Chapter 1

Introduction

In the past two decades, police cooperation has received increasing attention in both policy-making and scholarly literature and, although it is not a novel subject, much remains to be learned about it. Therefore, in an attempt to further unravel the deeper dynamics of police cooperation, this thesis examines the micro-cosmos of police cooperation in the European Union (EU). In particular, it explores the effects of the policy instruments of the Council of the European Union, also referred to as the Council of Ministers (hereafter, the Council) on the practices of police cooperation in the EU.

The Council is the EU’s main decision-making body, and its policy-making competence in the field of Justice and Home Affairs was established in 1992 by the Treaty of Maastricht\(^1\) (Mitsilegas 2009: 10). The resulting possibility for more coherent policy-making added a political dynamic to the existing bilateral and multilateral arrangements for police cooperation in Europe, which, as Hebenton and Thomas argue (1995: 7), ‘will play [a] part in determining the key practice of European policing’. The study thus aims to assess what effect Council policy instruments have had on the key practices of European policing and how the possible variations in such effects might be explained.

This first chapter sets out the background of the current study, presents the research questions and primary hypotheses, and describes the overall methodology. It also explains the research’s relevance, as well as its limitations. The chapter concludes with an overview of the structure and content of the remaining chapters.

1.1 Background of this study

Only since the mid-1970s has the development of police cooperation in Europe been structurally considered in political cooperation between the Member States (e.g., Monar 2002: 165). Before that, it was largely the domain of police practitioners. The first discussion of police cooperation at the political level between the (then) Member States of the European Communities (EC) occurred in 1975 at

the TREVI forum. Subsequently, with the coming into force of the Treaty on European Union (hereafter, TEU) on 1 November 1993, police cooperation gained a solid position on the European political agenda. Since then, one explicitly expressed objective of the TEU’s Title VI has been to strengthen police cooperation among EU Member States by ‘developing common action among the Member States in the field of police and judicial co-operation in criminal matters’ (Article 29 TEU).

Over the subsequent decades, numerous officials at both the EU and the national level have stressed the need to strengthen police cooperation between the police of EU Member States. Between 1995 and 2004, the EU Council adopted 137 tangible policy instruments aimed at enhancing police and judicial cooperation. Specifically, these instruments were designed to establish new institutions, such as Europol and Eurojust, harmonise procedural and substantial criminal regulations between the Member States, establish mutual recognition of these states’ measures and methods, and introduce supporting policies like training and funding for cooperation initiatives. The field of Justice and Home Affairs (JHA) has thus become one of the busiest policy terrains of the Council (Den Boer and Wallace 2001; Nilsson 2004a). Judging by the rhetoric of some politicians and civil servants, as well as the policy documents of the Council and the Commission, police cooperation in the EU is now firmly and centrally controlled and shaped at the EU level.

This assumption, however, presents a distorted picture. Notwithstanding the significant advancement of police cooperation at the EU level, much of the actual cooperation between the police of Member States takes place at a bi- or multilateral regional level. In fact, as detailed in Chapter 3 of this study, even though police cooperation has in recent years become part of the EU political agenda, police...
practitioners have remained a constant factor in the innovation and development of numerous bi- and multilateral cooperation arrangements outside any formal political framework.

Present day cooperation between police in the EU is therefore shaped through an ever-shifting complex array of informal professional frameworks, various modes of intergovernmental cooperation and emerging supranational institutions (Loader 2002: 125). Yet little is known about exactly how police cooperation practices are shaped and which variables play a role. Empirical research on police cooperation, particularly as it relates to the criminal investigative process, is rare. Overall, as Hoogenboom (2009: 323) argues, transnational policing is in general an under-researched area – at least compared to, for example, patrolling and community policing.

The ongoing integration between the EU Member States has influenced their practices of police cooperation. Hence, because police are a core element of the modern nation-state (Weber 1946), transnational police cooperation cannot be addressed outside its political context, especially given the significant development of instruments and institutions at EU level (Fijnaut 2004). Nonetheless, according to Walker (1994: 40) policing is not completely determined by the political context and, until some decades ago, police cooperation in Europe developed more or less autonomously.

In fact, throughout the 20th century, police cooperation in Europe was largely shaped by the initiatives of enthusiastic practitioners seeking solutions for their everyday practical needs (Anderson et al. 1995: 72). Hence, although the most prominent example of such initiatives is the establishment of Interpol, practitioner initiatives have also resulted in the emergence of many other (regional) arrangements for police cooperation in Europe, such as the Cross Channel Intelligence Conference between France, Belgium, the United Kingdom and the Netherlands and NeBeDeAg-Pol in the Belgian-Dutch-German border area. Even today, such police cooperation arrangements as the European Traffic Police Network (TISPOL), European Intelligence platforms and bilateral cross-border initiatives are established independently of EU-level decisions.

These observations raise questions about how Council instruments for enhancing police cooperation actually affect the real practices of police cooperation in the EU. For example, have these instruments

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6 See [https://www.tispol.org](https://www.tispol.org)
been mere ‘cosmetic exercises’ and should police cooperation be allowed to develop naturally as some practitioners propose? (Anderson et al. 1995: 77). It has been argued, for example, that the characteristics of JHA policy-making have resulted in many non-binding instruments that can be regarded as symbolic agreements (Den Boer 2001b: 37) whose effects are questionable (e.g., Commission 2004a; Den Boer and Wallace 2001: 511). Yet have these non-binding ‘soft law’ instruments really had no effect on day-to-day police cooperation in the EU? And have all binding ‘hard law’ instruments had a consistent effect on such cooperation? If not, which variables determine the effect of the Council instruments on police cooperation practices?

As noted above, new arrangements for police cooperation are still emerging in the EU as a result of practitioner initiatives, and police practitioners generally value practical cooperation arrangements and informal direct contacts more than politically instigated arrangements. They often argue, for example, that the scope of European police cooperation goes far beyond practical limits and operational needs, so formal instruments simply add further bureaucratic obstacles (Anderson et al. 1995: 78). Hence, the old boys’ network still prevails in practice and, on an operational level, goodwill is widespread (e.g., Anderson et al. 1995; Bayer 2010; Benyon et al. 1993; Hertzberger 2007; Guille 2010; U.S. Government 2006). In police cooperation, therefore, informal networking and the building of trust are seen as crucial factors for success (e.g., Anderson 2002; see also Den Boer and Spapens 2002: 25). In fact, most practitioners view formal and informal police cooperation as at best complementary, and a general fear exists that the development of police cooperation in Europe will become too distant from practical and operational needs (Anderson et al. 1995: 74–78; see also Van der Schans and Van Buuren 2003). Even outspoken proponents of police cooperation organised at the European level have warned that EU instruments resemble a ‘legislative soup’ (Van Buuren 2005) and that institutions that discuss only procedures instead of practical content are not advantageous (Wiarda 2005).

However, policy-makers and executives in Council structures and institutions, as well as some academics, view the gap between political ambitions and police reality from a different perspective. Some question whether police in the Member States are ‘able and willing’ to cooperate and denounce
the culture of ‘intelligence cocooning’ that in their eyes surrounds international policing (Bruggeman 2004). Bruggeman (ibid.: 5) further notes that the sharing of information is inadequate: states continue to cooperate in a traditional way in criminal matters, so police cooperation lacks trust and transparency. Also, policy-makers describe informal policing as ‘ad hockery’ that lacks any proper coordination, legal basis, accountability or transparency, and therefore results in a fragmentation of efforts (Anderson et al. 1995: 74–78).

In general, proponents of these practitioner and policy-maker perspectives see little value in the other’s perspective, a tension that Anderson et al. (1995: 77) capture in what they call the dichotomy of practical policing versus politics. Storbeck and Toussaint (2004: 13) formulate this dichotomy even more strongly by stating that:

JHA decision-making has often become a goal in itself, without a reality check at the operational level in the Member States. This leads to a situation in which there are two separate realities, i.e. the one at the negotiating table in Brussels and the one police and judiciary face every day in combating transnational crime. Both worlds are currently not interactive, leading to interference and competing scenarios.

This apparent rationality gap between EU Council policy-making on police cooperation and actual practices of police cooperation forms the central subject of this study. The study aims to identify the exact periphery between these two realities, particularly how instruments constructed in the political ‘reality’ influence the practices of police professionals in their ‘reality’.

1.2 Research question

Because the overall aim of the study is to analyse how practices of police cooperation in the European Union are being shaped, the primary research question is as follows:

To what extent do EU Council policy instruments aimed at enhancing police cooperation shape police cooperation practices in the EU?
In other words, what is the effect of EU Council instruments on police cooperation practices and how can differences in effect be explained? In relation to the differences in effect two hypotheses are formulated.

The first hypothesis, developed in detail in Chapter 5, recognises that EU Council JHA policy is characterised by a prevalence of non-binding ‘soft law’ instruments (e.g., Den Boer and Wallace 2001; Monar 2006a; Nilsson 2004a), which Member States have little incentive to implement because non-compliance is not measured, let alone sanctioned. Some authors therefore attribute little added value to these many soft law instruments in EU Council policy. In many instances, however, non-binding Council instruments have had a tangible effect on police cooperation practices. Additionally, Groenhuijzen and Pemberton (2009: 59), in discussing the differences in the effects of soft versus hard laws, observe that ‘the binding character, which often implies at least an external mechanism for monitoring compliance, has definitely had some advantages, but this addition should not be overestimated or made absolute’. The first hypothesis thus assumes the following:

There is no significant correlation between the legal nature of EU Council instruments aimed at enhancing police cooperation and their effect on the practices of police cooperation in the EU.

The second hypothesis, also developed in Chapter 5, is aimed at generating an explanation of the varying effects of Council instruments on the practices of police cooperation. The hypothesis flows from the importance of the officer’s perspective as demonstrated by Deflem (2002) and Sheptycki (2002a) in police cooperation practices, including shared beliefs and the significant professional discretion enjoyed by most police officers. Simultaneously the hypothesis takes into account the lack of practicality - observed by several authors - in the Council instruments on police cooperation, as well as the limited participation of police professionals in the JHA policy-making process (e.g., Bigo 2000b; Den Boer 2006).

These observations are framed by Snellen’s (1987, 2002) four rationalities model, elaborated in Chapter 5, which assumes that good public policy takes four rationalities into account: political, legal, economic and professional/scientific. When public policy does not stay within the boundary conditions of what is rational according to all four rationalities, the overall feasibility of that policy becomes ques-
tionable (Snellen 2002: 330). In this study, the working assumption is that the limited participation of police professionals in the Council policy-making aimed at enhancing police cooperation is likely to result in instruments that insufficiently take the boundary conditions of the professional rationality of police cooperation into account. Thus, according to Snellen’s model, police professionals are unlikely to recognise such instruments as practical and will not use them in practice. It is assumed that these notions may help explain the variation in the effects of Council instruments for enhancing police cooperation and. Combining these notions produces the study’s second hypothesis:

There is a significant correlation between the extent to which an EU Council instrument aimed at police cooperation is grounded in the professional rationality of police practitioners and its effect on the practices of police cooperation.

Both hypotheses are subsequently tested against data collected on a large number of Council instruments aimed at enhancing police cooperation.

1.3 Relevance

The study has both practical and academic relevance. Practical, because police cooperation is a widely debated topic in both political and public discourse in the EU: significant efforts and resources are being allocated to policy development and its subsequent implementation in this field. Yet coherent and comprehensive evaluations of the effect of EU Council instruments on actual practices of police cooperation are non-existent. Moreover, even though policing in general has enjoyed increasing popularity as a research subject over the past decades, empirical research on police cooperation practices remains scarce (Chatterton 2001; Fijnaut 2004; Hoogenboom 2009; Jaschke et al. 2007). In fact, Hoogenboom (2009: 323) argues that academic research usually tends to focus on only the most visible level of policing, where the majority of police work takes place, for example, patrolling, community policing and responses to calls for help. Hence, while this level is overwhelmingly represented in police research, many other aspects of policing are under-researched, including criminal intelli-
gence work, criminal investigations and, in particular, the transnational policing level on which liaisons operate, cross-border operations take place and Interpol and Europol are situated.

The main objective of this study, therefore, is to evaluate the effects of Council instruments intended to enhance police cooperation by going beyond the most visible levels of policing and drilling down to the under-researched level of international police cooperation. It aims to generate knowledge on the factors that shape police cooperation practices, the dynamics of Council policy-making related to this cooperation and, above all, the relation between these two. In achieving these goals, it also strives to be innovative by pursuing new lines of research: in particular, a quantitative approach to EU Council instruments and a structural assessment of their effect.

The theoretical aim of the study is to contribute to existing explanations for the deeper dynamics of police cooperation in the EU. The data gathered for that purpose might also be of interest to scholars debating the conceptualisation of the EU and policy implementation in general. It is further expected that the findings of this research could have direct practical use, for example, by providing policy-makers and police management with helpful insights into the success factors for making and implementing policy aimed at enhancing police cooperation.

1.4 Overall methodology

Methodologically, the central question is addressed in two stages. The first stage comprises the gathering of existing insights into Council JHA policy-making and the practices of police cooperation. The research therefore began with a review of the literature and studies on police cooperation in the EU. Simultaneously, 12 unstructured exploratory interviews were undertaken to gain an understanding of key issues in Council JHA policy-making and in the practices of police cooperation. The insights gained were then used to formulate the two hypotheses and in the set-up and execution of the second stage of the study.

This second stage involved the collection and analysis of data on several variables related to a large number of selected Council instruments for police cooperation enhancement, as well as two in-depth
case studies of police cooperation arrangements in the EU. The methodological technique thus employed was a combination of qualitative and quantitative research, and analysis techniques. This approach was chosen because it can provide both broad and in-depth evidence. The latter is also useful for developing alternative explanations, should they be required.

The actual methodology used to select the Council instruments on police cooperation, and to collect and analyse the data is detailed in Chapter 5. Briefly, it entailed examination of the Council instruments adopted between 1995 and 2004, an interval chosen for the following reasons: first, the results of JHA policy-making in the Council did not become visible until 1995 (Nilsson 2004a: 118). Second, sufficient time must be given for the implementation of the policy instruments if premature judgments on their effects are to be avoided, a minimum viable time-span of four years according to Mazmanian and Sabatier (1989: 303). The data collection began in 2008 and therefore only includes instruments adopted at least four years earlier (i.e., up until 2004). An additional argument for not stretching the research interval beyond 2004 is that, in the decade between 1995 and 2004, subsequent to the accession of Austria, Finland and Sweden, the configuration of the EU remained the same.

In the decade between 1995 and 2004 the Council adopted 70 instruments on police cooperation and these instruments constitute the key object (research sample) of this study. The field research entailed a targeted collection of data on these Council instruments, as well as data on the related policy-making for each, and on the instruments’ concrete effects on police cooperation practices. Subsequently, to enable correlation analysis, the qualitative data on these variables were numerically encoded according to a pre-defined system. The resulting data set was then used to statistically test for the existence of correlations between the variables. In addition, as part of an in-depth examination of how police cooperation is being shaped, two case studies were undertaken that aimed to uncover and document the nature of potential relationships between rationality in EU policy-making and in practical police cooperation.

Data collection for this study involved both the gathering of written documents and the administration of interviews and a questionnaire. One crucial primary source for the document analysis on Council policy-making was the official Council documents register, which includes all Council documents
related to policy-making and the implementation of adopted instruments. To obtain the relevant
documents, the register was queried online\(^7\) and most documents were downloaded directly. For the
documents that were not available online, a total of 116 requests for access were filed with the Coun-
cil’s General Secretariat between February 2006 and April 2010, which resulted in the procurement of
934 additional documents.\(^8\) In this way, a total of almost 3,000 relevant texts were collected, of which
about 1,200 relate directly to the Council instruments under scrutiny.

Additional primary texts were gathered in the form of police documentation (both official and unoffi-
cial), national government and parliamentary documentation, TREVI documentation and other written
sources on police practices in the EU Member States, including media reports. These sources were
collected through Internet research, archival research and direct contact with police officers and pol-
icy-makers. The data collected from these primary sources were supplemented through targeted col-
lection of information from secondary sources on police cooperation, including articles in both aca-
demic and professional journals. This documentary research took place from 2005 until 2010.

The research also included two series of interviews with police officers and civil servants, and one
structured questionnaire administered to police officers in specialised areas. The first series of inter-
views, as discussed above, took place between August 2005 and May 2007 and consisted of 12 ex-
ploratory interviews with randomly chosen, mostly senior, police officers and civil servants. The pur-
pose of these interviews was to gain understanding on key issues of contemporary police cooperation
practices and Council policy-making. The respondents were chosen based on the relationship of their
professional position with either international police cooperation or Council policy-making structures.
In a few cases, the researcher took advantage of unplanned opportunities for interviews.

The second series of interviews, carried out between May 2007 and August 2010, comprised 24 semi-
structured interviews with deliberately chosen respondents: specifically, senior police officers and
civil servants from ministries in four different EU Member States and two EU institutions. In addition
to these 36 personal interviews, seven police officers in the Netherlands from specialised departments

\(^7\) Available online at [http://www.consilium.europa.eu](http://www.consilium.europa.eu)

\(^8\) In a few cases, partial access was granted (after a confirmatory request), and in a few cases, access was denied. There is no
indication, however, that these few instances significantly impacted on data collection.
(e.g., high-tech crime, money laundering, fraud) contributed to the data collection by answering a number of written questions. This written survey, chosen for reasons of efficiency, asked respondents about the actual use of specific Council instruments in their field of specialisation. Their responses, like those from the interviews, were incorporated into the assessment of the Council instruments’ effects. An overview of respondents and general questions asked is included in Appendix A.

The data gathered from the different primary and secondary sources were subsequently collated and analysed. For verification purposes, the detailed findings are included in Appendix B.

1.5 Validity and bias

Although much effort went into ensuring the reliability of the data collection and analysis, this study, like any other, contains elements that may undermine the generalisability of its findings (e.g., King et al. 1994: 25). More specifically, as a direct result of time and resource constraints, the research methods chosen and three sources of potential bias, the study design includes factors that may impede external validity. These factors and the steps taken to mitigate their effects are discussed below.

The first limitation that could influence the external validity of conclusions on the effects of Council instruments is the fact that data for the selected instruments were not collected for all Member States. Realistically, collecting data for all instruments in all 15 countries that were EU members during the research interval (1995–2004) was simply not feasible within the limited time and resources of a Ph.D. study. Instead, available data were collected from both written sources and interviews. When data on the effect of a certain instrument initially appeared sparse, as much extra effort as possible within the time and resource constraints was put into collecting additional information. Nevertheless, the available quantity and quality of data differed for each case, and in 6 out of the 70 cases, it had to be concluded that insufficient data were available for reliable assessment of the instruments’ effect.

Hence, although the findings of this research are based on sufficient evidence for the conclusions drawn in this thesis, it could be argued that these conclusions are only valid for the Member States for which data were collected. On the other hand, in general, when police from different EU states co-
operate, the common denominator in their cooperation practices regulates the nature of that cooperation. Therefore, although there may be differences in cooperation practices between the Member States, the variance in these practices is likely to be relatively small, meaning that the data collected for a fewer Member States can still give an accurate picture of the whole. Nonetheless, the findings on the effects of Council instruments should be read with this limitation to external validity in mind.

A second factor that could limit the external validity of the findings is the use of interviews with experts. During the data collection phase, it turned out to be difficult to find police officers and policy-makers that had knowledge of both police cooperation practices and Council instruments and their use in this field. That is, despite exceptions in centralised and very specialised fields of police cooperation, such as football hooliganism and war crimes investigations, police officers with a broad knowledge of the Council instruments for enhancing police cooperation are rare. Likewise, policy-makers, such as the civil servants that represent the Member States in the Council working groups, and the staff of EU institutions in general, have limited knowledge of the actual practices of police cooperation, let alone practical cooperative experience.

Another problem that the search for experts in their field brought to light is that centralised police bodies – and in many instances, experts in particular fields – in the different Member States tend to know each other personally. As a result, these experts, like the civil servants involved in Council policy-making (e.g., Geuijen et al. 2008: 80), often form a relatively homogenous social group, leading to a high risk of similar, socially desirable answers (Bryman 2008: 211). In this research, this risk was mitigated in two important ways: first, semi-structured interviews were conducted in which respondents were asked to provide as much factual data as possible together with their opinions. Second, significant use was made of documentary evidence in conjunction with the evidence from interviews, and the data collected from the different sources was integrally analysed.

Lastly, three sources of possible structural bias must be acknowledged in the research as a whole. First, as a former police officer, the author has had a career in the field of international police cooperation. On the one hand, this experience provided two advantages not enjoyed by most authors in the field: relatively easy access to the inner sanctum of European police cooperation, and a thorough
understanding of police cooperation practices through experience. On the other hand, being a former officer in the field of study also entails a risk of systematic bias. For instance, as Anderson et al. (1995: 77) point out, police practitioners generally have a bias against politically driven forms of police cooperation. To mitigate this potential structural bias, this research employed a wide variety of data sources and interview settings where possible, together with strong interview protocols and discipline and extensive data management to ensure that all data and analyses are replicable. Interview content was transcribed by the researcher and authorised by the respondents, and the evidence used from both the interviews and the written data sources is meticulously quoted and attributed to the corresponding source.

A second potential source of bias arises from the actual literature and discourse on policing and police cooperation, which is written mostly in the English language and appears to be dominated by authors of Anglo-Saxon and Northern European origin. Language constraints also have influenced the selection of literature.9 Both these aspects are inevitably reflected in the references cited for this study, in which southern and eastern European perspectives are under-represented, thereby producing a potential cultural bias (e.g., Hofstede et al. 1993).

Thirdly, the projected external career of the Council policy documents, on which a large part of the analysis rests, could result in a bias. That is, documents that are expected to become public are likely to display less transparency concerning the underlying arguments than internal documents (Sheptycki 2002a: 12). In some areas, they may contain only a filtered residue of the actual discourse in the policy arena. As a result, these documents may only partly reveal the dynamics of the policy process and the rationalities applied in the actors’ arguments, which may in turn hamper the discovery of relevant facts. To mitigate this potential structural bias, the analysis of the policy process dynamics and the actors’ rationalities draws on the full documentary history, including the first initiative, subsequent drafts, working group minutes, explanatory notes, the notes of delegations and the final instrument.

In sum, even though some factors could limit the external validity of the study findings, significant steps have been taken to mitigate these factors. It is therefore believed that the data used for this study

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9 Contributions in languages other than Dutch, English, French and German were not considered.
adequately depict the workings of the JHA policy-making process and police cooperation in the European Union.

1.6 Thesis outline

This dissertation has two parts. The first, presented in Chapters 2 to 4, reports the findings of the literature review and desk research, and thus lays the foundation for the field research by providing an extensive background on police cooperation and EU policy-making in this area. Chapter 2 describes a number of key concepts related to policing and police cooperation in Europe and discusses academic perspectives of police cooperation. This is necessary because police cooperation in Europe occurs on several levels and involves myriad modes and instruments that make the subject wide-ranging and difficult to pin down (Anderson 1989: 9). In addition, police cooperation by no means exemplifies clear and rational organisation (Van Reenen 1989: 45). The aim of the chapter, therefore, is to provide a thorough background on police cooperation in Europe that can function as a point of reference for the entire thesis, while helping to delineate the subject that is the primary focus of this study. The description of key concepts in police cooperation is followed by an overview of the advancements and perspectives in research on police cooperation since the end of the 1980s, in particular three early models of police cooperation and more recent theoretical contributions to the debate by Mathieu Defflem (2002) and James Sheptycki (2002a). Finally, the chapter focuses attention on the different perspectives on European integration, particularly in relation to the question of how such integration may have influenced the development of police cooperation between the Member States.

Chapter 3 then explores the emergence of police cooperation in Europe from the 19th century until the present day. It thus provides an extensive overview of relevant developments in police cooperation practice in Europe, which until the mid-1970s was almost exclusively shaped by police practitioners. The chapter shows that, since police cooperation appeared on the political agenda with the 1975 establishment of TREVI, the political influence on police cooperation practices in Europe has increased. At the same time, it shows that police officers have retained a key role in the development and innovation of cooperation practices.
Chapter 4 examines in detail the way in which EU Council JHA policy instruments come into being. Specifically, it describes the structure of what until December 2009 was known as ‘the third pillar’ of the EU, as well as the way in which agenda setting and policy formulation take place in practice. In addition to describing the formal structure, it explores how, on a more informal level, the policy is being shaped. Most importantly, it aims to provide insight into the drivers and factors behind policy-making, as well as the challenges that result from particular conditions, such as the unanimity requirement under which Council policy-making to enhance police cooperation takes place. It should be noted at this point, however, that during the course of the research, a major change occurred in Council JHA policy-making when in December 2009 the Treaty of Lisbon came into effect. It remains to be seen to which extent these changes affect Council policy-making in relation to operational police cooperation, particularly as the policy-making in this field has undergone fewer changes than other subjects that resided under the third pillar (see e.g., Mitsilegas 2009: 47-48). Nonetheless, pre-Lisbon Council JHA policy-making remains the core object of this investigation.

The second part of this thesis, presented in Chapters 5 to 9, reports the findings and conclusions of the field research. It begins with Chapter 5, which outlines the theory, hypotheses and methodology used in the field research. Based on the findings of the first part of the study, it presents a theoretical reflection framed by Snellen’s (1987; 2002) four rationalities model and develops the two research hypotheses in greater detail. It also includes a detailed overview of the methodology used to identify and select the Council instruments deemed relevant for the study. Finally, to produce a framework for the analysis, it details the operationalisation of the research question and the collection of the data on the various variables related to the selected Council instruments. Chapter 6 contains the findings of the quantitative analysis of the variables for the 70 EU Council instruments selected. After presenting descriptive overviews of the instruments’ various characteristics, it reports the correlation analyses of these variables and hypotheses testing formulated in Chapter 5. Lastly, the chapter interprets – and where appropriate, explains – the findings, in particular those that diverge from expected outcomes.

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As noted before, the detailed evidence on which these findings are based is collated and presented in Appendix B.

Chapters 7 and 8 provide an in-depth qualitative analysis of two exemplifying case studies of Council instruments aimed at enhancing police cooperation, and the effect on actual practices of police cooperation in the EU. The first case study, reported in Chapter 7, examines the use in the EU of joint investigation teams (JITs). After introducing the JIT concept, it investigates possible causes for the apparent gap between political ambitions for JIT usage and their actual employment in police practice. It examines Council policy-making on JITs from the first introduction of the idea until today specifically, and, generally, the context of police cooperation in criminal investigations between the EU Member States. The second in-depth case study, discussed in Chapter 8, examines the practices of liaison officers and policy efforts to formalise their work. It reviews the use of liaison officers in European police cooperation since the 1970s, and includes a detailed portrayal of the actual practices of these officers. It then compares these practices and the factors that shape them with various policy efforts in this area. The chapter analyses whether policy-making on the use of liaison officers in police cooperation, which began under TREVI and has been continued by the EU Council, has had any tangible effect on police practice.

Chapter 9 combines the findings from the previous chapters into an overall synthesis of the thesis. Specifically, it reflects on the findings from the field research, considers the results of the hypothesis testing and integrates the observations from the case studies. Based on all these outcomes, it provides an answer to the central research question and reflects on the implications of this study.
Chapter 2

Police cooperation in context

2.1 Introduction

Many texts on police cooperation, whether in the media, in policy-documents or even in academic literature on the subject, proceed without a clear delineation of exactly what ‘police cooperation’ is, and the term is accorded various meanings. Such variety can cause confusion because, particularly in Europe, the various levels, modes and instruments of police cooperation make the topic broad and difficult to pinpoint (Anderson 1989: 9). In addition, police cooperation is by no means an example of clear and rational organisation (Van Reenen 1989: 45). What, then, does police cooperation entail? How does it relate to policing in general, and what is the meaning and relevance of the often-used adjectives ‘international’, ‘transnational’, ‘informal’ and ‘formal’ in relation to police cooperation? Against what general and theoretical background can police cooperation be examined? What theoretical perspectives and models have been formulated to address police cooperation and its development in the European Union? This chapter addresses these questions by discussing a number of key concepts and perspectives related to police cooperation in the hope of providing a solid background that can serve as a point of reference in the remainder of this study.

To this end, this chapter proceeds in four stages. Section 2.2 opens with a broad discussion of a number of key concepts related to international policing, including its functions and relation to the nation-state, the ambiguous use of the term ‘international police cooperation’, and different categories of police cooperation. The section ends by paying detailed attention to the often-made distinction between formal and informal police cooperation. To illustrate the different theoretical views on police cooperation, Section 2.3 outlines four perspectives that are distinguishable in the relevant police cooperation literature, i.e., functional, legal, political science and sociological. This part of the chapter includes the key elements of each perspective and their contribution to the field.
Section 2.4 introduces three early models of police cooperation formulated by Van Reenen (1989), Anderson (1989) and Benyon et al. (1993), respectively. These models, although descriptive, are important because until now they have delineated the research on police cooperation and thus have contributed to our understanding of the related issues. Subsequently, Section 2.5 details two recent theoretical contributions on police cooperation which are grounded in the broader sociological tradition, as well as in original empirical research. These studies, by Mathieu Deflem (2002) and James Sheptycki (2002a), are among the few serious attempts at theory building related to police cooperation. Although both authors adopt a different research design and proceed from different sub-disciplines within sociology, they derive comparable and, on some points complementary, insights. These insights emphasise the importance of organisational autonomy and shared problem solutions as key factors for successful police cooperation.

Next, Section 2.6 focuses on different perspectives of European integration, particularly in relation to how ongoing integration has influenced the development of police cooperation between the Member States. This discussion examines different perspectives on the nature and scope of this potential influence, including the intergovernmentalist versus supranationalist debate, as well as the multilevel governance concept, which shows some explanatory power for the differences in police cooperation and its development on central and decentralised levels within the EU. The chapter concludes with a summary of the relevant issues and insights derived from all perspectives examined.

2.2 Key concepts in police cooperation

2.2.1 Policing and the nation state

Before addressing the meaning of the term ‘police cooperation’, there is a need to clarify the concept of policing itself. According to Reiner (2000: 3), policing is a set of activities aimed at preserving the security of a particular social order or social order in general and is thus a form of social control. Therefore, although successful policing has often been defined as the ability to minimise the use of force, police are in essence ‘specialists in coercion’ (ibid.). From this perspective, then, police should
be defined as formally designated and specialised agents of social control who have the capacity and primary responsibility to legitimately apply coercive force to maintain social order (ibid.: 6–8).

However, looking at police and policing only from the perspective of coercion could present a limited picture. In the past two decades particularly, in what has become known as the ‘information age’ (Castells 1996), information and knowledge have come to dominate the organisational structure of police work (Sheptycki 2002a: 81), so police officers have in this sense been described as ‘knowledge workers’ (Ericson and Haggerty 1997: 19). In fact, Sheptycki (2002a: 73) argues that, as a result of new methods of handling and exchanging knowledge, police agencies have been revolutionised. Nevertheless, according to Reiner (2000: 6), the distinctiveness of the police does not follow from the way they perform their specific social function - other institutions have similar functions - but rather from their being the specialist repositories for the state’s monopolisation of the legitimate use of force. And in relation to the cooperation between police from different states, in particular in the EU, it is important to consider this direct relationship between police and the state more closely.

On the ‘legitimate use of force’, there is general agreement that Max Weber’s (1946: 78) claim that the state is ‘the sole source of the “right” to use violence’, or in other words, that a state is ‘a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’. The modern democratic state is thus generally seen as providing the police with the legitimacy to use force because police activities are subject to democratic control by parliament and other oversight bodies. Consequently, when force is necessary to secure general or specific social order, a symbiotic relationship emerges between the modern nation-state and the police (Walker 2003: 114). However, the ongoing integration in Europe has produced a new form of political order, one that has begun to challenge the hegemony of the state (Anderson et al. 1995: 87). Hence, ‘policing’ and ‘the state’ have been uncoupling (Walker 2003:115), and the symbiotic relation between them is becoming more ambivalent. For example, the European Arrest Warrant (Council of the EU 2002g), which is based on the principle of the mutual recognition of arrest orders in the different Member States, illustrates that the ‘monopoly of force is no longer solely at the disposal of each Member State’ (Jachtenfuchs et al. 2005: 23). Nevertheless, policing institutions are closely linked to political entities
and sovereignty, and the assumption of the monopoly of force within sovereign states remains a core principle in policing (Anderson et al. 1995: 120).

If sovereignty is a key concept in policing, then it follows that the concept of jurisdiction is equally important in any discussion of this issue and this concept adds to the complexity of modern policing. Traditionally, activities undertaken within the boundaries of the territorial jurisdiction were sufficient for police to successfully perform their social control activities. With regard to criminality, there was no – or at least little – variation in where the offences were carried out; where the damage or harm occurred; who was competent to investigate and prosecute; what citizenship the offender, investigator and victim held and where the offender, victim and proceeds of the crime were actually located (Marx 1997: 23). In past decades, however, that variation has increased enormously, a change that is particularly visible in border regions within the EU (e.g., Gooren and De Jong 2005). Citizens in the EU today can communicate, travel, send and receive goods, and conduct financial transactions across the boundaries of the Member States as if those borders simply did not exist. Social control, however, cannot cross these boundaries as easily because the police, in their actions, are bound to the territory under their own state’s sovereignty. Hence, unilateral police activities on the territory of another state would imply a breach of that state’s sovereignty, which is unacceptable for most, if not all, states. Thus to fulfil their task, police may need to cooperate with one another across borders. However, the very existence of different jurisdictions, creates obstacles (Anderson 1989: 150).

2.2.2 International police cooperation

The ambiguous use of the term ‘international police cooperation’ in the academic literature on police cooperation is readily apparent: not only is this term used with different connotations, but different terms for ‘international police cooperation’ are also used with seemingly similar connotations. These terms and ambiguities are examined below.

11 Nevertheless, breaches of sovereignty as result of unilateral police actions do happen. See, for example, Nadelmann (1993: 8, 226), Enquêtecommissie opsporingsmethoden (1996: 298) and Volkskrant (2007a).
First, the term ‘international police cooperation’ is often used to describe the practices of police who are actually cooperating ‘on the ground’. Such activity may take the form of day-to-day police cooperation in operational work and direct information exchange, or police cooperation on various matters in wider forums, for instance, through Interpol and Europol. The term ‘international police cooperation’, however, is also used to describe the cooperation between political centres in the different states because they shape the larger cooperative structures by, for example, concluding treaties and agreements. Hence, even though in practice, activities on different levels may overlap and occur simultaneously (Rijken 2006: 6), some delineation of the subject – for instance, using Benyon et al.’s (1993) definition of the levels of police cooperation – may prevent confusion (see Section 2.4).

A second possible source of confusion is the differentiation between the often-used terms ‘international police cooperation’ or ‘international policing’ (e.g., Anderson et al. 1995; Deflem 2002; Koenig and Das 2001; Nadelmann 1993) and the less often-used term ‘transnational policing’ (e.g., Aden 2001; Sheptycki 2000, 2002a). To further complicate the issue, the term ‘cross-border policing’ also appears in the literature on international policing (e.g., Den Boer and Spapens 2002), and some authors use all three simultaneously with apparently the same connotation and no attempt to differentiate (e.g., Loader 2002). Taken literally, the difference between ‘international’ as ‘occurring between nations’ and ‘transnational’ as ‘extending or operating across national boundaries’ could suggest the use of ‘international’ in cases of cooperation between state actors and the use of ‘transnational’ in cases of cooperation between sub-state actors. In the literature on police cooperation, however, such an explicit differentiation is rarely made. One exception is Sheptycki (2000; 2002a), who consistently uses ‘transnational’ in the context of contacts, coalitions and interactions that cross state boundaries but are not controlled by the central foreign policy organs of governments. He thus emphasises the significant influence on policing over recent decades of transnationalisation and the fact that the actions of a wider variety of sub-state actors seem ‘more important to understand than they

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13 Another exception, although less pronounced, is Deflem’s (2002: 56) application of ‘transnational’ to 19th century police operations almost in the sense of ‘unilateral’: ‘transnationally planned and confidentially executed police practices dominated over international cooperative efforts’.
once did’ (Sheptycki 2000: 7). According to Sheptycki, the term ‘international policing’, in contrast, should be understood to describe the practices of or on behalf of sovereign states by ‘highly decorated representatives’ of the state (ibid.).

Yet such a differentiation between transnational police cooperation and international police cooperation could result in a rigid definition of centralised police cooperation as ‘international’ and cooperation on decentralised (sub-state) levels as ‘transnational,’ a definition that, no matter how valid, could engender debate (see Sheptycki 2000: 6–7) outside the scope of this study. Moreover, in practice, police have long cooperated ‘transnationally’ without the knowledge or sanction of governments or their central foreign policy organs (e.g. Benyon 1996b: 358) and, in most literature, these practices are described as ‘international’.

Another term used in the literature for police cooperation activities is ‘cross-border police cooperation’ or ‘cross-border policing’, a label generally used with reference to direct cooperation between sub-state authorities in neighbouring regions located immediately on either side of a nation-state’s borders (Reichenbach, Spoormans and Korsten 1999: 16; Van de Walle 2000: 4; Commission 2004e). Many factors, such as shared cultural background, command of a (regional) language, a history of network contacts and the relative distance from the political centre, give cross-border police cooperation a character distinct from that of other forms of police cooperation (e.g., Den Boer and Spapens 2002; Gallagher 1998).

In general, this study predominantly uses the term ‘police cooperation’ to designate the actual practices of police officers from different jurisdictions interacting with each other, either on a day-to-day basis in operational cases or within wider forums and arrangements. The adjectives ‘international’, ‘transnational’ and ‘cross-border’ are used only where these are explicitly used in the sources quoted or when it is necessary to contrast particular cooperation practices to other practices. Where appropriate, the different levels proposed by Benyon et al. (1993) are also used for clarification.
2.2.3 Categories of international police cooperation

Most publications on international police cooperation focus on police collaboration in criminal investigations related to such activities as combating drug trafficking, terrorism, money laundering and trafficking in human beings; therefore, international police efforts are usually defined in terms of law enforcement.\textsuperscript{14} Sheptycki (2001: 158), however, criticises this approach:

> Fear of transnational organised crime has provided the discursive canopy under which the transnational practices of police agencies have largely developed. This discourse ignores the more mundane, but nevertheless important, service aspects of police work, transnational and otherwise. Police work such as coordinating disaster response is a no less important aspect of public safety provision than is law enforcement.

Traditionally in the literature, three broad categories of police cooperation have been distinguished: technical assistance, upholding public order, and cooperation in criminal investigations (Koers 2001:189). However, it may be questioned whether policing still fits these traditionally recognised classes, after the various developments during recent decades. For example, how might one classify the bilateral cooperation on traffic control and road safety since the late 1990s after the Schengen Convention lifted internal border controls? Bilateral cooperation on this terrain in border regions is now normal routine, and multilateral traffic safety operations are increasingly organised under the aegis of TISPOL. Another area in which police cooperation in the EU has stretched beyond the traditional cooperation categories is the coordination of responses to disasters and serious accidents, as illustrated, for example, by the Prüm Convention provisions relating explicitly to assistance in the case of such events.

Besides this apparent expansion of police cooperation in the EU beyond traditionally recognised areas, the delineation between the categories also seems to be fading as, for instance, in the special intervention units’ ATLAS network, in which technical assistance and operational cooperation have begun to blend (see Block 2007a). The daily work of the joint commissariats (see Chapter 3) established in EU border areas also illustrate the difficulty in determining where cooperation on public

\textsuperscript{14} For a further discussion of the nature of international enforcement, see Nadelmann (1993: 8–10).
order or road safety ends and cooperation on criminal investigation begins. In daily practice, these joint commissariats facilitate the full range of activities necessary for policing the area and do not differentiate categories of cooperation (e.g., Felsen 2011).

2.2.4 Formal and informal police cooperation

Another distinction often made in regard to police cooperation is that between ‘formal’ and ‘informal’, an issue of particular importance for any study of the dynamics of police cooperation and one that plays a role in many academic contributions on the subject. From a historical perspective, police cooperation in Europe was largely informal until the 1980s (Fijnaut 1982: 52); although bi- and multilateral treaties and conventions on mutual legal assistance did exist, these were aimed at judicial cooperation and seldom regulated police cooperation and information exchange. Hence, informal practices ‘arose out of pragmatic requirements to deal with certain events or cases in times when precise legal regulations were absent’ (Nogala 2001: 137) or, as Gallagher (2002: 132) puts it, out of ‘sheer necessity’. Such informal cooperation between police in Europe has existed since the 19th century (e.g., Deflem 2002: 65; Fijnaut 1992: 101), and, as pointed out by Benyon et al. (1993: 213) and as confirmed in more recent studies (e.g., Den Boer and Spapens 2002; Harfield 2005; Larsson 2006; U.S. Government 2006), these micro-level informal contacts between police officers form the backbone of police cooperation in Europe.

Nevertheless, although many authors use the adjectives ‘formal’ and ‘informal’ to label different types of police cooperation, only a few elaborate on the exact meanings of these terms in the context of their argument (e.g., Bayer 2010; Den Boer et al. 2008; Hufnagel 2011; Larsson 2006; Sheptycki 2002a). Bayer (2010: 89–90), for example, defines formal and informal in relation to the pathways along which interactions take place and equates formal with bureaucratic (ibid.: 19). Hufnagel (2011: 34), on the other hand, offers a legal perspective, defining ‘informal’ as occurring in the absence of precise – or in some cases any – legal regulation. Sheptycki (2002a: 28), in contrast, discusses formal and informal communications in relation to the institutional requirement of supervisory oversight. Yet even though these authors focus on different aspects of formality in police cooperation, all three con-
tribute to further defining ‘informal’ in relation to police cooperation, something that most other authors have until now failed to do.

Another perspective on formal and informal police cooperation is offered by Den Boer et al. (2008: 105–109), who define formality based on the degree of legitimacy. This they classify into three types: democratic, legal and social. Formal ‘vertical’ arrangements, they argue, are held accountable and therefore embody a relatively high level of democratic, legal and social legitimacy; whereas the loosely composed ‘horizontal’ arrangements merely enjoy ‘light’ accountability and legitimacy, which, from a normative perspective, is a reason for concern (ibid.: 103). In addition, as Den Boer (2002b: 275) argues, describing formality and informality in police cooperation as a dichotomy is not really accurate: forms of international police cooperation are characterised by different shades of formality.

Overall, views on the value and appropriateness of formal and informal police cooperation practices differ. Officers generally describe informal direct (horizontal) cooperation as swift, efficient and effective (Larsson 2006: 458) but regard formal (vertical) cooperation as slow, cumbersome, bureaucratic and ineffective (e.g., Bayer 2010: 19; Den Boer et al. 2008: 103; Gallagher 2002: 111). Nonetheless, informal practices have significant shortcomings. For one, their legality can be questioned, and their dependence on personal contacts involves a continuity risk. For example, what happens when the officer with the most contacts retires? Or when information from informal contacts is improperly filed in an investigation? Likewise, informal cooperation frequently contributes nothing to insights into and overview of relevant developments from a national point of view could therefore hamper effective criminal enforcement. Additionally, in informal cooperation, knowledge and experiences can easily be ‘shielded’ against scrutiny by superiors or outside reviewers (Nogala 2001: 137), and accountability within European policing ‘is already becoming increasingly thin’ (Den Boer 2002b: 277).

Another often mentioned downside to informal police cooperation practices is that the inability of central authorities to exercise control over them could affect a country’s sovereignty (e.g., Anderson 1989: 175). However, governments may sometimes have good reason to keep international agree-
ments and cooperation informal (Lipson 1991). An example of informal networking can be found in the Police Working Group on Terrorism (PWGT),\textsuperscript{15} the police in Europe’s primary channel for exchanging counter-terrorism related information and intelligence (interviews #6, #22). Although it was established in the 1970s, this group’s existence and workings were long kept secret, and only after 11 September 2001 (hereafter, 9/11) did governments publicly acknowledge their PWGT participation. Yet, as one PWGT-involved respondent noted, for a long time there has been no (precise) legal basis for the direct information exchange in the network. Rather, this information exchange has taken place with ‘tacit government complicity because the government didn’t know what else to offer instead of informal information exchange’ (interview #6).

In these ‘interstitial spaces’ between governed territories, as Sheptycki (1995: 630) calls them, there is no overarching legal framework, but states know that there must be some kind of lubrication to make cooperation possible. In fact, Lipson (1991: 514) argues that such informality in international arrangements has proper rationales, for example, speed and obscurity. Such informal understandings are particularly useful when police confront new practical problems in police cooperation for which existing formal arrangements do not suffice. Therefore, despite a general tendency formalise and centralise police cooperation in Europe (Block 2007b), it could be argued that alongside this trend, forms of police cooperation that are less formal in one or more aspects retain their value.

This study, however, adopts no normative standpoint on either formal or informal police cooperation practices; rather, it views both as complementary and as interrelated to the extent that informal practices may be subject to formalisation processes. Hence, it labels the cooperation arrangements discussed and examined in this study as more or less ‘formal’ or ‘informal’ by pointing out the relevant aspects of formality.

\textbf{2.3 Perspectives in the police cooperation literature}

\textsuperscript{15} The PWGT is discussed in more detail in Chapter 3.
The academic literature that pays particular attention to police cooperation began emerging throughout the 1980s, starting with such publications by Anderson (1989), Fijnaut (1982), Fijnaut and Hermans (1987), Gregory (1991), Van Reenen (1989) and Wilkinson (1985) among others. Previously, very little had been written about police cooperation with the exception of some popular books on Interpol and a number of articles in press and police journals, ‘all of which had little to offer the scholar’ (Anderson 1989: 8). Yet, even though policing has generally enjoyed increasing popularity over recent decades as a research subject, empirical research on daily practice in police cooperation is scarce (Chatterton 2001; Fijnaut 2004; Hoogenboom 2009; Jaschke et al. 2007: 89; Tak 2000b: 348). Nonetheless, in the last two decades, several valuable contributions on the subject have been published that generally can be divided in four different perspectives (Deflem 2002: 28). Each perspective is discussed below.

A significant portion of the literature on police cooperation is rather descriptive and highly technical, offering a great deal of empirical material but little theoretical explanation (e.g., Bayer 2010; Bayley 1985; Block 2007a; Brown 2008; Koenig and Das 2001). In some of these contributions, police cooperation is explained from a somewhat naive functionalist perspective (e.g., Fooner 1973; Santiago 2000), which generally assumes that increasing international police cooperation is directly triggered and shaped by an increase in international crime. Police practitioners and policy-makers particularly are prone to express such a functionalist view (see, for example, Interpol 2010c), regarding police cooperation as a direct function of a demand and an intention to cooperate. Such a view, however, generally fails to account for the variety of police cooperation initiatives and, more importantly, for those instances in which, despite an obvious demand for and intention to cooperate, cooperation fails to emerge. In other words, a simple functionalist view ‘explains too little and obscures too much’ (Andreas and Nadelmann 2006: v) or, as Shepetycki (2002a: 130) argues, when the necessity for cooperation is explained only by the rise in transnational crime, the premise is little more than a ‘caricature’. Indeed, Walker (1996: 260) reminds us that, because crime is a social construct, and crimes have deep social, economic and political roots, police cooperation ‘does not flow inexorably from developments in international crime but is invariably a matter of normative preferences and political choice’. More-
over, as Bigo (2000a: 89) points out, the police are in part a creator of these normative preferences that to a certain extent derive from their internal processes and institutional stakes.

Nevertheless, moving from that point to a claim that functional considerations can be completely ignored may be equally invalid. The effects of globalisation – including the increase in travel, international trade, communications and financial transactions – have undoubtedly changed society and created new issues for policing (Bowling 2009: 151). Such mobility over the last few decades has greatly increased the variation in the locations of the offences and the damage or harm they inflict; the parties that are competent to investigate and prosecute them; the citizenship of the offender, investigator and victim; and the actual whereabouts of the offender, victim and proceeds of the crime (Marx 1997: 23). As a result, these issues can often only be tackled through cooperation between police from across borders. For example, Gallagher (2002: 111) points out that in policing the Channel region, ‘sheer necessity’ is what drove the cooperative partners together, after they were confronted in their daily work by an increasing need for information from the other side of the border. Similar reasons to start cooperating have also been observed in other fields of cross-border cooperation in the EU (e.g., Van de Walle 2000: 10). Hence, the existence of shared problems may play an important role in the emergence of police cooperation and could also influence the nature and scope of the most effective cooperation for tackling the problem (e.g., Spapens 2010).

A second category of police cooperation literature, one that accounts for a significant amount of work, is made up of contributions that are more legally oriented (e.g., Fijnaut 1993a, 2004; Harfield 2003; De Hert 2004; Hufnagel 2011; Joubert and Bevers 1995; Koers 2001; Moors and Borgers 2006; Rijken 2006; Rijken and Vermeulen 2006; Schalken and Pronk 2002; Spapens 2008; Tak 2000a, 2000b; Vermeulen 2006, 2010; Vermeulen and Vander Beken 2002). Studies within this research stream try to explain police cooperation, or lack thereof, in the framework of formal systems of law and international treaties and view the codification of international law as a driving force in international police cooperation (Deflem 2002: 29). One recent example is Andreas and Nadelmann’s (2006: 227) argument that the capacity of a state to successfully engage in police cooperation depends greatly on the extent to which its criminal law norms conform with those of other states.
Nevertheless, it can be questioned whether conformity of criminal law norms between states alone is sufficient to drive police cooperation: the practices of police cooperation to combat art crime in the EU, for instance, strongly suggest that it is not (Block 2011b). As Sheptycki (2002a: 86) argues, ‘even if policing takes place under the law, it cannot be said to be driven by it’. Moreover, the existence of an unambiguous link between policing and law is questionable (Manning 1997: 94), if only because of the significant professional discretion enjoyed by police officers (Kleinig 1996). For example, in a series of case studies on international police cooperation through mutual legal assistance, only 2 of 11 key causal issues turned out to be of a purely legal nature (Harfield 2005: 153). Nonetheless, Hewitt and Holmes (2002) maintain that, from a practitioners’ perspective, differences in formal systems of law do affect police cooperation because they result in diverging rules of evidence, admissibility of covert policing techniques and variations in disclosure regimes between the jurisdictions. All of these impede police cooperation, according to these authors.

Tak (2000b: 353), on the other hand, claims that it is not so much diverging legislation that presents obstacles to police cooperation, but rather the lack of knowledge on relevant differences. Moreover, because police have sufficient professional discretion to participate in international cooperation arrangements without a specific legal basis, police cooperation is often possible without any legal framework (Aden 2001: 106). Indeed, Sheptycki (2002a: 87) in contrast argues that fragmentation of jurisdictions can empower police by, for example, enabling them to choose the ‘best’ jurisdiction for certain actions.

A third general category distinguishable in the police cooperation literature represents a political science (International Relations) or Public Administration perspective (e.g., Aden 2002; Anderson 1989; Anderson et al. 1995; Benyon et al., 1993, 1994; Bigo 1994, 1996, 2000a; Den Boer 2003; Den Boer and Walker 1993; Busch 1995; Gregory 1991, 1995, 2001; Hebenton and Thomas 1995; Huggins 1998; Monar 2002; Nadelmann 1993; Nogala 2001; Occhipinti 2003; Van Reenen 1989; Walker 1996, 2003). These studies focus on police in their institutional environment and argue that the emergence and development of police cooperation depends on the wider political context. For example, Nadelmann (1993) points convincingly to the export of law enforcement methods and tactics as a de-
literate strategy of U.S. law enforcement. Huggins (1998: 198–200) goes a step further by arguing that U.S. police assistance to countries in Latin America was driven by U.S. political and economical interests in the region and designed to gain control over these nations’ internal security apparatus. Many contributions from this perspective, however, retain a somewhat distant, helicopter-like view and include no in-depth empirical research on how police actually cooperate on a day-to-day basis. Two exceptions are Den Boer and Spapens (2002) and Alain (2001a), who use extensive empirical research to derive important insights into actual cross-border practices. A number of contributions in this category focus on analysing the influence of the ongoing integration of police cooperation in the EU. Since this issue is the central subject of this thesis, it is discussed extensively in Section 2.6.

A distinct stance within the Public Administration-oriented publications on police cooperation is a focus on the normative aspects of international policing (e.g., Brodeur 2000; Bruggeman 2002; Bunyan 1993, 2003b, 2005; Den Boer 2002b; Den Boer et al. 2008; Sheptycki 2002b; Tsoukala 2007). In light of the intensification of police cooperation in the EU and the increasing fusion of internal and external security, such contributions usually focus on important issues like accountability, legality, human rights and civil liberties. However, although generally well-informed and capable of adding to the public discourse on this subject, they seldom consider the deeper dynamics of, and the conditions under which, police cooperation will or will not emerge and be sustained. It should also be noted that some authors – for example, Bunyan (2003b: 2) – proceed from the assumption that police and judicial cooperation in the EU is intentionally being shaped undemocratically and is thus resulting in a curtailment of civil liberties. Most authors, however, do not adopt this perspective, and Bigo (2000a: 90), for example, argues that the available evidence suggests nothing of a ‘police conspiracy’; on the contrary, the ‘regime of social control is the product of intense struggle concerning the objectives, technical means and modus operandi (sic) of the controllers themselves’.

One final distinguishable category is the sociological perspective, which accounts for an increasing number of publications in the field and offers interesting insights into how police cooperation works in practice (e.g., Alain 2000, 2001a; Deflem 2002, 2006; Hofstede et al. 1993; Ingleton 1994; Lemieux 2009; Sheptycki 2000, 2001, 2002a; Soeters et al. 1995). Some research and publications from
this perspective address the cultural characteristics of the police and see their body of knowledge and ways of problem solving as important influential variables for police cooperation. Others focus on organisational characteristics and configurations, which they then use to explain success or failure in police cooperation. Although it pays limited attention to the wider political context, this sociological perspective seldom completely dismisses it as an explanatory variable. Because contributions from this perspective have a strong theoretical focus, Section 2.5 explores two recent contributions in more detail. First, however, the next section examines a number of models on police cooperation formulated in the early literature.

2.4 Early models of police cooperation

One of the first scholars to conceptualise international police cooperation was Van Reenen (1989: 45) who argues that internationalisation of policing can take many different shapes. He classifies three distinct categories. The first consists of forms of cooperation that engender no change in the existing police systems, the structure of authority over the police and the laws. Examples of such cooperation are information exchange on both formal and informal grounds, mutual legal assistance and cooperation in training (ibid.: 48). In the second category, which he labels ‘horizontal integration’, Van Reenen places those forms of international cooperation in which police obtain the authorisation to operate in another country, or officials from one country are granted authority over the police of another country (ibid.). In the EU, such horizontal integration of police systems is exemplified by the possibility for cross-border pursuit and surveillance introduced under the Schengen Convention, and more recently, by the usage of JITs, in which authorities from one Member State are granted even more far-reaching authority over the police officers from the other participating countries. Van Reenen’s (ibid.) third category includes forms of ‘vertical integration’, which he defines as cooperation in which an authority of a higher order than the national authority develops, and a police organisation is created that can operate within the EU. To some extent, Europol can be seen as a form of vertical integration, even though it does not as yet have operational powers.
Van Reenen (1989: 49) also emphasises the competition between police from different states in the international arena as an important issue in the internationalisation of policing, arguing that internationalisation involves not only cooperation but also competition. The police, he claims, have vested interests that can result in competition in certain areas, while also power balances between states can lead to competition. Such competition was, for example, visible in the processes surrounding the appointment of a new Europol Director in 2005 when France and Germany battled for a year over the succession of the first Director of Europol, Jürgen Storbeck (Minder 2005).

Anderson proposed another early conceptual model of police cooperation, which focused on the different options for police information exchange (1989: 171). He assumes two ideal models of exchange, each positioned on opposite ends of a spectrum from a ‘centralised state’ to a ‘decentralised state’. In the centralised state model, information exchange consists of a single national police unit coordinating and transmitting information from the country's police agency (or agencies) to the central units in other states with no direct contact allowed between sub-state police units from different states (*ibid.*: 172). This centralised state model as an ideal organisation is based on strict adherence to an ‘absolutist conception of state sovereignty’ that ‘is anachronistic in the field of policing, as it is in most areas of state activity’, even though a single point responsible for external cooperation and communications could be a great advantage (*ibid.*: 173).

In Anderson’s (1989) decentralised state model, a direct pathway of cross-border communication between sub-state police units is paramount, and the role of national offices is more supportive than hierarchical. Such a decentralised state model results in significant police autonomy in the international domain, which ‘represents an erosion of sovereignty and control unacceptable to virtually all the advanced industrialised democracies’ (*ibid.*: 175). However, more recent developments in the EU – as for example, the Schengen Convention, the European Arrest Warrant and the Prüm Convention – show that EU Member States can (under certain conditions) accept an erosion of their sovereignty by

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16 One interesting example of a coalition of interests in this ‘competition’ is the FIEP agreement between various military police forces in Europe. This cooperation forum highlights their aim to be present on the international scene – especially when decisions are being made for the future – and to become major players in Europe's security field. It can thus be seen as a part of their competition with non-military police forces. See [http://www.fiep-asso.org](http://www.fiep-asso.org) (last visited 14 March 2010).
allowing their police to directly exchange information with police from other Member States, allowing police from other Member States to conduct activities on their territory, and recognising and enforcing judicial decisions from other Member States.

Because both models are ‘ideal types’ unlikely to be found in practice, Anderson (1989: 177) also proposes two intermediate models of police information exchange, ‘qualified centralisation’ and ‘qualified decentralisation’, which resemble actual practices of information exchange between police more. Almost two decades after their formulation, these ideas on the dynamics of information exchange have retained their value for aiding the understanding of the dilemmas in present-day police cooperation, for example, those related to the Police and Customs Cooperation Centres alongside internal EU borders (see Felsen 2011; Vanmullen 2007). These centres’ operations can be described in terms of the qualified decentralisation model of information sharing in which national authorities not only have limited involvement but, as Anderson predicted (1989: 178), play virtually no role and may even become marginalised (see also Block 2007b). In this respect, his remarks corroborate the multi-level governance perspective on police cooperation discussed in more detail in Section 2.6.3.

The third and last model developed by Benyon et al. (1993) adopts a more abstract governance perspective on police cooperation by identifying three interrelated levels of police cooperation: a macro-, meso- and micro-level. The macro-level applies to constitutional and international legal arrangements and initiatives, including the harmonisation of national laws and regulations (ibid.: 11). This is the governmental level at which fundamental issues, such as procedures for extradition and assistance in criminal matters, are resolved. Here, cooperative arrangements usually take the form of treaties and conventions that have judicial impact and are often subject to parliamentary ratification. The Schengen Convention is an often-cited example of cooperation at this level but the EU Convention on Mutual Assistance in Criminal Matters (Council of the EU 2000a) and the Prüm Convention are also examples of police cooperation at macro-level.

The meso-level is concerned with the structural and procedural frameworks in which operational policing occurs. The arrangements on this level are supposed to directly facilitate operational police cooperation and need no intergovernmental agreements or parliamentary ratification (Benyon et al.
Although cooperation here sometimes occurs as the result of political initiatives, it takes place more regularly between different law enforcement organisations, sometimes without government knowledge or sanction (Benyon 1996a: 1046). Examples of such meso-level cooperation arrangements in Europe are the Cross Channel Intelligence Conference (e.g., Gallagher 1998) and the Police Working Group on Terrorism (e.g., Swallow 2005), both of which were initiated by practitioners. In contrast, the Police Chiefs Task Force exemplifies a meso-level arrangement set up as the result of a political initiative (see European Council 1999). One important feature of meso-level cooperation is regular communication, for instance, working groups that include face-to-face contact between middle-ranking officers from different countries. Other important factors include setting up information systems, common databases, and coordination of and access to information such as criminal intelligence (Benyon et al. 1993: 12).

Benyon et al.’s (1993: 13) final level, the micro-level, involves cooperation in the investigation of specific offences, and the prevention and control of particular forms of crime; in other words, day-to-day operational police cooperation. Although such collaboration can occur on an ad hoc basis, in the EU particularly, it is often embedded in existing macro- and meso-level arrangements such as the Nordic police cooperation, Schengen and the PWGT.

A number of other models on police cooperation have been suggested (e.g., Alain 2001b; Bigo 1994). However, their main contribution is the ability to classify and categorise, and thereby support, an analysis of the multitude of initiatives on police cooperation. Because these models are largely descriptive and seldom explain the deeper dynamics of police cooperation, the next section only examines the two contributions that do attempt to provide such explanation.

2.5 Theoretical insights into the nature and development of police cooperation

What important factors and circumstances determine or influence the deeper dynamics of police cooperation? A review of the literature brings to light only a few contributions aimed at answering this question. Two of the most distinctive, Deflem (2002) and Sheptycki (2002a), both adopt a sociologi-
cal perspective and develop a theoretical framework aimed at explaining police cooperation dynamics. This section discusses both contributions, particularly the key insights that are relevant to this thesis.

2.5.1 Bureaucratic theory on police cooperation

Central to Deflem’s (2002) bureaucratic theory of police cooperation is the assumption that the form and dynamics of this cooperation are shaped by the effect that the bureaucratisation process has on the police institutions that attempt to cooperate. Basing his theoretical model on Weber’s incorporation of a bureaucratic perspective into his theory of the state, he formulates three main propositions, the first of which states the following:

The greater the extent to which national police institutions have gained a position of institutional independence from their respective political centres, the greater is the chance that those institutions are in a position to engage in international cooperation. (ibid.: 21)

Specifically, Deflem claims that international police practices cannot be explained by external political and economical factors but are determined by internal organisational developments related to a process of bureaucratisation. He thus follows Weber in arguing that because of its technical superiority, a well-developed bureaucratic apparatus becomes a permanent, almost unbreakable formation, and, as a result of their expertise, knowledge, organisational skills and independent decision-making, bureaucratic officials become overwhelmingly powerful. In the long run, these specialists frequently become superior in advancing their ambition, and it is they, not the political officeholder, that have the real power (ibid.: 14).

In other words, police bureaucracies achieve institutional autonomy on the basis of a purposive-rational logic to employ the most effective and efficient means (professional expertise), given certain objectives that are rationalised on the basis of professional systems of knowledge (Deflem 2006: 242). A professional conception of policing therefore contradicts the notion of police as a mere extension of
a central power because it entails their gaining independence from that power. Moreover, as Deflem (2002: 25) also argues, other than some national variations, the modern police in Western democratic societies have developed – both functionally and organisationally – as professional bureaucracies and have thus become relatively more independent from the political centres. This does not mean that police do not remain related and subordinated to governments, but that they are autonomous in the planning and executing of their operations, and perform these tasks based upon their own professional knowledge. This autonomy and reliance on professional knowledge is an important notion in relation to this study’s focus on the effects of policy instruments on practices of police cooperation.

Deflem (2006) argues that the relative independence of the police negates state-centred theories. That is, the powers of a state in which a bureaucratic apparatus has been developed to fulfil the state’s growing arsenal of functions are dispersed across a multitude of institutions, and the centre of the state can in no way be assumed to always carefully control the organisation and activities of these institutions (ibid.: 249–250). Deflem’s observation closely relates to the propositions made in relation to the concept of multilevel governance discussed later in this chapter (see Section 2.6.3).

Deflem’s (2002: 22) second proposition, which in fact builds largely on the same idea of modern police employing professional systems of knowledge, posits that:

The greater the extent to which national police institutions can rely on a common organisational interest in the fight against international crime, the greater is the chance that those institutions will participate in international police cooperation.

Thus, shared expert knowledge and a shared agenda are a condition for successful police cooperation. It also proposes the following:

The organisationally defined myth that motivates police cooperation across national borders is provided by a professional interest in and the conception of the control of international crime.

(ibid.)

In other words, police cooperation is unlikely to succeed – even if structural conditions are favourable – if participating agencies do not share an agenda in the fight against international crime (ibid.: 23). In
formulating this proposition, Deflem (2002) proceeds from the notion that operational rules and procedures function as ‘myths’ inside bureaucracies; they define problems and specify solutions in terms framed by and for bureaucracy. Likewise, Crank (1998: 130) points out that one should not underestimate the ‘power of myth as vehicle for the transmission of values in the culture of the police’, and Manning (1997: 280) observes that myth in police organisations provides a sense of solidarity and common purpose. Once police agencies have achieved sufficient bureaucratic autonomy, they develop expert systems of knowledge that can be shared among fellow professionals across national boundaries.

Finally, Deflem (2002: 22) offers the third proposition:

National interests remain paramount in the planning and execution of international police activities and organisations.

Although seemingly trivial at first glance, (e.g., Hewitt and Holmes 2002), this claim provides a strong explanation for why, when priorities must be set as a result of limited capacity, police cooperation in a particular area may be lacking in situations in which good cooperation generally exists.

The question still remains, however, whether variations in these characteristics alone can fully explain the various modes of police cooperation, particularly within the EU. First, relative bureaucratic autonomy and operational motives may indeed be minimum requisites – or even strong encouragement – for the emergence and sustainability of operational police cooperation, but are these conditions sufficient to generate cooperation independently of the wider political and institutional context, on the one hand, and the situational logic and involved actors, on the other? Secondly, the relative autonomy of police in modern western societies should not be overestimated. For example, the limits of the relative autonomy of police in the EU is clearly demonstrated by the decision of EU Member States’ governments to stop their police officers from participating in the 35th Interpol European Regional Conference, held in May 2006 in the capital of Belarus, Minsk (Interpol 2006b). Additionally, the relative autonomy of police may depend on the legal system in which they operate since, in civil law systems, prosecutors and magistrates may have a significant role in the criminal investigation process.
Notwithstanding these issues, it can be argued that Deflem (2002) has developed one of the first grounded theories on the dynamics of police cooperation. In particular, his insight that structural conditions – namely, relative institutional autonomy on the basis of professional expertise and shared operational interests – are critical independent variables. They determine the dynamics of police cooperation and form an important element of the background against which this study takes place.

2.5.2 Sub-culture of transnational policing

A second theoretical contribution is Sheptycki’s (2002a) sociologically oriented explanation of the transnational practices of individual agents. He assumes that, because the nation-state system has undergone significant transformation, policing is in need of reflection (ibid.: 9). This is because it is historically embedded in the nation-state as a key element of sovereignty. Specifically, he argues that transnational policing practices are largely influenced by the occupational sub-culture of transnational policing. Like Skolnick (1966), he defines these as a set of ‘learned problem solutions’ (Sheptycki 2002a: 80), in other words ‘a body of knowledge’. He then reasons that the sub-culture of transnational policing is determined by four correlates: the technological and legal infrastructures, and the political and managerial regimes (ibid.: 82).

With regard to the technological infrastructure, the profound changes in information and communication technology (ICT) that took place at the end of the 20th century significantly changed the way policing is organised. According to Sheptycki (2002a: 82–83), these ICT advances – for example, CCTV monitoring and facial and license plate recognition computer systems – enable the police to process enormous amounts of information, thereby ‘amplifying [their] ability to read, interpret and manage people’.

The next factor influencing the occupational sub-culture is the legal infrastructure. However, according to Sheptycki (2002a), this influence does not conform to the conventional view of policing as an instrument for applying criminal law. Rather, he views law as a police resource in problematic situations and warns against underestimating the significance of professional discretion at a low level in
the police organisation (ibid.: 86). He also observes that, although jurisdictional boundaries may indeed hamper police investigations, fragmentation of jurisdictions can also empower police, for example, by enabling them to choose the ‘best’ jurisdiction for certain actions (ibid.: 87). In other words, police – like criminals - can go forum shopping and may, for instance, choose to bring charges in the jurisdiction that will accept the evidence at hand. In fact, as Sheptycki (2002a: 89) eloquently argues, ‘proficiency with the transnational kaleidoscope of legal rules is requisite for membership in the sub-culture of transnational policing’.

The third structural feature that shapes the sub-culture of transnational policing is what Sheptycki (2002a: 92) calls the ‘managerial regime’: the complex institutional structures within which police forces work. Because of both institutional fragmentation, which is a constant feature of policing according to Sheptycki, and interagency competition, successful policing often involves the negotiation of activities across institutional boundaries. Especially in areas where numerous law enforcement agencies work in close proximity – for instance, various law enforcement agencies working on the same square mile at an international airport – special efforts must be undertaken to avoid impeding common goals by discrepancies in priorities (ibid.: 94). The efficacy with which these problems are solved thus depends on the police’s managerial regime.

For his corresponding notion of ‘political regime’, Sheptycki (2002a) builds on what Keohane (cited in ibid.: 8) calls ‘world political institutions’, regardless of whether formally organised or not. Sheptycki (ibid.: 96–100) then argues that it is more fruitful to look at police not as a mere extension of the state but as part of a complex transnational political system that includes state, non-state, and sub-state actions at various levels. He concludes that police cooperation is being shaped by the efforts of police officers who, conditioned by the sub-culture of transnational policing, concentrate on bridging institutional divides. The power of these efforts has been multiplied by new technology (ibid.: 157).

Using this concept of sub-culture as an explanatory factor, however, raises certain questions. Although some studies corroborate the idea of a transnational policing sub-culture by showing the existence of police sub-cultures in different countries that may share many similarities (e.g., Crank 1998; Manning 1997), the extent of each sub-culture’s influence on police cooperation is by no means obvi-
ous. In fact, Hofstede (1991: 182) argues that by the time an individual internalises an occupational sub-culture – that is, in adulthood – the basic values of the national culture are already firmly instilled. Hence, although occupational sub-culture can transcend state boundaries, the resilience of the basic values derived from national cultures should not be underestimated. Hofstede, after all, identified significant differences along his five dimensions of national culture, even in Europe that may seem quite culturally homogeneous (ibid.: 87, 99, 129).

In fact, research on cross-border policing between France, Germany, Belgium and the Netherlands (Hofstede et al. 1993; Soeters et al. 1995; Van Daele et al. 2008: 294) shows that cultural differences between police forces both correspond with the core values within the respective national cultures, and also directly affect the ability of police forces to cooperate across borders. Not only are cross-cultural differences reflected in police officers’ attitudes, they also account for differences in organisational variables and contrasting conceptions and operationalisations of ‘good police work’ (e.g., Hills 2009). Loader (2002:130) also warns against assuming one sub-culture of transnational policing, claiming that, although there is some resemblance between modern states, the social meanings of policing are not invariant across time and space.

That said, Sheptycki’s (2002a) general findings do largely corroborate those of Deflem (2002): both authors emphasise that although police are subordinate to the political centre of the nation-state and are certainly influenced by the wider political context (regime) and institutions, these influences do not have a deterministic character. As Deflem puts it,

…international policing practices cannot be understood in terms of politics and law, for they do not follow government directives and do not target the international criminals as legal subjects.

(ibid.: 226)

Both Deflem and Sheptycki also see police as actors who – once they have reached a sufficient level of professionalism – gain and retain certain autonomy in their practices. Hence, law and technology might be described as ‘tools of the trade’ that allow police to determine their own paths. Like agendas and organisational myths that define problems and solutions (in Deflem’s terminology) or a shared
occupational sub-culture built up from learned problem solutions (in Sheptycki’s terminology), shared ideas on combating crime are what further enhance the chances of fruitful cooperation.

Finally, taking Mintzberg’s (1979) organisational theory as an external point of reference, it can be argued that both Deflem (2002) and Sheptycki’s (2002a) findings are in line with Mintzberg’s ‘principles of coordination’. As Mintzberg (1979: 268) argues, for organisations that must cope with a dynamic and complex environment – like the police in general – mutual adjustment becomes a prime mechanism of coordination. Such dynamics and complexity in international police cooperation, including the mutual adjustment between police teams in different jurisdictions, are vividly illustrated by Harfield’s (2005: 134–141) fourth case study of an international investigation. A less dynamic environment, on the other hand, is best dealt with by decentralised bureaucracies whose prime coordination mechanism is standardisation of skills (Mintzberg 1979: 286). Both situations, however, require that the decision-making power be decentralised to highly trained professionals that will improvise and innovate based on their knowledge and skills (shared knowledge and culture) and that have considerable discretion (autonomy) in the application of these skills.

Taken together, these notions form an important part of the background of this study, especially since it closely considers police cooperation practices in relation to efforts to govern these through the use of EU policy instruments. Furthermore police cooperation is inherently coloured by the ongoing political integration in Europe, whose influence is the subject of the next section.

2.6 The European micro-cosmos

It has been argued that the relationship between states influences their cooperation in a variety of areas. For instance, cooperation between antagonistic states generally does not come easily, if at all, and tends, for various reasons, to be at an informal level (Lipson 1991). In the EU, however, as ongoing political integration of the Member States prompts closer cooperation on a broad number of issues, the situation offers a glimpse of the other side of the spectrum. In fact, many authors have pointed to the influence of this ongoing integration on the cooperation between police in the Member
States (e.g., Anderson 1994; Anderson et al. 1995; Den Boer 1994, 2001b, 2004; Den Boer et al. 2008; Fijnaut 2004; Swallow 1998; Occhipinti 2003; Walker 1996). The following sub-sections examine the insights on police cooperation provided by the literature on international relations in general and on European integration in particular.

2.6.1 European integration as a driving force for police cooperation

The question of whether cooperation between the police from different Member States has been influenced by the ongoing integration of these states can be answered with a simple yes:

The emergence of European policing ... has been overdetermined by a range of wider political factors from the broad narratives of integration, functional spill-over and internal security, to the narrower interests of new European bureaucracies and old domestic police and police elites. (Walker 1996: 266)

Views on how police cooperation in the EU has been influenced by political developments, however, differ greatly. Anderson (1994: 4–8) encapsulates these differences by suggesting that the dynamics of European integration and their subsequent influence on police cooperation are generally viewed from one of four perspectives: the functionalist, neo-functionalist, pluralist/realist and federalist. The functionalist view assumes that technological and economic factors are the motor of change in the international system; that is, modern technology, increased travel, world trade, industry, banking and economics cause issues that can only be resolved by cooperative action across state boundaries. Changes in the European system, in turn, lead to changing demands for law enforcement. This viewpoint fits well with the perspective of many police officers who see a direct cause/effect relationship between a need and actual policing (Anderson 1994: 5).

Closely related, although with significant differences, is the neo-functionalist or supranationalist view, which has as a central element the idea of ‘spill-over’, in particular, the way in which the interaction between the various actors in the international field (e.g., governments, agencies, interest groups, international organisations) results in political integration (Anderson 1994: 5). In this framework, the
term ‘spill-over’ refers to the tendency for international regulation of one policy issue to generate pressures for regulation in other sectors (Haas 1964: 48). The concept implies that international cooperation in one policy area leads, or spills over, to cooperation in other areas as bargains are struck in the process of interaction, which may also be influenced by the decision-makers’ subjective preferences. Two types of spill-over are sometimes identified: functional spill-over and political spill-over. Functional spill-over occurs when intervention in one area causes deficits in other areas that could impede the initial objectives of the changes in the first area if no adjustments are made. In the EU, such intervention results from ongoing integration processes. This type of spill-over is the most common explanation given for the police cooperation under Schengen, which was ‘necessitated’ by the ‘security deficit’ caused by the abolition of internal borders in the Schengen area (Anderson et al. 1995; Monar 2001: 754; Occhipinti 2003). The validity of this explanation is, however, difficult to verify empirically (e.g., Busch 1995: 72). Political spill-over, on the other hand, refers to a situation in which existing supranational institutions engage in autonomous policy-making that leads in turn to ongoing institutional development.

The neo-functionalist stance is also frequently adopted to explain police cooperation in Europe. But, even though it explains the timing and nature of new initiatives more plausibly than the functionalist view (Anderson 1994: 6), it also suffers from well-recognised shortcomings. One such problem, discussed by Anderson et al. (1995), is that neo-functionalism’s technical explanation fails to differentiate between the policing of political activities, or ‘high policing’ as labelled by Brodeur (1983: 508), and the policing of ordinary crime, or ‘low’ policing in Brodeur’s terms (ibid.). This despite the fact that the former is likely to create many more obstacles to cooperation than the latter. Anderson et al. (1995: 95) argue that neo-functionalist conceptualisation thus fails to address the impact of the distance between the cooperating subject and state sovereignty in the various areas of police cooperation. It remains to be seen, however, whether this criticism still holds true in light of developments during the last decade, for that include the introduction of a single area of Freedom, Security and Justice through the Amsterdam Treaty and, more specifically, the events of 9/11. The Twin Tower attack may
have significantly changed the norms for decision-makers in Europe (Kaunert 2010a: 15) resulting in fewer obstacles to cooperation on matters of ‘high’ policing.

Anderson et al. (1995: 95) also contend that neo-functionalism has a problem explaining the integration of external change. Neither European integration nor police cooperation in Europe is an autonomous phenomenon: it occurs in a global context. Here again, the events of 9/11 exemplify an external incident that has had significant ramifications for police cooperation in Europe. Lastly, it could also be argued that a neo-functionalist perspective fails to explain the differences in the extent and smoothness of cooperation between police from different EU Member States.

The third approach to European integration is the federalist view that, in stark contrast to the other perspectives, envisions the establishment of a supranational authority, the federation, as the ultimate goal (Anderson 1994: 7). It takes the supranationalist idea a step further. Central to this view is the idea that when the capacity of the nation-state to secure its sovereignty and prosperity is challenged, states bundle their forces in a federation. The division and coordination of power between the federal and regional levels, and the integration on matters of mutual concern are then achieved through political bargaining. Anderson (ibid.) also notes that in principle it would be possible to leave all police powers in the hands of states, although in practice doing so is inconvenient and hard to sustain. The growth of federal legislation, especially, creates pressure for policing at the federal level, which according to Anderson (ibid.: 8) is visible in both the federal police systems of the U.S. and Germany and in the debate surrounding Europol and closer European police cooperation.

The fourth perspective on the dynamics of European integration and subsequent influence on police cooperation, the pluralist/realist view, assumes that power and sovereignty remain at the level of the nation-state (Anderson 1994: 6). That is, even though states cooperate closely for certain purposes and become a ‘security community’ in which resolving conflicts by force would be inconceivable, full integration is not the primary goal. Rather, policy on matters of mutual concern is decided in an intergovernmental setting not by a supranational body, and international agencies are set up based on interstate agreements for dealing with issues of ‘low’ policing.
Although Anderson (1994: 8) argues that all four of the above approaches ‘seem to offer guidance about the nature, form and direction of police cooperation in Europe and all four seem to find echoes in practical discussions’, other authors have different appreciations of the perspectives’ significance. For example, Occhipinti (2003) explains European police cooperation by a mix of internal variables – such as functional spill-over and functionalist and federalist ideology – and external factors, those international conditions and events that act as catalysts in combination with the integration process. He concludes that although all factors have had some influence through time, functional spill-over has played a far more significant role than federalist ideology (ibid.: 227–228). Swallow (1998: 36), however, argues that European police cooperation can be explained in terms of all four of the main integration theories, which ‘leads to the inexorable conclusion that no one single theory can explain the complexity of the subject, and/or there is a great deal of complementarity between all of the theories.’

Anderson et al. (1995: 120), on the other hand, specify that, because the relationship between police institutions and their socio-political environment is complex, any analytical framework should include both the influence exerted and the restrictions imposed by both the political context and matters intrinsic to the policing sector. Somewhat similarly, Walker (1996: 265–266), in addition to arguing that European policing is over-determined by a range of wider political factors, identifies transnational bureaucratic interests and domestic policing concerns as two underlying influences of significance.

Closely related, and with potential relevance for police cooperation in the EU, is the ongoing debate between intergovernmentalists and supranationalists over the role of supranational institutions in the European integration process (Kaunert 2010b: 3). Liberal intergovernmentalists, of which Moravcsik (1993, 1999) is perhaps the best known, argue that European integration is best explained as a series of rational choices made by national leaders and dominated by national interests. Succinctly put, integration occurs as a result of changes in the interests of Member States and as a result of political bargaining (Kaunert 2010a: 12). Supranationalists, in contrast, see intervention in the political process by high officials of international organisations as a real influence. They argue that although supranational officials have no formal voting rights, financial resources or coercive means at their disposal, they influence international negotiations through persuasive manipulation of information and ideas.
Moravcsik (1999: 268). Moravcsik (ibid.: 269) takes a particularly firm standpoint in this debate, arguing that ‘supranational intervention, far from being a necessary condition for efficient interstate negotiation in the EC, is generally late, redundant, futile and sometimes even counterproductive’.

Kaunert (2010a: 13), however, argues that supranational policy entrepreneurs are important in the social construction and reconstruction of norms that steer the political process, because ‘it does not seem reasonable to assert that [Member States’] preferences are exogenous’ (Kaunert 2010b: 4). On the other hand, Markert (2011: 20) argues that JHA policy-making over the last decade reveals a pattern of Member States strategically attempting to retain control over legislative initiatives.

The discussion on this debate is a relevant part of the background for this study because, not only are the EU policy-making structures becoming increasingly supranational, EU police cooperation structures are also increasingly showing supranational characteristics (Occhipinti 2003: 235). This development reflects in both the policy-making and police practices under investigation in this thesis. This study takes a constructivist position, believing that although the character of police cooperation in the EU is (still) ultimately intergovernmental, the importance of the actors who ‘construct the reality’ (Berger and Luckmann 1966), and in particular their preferences and the discourse they use, cannot be ignored.

2.6.2 Multilevel governance

One recent development in the literature on European integration is a focus on multilevel governance, a concept that enjoys wide application in public administration research (e.g., Bache and Flinders 2004; Hooghe and Marks 2001; Kettl 2000) and may help explain some of the dynamics observable in EU police cooperation. The multilevel governance model – as an alternative to the state-centric model – assumes that the state no longer monopolises European-level policy-making and that decision-making and authoritative competences are diffused across different territorial levels (Hooghe and Marks 2001: 3). It still recognises, however, that national governments play an important role. On the one hand, collective decision-making among states in the EU results in a loss of control for individual states; on the other, sub-state actors are not ‘nested’ exclusively within states but operate in national
as well as supranational arenas while creating transnational links (ibid.: 4). Analogously, Kettl (2000: 488) argues that national governments are increasingly bound by international regimes and are seeing a decrease in their ability to efficiently ‘deliver’ public goods at the local level. As a result, multilevel governance systems emerge when the central (nation-state) level shares the responsibility for administration with both a supranational and a sub-state (regional and/or local) level.

In a multilevel governance model, the different forms of police cooperation can be projected onto a three-level governance system, with Europol at the supranational level; centralised cooperation between national criminal intelligence centres at the state level – for instance, the Serious and Organised Crime Agency (SOCA) in the UK and the Directie operationele politiesamenwerking (DSO) of the Federal Police in Belgium; and Police and Customs Cooperation Centers (see Section 3.9) at the sub-state level. In such a multilevel governance system, two modes of working relationships can be distinguished: a vertical mode through traditional hierarchical bureaucracies and a horizontal mode through direct (cross-border or cross-institutional) contact (Kettl 2000: 494).

Den Boer (2004) expands these notions of vertical and horizontal police cooperation by arguing that horizontal cooperation is in general more ad hoc and more focused on concrete operational cases, whereas vertical cooperation consists of cooperation via the centralised national centres through institutions like Europol. To clarify these differences, Table 2.1 compares key characteristics of vertical and horizontal police cooperation.

<table>
<thead>
<tr>
<th></th>
<th>Vertical governance in policing</th>
<th>Horizontal governance in policing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Institutional appearance</strong></td>
<td>Europol, OLAF, PCTF</td>
<td>Schengen, bilateral and multilateral agreements, agreements on interagency level (e.g. PWGT, CCIC, liaison officers).</td>
</tr>
<tr>
<td><strong>Level of cooperation</strong></td>
<td>Formal, policy-making, strategic, operational through national centralised structures</td>
<td>Largely informal, from policy making to information exchange and operational cooperation across borders.</td>
</tr>
<tr>
<td><strong>Actors</strong></td>
<td>National politicians, senior executives and ‘Eurocrats’, practitioners in centralised structures.</td>
<td>National, regional and local politicians and executive, practitioners from all levels.</td>
</tr>
<tr>
<td><strong>Objective</strong></td>
<td>Centralised intelligence gathering, high profile targets, EU-wide solutions, primacy of cooperation through the national level.</td>
<td>Decentralised, focus on regional security cooperation, flexible solutions to day-to-day problems of cross-border policing.</td>
</tr>
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Table 2.1 Clustering vertical and horizontal arrangements (cf. Den Boer 2004: 4)

One important characteristic of multilevel governance is the formation of interconnections between the different levels of the regimes. In this sense, (new) horizontal relationships do not supplant (old) vertical ones but rather add to them. As a result, Kettle (2000: 496) argues, national institutions might
find themselves in a ‘squeeze for relevance’. In relation to police cooperation this dilemma was already noted by Anderson (1989: 178) and can be observed in actual cooperation practices (Block 2007b). To investigate the connection between these different levels in European police cooperation, Den Boer and Spapens (2002) consider cases of organised crime investigations in European border regions from the perspective of multilevel governance. They find that the coexistence of vertical and horizontal police cooperation might be a key to successful international investigations (ibid.: 27). They also reveal that centralised channels of international cooperation are not necessarily being marginalised by horizontal cooperation; rather, choices – for instance, whether or not to involve Europol – are being made pragmatically. Hence, this choice of vertical (through central facilities) or horizontal cooperation (through direct contacts) depends on the availability of facilities, expertise and other resources at the sub-state level. Organisational circumstances, such as the structure of the police on both sides of the border, also play a role.

The effectiveness of this pragmatic cooperation at a sub-state level and the diminished, although not eliminated, relevance of central facilities is largely corroborated by Gallagher’s (1998: 234) study of trans-frontier police cooperation across the Channel:

The further frontier regions are from central cores/services (i.e. Interpol, national services) the less likely they are to use such services and the more likely they are to seek other means (i.e., even French officers subject to a centralised system but based in northern coastal towns still seek the informal routes to resolve enquiries).

Overall, the concept of multilevel governance might be a welcome addition in explaining the dynamics of police cooperation as it takes place on the different levels in the EU as well as the interaction between these levels.

### 2.7 Conclusions

Based on a review of the literature, this chapter has introduced a number of key issues and insights related to police cooperation in Europe. It began by showing the complexity of policing in the modern
state, which has increased as a result of the international dimension. It then examined the differences between ‘international’, ‘transnational’ and ‘cross-border’ police cooperation, terms that in the literature are often used interchangeably but with different connotations that are seldom made explicit. Many authors also refer loosely to the differences between ‘formal’ and ‘informal’ police cooperation without defining what they understand these terms to mean. Overall, the insights gleaned from this literature review strongly suggest that a simple dichotomy between formal and informal police cooperation presents an inaccurate picture of police cooperation; in reality, such arrangements may vary in degrees along different dimensions.

The subsequent discussion of the theoretical perspectives offered in the police cooperation literature revealed that the first attempts to develop models and theories on police cooperation emerged only about two decades ago. Hence, the three early models of police cooperation detailed here still have ongoing practical relevance for this study. In addition, although theory building on police cooperation is as yet in its infancy, the valuable contributions of both Deflem (2002) and Sheptycki (2002a) provide a number of valuable insights that are directly relevant to the research question.

Deflem (2002), for instance, emphasises that favourable organisational circumstances are key requisites for successful police cooperation, and achieving sufficient institutional autonomy is a first prerequisite. Police bureaucracies achieve such autonomy on the basis of a purposive rational logic of employing the most effective and efficient means (professional expertise) given certain objectives that are rationalised on the basis of professional systems of knowledge. Shared organisational interests and shared problem solutions (expert knowledge) are also enabling conditions. The importance of shared ideas on problem solution, depicted by Sheptycki (2002a) as a specific knowledge-based ‘culture of transnational policing’, also provides a particular perspective on reality. Because this perspective is based on professional expertise, it provides a distinct rationality that guides police in their daily actions. At the same time, the significant professional discretion enjoyed by police officers affords them a key position in the shaping of their actual practices.

The literature review also made it abundantly clear that police cooperation, particularly in the EU, cannot be analysed outside its political context. Not only is this fact implied by the domestic anchors
of policing – for example, notions of state sovereignty and the monopoly of force – but the ongoing political integration of the EU Member States undoubtedly influences police cooperation. Hence, although different perspectives exist on the exact mechanisms through which this ongoing integration influences police cooperation, it may be argued that the EU provides a favourable political context in which cooperation between police can emerge and thrive more easily than under less favourable political circumstances. Such a claim does not, however, mean that police cooperation in the EU has become less complex. On the contrary, the political and administrative landscape in the EU shows not only integration between Member States but also a shift towards a system in which decision-making and authoritative competences are diffused across multiple territorial levels. As is well illustrated by the multilevel governance model, Member States simultaneously experience a push from the EU political level for union-wide police cooperation and a pull from the sub-state level at which officers engage in direct cross-border cooperation. Police cooperation is thus present at various levels, even though the interconnections between police cooperation at these levels are not always clearly mapped.

All these observations are central to this thesis, i.e., the effect of EU Council instruments on the practices of police cooperation. Most particularly, they raise the question of which factors make police officers at national or sub-national level act in conformity with policy instruments constructed at a EU level when they have the professional discretion to choose whether or not to do so. Before this question can be answered, however, more information is needed on a major foundational aspect of this thesis: actual practices of police cooperation in the EU. This aspect is discussed in detail in the next chapter.
Chapter 3

Historical and current practices of European police cooperation

As outlined in the previous chapters, police cooperation in Europe is a complex and extensive activity that takes place on various levels, in several fields and in a range of forms and modes. Therefore, a better understanding of police cooperation in Europe begins with an examination of the way in which such cooperation has developed and its current practices and structures. Compiling a comprehensive overview of all police cooperation arrangements and practices in Europe, however, is neither within the scope nor the aim of this study. It would nevertheless be insufficient to simply refer to other authors for a description of what takes place in the field of international police cooperation. Rather, a proper understanding and further analysis of this subject warrants a thorough examination, provided in this chapter, of the arrangements and strategies for police cooperation in Europe, as well as their history, development and practicalities. This chapter therefore discusses the key arrangements for police cooperation in Europe that has existed over the past 150 years.

Although the inclusion of certain arrangements – and unavoidably, the exclusion of others – is arbitrary, it is believed that the text does cover the most important developments and arrangements for police cooperation. For clarity, these aspects are presented in chronological order, beginning in Section 3.1 with early forms of police cooperation in the 19th century and then outlining all major subsequent developments, ending with intelligence platforms as the latest new development in EU police cooperation.

3.1 Early international policing in the 19th century

Early signs of international police cooperation in Europe stem from the proliferation and expansion of such cooperation throughout the second half of the 19th century. Forms of international policing at that time were often unilateral, with bilateral cooperation appearing in only ad hoc and temporary forms (Deflem 2002: 46). However, following what is often called the revolutionary year of 1848,
national police forces were reinforced and tasked with the control of political movements as autocratic regimes in Europe sought to suppress anarchists and revolutionaries. This task also demanded policing activities outside national boundaries because revolutionaries often hid abroad. Nevertheless, formal cooperation in these obviously political policing activities developed slowly (Liang 1992: 151–174), and police practices were thus largely unilaterally, planned and executed confidentially (Deflem 2002: 47–57) and focused mainly on what Brodeur (1983) would later label ‘high’ policing.

Informally, however, officers executing their political tasks abroad occasionally received support from local police. One example of such support is when the Metropolitan Police Special Branch officer tasked with keeping Irish revolutionaries under surveillance in late 19th century Paris received informal assistance from the French in intercepting the dissidents’ mail (Clutterbuck 2006: 42). Such informal police cooperation, still a widespread practice in Europe (e.g., Anderson et. al. 1995: 74; Bayer 2010; Benyon et. al. 1994: 55; Den Boer 1999: 71), is usually based on an informal understanding between police forces in neighbouring countries (Anderson 1989: 149) or more often, on direct informal contact between individual police officers (e.g., Deflem 2002: 65; Fijnaut 1992: 101). In the current ‘information age’ of email and mobile phones, these direct contacts have only increased (Sheptycki 2002a: 84) to the point that Bigo argued (1996: 81) that ‘L’Europe des polices est déjà là, inscrite dans les carnets d’adresses des policiers’.

Perhaps the first more structural and formalised police cooperation was established in 1851 between the police of seven German states of the ‘Police Union of the more important German States’ (Deflem 2002: 50). This arrangement was primarily concerned with establishing swift and active methods of information exchange through meetings and later through weekly magazines. Because the Union’s activities were mainly directed against people and organisations believed to threaten the established political order, it deemed international cooperation necessary because these political dissidents – among them Karl Marx and Friedrich Engels – were thought to be conspiring abroad in places such as London and Paris. Nevertheless, after increased antagonism between the political centres of the German states involved, the Union’s activities were reduced, and it was finally dissolved in 1866 (ibid.). The first formal bi- and multilateral agreements on mutual legal assistance were concluded at the end
of the 19th century and beginning of the 20th century (Fijnaut 1993b: 120) in relation to, for example, white slavery, pornographic writings and drugs (Fijnaut 1979: 397). It was not until 1923, however, that the first multilateral police cooperation arrangement was formalised.

3.2 The first multilateral arrangement: Interpol

Although some scholars take the International Anti-Anarchist Conference of 1898 in Rome as the starting point for the efforts that led to the establishment of what is now Interpol, other authors attribute this to the First International Congress of Judicial Police held in Monaco in 1914. In fact, between 1898 and 1914, many conferences were held and conventions signed (e.g., on white slavery) that can all be seen as precursors to the establishment of Interpol (Jensen 1981: 346). Nevertheless, the 1898 anti-anarchist conference, and in particular a number of its by-products, was the starting point of increased intra-European police communication and harmonisation of such methods of criminal investigation as the portrait parlé (Fijnaut 1987: 34; Jensen 1981: 332–334). Such issues were discussed secretly by specialists on police affairs who, in their final protocols, recommended that every country establish a central office to organise strict surveillance of anarchists and communicate all useful information to the other central offices in Europe (Liang 1992: 165).

The First International Congress of Judicial Police was attended by various professional groups including judges, lawyers, police, criminologists, members of parliament and civil servants of the Ministries of Justice, Interior and Foreign Affairs. The conference adopted a number of resolutions expressing the wish to improve direct police-to-police cooperation and give it a more formalised and official character (Anderson 1989: 39). However, as a result of the First World War, it was another nine years before the Second International Police Conference in Vienna in 1923 led to the establishment of the International Criminal Police Commission (ICPC), the forerunner of Interpol.

The objective of the ICPC was to establish and enhance mutual assistance between all police within their own legislative frameworks and to establish all institutions suited to fight against ‘ordinary crime’ (Deflem 2002: 127). Deflem (ibid.: 17–26) argues that the establishment of the ICPC as a
multilateral arrangement was only possible because policing of political crimes was excluded. Such cooperation represents the evolving bureaucratic independence of police from their political centres. Fijnaut (1979: 406), however, is more sceptical, arguing that despite that official objective, no explicit measures were taken to prevent the organisation being used in some countries to suppress political opponents.

Soon after the ICPC’s establishment, each participating country set up National Central Bureaus (commonly abbreviated NCB) that acted as gateways between the national law enforcement forces and the Interpol global communication channel. These bureaus are tasked with handling communication between national police and the police of other participating countries.

In 1938, the ICPC was taken over by the Nazis but reconstituted in 1946 after the Second World War with a new headquarters in Paris, whose telegraphic address was ‘INTERPOL’. In 1956, a new constitution was adopted, and the ICPC was renamed the International Criminal Police Organisation (ICPO) – Interpol. Over the years there have been discussions about Interpol’s exact status (Fijnaut 1993a: 10-12). Although it started as a ‘police men’s club’, in 1949 the United Nations first granted the organisation a consultative status as a non-governmental organisation and later in 1971 recognised it as an intergovernmental organisation (Interpol 2008b). Gerspacher (2008: 174) argues that Interpol developed from a ‘club for officers’ into a formal intergovernmental organisation. Such a claim, however, is debateable: even though its structures are formalised, and it is recognised as an international organisation by the United Nations (and many states), Interpol was not established by any explicit agreement or treaty between states and still functions more or less as an international police association (Fijnaut 1993a: 11).

Since October 2009, Interpol has had a total of 188 participating member countries (Interpol 2009b), and its core business has been the facilitation of information exchange on a case-by-case basis. Nevertheless, over the past decades, it has increasingly developed its other functions and now provides a range of criminal databases and analytical services, as well as proactive support for police operations throughout the world, and a meeting platform for experts on such specialties as art crime (see Block 2011b). Even so, communication remains the organisation’s primary function and, as Table 3.1
shows, the number of messages exchanged increased from approximately 1 million in 1989 to 14 million in 2010.17

![Table 3.1 Messages exchanged via Interpol](image)

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<td>Messages exchanged (millions)</td>
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<td>10+</td>
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Most of these messages are pre-formatted requests for information, and, although requests could be anything related to policing for which cross-border information is needed, most are related to criminal investigations (Verdelman 1987: 21). They may, for example, inquire whether an individual has a criminal record, who their associates are, whether some goods are registered as stolen, or information about telephone subscribers.. There is no legal obligation to answer questions; this depends on the legal regulations in the recipient country.

Although Interpol’s central organisation is the Interpol General Secretariat (IPSG) based in Lyon, its crucial component is the NCBs that are staffed with law enforcement personnel of the respective member countries. These bureaus’ main function is to receive requests and information from other NCBs and send out requests and answers on behalf of national law enforcement authorities. The location and organisation of the NCBs within national law enforcement structures is entirely the responsibility of the national police forces, and no two NCBs are alike. Some countries also delegate other international police cooperation functions to their national bureau,, for example, taking care of foreign police delegations or facilitating judicial cooperation (Swallow 1996: 108). In many EU Member States, the Interpol NCB is part of a national criminal intelligence service that also includes other cen-

17 It should be noted that in 1989, the definition of ‘message’ included both original messages and those that were re-transmitted by the central switchboard (House of Commons 1990: 33).

18 The data for 1989 are from the British House of Commons (1990: 40) and those for 1999–2010 are from Interpol (2000–2011).
trally organised cooperation functions at the national level, such as the Europol National Unit and the SIRENE Bureau.19

As a result, despite developments in the past decennia, Interpol still has significant relevance for police cooperation in the EU, for example, in day-to-day international contacts between police in the EU. Interpol is still a much-used channel for information and intelligence exchange, even though over the past 15 years new channels for information exchange have been established, including the Europol Liaison Network, the Schengen Information System and Police and Customs Cooperation Centres in border areas. Despite these ‘competitors’, Interpol remains an important conduit for information exchange between police in the EU Member States, with 38 percent of the messages exchanged through Interpol being received from or sent to an EU Member State (Interpol 2010b).

The significance of Interpol for police cooperation in Europe is also illustrated by the designation, in various Council of Europe Conventions and also in the 2000 EU Convention on Mutual Assistance in Criminal Matters, of the ‘Interpol channel’ as an official communication channel for judicial and police cooperation, especially in cases of urgency (Council of the EU 2000a). Likewise, the EU provides institutional endorsement and support to Interpol, which is reflected in, for instance, the 2001 cooperation agreement between Interpol and Europol, the regular attendance of Interpol representatives at both the Heads of Europol National Units meetings (Interpol 2004: 15–16), and the operational meetings of the Police Chief Task Force. Interpol is also involved in establishing a database on art crime tailored to the needs of police in the EU Member States (Council of the EU 2008d). Lastly, Interpol receives significant financial support from the EU: in 2003, the EU Commission financed a facilities upgrade at NCBs in five Balkan countries (Interpol 2005: 25), and in a 2006–2008 program, the Commission made 3 million Euro available for the same purpose in the Russian Federation (Delegation of the European Commission in Russia 2006). In sum, Interpol still has a significant influence on practices of police cooperation, both outside and inside the EU.

19 Such is the case, for instance, in Austria (Abt.II/BK/2 (ACIS)), Belgium (DSO), Denmark (NCIS), France (SCCOPOL), Germany, (BKA Abteilung IK), the Netherlands (iPol), Sweden (IPO) and the United Kingdom (Serious and Organised Crime Agency) (as of October 2009).
3.3 Developments in the 1950s and 1960s: multilateral treaties and conventions

As regards practical police cooperation after the 1923 establishment and 1946 reconstitution of Interpol, few changes occurred in Europe until the late 1950s (Anderson 1989; Fijnaut 1987; Wilkinson 1985) when two new treaties established important legal foundations for police and judicial cooperation in criminal matters. These treaties, developed under the aegis of the Council of Europe, were the European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959), which enabled police to seek assistance abroad in criminal inquiries using an International Letter of Request (ILOR). These ILORs, also called ‘letters rogatory’, are a formal request from a competent legal authority seeking assistance in gathering evidence in a foreign jurisdiction (Anderson 1989: 31) and thus enable police to avoid cumbersome diplomatic channels.

A further development occurred in 1962 when Belgium, the Netherlands and Luxembourg strengthened their cooperation with the Benelux Treaty on Extradition and Mutual Legal Assistance in Criminal Matters. This treaty contains a ‘police paragraph’ regulating pursuit across borders. Specifically, according to Article 27, a police officer in ‘hot pursuit’ can apprehend a fugitive within a 10 kilometre zone inside another Benelux country. This agreement can be seen as one of the first examples in Europe of cross-border operational powers and thus a relaxation of sovereignty concerns (Joubert & Bevers 1996: 32). Almost three decades later, the ‘hot pursuit’ principle would become one of the building blocks for the Schengen Convention. Nevertheless, despite these macro-level developments, actual practices of police cooperation in Europe did not change in the 1950s and 1960s. The 1970s, in contrast, brought about significant change, as outlined in the next section.

3.4 The 1970s: practitioner-led initiatives

Towards the end of the 1960s, new police cooperation arrangements in Europe emerged that were initiated by local and regional police facing problems of communication with their counterparts across state borders. One early initiative in 1968 is the Cross Channel Intelligence Conference (CCIC), which in fact is an *ad hoc* professional network between police in the United Kingdom, France, Bel-
gium and the Netherlands who were concerned with policing the Channel region. In meetings held every six months, personal networks were developed and common needs addressed, such as channels for direct communication rather than communication via Interpol. A prime mover in this network’s establishment was the then Chief Constable of Kent, Sir Dawnay Lemon, whose personal skills and continuous efforts proved indispensable (Gallagher 1998). From the outset, the CCIC has provided a firm basis for future development in the field of cross-border police cooperation in the region.

A similar initiative, the NeBeDeAg-Pol,20 was set up in 1969 by the Chiefs of Police in the border area between Aken (Germany); Luik and Verviers (Belgium); and Maastricht, Sittard and Heerlen (Netherlands), which is also known as the Euregio Meuse/Rhine21 (Vanmullen 2007: 23). Although the history of cross-border police contacts in this area goes back to the 1920s, the new cooperation arrangement had the following aims:

- to increase, mutually, the knowledge of the police organization, to organize language courses for police officers, to install direct radio and telex-communications, to appoint liaison officers and to arrange for the exchange of information concerning crime and criminals (Fijnaut 1993b: 125).

The NeBeDeAg-Pol also introduced the so-called ‘Euregio-Alert’, which, although described as a ‘regional search system’, resembled an unofficial international database for information about wanted criminals and stolen cars. For some of its activities, the arrangement built upon legal bases in existing treaties; at the same time, its members lobbied politicians for an improved legal basis for transnational police cooperation. In 1979, NeBeDeAg-Pol was deliberately registered as a non-profit association under German law so that it could operate ‘privately and away from government and formal diplomatic channels’ (Petermann 1996 cited in Swallow 1998: 206; see also Aden 2002: 17). In fact, Swallow (1998: 206) argues that NeBeDeAg-Pol is an obvious example of police officers developing

20 The acronym stands for Niederländische-Belgische-Deutsche Arbeitsgemeinschaft der Polizei [Dutch, Belgian, German Police Working Group].
21 For the EU regions alongside EU internal borders where cross-border cooperation initiatives exist, see http://www.aebr.eu/en/members/list_of_regions.php (last visited 28 February 2011); see also Den Boer and Spapens (2002: 10).
international practices ahead of political interest. Nevertheless, the further advancement of cooperation aspired to by some participants was unsuccessful, even though many of their wishes were absorbed into the 1980’s political discussions that eventually led to the Schengen Convention (Fijnaut 1993b: 126). NeBeDeAg-Pol thus played an important role in international police cooperation in this region and constitutes one of the starting points for the present-day joint commissariat in the Euregion Maas/Rhine (see Section 3.10).

Another example of emerging regional police cooperation in Europe is the 1972 agreement between the police of the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) which have been establishing closer relationships since the 18th century. In 1952, the Nordic Council was established, and in 1957, a mutual passport agreement was adopted that resulted in the abolition of systematic control at the internal borders between the five countries (Gammelgård 2001: 232). The subsequent 1972 police cooperation agreement ensured an informal structure for cooperation in the areas of investigation, criminal proceedings, enforcement and other police matters (Kleiven 2011: 64). Often cited as ‘best practice’ in this form of police cooperation (Council of the EU 2003e: 16), this arrangement was enhanced in 1982 through the establishment of Nordic Police and Customs Cooperation (Politi- og Toll i Norden, or PTN in Swedish), which includes coordinated intelligence exchange, a common strategy for police and customs in the operational field, and a joint liaison network in third countries (ibid.: 65). Major differences between the PTN and CCIC and NeBeDeAg-Pol, however, are not only its wider geographic coverage, but the fact that the Nordic cooperation arrangement is institutionally anchored at a national (state) level instead of at local and regional (sub-state) levels.

In the second half of the 1970s, the Police Working Group on Terrorism (PWGT) was established as one of the first functionally specialised police cooperation arrangements in Europe. The PWGT–an informal, albeit governmentally recognised, network of police counter-terrorism agencies –has no headquarters building, no secretariat, no formal constitution and no central analytical facility (Den Boer et al. 2008: 117; interview #6). However, in 1994 the participating agencies signed a memorandum of understanding in which the aims of the PWGT were formulated (interview #22). Often regarded as one of the most effective available mechanisms for co-ordinating international police intel-
ligence sharing and investigative efforts in the field of counter-terrorism in the EU (e.g., Benyon et al. 1993: 190; Swallow 2005: 5), the PWGT still handles most of the information flow related exclusively to EU Member States, despite the facilities offered by Europol (Gregory 2007: 15; interview #22).

The origins of the PWGT can be traced back to the beginning of the 1970s when Interpol’s constitutional difficulty with terrorism and ambiguous legal position left the European countries without an adequate mechanism for cooperating in their fight against terrorism (Fijnaut 1993a: 15). Specifically, Interpol is forbidden by its constitution (Article 3) ‘to undertake any intervention or activities of a political, military, religious or racial character’ and, until 1984, interpreted this clause as an obstacle to its involvement in cases of politically inspired terrorism (Anderson 1989: 142–147). Therefore, in January 1976, police forces from France, Germany, the Netherlands and the United Kingdom set up an informal counter-terrorist network to facilitate the exchange of operational information on terrorist activity independent of their respective governments (Swallow 2005: 4). The importance of this function was acknowledged by TREVI nine months later when this group was adopted as Working Party I (Clutterbuck 2002: 154).22

However, although this incorporation of the group into the TREVI structure was aimed at giving additional impetus and political support to the counter-terrorism efforts, it failed to do so, according to the police forces involved in setting up the pre-TREVI informal network. Overall, police participants felt uncomfortable with the involvement of politicians in their work and regarded the meetings as policy oriented and not very practical (Swallow 2005: 4). This resulted in the re-establishment in 1979 of the PWGT independent of the TREVI structure after it became clear that there was an immediate need for a forum, separate from TREVI, that catered specifically for the particular requirements of the police agencies engaged in counter-terrorism (House of Commons 1990: 44). The catalyst for this was the assassination, on March 22 1979 in The Hague, of the British Ambassador to the Netherlands, Sir

22 Clutterbuck (2002) and Swallow’s (2005) remarks about this 1976 initiative that formed the basis for the TREVI Working Party I are not echoed by other authors. Most authors state only that the TREVI Working Party I was created on 31 May 1977 (i.e. Anderson et al. 1995: 54; Benyon et al. 1993: 154; Occhipinti 2003: 32) and mention no pre-existing practitioner-led initiative.
Richard Sykes, by the Provisional IRA (e.g. Benyon et al. 1993: 187). As a result of this attack, the Dutch Criminal Intelligence Service (CRI) held an informal conference, attended by officers from the Metropolitan Special Branch, the German BKA and the Belgian Gendarmerie, which led to the re-creation of the PWGT.

The heart of the current PWGT are the meetings and seminars held twice a year in different Member States with the aim of exchanging knowledge and fostering personal contacts in order to build the trust necessary for cooperation in the sensitive area of counter-terrorism. Since 1980, the member agencies have also been engaging in short-term officer exchanges to improve language skills and gain insights into the work of other agencies. The close personal and professional relationships resulting from these exchanges are crucial for PWGT’s operational function of supporting and facilitating the exchange of intelligence and judicial enquiries (Swallow 2005). In 1986, the group began installing its own coded facsimile system, which was fully operational for all the members by 1988 (House of Commons 1990: 44) but was later replaced by an encrypted computer link. The organisation includes all EU Member States plus Norway and Switzerland (House of Lords 2005: evidence 16).

3.5 TREVI: a fundamental change in European police cooperation

Police cooperation, as part of a broader political cooperation on Justice and Home Affairs (JHA) in Europe, was first discussed structurally in the European political arena in 1975. In retrospect, this discussion can be qualified as signalling a fundamental change in the field of police cooperation that until then had received little political attention and had been almost exclusively the domain of police officers. It was thus police officers who largely shaped police cooperation in Europe throughout the 20th century (Anderson et al. 1995: 72).

The first discussions on JHA cooperation in Europe were kept outside the formal and supranational framework of the EC. In the sensitive area of cooperation on Home Affairs – which obviously comes closer to the ‘core’ of the sovereign state – the European countries preferred to rely on intergovernmental cooperation that secured ultimate control of their own affairs. Several terrorist acts, most
notably the hostage-taking of the Israeli competitors at the 1972 Munich Olympic Games and the inability of Interpol at that time to deal with terrorism, highlighted the need for closer European cooperation in a JHA field other than drugs. This recognition prompted the creation of the intergovernmental TREVI forum during the 1975 European Council Summit in Rome, which at its highest level brought together the ministers of Justice and Home Affairs of the EC Member States. Although initially intended to coordinate effective anti-terrorism responses among European governments, TREVI extended its business to many other issues in cross-border police cooperation between EC members (Den Boer 1994: 178). The forum’s working group on terrorism became known as TREVI I, and a second working group on information exchange and police methods and techniques became known as TREVI II. In 1985, a third working group, TREVI III, was established to address serious crimes other than terrorism. In retrospect, TREVI forms one of the foundations of contemporary political attention to police cooperation in the EU. In 1992, however, the TREVI structure was incorporated into the EU institutional framework by the Treaty of Maastricht, an incorporation that is further elaborated in Chapter 4.

3.6 Bilateral police liaison officers

One widely used strategy for cross-border police cooperation by the police of almost all EU Member States is the use of liaison officers. These are law enforcement officers stationed in another territorial jurisdiction without any formal powers. Although the tasks assigned to a liaison officer can differ widely between states, the common denominator is that these officers maintain contacts and act as formal and informal intermediaries between their own agency and the law enforcement agencies in the host country. Nadelmann (1993: 153) describes their role as somewhat ambiguous in that they are both official representatives of their agency but also informal ‘fixers’ – facilitators of requests from and to their home countries for information, evidence, interrogations, searches, arrests and extraditions. Bigo (2000a: 67) regards liaison officers as the human interface between the various national

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23 Some authors suggest that TREVI refers to the famous fountain in Rome, where the forum was set up, and to its first chair, a Dutchman named ‘Fonteijn’ (Benyon et al. 1993: 152; Nilsson 2004a: 115); others, however, claim it is an acronym of ‘Terrorisme, Radicalisme, Extrémisme et Violence Internationale’ (e.g., Harding and Swart 1995: 96; Mangenot 2006: 45).
police forces in Europe, and argues that their role is ‘crucial for policing in Europe, because it is they who manage the flow of information between their respective agencies’.

The use of liaison officers in police cooperation emerged in Europe during the second half of the 1970s, being initially most prominent in the battle against drug trafficking but quickly spilling over into the fight against organised crime and counter-terrorism (Bigo 1996). For example, the first foreign liaison officers to the Netherlands arrived in 1974 (KLPD 2008), and the Netherlands’ police sent out their first liaison to Bangkok in 1976 (Block 2000). In 1987, an overview circulated in the TREVI Working Group II showed that the 12 EC Member States had 52 liaison officers posted in 21 countries in and outside EC countries (TREVI 1987a). That number has since grown to over 500 officers who are now stationed both inside and outside the EU (see Section 8.3). The function of these liaison officers is illustrated in Chapter 8 by a detailed case study.

3.7 Schengen cooperation

In the 1980s, further advancements in European integration with consequences for police cooperation emerged when on 14 June 1985, the Benelux countries (Belgium, the Netherlands and Luxembourg), France and Germany signed an ‘agreement on the gradual abolition of checks at their common borders’ which became known as the Schengen Agreement after the place where it was signed. Inspired by both the 1960 Benelux Convention and the 1984 Saarbrucken Agreement between France and Germany, this agreement aimed to remove all internal frontiers between these countries (Joubert and Bevers 1996: 33). The actual implementation of the arrangement was overseen by the 1990 Convention Implementing the Schengen Agreement of 14 June 1985 (hereafter, the Schengen Convention). From the very beginning, European countries were free to join. By 1995, the Schengen member states numbered seven, including Portugal and Spain; by 1997, these had been joined by Austria, Greece and Italy and the Nordic EU Member States of Denmark, Sweden and Finland; and in 2000, the non-EU members Norway and Iceland also joined. Currently (2011) there are 25 Schengen Member States; all but three are members of the EU.
In 1999, the Schengen Convention of 1990 was incorporated into the EU Justice and Home Affairs framework, under the Treaty of Amsterdam, by means of a Protocol that integrated the Schengen acquis into the EU legal order. This integration meant that the existing Schengen acquis would from then on be considered EU law, and that all future measures building on that acquis would be adopted according to EU decision-making procedures (Council of the EU 1999d, 1999e). The United Kingdom and Ireland were granted the option of requesting participation in all or part of that acquis and later requested and gained approval to participate in all of the Schengen acquis provisions on criminal law and policing except for cross-border hot pursuit (Council of the EU 2000e, 2002i).

Included in the regulation for this emerging new area of free travel were a number of compensatory measures for possible shortcomings in security resulting from the abolition of controls at internal borders. Often explained by the neo-functionalist idea of ‘spill-over’ (Anderson 1994: 6),24 the Schengen Convention strongly emphasised intensified police cooperation in the Schengen area. Although the tools it provided for police cooperation were largely justified on the grounds that the abolition of border controls would lead to an upsurge in cross-border crime, the validity of this assumption is hard to verify (e.g., Anderson et al. 1995: 61; Busch 1995: 72; Den Boer 1994: 189).

Nevertheless, the Schengen Convention is considered the most complete model for international police cooperation in Europe (Hebenton and Thomas 1995: 59). Moreover, although it was initiated based on the political process related to the Schengen Treaty of 1985, police officers have been closely involved in the shaping of its practical aspects (Den Boer 1994: 179) and are still closely involved in executive decisions on cooperation practices under the Convention (interview #3). The uniqueness of this Schengen cooperation lies in the fact that the Convention both arranges a legal basis for cooperation and organises practical arrangements for that cooperation. Although its most commonly recognised and cited cooperation strategies are the Schengen Information System (hereafter, SIS) and the possibility for cross-border surveillance and hot pursuit, the Schengen Convention covers a much broader range of police cooperation topics. These include mutual assistance for preventing and detecting criminal offences; the exchange of information in specific cases for preventing

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24 See Section 2.6.1
future crime and offences against or threats to public policy and public security; and the stepping up of police cooperation in border regions through bilateral arrangements (Joubert and Bevers 1996: 34).

On several of these topics – for instance, cross-border pursuit – the Schengen member states have applied their own restrictions, so that the actual impact of each measure can vary by country (see Council of the EU 2003f), even though bilateral agreements can lift these limitations. To illustrate the workings of the police cooperation instruments under Schengen, the following paragraphs focus on three key aspects: the SIS, the possibility for cross-border pursuit and the possibility for cross-border surveillance.

1.) The SIS is an intergovernmental database that contains ‘alerts’ on persons and objects, based on which competent authorities can take specific action. It is in fact consulted daily by many police officers in the Schengen states using over 500,000 system access points (Council of the EU 2009f). The SIS works on a ‘hit-no-hit basis’ and in the case of a ‘hit’, additional information can be requested from the member state that inserted the record through the SIRENE Bureaus (e.g., House of Lords 2007; Karanja 2002). The database, which first went online in 1995 between the initial seven signatory countries, now operates in 25 states and in 2009 contained over 30 million alerts with on average, 35,000 entries are made, modified or deleted every day (Council of the EU 2009f).

Because the original SIS system was designed to operate in no more than 18 countries, in December 2001, the Council decided to replace it with a new version, the so-called second generation Schengen Information System or SIS II. Although the main purpose of this new version was to accommodate the inclusion of the EU’s new Member States, its creation was also seen as an opportunity to provide additional technical features, in particular, the inclusion of biometric data (Council of the EU 2001g). Meanwhile, because the implementation of SIS II has as yet not been completed (Council of the EU 2011a), the Member States that joined the EU after 2004, as well as Switzerland, are connected through the SISone4All system developed by the Portuguese Border Guard (Council of the EU 2006d).

2.) Cross border pursuit: International law contains little legislation, case law or jurisprudence on hot pursuit (Joubert and Bevers 1996: 243). Hot pursuit can be defined as the continuation of the pursuit
of wrongdoers outside the areas in which a state official has jurisdiction (ibid.). As this implies one state’s police forces entering another state’s territory, and generally involves highly visible police activity with flashing lights and sirens, it is likely to draw public attention. It is thus a visible territorial incursion and therefore a sensitive subject (Daman 2008: 175). However, Article 41 of the Schengen Convention allows that, under certain conditions, officers from other Schengen member countries may cross borders into another Schengen member country and exercise at least some coercive powers (pursuit and arrest) on foreign territory. This provision, one of the most controversial issues in the Schengen Convention negotiations (ibid.), was finally agreed upon through a compromise that allowed an open system in which each country can set its own restrictions through separate declarations. Although it does not reflect the needs of actual police practice, this compromise reflects the limits of what was politically acceptable at the time (ibid.).

According to the provisions of Article 41(9), every Schengen member country can set temporal, spatial and/or procedural restrictions on the powers of officers from other member states in hot pursuit on its territory through unilateral declaration. The last paragraph of Article 41, however, also allows Schengen member countries to extend the scope of hot pursuit by bilateral agreement (Council of the EU 2003f). In practice, this combination of unilateral restriction and bilaterally agreed extension results in regulatory complexity for the officers who must work with these exceptions (Joubert and Bevers 1996: 287). According to Friedrichs (2004: 18), this complexity shows the reluctance of many states to negotiate territorial sovereignty, which stands in stark contrast to the more relaxed attitude reflected by the Prüm Convention (see Section 3.11). Nevertheless, the diverging national rules on the use of force – for example, those on the use of firearms (NRC 2008; Volkskrant 2007b) – with which pursuing officers must comply when crossing into another jurisdiction (Daman 2008: 192) are much more problematic.

3.) Cross-border surveillance: The Schengen Convention was the first international treaty to formally introduce cross-border surveillance as a police cooperation technique (Joubert and Bevers 1996: 127). Specifically, Article 40 of the Schengen Convention provides a legal basis for border crossing by police officers conducting suspect surveillance in cases of criminal investigations into extraditable of-
fences. In such cases, a request for assistance should be made in advance, although in particularly urgent cases in which prior authorisation cannot be requested and only in cases of suspicion of listed offences (see Article 40(7) of the Convention) can the surveillance continue beyond the border, and the authorities should be notified immediately once the border is crossed. The authorities may also attach further conditions to their authorisation for cross-border surveillance. In practice, officers from the country of operation often take over the surveillance directly after the crossing of the border. Hence, most Schengen member countries retain specific surveillance capacity, for example, the Netherlands has five full-time surveillance teams that give absolute priority to requests from other Schengen member countries (College van Procureurs-Generaal 2006). Nonetheless, divergent working methods can be encountered in the different Schengen nations, for instance, in contrast to the Dutch approach, in Belgium, foreign surveillance teams crossing the border are joined by only one Belgian officer (Enquetecommissie opsporingsmethoden 1996: appendix V, 10.5.2).

3.8 Europol

3.8.1 The genesis of Europol

The European Police Office (Europol), established in its current form in 1999, is the European Union law enforcement organisation that handles criminal intelligence but has no investigative powers. Although some claim that Europol emerged as a result of a political process as opposed to practitioners’ needs (Zanders 2006), others note that the idea of a European police office was already circulating in the 1980s, most notably with the backing of German police officers (Fijnaut 1982: 54). In fact, the idea of a European police office was first discussed in 1974 during a conference of the Bund Deutscher Kriminalbeamter (Zelewski 1974: 303).

The first move towards a European police office can be found in the idea of establishing a European central drugs intelligence unit as agreed upon by the European Council in June 1990 (European Council 1990). The idea for this unit, often referred to in the literature as the European Drugs Intelligence Unit or EDIU, was developed by the TREVI Working Group III, which envisioned it as coordi-
nating the work of national drug intelligence units to be set up in each Member State, much like Europol and its national units (Occhipinti 2003: 34). This conception, however, was overtaken by the idea to establish a European Police Office that was proposed during the June 1991 Luxembourg European Council by former German Chancellor Kohl. Although the consensus between the EC states on Europol was in fact only narrow, the German side’s absolute determination resulted in an agreement to go forward with the first (non-executive) phase of Kohl’s proposition (Den Boer 1994:180; Hebenton and Thomas 1995:85). As den Boer predicted (1994: 180), the implementation of this agreement had negative consequences, as illustrated by the political stand-offs between Member States on the appointment of new high-ranking officials in the organisation. For example, the 2004 stand-off between Germany and France over a new director lasted a year (Minder 2005), and the discussions on the appointment of a deputy director (Geuijen et al. 2008: 83-84) paint a disturbing picture of an organisation with little prospect of operational vigour. Not surprisingly, Europol still suffers from a reluctance by Member States to share information (interview #2; Commission 2004a), although Den Boer (2002a: 159) argues that such reluctance may also stem from the ‘ego culture’ within some police intelligence circles.

The idea of a European Police Office was formalised in the 1992 Maastricht Treaty Article K.1(9) which defines its establishment as a matter of common interest for the Member States. It was also agreed that Europol should be established by a separate Convention. Because it was understood that this procedure could take some time, in the summer of 1992 a Europol Project Group was tasked with setting up a forerunner for Europol. This group established the EDIU, which was, almost immediately renamed the Europol Drugs Unit, or EDU, and formalised at a TREVI ministerial meeting in Copenhagen in 1993 (Council of the EC 1993).

### 3.8.2 The development of Europol

On 3 January 1994, the EDU began limited operations and, in 1995, it came under the regulation of a Council Joint Action, which widened its scope beyond drugs to certain other serious crimes (Council of the EU 1995b). The Europol Convention (Council of the EU 1995c) was signed in that same year.
but came into force on 1 October 1998, after which Europol took up its full activities from July 1999 onwards (Council of the EU 1999c). Since then, the Europol Convention has been adopted by all EU Member States, which now number 27 after Bulgaria and Romania entered on 1 August 2007 (Europol 2007b).

The primary purpose of Europol is to improve the effectiveness of and cooperation between the competent authorities of EU Member States in preventing and combating serious international organised crime. According to the Europol Convention, the organisation is competent to handle international organised crimes that involve drug trafficking, nuclear and other radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime, as well as related criminal offences and money-laundering offences connected with these crimes. However, Annex 2 to the 1995 Europol Convention also listed other serious international crimes that could fall within Europol’s future competence. Since then its competence has been extended to terrorism (1998), forgery of money and means of payment (1999) and money laundering (2000). Finally, a Council Decision in December 2001, which took effect on 1 January 2002, extended Europol’s mandate to deal with all ‘serious forms of international crime listed in the Annex to the Europol Convention’ (Council of the EU 2001h).

Further extensions of Europol’s mandate were achieved through a second and third Protocol to the Convention. The second Protocol (Council of the EU 2002h), signed in 2002, gives Europol the competence to participate in joint investigation teams in Member States and to ask Member States’ law enforcement authorities to initiate criminal investigations. The third Protocol (Council of the EU 2004c), signed in 2003, makes several amendments to the Europol Convention, including wider access to personal data held in the Europol Information System and Analytical Work Files; the possibility for cooperation with non-EU countries and bodies; the transfer of personal data in certain cases to non-EU countries and the powers for Europol to deal with additional crimes other than those listed in the current Annex to the Convention. After a period of protracted ratification by a number of Member States, both protocols entered into force in April 2007. In 2010, Europol officially became an EU

agency when a Council Decision replaced the Europol Convention and its Protocols (Council of the EU 2009d).

3.8.3 The organisation of Europol

One essential feature of Europol that is seldom recognised in the literature is the distinction between the Europol organisation itself and the Europol Liaison Network. Although both are legally based on the Europol Decision (and before 2010, the Europol Convention) and are mutually interdependent, they perform very different roles in the field of international police cooperation. The objective of Europol (Article 3 of the Europol Decision) is to ‘support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States’. Its primary tasks are collecting, storing, processing, analysing and exchanging information and intelligence, and providing such services as operational analysis in support of operations and generation of strategic reports and crime analyses such as the annual organised crime threat assessment and the annual terrorism situation and trend report. These tasks are performed on the basis of information and intelligence supplied by Member States and third parties.

The organisation also provides expertise and technical support for investigations and operations carried out within the EU under the supervision and legal responsibility of the Member States concerned and further promotes crime analysis and harmonisation of investigative techniques within all Member States. The analytical support provided to Member States by Europol is structured around its Analytical Work Files (hereafter, AWF) in which information from the Member States is collected, analysed and then disseminated. An AWF can be aimed at a specific crime group or a certain crime field, for example, the AWF ‘Monitor’ targets criminal activities of motorcycle gangs, and the AWF ‘Copper’ deals with Albanian criminal groups associated involved in all kinds of serious and organised crime. In the AWF ‘Terminal’, on the other hand, information is collected on individuals and networks involved in fraudulent activities related to payment cards, such as skimming (Council of the EU 2005c).
On another level, support is also facilitated by one of Europol’s newest resources, the Europol Information System (EIS), which operates like a European ‘flagging’ system to ensure that law enforcement agencies do not work on the same target without each other’s knowledge (Europol 2007a: 20). After many hurdles, this system finally became operational in 2005, and in 2006, the first countries began automatically uploading their subject and investigation data. Lastly, Europol also assumes a supporting role for specific cooperation platforms such as the ATLAS network of special intervention teams, the European Network of Advisory Teams on Kidnap and Hostage Taking and the Europol Homicide Working Group.

Although closely related, the Europol Liaison Network, in contrast, is in fact independent of the Europol organisation. Its task, as specified in Article 9 of the Europol Decision, is to support the daily exchange of information and intelligence between EU Member States, each of which must second at least one Europol liaison officer (ELO) to Europol. These ELOs - who have also been seconded by non-member countries such as Switzerland, Canada, Iceland and the United States, as well as Interpol (e.g., Europol 2007a) – are what one commentator calls ‘an unparalleled resource in day-to-day police cooperation’ (Brady 2007: 19). These officers, who in 2009 accounted for 121 of the 662 personnel working at Europol (Europol 2010: 4), are subordinate to their Europol National Unit (ENU) and represent their own national law enforcement agencies (police, customs, border guards). Hence, in contrast to the direct communication between the NCB’s of Interpol, all communication through Europol takes place via the Europol headquarters in The Hague, where the ELOs exchange information and jointly coordinate actions. The work of the liaison officers is neither managed nor supervised by the Europol organisation, even though the network is facilitated logistically by the Europol organisation in that it is accommodated within the Europol building and uses Europol’s infrastructure for secure information exchange (SIENA, the Secure Information Exchange Network Application) (Europol 2009: 35).
be argued that Europol provides support for police coordination in the Member States on the four levels outlined in Table 3.2. This broad involvement at various levels indicates a growing importance of Europol and the ELOs for police cooperation practices in the EU.

### 3.9 Entering the 21st century: joint commissariats

Towards the end of the 1990s, throughout the EU new regional arrangements for police cooperation began to emerge, mostly in the densely populated regions beside the internal borders of the EU. These arrangements – sometimes called Joint Police Stations (JPS) or Police and Customs Co-operation Centres (PCCC) – have their legal basis in Article 39(5) of the Schengen Convention and additional agreements. Of the 18 such structures counted by a 2005 inventory, 11 included participation by customs administrations (Council of the EU 2006b), and currently there are between 40 and 60 PCCCs operating in the EU (MEPA 2010), depending on how PCCC is defined.

The first PCCC was probably the Gemeinsames Zentrum der deutsch-französischen Polizei- und Zollzusammenarbeit in Offenburg (nowadays situated in Kehl), which was established in the first half of 1999 and is based on both the Schengen Convention and the 1997 Mohndorf agreement between France and Germany. Organised as a 24-hour information facility, the centre illustrates a truly multidisciplinary set-up: on the French side, there is a presence of the Police Nationale, Gendarmerie and customs officers, while the German side includes officers from the police of Baden-Württemberg and Rhineland-Palatine, customs and the German Federal Police (Felsen 2011; Nogala 2001: 138–139).

<table>
<thead>
<tr>
<th>Tool(s)</th>
<th>European policing efforts: coordination level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europol Information System</td>
<td>Data level</td>
</tr>
<tr>
<td>Analytical Work Files, OCTA, TE-SAT</td>
<td>Phenomenon level</td>
</tr>
<tr>
<td>Europol Liaison Network</td>
<td>Case level</td>
</tr>
<tr>
<td>Expert meetings</td>
<td>Working method level</td>
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Table 3.2 Europol coordination mechanisms

Based on the above, it can
The same year, a similar centre was established between Germany and the Netherlands, although it is not open 24 hours (Volkskrant 1999).

In subsequent years, the 24-hour centre at Kehl has been copied by many other border regions including the Police and Customs Cooperation Centre (CPDS) launched by Belgium and France in September 2002 for their cross-border police cooperation in the region around Lille. In 2004, its staff of 36 Belgian and French police and customs officers (Dupuis 2004) handled 66,217 messages. On 25 February 2003, a similar joint commissariat for regional cross-border cooperation between Belgium, France, Germany and Luxemburg opened in Luxemburg, and in 2004 it handled 44,675 messages (Federale politie 2005: 162).

Another example is the Euregional Police Information and Coordination Centre (EPICC), established in November 2005 as a collaboration between police from Belgium, the Netherlands and Germany. The centre is located in Heerlen (the Netherlands), a region in which police cooperation in general has been facilitated since 1969 through NeBeDeAg-Pol. With regard to information exchange specifically, the participating police forces have been able to exchange information since 1996 through the Euregional MultiMedia Information (EMMI) system (Verbeek 2004: 81–92), and through the ‘operational coordination points’ established under the NeBeDeAg-Pol cooperation agreement (Vanmullen 2007: 23). In fact, the information exchange enabled by the EMMI was so swift that other police forces routed their requests through the local forces that were in direct contact with Germany instead of through central channels (Van der Schans and Van Buuren 2003: 249). In the EPICC, which like preceding police cooperation initiatives was established as a result of a practitioners’ initiative (BZK 2005), 16 police officers and civil servants from the public prosecutors’ offices in the three participating countries work together and exchange about 100,000 messages a year (Sube 2005).

Other early joint commissariats have emerged along the borders between France and Spain, France and Italy, and Spain and Portugal and, more recently, alongside basically all internal Schengen borders. These joint commissariats share a number of important characteristics: above all, the significant volume of message traffic that passes through them. For example, three of the centres discussed – the EPICC, CPDS and GPBS – together handled more messages in 2004 than the Europol liaison officers
did from the then 25 Member States (Block 2007b). These joint commissariats also differ substantially from earlier regional cross-border initiatives in the EU in their functional range and their mandate. That is, in contrast to the earlier sub-state initiatives, they cover a full range of police activities, including criminal investigations, traffic control, matters of public order, and immigration. Moreover, information exchange via these commissariats does not have to be ‘vertically’ confirmed through a ‘formal’ route as was mandatory, for example, in the CCIC (Sheptycki 2002a: 23). Lastly, and very significantly, even though the joint commissariats operate from one location, they tend to use a multidisciplinary set-up that reflects the pooling of resources in a field of cooperation between countries too often characterised by sovereignty concerns. Taken together, therefore, these developments indicate the growing significance of decentralised interregional police cooperation in Europe (Block 2007b).

### 3.10 Police Chiefs Task Force (PCTF)

Originally named the Police Chiefs Operational Task Force, the PCTF originated from the much-quoted Presidency Conclusions of the Tampere European Council of 15–16 October 1999 point 44 (European Council 1999) which states the following:

The European Council calls for the establishment of a European Police Chiefs operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions.

Nonetheless, the Council took no formal decision on the establishment of the PCFT and provided no further explanation on how to proceed. After 10 years of existence the PCTF was disbanded in 2010 as a result of the Lisbon Treaty, although an informal continuation of the network of police chiefs was

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26 One possible exception is the Nordic countries in which broad cross-border cooperation along the internal borders has been extensive since the 1970s (Kleiven 2011: 65).
quickly established (Federale politie 2010) and the meetings that include a presence of representatives of various EU bodies continue to take place.\textsuperscript{27}

The original idea for the PCTF was to establish a body of investigative heads that could identify joint criminal problems as well as commit resources to joint operations. However, as explained by a respondent closely involved in drafting the Tampere Conclusion, the inclusion of the word ‘Chiefs’ in the PCTF’s name was a product of the public relations people not the Council; the original intention was to bring together the heads of investigative departments not the police chiefs of the Member States (interview #13). Nevertheless, partly as result of the name made up by the public relations writers and partly as result of the differences in domestic police systems, the Conclusions were interpreted to mean that representatives at the highest police level from each Member State should regularly sit together (\textit{ibid.}). In March 2000, the PCTF held its first meeting, and meetings have continued to take place since then, initially once and later twice during each EU presidency.

With only the Tampere Conclusions as a starting point, a large portion of the PCTF’s early meetings were spent trying to agree on the scope and nature of the tasks it should perform. At one meeting in July 2002, the taskforce did agree on its own function and mandate (Commission 2004a: 19), but this and other decisions on its internal functioning failed to clarify the PCTF’s positioning within EU institutional structures. Hence, in November 2004, the Council adopted a compromise on the taskforce’s task and mandate, stipulating that its contributions to the planning and coordination of operational actions would be accommodated by Europol. Its strategic role would be to meet once or twice during each Presidency within Council structures, and work alongside the Article 36 Committee (Council of the EU 2004d). Europol set up a PCTF Support Unit to assist in the operational matters agreed on by the PCTF, and to act as a point of contact between the Council, Europol, Eurojust, Interpol and the Member States for operational matters (Council of the EU 2005d).

Notwithstanding the PCTF’s unclear legal position (see also Bunyan 2005), in practice its members had the potential to play a significant role in EU police cooperation. For example, as a result of their

\textsuperscript{27} See the announcement of the Polish Presidency ‘European Police Chiefs Task Force Meeting’ available at: http://pl2011.eu/en/content/european-police-chiefs-task-force-meeting-0 (last visited 1 October 2011).
proximity to the political powers (ministers of Interior and Justice) in the 27 EU Member States, task-force members could potentially have influenced political decisions on police matters while also controlling the allotment of police resources to such initiatives as the implementation of new structures and procedures. They could also have gained direct access to the Council’s otherwise relatively closed JHA policy-making structure, meaning that the PCTF’s influence could have reached well beyond its formal position on both an operational (coordination) and a strategic (policy) level. Yet, in spite of this potential, no clear indications have emerged that post-2000 taskforce efforts, including its so-called COSPOL planning methodology, have led to actual joint investigation teams — frequently touted in PCTF documents as an important tool in fighting organised crime (e.g., Council of the EU 2004e; 2005e) — let alone to tangible publicised results. Some have therefore referred to the PCTF as the ‘Police Chiefs Diner’s Club’ (interview #13). After the Lisbon Treaty came into force, the PCTF was disbanded and most of its tasks were taken over by the Committee on Internal Security (COSI) (e.g., Council of the EU 2010c).

3.11 EU Convention on Mutual Assistance in Criminal Matters

Although the Convention on Mutual Assistance in Criminal Matters between EU Member States (the EU MLA Convention) primarily addresses judicial cooperation, in daily practice mutual legal assistance in criminal matters is important for international criminal law enforcement because many actions by police cooperating in the fight against organised crime have their legal basis in mutual assistance arrangements (e.g., Harfield 2005). Moreover, in Europe, police and judicial cooperation are to a large extent entangled (Fijnaut 2004: 242) because similar investigative competences may fall within the remit of the judicial authorities in one Member State but be part of police powers in another.

The EU MLA Convention facilitates and enhances police cooperation by introducing several general concepts and tools for this that provide a clearer and more standardised legal framework for certain investigative methods in all Member States. For example, it introduced the forum regit actum rule, which, according to Vermeulen (2006: 82), is the most revolutionary in European practice of the past.
decennia because it is the reverse of the traditional *locus regit actum* rule which states that legal assistance is governed by the formalities and procedures stipulated by the state to which a request is addressed. A second general concept that may have importance for police cooperation is the provision for a direct exchange of requests between locally competent judicial authorities rather than through the ‘formal’ route between central authorities. Also important is a third provision for the spontaneous exchange of information in judicial (and police) cooperation on criminal matters, which was not fully covered by the Schengen Convention Article 46 provision for spontaneous exchange to prevent future crimes and offences against or threats to public order and security.

The Convention also provides for particular investigative tactics, such as hearings by videoconference (Article 10); the hearing of witnesses and experts by telephone conferencing (Article 11); controlled deliveries that can also be applied to combat crimes other than illicit drug trafficking (Article 12), joint investigation teams (Article 13); covert investigations (Article 14); and direct transmission of telecom interceptions (Article 18). While the joint investigation teams that were introduced in EU police cooperation by this Convention have received considerable political attention (see Chapter 7), in fact the other provisions – for example, telecom interceptions – are invoked on a daily basis during police cooperation in criminal investigations (e.g., Vermeulen and Van Damme 2010: 165). These provisions of the Convention thus play an important role in EU police cooperation in criminal investigations.

### 3.12 Prüm Convention

One of the most recent multilateral developments on police cooperation in Europe was the 2005 Prüm Convention\footnote{Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation – particularly in combating terrorism, cross-border crime and illegal migration – signed in Prüm on 27 May 2005.} between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria. The original idea for Prüm was presented by former German Minister of Home Affairs Otto Schily on 25 February 2003 at the inauguration of a joint commissariat in Luxembourg (Bellanova 2007: 7). It
grew out of recognition that the originally agreed measures of the Schengen Convention, although crucial instruments, especially for border regions, were not meeting the needs of many practical day-to-day situations along the borders (Van der Schans and Van Buuren 2003: 249). Schily (2007) proposed that police cooperation could be far better advanced by a specialised nucleus of seven contracting parties than by the Council with its requirement of unanimity and consensus among the 27 Member States.

The key points of the Prüm Convention were the direct sharing of information (e.g., DNA profiles, fingerprinting data, vehicle registration data) and a framework that allows police officers in urgent situations to cross borders without prior consent in order to take provisional measures. Like Schengen, the Prüm Convention set a new standard for police cooperation in Europe between a small group of like-minded countries within the Union, and can be seen as the first application of the principle of availability as a basis for information exchange, a primary concern of the 2004 Hague Programme (Council of the EU 2004a). From its very beginning, the Convention was open to any EU Member State, and many Member States soon declared their willingness to join. Early in 2007, Germany proposed that the Convention be incorporated into the EU legal framework (Council of the EU 2007c), and in 2008 the Council agreed on a decision that was almost a copy of the Prüm Convention (Council of the EU 2008e).

However, some commentators question the proportionality, legality and legitimacy of Prüm, particularly since the process of adoption took place completely outside the EU framework and was then brought into the EU framework ‘through the back door’ (e.g., Bellanova 2007). Nonetheless, the Prüm Convention’s provisions on direct cross-border cooperation and information exchange are being applied on a daily basis. The provision for the computerised exchange of DNA profiles, particularly, has led to significantly enhanced and more efficient practices (interview #30). A last important aspect is that the Prüm Convention shows that countries in the EU outside the Council can also reach agreement on police cooperation that has a concrete effect on police cooperation practices.

3.13 Intelligence platforms
The most recent police cooperation arrangements of relevance for this study are the so-called intelligence platforms that police from EU Member States have set up over the past five years both inside and outside the EU. The first such platform was formed in 2007 when liaison officers from France, Germany, Italy, the Netherlands, Spain and the United Kingdom began informal intelligence cooperation in Dakar, where they organised the sharing of intelligence on the significant cocaine trafficking in the West African region together with the local law enforcement. Quickly recognising the potential of this type of enhanced cooperation, in 2008 the Commission funded a feasibility study and, in 2009, the cooperation was established as an intelligence platform operating from the French embassy. Soon after, a similar platform was established in Accra, where it is set up as part of the British High Commission and hosts liaison officers from the UK, Germany, France, Spain and also the U.S. (Commission 2010b; Council of the EU 2006c). Although these platforms have become part of the EU’s law enforcement strategy in the fight against drug trafficking in West Africa (Council of the EU 2009c), they remain informal in that they have no institutionally formalised position or specific legal framework. Rather, they build on existing frameworks, such as the EU MLA Convention (Council of the EU 2000a) and the Council Decision on the common use of liaison officers (Council of the EU 2006a).

Another intelligence platform is the Maritime Analysis and Operations Centre – Narcotics or MAOC–N (Commission 2009) which was formally established on 30 September 2007 through intergovernmental agreement between seven EU Member States (France, Ireland, Italy, the Netherlands, Portugal, Spain and the United Kingdom). It grew out of the informal activities of practitioners and has existed in Lisbon in embryonic form since 2004. The 2007 agreement establishes a legal base for information exchange between the participating countries and defines scope, activities and logistic arrangements. Most particularly the MAOC-N, which had in fact been operational in its formalised form since April 2007, acts as a coordination point for intelligence that allows the navies of the participating countries to undertake effective high sea interdiction operations aimed at intercepting trans-Atlantic drug traffickers (BBC News 2007). The centre receives a large part of its funding from the Commission, and the participating states have agreed to share the rest of the costs. Each participating
state has posted at least one liaison officer to the centre – in fact, the SOCA, for example, has already stationed three (House of Commons 2008) – and Europol has also agreed to post a liaison officer to the platform. Since its establishment, the MAOC-N has coordinated the seizure of over 44 tonnes of cocaine (House of Commons 2010).

A similar type of platform aimed at the coordination of intelligence and operations on drug trafficking in the Mediterranean was set up in Toulon in May 2008 after 10 countries bordering the Mediterranean Sea signed an intergovernmental agreement (Le Figaro 2009a). This platform, the Centre de coordination de lutte antidrogue de la Méditerranée (CECLAD-M), which comprises mainly French law enforcement officers supported by liaison officers from the participating countries, also reported significant operational results soon after its implementation (Le Figaro 2009b). The development of the intelligence platforms shows the continuing importance of practitioner initiatives on the shaping of police cooperation in the EU. These initiatives can be picked up and formalised at a later stage.

3.14 Conclusion

This chapter has presented an overview of the development of police cooperation in Europe from the mid-19th until the early 21st century. As noted in the introduction, this overview is not comprehensive because of the overwhelming number of platforms and arrangements for police cooperation in Europe. For example, in addition to the NeBeDeAg-Pol discussed in this chapter, there are three other cooperation platforms along the Dutch-German border alone. Through these the police exchange information and coordinate the allocation of capacity locally and regionally. Obviously, it would be impossible to give all these arrangements equal attention. Nevertheless, the chapter has addressed the main arrangements for police cooperation and has provided interesting insights into the development of police cooperation practices in Europe.

The details of the various arrangements indicate that between the mid-19th and the early 21st century, police cooperation in Europe matured from informal support for what in essence were the unilateral practices of police acting on foreign sovereign territory to intensive and often real-time information
sharing and joint operations. The progress of this police cooperation in Europe reflects the influences of practitioners informally seeking solutions – often ahead of political interest – as well as the impact of more centralised and formal developments through intergovernmental treaties and conventions. For example, Interpol originated from practitioners’ efforts but was followed by Council of Europe Conventions and then informal arrangements like NeBeDeAg-Pol and CCIC took police cooperation another step forward at the end of the 1960s. Thereafter, more formalised cooperation under TREVI and the Schengen Convention provided a new impetus for police cooperation in Europe that then continued through more enhanced regional cross-border cooperation by the Police and Customs Cooperation Centres. A drive for further harmonised cooperation was then formalised by the Prüm Convention, but the latest innovation in European police cooperation – intelligence platforms – was again initiated by practitioners and embraced recently at a higher level.

Hufnagel (2011: 331), working from a legal perspective, draws similar conclusions on the alternating influence of formal and informal developments in the dynamic of the developments of police cooperation in the EU. Overall, these developments show that, since police cooperation gained a prominent place on the European political agenda in 1975, the influence of police practitioners on the shaping of police cooperation has remained significant (see also Alain 2000: 247). Still, EU policy instruments have become another factor in the shaping of police cooperation in the EU and the next chapter focuses on how policy-making in the Council instruments to enhance police cooperation works in practice.
Chapter 4
EU Council JHA policy-making

4.1 Introduction

Since the TEU\textsuperscript{30} came into effect in 1993, the EU Council has produced an impressive number of instruments in the realm of Justice and Home Affairs (JHA) in what until December 2009 was called the third pillar of the EU. The first pillar contained the economic, social and environmental policies, the second pillar foreign policy and military matters and the third pillar brought together police and judicial cooperation. During the course of this research, the pillar structure of the EU ceased to exist when the Treaty of Lisbon came into effect on 1 December 2009. Even though it may appear anachronistic, this chapter describes the dynamics EU Council JHA policy-making prior to the Lisbon Treaty.

As already outlined in Chapter 3, in 1975 TREVI emerged as an intergovernmental forum between the European states for cooperation in the realm of Home Affairs. However, although this assembly marks the first discussion in Europe of police cooperation as part of a broader political cooperation in the European political arena, such discussion was kept outside the formal and supranational framework of the EC. Nevertheless, cooperation between the Justice Ministries within the framework of the Council of Europe (CoE) – most notably, in the European Committee on Crime Problems established in 1958\textsuperscript{31} – did lead to conventions and recommendations in response to various crime prevention and control issues. In 1977, former French President Giscard D’Estaing introduced the concept of an espace judiciaire européen in which to develop a cooperative framework for legal assistance. These efforts were intensified by a Legal Cooperation Working Group set up in the 1980s within the intergovernmental European Political Cooperation between the EC Member States (Vermeulen 2006: 60–61).


\textsuperscript{31} See http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC_en.asp (last visited 30 August 2011).
Both TREVI and the Legal Cooperation Working Group were brought into one institutional framework by the Treaty of Maastricht, and became the foundation for the third pillar of the EU under Title VI of the treaty, ‘Provisions on Cooperation in the Field of Justice and Home Affairs’. The acronym ‘JHA’ soon became an established expression. Nevertheless, even though Justice and Home Affairs were now incorporated within the EU framework, their special grouping under a separate pillar and the special provisions governing decision-making in this area reflected the sensitivity of matters ‘close to the heart of Member States’ national sovereignty’ (Nilsson 2004a: 113). Of central importance in Title VI was Article K.1 which explicitly mentions police cooperation as one matter of common interest in achieving the Union’s objectives. This emphasis was reinforced in 1999 when the Amsterdam Treaty restructured Title VI, renamed it ‘Provisions on Police and Judicial Cooperation in Criminal Matters’ and integrated the Schengen provisions by virtue of an attached protocol.

As a result, although JHA cooperation is a relatively new field of policy-making compared to free market cooperation within the EU, it became one of the fastest growing policy domains (Monar 2006b: 495) and quickly involved a significant volume of legal instruments dating from both before and after the Treaty of Amsterdam (Walker 2004: 3). Indeed, within a decade of the Treaty of Maastricht’s coming into effect, this policy field’s ‘extraordinary career’ (Monar 2001: 748) had resulted in over 835 texts on Justice and Home Affairs adopted by the Council (Nilsson 2004a: 124). However, as pointed out in the first chapter, their effects on police cooperation practices show significant variation, possibly due to weaknesses in the policy-making process. This chapter therefore explores the general issues related to JHA policy-making in the EU Council.

Not only could EU policy-making be analysed using a variety of approaches, but different policy domains in the EU have different modes of making policy (Wallace 2001: 73). Therefore, to understand how the EU Council JHA policy process actually works, two distinct aspects must be highlighted: the requirement of unanimity in decision-making, as defined in Article 34 TEU, and the closed nature of the JHA policy community (Den Boer and Wallace 2001: 505; Wallace 2001: 79). Hence, an ‘outside’ perspective on Council JHA policy-making that focuses on Member States’ preferences and actions – even though capable of producing interesting findings (see e.g., Friedrichs 2005) – provides
only a limited picture. For instance, the claim that the continuous interacting of EU Member States at different levels does not really change preferences over time or influence policy is dubious (Kaunert 2010a: 12). In fact, the closed character of the JHA policy-making structure (Den Boer and Wallace 2001: 505) and the consensus requirement greatly influence the speed of the process as well as the final instruments, which can differ substantially from the initiatives (Den Boer and Wallace 2001: 507). A more logical approach for the present study, therefore, is an inside perspective, focusing on the actual internal machinery of JHA policy-making. Accordingly, to provide background for the analysis of Council instruments and their effects on cooperation practices, this chapter examines JHA policy-making within the EU Council structure by looking at its different stages, i.e., agenda setting, policy shaping and decision-making (Versluis et al. 2011: 20). These findings are then used as a basis for exploring potential explanations for the effects, or lack thereof, of Council JHA policy instruments.

The remainder of the chapter is structured as follows. The next section discusses the different legal instruments that the Council could adopt to shape its policy on police cooperation. Section 4.3 then considers the various actors involved in the policy process, not only the formally designated actors but also those who are central in the policy process in practice while playing no formal role. Section 4.4 describes the policy cycle, after which the various motives and factors behind the Council’s JHA policy, both internal and external, are examined. Thereafter particular challenges in EU JHA policy-making, that are highlighted in the existing literature and may have affected the content and effects of the instruments adopted, are discussed. Section 4.7 discusses existing evaluations of EU JHA instruments, and finally Section 4.8 concludes the chapter by summarising the relevant insights gained from the earlier sections.

4.2 EU Council JHA policy instruments

Two distinctions can be made in regards to the policy instruments adopted by the Council in the pre-Lisbon era. First is the difference between those adopted during the era of the Maastricht Treaty and those adopted after the Treaty of Amsterdam; second is the fact that, within this arsenal of instru-
ments, some had their legal basis in the TEU, whereas others had no formal legal basis but were still used by the Council to express agreement. Since the field research covered all types of instruments, they are discussed in detail below.

4.2.1 Hard law instruments

Three types of hard law instruments were adopted by the Council in the realm of JHA: Joint Positions, Joint Actions and Conventions. In the context of the Maastricht treaty, Joint Positions were non-binding on Member States, whereas Joint Actions were binding in terms of their objectives; although according to some authors, the legality of such binding instruments is unclear and has therefore been contested (Mitsilegas 2009: 11). Conventions were binding after ratification by the national parliaments of the Member States and mirrored the intergovernmental character of other international forums such as the Council of Europe (ibid.: 11).

According to Mitsilegas (2009: 12), however, the operation of the third pillar in the Maastricht era showed the weakness and limits of the compromise reached at Maastricht. The Amsterdam Treaty was therefore intended to strengthen the Council’s powers and, in its Article 34.2, provided four different types of formal instruments that the Council could adopt: Common Positions, Framework Decisions, Decisions and Conventions (Mitsilegas 2009: 16). The first, Common Positions, were used to ensure that Member States took a coordinated approach in treaty negotiations with other intergovernmental organisations like the Council of Europe (CoE) and the United Nations (e.g., Council of the EU 1999f, 2000f). Although the Treaty did not explicitly state that common positions are binding, neither did it exclude this assumption (Mitsilegas 2009: 16).

The second type, Framework Decisions, were meant to approximate the laws and regulations of the Member States on any particular issue and were thus very similar to pre-Lisbon first pillar Directives32 (ibid.: 16). Like Directives, Framework Decisions were binding upon Member States in terms of the results to be achieved but left the choice of form and method to the national authorities. Unlike

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Directives, however, they did not entail direct effect; rather, the Member States had the right to decide how the Framework Decisions were to be implemented in national legislation. Decisions, in contrast, were binding upon Member States but had no direct effect. Conventions, as in the Maastricht era, could be established by the Council and recommended for adoption by the Member States in accordance with their respective constitutional requirements.

### 4.2.2 Soft law instruments

Besides these formal hard law instruments, the Council has also over the years adopted a many non-binding instruments with no specific legal basis in the TEU (Den Boer and Wallace 2001: 511; Nilsson 2004a: 124). In fact, of the first 100 JHA instruments adopted by the Council, only one was a legally binding instrument (Nilsson 2004a: 117). These non-binding or ‘soft law’ instruments, used since 1993, take the form of Recommendations, Resolutions, Action Plans and Conclusions. Some authors, however, dispute the ‘soft law’ concept as a contradictio in terminis, arguing that soft law without legal effects is not law and soft law with legal effect is hard law (Senden 2004: 109). Nevertheless, as Snyder (1994: 198) points out, although soft law has no formal legal effects, it can have practical effects. Indeed, Senden (2004: 110) maintains that the term soft law provides a reasonably satisfactory umbrella concept for which there is no suitable alternative.

Senden (2004: 111) also claims that soft law expresses a ‘shadow area between law and politics’, an observation that, although made in relation to community law, not Council JHA instruments, may be equally applicable to instruments related to police cooperation. Most particularly, she distinguishes three potential functions that soft law can fulfil, a pre-law, post-law and para-law function (ibid.: 119-120). In its pre-law function, soft law can pave the way for future hard law by assessing its desirability or necessity, or can facilitate the subsequent adoption of legislation by providing or increasing the basis of support for the rules it contains. In its post-law function, it can be adopted subsequent to existing law in order to support its implementation; and in its para-law function, it can be used as an alternative (sometimes temporarily) to legislation.
Given this framework, the extent to which soft law instruments are binding upon the Member States is controversial. For example, Korkea-aho (2009: 273) argues that although the differences in the legal status of hard and soft law form the core of the formal distinction between them, such a binary distinction is unhelpful because it disregards the legal effects that soft law might nevertheless have for several reasons, including judicial recognition, expectations generated, cooperation between the Commission and non-state actors at the national level, and incorporation into hard law. Nonetheless, soft law can be an effective way of achieving integration in sensitive areas (Korkea-aho 2009: 276), and in the pre-Lisbon third pillar – particularly in the realm of police cooperation – soft law instruments may well have represented the sovereignty concerns of Member States and the maximum result that could be achieved. In relation to instruments aimed at police cooperation, particularly, this observation is highly relevant in that it indicates a significant function for soft law instruments in JHA policy-making despite the criticism voiced often about its use in this area (e.g., Commission 2004a). It follows that the field research should pay attention to the distinction between hard and soft law instruments.

4.2.3 Modes of governance
Monar (2006a) takes another approach towards Council instruments by construing all JHA texts adopted by the Council as relevant governance instruments for targeting common objectives. Specifically, he identifies four ‘modes of governance’: ‘different types of instruments (legislative or non-legislative) used for the steering and coordination of interdependent actors through institution-based internal rules systems’ (ibid.: 4). These four modes – ‘tight’ regulation, ‘framework regulation’, ‘target setting’ and ‘convergence support’ – differ from each other based on the freedom of implementation and whether decision-making is binding or not. Table 4.1 outlines these modes and their characteristics.
Legal nature of the instrument

<table>
<thead>
<tr>
<th>Freedom in implementation</th>
<th>Binding</th>
<th>Non-binding</th>
</tr>
</thead>
<tbody>
<tr>
<td>None or little (binding)</td>
<td>Tight regulation (Joint Actions, Decisions)</td>
<td>Target setting (Recommendations, Regulations, Conclusions, Action plans)</td>
</tr>
<tr>
<td>Full (non-binding)</td>
<td>Framework regulation (Framework Decisions)</td>
<td>Convergence support (Evaluations, Reports)</td>
</tr>
</tbody>
</table>

Table 4.1 Council JHA instruments classified by mode of governance (Monar 2006a: 7–11)

As is elaborated in the subsequent chapter, in contrast to Monar (2006a), this study adopts a narrow definition of ‘instrument’ by including only those policy texts that have at least one binding element.

4.2.4 A note on Schengen

A number of policy instruments related to police cooperation in the EU are based on the so-called Schengen framework, which has also been mentioned as one of the ‘laboratories’ for the EU JHA policy field (Monar 2001: 750). As discussed in Chapter 3, the 1990 Schengen Convention introduced a legal framework and tangible arrangements for police cooperation with the aim of guaranteeing internal security and balancing the insecurities brought about by the introduction of the free movement of goods and persons between contracting parties under the 1985 Schengen Agreement. In 1999, the provisions of this Convention, together with the subsequent decisions of the Schengen Executive Committee, were integrated into the EU legal framework, although they have remained a distinct legal and political base for police cooperation in the Union (Mitsilegias 2009: 35; Monar 2000: 134). From the beginning, senior police officers have been closely involved in the shaping of its practical aspects (Den Boer 1994: 179). Because of these aspects, the so-called Schengen acquis, as well as later Council decisions relating to the Schengen instruments, fall beyond the scope of this research.

4.3 Structure and process of Council JHA policy-making

4.3.1 Formal structure
When describing the structure of Council JHA policy-making, it is important to keep in mind that many legislative decisions are perhaps adopted but not constructed or even discussed by Council Ministers. In fact, most legislation is adopted de facto by public servants who occupy the Council’s various working groups and committees without any direct ministerial involvement (Häge 2007). Moreover, although JHA policy-making in the pre-Lisbon third pillar took place according to intergovernmental decision-making unanimity rules, the degree of influence of each individual state in that process is questionable (Occhipinti 2003: 15–20). In reality, the process was influenced by the institutions in which the intergovernmental bargaining took place, which also constrained the autonomy of the individual Member States (Rosamond 2000: 141–145). As discussed in Chapter 2, the influence on intergovernmental decision-making in the EU by supranational institutions, such as the Council Secretariat and the Commission, is also a subject of debate. In this study, however, the working assumption is that these institutions have had an influence on Council JHA policy-making.

In the Council structure, JHA is comprised of many interconnected and interdependent entities that are difficult for outsiders to distinguish. Many such entities were part of the hierarchy that the JHA policy-making structure inherited from TREVI, which comprised a five-level hierarchical structure under the Maastricht Treaty and a four-level structure under the Amsterdam Treaty (Nilsson 2004a: 118). In the current four-level hierarchy, the bottom level consists of 18 preparatory bodies or working parties, sometimes referred to as groups (Council of the EU 2010a; see also Council of the EU 2002j). These working parties consist of officials from the Member States, as well as representatives from the Commission, the Council Secretariat and occasionally EU institutions like Europol and Eurojust. These national officials are either on the staff of the permanent representation of Member States in Brussels or belong to the relevant ministry and travel to the working group meetings when necessary. These groups meet on average every four to six weeks and are tasked with preparing proposals for legal instruments for discussion at a higher level and solving as many technical, legal and political problems as possible to facilitate early agreement (e.g., Geuijen et al. 2008: 81).

The working parties that deal predominantly with policy-making on police cooperation are the Police Cooperation Working Party (PCWP), the Terrorism Working Party (TWP), the Europol Working
Party and the Multidisciplinary Group on Organised Crime (MDG). Another relevant working party – although not part of the specific JHA collective but categorised under general affairs – is the Horizontal Working Party on Drugs. This group interconnected the EU policy-making in the three pre-Lisbon pillars on the subject of drugs. Because combating drug-related offences is one of the first and longest standing fields of police cooperation in Europe (Bigo 1996), this working party is occasionally also directly involved in policy-making on police cooperation. For example, it was the first to discuss the draft Council Decision on the posting of liaison officers to Albania (Council of the EU 2003d).

On the second level of the hierarchy, the Committee Article Thirty Six (CATS) – named after the original TEU Article that provided its legal basis – has been tasked with coordinating the work of the various working parties dealing with police cooperation, judicial cooperation in criminal matters, the Schengen Information System and the work of EU agencies in the field of police and judicial cooperation (e.g., Europol, Eurojust, CEPOL). Before the Amsterdam Treaty, this coordinating committee was called the K.4 Committee and, like CATS, comprised senior officials from the national ministries that met once a month in Brussels. CATS’s functions in the policy process, however, have triggered diverging views. According to one senior Belgian police officer, for example, some see CATS as a delaying factor in the policy process with few additional benefits (NRC 2004). Europol, on the other hand, in its contribution to the ‘EU Plan of Action on Combating Terrorism – Update’, describes CATS as a filter that served, for instance, in Europol’s futile attempts to get the Council’s attention on the non-compliance of security services with Europol’s Counter Terrorism Task Force (CTTF) mandate (Council of the EU 2004g, 2005f: 9). A JHA Counsellor, in contrast, sees CATS as functional for developing formal instruments but not for operational issues that tend to slip easily through CATS on their way to the Council (interview #9).

The next and third level in the hierarchy is the Comité des représentants permanents (COREPER), which consists of the permanent representatives from the Member States to the EU. Officially, COREPER is responsible for preparing the work of the Council particularly when preparation has

33 Under the Lisbon Treaty, the newly formed Comité de sécurité intérieure (COSI, based on Article 71 TFEU) has taken over operational coordination. Hence, the legal basis for CATS has not been retained, and its future is as yet unclear; the Comité des représentants permanents (COREPER) will evaluate CATS’s work before 1 January 2012.
been undertaken by other forums and ensures its consistency with Union policies and actions. In practice, however, everything destined for the Council passes through COREPER, which gives this body considerable executive and legislative influence (Westlake and Galloway 2004: 201; see also Council of the EU 2004h). It is at this level that agreement between the Member States is usually reached.

Since 1992, as part of a trend to delegate the technical work to specialists, COREPER has been divided into COREPER I, composed of deputy permanent representatives, and COREPER II, made up of permanent representatives, which deals with the preparation of JHA subjects for the Council (Westlake and Galloway 2004: 204). In preparing the Council meeting agendas, COREPER establishes the so-called ‘A points’: items on which agreement has already been reached in the preparatory phase and for which adoption by the Council is a matter of formality, and ‘B points’, items generally related to issues that require negotiation on the highest political level.

The fourth and highest level in the hierarchy is the Council of Ministers, the ministers from Member States that have made up the Council since its 1951 founding by the Treaty of Paris. Depending on the matters examined, the Council meets in nine different configurations. For example, the ‘General Affairs and External Relations’ Council’ is made up of Foreign Affairs ministers while the JHA Council consists of Justice and Interior ministers. Nevertheless, even though the Council meets in these different configurations, it is in fact indivisible, meaning that JHA topics can be addressed in Fisheries Council meetings, for instance. For subjects outside the ministers’ expertise, however, the General Secretariat of the Council and COREPER usually avoid putting anything but A-points on the agenda.

The first JHA Council was held in 1993 and, as result of the ever-growing number of items, the JHA Council has since become one of the most important Council formations (Nilsson 2004a: 139).

Another formal actor in the JHA policy process is the European Parliament (EP), although in practice its role in the pre-Lisbon third pillar was quite limited. That is, prior to the Lisbon Treaty, the Council only had to consult the EP before actually adopting a Decision or Framework Decision, even though the EP was a co-decision-maker in establishing Conventions. The EP had a minimum of three

34 This situation has changed since the Lisbon Treaty came into effect in December 2009; however, as discussed earlier, these changes fall outside the scope of this thesis.
months to give its opinion on an initiative and, if the instrument needed to be changed substantially, the EP had to be re-consulted (Nilsson 2004a: 136). For instruments aimed at police (and judicial) cooperation, the EP has installed a Citizens Freedoms and Rights, Justice and Home Affairs Committee (LIBE) which delivers opinions through an appointed rapporteur. This official drafts the opinions and proposed amendments and prepares a report for Parliament. Since the EP is only involved in the procedures on Decisions, Framework Decisions and Conventions, its impact on opinions on Council instruments is hard to assess. Also, its opinions on police and judicial cooperation are usually filtered through an informal working party of JHA Counsellors (e.g., Council of the EU 2000g, 2003h, 2005g). Nonetheless, some argue that, on certain issues, the EP has had a more significant impact through the activities of LIBE than its limited formal powers suggest (Argomaniz 2007).

Finally, the European Commission has a formal position in the JHA policy-making complex, one that was minimal under the Maastricht Treaty but was accorded full right of initiative by the Amsterdam Treaty. As a result, the small JHA task force set up as part of the Commission in 1992 was expanded into a full Justice, Freedom and Security Directorate-General, whose experience and resources led to an increase in staff. This augmentation, among other factors, has led to an increase in the Commission’s JHA initiatives (Nilsson 2004a: 138) and although the Commission’s role in the non-communitarised third pillar was limited, some of its legislative proposals – such as those to combat terrorism after the attacks of 9/11 – have had a major impact on JHA policy-making (Monar 2006b: 500). This effect should not be surprising given the Commission’s structural position in JHA policy-making vis-à-vis the preference heterogeneity between the Member States and the fragmentation caused by the rotating Presidency. The Lisbon Treaty, however, provided the Commission with a truly privileged position in JHA policy-making, one in which it now has the primary right of initiative while the Member States can only forward an initiative if they do so jointly with seven Member States or more (e.g., Mitsilegas 2009: 46). After this expansion of the Commission’s role in July 2010, the
Justice, Freedom and Security Directorate-General was split into a Directorate-General for Justice and a Directorate-General for Home Affairs that has over 300 staff members.  

4.3.2 The informal circuit

As suggested earlier, in addition to the formal actors in the JHA policy-making complex, there are several informal actors who may not always be visible but can in fact be just as influential as the formal bodies (see also Curtin 2004: 98). Three of these informal actors who have a significant influence on process in practice are discussed below.

The first informal body, the JHA Counsellors, consists mainly of civil servants from the Justice and Home Affairs Ministries who are attached full time as permanent representatives of the Member States to the EU in Brussels. According to Nilsson (2004a: 134–135), over the past decade these counsellors have gradually developed relative independence and have become significant actors in JHA policy-making. Permanently based in Brussels, they know each other through frequent personal contacts and often have particular knowledge on the policy matters at hand and good insight into the technical and procedural details of the subjects, which significantly facilitates their cooperation and common work. Although they do not necessarily attend the meetings of the formal working parties – unless being appointed formal national representative to the working party – the JHA Counsellors play a role on the many sidelines of the formal process, including, for example, in working groups on specific subjects (not to be confused with formal Council working parties).

JHA Counsellors also prepare the CATS meetings and participate in the so-called Antici group, which, named after its first Italian President (1975), is responsible for deciding on the organisation of COREPER II proceedings and preparing its meetings (Council of the EU 2003i). Hence, JHA Counsellors report to both CATS and COREPER II but are also present as advisors to their countries’ formal representatives in the CATS, COREPER II and JHA Council meetings. In daily practice, the Council Secretariat contacts the counsellors – frequently informally by email – to discuss minor chan-

ges in policy drafts that would delay the already slow-moving policy-making process if left until the next meeting of the appropriate working party (interview #10). Finally, as mentioned above, the JHA Counsellors are in practice often tasked with discussing the amendments proposed in EP Opinions on Council instruments and with determining whether these amendments are feasible.

Judging by their actual involvement from the beginning to the end of the policy-making process, it can be argued that the JHA Counsellors are significant informal actors in Council JHA policy-making. In fact, they have been known to solve questions on which CATS, COREPER and/or the Council have been unable to achieve results (Nilsson 2004a: 134) because of political sensitivities and technical complexities, and have thus been compared to a ‘mini-COREPER’ (Nilsson 2004a: 140). Nevertheless, a national policy advisor from one Member State refused to recognise JHA Counsellors as powerful informal actors, arguing that, at least in respect to procedures in his own country of origin, they worked with a strict mandate from their capitals with little room for deviation, sometimes to their own frustration (interview #17).

The second informal actor in the JHA policy arena is the Council General Secretariat’s Directorate General for Justice and Home Affairs (DG H), established in 1995, which from the start has included a number of very senior officials in the area of Justice and Home Affairs (Mangenot 2006). According to the Council’s Rules of Procedure, the Council Secretariat’s task is to be closely and continually involved in organising, coordinating and ensuring the coherence of the Council’s work and implementation of its annual programme. It performs its role under the responsibility and guidance of the Presidency, which it assists in seeking solutions. (Council of the EU 2004h).

However, although on paper this role appears procedural not substantive, the staff of the General Secretariat – unlike the Presidency, with its six-month rotation, and the diplomatic staff of the permanent representations, who rotate on average once every three to four years – have no maximum period for performing their functions and are leaned on very heavily by some Presidencies (interview #9 and #10).
The fact that the DG H is involved in all stages of the policy process results in an accumulation of knowledge and makes it the real institutional memory of the Council on JHA matters (Nilsson 2004a: 137). On many occasions – for example, the development of Eurojust (Mangenot 2006; see also Nilsson 2004a: 138) – policy instruments have been drafted, developed and even pushed by Council Secretariat staff, and only afterwards has a Member State – often the Presidency – formally initiated the idea.

In practice, the Council Secretariat plays the role of motor, legal drafter and initiator (Nilsson 2004a: 137), and its influence on JHA policy is therefore certainly not marginal as suggested by, for example, Rood and Siccama (1994). In fact, in situations in which the Council Secretariat has extensive knowledge of both the content and process of the policy-making, its members are likely to become powerful bureaucrats (cf. Weber 1922: 572). Once again, however, the role of the Council Secretariat in this area seems to be changing, particularly as a result of the increasing role of the Commission after the Lisbon Treaty granted it primary right of initiative (Article 76).

The third and last actor that has apparently had more influence on the JHA policy-making process than could strictly be derived from the formal set of rules governing the pre-Lisbon third pillar is the Member State holding the (rotating) Presidency. The Presidency, which is taken up every six months by a different Member State, assumes the chairs of all preparatory bodies, COREPER and CATS (Council of the EU 2004h: Article 19) and drafts the agendas for each meeting. This ability to control the agenda obviously entails the ability to influence the final policy outcome, even if the actual decisions are made after political bargaining. Hence, if well-coordinated, a Member State can have a decisive influence on policy matters during its Presidency, especially when it collaborates intensively with the Council Secretariat (Den Boer and Wallace 2001: 514). In fact, it has been argued that Member States assuming the Presidency often abuse their position to promote national priorities such as domestic crime issues that hold little general interest for the Union (e.g., Storbeck and Toussaint 2004). A Presidency’s urge to demonstrate political vigour may also sometimes result in proposals that do not reflect general EU interests (Nilsson 2004a: 118).
4.4 The policy cycle

Under the pre-Lisbon Title VI of the TEU (Article 34.2), Member States and the Commission had the right of initiative in proposing new policy instruments, a right whose practical applications are outlined below particularly in terms of the process a proposal undergoes before being adopted as an instrument.36 Such pre-Lisbon policy-formulation began when Member States or the Commission launched initiatives and the Council Secretariat subsequently oversaw their translation into the official languages, and transferred the proposal to one of the working groups for discussion. After every working group meeting, the Presidency, with the aid of the Council Secretariat, would summarise the proceedings and, where necessary, draft an amended version of the proposal(s) under discussion. These proceedings and drafts were in turn translated and distributed by the Council Secretariat.

Sometimes, the working groups would encounter ‘matters of principle’, which were then submitted to CATS or COREPER with a request for (political) guidance on the approach that should be adopted (see, for example, Council of the EU 2001i). In 80% of the cases, agreement was reached at the level of the working parties (Nilsson 2004a: 131). The amended proposal was then forwarded to CATS, which coordinated the working parties’ efforts and forwarded the outcome to COREPER. If agreement was reached, which was generally the case, the proposal was finalised – that is, the text was screened for legal consistency, and the translations were synchronised for formal adoption by the Council and forwarded as ‘A points’. If discussion or voting was needed or expected, the item was placed on the agenda as a ‘B point’.

However, because this description of the policy flow is based on formal structures and instructions like the Council’s rules of procedure, it is the ‘ideal’ process rather than the reality. In reality, policy flow can be erratic and move along parallel tracks with changing speeds. For example, both the process and the speed at which issues moved up and down the agenda could be influenced by both the domestic priorities of intervening Presidencies and the informal circuit described. Hence, ideas and even complete proposals might be informally discussed at length and formally tabled only when

36 For a detailed, almost ethnographic, account of the practical workings of the policy cycle, see Geuijen et al. (2008: 77–92).
agreement had been more or less reached. In some cases, proposals were drafted in the Council Secretariat and a ‘sponsor’ found afterwards, usually in the form of the Presidency (Nilsson 2004a: 138). In such cases, proposals encountered little or no opposition and even if they did, informal consultations between the JHA Counsellors frequently solved the problem.

Besides these informal practices, the complexity of the system itself was capable of steering things away from the ‘ideal’ policy flow. For instance, initiatives were sometimes promoted in several working parties at the same time, in different working parties and without any interconnection (Geuijen et al. 2008: 81). Political pressures could also trigger situations in which CATS agreed on a ‘hastily patched-together proposal coming from nowhere’ (ibid.). Such practices, classified by Van der Schans and Van Buuren (2003: 312) as among the rather perverse rituals of the Brussels policy circuit – which include ‘agreeing with decisions that one considers to be useless and adopting instruments never to look at them again’ – still seem to have a significant influence on the Brussels policy process (ibid.). Anomalies in the policy process may also result from such events as the terrorist attacks in the United States in September 2001 (Den Boer 2003), which threw the JHA Council completely off balance. Nevertheless, Council JHA policy-making does have a number of legal and political foundations, which are examined in the next section.

4.5 **Foundations of JHA policy**

Although several important foundations of and influences on the JHA policy-making process can be distinguished, the following six key documents are generally considered to have served as the legal and political foundation for EU JHA policy in the decade prior to 2004 (Commission 2004a):

- Title VI of the TEU;
- The Schengen Convention;
- The 1997 Action Plan to Combat Organised Crime (Council of the EU 1997a);
- The 1998 Vienna Action Plan (Council of the EU 1998b);
- The Tampere European Council Conclusions of October 1999 (European Council 1999);

- The Hague Programme of 2004 (Council of the EU 2004a). 37

The first two were in fact the legal foundation for all policy-making before the Lisbon Treaty came into effect, while the other four provided the strategic ideas behind the policy-making. Therefore the latter four are discussed below as are the external influences on Council JHA policy-making.

4.5.1 Four strategic texts for JHA policy-making

The 1997 Action Plan to Combat Organised Crime is commonly regarded as the first strategic Council guideline on JHA matters. Drafted by the then Netherlands Presidency based on various earlier reports and input from other Member States and informal discussions, it was further elaborated by a high-level group (Council of the EU 1997c). The Action Plan summed up 30 recommendations, some directly related to the organisational structure and procedures of police cooperation between the Member States. In that respect, it played a double role, serving not only as a strategic guideline but also as a tangible policy instrument whose provisions were to be implemented in the Member States.

The recommendation followed most was the creation of one national point for the international exchange of police information, an innovation that combined the Europol National Unit, the Interpol National Central Bureau and the SIRENE Bureaus into one. The implementation of most other recommendations, however, varied across Member States (Den Boer and Doelle 2002: 49).

Another strategic text for pre-Lisbon era JHA policy-making in the EU was the so-called Vienna Action Plan, conceived soon after enforcement of the Treaty of Amsterdam and drawn up by the Council and the Commission to implement the treaty provisions in the areas of freedom, security and justice. Approved by the European Council in December 1998, this Action Plan established ‘the principles of operational efficiency and taking a realistic approach’ and focussed enhancing the role of Europol by extending its competences and powers. It also called for the creation of a collective framework for

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37 Later strategic documents, such as the Stockholm Programme (Council of the EU 2009a), fall outside the scope of this thesis.
and further development of existing bilateral and regional cross-border cooperation (Council of the EU 1998b).

One year later – while leaving the Vienna Action Plan in place – the European Council Summit of 15–16 October 1999 in Tampere gave considerable political impetus to furthering JHA policy-making, not least because it was the first ever European Council Summit entirely dedicated to JHA (Occhipinti 2003: 81). According to the second paragraph of the Tampere Conclusions, the European Council was ‘determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam’. The conclusions of this summit, often referred to as ‘the bible’ by insiders (Nilsson 2004a: 125), have since been used in numerous instances to initiate and legitimise EU Council JHA instruments.

In terms of police cooperation specifically, the Tampere Conclusions are recognised as the basis for the Police Chiefs Task Force (see chapter 3). Nevertheless, although Nilsson (2004a: 125) emphasises the success of Tampere as a ‘balanced, measured but ambitious response … to the expectations of heads of state and government and citizens alike’, not all commentators share this rosy opinion. Bunyan (2003b), for example, calls the process through which the Tampere Conclusions were adopted profoundly undemocratic because there was absolutely no opportunity for national parliaments or civil society to have any say throughout the policy document’s realisation. Gregory (2001: 2) is also critical, arguing that since Tampere, ‘the EU has begun to articulate a position with respect to the objectives of “an area of freedom, security and justice”, which seems to intrude into national policing in ways which differ from the previous stress on co-operative mechanisms to deal with common transnational crime problems’.

The fourth strategic document for EU JHA policy-making during the timeframe of this research was the Hague Programme adopted in 2004 under the Dutch Presidency, which, in light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004, had a primary focus on security (Mitsilegas 2009: 34). In terms of police cooperation, this programme – intended as a follow-up to Tampere – introduced into the realm of EU JHA policy a rather revolutionary idea: the principle of availability, which asserts that the authorities of any Member State have the right to ac-
cess information held by a comparable authority in any other Member State. Yet, despite this ambitious agenda, the principle of availability has yet to be used to its full extent as a policy instrument, even though traces of it can be found in the Prüm Convention and the Swedish Framework Decision (Council of the EU 2006e). In fact, Mitsilegas (2009: 32) argues that this situation exemplifies the notable difference between what Member States proclaim in the European Council and the actual powers that they are prepared to grant the EU in JHA matters. In relation to the research question that guides this study, this observation by Mitsilegas raises the question of how much effect could then be expected of EU Council policy instruments on practices of police cooperation?

4.5.2 External influences on JHA policy

In addition to the key texts discussed in the previous sub-section, Council JHA policy has also been influenced by transnational challenges, widely published security-related incidents and domestic interests. For example, as Monar (2001: 752) points out, a number of transnational challenges over the years pressured Member States into agreeing to intensified cooperation, and the significance of these external pressures on EU JHA cooperation are particularly well illustrated by the EU’s swift reaction to the terrorist attacks in the United States on 9/11 (Occhipinti 2003: 6). Not only did these attacks have a profound impact on the content of the EU JHA policy adopted nine days later by the Council (Council of the EU 2001a), they also had a direct effect on the process of policy-making. A window of opportunity for swift policy-making opened in the aftermath of the 2001 terrorist attacks (Den Boer 2003) that Kaunert (2010b: 74) argues was clearly recognised by the Commission.

However, such initiatives launched in reaction to incidents, as opposed to carefully considered strategies, can be criticised as signs of significant weakness in EU JHA policy-making. Nevertheless, the fact that the public generally overestimates the risk from highly publicised security events raises the question of whether politicians can afford not to react to such incidents (e.g., Schneier 2006: 27, 241). In reality, as elected officials, they are expected to counteract the issue, and political rationality dictates a reaction even when informed police professionals argue that the incident is neither part of a larger trend nor a transnational crime problem that requires common, immediate action.
The second category of external influences on EU JHA policy-making is the domestic interests that make up part of every Presidency’s own agenda, involve different levels of interest in a range of subjects and sometimes result in attempts to ‘Europeanise’ domestic problems. An obvious illustration of national political issues influencing EU JHA policy-making are the 1996 Belgian initiatives, brought up again during their 2001 Presidency (Council of the EU 2001j), to establish instruments related to child sex abuse in reaction to the Dutroux case (Monar 2001: 757; see Council of the EU 1996f, 1996g). Without denying the seriousness of the Dutroux case, one could question whether the topic is indeed a transnational crime problem in need of a coordinated EU law enforcement approach. The same holds true for the initiatives on drugs developed by the Irish Presidency in 1996 when it was under great domestic pressure as a result of the murder by Irish drug dealers of Veronica Guerin, a journalist covering the drug problem and the Irish drug business in detail (BBC News 1998). Public outrage at Guerin’s murder prompted changes in Irish criminal law and influenced JHA policy on combating drugs under the Irish Presidency. Taken together, the apparent influence of incidents on Council JHA policy-making raises questions about the extent to which extent policy instruments, driven by domestic interests of one or a few Member States, have an overall effect on police cooperation practices in the EU.

4.6 Issues in Council JHA policy-making

Over the years, Council JHA policy-making has come in for its share of criticism. Some argue, for instance, that it has been little more than an extension of national interests without an overall strategy (Storbeck and Toussaint 2004), while others claim that the rationale for individual instruments in the JHA realm ceased to be questioned or justified (Den Boer 1994: 184). To understand such criticism and further analyse Council instruments, it is at this point important to revisit the vulnerabilities of the Council JHA policy-making process noted above. Four factors in particular can be distinguished as the most problematic aspects of Council JHA policy-making:

– the closed character of the Council JHA policy-making structures;
– the dominance of national agendas, which results in an *ad hoc* style of policy-making;

– the so-called ‘double lock’ on agreement and implementation; and

– the prevalence of soft law.

Below these factors are discussed in more detail with the aim of distilling the relevant insights that can aid the design of the field research for this study on the effect of Council instruments on practices of police cooperation.

### 4.6.1 Closed character of the Council JHA policy-making structures

Various authors have pointed out that Council JHA policy-making has always taken place in relative isolation, i.e., in a closed working group system that largely excludes local actors, parliamentarians and civil society from the debate (e.g., Bunyan 2003b), and thus marginalises any professional input on JHA instruments from those that must implement them in practice (Den Boer and Wallace 2001: 505). Even before the TEU, police practitioner input in European policy-making on police cooperation had already been overtaken by bureaucratic input from senior civil servants (Anderson et al. 1995: 73), and the formalisation of European police cooperation through inclusion in the pre-Lisbon third pillar may have even further decreased the input of professional and practical law enforcement expertise (*ibid.*: 287).

Also Bigo (2000b: 183) argues that over the years, professionals have progressively been marginalised in the debate, and that their replacement by ‘European specialists’ has often been justified by the technicality of the EU policy-making process. The policy process has thus been driven strongly by executive thinking, particularly because civil servants, rather than agency representatives, make up the working groups. This marginalisation has also resulted in legal instruments that lack practical orientation (Den Boer 2006: 86–87). Additionally, as Peterson (1995: 73) notes, the Council’s policy process at policy-setting level (Council, COREPER) is generally dominated by political rationality. Peterson further argues that the policy shaping level (working groups) is dominated by a technocratic rationality, although the example he uses of a bargaining situation involves not only the Commission
but also national experts and the private sector (*ibid.*: 74). In the defunct pre-Lisbon third pillar, however, no external (private) actors were included in the policy-making process, so the term ‘technocratic’ in that context refers to legal and political rationality. Taken together, the above observations raise the question of whether instruments without practical orientation can actually have any effect, intentional or not, on actual practices of police cooperation and if so, to what extent.

### 4.6.2 Dominance of national agendas

Another critique often voiced against Council JHA policy-making is its domination by national agendas, which results in an ad hoc style of policy-making (e.g., Den Boer 2001b: 37; Storbeck and Toussaint 2004: 4; Geuijen *et al.* 2008: 81). In truth, despite the existing multiannual plans and key texts like the Tampere Conclusions, JHA policy-making does seem to lack a true ‘master plan’ and thus becomes susceptible to isolated incidents and domestic priorities rather than common interests. This reality is bluntly described by Storbeck and Toussaint (2004: 4), who were active participants in the JHA policy-making complex at the time of their writing:

> It is also remarkable that most of the JHA measures have been introduced not as a result of a careful consideration on an overall strategy on internal security but mainly by individual initiatives of a single Member State. Sometimes initiatives have been justified by a specific national need or as a reaction to widely publicised national and international crime situations and threats (Dutroux, Dover Case, 9/11). In general, the actions are based on national law enforcement and security priorities of one Member State – usually the one holding the Presidency – aimed at solving national problems, but may be a waste of time and resources for others.

The Member State that holds the Presidency has six months of control over the agenda and, as previously discussed, some abuse this position to promote national priorities. It follows that every six months, the priorities change and even a prudent evaluation may conclude that no overall strategy exists in the field of security and justice (*ibid.*: 5).
4.6.3 Double lock on agreement and implementation

The third issue that has been problematic in EU JHA policy-making - particularly in the pre-Lisbon era - is the combination of the unanimity requirement and the potential and actual differences in instrument implementation. Together they form the so-called 'double lock' on agreement and implementation (Den Boer and Wallace 2001: 510; Monar 2007: 7). The first part of the ‘double lock’ is the unanimity requirement that limits the instruments developed in two ways: first, it might lead to non-binding instruments and second, instrument content is based on the lowest common denominator acceptable to all Member States (Den Boer 2001b: 37; Storbeck and Toussaint 2004: 4). Such limitation is even acknowledged within the Council structures and is, for example, visible in the fear expressed that in adopting a manual on tracing crime-related firearms, ‘there is the risk that following the negotiations to adopt it as a legal instrument, the manual will end up reflecting the minimum common denominator instead of the best practice’ (Council of the EU 2005h: 2). Put differently, Member States only want to agree on a text that leaves them enough room to manoeuvre. Likewise, in discussions on the Council Decision of 13 June 2002 to set up a European network of contact points related to persons responsible for genocide, crimes against humanity and war crimes, the original proposal in Article 2 of the Council Decision read that Member States ‘shall ensure that contact points exchange … any available information’ was changed to ‘contact points may exchange information without a request to that effect’ (cf. Council of the EU 2001k, 2002k, emphasis added).

The second part of the ‘double lock’ on agreement and implementation, the so-called ‘implementation deficit’, is related to the fact that Framework Decisions, Decisions and (to some extent) Joint Actions, although binding upon Member States’ governments, depend for their real value on actual implementation. At the EU level, however, there are no follow-up mechanisms to ensure proper implementation of JHA instruments (Den Boer and Wallace 2001: 508; Nilsson 2004a: 117), and even at the national level, formal structures or responsibility for implementing EU JHA instruments are often lacking (Bekkers and Vijlbrief 2006: 33; interview #19). Nevertheless, it should be noted that failure to implement instruments is common: for example, Hoogenboezem (2003) shows that utility deregulation instruments are not always implemented. One might also wonder about the enactment into national
law of decisions made by a qualified majority voting in those Member States that voted against such decisions (House of Commons 2007: 80). Indeed, Pressman and Wildavsky (1984) argue that full and flawless policy implementation is generally unlikely given the many factors that contribute to deficits in implementation.

Examples of the imperfect implementation of JHA instruments in the Member States include the protracted ratification of the additional protocols to the Europol Convention (see Chapter 3) and the divergent interpretations, of the Council Framework Decision on joint investigation teams (Rijken and Vermeulen 2006: 24–52). This range in interpretations is reflected by the substantial differences in formal implementation in various EU Member States. Even translation errors have contributed to implementation deficits, for instance, the poor translation into Swedish of the 2002 Council Framework Decision on combating terrorism (Council of the EU 2002l) resulted in ‘vague’ legislation on this issue in Sweden (Borg 2006: 10–11). Obviously, the implementation record of Council policy instruments leaves one wondering about any concrete effect of these instruments.

4.6.4 Prevalence of soft law

As previously discussed in this chapter, in addition to the hard law instruments that find their basis in the TEU, the Council has also adopted a number of soft law instruments into JHA policy-making. Such adoption, Den Boer and Wallace (2001: 511) argue, is a consequence of the unanimity requirement, which causes ‘a “spiralling-down” effect on the kind of legal instruments produced’. In fact, in the field of police cooperation, the use of non-binding instruments exceeds that of binding ones by a ratio of over 3:1, and Member States remain reluctant to use ‘binding instruments which might interfere with the autonomous control and organisation of the police forces’ (Monar 2006a: 16).

This prevalence of soft law instruments in EU JHA policy is often considered problematic because these instruments are less likely to be implemented and less likely to have their desired effect (e.g., Anderson and Apap 2002: 7; Den Boer 2004: 1; Elsen 2007: 18). The Commission (2004a: 38) made the following remark in relation to pre-Lisbon era policy-making:
Another problem in the third pillar is the proliferation of non-binding instruments approved or taken note of by the Council, such as recommendations or conclusions. There is limited added value in this type of instruments, which take up valuable time and resources and tend to lead to confusion, since different interpretations arise as to the obligation to implement them. In the view of the Commission, if Member States consider a given subject important enough to be discussed at the level of the Council, then discussions should result in measures, which are effectively implemented by all.

Bunyan (2003a: 2), however, offers a contrasting view on the use of non-binding instruments. He suggests that the use of ‘soft law’ is a deliberate strategy to avoid parliamentary scrutiny in the implementation process because ‘although the form of these decisions are non-binding (“soft law”) in practice they authorise actions and are usually implemented’. This point of view presupposes the existence of an overall strategy in JHA policy-making, a ‘deliberate strategy’ that, as shown earlier, scarcely describes the underlying motor of the often erratic JHA policy-making process that is influenced by divergent national domestic issues, a rotating Presidency and external events.

Nevertheless, the Commission’s assumption that non-binding instruments have few advantages may be somewhat premature; rather, ‘the binding character, which often implies at least an external mechanism for monitoring compliance, has definitely had some advantages, but this addition should not be overestimated or made absolute’ (Groenhuijsen and Pemberton 2009: 59). Dalféth (2010: 91–93) also notes that soft law puts less pressure for implementation on Member States than hard law even though there can still be pressure to comply. Moreover, as discussed earlier, soft law can perform an important para-law function, particularly when the sensitivity of the issue hampers the adoption of binding measures, but states still want to reach some kind of agreement (Korkea-aho 2009: 276; Senden 2004: 120). Finally, as discussed in more detail in the next section, no solid empirical basis has yet been published on which to draw conclusions on the actual effect or advantages of binding or non-binding JHA policy instruments. Nevertheless, numerous examples exist of non-binding Council instruments having a visible effect on police cooperation practices between Member States.
in particular the Council Resolution of 21 June 1999 on a handbook for international police cooperation and measures to prevent and control violence and disturbances at international football matches (see Adang and Cuvelier 2001).

4.7 Evaluations of EU Council JHA instruments

As the above discussion intimates, the extent to which Council JHA instruments – particularly those aimed at enhancing police cooperation – have affected police cooperation practices within the EU and between its Member States is open for debate. This section explores the extent to which the effects of Council JHA instruments have been evaluated and the issues that have been identified as relevant. To do so, it first examines the external assessments of policy-making on police cooperation and reviews the EU internal monitoring and evaluation mechanisms in this area.

4.7.1 External evaluations of EU Council JHA instruments

According to Den Boer (2001b: 38), the JHA acquis prevailing at the time had not yet been subject to detailed assessment, which is still the case (see also Calderoni 2010: 20), making Fijnaut’s (2004) assessment of EU JHA policy perhaps the most prominent. In general, Fijnaut offers a positive view of the progress of police cooperation in the Union as result of Council JHA policy-making:

> For all their limitations, then, the achievements of the EU, regarding the conversion of formal frameworks into further operationalisation of cross border police cooperation should not be underestimated. This cooperation goes to the heart of state sovereignty, and so by definition is a very demanding matter. To then develop over no more than ten years through treaties that must be negotiated by more and more Member States an entire spectrum of more and more operational forms of cooperation is certainly considerable (Fijnaut 2004: 253).
Nevertheless, Fijnaut also voices some serious concerns, especially in terms of the objective of the Union’s policy on police cooperation which is ‘to provide citizens with a high level of safety’ through the development of ‘common action’ and closer police cooperation. This objective of a high level of safety, he notes, is almost purely rhetorical because it remains unclear how high a ‘high level’ is or how high it should be, let alone how this could be measured (ibid.: 253). He also argues that it is impossible to answer the question of whether police cooperation – at either the level of agreement between Member States or at Council level – adds value through increased safety in relation to cross-border and organised crime in the EU (ibid.: 267).

According to Fijnaut (2004), the ‘added value’ is as yet unknown for two reasons: First, there is insufficient overview of and insight into organised crime in the EU as a whole. The problem of organised crime in the EU, although it shares certain dominant characteristics, differs from country to country on important points (ibid.: 269). Second, direct cooperation between police of the Member States, as well as mutual cooperation through Europol, is difficult to assess because there is so little insight into how police cooperation actually operates in the EU (ibid.: 270; see also Chatterton 2001: 324 and Hoogenboom 2009). This latter observation raises the question how one should interpret Fijnaut’s (2004) appreciation of the achievements. Which achievements in the conversion of formal frameworks into operationalisation of cross border police cooperation does Fijnaut mean? As his assessment does not address police practices on the ground, the achievements meant here apparently relate to legislation and policy achievements, i.e., the transposition of EU instruments into national legislation and policy by Member States.

Admittedly, given the issue’s sensitivity, which stems from its impingement on Member State sovereignty, and taking into account the implementation deficit, the successful and complete transposition of EU instruments into the national legislation and policy of Member States could be considered as an achievement in itself. Nevertheless, even assuming that the instruments have been transposed into the

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38 This may raise the question of the extent to which a direct relation exists between organised and cross-border crime, on the one hand, and the level of safety for EU citizens, on the other. In fact, critics argue that often ‘organised crime’ is no more than a ‘folk devil’ (Cohen 1972) that is barely noticed by the average citizen on a daily basis but is gratefully used as a subject for ‘fear management’ (e.g. Van Duyne 2004). Further deliberation of this question, however, would stretch beyond the scope of this research.
relevant national legislation and regulations, such achievement is still at best only a partial indication of the effect of the Council policy instruments on the daily practices of police cooperation: formal transposition does not equal practical implementation.

A number of other authors have also considered EU Council instruments on police cooperation (e.g., Apap and Carrera 2003; House of Commons 2007; Monar 2002, 2006a, 2007; Occhipinti 2003; Walker 2004), but none has specifically assessed the effects of Council instruments on police cooperation practice. Likewise, several studies have evaluated the effect of individual, or a number of related instruments (e.g., Bossong 2008; Calderoni 2010; Den Boer and Doelle 2002; Groenhuijsen and Pemberton 2009), but these did not include a systematic overall assessment of the effect of EU Council instruments on the practices of police cooperation in the EU. A quantitative empirical approach to the evaluation and analysis of EU Council JHA policy instruments is rare: only Monar’s (2006a) work comes to mind.

4.7.2 Internal evaluations of EU Council JHA instruments

A number of internal EU monitoring and evaluation mechanisms for Council JHA policy have been developed over the years, including the so-called Tampere Scoreboard. This instrument originated after the 1999 Tampere European Council placed the development of the Union as an area of freedom, security and justice high on the political agenda and invited the Commission to propose an appropriate ‘scoreboard’ to track the progress towards implementing the necessary measures (European Council 1999). The Commission subsequently developed the Tampere Scoreboard, which it then used to produce a bi-annual progress report of the implementation of measures and compliance with the deadlines set in the Amsterdam Treaty, the Vienna Action Plan and the Tampere Programme. These six-monthly scorecards – the last of which was published in June 2004 (Commission 2004d) – reviewed the objectives and deadlines set at Tampere and described the outstanding proposals, initiatives presented and work planned.
The importance of the Tampere Scoreboard as an evaluation instrument should not, however, be overestimated. It could not, for example, assess the effectiveness, efficiency and degree of the organisational convergence achieved by Member States (Den Boer 2001b: 38). In fact, at that time, the Commission had very limited institutional powers to even monitor, let alone enforce, Member States’ compliance with Council JHA policy instruments. Hence, although all Framework Decisions adopted by the Council obliged Member States to take the necessary compliance measures before an agreed date and subsequently transmit detailed information on national implementation measures to the Commission and Council, the Commission had in fact no mechanisms by which to sanction those that did not comply. Rather, as in the case of the implementation of the Council Framework Decision on joint investigation teams (Commission 2004c), the Commission used information submitted to compile detailed reports in which it sometimes named and shamed those dragging their heels (Dalferth 2010: 92).

Such monitoring, however, was further limited to Framework Decisions and these only constitute a small part of relevant Council instruments that have been adopted.39 Moreover, although the Member States were each required to submit a report on implementation, the Commission had neither the instruments to ascertain their accuracy nor any means of requesting follow-up information. As a result, its evaluations focused almost entirely on the formal transposition of Framework Decision articles into national legislations (see also Groenhuijsen and Pemberton 2009: 49). In fact, the monitoring report on the implementation of the European Arrest Warrant is a rare example of attention being paid by the Commission to the implementation measures’ practical results (Commission 2005c).

Likewise, Council Decisions and, prior to the Amsterdam Treaty, Joint Actions contained the provision that an evaluation be demanded at a certain moment after adoption and were partly evaluated within the Council structures. In such cases, the Presidency usually sent a questionnaire to the delegations of the Member States and later compiled a report based on the answers received. Although some evaluations were quite detailed – for example, the evaluation of the 1996 Joint Action on liaison offi-

39 Anticipating the empirical findings of this research, Chapter 5 shows that of the Council instruments aimed at police and judicial cooperation adopted after Tampere, less than one-fifth were Framework Decisions.
cers (Council of the EU 2001c, 2002b, 2002m) – it very much depended on the Presidency whether an evaluation was held and what its quality was. In addition, the Presidency had no instruments to affirm the accuracy of the Member States’ responses.

A separate evaluation mechanism does exist, however, for implementation of the Schengen measures and policy. Developed under the intergovernmental Schengen framework\(^{40}\) and later incorporated into the EU framework, it set up a ‘Standing Committee on the evaluation and implementation of Schengen’. This committee was renamed in the Schengen Evaluation Working party (Sch-Eval) and is tasked with verifying that the preconditions for the practical application of the Schengen Convention are being met by the states involved. The working party is also tasked with a broad evaluation of matters related to internal and external borders, police and judicial cooperation, the SIS and visas in the existing Schengen states. These Schengen evaluations are in fact peer-reviews and stand out for the following reasons: they are highly structured, held periodically, involve actual field visits by experts on the issues evaluated and thoroughly evaluate structures and practices on the ground (see Council of the EU 2009g). No such thorough evaluations have ever existed in the EU legal framework, however, for other JHA policy instruments.

Some thematic evaluation mechanisms were put in place for activities under Title VI, including one for evaluating the application and implementation at a national level of international undertakings in the fight against organised crime (Council of the EU 1997d), and another for evaluating the legal systems and their implementation at a national level in the fight against terrorism (Council of the EU 2002n). These mechanisms, however, were directed at evaluating not the Council policy instruments specifically but rather the entirety of efforts and structures at a national level in these areas (e.g., Council of the EU 2001l; Matrix Insight 2009).

Overall, despite the existence of a number of internal mechanisms for evaluating Council JHA instruments, these have either been focused on the formal implementation (transposition) of Framework Decisions, or on some Council Decisions in a somewhat *ad hoc* manner. No such internal evaluation

\(^{40}\) SCH/Com-ex (98) 26 def Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L239 22.09.00).
mechanisms seem to have been developed for non-binding instruments. In the areas of Schengen cooperation, organised crime and terrorism, mechanisms were produced for thematic evaluation of the overall effect of a policy, but these mechanisms did not give a full picture of the effects of Council JHA instruments. Hence, in general, it can be argued that the system of internally monitoring the implementation of Council instruments adopted at the EU level under Title VI has been fragmented and incomplete (Commission 2006b).

4.8 Conclusion

This chapter has outlined the structures, actors and details of the processes by which JHA Council instruments on police cooperation were formulated within the timeframe of this research (i.e., between 1995 and 2004). The aim of the chapter was to gather insights into this policy-making complex that could assist in further analysis of the Council instruments aimed at police cooperation. Overall, the examination has shown that the pre-Lisbon intergovernmental processes in which Council JHA instruments were constructed were undoubtedly complex. Not only the policy-making itself but also the policy content was affected by the unanimity requirement, domestic interests of the Member States particularly when they held the rotating Presidency and the relatively closed environment of the JHA policy arena. Also noted were the absence of police practitioners (and their influence) and the domination of political and legal rationality in the Council’s policy-making process. This may have resulted in impractical policy instruments. Although the chapter did address the prevalence of non-binding instruments, this thesis questions the assumption of many authors and the Commission that such instruments are to blame for the deficit in Member States’ implementation of JHA instruments.

The one broad external assessment of the achievements of EU JHA policy (i.e., Fijnaut 2004) does indicate significant achievements; however, that analysis addresses only the formal implementation of EU instruments in national legal frameworks. Other external assessments are similarly limited: they examine no more than one instrument. Overall, the document review suggests that over time a number of internal EU monitoring mechanism were put into place, but these were either thematic or did not look beyond formal implementation. They therefore failed to address whether the instruments imple-
mented actually led to changed practices by police officers. Nevertheless, taken together, the insights from this chapter provide an ample foundation for further detailing the research in this study.
Chapter 5
Hypotheses, Theory and Research Design

5.1 Introduction

The findings from the previous chapters form the starting point for the field research, which is designed to answer the following primary research question:

To what extent do EU Council policy instruments aimed at enhancing police cooperation shape police cooperation practices in the EU?

In other words, what is the effect of EU Council policy instruments on the practices of police cooperation in the EU and how can differences in the effects of EU Council policy instruments be explained? To address this question, the present chapter draws on the insights derived from the previous chapters and proposes Snellen’s (1987; 2002) four rationalities model as an analytical framework. Within this framework, it formulates two hypotheses and develops the scope and design of the field research through which the data are collected.

The chapter is structured as follows. Section 5.2 presents the first hypothesis, which, contrary to the general assumption discussed in Section 4.6.4, argues that no correlation exists between the legal obligations of the Council instruments aimed at enhancing police cooperation and the effect of these instruments on actual practices of police cooperation in the Union. Section 5.3 describes Snellen’s (1987; 2002) four rationalities model – in particular how applying the model can explain the divergent effects of Council instruments. It then presents the second hypothesis that argues that a correlation exists between the extent of professional rationality in Council policy-making aimed at enhancing police cooperation and the effect of the resulting instruments on police cooperation practices.

Subsequently, Section 5.4 outlines the research design and the operationalisation of the variables, beginning with an overall description of the field research and the process for identifying and selecting the relevant Council instruments on which to collect data. It thereby determines the scope of the data.
collection on the Council instruments, focussing on the operationalisation of and data collection on
the variables related to ‘professional rationality’ and ‘effect’, both of which are assessed using appro-
priately constructed indicators. The section ends with a brief description of the method applied for the
statistical analysis.

5.2  Is legal obligation relevant?

5.2.1  Perspectives on soft law instruments in Council JHA policy

As pointed out in Chapter 4 in its policy-making on Justice and Home Affairs, the Council has ad-
opted not only hard law instruments based in the TEU but also quite a number of soft law instruments.
In fact, of the first 100 JHA instruments adopted by the Council, only one was a legally binding (Nils-
son 2004a: 117) and since 1993, the Council has used a number of non-binding instruments in the
form of Recommendations, Resolutions, Action Plans and Conclusions. These soft law instruments,
as Chapter 4 explained, are seen – by the Commission especially (e.g., Commission 2004a) – as one
of the weaknesses of Council JHA policy-making. Some scholars (e.g., Anderson and Apap 2002b: 7;
Den Boer 2004: 1; Elsen 2007: 18) also regard this high number of soft law instruments in Council
JHA policy as problematic and argue that these instruments are less likely to be implemented and less
likely to have their desired effect. For example, Den Boer (2004b: 1) notes that

… in the recent past, the adoption of ‘soft’ legal instruments – often done to circumvent the
timely and tedious unanimity procedure in the JHA Council – has resulted in a fragmented or
even suspended implementation of EU law in the Member States.

Den Boer and Wallace (2001: 511) further argue that the use of soft law is a consequence of the una-
nimity requirement in JHA policy-making, which causes a ‘spiralling-down’ effect on the type of
legal instrument produced. As noted above, the Commission, particularly, considers non-binding
Council instruments to be problematic:

There is limited added value in this type of instruments, which take up valuable time and re-
sources and tend to lead to confusion, since different interpretations arise as to the obligation to
implement them. In the view of the Commission, if Member States consider a given subject important enough to be discussed at the level of the Council, then discussions should result in measures, which are effectively implemented by all. (Commission 2004a: 38)

Yet not only does the Commission provide no empirical support for its claim that non-binding instruments are less often implemented and thus add less value but, as discussed in the previous chapter, empirical studies on the effects of Council JHA instrument in general are few and broad evaluations as yet non-existent. Moreover, Monar (2006a: 7) argues that non-binding instruments, or ‘lighter modes of governance’ in his vocabulary, play an important role in the JHA domain.

In fact, even a brief look at the Council instruments aimed at enhancing police cooperation reveals that whereas some binding instruments have had little effect on police cooperation practices – for example, the Council Framework Decision on joint investigation teams (Council of the EU 2002a, see Chapter 7) – a number of non-binding instruments have had a substantial effect, for instance, the 1999 Resolution on a handbook for international police cooperation and measures to prevent and control violence and disturbances at international football matches (see Adang and Cuvelier 2001). Hence, the crucial question is whether the legal nature of Council instruments aimed at enhancing police cooperation is really a relevant variable that predicts the extent of their effects.

5.2.2 Hypothesis one

The above observations lead to the first study hypothesis:

There is no significant correlation between the legal nature of EU Council instruments aimed at enhancing police cooperation and their effect on the practices of police cooperation in the EU.

While, as explained in Chapter 2, police cooperation practices are influenced by the political context and by the legal framework in which they take place, as Sheptycki (2002a: 86) argues, ‘even if policing takes place under the law, it cannot be said to be driven by it’. In this first hypothesis it is therefore assumed that the choices police make between available policy tools and methods for cooperation with their peers across borders are not determined by the legal nature of the Council instruments. In
other words, whether a tool or method for police cooperation has been introduced by a binding or by a non-binding Council instrument is not a determinant variable for police when they make their choice to apply this tool or not. Moreover, the ability of police to make these choices independently from their respective political centres increases the chance that they are in a position to engage in international cooperation (Deflem 2002: 21).

Proponents of the legalistic-bureaucratic approach, on the other hand, might argue that legal regulation determines (or at least should determine) police practice, implying that the establishment of legal instruments should by default lead to enhanced cooperation as Hufnagel (2011: 334) notes. However, her comparative study of police cooperation in the EU and Australia finds no evidence for this dynamic (ibid.). Rather, based on her findings, Hufnagel (ibid.: 335) argues that it is more likely that practices in EU police cooperation have shaped the legal framework, rather than the other way around, a conclusion that clearly speaks to other authors’ questioning of the extent to which law actually governs police practices (see also Crank 1998: 256; Manning 1997: 94; Sheptycki 2002a: 86). Not only does this ambiguity cast even more doubt on the advantage of the legal binding character of Council instruments, but the hitherto imperfect implementation of binding Council instruments in the Member States (Den Boer and Wallace 2001: 511) calls into question how these instruments can actually be better than non-binding instruments if they are not even implemented.

Thus, if the first hypothesis is correct, the field research should find no correlation between the (independent) variable ‘legal nature’ of Council instruments and the (dependent) variable ‘effect’ of Council instruments. The operationalisation of these variables and the methodology for data collection and analysis are described below in Section 5.4.

5.3 Is professional rationality in policy-making relevant?

As also discussed in Chapter 4, one of the major obstacles in Council JHA policy-making has been the limited influence and involvement of practitioners in the policy-making process, which, according to Den Boer (2006: 86–87) may have resulted in the suspected lack of practicality of Council instru-
ment. This study assumes the practicality of Council instruments aimed at enhancing police cooperation to be a relevant variable for their effect on police cooperation practices, in particular because, as discussed in Chapter 2, police officers employ the most effective and efficient means to execute their task on the basis of a purposive-rational logic (Deflem 2006: 242). In other words, their actions are guided by their professional expertise and impractical instruments are therefore unlikely to be used. To connect this assumption to the EU Council policy-making aimed at enhancing police cooperation, this study applies Snellen’s (1987, 2002) four rationalities model, which is widely quoted as a valuable conceptual framework for examining the complexity of public administration (e.g., Edwards and Pröp 1996; Veerman 2004; Zouridis and Thaens 2003). For a better understanding of the model and in particular its application in this study, the next sub-section examines the model in more detail.

5.3.1 Multiple rationalities in public administration

Snellen (2002: 324) argues that in addition to being rational from an instrumental, technical and efficiency perspective, public organisations must also live up to other values such as legitimacy, legality, democratic control, accountability and equality before the law. In other words, modern public administrations must cope with a multitude of values, interests and purposes that can be represented by four fundamental sets of norms. These sets, each of which includes criteria for responsible (rational) action, proceed from four distinct autonomous perspectives on reality – the political, legal, economic and professional-scientific – which are always relevant in any government policy (ibid.). The model therefore aims to explain collective action (in public administration) rather than individual action (Snellen 1987: 1; Snellen 2002: 326).

The first and possibly most influential of the rationalities is the political rationality, which is often based on principles opposite to those of each of the other rationalities. According to Snellen (1987: 3), the essence of politics is the struggle for policy and prevention of violent solutions, which tasks politicians with the responsibility to arrive at unequal distributions of value in situations of equal claims. Because legal rationality comprises the elements that form the foundation of public ‘confidence in law’, it tries in essence to ensure trustworthy relationships in society. Hence, every government action
must be legal in both its form and its substance. In that sense, legal rationality demands that public administration conform to the written principles stipulated in law as well as unwritten but well-understood principles such as security, equality before the law and protection from arbitrary action. In such matters, clarity and consistency are crucial formal elements, and guarding these elements in public administration is a full-time job (ibid.: 4).

The third form, economic rationality, is related to the efficiency and awareness of the means for accomplishing resource-distribution. That is to say, public administration is typically required to be efficient because the available collective means are usually limited and seldom meet society’s demands. Hence, in government policy, macro-economic rather than micro-economic efficiency is usually more important (Snellen 2002: 329). Indeed, the obviousness of achieving a maximum result with available means is central to economic rationality; not only policy but also the way government is organised should be the rational basis of economic principles. The fourth rationality of importance in public administration is professional or scientific-technical rationality – the application of proven theories and valid knowledge in a policy sector – which makes the availability of appropriate and valid knowledge on how certain actions will influence society a necessary precondition to realising policy objectives (Snellen 1987: 4). Although such knowledge can be derived from practical experience, it can also have its basis in scientific knowledge, for example, from more fundamental academic disciplines like the sociology of organisation(s) and social psychology or from sector-oriented branches of the social and technical sciences.

According to Snellen (2002: 325), each of these four rationalities has been central in different – more or less consecutive – paradigmatic approaches to public administration over the last century, meaning that the fundamental set of norms in each paradigm has encompassed only a part of the total rationality in public administration. So, if taken separately, these four rationalities are inadequate for handling the complexity of administrative reality. Rather, every act of government administration should ideally comply with all four sets of norms. Hence, mono-rationality – rationality based only on the values in one field of discourse – is irrational in public administration, or at best only partly rational. Even more important, there is no order of precedence among the rationalities, meaning that there is
neither a ‘super rationality’ principle that assures total rationality nor an overarching normative system. Rather, each of the four rationalities relates to an autonomous aspect of reality with its own self-referential normative and empirical base, and no guarantee exists of consistency between the norms derived from each. At best, one can speak of a coexistence of the different rationalities (ibid.).

Despite the inherent friction and ambivalence between the four rationalities, however, Snellen (2002) argues that in good government policy equilibrium does exist between them, and the limitations on the extent of domination by a single rationality may be best represented by the idea of boundary conditions set by the other rationalities. That is to say, in any policy disagreement, each rationality sets a boundary condition for an acceptable line of policy, pushing beyond which can have repercussions for the policy’s overall feasibility (Snellen 2002: 330). In other words, as long as the policy stays within the boundary conditions set by each of the four rationalities – i.e., within what might be called an ‘acceptable policy space’ – various solutions are often possible. If one of the rationalities is underrepresented in the policy-making process, however, the boundary conditions that that rationality has set might not be taken into account. The question that follows, in the light of this research, is whether all rationalities are equally represented in the EU Council JHA policy process.

5.3.2 Rationalities in EU Council JHA policy-making

Particularly important for this research is Snellen’s (2002: 330) argument that the relationships between the four rationalities include efforts to suppress one another or exclude one another; in other words, each rationality claims precedence over the other three based on its self-referential normative base. This struggle can be observed in practice when institutionalised representatives of each of the four rationalities – for instance, politicians, lawyers, economists and policy-sector practitioners – try continually to meet the norms and requirements originating from their own rationality. Actors operating within each rationality may also find each other’s lines of thought incomprehensible and irrational or, as Snellen (ibid.: 338) puts it, every specialised participant in the policy-making process tends to have a ‘trained incapacity to recognise the rationality of the standpoints of the partners’.
Other authors have also pointed out the existence of incompatible worlds of understanding stemming from different perspectives on reality. For instance, Dunsire (1978: 2) argues for analogous understanding of differences in bureaucracies, claiming that ‘orders of comprehension’ are present on each bureaucratic level and that each ‘has its characteristic “universe of discourse”, sphere of interests, concepts, working vocabulary and style of going about things’. More in relation to the policy process itself, Majone (1989: 4) argues that ‘scientific criteria of truth clash with legal standards of evidence and with political notions of what constitutes sufficient ground for action’. The relevance of these ideas for this study is that they could explain the two apparently different realities in the JHA realm (Storbeck and Toussaint 2004: 13), or what Anderson et al. (1995: 77) call the ‘dichotomy of practical policing versus politics’.

From this perspective, the exclusion of police professionals from the Council’s JHA policy-making to enhance police cooperation as discussed in Section 4.6.1 is likely to result in an under-representation of professional rationality in the agenda setting, policy shaping and decision-making, which in turn could result in the expected lack of practicality of policies, i.e., Council instruments. In fact, several authors (e.g., Geuijen et al. 2008; Peterson 1995; Van der Schans and Van Buuren 2003) point towards a dominance of political rationality in the Council JHA policy-making process. Some authors, for example, refer to the problems caused by the unanimity requirement that all Member States must agree on a decision before it can move beyond the status quo. In such a situation, because any decision is considered better than none at all, some fear that political pressures might lead high-level actors in the Council structures to approve a hastily patched-together proposal that comes out of ‘nowhere’ (Geuijen et al. 2008: 81). Indeed, Van der Schans and Van Buuren (2003: 312) report that on the Brussels’ policy circuit, they actually observed such ‘embarrassing rituals’ as ‘agreeing with decisions that one considers to be useless and adopting instruments never to look at them again’. Such rituals seemingly have a significant influence on the policy process. The dominant political nature of the policy-process is also reflected in Geuijen et al.’s (2008: 80) description of a meeting of the Council Police Cooperation Working Group: ‘The meeting was mostly about gauging, shaping and bending words until everybody could agree’.
Peterson (1995: 71) captures the rationalities that play a role in Council policy-making in a three-level model in which each level is characterised by different dominant actors and a dominant form of rationality.

<table>
<thead>
<tr>
<th>Level of analysis</th>
<th>Type of decision</th>
<th>Dominant actors</th>
<th>Rationality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Super-systemic</td>
<td>History-making</td>
<td>European Council, National governments in IGCs</td>
<td>Political, legalistic</td>
</tr>
<tr>
<td>Systemic</td>
<td>Policy-setting</td>
<td>JHA Council, COREPER,</td>
<td>Political, technocratic</td>
</tr>
<tr>
<td>Sub-systemic/meso level</td>
<td>Policy shaping</td>
<td>Commission Committees, Council working groups</td>
<td>Technocratic consensus,</td>
</tr>
</tbody>
</table>

Table 5.1: Analytical levels in EU decision-making (Peterson 1995:71)

Peterson (1995: 74) further argues that the level on which policy shaping takes place is dominated by technocratic rationality because ‘private actors frequently provide expertise that is otherwise unavailable’. Nevertheless, in the JHA policy-making arena, the participants of the Council working groups are mostly bureaucrats working in a closed circuit. Here, because of the technicality of the policy-making process, professionals are replaced by ‘European specialists’ (Bigo 2000b: 183), and the preambles to many Council instruments aimed at enhancing police cooperation show only technocratic (political and legal) arguments as the rationale for instrument adoption. This closed intergovernmental setting and the dominance of political and legal rationalities at the policy shaping level also are confirmed by the observations of Geuijen et al. (2008). In other words, in the EU Council agenda setting, policy shaping and decision-making aimed at enhancing police cooperation the professional rationality related to the practice of police cooperation seems under-represented. Therefore in the policy process the boundary conditions from a professional may not be met, which may result in an imbalance in the output (i.e., the instruments) and consequently could have repercussions for the overall feasibility of the policy (Snellen 2002: 330).

5.3.3 Rationality in police cooperation practices

Policy instruments to enhance police cooperation aim to influence police cooperation practices and expect practitioners to start acting in a certain way. The important question, however, is whether pol-
ice professionals themselves see the expected behaviour as rational. Chances are that, if such action is rational primarily from a political or legal perspective, police officers – from their prevailing professional rationality (Deflem 2006: 242) – will reject it as ‘irrational’, ‘extra-rational’ or ‘pseudo-rational’ (Snellen 2002: 330).

This rejection could result in a situation in which police do not apply the policy instrument or do not apply it as intended. Such rejection, however, does not necessarily entail disobedience but rather reflects the reality that police have high levels of discretion in their work, particularly at the lower organisational levels (e.g. Corsianos 2003: 302; Sheptycki 2002a: 86). In fact, as McLaughlin and Muncie (2001: 95–96) argue, discretion refers to ‘the power conferred on criminal justice professionals to use their judgement to decide what action to take in a given situation. This includes the decision to take no action’. The extent of professional discretion of police may of course differ between jurisdictions. However, given the complexity of international police cooperation, as well as the numerous alternative cooperation tools, channels and methods, police professionals can easily choose not to use any particular instrument or to use it in an unintended manner as they see fit. For example, in their investigation of cross-border police cooperation practices, Den Boer and Spapens (2002: 27) uncovered a pragmatic ‘cherry-picking’ approach by police professionals who must choose between centralised or decentralised (informal) cooperation possibilities when cooperating with peers across borders. In fact, this behaviour mirrors the professional independence that, according to Deflem (2002: 21), puts police in the position to successfully engage in police cooperation.

On the other hand, not all commentators share this view. For example, Bruggeman (2004) questions whether police in the EU are really ‘able and willing’ to enhance international cooperation, arguing that the lack of professionalism and innovation sometimes found in police practice is one of the causes of the major gap between political ambition and law enforcement reality. From a cultural perspective also, it has been argued that the police, because of their ability to exercise coercion, have occupational sensibilities that tend to undermine new ways of thinking and acting (Wood 2004: 31). In fact, it has been argued more directly that police culture is ‘notoriously immune to reform’ (Christopher 2004: 180, see also Chan 1996), and police organisations have often been described as non-
innovative or resistance-sensitive organisations, in other words, they are difficult to change (Cozijnsen 1989). Nevertheless, the police have initiated many innovations in international cooperation, often ahead of political interest (e.g., Gallagher 1998; Swallow 2005), and such developments as Police and Customs Cooperation Centres and intelligence platforms (see Chapter 3) show that officers are still the driving force behind significant innovative developments in EU police cooperation.

Another possible critique is that, because police in different Member States have different ideas on what constitutes ‘good policing’ (Hofstede et al. 1993) and adhere to different standards (Hobbing 2008), a shared professional rationality between them may not exist. Nevertheless, the dichotomy between policing and politics (Anderson et al. 1995: 77) suggests that the differences in perspectives on policing within the police are smaller than the differences between police and politicians. Indeed, several studies (e.g., Den Boer and Spapens 2002; Gallagher 1998; Harfield 2005; Jensen 1981; Sheptycki 2002a) report that a common denominator has emerged between police tasked with international cooperation and that police are able to cross any existing geographic boundaries more easily than politicians. Jensen (1981) provides a telling example of this by demonstrating that the results of the 1898 Anti-Anarchist conference in Rome were much more visible in a convergence of police practices than in desired political consensus between the states. The police involved in the conference were, for example, quickly able to agree on the introduction of the portrait parlé as a standard method of identification in the different European states, whereas the political agreements aimed for at the conference did not materialise.

In sum, it may be argued that instruments for police cooperation that are not rational from a police professional perspective (i.e., do not fit in the professional system of knowledge) are likely to be viewed as impractical and less likely to be applied than instruments that are practical in the eyes of police professionals.

5.3.4 Hypothesis two

The above observations lead to the second study hypothesis:
There is a significant correlation between the extent to which an EU Council instrument aimed at police cooperation is grounded in the professional rationality of police practitioners and its effect on police cooperation practices.

This hypothesis is tested first by a quantitative analysis of the data collected on a large number of the Council instruments aimed at enhancing police cooperation and then by a more in-depth qualitative analysis of the implied causal relations between professional rationality and effect of specific Council instruments in two case studies.

At this point, it should also be clarified that this study does not address Snellen’s (2002) fourth rationality, economic rationality, because economic perspectives do not appear to play an explanatory role in either EU Council JHA policy-making or in police practices. Unlike the Commission’s policy-making in other areas— that does consider the possible economic consequences of new initiatives— the available policy-documents for the initiatives in Council JHA policy-making during the period under study show no such consideration. Only after the Lisbon Treaty came into effect did the Commission begin to include impact assessments in its JHA-related initiatives (e.g., Commission 2010).42

Today initiatives by the Member States also include the economic consideration in the policy-making (e.g., Council of the EU 2010b).

Nor are there any indications that either academic researchers or the police themselves have explicitly addressed police cooperation from an economic perspective. In the academic literature, some authors do acknowledge resource constraints as a factor in the police cooperation and its success (e.g., Hewitt and Holmes 2002), but economic arguments do not as yet appear to be decisive element. Moreover, even though one might expect economic rationality to play some role in police priority setting in international cooperation, a recent study in the Netherlands indicates that relevant decisions are made implicitly (Vleeming 2008).

Overall, this study assumes that although boundary conditions set by the political, legal and professional rationality play divergent roles in both the policy-making on police cooperation and in police

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42 See in this regard also Council of the EU 2011b on recent SIS II budget discussions.
cooperation practices, boundary conditions set by economic rationality do not play a role. In general it may be questioned to which extent boundary conditions set by economic rationality play a role in the policy process on security issues, especially when the issue relates to counter-terrorism (e.g., Schneier 2006). Nonetheless, given the current economic crisis, financial-economic factors may begin to play a more prominent role in decisions on whether or not to participate in police cooperation activity. Indeed, one first possible indication of such a trend is the recent discussion on the high economic cost of processing European Arrest Warrants for minor offences (Eurojust 2010: 32). Boundary conditions from an economic rationality could therefore become relevant for the policy-making on police cooperation and perhaps the recent impact assessments discussed above are a first sign of this. However, so far, and in particular for the decade under study, boundary conditions set by an economic rationality are assumed to play no role in either police cooperation policy or practice and is thus not addressed in the data collection or analysis. Rather, the field research focused on the extent of professional rationality in the Council JHA policy process (agenda setting, policy shaping and decision-making) and the consequences this may have for the effect of the Council policy instruments aimed at enhancing police cooperation.

5.4 Research design

To answer the central study question and test the two hypotheses, the field research began with a quantitative analysis of 70 EU Council instruments aimed at enhancing police cooperation. Ten variables were used to describe the Council instruments. This analysis was then followed by an in-depth qualitative exploration of possible direct relations using two representative case studies. Both the quantitative and qualitative analyses consider aspects of policy-making as well as the practices of police cooperation. The design and organisation of the research is presented below in three sub-sections. The first describes the steps that were taken to identify the relevant Council instruments from the multitude of instruments adopted by the Council since 1993. Thereafter the relevant variables, their operationalisation and the process of data collection are discussed, as well as the techniques used for the quantitative analysis. Lastly the design and purpose of the two in-depth case studies are outlined.
5.4.1 Identifying the relevant EU Council instruments

The decision on which Council instruments should be examined if sufficient data were to be collected for representative findings was arrived at in a six-step process. In the first step, the time interval for document selection was set between 1995 and 2004 because the first real results of JHA policy-making in the Council only became visible in 1995 (Nilsson 2004a: 118). To avoid premature judgements on policy effect, sufficient time had to be allowed for instrument implementation. According to Mazmanian and Sabatier (1989: 303), the minimum acceptable time-span in research on policy implementation outcomes is four years; therefore, because data collection began in 2008, only instruments adopted at least four years earlier (i.e., by the end of 2004) were included. A case illustrating the necessity of this time-span is the implementation process of the so-called Swedish Framework Decision (Council of the EU 2006e), which was adopted in December 2006. A recent evaluation shows that the instrument has still not been fully implemented (Commission 2011). An additional argument for not stretching the research interval beyond 2004 is that in the decade between 1995 and 2004, subsequent to the accession of Austria, Finland and Sweden, the configuration of the EU remained the same.

In the second step, the total set of JHA instruments adopted by the Council between 1995 and 2004 was identified using the most comprehensive source for such data: the annual lists of adopted texts provided by the Council Secretariat on the Council’s website\(^{43}\) (see also Monar 2006a: 7). However, although these 1995 to 2004 lists included a total of 896 numbered Council texts, during verification it was discovered that they excluded a number of relevant texts adopted by the Council during those years.\(^{44}\) In addition, in several instances the lists grouped different texts under a single number that should actually be listed separately. Despite these flaws, the annual lists of the Council Secretariat are

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\(^{43}\) As of 2011, these lists, last visited for this study on 10 October 2006, were no longer available online, but they remain on file with the author.

\(^{44}\) The following adopted JHA texts were omitted from the lists: Council of the EU 2001a, 2001m, 2003j and 2004i. However, it should also be noted that these omissions, discovered during the cross-check of entries against a number of other sources, may not constitute an exhaustive list of ‘missing’ texts.
still the most comprehensive source available for determining the relevant population for this research. After the necessary corrections were made, the final set consisted of 930 JHA texts adopted by the Council between 1995 and 2004. The third step then classified and categorised the text identified by subject matter, as well as by the acronyms commonly used by the Council working groups. The result was the seven categories of texts shown in Table 5.2.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Acronyms used on Council documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police and judicial cooperation</td>
<td>Because police cooperation and judicial cooperation in the EU are to a large extent linked (Fijnaut, 2004), these texts were initially grouped together. Later in this chapter, a distinction is made between police and judicial cooperation, and the corresponding instruments are distinguished accordingly.</td>
<td>ENFOPOL,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CRIMORG, JAI, COPEN, CORDROGUE,</td>
</tr>
<tr>
<td>Europol governance</td>
<td>A significant number of the texts adopted by the Council deal with the administrative, financial and procedural framework set up by the EU to facilitate decision-making on and implementation of Europol. Texts aimed at changing the mandate, role and tasks of Europol – because they have the potential to influence police cooperation practices – are placed in the first category.</td>
<td>EUROPOL</td>
</tr>
<tr>
<td>Immigration, visa and border control</td>
<td>This category groups all texts adopted by the Council that relate to immigration, visa matters and matters of external border control. Although some fall under the auspices of the first pillar, they are decided upon in the third pillar setting of the Council.</td>
<td>MIGR, ASIM, VISA, FRONT</td>
</tr>
<tr>
<td>Cooperation between customs authorities</td>
<td>Whereas the first pillar covers regulation of customs cooperation, the third pillar has a separate Customs Cooperation Working Party that discusses enforcement issues of customs cooperation. Hence, texts on this subject – although few – are grouped together in this category. In the few instances of texts aimed at both customs and police cooperation, the text is included in the first category of texts on police and judicial cooperation.</td>
<td>ENFOCUSTOM</td>
</tr>
<tr>
<td>Judicial cooperation in civil matters</td>
<td>Even though judicial cooperation in civil matters attracts relatively little attention in JHA policy-making, it forms a clearly distinguishable category.</td>
<td>JUSTCIV</td>
</tr>
<tr>
<td>Schengen cooperation</td>
<td>Although a large number of the texts adopted in this category are aimed at police cooperation, cooperation under Schengen does not affect all Member States and has a distinct legal framework and decision-making structure. A separate category was therefore formulated for Schengen cooperation, which falls outside the focus of this research.</td>
<td>SIRIS, COMIX, SIRENE</td>
</tr>
<tr>
<td>Other</td>
<td>This last category includes texts on internal (Council) procedure, Common Positions aimed at a certain position in negotiations on treaties and agreements, and texts on the JHA issues related to EU enlargement and external JHA relations.</td>
<td>PESC, POL and COWEB</td>
</tr>
</tbody>
</table>

Table 5.2 Categories of EU Council JHA texts (author)

Figure 5.1 displays the distribution of the 930 JHA texts over the seven categories. Of the JHA texts adopted between 1 January 1995 and 31 December 2004, 318 (34%) were identified as addressing police and judicial cooperation.
The fourth step determined which of the 318 Council texts on police and judicial cooperation qualified as an ‘instrument’, which this study defines more narrowly than Monar (2006a) as only those policy texts having at least one binding element. This exclusion is not to deny the potential contribution to common action of the policy texts that Monar (2006a) calls ‘convergence support’; however, including these in an empirical study on this subject would be problematic. The high degree of freedom makes equal implementation in the various Member States unlikely or unquantifiable, which means that it would be hard to link the actual effect, if any, back to any specific instrument. Therefore, in the context of this research, evaluations and reports are not considered ‘instruments’. Of the texts categorised as police and judicial cooperation, 181 texts qualify as ‘convergence support’, which leaves 137 instruments – as defined above – aimed at police and judicial cooperation. The basic sample comprises these 137 instruments.

The fifth step involved further categorisation of these instruments based on the eight types of instruments adopted by the Council, all of which were encountered in the sample. Briefly, these consist of four hard law instruments – binding Decisions, Framework Decisions, Acts and Joint Actions – and

**Figure 5.1 Council JHA texts adopted 1995-2004 (N=930)**
four soft law instruments – Resolutions, Action Plans, Recommendations and Conclusions. Table 5.3 below provides an overview of the instruments categorised by year and type.

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Decision</td>
<td>2</td>
<td>2</td>
<td>5</td>
<td>8</td>
<td>8</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>31</td>
<td></td>
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<tr>
<td>Framework</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>15</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Act establishing a (Protocol to a) Convention</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint Action</td>
<td>1</td>
<td>11</td>
<td>5</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>23</td>
</tr>
<tr>
<td>Resolution</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>22</td>
<td></td>
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<tr>
<td>Action Plan</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
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<td></td>
<td></td>
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<td>5</td>
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<tr>
<td>Recommendation</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>3</td>
<td>3</td>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conclusions</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>20</td>
<td>10</td>
<td>10</td>
<td>6</td>
<td>12</td>
<td>21</td>
<td>22</td>
<td>16</td>
<td>12</td>
<td>137</td>
</tr>
</tbody>
</table>

Table 5.3 EU Council instruments aimed at police and judicial cooperation 1995–2004

The sixth and final step involved assessing whether each of the 137 instruments aimed at police and judicial cooperation should be included in the sample based on the following criterion: the instrument should focus primarily – or at least substantially – on enhancing operational police cooperation through the introduction of new or changed police cooperation practices, including new or changed methods, structures, tools, priorities or procedures. In other words, this study examines instruments that explicitly aim to change police cooperation practices, although such change could entail police cooperation in various fields (e.g., criminal investigation, public order and safety). Instruments aimed solely at judicial cooperation or penalisation are excluded from the sample, as are policy support instruments aimed at, for example, police training, technical police cooperation or financing cooperation programmes. The sample does, however, include instruments that have the enhancement of police cooperation as one of multiple aims.

As a result of this selection process, a total of 70 instruments adopted by the Council between 1995 and 2004 were identified that are partly or wholly aimed at enhancing police cooperation in the EU. These 70 instruments, detailed in Table 5.4, comprise the whole body of EU Council instruments aimed at enhancing police cooperation throughout the relevant decade and form the data set (hereafter, the ‘final sample’) on which the further research of this thesis is built.
It is important to note that, as clarified in Figure 5.2, the final sample is a sub-set of the original sample of 137 Council instruments on police and judicial cooperation adopted between 1995 and 2004. During data analysis, some comparative use was made of the data on instruments in the basic sample that do not fall within the final sample.

Table 5.4 EU Council instruments aimed at enhancing police cooperation 1995–2004

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</thead>
<tbody>
<tr>
<td>Decision</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>1</td>
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<td>16</td>
</tr>
<tr>
<td>Framework</td>
<td>1</td>
<td>1</td>
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<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Act establishing a Convention</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint Action</td>
<td>1</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Resolution</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Action Plan</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td></td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Recommendation</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Conclusions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>2</td>
<td>11</td>
<td>4</td>
<td>4</td>
<td>8</td>
<td>13</td>
<td>11</td>
<td>7</td>
<td>6</td>
<td>70</td>
<td></td>
</tr>
</tbody>
</table>

Figure 5.2 Relation between basic and final samples

Descriptions of all 137 Council instruments in the basic sample are provided in Appendix B. For the 67 instruments excluded from the final sample, the appendix provides only a concise description and the reason for non-inclusion. For the 70 instruments included in the sample, the descriptions and discussion are more detailed.

5.4.2 Descriptive variables

Based on the two hypotheses and other potentially relevant aspects of JHA policy-making described in the literature, 10 variables were identified as the basis for data collection. The first eight, collected
from all 137 instruments in the basic sample, are descriptive and relate to the policy-making process.

These are detailed in Table 5.5:

<table>
<thead>
<tr>
<th>#</th>
<th>Variable</th>
<th>Description/purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Year of adoption</td>
<td>Allows exact identification of the instrument in time and possible temporal analysis in relation to other adopted instruments, plans or external events.</td>
</tr>
<tr>
<td>2</td>
<td>Year of initiative</td>
<td>Allows exact identification of the initiative in time and possible temporal analysis in relation to other initiatives, plans or external events.</td>
</tr>
<tr>
<td>3</td>
<td>Presidency at adoption</td>
<td>Indispensable for any comparative analysis of the frequent claim (see Chapter 4) that the Member State holding the Presidency significantly influences the process.</td>
</tr>
<tr>
<td>4</td>
<td>Type of instrument</td>
<td>Because an instrument’s legal nature can be determined from its type (see Chapter 4), this variable is a necessary condition for testing the first research hypothesis.</td>
</tr>
<tr>
<td>5</td>
<td>Type of instrument as originally proposed</td>
<td>Allows recording and analysis of any changes in instrument type that may have occurred during the policy shaping in the Council structures.</td>
</tr>
<tr>
<td>6</td>
<td>Initiator</td>
<td>Given the emphasis in some contributions on the apparent domestic interests in the policy process, reference to the initiator should enable analysis of the particular rationale underlying the instrument. The initiator could be any of the Member States, the Commission (as of 1999) or it could be a joint initiative.</td>
</tr>
<tr>
<td>7</td>
<td>Role of the initiator</td>
<td>Allows analysis of the suggestion that Member States use their Presidency to ‘hijack’ the agenda in favour of national issues.</td>
</tr>
<tr>
<td>8</td>
<td>Time-lag</td>
<td>Measures time (in days) elapsed between the moment a first tangible text (draft or specific discussion note) is tabled (t₁) and the actual adoption of the instrument (t₂). The study of decision-making speed holds both substantive and theoretical importance (Golub 2007: 156) but has primarily been focussing on decision-making under Qualitative Majority Voting (e.g., Golub 2007; Golub 2008; König 2008; Sloot and Verschuren 1990).</td>
</tr>
</tbody>
</table>

Table 5.5 Descriptive variables for which data were collected

The data on these eight descriptive variables were retrieved from official Council documents on the 137 instruments in the basic sample, which was taken primarily from the Council register of documents, as detailed in Chapter 1. For one of the original 137 instruments it was impossible to determine the values of two variables based on the available documentation. For the 70 instruments in the final sample, two additional variables were determined: 1) the ‘professional rationality’ applied in the policy-making and reflected in the resulting instruments and 2) the ‘effect’ of the instrument, whose value for each instrument was assessed based on corresponding indicators. The operationalisation of these variables into indicators and the organisation of the data collection are detailed in the next two sub-sections.
5.4.3 Variable ‘professional rationality’

Because policy-making is a dynamic process that takes place through discourse (Majone 1989: 7), the rationalities applied in the Council policy-making are best assessed by examining the texts of the proposals, meeting minutes and background notes. These are evidence of the ideological structure underlying the policy on police cooperation (Den Boer 1994: 174), so the arguments used by the participants in the agenda setting, policy shaping and decision-making should reflect the rationalities employed. Hence, the extent of professional rationality in the policy-making of these instruments was distilled from these official documents as well as from the content of the final instrument.

As briefly pointed out in Section 1.5, relying on official policy documents does entail a risk of not getting the full picture of the discussions and negotiations during the policy-process. For example, documents intended for external use are likely to display less transparency of underlying arguments than internal documents (Sheptycki 2002a: 12). It may be argued that some issues elaborated during discussions are not included in the proceedings of the meetings and data collected only from documents does not provide a ‘historia interna’. However, collecting the oral history of all meeting participants for all instruments in the sample would not have been a feasible research strategy, if only because of the considerable time lapse since the meetings took place. More importantly, it could also be questioned to what extent certain arguments not reflected in the written proceedings were really essential to the policy-making. Hence, the Council policy documents were examined in detail for any indications of professional rationality applied in the discussions.

A closer look at the Council JHA policy-making process revealed six focal points on which to base the indicators for the rationalities incorporated into the policy discourse. The first focal point is the initial draft document for the initiative, which often includes preambles summarising the underlying ‘reasons’ or ‘rationale’ for the initiative. The second focal point is formed by possible prior discussion notes and the explanatory memorandums that accompany the initial draft document written by the instrument’s initiator. These documents often reveal the input-rationality for the agenda setting, as they include the underlying arguments in favour of the instrument and the assumptions about the effect of the proposed instrument.
The third is the proceedings of the working group meetings in which the proposal was discussed which may contain arguments for and against the proposed measures and, if discussion content is reported, may shed light on the rationality applied in shaping the instrument. The fourth is the subsequent drafts of the same instrument, whose differences can reveal the extent of the rationalities in the discussions. The fifth is the notes or amendments to the instrument forwarded by Member States that may present alternative viewpoints. These three types of documents are prototypical and can be analysed to identify the extent which of the four rationalities (i.e., political, legal, economic and professional) were considered in the policy shaping.

The sixth is the final text of the instrument in particular the preamble that explains the reasoning behind the instrument. Together with a possible explanatory memorandum, it provides indications of the rationalities embedded in the final policy instrument.

All six document types were mined for the data needed to determine the extent of the professional rationality used in shaping the policy instruments in the sample. Methodologically, this text analysis was designed to map why the actors in the policy-making process judged the proposed instruments or amendments to be necessary and/or appropriate, and to identify any arguments based on professional rationality. The indicators searched for in the preambles and the other policy-making related documents are summarised in Table 5.6 and described in detail in Appendix B.

<table>
<thead>
<tr>
<th>#</th>
<th>Indicators of professional rationality</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Use of statistics</td>
</tr>
<tr>
<td>2</td>
<td>References to ‘best’ practices</td>
</tr>
<tr>
<td>3</td>
<td>Use of academic studies or other research reports</td>
</tr>
<tr>
<td>4</td>
<td>Use of (the outcomes of) expert panels and seminars</td>
</tr>
<tr>
<td>5</td>
<td>Use of expert opinions, reports and testimonies</td>
</tr>
<tr>
<td>6</td>
<td>Use of the outcomes from questionnaires and evaluations</td>
</tr>
</tbody>
</table>

Table 5.6 Indicators of professional rationality
These indicators were then used to assess the extent to which professional rationality was applied in the policy-making, and the outcomes were quantified on a scale from 1 (none) to 5 (high) as outlined in Table 5.8.⁴⁵

### 5.4.4 Effect variable

In this study, ‘effect’ is defined as a concrete change in police practices as intended by the Council instrument under scrutiny. One possible preceding condition for such an effect might be whether the instrument is (properly) transposed or implemented in national law or regulations, or otherwise incorporated in the policies of the Member States. However, such incorporation may not always be the case, and formal transposition or implementation does not always lead to an actual effect. Hence, in this research, only actual concrete change in police practices is considered an effect. Nevertheless, measuring the effect of policy in a comprehensive and systematic manner may in fact prove far from straightforward, meaning that the perspective chosen is of great importance. Building conclusions on the opinions of stakeholders is risky because the perceived effect of policy often seems to depend on their perspective of it (Mazmanian and Sabatier 1989: 38). In addition, because assessing policy implementation and determining direct associations and external influences is made even more complex by differences in effect between different Member States and the time elapsed, any single standard for judging success may be inappropriate (Ripley and Franklin 1986: 235). Taking these limitations into account, this study does not measure the effect of the policy instruments based on their perceived ‘success’ but on indicators of concrete changes in police practices in line with the intended effect of the instrument. In other words, can the intended effect on police practice be observed? If so, did it occur after the adoption of the relevant instruments? Finally, can other, interfering causes be excluded?

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⁴⁵It is important to note, however, that, because the development of a validated measurement tool was not one of the aims of this research, the ability of this scale to accurately measure the application of professional rationality in the policy-making has not been verified. Therefore, even though the descriptions reveal more differentiated variations between the instruments than would a two-dimensional ‘high’ versus ‘low’ assessment, the quantitative analysis does make use of a ‘high’ versus ‘low’ dichotomy (with scores 1 and 2 on the scale defined as ‘low’ and 3-5 as ‘high’) and applies a correspondingly appropriate statistical technique (see Section 5.4.5 for further discussion).
Given the varied nature of the data sources, this focus offers the best promise of an informed assessment of the Council instruments’ effects. The indicators used for the assessment are listed in Table 5.7.

<table>
<thead>
<tr>
<th>#</th>
<th>Indicators of effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Changes in national police structures and/or number of staff in specific areas</td>
</tr>
<tr>
<td>2</td>
<td>Changes in applied procedures (e.g., specific forms)</td>
</tr>
<tr>
<td>3</td>
<td>Changes in methods of and/or channels for communication</td>
</tr>
<tr>
<td>4</td>
<td>Changes in the number or type of criminal cases investigated</td>
</tr>
<tr>
<td>5</td>
<td>Establishment of joint teams or joint operations</td>
</tr>
<tr>
<td>6</td>
<td>Inclusion of actions and or specific activities in annual reports or other publications</td>
</tr>
</tbody>
</table>

Table 5.7 Indicators of effect

The data collection for the variable ‘effect’ employs a ‘triangulation of method’ (Blaikie 2009: 224) that includes (1) a review of the academic literature, (2) an analysis of the relevant policy documents and other primary sources and (3) interviews with key respondents. The starting point for this data collection was the academic literature although, as noted earlier, actual empirical research on police cooperation practices is far from abundant. Some sources are available, however, that contain data not only on police cooperation practices in general, but on the indicators of the effect of Council instruments specifically (e.g., Adang and Cuvelier 2001; Den Boer and Spapens 2002; Harfield 2005; Spapens 2008; 2010).

The second data collection method analysed Council and Commission evaluations and reports on the implementation of instruments where available. However, as pointed out in Chapter 4, the number of evaluations is limited. Nevertheless, very data-rich Council documents on the instruments are available (e.g., Council of the EU 2001d, 2002m), as are various reports and statistics on police cooperation practices published by the Member States’ police and judicial authorities. When placed in a temporal context, these, can clearly point to the effects of Council instruments. Also, data were drawn from articles on police activities in professional journals and the general media, which in some cases provided very clear indicators of the extent of an instrument’s effect on police cooperation practices.
The third method for collecting data was extensive fieldwork, which included 24 interviews conducted with experts from different Member States and EU institutions, as outlined in Chapter 1. The aim of these interviews was to obtain expert opinions on the effects of the instruments as well as general and specific information on and knowledge of police cooperation. This information then contributed to the two case studies. These experts were selected for interviews based on the amount and type of knowledge they were likely to have on the research topic given their current and previous professional positions. They included senior police officers and civil servants from relevant ministries in four different EU Member States and two EU institutions. These semi-structured interviews were conducted using pre-drafted interview protocols that outlined the subjects to be discussed but did not detail the questions. At the time that their participation was sought, all participants were provided with a written explanation of the research goals and, in particular, the topic that would be most prominent in their interview. Several respondents held operational positions in criminal investigation structures and agreed to participate in an interview only on the basis of anonymity. Hence, in the overview of respondents, all participants are referred to using a generic description of their formal positions (see Appendix A). For all interviews, a written transcript or summary was made and sent to the participants for comments and authorisation. This follow-up gave the participants an opportunity to adjust or highlight certain findings and in some cases provide more detail. Because the aim of the interviews was to collect factual data, all comments received in the follow-up were subsequently incorporated into the transcripts.

In addition to the 24 personal interviews, seven police officers from specialised departments in the Netherlands (e.g., high-tech crime, money laundering, fraud) contributed to the data collection by completing a written questionnaire, a method chosen for its efficiency. Specifically, the respondents were asked about use in practice of the specific Council instruments in their field of specialisation. Their answers, like the interview responses and comments, were incorporated into the assessment of the Council instruments’ effects.

46 To ensure academic verifiability, the identity of the respondents (with their consent), as well as the interview transcripts, were made available to the thesis supervisor.
Once data on effect indicators for each of the 70 instruments had been collated, the effect of each instrument was assessed based on all the data available on the instrument. For verifiability, these findings are detailed in Appendix B, together with references to the corresponding effect indicators. In six cases out of 70, it had to be concluded that the available data were insufficient for reliable assessment of the instrument’s effect. For analytical purposes, the qualitative data gathered on instrument effect were coded numerically on a five-point scale (from 1 ‘negligible’ to 5 ‘very high’; see Table 5.8 for scoring detail).  

5.4.5 Coding and applied quantitative analytical methods

The variables recorded for the instruments were coded according to a pre-defined system, which is provided below in Table 5.8.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision</td>
<td>Year of adoption</td>
</tr>
<tr>
<td></td>
<td>Year of initiative</td>
</tr>
<tr>
<td></td>
<td>2004=10</td>
</tr>
<tr>
<td>Presidency at the time of adoption</td>
<td>Austria=1 Belgium=2 Denmark=3 Finland=4 France=5 Germany=6 Greece=7 Ireland=8 Italy=9 Luxembourg=10 Netherlands=11 Portugal=12 Spain=13 Sweden=14 United Kingdom=15</td>
</tr>
<tr>
<td>Type of instrument</td>
<td>(1) Council Act</td>
</tr>
<tr>
<td>Type of instrument initiated</td>
<td>(2) Framework Decision</td>
</tr>
<tr>
<td></td>
<td>(3) Decision</td>
</tr>
<tr>
<td></td>
<td>(4) Joint Action</td>
</tr>
<tr>
<td></td>
<td>(5) Resolution</td>
</tr>
<tr>
<td></td>
<td>(6) Action Plan</td>
</tr>
<tr>
<td></td>
<td>(7) Recommendation</td>
</tr>
<tr>
<td></td>
<td>(8) Conclusions</td>
</tr>
<tr>
<td>Initiator of instrument</td>
<td>Austria=1 Belgium=2 Denmark=3 Finland=4 France=5 Germany=6 Greece=7 Ireland=8 Italy=9 Luxembourg=10 Netherlands=11 Portugal=12 Spain=13 Sweden=14 United Kingdom=15 Commission=16 Joint initiative=17</td>
</tr>
<tr>
<td>Did the initiator hold the (incoming) Presidency?</td>
<td>Yes=1 No=2 Incoming=3</td>
</tr>
<tr>
<td>Time lapse between initiative and decision</td>
<td>Number of days between date of first actual initiative and date of adoption of the instrument.</td>
</tr>
<tr>
<td>Rationality</td>
<td>Extent to which a professional rationality is identifiable in the policy-making for EU Council instruments aimed at enhancing police</td>
</tr>
<tr>
<td></td>
<td>1= None. No indications of professional rationality found, neither in the instrument nor in the preparations and discussions leading up to its adoption.</td>
</tr>
<tr>
<td></td>
<td>2= Low. There are some indicators that at some point the policy-making did incorporate arguments based on professional rationality; however, these are not explicitly reflected in the preamble of the instrument and only appear to a limited extent in the initiative and other documents.</td>
</tr>
</tbody>
</table>

47 However, as already noted for the assessment of professional rationality, this scale has not been validated as an exact measure of instrument effect. Therefore, again, even though the descriptions show more differentiated variations between instruments than would be revealed by a two-dimensional assessment, the quantitative analysis is based on a ‘high’ versus ‘low’ dichotomy (with scores 1 and 2 on the scale defined as ‘low’ and 3-5 as ‘high’) and the appropriate statistical technique.
cooperation. The extent of the professional rationality is assessed on a five-point scale but recoded as ‘low’ (1 and 2) and ‘high’ (3, 4 and 5) to enable the use of Pearson chi-square tests.

<table>
<thead>
<tr>
<th>Assessment of effect</th>
<th>Extent to which the instrument has had its intended effect on the practices of police cooperation in the EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) None. Either no indicators or only a few isolated examples were found of application of this instrument, and there is no indication that this instrument achieved any of its intended effects on operational police cooperation practices in the EU.</td>
<td></td>
</tr>
<tr>
<td>2) Low. Some indicators of the application of this instrument were found, but its effect on police cooperation practices has been limited and/or alternative explanations of its effect are likely. This rating is also assigned to instruments that codify existing practices without promoting any further development.</td>
<td></td>
</tr>
<tr>
<td>3) Medium. Several indications of the application of this instrument in practice were found; however, the intended effects on police cooperation in the EU are (as yet) limited to certain countries or situations and in some cases, alternative explanations of their existence are possible. This rating is also assigned to instruments that codify existing practices but do lead to new developments.</td>
<td></td>
</tr>
<tr>
<td>4) High. Various indications were found that the instrument achieved its intended effect in practice, but the practices may not exist everywhere, they are not always in line with the instrument’s intentions and/or competing explanations of their existence may be possible.</td>
<td></td>
</tr>
<tr>
<td>5) Very high. The intended effect on police cooperation in the EU was achieved subsequent to the instrument’s adoption and is clearly signalled by various indicators.</td>
<td></td>
</tr>
</tbody>
</table>

Table 5.8 Scheme for the numerical coding of the quantitative data.

As explained in previous sub-sections, the purpose of the numerical data coding was to enable quantitative descriptions and statistical correlation analysis, most particularly, cross-tabulation with the Pearson chi-square test. However, because statistical analysis of variables related to Council JHA policy-making is unusual in the literature on either JHA policy-making or police cooperation, a brief explanation of this applied technique is provided below for those less familiar with the methodology.

The hypotheses formulated earlier in this chapter are tested using cross tabulations and Pearson chi-square. The Pearson chi-square test analyses the existence of a correlation between two categorical variables and tests the statistical significance of the results. It proceeds from the null hypothesis \( H_0 \) that if there is no correlation between the two variables (i.e., they are independent), the distribution between them can be expected to be random. By examining whether the observed distribution fits the expected (random) distribution, and identifying deviations of the observed values from the expected

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48 A t-test was also used to determine whether the difference between two means was statistically significant (see Section 6.2.5). All statistical analyses were carried out using SPSS.
random pattern, it determines whether the deviation is statistically significant or whether the observed relation between the data may be due to chance. It cannot, however, determine the strength and direction of the relations, only the existence of a correlation between variables (Bryman and Cramer 2005: 206–213).

The larger the difference between the observed and the expected (random) frequencies, the larger the ensuing chi-square value, \( \chi^2 \), meaning that a large \( \chi^2 \) could indicate a correlation between the tested variables. However, it must also be determined whether that relation is statistically significant or the result of chance. Hence, the results of the Pearson chi-square include the probability estimator, \( p \) (i.e., the probability that a relation is the result of chance), and so \( p = 0.02 \), for example, means a 2 in 100 chance that the conclusion that a correlation exists is false. Like most social science research (Bryman and Cramer 2005: 135), this study sets the significance level at 95%, meaning that when \( p \) is less than 0.05, there is less than a 5% chance that the null hypothesis has been rejected when it should have been confirmed, the observed relation is statistically significant, and the null hypothesis (of no relationship) can be rejected.

### 5.4.6 In-depth case studies

In addition to the quantitative analysis described in the previous sub-sections, two cases studies were developed to foster in-depth examination of police cooperation practices in relation to the EU Council JHA policy aimed at shaping them. The two police cooperation practices addressed in these case studies – joint investigation teams and liaison officers – were selected for three reasons:

1. Both strategies have been the focus of considerable policy efforts by the Council, resulting in more than one binding instrument aimed at enhancing them, so both can be regarded as ‘exemplifying cases’ (Bryman 2008: 56) within the study framework.

2. Joint investigation teams are top-down instruments initiated and shaped on an EU political level, whereas the use of liaison offices in police cooperation has emerged bottom-up over the years as a widespread practice by the police of the Member States.
3. An initial assessment indicated that the effects of the Council instruments on joint investigation teams and liaison officers have been limited, in spite of significant Council policy efforts on both issues. This contrast between intention and achievement thus provides an important opportunity to investigate in detail the relation between professional rationality in the policy-making and the effect of the resulting instruments on police cooperation practices.

The case studies presented in Chapters 7 and 8 of this study describe the full history of Council policy-making on each strategy, and examine in detail the practices of police cooperation on which the policy efforts have been focused. In addition to the data sources described earlier, for these two case studies archival research was undertaken in the TREVI archive of the Dutch Ministry of Justice. The findings on these case studies are subsequently analysed within the framework of Snellen’s (1987, 2002) four rationalities model.

5.5 Conclusions

This chapter focused on the theory and design used in the field research for this study. Based on the insights derived from the first chapters, Chapter 5 presented two hypotheses on the correlations between the Council JHA policy-making process and its effects on police cooperation practices. The first hypothesis proposes that, contrary to the usual assertion, the legal nature of the Council instruments is not a relevant variable determining their effect on police cooperation practices. This assumption is supported by the contention that the professional discretion enjoyed by police officers allows them to apply pragmatic selection of instruments to their use in when cooperating with peers across borders. From that perspective, the relevance of a Council instrument’s legal nature to that selection is questionable; instead it is the practicality of Council instruments that is more likely to be a relevant factor for their effect on police practices. Therefore, based on Snellen’s (1987, 2002) four rationalities model, it is argued that instruments will be more practical – or more rational in the eyes of officers – if professional rationality has been applied in the policy shaping process.

49 Special permission to access the TREVI archives was granted on 9 June 2008. Permission to use the results of the data collected in this thesis was received from the Ministry of Justice on 5 August 2011.
This chapter then identified the Council instruments chosen for the basic and final study samples. This identification process revealed the initial research finding that 137 of the 930 texts on Justice and Home Affairs adopted by the Council in the decade between 1995 and 2004 can be classified as Council instruments aimed at enhancing police and judicial cooperation between the Member States. From this basic sample, 70 instruments can be classified as Council instruments aimed at enhancing police cooperation and form the final sample in this study.

Based on the two hypotheses and other potentially relevant aspects of JHA policy-making described in the literature, 10 variables were identified as the basis for data collection. The first eight, collected from all 137 instruments in the basic sample, are descriptive and relate to the policy-making process. The last two, collected from the 70 instruments in the final sample, relate to the level of professional rationality in the policy-making for these Council instruments and the level of their effect. Finally, this chapter explained the numerical data coding and the primary statistical method used for the quantitative analysis (Pearson chi-square test). The data on the policy-making and effect of these instruments form the core on which the ensuing chapters build.
Chapter 6

EU Council Instruments on police cooperation:

a quantitative assessment

This chapter reports the central empirical findings of this study. As discussed previously, the final sample contains 70 Council instruments aimed at enhancing police cooperation for which data were collected on nine variables related to the policy-making process and one variable related to the instruments’ effects. The qualitative data gathered and detailed in Appendix B were then coded to produce a quantitative data set for correlation analysis.

To sketch a broad profile of the policy-making process for the Council instruments aimed at enhancing police cooperation, the next section reports the findings for each of the 10 variables, predominantly in descriptive form. In a number of instances, data from the basic sample (see Section 5.4.1) of 137 instruments are used for comparative purposes. In addition to the descriptive overview of the findings, the section also reports the results of a number of statistical analyses performed on the data to test some general assumptions about Council JHA policy-making found in the literature. Although this descriptive overview does not directly relate to answering the research question, it does add to a general understanding of the nature of the policy process through which Council instruments come about. This may be relevant for identifying further implications of this study’s findings. Section 6.2 then discusses the findings in relation to the research question and in particular to the two hypotheses formulated for the study, looking at whether or not the correlations assumed in the hypotheses exist. Thereafter, Section 6.3 analyses the outcomes for the second hypothesis, particularly in cases where the findings deviate from the hypothesis. Finally, Section 6.4 offers some intermediate conclusions based on the findings detailed in the chapter.

6.1 Descriptive overview

6.1.1 Instruments initiated and adopted by year
The first two variables on which data were collected relate to the year in which the initiative for an instrument was forwarded and to the year in which it was adopted. Not only could the frequency of the initiatives and adopted instruments provide insight into the dynamics of Council JHA policy-making between 1995 and 2004, but these variables could also be valuable for comparing different instruments in time or analysing the relations between instruments and external events. As shown in Figure 6.1, two peaks in initiatives and adopted instruments can be identified, in 1996 and 2001/2002, respectively.

Figure 6.1 Initiated and adopted Council instruments on police cooperation 1995–2004

The activity peak in 2001/2002 is most certainly a result of the 9/11 incidents in the U.S.: half of the initiatives presented in the Council between 11 September 2001 and the end of 2002 were related to counter-terrorism, or at least were presented as such. Hence, these findings confirm the ‘window of opportunity’ noted by Den Boer (2003: 205). This is most clearly illustrated by the Framework Decision on JITs (Council of the EU 2002a) for which an initiative was forwarded soon after the extraordinary Council meeting in September 2001. The Conclusions of this meeting invite the Member States ‘to set up one or more joint investigation teams without delay’ (Council of the EU 2001a). Subsequently, an initiative for a Framework Decision on JITs was presented (Council of the EU 2001b). However, it contains the exact same text tabled 18 months previously and that had since then lain dormant in the Council Secretariat (interview #24).
The peak in 1996 is more likely the result of two unrelated incidents in Ireland and Belgium. Both of these countries proposed a number of instruments, while holding the Presidency, and after domestic crime incidents (see Sub-Section 6.2.4 below). Further variations in the volume of initiated instruments could be explained by the institutional framework within which the policy-making took place. As Nilsson (2004a: 118) notes, and as Figure 6.1 shows, after the TEU came into force it took Council policy-making until 1995 to gain speed. Apparently, after being in full swing in 1995 and 1996, the policy-making on JHA matters slowed down in anticipation of the Amsterdam Treaty which stipulated significant changes to the Council JHA policy-making process (Mitsilegas 2009: 12).

### 6.1.2 Activity of Member States

Two further variables in the data set link the adopted instruments to the Member States: the Member State holding the rotating Presidency at the time of adoption and the Member State or States that initiated the measure. In the period under research, the Commission formally forwarded only one initiative and eight initiatives were forwarded jointly by two or more Member States.

<table>
<thead>
<tr>
<th>Member State</th>
<th>Instruments adopted under its Presidency</th>
<th>Number of instruments initiated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Belgium</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Denmark</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Finland</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>France</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Germany</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Greece</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Ireland</td>
<td>14</td>
<td>6</td>
</tr>
<tr>
<td>Italy</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Portugal</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Spain</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Sweden</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Commission</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Joint initiative</td>
<td>-</td>
<td>8</td>
</tr>
</tbody>
</table>

Table 6.1 Member State activities in Council JHA policy-making (1995–2004)
All other instruments were initiated by one of the Member States. These findings, presented in Table 6.1, show that a significant variation – between 0 and 9 – can be observed between the number of initiatives put forward by different Member States for Council instruments aimed at enhancing police cooperation. It should be noted that in the interval under research France, Italy, Ireland, Spain and the Netherlands assumed the rotating Presidency twice, which, as elaborated later in this section, has a quantitative influence on the policy output of a Member State. Moreover, Belgium, which put forward seven initiatives, held the Presidency during the aftermath of the 9/11 incidents in the U.S. when a ‘wave of counter-terrorism measures’ was proposed (Den Boer 2003). However, even after correction for these differences, the number of initiatives still indicates that priorities between Member States differ as regards their efforts towards Council policy-making on police cooperation.

6.1.3 Type of instrument

The fifth and sixth variables relate to the type of instrument adopted by the Council, i.e., the type of instrument originally initiated and the type of instrument finally adopted. As noted in the previous chapter, except for Joint Positions, the Council has used all types of instruments available under the TEU to govern police cooperation in the Union. The frequency of the different types of Council instruments aimed at enhancing police cooperation is presented in Table 6.2.

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Initiated</th>
<th>Adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Framework Decision</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Decision</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Joint Action</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Resolution</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Action Plan</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Recommendation</td>
<td>16</td>
<td>19</td>
</tr>
<tr>
<td>Conclusions</td>
<td>5</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 6.2 Distribution of Council instrument types in the final sample ($n=70$)

As the table shows, 36 out of 70 (51%) of these instruments are non-binding, which at first glance does not seem to confirm the reported 1:3 ratio between binding and non-binding instruments (Monar 2006a: 16). However, as discussed in Chapter 5, Monar uses a different and wider definition of the
term ‘instrument’, one that includes texts classified as ‘convergence support’ (ibid.: 11) that are not considered ‘instruments’ in this present research (see 5.4.1). Nevertheless, the fact that 51% of the Council instruments aimed at enhancing police cooperation are non-binding is significant, particularly given that these are texts are aimed at achieving concrete action by police in the Member States.

As discussed in Chapter 4, the use of non-binding instruments in issues of operational police cooperation might be explained by sovereignty concerns. This would imply that the use of non-binding instruments aimed at enhancing police cooperation is likely higher than the use of non-binding instruments on other, non-operational, and thus less sensitive, issues in police and judicial cooperation. A cross tabulation was therefore conducted using the available data from the basic sample containing 67 additional Council instruments aimed at both police and judicial cooperation. As Table 6.3 shows, more non-binding Council instruments aimed at police cooperation enhancement were adopted than Council instruments not aimed at such enhancement.

<table>
<thead>
<tr>
<th>Legal nature</th>
<th>Non-binding</th>
<th>Binding</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>20</td>
<td>47</td>
<td>56</td>
</tr>
<tr>
<td>%</td>
<td>29.9%</td>
<td>70.1%</td>
<td>40.9%</td>
</tr>
<tr>
<td>Count</td>
<td>36</td>
<td>34</td>
<td>81</td>
</tr>
<tr>
<td>%</td>
<td>51.4%</td>
<td>48.6%</td>
<td>59.1%</td>
</tr>
<tr>
<td>Count</td>
<td>67</td>
<td>70</td>
<td>137</td>
</tr>
<tr>
<td>%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 6.3 Cross tabular analysis: legal nature vs. aim to enhance police cooperation

A Pearson chi-square test confirmed\(^{50}\) that Council instruments aimed at enhancing police cooperation adopted between 1995 and 2004 are non-binding significantly more often than other Council instruments in the field of police and judicial cooperation. This finding could indicate that, in spite of the apparent relaxation of sovereignty concerns suggested by the Schengen Convention, the Prüm Convention and the European Arrest Warrant, police cooperation is still a sensitive matter for which Member States prefer (or at least preferred in 1995–2004) non-binding instruments that do not interfere with the autonomous control and organisation of their police forces (see also Monar 2006a: 16). These sovereignty concerns are also reflected in the text of the Lisbon Treaty (Mitsilegas 2009: 48).

\(^{50}\) \(\chi^2 = 6.595, p=.010,\) at a 95% significance level. See Appendix C for the full SPSS output of all statistical analyses presented in this chapter.
Another assumption about instrument type in the literature is that the unanimity requirement in Council JHA policy-making causes a ‘spiralling-down’ effect on the kind of instruments produced (e.g., Den Boer and Wallace 2001: 511), meaning that content and legal nature become based on the lowest common denominator during the policy process. However, as indicated in Table 6.2, only small differences appear to exist between initiated and adopted instruments. Hence, the question arises of whether a ‘spiralling-down’ effect actually takes place during the Council’s actual policy-making process. A detailed comparison of the proposed and adopted instruments for enhancing police cooperation suggests it does not. This comparison is outlined in Table 6.4 that sets out the adopted instruments against the instruments originally proposed, and highlights the instances in which the adopted instruments deviate from the proposed instruments.

In fact, the findings show that in only 4 cases (6%) a measure initially proposed as a binding instrument was changed during the policy-making process into a non-binding instrument:

  The policy history shows that after the initial discussion in the Terrorism Working Party, some Member States could not support a formal Joint Action (Council of the EU 1998e);
- Council Resolution on combating international crime with fuller cover of the routes used (Council of the EU 1999g), which was changed from a Joint Action into a Resolution after initial discussion in the Police Cooperation Working Party;
• Council Resolution on the exchange of DNA analysis results (Council of the EU 2001n). After Portugal expressed many reservations, the initiative for a Framework Decision was diluted into a non-binding Resolution (Council of the EU 2000h);

• Council Recommendation on the introduction of a standard form for exchanging information on terrorists (Council of the EU 2002o). The original initiative was aimed at the adoption of a Decision; however, when the Spanish Presidency met significant resistance to the text, it re-drafted it into a Recommendation.

As Table 6.4 also shows, opposite change in instrument type took place in one case: the Joint Action with regard to cooperation on law and order and security (Council of the EU 1997e) which had originally been proposed as a Resolution. During the initial discussions on the proposal in the PCWP, it had already been agreed that it should become a Joint Action, even though no further explanation for this change was provided (Council of the EU 1997f).

In two other cases, a different type of instrument was adopted than originally proposed. The first, the Council Decision on the improved exchange of information to combat counterfeit travel documents (Council of the EU 2000i), was originally proposed as a Joint Action but seems to have been changed as a formality. The initiative was tabled in early 1999 as a draft Joint Action, but the entry into force of the Treaty of Amsterdam on 1 July 1999 removed Joint Action as an available instrument for the Council. It was then agreed that the draft should be transformed into a Decision (Council of the EU 1999h: 3). The second, the Council Recommendation on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings (Council of the EU 2003k), was originally proposed as a Council Conclusion. However, this change appears to be nothing more than a correction to the instrument title in that the text of the initiative was already formatted as a Recommendation. Overall, therefore, these findings provide no evidence of a structural ‘spiralling-down’ of instrument type during the policy-process in the Council’s working groups as most of the soft law instruments were proposed as such from the outset.

6.1.4 Role of the initiator
To explore the assumption that Member States ‘abuse’ their Presidency to forward national issues to the EU level (e.g., Storbeck and Toussaint 2004), data were also collected on the position of an instrument’s initiator, or to be more precise, whether or not the initiator held the Presidency, or was about to, at the time of initiation. The status of the initiators of the 1995–2004 Council instruments enhancing police cooperation are summarised in Table 6.5.

<table>
<thead>
<tr>
<th>Status of the Initiator</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holding the EU Presidency</td>
<td>48</td>
<td>68.6</td>
</tr>
<tr>
<td>Not holding the EU Presidency</td>
<td>15</td>
<td>21.4</td>
</tr>
<tr>
<td>Holding the incoming EU Presidency</td>
<td>7</td>
<td>10.0</td>
</tr>
<tr>
<td>Total</td>
<td>70</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Table 6.5 Role of the initiator (1995–2004)

At first glance, the data in the table appear to justify the concern expressed in the literature: 79% of the instruments (55 out of 70) were initiated by a Member State holding or about to hold the Presidency. This finding could indicate that Member States are more likely to initiate an instrument at a moment in which they have a greater influence over the JHA policy-making agenda and process, as illustrated by the several examples of a Presidency favouring a domestic interest in JHA policy-making instead of displaying neutrality. As previously discussed, the Irish Presidency proposed a number of drug-related policy instruments in 1996 that were most probably driven by the intense domestic political pressure and public outrage after the murder by Irish drug dealers of journalist Veronica Guerin. Not only did this incident prompt changes in Irish criminal law, but it apparently motivated such Irish Presidency JHA policy initiatives as the Council Resolution on measures to address the drug tourism problem within the European Union (Council of the EU 1996h), a problem suggested by a 1995 expert report for the Madrid European Council (Council of the EU 1995d). However, although Ireland put this idea on the agenda at the start of its Presidency, the outcome of a questionnaire among the Member States showed that drug tourism was barely considered a problem. Moreover, the statistical evidence on drug tourism appears fragmented at best, with many Member States reporting no particular problem with drug tourism. If anything, this evidence tended to indicate that police cooperation on this issue took place via existing channels without any significant problems (Council of the EU 1996i). Yet Ireland still went forward with the initiative. The current findings thus appear to support the presumption that actions in the Council can often be explained by national law enforce-
ment and security priorities of the Member State holding the Presidency rather than an actual need for EU wide harmonisation (see also Calderoni 2010: 18–19).

Nevertheless, caution is needed before drawing conclusions on these data because the formal role of the Presidency may provide an alternative explanation as to why initiatives are most often tabled by the Presidency. As Nilsson (2004a: 138) argues, sometimes an initiative may be drafted in the Council Secretariat, and a ‘sponsor’ to formally table the initiative may be found afterwards, usually in the form of the Presidency. Such was the case with the Council Decision to establish Eurojust (ibid.). The paper trail of some instruments also indicates that the Presidency often automatically becomes initiator when a proposal is written by other Member States. An example of this is the Council Recommendation concerning a handbook for cooperation between Member States to avoid terrorist acts at the Olympic Games and other comparable sporting events (Council of the EU 2004i). Although the initiative was tabled formally by Ireland at the beginning of its Presidency in 2004, the text of the first draft shows that the 11 page handbook was drawn up in the margins of the Working Party on Terrorism and agreed by all delegations participating in its preparation before the initiative was formally tabled (Council of the EU 2004i: 1). Finally, under the Maastricht Treaty a number of proposals by the Commission, which at that time did not enjoy the right of initiative in this field, were formally tabled by the Presidency. These include the initiative for the Council Act to draw up the second Protocol to the Convention on the protection of the European Communities’ financial interests (Council of the EU 1997g) and the initiative for the Joint Action to establish a programme of exchanges, training and cooperation for persons responsible for combating organised crime (Council of the EU 1998f).

6.1.5 Time lag

The eighth variable measured is the time lag of implementation, calculated as the number of days between the presentation of an instrument \( (t_1) \) and the day of its adoption \( (t_2) \). According to the findings, this ranges from 8 to 1,504 days. The speediest policy-making took place for the Council Conclusions of 20 September 2001 after the incidents of 9/11 in the U.S. The most protracted policy-making for a
Council instrument aimed at enhancing police cooperation was the EU MLA Convention. The first draft was presented on 16 April 1996 but the final document was not adopted until 29 May 2000.

On average (arithmetic mean), Council JHA instruments aimed at enhancing police cooperation takes 265 days, a somewhat slow process that the Commission in particular attributes to delays in reaching consensus (Commission 2006c: 12) or, more generally, to institutional obstacles (Golub 2007: 157). Some authors also assume that Member States agree on non-binding instruments more quickly (Den Boer 2004: 1; Monar 2006a: 16), an assumption confirmed in this study by assessing the difference in the time the Council took to shape and decide on a binding as opposed to a non-binding instruments. As Table 6.6 shows, the difference in mean time lag for binding versus non-binding instruments differs greatly, a difference that an independent samples test shows to be statistically significant.\(^{51}\) In other words, it takes the Council four to five months longer to shape and decide on a binding instrument than on a non-binding instrument aimed at enhancing police cooperation.

<table>
<thead>
<tr>
<th>Overall mean</th>
<th>265</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean non-binding instruments</td>
<td>194</td>
</tr>
<tr>
<td>Mean binding instruments</td>
<td>340</td>
</tr>
</tbody>
</table>

| Table 6.6 Mean time lag in days (n=70) |

A similar independent samples test on the basic sample of 137 instruments (which includes other non-operational Council instruments on police and judicial cooperation) confirms this statistically significant difference in mean time lag between binding and non-binding instruments.\(^{52}\)

### 6.1.6 Assessment of professional rationality

The ninth variable assessed is the level of professional rationality employed in the agenda setting, policy shaping, decision-making and in the final policy instrument. As described in Chapter 5, this variable was assessed by analysing the various available policy documents related to each instrument, including initial draft, related reports, meeting proceedings, notes and the final text and explanatory reports. The extent of the professional rationality identified was then assessed on a number of indic-

\(^{51}\) \(t=-2.75, p=0.008, \) at a 95% confidence interval, equal variances not assumed.

\(^{52}\) \(t=-4.494, p=0.000, \) at a 95% confidence interval, equal variances not assumed.
tors and quantified on a five-point scale from none to very high. The findings are presented in Figure 6.2.

![Bar Chart](image)

**Figure 6.2 Extent of professional rationality**

These findings show that for more than half the instruments (51%), the extent of professional rationality in the policy-making was low or non-existent, thereby confirming the assumptions in the literature outlined in Chapters 4 and 5.

As detailed in Appendix B, qualitative analysis of the policy document texts revealed that many proposals for Council instruments aimed at enhancing police cooperation do not use professional rationality to support the argument for adoption. Moreover, even when they do, in many cases these arguments include mere assertions offered with no supporting evidence. For example, the explanatory note on a proposal for a Council Decision on tackling vehicle crime with cross border implications (Council of the EU 2004k) asserts that ‘vehicle crime is the pivotal point for many other forms of crime. There is usually a link between car theft and car trafficking and other forms of crime such as drugs, firearms and trafficking in human beings’ (p. 1). It offers no evidence, however, to support such a claim. In the final adopted version of the Decision (Council of the EU 2004j), this wording was changed to ‘vehicle crime may also be linked internationally to other forms of crime, such as trafficking in drugs, firearms and human beings’, but again no concrete evidence is cited. The 2004 and 2005 Europol reports on organised crime in the EU do mention that vehicle crime is becoming increasingly
organised and international, and that OC groups involved in vehicle crime are also active in other areas (Europol 2005c: 23; Europol 2006: 12). Neither report, however, links vehicle crime itself to other forms of crime.

Furthermore, document analysis identifies the frequent absence of arguments relevant to those in the field in the policy shaping process. In addition, there is a lack of explicitly formulated professional rationality in the agenda setting as reflected in the final instruments. In sum, these findings support the suspected lack of professional rationality in Council policy-making aimed at enhancing police co-operation, although it should be noted that the 40% of instruments identified as including professional rationality in the policy-making is still significant. The analysis presented in Section 6.2 will examine whether the differences in the professional rationality in the policy-making of instruments show a correlation with the differences in the instruments’ actual effect.

6.1.7 Assessment of effect

The tenth and final variable is the effect of the instruments on police cooperation practices in the Member States, which, as already stipulated, is defined as a concrete change in police practices as intended by the Council instrument under scrutiny. Qualitative data on the effect of each instrument were collected from several written primary and secondary sources, as well as in targeted interviews with officers based on the indicators discussed in Chapter 5. These data were also assessed and numerically coded on a five-point scale from none to very high. The results are graphed in Figure 6.3 below.
These findings on the effect of Council instruments aimed at enhancing police cooperation indicate that 61% of these instruments had little effect or no effect at all on actual police cooperation practices in the EU and that less than 30% had a high or very high effect on police practices. Whether this limited overall effect is the result of the many non-binding instruments in Council JHA policy, as the Commission (2004a: 38) argues, is discussed in the next section.

6.2 Correlations

6.2.1 Correlation between the legal nature of the instrument and its effect

Whereas the presentation of the findings in the previous section was primarily descriptive, this section looks more closely at the correlations in the data, guided particularly by the hypotheses formulated for the study. First, in contrast to the literature on JHA policy-making, which suggests that non-binding instruments are less likely to be implemented and therefore less likely to have any effect, this study assumes that in the police cooperation field especially, the legal nature of a Council instrument holds no predictive value for its actual effect on police practices. The first hypothesis therefore states the following:
There is no significant correlation between the legal nature of EU Council instruments aimed at enhancing police cooperation and their effect on police cooperation practices in the EU.

This hypothesis is tested using a cross tabular analysis and a Pearson chi-square test between the recorded values for the (independent) variable ‘legal nature’ and the (dependent) variable ‘effect’. The eight different types of instruments (see Table 6.2) were grouped into two groups, ‘binding’ and ‘non-binding’; and the ‘none’ and ‘low’ scores and ‘medium’, ‘high’ and ‘very high’ scores for each instrument were re-coded as ‘low’ and ‘high’ respectively. The cross tabular results are given in Table 6.7.

<table>
<thead>
<tr>
<th>Legal nature</th>
<th>Non-binding</th>
<th>Binding</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Count</td>
<td>19</td>
<td>20</td>
<td>39</td>
</tr>
<tr>
<td>%</td>
<td>57.6%</td>
<td>64.5%</td>
<td>60.9%</td>
</tr>
<tr>
<td>High Count</td>
<td>14</td>
<td>11</td>
<td>26</td>
</tr>
<tr>
<td>%</td>
<td>42.4%</td>
<td>35.5%</td>
<td>39.1%</td>
</tr>
<tr>
<td>Total Count</td>
<td>33</td>
<td>31</td>
<td>64</td>
</tr>
<tr>
<td>%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 6.7 Cross tabulation: legal nature versus effect

As already apparent from the case distribution in the cross tabulation, the Pearson chi-square test confirms that the differences between the binding and non-binding instruments are minimal. Therefore, the null hypothesis (H₀) of no relationship between the legal nature instruments and the effect of these instruments on police practices cannot be rejected. Hence, contrary to the assumptions in the literature (see Section 5.2.1), the legal nature of a Council instrument aimed at enhancing police cooperation provides no explanation for the differences in these instruments’ effects. More specifically, the findings fail to support the assumption voiced, amongst others, by the Commission (2004a) that non-binding instruments have few advantages. The findings of this study show an even slightly higher effect of non-binding instruments but, again, there is no statistically significant relation.

53 The re-coding of the ‘effect’ scores was necessary because in a Pearson chi-square analysis using a 2x5 cross table, 64 cases is insufficient for reliability (see Bryman and Cramer 2005: 213).

54 $\chi^2 = .323$, $p = .570$, at a 95% significance level.
6.2.2 Correlation between the professional rationality in the policy-making of an instrument and its effect

This study further argues that the professional discretion that police officers can exercise will lead them to choose instruments that are practical in their eyes. Therefore, based on the assumption that instruments which are not rational from the practitioners’ perspectives (i.e., are seen as impractical) are less likely to have an effect on police cooperation practices, the second hypothesis is as follows:

There is a significant correlation between the extent to which an EU Council instrument aimed at police cooperation is grounded in the professional rationality of police practitioners and its effect on police cooperation practices.

This hypothesis is tested using a cross tabular analysis and a Pearson chi-square test between the recorded values for the (independent) variable ‘legal nature’ and the (dependent) variable ‘effect’. Once again the eight different instruments types (see Table 6.2) were grouped into ‘binding’ and ‘non-binding’ and the scores for the effect of each instrument were re-coded into ‘low’ and ‘high’. The cross tabular results are presented in Table 6.8.

<table>
<thead>
<tr>
<th>Effect</th>
<th>Level of professional rationality</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low</td>
</tr>
<tr>
<td>Count</td>
<td>32</td>
</tr>
<tr>
<td>%</td>
<td>94.1%</td>
</tr>
<tr>
<td>Count</td>
<td>2</td>
</tr>
<tr>
<td>%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Count</td>
<td>34</td>
</tr>
<tr>
<td>%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 6.8 Cross tabulation: level of professional rationality versus effect

Here, the cross tabulation reveals a clear difference in the case distribution, and the Pearson chi-square test confirms a statistically significant correlation between the level of professional rationality and the effect on police cooperation practices. Hence, the null hypotheses must be rejected. In other words, these findings suggest that the extent to which the policy-making of an EU Council instrument aimed at enhancing police cooperation is grounded in professional rationality is a significant

55 $\chi^2 = 33.547, p=.000$, at a 95% level of significance.
explanatory factor for the effect of these instruments on police cooperation practices. They thus confirm the second hypothesis of this study formulated on the basis of the four rationalities model (Snellen 1987; 2002), which predicts that an imbalance in the rationalities in public policy-making has consequences for the implementation of that policy. The following section therefore examines these findings in more detail to gain a better understanding of their implications.

6.3 Expected and deviant cases

6.3.1 Introduction

As shown in the previous section, the Council instruments aimed at enhancing police cooperation that are shaped using professional rationality are likely to have an effect on police practices and vice versa. In other words, the data analysis confirms hypothesis two, that a correlation exists between the extent of professional rationality in the policy-making and the effect of the instrument. Nevertheless, the results also show that this correlation is not absolute: the data set also contains instruments that deviate from the hypothesis. That is, some Council instruments shaped with a high level of professional rationality in the policy-making have little or no effect on police cooperation practices, whereas a number of Council instruments shaped with little or no visible professional rationality in the policy-making nevertheless appear to have had a high effect on police cooperation practices. From the perspective of the second hypothesis of this study, these might be termed ‘unexpected’ cases that contrast with the ‘expected’ cases in which the instruments have the expected effect.

In fact, as Table 6.8 shows, the actual count of expected cases in the data set is 55 out of 64 and the count of unexpected cases is 9 out of 64. Because two of these expected cases are the subject of separate in-depth case studies in Chapters 7 and 8, this sub-section examines the unexpected cases to achieve a deeper understanding of the relationship between professional rationality in policy-making and the actual effect on police cooperation practices. To do so, it first looks at the two Council instruments that impacted on police practices even though the policy-making for them shows little attention to professional rationality, and then at the Council instruments that had little effect despite a
high level of attention to professional rationality in the policy-making. In both instances, the analysis seeks alternative explanations for the effect of each particular instrument.

6.3.2 Low professional rationality but high effect

As Table 6.8 shows, the sample includes two cases for which the professional rationality in the policy-making is assessed as low but whose effect, contrary to expectations, is assessed as high: the Council Conclusions of 20 September 2001 (Council of the EU 2001a) and the Council Decision of 6 December 2001 on the protection of the Euro against counterfeiting (Council of the EU 2001o).

The Council Conclusions of 20 September 2001 in fact constitutes a rare case because of the significant external influence of the 9/11 incidents on the policy-making. As already discussed, the Conclusions were part of the reaction to these events, one dominated by a strong feeling that ‘something must be done’ (Den Boer 2003: 189–190; see also Schneier 2006: 241), not only within the Council structures but in the Western world in general, including within the police forces (see, for example, Interpol 2001b). This extraordinary situation explains why, in spite of a lack of professional rationality in the policy-making, the effect of the Council Conclusions on police cooperation practices has been high.

The situation related to the 2001 Council Decision on the protection of the Euro against counterfeiting is comparable in the sense that the introduction of one single currency, and its associated risks for all Member States alike, differs from many other situations. Hence, even though policy-making shows no indications of professional rationality, the introduction of a single new currency for most of the Member States seems to have been sufficient incentive to foster a high level of cooperation in which Europol acts as a central hub for information. Indeed, as one Europol expert on Euro forgery noted, the level of information sharing by the Member States on this issue was good, especially compared to that on other forms of crime, because of a ‘commonly felt responsibility ... for good information exchange ... on the forgery of Euros’, even though such exchange seldom or never involved the standard format detailed by the Decision (interview #25). Perhaps the logic of cooperation through Europol in
this particular area of crime is self-explanatory in that Euro counterfeiting was in fact a new crime that began to equally affect almost all Member States at the same moment in time. With such a strongly shared interest among the Member States, any further underpinning from a professional perspective in the policy-making may have been unnecessary.

So although these two cases demonstrate that cooperation can be fostered and enhanced by other factors than policy alone, the circumstances under which the instruments were shaped and the effect they had were unusual. These two unusual and ‘unexpected’ cases therefore in no way undermine the central assumption that a balanced rationality in the policy-making of Council instruments aimed at enhancing police cooperation (i.e., one that takes into account professional rationality) is an important pre-requisite for these instruments to have a concrete effect on police practices.

6.3.3 High professional rationality but limited effect

As Table 6.8 also shows, the sample includes seven cases in which the professional rationality in the policy-making is assessed as high but the instrument’s effect, contrary to expectations, is assessed as low. For the first, the 1996 Council Recommendation on guidelines for preventing and restraining disorder connected with football matches (Council of the EU 1996j), the professional rationality in the policy-making is assessed as (4) and the effect as (2). However, cooperation in the field of football hooliganism since 1985 has been dominated by a standing committee under the Council of Europe’s 1985 European Convention on spectator violence and misbehaviour at sports events and in particular at football matches. The 1996 Recommendation was in fact the first instrument adopted by the EU in this area. Nevertheless, although police in some Member States were already working more or less as proposed by the Recommendation, real coordinated cooperation only began based on the 1999 handbook (interviews #15 and #20) that, like the subsequent Council instruments to counter football hooliganism, shows a very high effect (see Appendix B, instrument #52). Nevertheless, the lack of effect of the 1996 Council Recommendation on this issue might very well be explained by the fact that, at that time, the EU was a new actor in this already established field of police cooperation and that the instrument was mostly codifying pre-existing practices agreed on in another forum (see Council of Eu-
rope 1999). As a result only few changes in practices after adoption of the instrument could be visible and thus the effect was assessed as low.

The second Council instrument that shows little effect in spite of high professional rationality in the policy-making is the 1996 Joint Action concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking (Council of the EU 1996h). The professional rationality in the policy-making related to this instrument is assessed as (4) and the effect as (1). However, although this Joint Action was supposed to be implemented by the EDU/Europol, as one respondent explained, it is unwise to overestimate the capabilities of the EDU/Europol in its early days (interview #17). Hence, as regards this Joint Action, ambition seems to have been higher than the EDU’s capacity to take on the role envisaged by the instrument. The discrepancy between high professional rationality in the policy-making and low effect might therefore be attributed to the responsible agencies’ inability to do the work envisioned.

The third such instrument is the Council Resolution on the exchange of DNA analysis results (Council of the EU 2001n), whose professional rationality in policy-making is assessed as very high (5) and whose effect is assessed as low (2). In fact, as it turns out, the Resolution merely codified existing practices following the 1998 agreement among practitioners in the European Network of Forensic Science Institutes on the use of seven joint markers. Not only are there no indications that this EU Council Resolution changed anything in ENFSI practices, but even before the Resolution was adopted, the seven markers were the de facto standard for the exchange of DNA profiles in the EU (interview #31). Likewise, although Member States have indeed designated the contact points envisaged in the Resolution, the national laboratories in many of these states were already acting as contact points. So once again, there was little visible change after Resolution’s adoption. Moreover, until the implementation of the Prüm Convention, exchange of DNA analysis results remained fragmented and was done on a case-by-case basis (ibid.).

The fourth - unexpected - case is the Council Recommendation of 25 June 2001 on contact points maintaining a 24-hour service for combating high-tech crime (Council of the EU 2001p). In this case
professional rationality in policy-making is assessed as very high (5) and its effect is assessed as low (2). In terms of this latter, however, closer examination reveals that the Council had already endorsed the joining of the G8 high-tech crime network in 1998 (Council of the EU 1998g), and 9 out of the 15 Member States were members of the network before 2001 (Council of the EU 2001r: 3). In fact, between 2001 and 2007, the network expanded to 52 participating countries, including 12 of the 15 EU Member States (interview #5). Hence, in reality, only three Member States joined the network after 2001. Moreover, the post-2001 expansion can equally be explained by the European Cybercrime Convention, signed by all EU Member States and adopted at the end of 2001, which requires all signatories to have a 24/7 contact point (Article 35). Hence, this Recommendation also largely codified existing practices, and any remaining effect can be explained by the European Cybercrime Convention. Therefore, the actual effect of the Recommendation on police cooperation is assessed as low, even though it may have had an effect had it been adopted a few years earlier.

The fifth instrument is the Council Recommendation on the alignment of statistics on seizures of drugs and diverted precursors (Council of the EU 2001q), whose professional rationality in policy-making is assessed as medium (3) and whose effect is assessed as low (2). In the high/low dichotomy used for the quantitative analysis, however, these two values differ little but do fall on the other side of the high/low divide. The difference therefore warrants no further explanation.

The sixth unexpected case is the Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes (Council of the EU 2003l). Although the professional rationality in the policy-making for this instrument is assessed as medium (3), its effect is assessed as none (1) because since its adoption, only two Member States (Finland and Sweden) have set up a new unit as envisaged by the Decision and no direct relation could be established between these units and the instrument itself. In fact, according to one expert interviewed, almost all currently active war crimes units in the Member States are led by police officers with field experience in peace missions (interview #34). As a result, given the significant persuasiveness needed to get policy-makers to allocate funds for the investigation of this type of crime – especially if it competes with other priorities like terrorism – in practice, the setting up of such units is influenced far more by dedicated practitioners.
than any formal policy (ibid.). Hence, the finding of a lack of effect of this Decision on war crimes may indicate that in addition to practical policy instruments and perhaps political circumstances, the efforts of officers may also explain the development and persistence of police cooperation.

The seventh and final unexpected case is the 2004 Council Resolution on cannabis (Council of the EU 2004f), whose values for professional rationality in policy-making and effect are assessed as medium (3) and low (2), respectively. As in the fifth case discussed above, these values barely differ in the quantitative high/low dichotomy and warrant no further explanation.

In sum, although some of the seven cases discussed in this sub-section demonstrate that more factors could be relevant for fostering and enhancing police cooperation, these ‘unexpected’ cases do not undermine the central assumption that a balanced rationality in the policy-making of Council instruments aimed at enhancing police cooperation (i.e., one that takes into account professional rationality) is an important pre-requisite for these Council instruments to have a concrete effect on police practices.

6.4 Intermediate conclusions

Although Chapters 7 and 8 offer more in-depth analysis of policy-making versus practices in the field, the findings of the quantitative analysis do allow some intermediate conclusions. These conclusions relate to the nature of EU Council policy-making in general, as well as to the research questions in particular.

First, the findings reported in Section 6.2 support the observations of many other authors on the prevalence of non-binding instruments. In fact, the data analysis clearly shows that, in the period under research, Council instruments aimed at enhancing (operational) police cooperation are statistically more often of a non-binding nature than other Council instruments in the field of police and judicial cooperation. The data does not, however, indicate any structural spiralling-down effect on the kind of legal instruments produced in policy-making that some have presumed to occur under the Council’s unanimity rule. In only 4 (of 70) cases was an instrument initially proposed as binding and
later that policy shaping changed into a non-binding instrument. Therefore, if a spiralling-down effect on instrument type exists, it presumably takes place prior to any discussion of these legislative proposals within the Council structures. It may even be that Member States, anticipating obstacles to the adoption of a binding instrument under the Council’s unanimity rule, drafted their initiatives from the outset as soft law instruments.

The analysis further reveals that 79% of the instruments (55 out of 70) were initiated by a Member State that held the Presidency or was about to, which could indicate that Member States are more likely to initiate an instrument when they have a larger influence over the policy-making agenda and process, a conclusion supported by the Belgian and Irish efforts in 1996. However, it also shows that in certain instances the Presidency acted as the formal initiator of instruments drawn up by, for example, the Council Secretariat or jointly with other Member States. So two things are at play here. Those holding the Presidency may act on national priorities, but they may also be influenced by the formal nature of the role of this Presidency.

The analysis of time lag shows that, on average, the Council takes 146 days longer to shape and decide on a binding instrument than it does on a non-binding instrument. This statistically significant difference in time-lag mean is confirmed by an additional analysis of the basic sample of 137 Council instruments on police and judicial cooperation. This finding offers support for the contention in the literature that existing sovereignty concerns still make Member States reluctant to agree on binding instruments in the field of police and judicial cooperation.

The data analysis also finds, in line with suggestions in the literature, that professional rationality played a limited role, if at all, in the discussions during the policy-making for a large number (51%) of the instruments. More specifically, analysis of the policy document texts reveals that many proposals for these Council instruments do not, or barely, address professional rationality in the reasoning for instrument adoption. Even when such professional rationality is considered, the arguments tend to include assertions put forward with no concrete supporting evidence.

In terms of the primary research question on the effect of EU Council instruments on police cooperation practices – a variable never before explicitly assessed in an empirical study – the assessment
carried out in this study indicates that 61% of the Council instruments aimed at enhancing police cooperation show little or no effect on actual police cooperation practices in the EU. A further statistical analysis of the data collected reveals no correlation between the legal nature of the Council instruments on police cooperation and their effect on police practices. Therefore, contrary to what is generally asserted – particularly by the Commission – the legal nature instruments provides no explanation for the differences in its effect. This same analysis does, on the other hand, reveal a significant correlation between the level of professional rationality and the effect on police cooperation practices. In other words, the extent to which the policy-making of an EU Council instrument aimed at enhancing police cooperation is grounded in professional rationality does indeed hold predictive value for its capacity to effect concrete changes in police cooperation practices. This conclusion was not significantly contradicted by the extended analysis of the cases that deviate on this point. Rather, the instrument effect in these unexpected cases could equally be explained by alternative motivations existing parallel to the professional rationality-level explanation. The case studies presented in the next two chapters focus on the relation between professional rationality in the policy-making and practices of police cooperation.
Chapter 7

Case study: joint investigation teams

7.1 Introduction

This chapter presents the first of two in-depth case studies on the effect of EU Council instruments on actual practices of police cooperation in the EU. This first case study, on joint investigation teams, examines in detail the rationality of Council JHA policy-making with regard to JIT-related instruments and how this effect corresponds with practices of police cooperation. Joint investigation teams were selected for analysis for two reasons: first, as discussed in Chapter 5 and elaborated below, this police cooperation instrument has received significant political attention, and second, JITs are seen as a ‘panacea’ for enhancing police cooperation in the EU.

The concept of ‘joint teams’ as a promising strategy for cooperation in criminal investigations between police of the EU Member States was first introduced in the 1997 Amsterdam Treaty. It envisaged officers from different jurisdictions and law enforcement organisations jointly investigating organised crime by working together in one team, efficiently sharing information and evidence alike. This idea has been reiterated in subsequent policy plans, including the Tampere Programme (European Council 1999) and the Hague Programme (Council of the EU 2004a). The establishment of JITs was considered necessary because many criminal investigations span more than two countries, making traditional methods of bilateral legal assistance simply outdated (Commission 2001). Joint teams comprising police officers from more than two Member States were thus believed to be the perfect solution for the perceived inadequacy of existing police cooperation between the Member States (interview #24). However, over a decade later, the strategy has still not been received with great enthusiasm by police, and only about 40, mostly bilateral, JITs have been operational in the five years

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56 A concise version of this chapter is published as Block 2011a.
since they were introduced in 2004. This number represents an almost negligible percentage of all cross-border criminal investigations in the EU.\textsuperscript{57}

This chapter investigates the possible causes for this apparent gap between the political ambition and police practices related to JITs. It does this by examining EU Council policy-making on joint investigation teams from the idea’s first introduction until the present day, and by exploring the concept in the more general context of police cooperation in criminal investigations between the EU Member States. In particular, the discussion attempts to answer the question of whether EU level JITs are as valuable as proponents claim they are. It also assesses the future feasibility of this cooperation strategy in the complex reality of European police cooperation.

The chapter is divided into four parts. Section 7.2 begins with a general introduction to the concept of joint investigation teams in the EU and in particular, their innovative aspects. It then outlines the emergence of the concept in EU policy-making, beginning with the first reference to joint teams in 1994. It also examines the political ambitions that can be seen, for example, in the policy documents on the JIT concept. Finally it shows that the origin of JITs can be found in domestic law enforcement practices in Germany and that the concept was introduced on the EU level without a thorough discussion of its particulars and feasibility in the complexity of EU police cooperation.

Section 7.3 presents a brief introduction to the so-called traditional method of cross-border police cooperation in criminal investigations, including the use of parallel investigations. It then summarises the obstacles to cross-border police cooperation in criminal investigations as discussed in the literature. Finally, to show the potential advantage of JITs above traditional methods of cross-border criminal investigation, it concludes with an analysis of the potential benefits of JITs in addressing these obstacles in such investigations.

Section 7.4 then focuses on the practices related to JITs in EU Member States, presenting first a brief discussion of the provisions for JIT implementation in the Member States and then an overview of the JITs established between 2004 and early 2009. The section ends with a detailed examination of sele-

\textsuperscript{57}In contrast, the Europol liaison officers, who as yet occupy no central place in European police cooperation (see Chapter 3), facilitated 10,487 cross-border operations in 2009 (Europol 2010) and over 13,000 in 2010 (House of Lords 2011: 26).
ted practical experiences with JITs to demonstrate that the strategy has encountered a number of un-
anticipated obstacles in the practice of cross-border police cooperation. Section 7.5 summarises the
findings and draws conclusions in relation to the central subject of this study.

7.2 Emergence and origin of the JIT concept

7.2.1 Joint investigation teams in the EU

The term ‘joint investigation team’ is widely used around the world in reference to divergent forms of
law enforcement investigative cooperation. However, the actors within, and the subjects of, JITs can
differ considerably in different parts of the world. For example, in New South Wales (Australia), the
designation ‘joint investigation team’ can be used to describe a team of specially trained Department
of Community Services officers and police who handle allegations of criminal child abuse (Parlia-
ment of New South Wales 1997). In the Baltic Sea Task Force (2002), the term relates to direct co-
operation between case officers from different member countries. In the EU, however, unlike parts of
the world in which the term has no strict definition, Article 13 of the EU Mutual Legal Assistance
Convention (EU MLA Convention) clearly defines a JIT as an ‘operational investigative team consist-
ing of representatives of law enforcement and other authorities from different Member States and pos-
sibly from other organisations like Europol and Eurojust’ (Council of the EU 2000a). The purpose of
JITs is to jointly investigate a criminal case using a bi- or multinational team that is likely to be oper-
ating from one location, they may be multidisciplinary (e.g., police, customs, prosecutors) and are set
up for single investigations within an agreed timeframe. Such a team should be established based on a
so-called JIT agreement between the participating Member States and must carry out its activities in
accordance with the law of the Member State in which it operates.  

58 The Baltic Sea Task Force is a police cooperation arrangement of the Council of the Baltic Sea states; see
visited 28 February 2011).

59 For further details on JITs and the corresponding legal framework, see for example, Helmberg (2007) and Schalken and
Pronk (2002).
JITs as established under the EU MLA Convention contain three key innovative features that have given rise to high expectations for their efficacy. First, seconded members – that is, those who operate outside their national state while participating in a JIT – are entitled to be present while investigative measures are undertaken and can even be given powers by the host state to undertake certain investigative measures themselves. Second, a seconded member can request his or her own national authorities to take investigative measures required by the joint team. Such a request should then be dealt with under conditions that would apply to a national request, i.e., the investigation should in effect be considered in all participating Member States as if it were a national investigation. Third, all information and evidence obtained during the operation of a JIT can be fully shared among the participating Member States. The JIT agreement thus eliminates the necessity of sending letters of request in order to exchange information and evidence in the case.

7.2.2 Introduction of the ‘joint investigation team’ in the EU legal framework

An enhanced understanding of the JIT concept and its projected role and place in European police cooperation first requires an in-depth look into the emergence and origin of the JIT concept in the EU; specifically, how it was introduced into EU JHA policy-making, where it came from and what ideas underlie it. These questions are answered using an analysis of JIT-related policy documents produced between 1993 and 2000 by various EU Council Working Groups.

JITs first appeared in the EU policy-making arena in a 1994 discussion paper by the German delegation to the Customs Cooperation Working Group (Council of the EU 1994a). This paper, which was related to the revision and updating of the Naples Convention, was based on German customs authorities’ suggestions for a new convention. One such suggestion, the ‘creation of joint teams,’ reappeared in the first draft for the Naples II Convention forwarded by Germany, which offered ‘joint investigation teams’ as an additional method of cooperation over and above traditional mutual assistance:

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60 Convention of 7 September 1967 between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on mutual assistance between customs administrations.
In the framework of the fight against international organized groups of criminals, for a limited period of time and in order to attain a specific investigative objective, it can become necessary to form a joint investigation team involving officials from two or more Member States. The idea is to make it possible to identify and combat the organizational structures of the groups of criminals. (Council of the EU 1994b)

The original German text of the draft uses the phrases Gemeinsame Ermittlungsgruppe and Gemeinsame Fahndungsgruppe, both of which are translated in the English version of the draft as ‘joint investigation team’. In 1997, the Council adopted the Naples II Convention, and the possibility of setting up ‘joint special investigation teams’ for customs investigations was formalised (Council of the EU 1997h). These were however not the JITs that have been (and still are) the subject of political ambition.

7.2.3 Joint investigation teams in the Mutual Legal Assistance Convention

Contrary to common belief (e.g., Nagy 2010: 107), the concept of joint investigations in criminal investigations and the idea of giving these a legal basis in the EU legal framework was not introduced in the Conclusions of the European Council meeting of 1999 in Tampere but was already in circulation by 1996. In 1995, a Working Group on Mutual Assistance in Criminal Matters began discussions on a new convention for mutual legal assistance in the EU, which was seen as additional to the 1959 Council of Europe Mutual Legal Assistance Convention61 and other existing EU instruments on mutual legal assistance (Vermeulen 2006). In April 1996, during the drafting process, the German delegation presented a note on modern methods of cross-border investigation to the working group (Council of the EU 1996a) that discussed a total of seven modern police cooperation methods in criminal investigations to be considered, including the use of ‘joint investigation teams’. However, whereas the other six investigative methods were each outlined in detail, there was no further explanation for the concept of ‘joint investigation team’. Therefore, although it is likely that the idea was

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61 European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959.
explained orally in the working group (interview #24), none of the proceedings of the working group or drafts of the Convention at the time has any explanation.

In March 1999, the German Presidency once again forwarded a proposal to include concrete provisions on joint investigation teams in the EU MLA Convention (Council of the EU 1999a). This proposal referred to an apparent political agreement on this issue by the Council in its meeting of 4 to 5 December 1997. According to the accompanying note, the Council had ‘decided that, in addition to the provisions on controlled deliveries and use of covert investigators, further provisions on modern transnational investigation methods, particularly joint investigation teams, for mutual assistance in criminal matters should be drawn up by mid 1999’. However, close scrutiny of the published minutes of this JHA Council meeting reveals no such discussion, let alone an agreement on this particular issue (Council of the EU 1997b).

The proposal also contained references to presumed legal precedents for joint investigation teams, specifically, provisions in the Naples II Convention, in the Italian-Swiss Additional Treaty to the European Convention on mutual assistance in criminal matters62 and in the ‘relevant’ Benelux Treaty. As discussed above, the Naples II Convention does indeed contain a provision for joint investigation teams, which, however, was also the result of a German initiative. In the Italian-Swiss agreement, ‘joint investigation teams’ are mentioned only in Article XXI, which states that ‘in the framework of a criminal investigation judicial authorities possibly accompanied by police … could work together in a joint investigation team.’ The agreement does not, however, contain any further details, elaboration or practical provisions on joint investigation teams. The ‘relevant’ Benelux Treaty referred to is most probably the 1962 Benelux Treaty63 on extradition and mutual legal assistance, which actually contains no provision on joint investigation teams, although its Article 26 does mention the possibility

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that law enforcement officers could ‘render assistance’ on the territory of one of the other contracting parties. According to this particular article, the officer in question will be handed a commission rogatoire, which should include explicit instructions on the officer’s activities. It remains unclear, however, how this assistance could have been interpreted as a ‘joint investigation team’.

Overall, the German proposal makes explicit reference to an apparent political agreement and three legal precedents to support the introduction into the MLA Convention drafting process of the JIT provision; however, on closer inspection of these references, it becomes difficult to verify their authenticity and relevance. What is even more remarkable is that the proposal completely lacks any references to the actual practices of and/or obstacles in cross-border criminal investigations: it includes no professional arguments or considerations of the feasibility of a joint team within the context of European policing. Put simply, the initiative is totally devoid of professional rationality.

Nor do the subsequent discussions and different draft versions of the relevant provisions in the Convention show any sign that consideration was given to the practicalities of police cooperation in Europe or the feasibility of joint teams in this context. Admittedly, these documents, because they had a projected external career, might not capture all that was discussed in closed meetings of the working groups. Nevertheless, four years passed and hundreds of documents were produced between the first discussion note on JITs in the drafting process in 1996 and the finalisation of the MLA Convention in 2000. If a professional rationality on the feasibility and practicality of JITs played any role in the discussion, it would be very unlikely that there would be no mention of this in the documents. Yet only the explanatory report on the final version of the MLA Convention contains a single reference to JITs that is based on a professional perspective:

Experience has shown that where a State is investigating offences with a trans-border dimension, particularly in relation to organised crime, the investigation can benefit from the participation of law enforcement and other relevant personnel from another State in which there are links to the offences in question. (Council of the EU 2000b)

It remains unclear, however, to what ‘experience’ reference is being made.
7.2.4 Political ambition related to JITs

The discussion on JITs, however, did not take place only in the technical working group dealing with the draft EU MLA Convention; it also appears simultaneously in various strategic EU policy documents, which all reflect a clear political ambition. The first strategic policy plan that refers to joint teams is the 1997 Action Plan to combat organised crime (Council of the EU 1997a), which refers specifically to ‘multidisciplinary integrated teams’ that ‘discuss the results of Europol's analyses with a view to initiating large-scale joint multidisciplinary investigations involving two or more Member States’. This same year, in its Article 30(2), the Treaty of Amsterdam formally introduces a general provision that envisages, without any further specification, the involvement of Europol in ‘joint teams’.

This provision is then elaborated in the Vienna Action Plan of 1998, which foresees the drawing up ‘an adequate legal instrument extending Europol’s powers to the activities referred to in Article 30(2) TEU’ and sees the ability of Europol to ‘act within the framework of operational actions of joint teams’ as one of the plan’s priorities (Council of the EU 1998b). Interestingly, even though the idea of JITs had been introduced two years earlier in the Working Group on Mutual Assistance in Criminal Matters, the draft of the MLA Convention existing at that time (December 1998) did not contain a provision on JITs (see Council of the EU 1998a).

A year later, however, the Tampere Programme calls for ‘joint investigative teams as foreseen in the Treaty to be set up without delay’ (European Council 1999), an ambition driven primarily by the idea of translating the political points of departure in the Treaty of Amsterdam on the single area of Freedom, Security and Justice into practical matters. The actual process of including these ideas into the drafting of the Tampere Conclusions was closely guarded by the Finnish preparation team that generated the initial idea for such inclusion. At that time, support for this idea was based on the belief that working through JITs would be very beneficial for the development of Europol, which in 1999 had just taken up its duties (interviews #13 and #14).

Political ambition in relation to JITs was further spurred by the expected slow ratification of the MLA Convention with regard to the introduction of JITs. As one senior official interviewed explained, at
that time the debate on JITs within the Council structures was dominated by two thoughts: First, it was believed that the tradition of mutual legal assistance was not modern enough to combat contemporaneous transnational crime; that is, working with ‘letters rogatory’ was an antiquated approach in modern investigations, and JITs would be more efficient. Second, the policy-making was strongly driven by the belief that to reach the single common area of Freedom, Security and Justice envisioned in the Treaty of Amsterdam, common investigations would be an absolute necessity (interview #24).

An attempt was therefore made to create a separate Framework Decision on JITs with a much speedier implementation process, but this attempt failed in March 2000 (Council of the EU 2000c; Nilsson 2004b: 15). After 9/11, however, the perceived threat of terrorism opened up new windows of opportunity for the remaining JHA issues in the EU (Den Boer 2003: 205), and the JIT Framework Decision was given a second chance. Specifically, the extraordinary Council meeting in September 2001 invited the Member States ‘to set up one or more joint investigation teams without delay’ (Council of the EU 2001a). Subsequently, Belgium, France, Spain and the UK presented a joint initiative for a Framework Decision on joint investigation teams (Council of the EU 2001b), which contained exactly the same text as had been tabled 18 months earlier and had lain dormant since in the Council Secretariat (interview #24). Political agreement on this issue was then reached virtually without discussion (Nilsson 2004b: 15), and the Framework Decision on JITs was adopted soon after (Council of the EU 2002a). This instrument included an obligation for Member States to implement the provisions on joint teams before the end of 2003 and, in that same year, the Council also adopted a Recommendation introducing a model agreement for JIT establishment (Council of the EU 2003b).

Subsequent efforts to promote joint teams are also reflected in, for example, the 2004 Hague Programme (Council of the EU 2004a: 22–23), the 2009 Stockholm Programme (Council of the EU 2009a: 41), the activities of the (former) Police Chiefs Task Force (Council of the EU 2004b, 2007a), and on the websites of Europol and Eurojust.64 These efforts often focus on JITs as an end rather than a means to enhance police cooperation.

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64 Europol and Eurojust maintain a dedicated page on JITs on their websites; see for example, https://www.europol.europa.eu/content/page/joint-investigation-teams-989 (last visited 8 August 2011).
7.2.5 An early initiative

One example of a visible political push to use JITs in practice began in a February 2000 meeting when French President Jacques Chirac and Dutch Prime Minister Wim Kok agreed that France and the Netherlands should form a JIT to combat the production and trade of synthetic drugs (NRC 2000). This agreement was reached against a background of divergent drug policies that had complicated the bilateral relation between France and the Netherlands for many years. However, when Chirac and Kok agreed to establish a French-Dutch JIT on synthetic drugs, no specific legal basis for such teams in the EU was available. The EU MLA Convention was signed three months later in May 2000, and it would be 2004 before most EU countries, including France and the Netherlands, had transposed the EU policy instruments into their national legislation to provide a legal base for cross-border JITs.

As a follow-up to the Kok-Chirac agreement, the Dutch Ministry of Justice organised a meeting in The Hague in November 2000, in preparation for which the police commander of the Synthetic Drugs Unit wrote a letter to the ministry that questioned the feasibility of a French-Dutch joint team on these drugs. Judging from his experience, he argued, it was obvious that no shared problem between France and the Netherlands existed because the trade in synthetic drugs in France was of a totally different calibre than the production and trade in the Netherlands. He therefore proposed that a thorough analysis be carried out first to accurately assess whether a shared problem actually existed that would justify a joint team (Ministerie van Justitie 2000a).

The first meeting between French and Dutch representatives on this subject took place on 27 November 2000 at the Dutch Ministry of Justice in The Hague. The list of participants shows that, of the 14 persons present during this meeting, only one was a police officer, the above-mentioned commander of the Synthetic Drugs Unit. The other participants were civil servants from the French and Dutch Ministries of Justice (Ministerie van Justitie 2000b). At the meeting, it was decided that a steering

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65 The Synthetic Drugs Unit existed on a national level in the Netherlands and targeted the higher echelons of the criminal organisations producing and trading synthetic drugs and their precursors. In 2005, it was integrated into the National Crime Squad of the Netherlands’ police.
committee (Comité de pilotage) and a bi-national working group (groupe binational) would be established to prepare the JIT. Meetings followed for about a year and possible pilot cases were discussed. Then, during a meeting in Paris on 26 September 2001, it was concluded that no operational information was available that would support the need for a Dutch-French joint team on synthetic drugs. Thereafter, in June 2002, the prosecutor responsible for the Synthetic Drugs Unit wrote a letter to the Dutch Minister of Justice stating that no common problem in the field of synthetic drugs between France and the Netherlands had been identified that would justify a JIT (Ministerie van Justitie 2002b). A French prosecutor, however, noting the differences in the cultural and legal systems of France and the Netherlands, sees these differences as a significant cause for the failure to establish the JIT (Vuelta Simon 2007: 267–268). Regardless of the exact reason despite the political will to establish a JIT and the high symbolic value given the projected JIT by the Chirac-Kok agreement, the differences in the countries’ cultural and legal systems challenged the team’s feasibility and a lack of professional (investigative) rationale for the cooperation brought these efforts to nought.

7.2.6 The riddle: where did JITs originate?

The German efforts to introduce the JIT concept into the EU legal framework were outlined in the previous sub-sections, and Chapter 4 argued for the domestic security situation and normative ideas at the national level as potential explanatory factors for Member States’ actions in EU policy-making on police cooperation (e.g., Friedrichs 2005; Storbeck and Toussaint 2004: 4). It is therefore not surprising that JITs (Gemeinsame Ermittlungsgruppe in German) were already a frequently used strategy of cooperation between different law enforcement agencies in and between the different Länder (states) of the Federal Republic of Germany years before Germany put forward its EU initiatives. The first Gemeinsame Ermittlungsgruppe was established in 1970 in Hamburg between state police and federal customs to target drug trafficking and resulted in the commonly used abbreviation for such teams, GER (Gemeinsame Ermittlungsgruppe Rauschgift). This close cooperation between police and customs – which in the German law enforcement system have overlapping competences with regard to drug trafficking offences – was aimed at preventing competing investigations on the same target,
interference of one investigation with another and the fragmentation of information (Wamers 1992: 542). In the beginning, the cooperation of the joint teams was not without legal and organisational obstacles even though the legal framework, language and culture between the agencies were largely, if not fully, identical and the organisational variation in German law enforcement agencies is relatively limited. It soon became clear to the participants, however, that the pooling of investigative capacity and the combining of information led to teams with significant leverage in combating drug trafficking, teams that, as a result, could confront targets in the higher echelons of drug traffickers (ibid.).

In 1988, the first written agreement between customs and police that included provisions on joint teams was established in Nordrhein-Westfalen. Two years later, the German federal government promoted the use of joint teams between police and customs in its national drug combating strategy, and the use of GERs has since proliferated all over Germany, even though the team structure may vary according to the situational logic (Wamers 1992: 543). The joint teams of today can consist of investigators from any German law enforcement agency and, although initially deployed only in drug trafficking offences, they are now set up to combat various types of organised crime, including human trafficking and cigarette smuggling (e.g., Ministerium des Innern Brandenburg 2007; Senatsverwaltung für Justiz 2009).

The widespread use of GERs all over Germany indicates that this strategy is seen as a successful tool for cooperation in criminal investigations and that it was in Germany’s interest to present it on the EU level. Most particularly, according to Van Reenen (1989: 49), internationalisation in European policing not only is characterised by cooperation between European police forces, also it can be described in terms of competition between them where they have an interest in promoting their (working) methods, strategies or even products. Such a viewpoint could well explain German efforts to upload the concept of joint teams to a European level. At the same time, however, as shown in the previous section, neither this backdrop nor any other practicalities of JITs were (explicitly) explained in Germany’s initial note on the proposal or discussed in the subsequent policy-making process within the EU Council structures. The question thus arises of the extent to which the innovative features of the JIT concept address the actual obstacles encountered in police cooperation in criminal investigations.
between the EU Member States. More specifically, do JITs add value over traditional methods of police cooperation? To answer this question, the next section addresses the practices of and the existing obstacles in cross-border cooperation in criminal investigations.

7.3 Cross-border police cooperation in criminal investigations

7.3.1 Traditional methods

When the phrase ‘traditional methods of police cooperation in criminal investigations’ is used in debates in the EU, it refers to cooperation through the exchange of ILORs (international letters of request) in cross-border investigations. ILORs, based on the 1959 Council of Europe Mutual Legal Assistance Convention, allow police to facilitate real-time close cooperation by setting up a parallel investigation. This latter means that two (or more) investigation teams simultaneously target the same criminal activities or structures under international coordination that, together with the means for information exchange, is detailed in ILORs sent back and forth between the participating countries (Block 2008a: 76; Harfield 2005: 119–153).

In its most elaborate form, a parallel investigation is based on mutually exchanged ‘open-ended’ generic ILORs through which the participating law enforcement agencies establish a legal basis for the direct and immediate exchange of intelligence whenever it becomes available during the investigation. For this purpose, open-ended ILORs contain a request to take any preliminary measures necessary in the course of the investigation as well as other coordinating arrangements. If and when, in a later phase of the investigation, certain tactical measures (e.g., interception of communication, controlled deliveries) become necessary or evidential requirements (e.g. searches, interrogations, confiscation of documents) are identified, additional ILORs can be issued for these specific purposes (interview #1; see also Harfield 2005: 128 and Spapens 2010: 4).

7.3.2 Obstacles to cooperation in criminal investigations
The growing literature on cross-border police cooperation in criminal investigations (e.g., Block 2008a; Borgers and Moors 2007; Den Boer and Spapens 2002; Deflem 2002; Harfield 2005; Hewitt and Holmes 2002; Hofstede et al. 1993; Larsson 2006; Spapens 2008; Tak 2000a, 2000b), however, emphasises its complex nature and identifies common obstacles to cooperation. Hewitt and Holmes (2002) particularly, writing from a UK police practitioner’s perspective, analyse the complexity of the logistic, legal, institutional, cultural and political problems faced in cross-border cooperation in criminal investigations, and categorise the key obstacles identified based on legal differences between the Member States and a number of organisational aspects related to police cooperation (Hewitt and Holmes 2002: 3–10). These issues are explicated below using tangible illustrations.

First, the legal differences between the Member States, some of which are deeply embedded in the different legal systems and cannot thus be easily harmonised, can result in the allocation of investigative roles and powers to different actors. For example, the powers that are vested in the investigating magistrates in some Member States are the competences of public prosecutors or, in the UK, of senior police officers in other Member States. These differences can cause miscommunication and difficulties in identifying the competent authorities and aligning the communication between them.

Likewise, in different legal systems, different rules of evidence can apply, which is most evident between the (British) common law system and the civil law systems used in most other Member States. For instance, whereas in most civil law systems, a report filed by a law enforcement officer has evidential value in court proceedings, under the common law system, the requirements for the (chain of) evidence are usually much stricter. Hence, UK police officers make (a highly regulated) use of official pocket books in which to record every observation, which subsequently forms a link in the chain of evidence. For police in most other European countries, this practice is non-existent and in a joint case could lead to evidentiary problems if the case were heard in a UK court. This situation is well illustrated by the court case on the investigation of 58 Chinese immigrants found dead in Dover in June 2000 (BBC News 2000a; Johnson 2002). This hearing required that the original notes on a particular observation written by a Dutch police officer on the sleeve of his shirt be submitted as evi-
Dence, and it took considerable effort by the Dutch police to locate them (Van der Schans and Van Buuren 2003: 151).

Differences in the admissibility of evidence obtained through the use of covert policing techniques can also obstruct police cooperation in criminal investigations. For example, police in the UK and Germany are allowed to make use of a so-called participating informant (*Vertrauensperson*), but for police in the Netherlands, such use (of a *Burgerinfiltrant*) is prohibited. On the other hand, phone interceptions are an admissible covert police technique for police in the Netherlands but not for police in the UK and Sweden (Tak 2000b: 348–353).

Cooperation in criminal investigations can also be impeded by the existence of divergent disclosure rules; that is, the rules that determine whether, when, which and to whom information from investigations should or could be disclosed in either the investigating or prosecuting phase. During investigation, for instance, police cannot always share sensitive information flagged ‘for police use only’ with their colleagues across borders, because at some stage in the investigation, these colleagues might have to disclose all the information available to them. Once the case reaches the prosecution stage, in the UK, the Public Interest Immunity exemption\(^{66}\) provides a tool for avoiding the disclosure of sensitive techniques and information sources (Harfield and Harfield 2005: 21); however, in the Netherlands, any information used as a basis for the investigation, as well as its sources, must be disclosed in court.\(^{67}\) In transnational investigations, therefore, the defence could obtain information prematurely while (a part of) the investigation is ongoing in another country.

Undoubtedly, dealing with these differences in jurisdictions takes significant effort, although Tak (2000b: 353) argues that obstacles arise more as a consequence of the lack of knowledge about the system differences than the differences themselves. Nevertheless, the concrete examples presented both by Hewitt and Holmes (2002) and other researchers (e.g., Harfield 2005) show that legal differences not only add to the complexity of police cooperation in criminal investigations (Block 2008a: 77) but also are sometimes so irreconcilable as to obstruct ongoing cooperation. Of course, as dis-

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\(^{66}\) UK Criminal Procedure and Investigations Act 1996, Section 3(6).

\(^{67}\) Only the identity of a covert human intelligence source (CHIS) debriefed by Netherlands police intelligence officers is formally protected (Wet Politiegegevens, Article 12).
cussed in Chapter 2, skilled officers can also use the fragmentation of the legal infrastructure to their benefit (Sheptycki 2002a: 87), for example, by ‘shopping around’ for a jurisdiction in which they have the highest chance of a conviction.

Police cooperation is also hampered by a number of organisational aspects, which, according to Hewitt and Holmes (2002: 3) include not only the fragmentation of law enforcement efforts within a Member State but also the differences in how police in the Member States are organised. These differences are most prominently related to competences and the fact that the policing role in different jurisdictions can be executed by different law enforcement agencies. Another organisational aspect that could hamper cross-border cooperation in criminal investigations is the resource constraints in criminal investigations or even in policing in general. Because these constraints force agencies to prioritise their workload, even between countries with long-established cooperation, national interests are likely to remain paramount over international cooperation (Deflem 2002: 27). Closely related to this aspect are the often pre-set performance targets, which not only encourage the prioritisation of the activities and output by which performance is measured (Hewitt and Holmes 2002: 4) – output that generally does not include cross-border cooperation\(^6\) – but also decrease the flexibility of law enforcement agencies to act upon unexpected cooperation requests. In fact, recent research on police cooperation in criminal investigations in the Belgian, German and Dutch border regions confirms that differences in priorities and the limited flexibility to take on unexpected requests constitute important obstacles to cooperation (Spapens 2008: 278–281). Specific performance targets are also the basis for the case screening criteria used by functionally structured law enforcement agencies, which often makes it difficult for these agencies to cope with organised criminals who frequently change commodities and operation. Only if the different agencies pool their information can criminal operations become visible that otherwise would not have made the case screening threshold (see also Hewitt and Holmes 2002: 4).

\(^6\) For example, the 2006/2007 performance targets for police in England and Wales do not include specific targets for international cooperation (Home Office 2007). The same applies to the Netherlands, where the allocation of capacity for the execution of international requests is not part of the standard planning and control cycle (Vleeming 2008).
Larsson (2006: 458), on the other hand, although he observes similar obstacles, concedes that such factors as cultural differences can also inhibit a shared understanding of cooperation priorities. Most particularly, although a shared understanding of the problem is an important pre-requisite for successful international police cooperation (Deflem 2002: 23), divergent cultures can have different policing standards and different ideas of what constitutes ‘good’ and effective policing (Hofstede et al. 1993: 74; Hills 2009: 311). Likewise, Borgers and Moors (2007: 11), in their investigation of police cooperation in confiscation matters, identify organisational, legal and cultural bottlenecks to successful police cooperation; Den Boer and Spapens (2002) emphasise the importance of trust, linguistic knowledge and a history of networking and personal contacts; and Ingleton (1994) points to the ever-present linguistic barriers.

7.3.3 Addressing cross-border cooperation obstacles

Before examining how JITs address some of the above obstacles, it must be noted that other provisions of the EU MLA Conventions do consider some of the existing obstacles in cross-border investigations. For example, Article 4.1 simplifies the rules of evidence by introducing the *forum regit actum* rule in mutual legal assistance instead of the traditional *locus regit actum* rule, with exception in the case of controlled deliveries, covert investigations and JITs. This move, as Vermeulen (2006: 82) argues, constitutes a revolutionary change in European practice because it means that the requested Member State must comply with the formalities and procedures explicitly indicated by the requesting Member State as long as these are not contrary to the fundamental principles of its law. Likewise, Article 6, by prescribing the exchange of requests directly between the (local) competent judicial authorities, significantly speeds up the formal paperwork. Finally, the inclusion of a number of specific investigative methods – for example, controlled deliveries (Article 12), investigations by officers acting under covert or false identity (Article 14) and interception of telecommunications (Article 18) – contributes to harmonisation in this field.

The question remains, however, what solutions the EU MLA Convention’s concept of joint investigation teams specifically provides to counter the obstacles in cross-border investigations. Obviously, the
multidisciplinary set-up of JITs addresses the problem of fragmentation in cross-border cooperation in
that officers from different police and other agencies (e.g., Customs, Europol) could all be part of a
JIT. A JIT agreement can also speed up the investigation process by requiring the conclusion of only
one agreement to create a common judicial space instead of the sending of multiple ILORs, thereby
reducing the administrative burden and increasing the speed of information sharing.

The other new features of the JIT, however, do not appear to directly address common cooperation
obstacles. For example, although it is certainly an advantage to have the seconded foreign members of
the JIT present at and possibly contributing to operational actions, this practice is not as innovative as
is often claimed. Existing legal frameworks already made it possible for foreign police officers to be
present during or even participate in cooperative investigative measures, and such cooperation has
been practiced in cross-border investigations for many years (Spapens 2010: 4). For example, UK
police officers helped police in the Netherlands by translating intercepted phone conversations in back
slang (Barns et al. 2005: 208), and the Dutch police assisted the UK police in, for example, Operation
Mallard (Johnson 2002: 40). Further, although administrative barriers could be reduced by the stipula-
tion that national conditions should apply to seconded JIT members’ requests to national authorities to
take measures, this provision does not guarantee that the request will be fulfilled in a timely manner.
Rather, as discussed earlier, the limited capacity available for criminal investigations could be a le-
gitimate reason for not prioritising such petitions.

Nor do the MLA Convention provisions on JITs address key obstacles like the differences in disclos-
ure regimes and rules of evidence. Moreover, the efficacy of the innovative feature of ‘freely sharing
information lawfully obtained by a joint investigation team’ could actually depend on admissibility of
the investigative covert techniques used. For example, as pointed out above, evidence obtained from a
participating informant by a JIT operating in Germany that includes Dutch police officers is unlikely
to be admissible in the Netherlands. Table 7.1 therefore summarises the key obstacles in police co-
operation and shows whether the JIT-related and other provisions of the EU MLA Convention address
them. Overall, the table suggests that JITs are likely to encounter similar obstacles as parallel investi-
gations without having the means to overcome them.
In fact, the conclusions of the annual meetings of national JIT experts indicate that such obstacles as divergent disclosure regimes have indeed been encountered in JITs (Council of the EU 2008a, 2008b), a finding that obviously calls into questions the advantage of JITs over the traditional strategy of cross-border police cooperation in criminal investigations. Hence, in a further search for JITs’ potential advantage, the remainder of the chapter outlines some practical experiences encountered with JITs to date.

7.4 Joint investigation teams in European police practice

7.4.1 Implementation in national legislation and regulations

It has been observed that the speed, as well as the legal form, of implementation of the EU MLA Convention provisions and the 2002 Framework Decision on joint investigation teams differ widely between Member States (Commission 2005a). Whereas some Member States (e.g., Sweden) have transposed only the general idea of a JIT into their national legislation and have left the detailed deci-

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69 See, however, the remarks in section 7.4.5 on hidden administrative barriers.
sions to the executing authorities,70 others (e.g., the Netherlands) have created extensive and detailed regulations that prosecutors and police must adhere to before establishing or participating in a JIT (College van Procureurs Generaal 2004). As a result, the different implementations of the JIT provisions in the EU Member States and the differences in the legal systems in which they are embedded are not always reconcilable (Helmberg 2007: 247).

In addition, some the wording of the JIT provisions in the EU MLA Convention is ambiguous and leaves room for different interpretations by Member States, which has led to differences in implementation. For example, although the relevant provisions on JITs refer to ‘team’ and ‘leader’ (singular), legally there are no objections to establishing a JIT with more than one team leader working simultaneously from two (or more) locations. The approach chosen in practice towards JITs is therefore the sole responsibility of the Member State, a situation that has of course led to differences in interpretation and implementation. The Dutch judicial authorities, for example, originally took a somewhat dogmatic approach, defining a JIT strictly as a single team under single leadership in a single location. Currently, however, this approach appears to have been relaxed (Van Daele et al. 2008: 254). Other countries, like France and Spain, adopted a more pragmatic approach from the outset. Under their interpretation, a JIT can be set up as loosely collaborating teams in each participating Member State, based on an agreement to form a JIT but in fact operating independently. In practice, however, this pragmatic approach to JITs differs little from the traditional model of parallel investigations except that the cooperation has a different legal basis.

Finally, not only have Member States implemented the JIT framework in different ways, but some have concluded bilateral agreements on cooperation in JITs that are additional to the EU legal framework. For instance, since 2003, France has concluded bilateral agreements on the establishment and operation of joint teams with seven other Member States (Ministère de la Justice 2009). Overall, therefore, what was envisaged as a single harmonised tool for cross-border criminal investigations has in practice become a patchwork of varying implementation and supplemental bilateral agreements.

7.4.2 Established JITs in the EU

The actual practicality of JITs is now assessed by examining specific experiences with the teams established between 2004 and early 2009, which, according to the documentation, totalled 38.\textsuperscript{71} Although the Netherlands and the UK claim to have established the first JIT in January 2005 (KLPD 2005; NCS 2005), France and Spain actually set up a joint team in September 2004 to target ETA terrorism (Ministère de la Justice 2004). However, the authorities in the Netherlands did not define the pragmatic two-team model used by France and Spain as a JIT under the legal framework of the EU and thus considered the Netherlands–British JIT as the first true JIT. This confusion obviously speaks to the earlier discussed differences in JIT definition and interpretation. Table 7.2 provides an overview of joint teams established in the EU between 2004 and early 2009 and summarises their purpose.

<table>
<thead>
<tr>
<th>Between</th>
<th>Established</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>France-Spain (total 12)</td>
<td>From September 2004</td>
<td>ETA terrorism</td>
</tr>
<tr>
<td></td>
<td>onwards</td>
<td>Islamic terrorism</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Drug trafficking</td>
</tr>
<tr>
<td>Netherlands-UK</td>
<td>January 2005</td>
<td>Cocaine trafficking</td>
</tr>
<tr>
<td></td>
<td>February 2009</td>
<td>Murder</td>
</tr>
<tr>
<td>France-Lithuania</td>
<td>2005</td>
<td>False bank cards</td>
</tr>
<tr>
<td>France-Belgium (4)</td>
<td>From 2006 onwards</td>
<td>Islamic terrorism (GSPC)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jihad recruitment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cannabis trafficking</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organised crime</td>
</tr>
<tr>
<td>France-Netherlands</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Germany-Slovakia</td>
<td>2006</td>
<td>Heroin trafficking</td>
</tr>
<tr>
<td>Netherlands-Belgium (3)</td>
<td>2007</td>
<td>Motorcycle theft</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>Human trafficking</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>Car theft</td>
</tr>
<tr>
<td>France-Germany (2)</td>
<td>February 2007</td>
<td>Turkish left-wing terrorism</td>
</tr>
<tr>
<td></td>
<td>August 2007</td>
<td>ATM robberies</td>
</tr>
<tr>
<td>France-Romania</td>
<td>End 2007</td>
<td>Organised crime (burglaries)</td>
</tr>
<tr>
<td>Spain-Portugal</td>
<td>October 2007</td>
<td>ETA terrorism</td>
</tr>
<tr>
<td>Finland-neighbouring countries: Sweden, Estonia and Lithuania (7)</td>
<td>Various dates</td>
<td>Various</td>
</tr>
<tr>
<td>Germany-Bulgaria</td>
<td>2008</td>
<td>Euro counterfeiting</td>
</tr>
<tr>
<td>UK-Romania</td>
<td>2008</td>
<td>Human trafficking</td>
</tr>
<tr>
<td>Germany-Netherlands</td>
<td>2008</td>
<td>Turkish-controlled heroin trafficking.</td>
</tr>
</tbody>
</table>

Table 7.2 Overview of JITs established between 2004 and early 2009

\textsuperscript{71} The data in this table are based on information from a variety of open sources and interviews. The conclusions of the third meeting of national experts on JITs held at Eurojust states that by November 2007, about 35 bilateral JITs had been established (Council of the EU 2008a). However, on closer scrutiny, it becomes clear that several of the JITs mentioned in these Conclusions have either been counted twice or never reached an operational stage. In general getting complete and accurate data on established JITs in all Member States is difficult, apparently even for those actively involved in this field (see Council of the EU 2011d: 7).
Following their initial cooperation, France and Spain established various other JITs including three more aimed at combating ETA terrorism and related offences (Vuelta Simon 2007: 278). France and Spain also formed a JIT on Islamic terrorism and cooperated in a number of JITs investigating drug trafficking offences (European Parliament 2009a: 36).

In February 2007, France established a JIT with Germany on Turkish left-wing terrorism using a similar set-up as that between France and Spain; there were in fact two teams, one in Paris and one in Berlin, working together based on a JIT agreement. A second JIT between France and Germany was established in August 2007 between the Direction Interrégionales de la Police Judiciaire in Strasbourg and the Landes Kriminal Amt in Baden-Württemberg. This JIT was indeed one team and partly staffed with officers from the Police and Customs Cooperation Centre in Kehl, whose officers, conveniently, are bilingual (Felsen 2011). Altogether, by March 2009, France had participated in 21 JITs (Ministère de la Justice 2009).

Another Member State that has frequently made use of the JIT strategy is Finland, which by May 2007 had participated in seven JITs, mostly with its neighbours Sweden and Estonia (interview #16). Germany up to early 2009 participated in five JITs, beginning in August 2006 with Slovakia and followed suit in 2007 with the two JITs with France as discussed above. In 2008 Germany established one JIT with the Netherlands and one with Bulgaria (interview #31, see also Sensburg 2008: 664). Since 2007, the neighbours Belgium and the Netherlands have established and concluded three JITs.

According to the latest figures, for example in Eurojust’s 2009 annual report, the number of established JITs has increased slightly, with Eurojust national members participating in 7 JITs and Eurojust being notified about the establishment of JITs in 10 cases (Eurojust 2010: 34). Also the Conclusions of the 6th annual meeting of national JIT experts show an (but by no means abundant) increase in the number of JITs, although it is noted that ‘the gathering of accurate statistics has proven to be quite difficult’ (Council of the EU 2011d: 7). Altogether the total number of established (and completed) JITs to date (summer 2011) can be estimated around 60 to 70.
7.4.3 Practical experiences with JITs

Based on a bilateral agreement, France and Spain adopted a pragmatic JIT model in which the officers operate primarily within their own country (Ministère de la Justice 2003). Hence, the JIT provisions are used to establish a common judicial space that allows direct information sharing and, when the need arises, swift coordination. In addition, both French and Spanish officers can cross the border without further formalities to assist their colleagues on the other side. In practice, the cooperation between the teams is very close and has resulted in mutual trust (Vuelta-Simon 2007: 269). Not surprisingly, then, the JITs established so far between France and Spain have had significant operational success, including a sizable seizure of cocaine in September 2006, numerous arrests of suspected ETA members and, in one case, the seizure of 350 kilos of explosives in an ETA safe house in Cahors in October 2007 (Le Figaro 2007).

The approach has proven particularly practical and successful in combating ETA terrorist activities, whose preparation and support is often carried out on French soil but whose actual implementation takes place on Spanish soil (interview #11). Not only do a large number of the 200 Spanish police officers involved in cross-border cooperation with France on ETA terrorism participate in one of the JITs (El Pais 2007a), but after the killing of two Spanish police officers who were part of a JIT on combating ETA terrorism in Cap Breton, France and Spain announced that they would establish a permanent joint team on ETA terrorism (El Pais 2007b). They are thus taking maximum advantage of the legal provisions for the JIT strategy.

Not all experiences, however, are so positive. Although establishing a multinational JIT was one of the Netherlands’ political priorities for cross-border police cooperation during its EU Presidency in the second half of 2004 (Netherlands Police Institute 2003), its various top-down efforts over approximately one year to establish a JIT between Belgium, Germany, the Netherlands and the UK yielded no results. Such failure, which occurred despite analytical support from Europol through the ‘Maritsa’ AWF, is probably partly attributable to the stifling structure of the whole project, which involved a steering group, a project board, a project manager, and a Joint Intelligence Group with no clear relations between them (Rijken 2005: 40). In addition, the implementation of the JIT provisions
in the participating Member States differed considerably and the parties came to no shared understanding of the case to be investigated (*ibid.*: 22–23).

Nevertheless, in the wake of this failure, two police commanders from the Netherlands and the UK recognised the existing window of opportunity to experiment with a JIT and took the initiative of establishing a bilateral JIT targeting cocaine trafficking. One Dutch police officer acted as team leader and English was the team’s working language. To assess how the JIT concept would work in practice, the commanders opted for a simple investigation (interview #4), which, although anticipated to last about six months, was successfully concluded after three. The bilateral team setting was also relatively straightforward, although considerable effort had to be invested in organising accommodations, financing, training and attending to the legal details enabling secondment of the British officers. This experience did bring to light, however, one clear advantage of working in a JIT: the opportunity to operate collectively using actual expertise from different countries and to learn from each other.

Nevertheless, it also showed that differences in disclosure rules between the Netherlands and the UK are a critical issue. Most of the information available in the UK was considered sensitive information (for police use only) so the UK investigators, in order to comply with British law, had to prevent this information from being disclosed when supplying information to the JIT. The information from the UK was therefore provided to the JIT via conventional channels (Rijken 2006: 113–114) so that the seconded members from the UK were not ‘contaminated’ with intelligence that they might have had to disclose in a Dutch court (interview #4). As one involved police commander remarked about the British-Netherlands’ JIT experience, ‘[w]e proved that a JIT can work and that it has some advantages. However, based on my experience, I cannot now say that a JIT provides a greater chance of getting results than a parallel investigation’ (interview #4). He also added that good personal contacts, the ability to bridge cultural differences, a shared interest and a good knowledge of the legal system of the cooperating partner had been crucial elements in the JIT’s success.

7.4.5 Hidden administrative barriers
JITs, because they require only a single agreement instead of multiple ILORs, were also expected to decrease the administrative burden. In practice, however, hidden administrative barriers have emerged in both the setting up and the running of JITs that could diminish the advantage of a single JIT agreement. For example, the first Netherlands-Belgian JIT targeted an organised crime group suspected of large-scale motorcycle thefts, which they carried out not only in the Netherlands and Belgium but also in Germany. Hence, the German authorities were also invited to participate in the JIT. However, because the German police felt that their interests could be equally served by ILOR-based cooperation, they eventually decided not to participate (Van Daele, Spapens, Fijnaut 2008: 255). This refusal may also, however, have been partly engendered by the significant administrative burden that falls upon German prosecutors who participate in a JIT. For instance, one German police officer who was closely involved in a JIT with France in 2007, although he praised the efficiency of the JIT in terms of swift and easy information sharing and operational measures, also noted in his interview that a German prosecutor running an international JIT (as opposed to a German domestic GER) carries a significant administrative burden of weekly reports and loss of discretionary power. He therefore concluded that German prosecutors are minimally enthusiastic about starting a JIT (interview #31).

Another potential administrative burden related to the direct sharing of information and evidence was brought to light by a JIT established in 2009 between Belgium and the Netherlands. In this case, once the Belgian police officers in the JIT officially filed a report with the Belgian investigating magistrate, it came under the magistrate’s purview and the officers were prevented by Belgian regulations from sharing it directly with JIT members from the Netherlands. This constraint resulted in considerable delays in the information flow (Nederlandse Politieacademie 2009).

One final observation in this context is that although JITs were specifically intended to be a multilateral instrument, all JITs established to date have been bilateral and generally established between neighbouring countries. Only recently apparently Sweden participated in a French-Spanish JIT, thus in fact making it a tri-lateral JIT (see Council of the EU 2011d).
personal contacts and a shared interest in a specific criminal investigation are important for JIT success. Hence, as Spapens (2010: 10) argues convincingly, JITs are most effective if the investigation targets a close-knit criminal group running highly integrated operations across two or more countries. If not, the advantage of a JIT is far from obvious.

7.5 Conclusions

By analysing the historical development of the legal frameworks for JITs and the sociological factors that impact them, this chapter has outlined why the popularity of the JIT instrument does not in practice live up to the political expectation. First, JIT’s, developed as a police cooperation strategy in the EU based on the assumption that the traditional ILOR-based strategy of cross-border police cooperation in criminal investigations was outdated and insufficient, were believed to have advantages, particularly in multilateral investigations. However, the present analysis demonstrates that although JITs have some innovative and potentially efficient features, they do not remedy most of the existing obstacles of cross-border police cooperation in criminal investigations. Rather, despite the ‘innovative’ JIT provisions; in practice, cooperation seems to thrive predominantly because of other factors.

Second, the JITs established to date have, like parallel investigations, met with a variety of obstacles, sometimes as a result of legal differences between the Member States regarding, for example, covert investigative techniques and divergent disclosure regimes. Third, the JITs established so far have been mostly established between neighbouring states that already had vast experience with mutual police cooperation; truly multilateral JITs have not yet been established. Fourth, in spite of the belief that JITs would decrease administrative burdens, in some Member States, ‘hidden’ administrative barriers exist to setting up and running JITs, for example, the administrative burden on German prosecutors initiating JITs and the administrative barriers raised by Belgian national regulations on the sharing of police reports already filed with the investigative magistrate. Because police and judicial practitioners recognise these practical barriers, they are reluctant to abandon their tried-and-tested methods for joint investigation.
In terms of the central thesis question – whether EU Council policy instruments aimed at enhancing police cooperation shape police cooperation practices in the EU – the findings demonstrate that the JIT concept, originally introduced on the EU level by Germany and most likely modelled on successful domestic use of this strategy, is not so easily translatable to police cooperation at the EU level. Obviously, this latter is far more complex than between the German Länder, whose legal, organisational and cultural differences are minimal or non-existent. The findings also show that neither the particulars of the joint team strategy nor the complexity of the deployment context were thoroughly discussed in the JIT-related EU policy-making, and indeed may not have been addressed at all. Rather, the agenda setting, policy shaping and decision-making related to JITs built on political and legal arguments. Hence, legal and political considerations in policy-making on police cooperation, although indispensable, are, as the practical experiences with JITs clearly show, insufficient for devising a feasible and effective policy. Had the German model been more deeply discussed and the key aspects and practical experience with the cooperation strategy been taken into account, some of the obstacles met by JITs in practice could have been anticipated and perhaps avoided.

In sum, the findings related to the two JIT instruments indicate that a lack of professional rationality in the EU Council policy-making is likely to produce an instrument that, in the complex domain of police cooperation, cannot deliver on its promises. Most particularly, even though JITs have been, and still are, pushed top-down based on a political agenda supported with legal arguments, their presumed advantages in coping with the obstacles in cross-border criminal investigations has not yet been demonstrated beyond limited bilateral use between countries that already had a good history of police cooperation. The findings in this chapter thus strongly imply a direct relationship between the absence of professional rationality in the policy-making on the JIT provision in the EU MLA Convention and the Framework Decision and the hitherto limited effect of this instrument on police cooperation practices, which is itself clearly demonstrated by Member States’ apparent need to supplement the JIT framework with bilateral agreements.
Chapter 8
Case study: liaison officers

8.1 Introduction

This chapter presents the second of the two in-depth case studies. It explores both the usage of liaison officers and the background and effects of European policy efforts on this practice. The use of bilateral liaison officers – also known as drug liaison officers, international liaison officers, overseas liaison officers or legal attachés – is one of the most widely used strategies by police from the Member States for information exchange, cooperation and network maintenance. The case study is also particularly relevant because the use of liaison officers in police cooperation has been the subject of significant European policy efforts aimed at regulating their posting, formalising their work, and enabling their common use. Such efforts began in the 1980s with the policy instruments of the TREVI Council of Ministers and continued after 1993 with several instruments adopted by the EU Council.

At the same time, the deployment of liaison officers is seen by both policy-makers and practitioners as a very effective and efficient strategy for police cooperation.

The case study therefore investigates how the policy instruments on liaison officers have been shaped and to what extent they have affected practices in the Member States with regard to the posting of liaison officers and the liaison officers’ role and tasks. In line with the earlier chapters in this study, the analysis of the policy-making is framed by Snellen’s (1987, 2002) four rationalities model, with a specific focus on the extent of professional rationality in the policy-making. An in-depth description of the use of liaison officers and their practices in police cooperation provides the background for this analysis.

The review of the academic literature on police cooperation brought to light only a few empirically based contributions on the practices of police liaison officers (i.e., Bailey 2008; Bigo 1996 and 2000a; Block 2007c; Fowler 2008; Nadelmann 1993). Other contributions on this issue usually build on either Bigo (1996, 2000a), who provides an extensive account of the use of liaison officers in European policing but does not detail their practices, or Nadelmann (1993), who does detail many prac-

73 A concise version of this chapter is published in Block 2010.
tices but from a U.S. law enforcement perspective. Therefore, to provide a background against which
to examine policy efforts in this field, Section 8.2 details the practices of liaison officers in a largely
descriptive manner. Specifically, it details the role and tasks of liaison officers in police cooperation,
using the practices of EU liaison officers posted in Russia as an illustration. These officers serve as a
valid representative case because their work is essentially the same as that of liaison offices in any
other country (interviews #32 and #33). Section 8.3 examines the initial use and development, and
current use and relevance of liaison officers for cooperation by police in the EU Member States. Sec-
tion 8.4 then maps out and examines in detail the policy instruments related to the posting and tasks of
liaison officers adopted under TREVI and by the Council, with particular attention to the rationalities
involved in the agenda setting and policy shaping for each of these instruments, and the instruments’
effects. The concluding section summarises the findings and reflects on the implications in light of the
central research question of whether EU Council policy instruments aimed at enhancing police co-
operation shape police cooperation practices in the EU.

8.2 Liaison officers: practices

8.2.1 Role of liaison officers in police cooperation

Liaison officers are law enforcement officers posted on behalf of their agency in another country (i.e.
i.e., the host country) to liaise with the law enforcement agencies in that country. This strategy, which
has emerged as a practical form of interagency cooperation between police forces, allows police to
directly (horizontally), and sometimes informally, exchange information across borders and coordi-
nate cooperation efforts, mostly in criminal investigations.

Although the exact role of liaison officers, being subject to national preferences and regulations, can
differ widely between Member States, all share the common responsibility of developing and main-
taining a network of privileged contacts in their host country and acting as intermediaries between
their agency and the host country’s law enforcement agencies (Nadelmann 1993: 153). They therefore

74 Where no specific references are provided, the data in this section are based on interviews # 6, 12, 18, 32, and 33, as well
as the author’s personal experiences discussed in Block 2007c and Block 2008b.
provide support to and have an intelligence role in operational police cooperation. However, it is important to realise that liaison officers do not have investigative powers in the jurisdiction in which they are posted. Rather, using their direct contacts in either country, they facilitate requests from and to their home country for intelligence, information and evidence, as well as requests for (coercive) investigative action such as suspect interviews, arrests and extraditions (ibid.). Depending on the specific tasks assigned and the particulars of the investigation, these duties can, for example, expand to coordinating joint (covert) operations or facilitating the judicial follow-up of the initial information exchange. As a result, a simple request for intelligence could end up as a lengthy, logistically and legally challenging endeavour. Liaison officers also frequently have a tactical role: to explain the legal and operational particulars of the law enforcement systems of their host country to their colleagues at home and advise on the most promising avenues for cooperation. Some liaison officers are also tasked with informing and advising their agencies at the strategic level on issues and developments in the host country (interviews #32 and #33).

Most EU liaison officers are accredited as diplomats in the host country – or host countries if they serve more than one nation – and enjoy diplomatic immunity. With few exceptions, they are seconded to their country’s embassy or consulate in the host country and maintain an office there. In the 1980s, there were discussions amongst the then EC Member States on whether liaison officers should actually have diplomatic immunity: some Member States argued that liaison officers stationed within the EC specifically should have the same status as police officers in the host country, and all agreed that liaison officers posted outside the EC should have diplomatic immunity (Ministerie van Justitie 1990). Nowadays, it is common practice for liaison officers from EU Member States posted in or outside the EU to be accredited diplomats. However, although this accreditation offers them a formal position, both Bigo (2000a: 70) and Nadelmann (1993: 109) emphasise the ambiguity of the liaison officers’ role: on the one hand, they can use their informal direct contacts with local law enforcement to exchange information and secure quick responses to their requests; on the other, they are formal representatives of their country and can choose where necessary to formalise their efforts when informal solutions prove insufficient. One exception to this practice of seconding liaison officers to an embassy
are the counter-terrorism liaison officers in Europe, who are usually seconded to the counter-terrorism agency in the host country in which, because of the sensitivity of the matter, they function as a dedicated point of contact between two specific agencies without a wider remit (Bigo 2000: 75; interviews #6, #22).

8.2.2 Case work

Within the EU, the police can choose between several channels for information exchange and cooperation, including, as discussed in Chapter 3, Interpol, Europol, the Schengen Information System, the Police and Customs Cooperation Centres and of course direct contacts. Requests for information and cooperation, usually referred to as ‘cases’, are likely to be routed through liaison officers instead of through any of the other available channels whenever they require more active support than simple information exchange. In other words, the liaison officer channel is usually chosen because of the complexity, sensitivity or urgency of the case. Further, although cases routed through liaison officers usually relate to serious organised crime investigations, liaison officers may also lend support to solve local crime problems. This assistance is exemplified by the posting to Jamaica of a London Metropolitan Police detective as liaison officer in support of an operation targeting local gun violence in London (BBC News 2000b).

As with many other concepts in European policing, however, there is no widely shared standard (Hobbing 2008) of what constitutes a ‘case’ in the work of liaison officers. For governance and accountability purposes, most liaison officers are obliged to file every new inquiry or intelligence dissemination as a separate ‘case’. For example, to comply with their national regulations, German and Dutch liaison officers must open a file for each new subject regardless of whether it originates from their home country or from the host country (interview #32; Block 2007c). Such a file normally contains all incoming and outgoing communications related to the case and serves two basic functions. First, it registers the actual information exchanged in order to comply with relevant regulations (e.g., data protection rules and judicial prerequisites for the information exchange), somewhat in line with what Scharpf (1999: 6) termed ‘input-oriented legitimacy’. Second, it serves as a basis for periodic
management reports that are part of what Scharpf (ibid.) termed the ‘output-oriented legitimacy’ (i.e., the effectiveness and efficiency) of the liaison officer’s work.

Simply counting the number of cases, however, does not provide a comprehensive picture of a liaison officer’s workload. A simple case, especially if the work can be done by e-mail and fax, could entail nothing more than a one-time information exchange taking less than an hour. In contrast, a complex case could entail numerous information exchanges followed by the facilitation of several formal requests for investigative actions. Such cases could involve hundreds of messages, various meetings and a great deal of travel, which together would take up many work hours over several months or even years. Cases can be either ‘referred’ or ‘discovered’ (Bailey 2008: 97), meaning that they either originate from the liaison officer’s home country or are brought to the officer’s attention by the host country. The bulk of a liaison officer’s casework, however, is likely to consist of referred cases, although in the spirit of reciprocity discovered cases usually receive equal priority (interview #32; Block 2007c: 375).

Liaison officers are seen as effective and efficient because their personal contacts and knowledge of the system place them in a better position to handle the bureaucracy or other hurdles in the host country’s system. The following case provides a telling example of how effective and efficient a network of liaison officers can be for police cooperation: In September 2000, a dead man was found in a meadow just north of Amsterdam, with a Russian passport lying close to his body. The victim’s body was severely mutilated, making police suspect a connection with organised crime and prompting them to establish a large homicide team. Since getting information from Russia through Interpol channels could take some weeks, the team contacted the Netherlands’ liaison officer in Moscow, who within a few hours was able to confirm the victim’s identity. He was also able to inform the team that the Moscow police had chased the victim, together with another person, on suspicion of rape five days earlier but had lost them near the capital’s airport, Shermetyevo. The other person had already been found deceased in the landing gear compartment of a Boeing 737 that had arrived in Amsterdam from Moscow. Apparently, the victim had fallen into the meadow from the same plane when it lowered its undercarriage on approach to the airport. The swift information exchange with the Russian authorities
through the liaison officer made it possible to immediately close the investigation, which otherwise could have consumed a significant amount of valuable police investigative capacity.\textsuperscript{75} Speed, however, is not the only advantage of such direct cooperation. When a liaison officer presents a request in person to the requested agency, he or she is often able to obtain support at the highest level necessary and have the request assigned directly to a competent case officer. This direct contact not only increases the speed with which the request is handled but also decreases the risk of premature disclosure, an advantage that is particularly valued by police dealing with countries in which corruption is suspected.

\textbf{8.2.3 Differentiation in tasks and practices}

How liaison officers organise their work depends on national legal regulations, the police system in their home country and their personal preferences (interviews #32, #33). One example of task variation resulting from divergent national regulations is whether a liaison officer is tasked by his or her agency to use covert human intelligence sources (CHIS) in the host country. Because the EU Member States differ in their legislation of and approach to the use of CHIS, some allow their liaison officers posted abroad to use CHIS, while others do not. In addition, the host country itself may have restrictive regulations on what liaison officers can and cannot do, for example, regulations in the Netherlands do not allow foreign police liaison officers to make use of CHIS on Dutch territory (Ministerie van Justitie 2002a). The differences between the police systems in Member States also result in divergent tasks for liaison officers, for instance, some Member States send out mostly high ranking officers as liaisons, whereas others, valuing investigative competency over rank, send out lower ranking but seasoned investigators. Whereas the latter usually focus more on operational tasks, the former generally focus on maintaining contacts at the highest possible level in their host country (interview #33). The liaison officers’ personal preferences form a third important source for further variation in practice, for example, they may differ in the agency, department or person they trust and prefer to contact,
and whether they choose a formal approach as a representative of their country or a more informal approach as a ‘colleague’ (interview #32).

8.2.4 The process of criminal intelligence exchange

To provide a deeper understanding of the work of liaison officers, this sub-section describes their role in the criminal intelligence exchange process, which begins when a liaison officer receives a request for information from his or her home country and must determine the best way to forward it. From the liaison officer’s perspective, this step entails finding the most appropriate legal context and most competent agency – or person in some cases – to deal with the actual substance of the case. These choices are not always straightforward because, for example, in many countries various law enforcement agencies exist without a single point of contact designated for foreign liaison officers. At the same time, the law enforcement agencies may have overlapping mandates and, in such situations, liaison officers can de facto choose the agency, and sometimes department, that they consider the most adequate for handling their request. Nevertheless, there might also be limited interagency coordination and intelligence sharing between the agencies in the host country, meaning that choosing one agency to which to send the request entails the risk of leaving relevant intelligence available in another agency untapped. In addition, although a request can be sent simultaneously to multiple agencies, unwritten rules prescribe that liaison officers inform all requested agencies accordingly. In practice, the liaison officer then runs the risk that none of the receivers accord the request much priority. Therefore, the liaison officer chooses the agency to which to forward the request based on case substance, past experience and personal preferences (interview #32).

After selecting the receiver, the liaison officer invests significant effort into adapting the request to meet the local legal and operational requirements, so that it can be dealt with quickly. This effort involves providing information in the requested agency’s preferred format, rephrasing the query so that it fits the agency’s world of comprehension, and possibly rephrasing the specific questions to match the way information is stored in their databases. The answer from the requested agency is in turn translated and evaluated to determine the origin, classification and quality of the information received.
and ensure that it can indeed be operationally and legally used in the liaison officer’s home country. Thereafter, the answer is annotated where necessary with other available information and sent back to the requesting agency in the home country. This is another point at which a liaison can add value to the intelligence exchange process, and indeed the periodic evaluation of German liaison officers’ work assesses whether they act simply as a ‘post office’ or really add value to the communication (interview #32).

The practicalities of the liaison officers’ work as depicted in the previous three sub-sections clearly reveal that liaison officers need a significant level of professional discretion (professional autonomy) with regard to the organisation of their workload. Most particularly, their efficacy depends on their knowledge of investigative and operational issues in the different legal and organisational systems in the jurisdictions between which they liaise, as well as their ability to adapt their choices to the situation at hand. Liaison officers should also have extensive experience in crime investigations because, ‘if they [in the host country] see that you don’t understand how it works, you’d be better off going home’ (interview #33). Their personal skills in forging relationships and maintaining a network, as well as linguistic and cross-cultural competencies, are also key to the successful performance of their tasks. All these elements are important for examining TREVI and EU Council policy efforts in relation to liaison officers.

8.3 Liaison officers in European police cooperation

8.3.1 Emergence of liaison officers

Before the 1970s, European police forces did not use liaison officers in international cooperation even though the idea of posting liaison officers (police attachés) abroad was discussed as early as 1923 during the International Police Conference in Vienna (Fijnaut 1979: 405–406). No agreement was reached, however, at that time. Nevertheless, Italy had already been using police attachés posted at its embassies abroad, who were tasked with the surveillance of anarchists but most probably operated unilaterally (ibid.: 405). The first European bilateral liaison officer was posted by France in 1971 to
Washington, D.C. (Bigo 2000a: 76) and, throughout the 1970s, an increasing number of European police agencies began to second liaison officers to other European countries, as well as to source countries of illicit drugs. For example, the first foreign liaison officers posted in the Netherlands arrived in 1974 (KLPD 2008), and in 1976 the Dutch police sent out its first liaison officer to Bangkok (Block 2000), where the Swedish National police had been the first European police force to do so (Anderson 1989: 124).

This use of liaison officers in law enforcement cooperation was not a new phenomenon: the FBI sent its first special agent in a ‘liaison’ capacity abroad in 1939 and started its legal attaché (LEGAT) programme in the 1940s by posting attachés in Latin America, London and Ottawa (Fowler 2008: 111; Nadelmann 1993: 151–152). The Federal Bureau of Narcotics, which preceded the U.S. Drug Enforcement Agency (DEA), sent its first permanent liaison officer abroad to Rome in 1951 (Nadelmann 1993: 131). It is very likely that the use of liaison officers by the European police forces was inspired by DEA practices, especially as their first use in the 1970s coincided with a significant increase in DEA presence abroad (Nadelmann 1993: 140–141). This assumption is further supported by the fact that, initially, the European liaison officers were active solely in combating drug offences and only later expanded into other areas like fighting organised crime and counter-terrorism (Bigo 1996: 30).

At that time, two other types of liaison officers existed: officers posted by some European at Interpol and those posted abroad by the French Interior Ministry’s Service de Coopération Technique Internationale de Police’ (SCTIP). The first practice began in 1972 (Bresler 1992: 133, 227–231) and, by 1987, there were 13 liaison officers from the then EC countries posted to Interpol (TREVI 1987a). These officers, however, were not ‘bilateral’ liaison officers in the sense that they maintained direct contacts between law enforcement agencies; rather they acted as liaisons on behalf of Interpol and were often assigned to maintain contacts in a number of countries, most specifically in the fight against drug trafficking. Likewise, the liaison officers posted abroad by the SCTIP were not seen as true liaison officers because they were not tasked with operational cooperation. Rather, the SCTIP focused exclusively on technical police cooperation, although it has been argued that sensitive political and intelligence interests were involved in its establishment, which coincided with de Gaulle’s
decolonisation of sub-Saharan Africa (Anderson 1989: 154). Nevertheless, in the 1990s, the SCTIP’s focus shifted because of the situation at that time (les réalités du moment) and security requirements (les impératifs de sécurité) (Ministère de l’intérieur 2003). Nowadays, operational cooperation is a primary task of the SCTIP liaison officers posted abroad (Ministère de l’intérieur 2008).

8.3.2 Expansion

Over the first decade after liaison officers emerged in European police cooperation, their number increased rather slowly. For example, an overview circulated in 1987 within TREVI Working Group III shows that the then 12 EC Member States together had 52 liaison officers posted in 21 countries in and outside the EC (TREVI 1987a). These included 10 liaison officers posted jointly by the Nordic countries (Denmark, Finland, Sweden, Norway and Iceland), which have pooled their police and customs liaison officers since 1982 (Gammelgård 2001:233). At the end of the 1980s and into the early 1990s, the use of liaison officers in European police cooperation expanded further, with France, Spain, Italy and the UK together having posted almost 70 liaison officers abroad by 1992 (TREVI 1991c). Throughout the 1990s, this practice expanded even further until today the police forces of all EU Member States have a large number of liaison officers posted in countries both inside and outside the EU. For example, by 2003, the then 15 EU Member States had 255 liaison postings outside the EU and 77 inside (Council of the EU 2003a). In fact, however, this number represents the minimum number of postings because sometimes more than one liaison officer is stationed at one liaison post. By 2008, this number had risen to 541, of which 337 were outside the EU in different regions of the world (Council of the EU 2008c). This expansion of liaison officers posted by the EC/EU Member States over time is illustrated in Figure 8.1.
Figure 8.1 Number of liaison officers posted by the EC/EU Member States 1971–2008

Not all these liaison officers, however, are necessarily ‘police liaison officers’ because some EU Member States – for example, the Nordic countries – make no explicit distinction between police and customs liaison officers. Moreover, the number of liaison officers given in the overview excludes the so-called Europol liaison officers (ELO), posted at Europol by the Member States and some third countries, who by December 2009 numbered 121 (Europol 2010: 5). Although the tasks of an ELO are more or less similar to those of a bilateral liaison officer, these officers cooperate only with each other within the contained environment of Europol and maintain no direct contact with the different law enforcement agencies in the host country as part of their ELO post.76

8.3.3 Significance of liaison officers for police cooperation in the EU

A total of 541 liaison officers is of course only a tiny fraction of the total police capacity of the EU Member States.77 Nevertheless, liaison officers are a significant factor in police cooperation, both within the EU and in contacts with third countries, especially given that, apart from liaison officers and the staff of the Police and Customs Cooperation Centres, only a small number of police officers in

76 Some ELOs maintain such contacts; however, these are then also accredited as their country’s bilateral liaison officer for the Netherlands and/or Belgium.

77 In 2008, the total number of police in the 27 EU member states (excluding civilian staff, customs officers, tax police, military police, secret service police, part-time officers, special duty police reserves, cadets and court police) was 1.75 million (Commission 2010c: 14).
Europe are engaged full time in transnational cooperation. The importance of liaison officers for police cooperation within the EU is reflected in the regional distribution of the liaison posts maintained by the EU Member States (Table 8.1). Remarkably, the data in the table show that large number of these posts (38%) are located within the EU, even though many other channels for information exchange and cooperation are available.

<table>
<thead>
<tr>
<th>Region</th>
<th>European Union</th>
<th>Central and Eastern Europe</th>
<th>Africa</th>
<th>Asia Pacific</th>
<th>South Asia</th>
<th>Middle East</th>
<th>Americas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europe</td>
<td>204</td>
<td>108</td>
<td>70</td>
<td>42</td>
<td>17</td>
<td>24</td>
<td>76</td>
</tr>
</tbody>
</table>

Table 8.1 Region and number of EU liaison officers in 2008 (Council of the EU 2008c)

In fact, Bigo (2000a:79) argues that the use of liaison officers has been a crucial development in European police cooperation, claiming that ‘since the widespread interconnection of police files is forbidden, and even undesirable for operational reasons, they have become the human interface for data interconnection’. As illustrated by the following quote from a Council working group document, the role of liaison officers in police cooperation has also been acknowledged in the EU policy arena as vital to the fight against organised crime:

In particular, past experience has shown that, in the fight against drugs, they have developed into an absolutely vital means of ensuring efficient cooperation with the law enforcement agencies of other States in the ‘advance deployment strategy’, direct provision of information, direct cooperation with the law enforcement agencies on the spot and constant evaluation with regard to the emergence of new criminal trends in the receiving States. This wealth of experience in practical cooperation, which the liaison officers possess, should be drawn upon constantly. (Council of the EU 1998c)

The significance of liaison officers for police cooperation with third countries is particularly well exemplified by the EU liaison officers posted in the Russian Federation. Police cooperation between the EU Member States and Russia, even after the fall of the Iron Curtain, remained somewhat cumbersome for many reasons, including the differences in language, legal systems and organisational struc-
tures and the still present political contrasts. As a result, the available channels for police exchange of intelligence and cooperation are limited primarily to Interpol and liaison officers (Block 2007c).

Since the 1990s, the number of EU liaison officers posted in the Russian Federation has grown significantly. By 2004, partly as result of EU expansion, their total number reached 31, representing 17 EU Member States.78 However, almost all liaison officers have support staff, resulting in more than 50 persons dealing full time with law enforcement cooperation on behalf of EU Member States in the Russian Federation. In 2004, these liaison officers handled approximately 4,000 cases, with the actual number varying between 60 and 500 cases per Member State. During the same year, Interpol’s National Central Bureau (NCB) in Moscow handled a comparable number of cases of which the great majority, 70 to 80%, related to European countries; however, the cases sent through the Interpol channel tended to relate to smaller and less complex criminal investigations. Thus, the overall workload of the liaison officers represents a fairly large, if not the largest, part of the cooperation in criminal investigations and criminal intelligence exchange between European law enforcement agencies and the Russian Federation.

In sum, liaison officers represent a significant strategy for cooperation between the police from the EU Member States, not only in contacts with third countries but also in the EU, as was pointed out, in spite of various alternative channels. Now that the practices of the use of liaison officers by police from the EU Member States have been examined, the next section focuses on the policy-making at the EU level in relation to liaison officers over the past 25 years.

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78 The quantitative data referred to in this sub-section were gathered through a survey conducted at the end of 2004. Of the 31 liaison officers posted in the Russian Federation, 27 responded. The findings are presented in more detail in Block 2007c.
8.4 TREVI and EU policy instruments aimed at liaison officers

8.4.1 Policy efforts under TREVI

The first time that the subject of liaison officers appeared on Europe’s political agenda was in the TREVI forum in September 1986, when TREVI Working Group III examined the issue of drug liaison officers (DLOs) in police cooperation. In this meeting, however, after addressing different aspects of the use of such officers, the working group recognised that pooling liaison officers was impossible for financial, legal, practical and linguistic reasons. After this first discussion, it was agreed that the delegations would provide the UK Presidency with details on their liaison officers and that this information would be used within TREVI as a basis to further, as far as possible, the exchange of liaison officers and transfer of information between Member States (TREVI 1986a).

The focus on liaison officers as a policy subject received its most important momentum at the TREVI Ministers Conference on 20 October 1986 when the then Dutch Minister of Justice proposed adding a paragraph on liaison officers into the TREVI Conclusions on drugs (Ministerie van Justitie 1986). This proposal was accepted with some amendments, and the resulting Conclusions document makes the following request of Member States:

[That they build] on the good co-operation which already exists between law enforcement agencies, by posting drugs liaison officers (DLOs) within the Member States, by Member States posting DLOs to other countries, and by supporting a world-wide directory of contacts for drugs related messages. To this end Ministers asked TREVI Working Group III to examine the scope for building on existing arrangements to create a coordinated network of drug liaison officers to monitor developments in producer countries. (TREVI 1986b)

Preparatory documents from the Dutch Ministry of Justice show that this sudden emphasis by the Netherlands on liaison officers was actually prompted by the fear that, in the TREVI ministerial meeting, the European drug policy would be dealt with predominantly from a repressive perspective. That is, the relatively liberal drug policy in the Netherlands had received heavy criticism some weeks
earlier in a session of the European Parliament, prompting a senior policy advisor to the Dutch Minister of Justice to propose a focus on liaison officers to divert attention towards a more preventive approach (Ministerie van Justitie 1986).

In April 1987, the TREVI ministers agreed on a seven-point agreement on drug liaison officers which included rationalising the existing network by taking into account other DLOs already posted cooperation between these DLOs and the direct exchange of information of an urgent operational nature (TREVI 1987b). Further discussions in TREVI III eventually led to the inclusion of two paragraphs on liaison officers in the TREVI Programme of Action adopted in 1990 in which the designation ‘DLO’ was changed to the more general designation ‘liaison officer’ (TREVI 1990). In 1991, the TREVI Ministers adopted two Recommendations on liaison officers (TREVI 1991a, TREVI 1991b) whose content was largely similar to the text in the 1990 Programme of Action. Nevertheless, some details in these Recommendations were based on responses to a 1990 questionnaire indicating that Member States shared no common opinion on many subjects related to liaison officers (e.g., posting, tasks, accreditation, competencies) (Ministerie van Justitie 1990). Although the effect of the TREVI policy efforts on the practices of liaison officers is difficult to assess in detail, their apparent lack of effect was noted in 1996 as a reason to initiate further EU policy efforts (Council of the EU 1996b).

8.4.2 EU policy instruments on liaison officers

After the inclusion of the TREVI acquis in the third pillar of the EU, the first reference to liaison officers in EU policy documents can be found in a 1995 report of the Working Party on Drugs and Organised Crime. This report stresses the role of liaison officers, particularly with regard to combating drug trafficking:

Member States should make efforts to enhance co-operation and coordination between DLOs both within the EU and in third countries, through increased exchanges of information and intelligence and through regular in-country meetings. (Council of the EU 1995a)
This new attention culminated in several policy efforts aimed at liaison officers, and between 1996 and 2006, the EU Council adopted a total of five policy instruments aimed at coordinating the posting and tasks of the EU Member States’ police liaison officers. A description of each follows.

**1996 Joint Action**

In early 1996, discussions on a new instrument were initiated, based on a note written by the Italian Presidency (Council of the EU 1996c) that built on the TREVI Ministers’ Recommendations of June 1991 and included a questionnaire on the use of liaison officers by the Member States. The Italian Presidency subsequently drafted a Joint Action, which was adopted in the second half of 1996 (Council of the EU 1996d). Intended to expand earlier agreements on the common use of liaison officers, the document stated that ‘it would therefore appear desirable for the Member States to agree on a strategy to identify areas for action and procedures for possible shared use of the networks of liaison officers’. That ambition, however, was quickly tempered by a response from the German delegation, which, although it supported most of the Italian suggestions, stated firmly that ‘liaison officers are deployed according to national considerations’ (Council of the EU 1996e).

Careful scrutiny of the initiative reveals that the underlying arguments for the draft Joint Action contained no reference whatsoever to any practical aspect of liaison officers’ work in relation to, for example, the divergent legal systems and traditions of EU Member States or the differences in police powers, police practices, structures and culture. Yet, as discussed extensively in the previous chapter, these aspects all add to the complexity of police cooperation and thus affect the proposed pooling of liaison officers. Nevertheless, even the subsequent policy documents related to discussions on the draft Joint Action show no evidence of attention to these issues.

In 2001, the results of the implementation of the 1996 Joint Action were assessed in the Police Co-operation Working Party (Council of the EU 2001c). Based on questionnaire responses, it was concluded that only limited use was made of the scope for collaboration between the Member States on the posting and tasking of liaison officers (Council of the EU 2002b). Closer scrutiny of the actual responses provided by the Member States, however, shows that their practices related to the use and posting of liaison officers still differed, and little, if any, concrete implementation had occurred of the
Joint Action’s provisions. Rather, cooperation between Member States’ liaison officers still had to take place predominantly on an informal and bilateral basis, and not in a way intended by the Joint Action (Council of the EU 2001d).

**2000 Action Plan**

In 2000, liaison officers also took a prominent role in the Action Plan on common action for the Russian Federation on combating organised crime (Council of the EU 2000d), which was ‘designed to promote close cooperation between the European Union and its Member States, and the Russian Federation in the fight against organised crime’. Specifically, the plan summed up 17 possible law enforcement cooperation arrangements and included a special paragraph devoted to the Member States’ liaison officers posted in the Russian Federation. This paragraph states that ‘these officers [should] meet on a regular basis … exchange relevant information [and] should have the opportunity to consider the implementation of the action plan and to put forward proposals for strengthening that process’ (Council of the EU 2000d: 10). In practice, however, the only identifiable consistent action taken based upon the Action Plan since 1999 has been the organisation, by consecutive Presidencies, of annual meetings of the EU liaison officers. However, because these meetings usually have a pre-drafted programme, they tend to produce conclusions that only support the incumbent Presidency’s national priorities with little space available for input from the liaison officers – as recommended in the Action Plan (Block 2007c: 380).

Moreover, although the number of EU liaison officers posted in Russia doubled between 1999 and 2004, this increase bears no directly visible relation to the Action Plan: liaison officers from the new Member States that entered the EU in 2004 account for almost half the increase.\(^79\) The Action Plan suggested regular meetings between the EU liaison officers posted in the Russian Federation as a means to promote information exchange. These meetings however have been held since 1999 and have continued in the same form after the adoption of the Action Plan. These informal meetings are held between all (i.e., not only EU) liaison officers and are in fact common in locations where various foreign liaison officers are posted. One widely known example is the meetings of the Foreign Anti-

\(^{79}\) The findings for these data, collected by questionnaire at the end of 2004, are reported in more detail in Block 2007c.
Narcotic Community (FANC), an informal working group of foreign DLOs posted in Thailand that was set up in 1979 (e.g., Osborne 2002). Overall, close cooperation between the EU Member States’ liaison officers posted in the Russian Federation does exist but occurs mainly on an informal basis and independently of the Action Plan.

**2003 Council Decision and Resolution**

In 2003, the Council adopted two instruments concerning liaison officers: a Council Decision aimed at regulating the posting and tasks of police liaison officers that replaced the 1996 Joint Action (Council of the EU 2003a), and a Resolution on the posting of liaison officers with particular expertise in drugs to Albania (Council of the EU 2003c). The initiative for the first was taken by Denmark (Council of the EU 2002e), although the discussion began in 2001 when Sweden, citing the cooperation between the Nordic countries on liaison officers, proposed the opening of ‘joint liaison offices’ (Council of the EU 2001e). However, except for Sweden, Denmark and Italy, all other Member States considered this proposal to be too far-reaching, arguing instead that further developments in cooperation between the liaison officers should be based on pre-existing agreements, both formal and informal (Council of the EU 2001f). The Danish initiative therefore aimed to strengthen coordination and cooperation between the Member States via their respective liaison officers, and to facilitate Europol’s ability to obtain information from a Member States’ liaison officers in third countries or in international organisations in which Europol is not represented. In fact, it put particular emphasis on cooperation and coordination in third countries by asking Member States to ensure that their liaisons in these countries share tasks and assist each other. Even though the explanatory note to the proposal reflects significant political ambition for the proposed Decision, it offers no further explanation of, or references to, actual practices of liaison officers (Council of the EU 2002f).

One particularly interesting aspect of the Decision was its emphasis on the common use of liaison officers, a strategy for which the Nordic model is most often quoted as ‘best practice’ because of the Nordic States’ success in pooling their liaison officers (e.g., Council of Europe 2003; Kleiven 2011). However, neither the proposal itself nor the explanatory note refers to these best practices of Nordic
cooperation, and neither poses or answers the questions why the close cooperation between the Nordic countries in posting liaison officers is successful and whether similar arrangements would also work at the EU level. Gammelgård (2001), for example, argues that the geographical, cultural and linguistic commonalities between the Nordic countries are an important factor in their already long-standing police cooperation. Yet the policy documents relating to the discussion on the Danish proposal make no reference to such commonalities among EU Member States or to the practical aspects or feasibility of using liaison officers. Also, they do not address such questions as how this use would work in practice or what obstacles might be met. As to whether liaison officers could actually represent other Member States, one liaison officer interviewed gave the following response:

If you look at the liaison officers, of course they can. But the problem lies with the different standards between the Member States. It is like with the so-called Swedish initiative: everyone should be able to communicate everything with everyone. Sure. But as long as we each have different standards, this simply doesn’t work. (Interview #32)

As prescribed in the 2003 Decision, its implementation was evaluated two years after its adoption (Council of the EU 2005a). However, the evaluation’s conclusion that the exchange of information was functioning quite well was based, as in the evaluation of the 1996 Joint Action on liaison officers, on case examples rather than statistics. There is little evidence of task sharing or processing requests from Europol and it also revealed that the representation of another Member State by liaisons appeared to be taking place only in the framework of bilateral or multilateral agreements and usually between smaller entities as, for instance, in the Nordic police and customs cooperation. It did find that meetings were being held between EU liaison officers posted in third countries, but informal ties between liaison officers often seemed to be the driving force behind these meetings (ibid.).

The only apparent concrete effect of the 2003 Decision was the effort to pool liaison officers by the Benelux countries (Belgium, Netherlands and Luxembourg), whose long history of police cooperation

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80 With ‘the so-called Swedish initiative’ the respondent refers to the Council Framework Decision on simplifying the exchange of information and intelligence (Council of the EU 2006e), which was initiated by Sweden. The lack of common standards also shows from the replies by the Member States to a questionnaire related to the Swedish initiative (Council of the EU 2005h).
formed an important basis for the 1985 Schengen Agreement (Fijnaut 1993c: 39). In November 2003, the police chiefs of these countries, with the Council Decision in mind, developed ideas on a common liaison network, and a pilot for enhanced cooperation between their liaison officers posted in five countries was formalised in April 2004 and then implemented in 2004 and 2005. A further agreement at ministerial level – one focused on cooperation between Benelux countries’ liaison officers posted in the Balkan region – was reached in 2006 (Benelux 2006). The official Benelux 2006 annual report is highly positive about the project (Benelux 2007: 9), and the valuable part played by the Dutch liaison officer in Warsaw in the successful apprehension in Poland of the suspect in a murder committed in Brussels has been widely acknowledged (Ministry of the Interior of Belgium 2006). However, the officers involved are less convinced and note significant differences between the practices of liaison officers from the Benelux countries that are not easily overcome (interview #18). More specifically, even though handling routine requests on behalf of another country is seldom problematic, in sensitive and complex situations in which liaison officers could be most beneficial, the cultural, legal and practical (e.g., language, standards, procedures) differences between the Dutch and Belgian police systems present formidable obstacles (interview #33).

The 2003 Resolution on the posting of liaison officers with particular expertise in drugs to Albania (Council of the EU 2003c) was based on an initiative put forward by Italy in July 2003 (Council of the EU 2003d), although Italy had actually voiced an interest in joint liaison efforts in the region as early as 2001. Specifically, in an expert group’s report on piloting a scheme for Member States common use of liaison officers in third countries, Italy proposed the Balkans as an interesting area for the joint pilot scheme (Council of the EU 2001f). However, the arguments in the initiative for the necessity of joint efforts on drug trafficking in general, and on drug trafficking and other crimes originating from the Balkans (including Albania) in particular, adopt a largely political viewpoint. Moreover, the first seven points in the preamble to the final proposal cite political developments rather than operational considerations. Admittedly, points 8 to 10 make reference to a sizeable increase in cannabis smuggling through Albania into Italy, as well as to the rise of Albanian organised crime groups in
drug trafficking in general. However, this inclusion is primarily an indication that Italy’s domestic interests played a significant role in its decision to table the initiative.

In 2009, six years after the adoption of the Resolution, nine EU Member States had a police liaison posted in Tirana. Of these, two Member States – Italy and Greece – had already had a liaison office in Tirana prior to 2003, and two were new Member States that had joined the EU since 2004. Thus five of the original 15 Member States posted a new liaison officer after 2003. Nevertheless, given that crime groups from Albania have been emerging over the years as a serious nuisance all over Europe (see Arsovska 2008), it is hard to judge to what extent this expansion has been the result of the 2003 Resolution. It is, for example, very likely that violent organised Albanian crime on their own territories prompted Denmark in 2005 and Belgium in 2006 to post a liaison officer in Tirana (Copenhagen Post 2005; Expatica.com 2007).

**2006 Decision**

In 2006, the Council adopted another Decision aimed at liaison officers, one that amended the 2003 Decision on their common use (Council of the EU 2006a). The initiative for this Decision was put forward by the UK and Ireland based on the evaluation of the previous Decision (Council of the EU 2005b). The main changes related to two issues. First, Article 8 of the amended Decision made it possible for Member States to use liaison officers posted by Europol to third countries or international organisations. The practical relevance of this provision, however, is questionable. Not only has Europol had only one liaison office (staffed with two liaison officers) in a third country over most of the past decade (i.e., in Washington D.C.), but the cooperation between the U.S. and EU law enforcement agencies still takes place predominantly through long-established bilateral channels (Council of the EU 2005c). These realities thus raise serious questions about the advantages of even this particular office, which was envisaged as an efficient focal point for police cooperation between U.S. and EU law enforcement agencies.

The second change related to formalising EU cooperation by, for example, appointing ‘lead nations’
that would be given responsibility for its coordination in a particular country or region. The resulting discussion on how to organise the coordination of the liaison officers’ network in third countries and the role of a ‘lead nation’ in each region is still ongoing, but the discussions clearly reveal that not all Member States take an unequivocally positive stand on a more formalised approach (Council of the EU 2009b).

Again, the policy documents related to the policy-making on the 2006 Council Decision show no signs of any discussion of the proposed provisions from a professional perspective. Only in the discussions on the actual implementation of these provisions did it become clear that the Member States held very different views. For example, Germany, in its responses to a questionnaire related to the discussion, stated that it ‘does not consider the inflexible formalised expansion of the liaison officers’ meetings indispensable’. Indeed, the UK even questioned the very existence of ‘best practices’ because ‘each EU nation operates their LO functions in a different way and their priorities/strategic imperatives also differ’ (Council of the EU 2009c). Hence, although it might be too early to assess the effects of the 2006 Decision, to date few of the intended effects on the posting and practices of liaison officers as a joint EU liaison officer’s scheme are identifiable.

8.5 Conclusion

This chapter has presented a case study on the use of liaison officers as a cooperation strategy for police in the EU Member States, as well as the policy-making in this field in the TREVI forum and later the EU Council. Overall, the case study findings indicate that, despite the existence of alternative channels, the police make significant use of liaison officers for police cooperation, even within the EU. The findings on the use of liaison officers, specifically, show that the posting of liaison officers and the organisation of a liaison officer network are governed primarily by domestic considerations and priorities. Moreover, even when the Member States express agreement in Council, they appear to be reluctant to surrender control over their liaison officers. This reluctance is particularly visible in some Member States’ statements in the EU policy discussions on liaison officers and in the actual posting of liaison officers in Albania.
The findings also suggest that the role, tasks and practices of liaison officers are determined by national legislation, the particulars of the police system in their home country and the personal preferences of the individual liaison officer. For example, the efficacy of liaison officers in coping with the complexity of police cooperation depends on their personal skills in building a network of privileged contacts, as well as their knowledge of the legal and organisational particulars of the jurisdictions between which they liaise. If they are to make optimal use of their networks and knowledge, the high level of professional discretion they can exercise in their work is of course indispensable. In fact, the findings lend credence to the suggestion that liaison officers embody the professional autonomy that Deflem (2002: 21) contends is one of the conditions for successful police cooperation.

One important finding of the analysis of the agenda setting and policy shaping related to the instruments aimed at liaison officers is that only the documents from TREVI III show residue of some discussion on its practical aspects. The different EU Council policy documents aimed at coordinating the posting and use of liaison officers, in contrast, are almost wholly underpinned by political and legal rationality. These discussions reflect considerable political ambition – usually in reference to the construction of a common EU Area of Freedom, Security and Justice – but fail to consider the practical issues relevant to liaison officers’ work, such as the legal, organisational and cultural differences between police systems in the Member States. Hence, as in the previous case study on joint investigation teams, the findings underscore what Anderson et al. (1995: 77) call the ‘dichotomy of practical policing versus politics’. In other words, the discourse in the policy-making on liaison officers and the actual practicalities of police cooperation through liaison officers appear to relate to two different realities: whereas the policy-making primarily adopts a political and legal viewpoint, the practice is governed by national particulars and the significant professional discretion exercised by liaison officers. This dichotomy is vividly illustrated by the Benelux efforts on the pooling of liaison officers: the official documents report success, but the officers have serious and substantiated doubts based on practical barriers such as organisational and legal differences as well as the language differences.

As could have been predicted by Snellen’s (1987, 2002) four rationalities model, these findings indicate that the Council policy instruments on liaison officers have had little effect. Rather, the agenda
setting and policy shaping reflect a clear ‘imbalance’ in favour of political and legal rationality with little attention for any boundary condition set by the professional rationality of the subject matter at hand. As a consequence, the resulting instruments aimed at the common use and work of liaison officers lack practicality and, not surprisingly, a fully-fledged EU liaison officers’ scheme has yet to emerge despite the continuing efforts in Council policy-making on this subject.
Chapter 9

Synthesis and reflection

9.1 Introduction

Police cooperation in Europe is a multifaceted, multilayered and complex field of activities. Over the past 150 years, the practices of police cooperation have developed bilaterally and multilaterally on an intergovernmental level between states, on a sub-national (informal) level between agencies and individual officers and, since the establishment of the TREVI forum in 1975, on an EC/EU level. Although the political efforts to shape police cooperation in the TREVI forum have been purely intergovernmental, in the current EU, supranational characteristics have become increasingly visible, with significant changes resulting from the Lisbon Treaty as the latest development (Kaunert 2010b: 61).

Since the establishment of the EU, police cooperation has become a political objective, one explicitly expressed in the TEU. Remarkably, the body of knowledge on the effect of these policy instruments on police cooperation practices remains limited, despite the adoption over almost two decades of numerous policy instruments to enhance police cooperation between the Member States. This study has aimed to fill that gap, and the insights and findings it has uncovered are assembled and reflected upon in this final chapter.

The primary research question for this study was as follows: To what extent do EU Council policy instruments aimed at enhancing police cooperation shape police cooperation practices in the EU? This question was then broken down into the following sub-questions:

1. What is the effect of EU Council instruments on police cooperation practices?

2. How can differences in effect be explained?

These questions were addressed in two stages. The first comprised an extensive literature review and document analysis on the concept of police cooperation, the history and current practices of police cooperation in Europe and EU Council JHA policy-making aimed at enhancing police cooperation.
Next, based on the insights gleaned in the first stage, the field research began with the formulation of two hypotheses on how differences in effect might be explained: The first questioned whether the legal status (binding versus non-binding) of such Council instruments influenced their actual effects. The second argued that, analysed within the framework of Snellen’s (1987, 2002) four rationalities model, the extent of professional rationality in the Council policy-making and the resulting instrument is a relevant variable for these effects. The field research continued with the collection and analysis of data on several variables related to the full body of Council instruments for police cooperation enhancement adopted between 1995 and 2004. Two in-depth case studies on police cooperation arrangements in the EU were also conducted using a combination of qualitative and quantitative research and analysis with the aim of collecting a broad range of in-depth evidence related to the primary research question.

To answer the central question, the remainder of this final chapter collates and then critically analyses the findings of the field research. Specifically, the next section sets out the key empirical findings on the 70 Council instruments that address police cooperation (as presented in Chapter 6) and assesses them in relation to the hypotheses. It also presents an additional analysis, first of a number of instruments that show unexpected effects and then of the two in-depth case studies. The final section then draws on these findings to discuss their implications for both EU policy-making on police cooperation enhancement and future research.

9.2 The effect of Council instruments on police cooperation practices

9.2.1 Main findings

As shown by the field research (see Chapter 5), 70 of the numerous JHA texts adopted by the Council between 1995 and 2004 focus on enhancing police cooperation in the Union by aiming to change police cooperation practices. Before the findings related to the primary research question are presented, the broader findings of this study on the nature of Council policy-making process on instruments aimed at enhancing police cooperation are discussed.
In line with the expectations expressed in the related literature, a large number of these instruments (51%) are legally non-binding (see Chapter 6). In fact, a comparative analysis revealed that, in the decade under investigation, relevant instruments have been statistically significant more often of a non-binding legal nature than other Council instruments in the field of police and judicial cooperation. This outcome indicates that police cooperation is still a sensitive subject, despite an apparent relaxation of sovereignty concerns as evidenced, for example, in the Schengen Convention, the Prüm Convention and the European Arrest Warrant. Member States have clearly shown a preference for non-binding instruments that do not interfere with the autonomous control and organisation of their police forces. An analysis of the process further demonstrated that in most cases these instruments were proposed in their non-binding form from the outset: only in 4 (of 70) cases was an initially binding instrument changed in the policy process into a non-binding instrument. Hence, if a spiralling-down effect on instrument type exists, as suggested by Den Boer and Wallace (2001: 511), it presumably takes place prior to any discussion of these legislative proposals within the Council structures. It may even be that Member States, anticipating institutional obstacles to the adoption of a binding instrument under the Council’s unanimity rule, tend to draft their initiatives from the outset as soft law instruments.

Additional findings on the policy-making process in relation to the instruments’ legal status also show that, on average, the Council takes 146 days longer to shape and decide on a binding instrument enhancing police cooperation than to shape and decide on a non-binding instrument. This difference is shown by empirical analysis to be statistically significant, which further supports the assumption that existing sovereignty concerns still make Member States reluctant to agree on binding instruments in the field of police and judicial cooperation. At the same time, however, the findings indicate that Member States do use EU level policy-making to upload domestic issues, particularly when they occupy the Presidency: almost 80% of the instruments were initiated by a Member State when it held or was about to hold the Presidency. This finding implies that Member States are more likely to initiate an instrument at a moment in which they can exercise a larger influence over policy-making agenda and process. This conclusion in turn points to an ambiguous situation in which Member States are
reluctant to agree in Council on legally binding measures in the field of police and judicial cooperation yet use Council policy-making in this area when it suits their domestic needs. It should nevertheless be noted that in some instances the Presidency only acts as the formal initiator of an instrument prepared, for example, by the Council Secretariat or jointly with other Member States. Hence, the formal role of the Presidency and the corresponding obligations and expectations offer an alternative explanation for the high number of initiatives forwarded by a Member State that holds the Presidency.

In terms of the primary research question on the effect of EU Council instruments on police cooperation practices, the assessment carried out in this study indicates that 61% of the Council instruments aimed at enhancing police cooperation have had little or no effect at all on actual police cooperation practices in the EU (see Section 6.1.7). Admittedly, when ‘effect’ is defined as a concrete change in police practices as intended by the Council instrument under scrutiny – as it is here - there is as yet no benchmark against which to measure the effect, which prevents the drawing of any clear-cut conclusions on whether an outcome is high or low. Nevertheless, the finding does provide some evidence for the argument that if the intention is to enhance police cooperation in the Union, there is room for improvement in the corresponding Council policy-making. On the other hand, the assessment also indicates that 39% of the instruments have a medium to very high effect on police practices, which adds more importance to the question of how the differences in effect can be explained.

As discussed above, the assumptions related to potential explanations for the differences in effect of the Council instruments in this research have been captured in two hypotheses, the first of which questions the frequently voiced suggestion that non-binding instruments have less effect on police cooperation practices than binding instruments (see Section 5.2.2.). The findings of this study support that hypothesis: the statistical analysis of the data collected shows no correlation between the legal nature of the Council instruments on police cooperation and their effect on police practices (see Section 6.2.1). Hence, contrary to what is often claimed – particularly by the Commission (e.g., Commission 2004a) – the legal nature of a Council instrument aimed at enhancing police cooperation is not a reliable predictor of its concrete effect.
The second study hypothesis asserts that the extent to which Council instruments have an effect on police cooperation practices depends on the extent of professional rationality in the Council policy-making on that instrument. This hypothesis, formulated within Snellen’s (1987, 2002) four rationalities framework, predicts that police practitioners will reject instruments that are constructed from a purely political and legal rationality that fails to take their professional rationality into account (see Section 5.3.4). To collect data on professional rationality, this study assessed the rationalities in Council policy-making on each of the 70 Council instruments in the final sample on a number of indicators. This assessment, which was based on a detailed examination of the policy document texts from all phases in the policy-making, revealed that professional rationality played no, or a very limited, role in the policy-making for a large number (51%) of these instruments (see Section 6.1.6).

More specifically, many proposals and subsequent discussions for these Council instruments never, or barely ever, considered arguments based on professional rationality in relation to the rationale for instrument adoption. Indeed, in some cases, such as the Council Resolution on measures to address the drug tourism problem within the European Union (Council of the EU 1996h), the JIT provisions in the EU MLA Convention (Council of the EU 2000a) and the Council Decision on tackling vehicle crime with cross border implications (Council of the EU 2004j), the policy-making appears to have been based in part on unfounded assertions about the nature and extent of the problem and the practices of police cooperation in that field. This finding raises the question of whether EU policy-making is based on political rhetoric or practical reality.

To test the second hypothesis empirically, a statistical analysis was conducted between the assessed effect of the Council instruments and the assessed extent of professional rationality in the related policy-making. This analysis demonstrated a statistically significant correlation between these two variables (see Section 6.2.2). In other words, the extent to which the policy-making of an EU Council instrument aimed at enhancing police cooperation is grounded in professional rationality is strongly associated with and holds predictive value for concrete changes in police cooperation practices as result of the instrument. Council instruments based on input and shaped in a process that pays no or limited attention to the boundary conditions set by the professional rationality are less likely to yield an in-
tended effect on police cooperation practices. This outcome confirms the second hypothesis and supports Snellen’s (1987: 4) argument that the availability of appropriate and valid knowledge on how certain actions will influence society is one of the necessary pre-conditions for achieving policy objectives.

9.2.2 Additional analysis

The study data also allowed for an additional extended analysis of the relation between professional rationality in the Council policy-making and the effect of the resulting instruments on police practices, which was necessary for two reasons. First, as already noted at the outset of this study, although a statistical analysis may show correlation, it cannot reveal any causal relation between the variables. Second, the initial statistical analysis made clear that, in spite of the statistically significant correlation between professional rationality and effect, the relation is not absolute: the data set also contains instruments that show an unexpectedly low or high effect (see Section 6.3). Hence, this sub-section analyses the findings on the instruments that had an unexpected effect and the next sub-section discusses the findings of the in-depth case studies.

The extended analysis of the instruments with an unexpected effect revealed no significant contradictions to the main conclusion. Rather, the analysis pointed to four potential alternative explanations for these instruments’ effects, or lack thereof, that could exist parallel to the professional rationality explanation. First, the results for the effect of the Council Conclusions of 20 September 2001 (Council of the EU 2001a) suggest that instruments created under extraordinary political pressure, such as those following 9/11, may have a significant effect even though the policy-making shows little influence from a professional rationality. Apparently, police practitioners felt as deeply as politicians that ‘something must be done’ (Den Boer 2003: 189-190; see also Schneier 2006: 241), which may indicate that rationality is determined by the circumstance; that is, boundary conditions may change under certain conditions. The question remains, however, whether the instrument’s effect can be sustained once the extraordinary conditions fade and the situation normalises. Because the threat of terrorism
since 9/11, whether real or perceived, has persisted, this question can only be answered by future investigation.

Second, the analysis revealed that a similar situation existed in relation to the Council Decision on the protection of the Euro against counterfeiting (Council of the EU 2001o). In this case a commonly felt responsibility towards the protection of the Euro resulted in an unexpected instrument effect. Even though the policy-making shows no indications that professional rationality was taken into account, the introduction of a single new currency was sufficient incentive to foster a high level of cooperation, cumulating in a central role for Europol (see Section 6.3.2). Hence, a strongly shared interest (see also Deflem 2002: 22) among the Member States is apparently able to balance a lack of underpinning from a professional perspective.

The analysis of the seven instruments with a smaller effect than would be expected given the high professional rationality in the policy-making showed that, in five cases, the discrepancy occurred as a result of technical decisions related to the research design (see Section 6.3.2). In two cases, however, it revealed a third and fourth possible alternative explanation for policy instrument effect. The third possible alternative is related to implementation capacity, a factor visible in the limited effect of the 1996 Joint Action, which concerns the exchange of information on the chemical profiling of drugs, to facilitate improved cooperation between Member States in combating illicit drug trafficking (Council of the EU 1996k). A lack of capacity in the sole implementing agency – Europol’s Drugs Unit – provides a logical explanation for why the effect was smaller than might have been expected given the high professional rationality in the related policy-making and resulting instrument. Hence, implementation capacity, although it does not affect the overall analytical conclusions, may be a relevant factor.

The fourth potential alternative is the presence of dedicated individuals, a fact whose relevance was discussed previously (see Section 3.5) and which emerged in the field research in relation to the effect of the Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes (Council of the EU 2003l). In this case, even though the policy instrument was well articulated from a professional perspective, Member States set up very few units for the investigation
and prosecution of war crimes, a failure that the field study results suggest is quite likely given the absence of officers with relevant experience and dedication (see Section 6.3.2).

**9.2.3 Analysis of the in-depth case studies**

The remaining field research consisted of two case studies, one on joint investigation teams and another on liaison officers. Both case studies mapped out the related EU Council policy-making and police cooperation practices and then analysed any interaction between these aspects. The case study on JITs (see Chapter 7), particularly, demonstrated that international police cooperation in criminal investigation (in the EU) is a multifaceted endeavour in which investigators face not only the usual (logistical) challenges of a criminal investigation but also legal, organisational and cultural-linguistic differences between the involved jurisdictions. The analysis on JITs clearly shows, however, that this complexity was not addressed within the Council structures. Instead, driven particularly by the political ambition underlying the creation of a common EU Area of Freedom, Security and Justice, the policy-making was guided by the assertion that traditional methods of police cooperation in criminal investigations are outdated and inadequate for coping with contemporary forms of organised crime. Therefore, JITs were, and still are, heavily promoted as the solution for police cooperation with little consideration of their feasibility in the complex environment of the 27 different jurisdictions in which EU police cooperation occurs. In the policy process the concept was never tested against any professional requirements.

The case study clearly demonstrated that JITs not only face the same obstacles as traditional methods of international cooperation in criminal investigations, they also fail to offer any clear advantage in overcoming these obstacles. The significant professional discretion that police and judicial practitioners have in choosing the form and method of their international cooperation is thus a likely explanation for the as yet limited use of JITs. Overall, although JITs were envisaged as the solution for multilateral cooperation in criminal investigations in the EU, all JITs identified in this research have been bilateral, often between neighbouring Member States that already had a history of enhanced police cooperation. The JIT case study findings thus reinforce the results presented in Chapter 6 by de-
tailing the association between a lack of professional rationality in the policy-making on JITs and a subsequent limited effect on police cooperation practices. Recently the number of established JITs seems to be (slowly) increasing and although most are still bilateral in nature the effect on police cooperation practices could change in the future.

The second case study examined policy efforts regarding and practices of liaison officers in European police cooperation. These liaison officers are a much-used strategy for cooperation by police from the EU Members States; and even within the EU, regardless of the existence of multiple alternative channels, police make significant use of them in their cooperation. Nevertheless, the case study demonstrated that, in spite of the numerous policy instruments aimed at formalising and coordinating the use of liaison officers, the posting of liaison officers and the organisation of a liaison officer network are primarily governed by domestic considerations and priorities. That is, regardless of what the Member States agree in Council, they are apparently reluctant to surrender control over their liaison officers. More important, the findings indicate that the role, tasks and practices of liaison officers are determined by national legislation, the particularities of the police system in the home country and the personal preferences of the individual liaison officers. The detailed findings on liaison officers’ activities, especially, point to the importance of the high level of professional discretion exercised by liaison officers in their work. This professional discretion allows them to make optimal use of their networks and knowledge to maximise their efficiency, and lends credence to the argument that liaison officers embody the professional autonomy that is, according to Deflem (2002: 21), a key condition for successful police cooperation.

This second case study also mapped the significant number of policy-efforts at the EC/EU level aimed at coordinating and harmonising the work of liaison officers. Scrutiny of these efforts, however, demonstrated that only the documents from TREVI Working Group III contain some residue of a discussion on the practical aspects of such work and testing the policy alternatives against professional requirements. The discussions on the common use of liaison officers in the other EU Council policy documents merely reflect considerable political ambition, usually related to the construction of a common EU Area of Freedom, Security and Justice. They therefore failed to consider the practical
issues relevant to the work of liaison officers, such as the legal, organisational and cultural differences between police systems in the Member States. As with the case study on JITs, these findings indicate the existence of what Anderson et al. (1995: 77) call the ‘dichotomy of practical policing versus politics’ and what Storbeck and Toussaint (2004: 13) describe as two different realities in the JHA realm. The findings also show that, as could have been predicted by Snellen’s (1987, 2002) four rationalities model, the Council policy instruments have had little effect on liaison officers’ practices. Hence, the observations from this case study underscore the finding reported in Chapter 6 of a pre-disposition in the policy-making towards a political and legal rationality with no attention to the subject matter’s professional rationality. They also provide further support for the assumption of a relation between professional rationality in and the effects of an instrument. More specifically, the instruments produced on the common use and work of liaison officers lack practical orientation and – apart from exceptions like the long-standing Nordic cooperation, the limited Belgian-Dutch cooperation and recent experiments with intelligence platforms in West Africa – no fully fledged EU liaison officers scheme has emerged.

9.2.4 Answering the research question

The findings discussed above point to a clear answer to the research question and its related sub-questions. In response to the first sub-question on the extent of the effect of EU Council instruments on police cooperation practices, it can be argued that this effect has been limited: 61% of the instruments had no, or a very low, concrete effect on actual practices of police cooperation. That being said, this conclusion should not be mistaken for an overall limited effect of ongoing European integration and resulting EU policies on police cooperation practices in Europe. On the contrary, it can be argued that along both the political and the organisational dimension, the overall situation in the EU has been favourable for police cooperation. In particular, police enjoy relative institutional independence and well-developed expert systems of knowledge (cf. Deflem 2002), and the ongoing integration between the Member States provides a stable political context for police cooperation that is behind a conver-
gence of practices on the formal level (harmonisation) and practitioner initiatives on the informal level (see also Hufnagel 2011).

This convergence of shared organisational interests and problem solutions between police from the Member States is further illustrated by such cooperation as joint training under CEPOL. Additionally, regardless of any criticism against Europol, the significant relevance and future potential of this institution for police cooperation in the EU cannot and should not be denied. Lastly, new initiatives aimed at enhancing police cooperation have been launched on a frequent basis, such as the European Investigation Order (Council of the EU 2011e) and the European Intelligence Model (Council of the EU 2011f).

Nevertheless, the findings of this study show that a large proportion of the Council policy instruments have not achieved their intended effect in spite of significant efforts in the policy-making. In fact, the most interesting findings of the research relate to the potential explanations for these variations in the concrete effects of Council instruments. In response to the second sub-question of how these differences in effect can be explained, the findings strongly imply that the amount of professional rationality in EU Council policy-making aimed at enhancing police cooperation plays an important part in how much effect the instrument will have on actual police cooperation practices. Specifically, the statistical analysis identified a strong correlation between the extent of professional rationality in the Council policy-making and the effect of the resulting Council instruments. In fact, in line with Snel- len’s (1987, 2002) four rationalities framework, it demonstrated that instruments not tested in the policy process against boundary conditions set by a professional rationality are likely to have less effect on police cooperation practices. Nonetheless, although these findings do provide one answer to the research question, they also raise new questions. These are discussed in the next section of this final chapter.

9.3 Implications and avenues for further research

9.3.1 EU Council policy-making
The most obvious (practical) implications of the study findings relate to EU Council policy-making aimed at enhancing police cooperation. Briefly stated, the findings indicate that in the shaping of such policy instruments, it is important to elevate substance (professional rationality) over form (legal nature). However, as explained earlier, during the course of this research, the Lisbon Treaty came into force, causing significant institutional change in EU Council policy-making. Obviously, a discussion of all these changes and the extent to which they have materialised is beyond the scope of this study, yet the new post-Lisbon reality must be taken into account when deriving the potential implications of this study’s findings.

These changes affect two key implications, particularly. First, in spite of arguments in the literature and by the Commission, this study has revealed that legally binding instruments do not necessarily have more effect on police cooperation practices than non-binding instruments. Hence, it could be argued that non-binding Council instruments aimed at enhancing police cooperation can be used effectively as an efficient method to swiftly formalise agreement between the Member States on aspects of police cooperation. However, the extent to which this implication applies in the post-Lisbon reality is as yet unclear. One of the changes brought about by the Lisbon Treaty (Article 76) is that the Commission has gained primacy in forwarding proposals for instruments on police and judicial cooperation to the Council. This same article, however, also allows a proposal to be forwarded by the Member States as long as at least a quarter of the Member States do so jointly. This provision clearly indicates an intention to end the use of non-binding instruments in Council policy-making on police and judicial cooperation and to prevent proposals that serve only the domestic interest of one Member State, while simultaneously allowing Member States to retain a stake in the agenda setting. Nevertheless, recent Council instruments aimed at enhancing police cooperation – such as the Council Resolution on the European network on fugitive active search teams (Council of the EU 2011c) – show that the Council continues to adopt non-binding instruments proposed by one Member State only, a practice that could admittedly represent the kicks of a dying horse: pre-Lisbon Council policy-making rituals. However, if such is not the case and the Council continues to use non-binding instruments to
enhance police cooperation, it is important to remember – as the findings of this study indicate – that also non-binding instruments can be advantageous.

The second (practical) implication of the study findings, the importance of professional rationality in the policy-making process, raises questions of how such rationality could be absorbed in today’s policy-making process and what incentives the participants in the politically dominated Council policy-making process may have for such absorption. In spite of the changes brought about by the Lisbon Treaty, the shaping of police cooperation policy instruments still takes place in the relatively closed Council working parties. Interestingly, the new primacy of the Commission in formulating and forwarding proposals for Council instruments on police and judicial cooperation (introduced by the Lisbon Treaty) creates an obvious opportunity for increasing the input of professional rationality into these policy discussions. This increased opportunity is particularly visible in the Commission’s extensive experience in involving stakeholders in the policy preparation through the use of, for example, green papers and consultations. This experience could especially be exploited in relation to police cooperation by involving police practitioners and thereby including a professional rationality in the formulation of new policy proposals. In this way, the Commission, acting as a supranational policy entrepreneur, could set the norm in policy discussions (Kaunert 2010b: 4) making sure that policy-making in the Council from the outset is characterised by a more balanced representation of all four of Snellen’s (1987, 2002) rationalities.

9.3.2 Further research

The study findings also have important implications for future research. One recurring finding is the relevance for police cooperation of professional discretionary powers. This factor has been studied since the 1960s as a key explanatory factor for the difference between ‘law in the books’ and ‘law in practice’ (Rowe 2007: 279, see also Davis 1996), but is usually interpreted to explain why junior police officers are difficult to manage because of the considerable autonomy they enjoy in deciding whether or how to apply the law (ibid.: 280, see also Lipsky 1980). However, adopting Deflem’s

(2002) theoretical perspective on police cooperation – and given the importance of relative institutional independence – police discretion could in fact be argued to embody the police’s relative institutional autonomy at the individual level. The findings on liaison officers’ practices, particularly, (see Chapter 8) point in this direction, as do the practices of police cooperation on art crime (Block 2011b).

However, despite earlier studies (e.g., Den Boer and Spapens 2002; Gallagher 1998; Harfield 2005) that point (albeit implicitly) to the importance of the police’s professional discretion in shaping actual police cooperation practices, discretionary power has not been an explicit focus in police cooperation literature. Yet the true extent of police discretion in their international cooperation practices may turn out to be a key element in the shaping of police cooperation. That is – to use Bardach’s (1998) concept of ‘craftsmanship’ – in their cooperation practices, police assume the role of craftsmen relatively autonomously choosing their materials and applying good practices. Indeed, the findings of this study suggest that police officers have the final word on which of the available methods and tools for cooperation will be applied. The current findings are not, however, sufficient to gauge the accuracy of this suggestion or identify which factors or conditions may play a role in this dynamic. For this reason, further empirical research into the practices of police cooperation is warranted.

The same holds true for empirical research into the effect of Council instruments aimed at enhancing police cooperation. In methodological terms, implementation research demands the analysis of a significant interval between the moment of adoption of a policy instrument and the evaluation of the policy, including its effects. This is why studies like this one appear to be outdated. A longitudinal and systematic observation of EU policy-making on police cooperation is recommended for similar studies in the future. Further research could provide deeper insights into the dynamics between policing, politics and policy-making, particularly in view of the significant amount of recent changes resulting from the Treaty of Lisbon and the Stockholm Programme (Bruggeman and Den Boer 2011).

A final research implication relates to the fact that the broader realm of the EU seemingly provides a favourable context for police cooperation, one that could explain the emergence of a ‘blurring patchwork’ (Alain 2001a: 3) of police cooperation arrangements. In fact, the findings of this study show
that although political rationality in the EU almost ‘demands’ the taking of steps towards further cooperation between Member States at the same time, both the Member States and their police have sufficient autonomy to shape their own cooperation practices on different levels. As a result, a large variation is evident at micro-level in both the political context and organisational circumstances of the police. That is, not only are there still significant differences in political context on the different levels at which police cooperation takes place – i.e., the national, sub-state and supranational levels, as well as their interconnections – but the organisational circumstances of the police forces and their subcultures in the 27 Member States are still highly divergent. These differences imply that a multilevel governance perspective could be relevant starting point for future knowledge-gathering on the complex process of shaping police cooperation in the EU. Although such a perspective has already been used in previous work on police cooperation (e.g., Block 2007b; Den Boer and Spapens 2002), applying it anew, and this time to the interconnection and interaction between the different levels on which police cooperation in the EU is being shaped, could produce valuable additional knowledge. Undoubtedly, however, all these avenues for further research will be conditioned and contextualised by the rapid and continuous organisational changes in policing in the Member States.
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APPENDIX A

Respondents and interview protocol

This appendix contains three items:
1. an overview of all interviews held in the framework of the research for this study. The respondents were guaranteed anonymity and therefore only their (approximate) function and the place and date of the interview are provided;
2. an overview of the written answers received on a questionnaire. Again, the respondents were guaranteed anonymity and therefore only their (approximate) function is provided;
3. the protocol used in the semi-structured interviews including the questions asked in the interviews.

1. Interviews: Respondents, dates and places
1. Team leader at a Unit of the Dutch National Crime Squad (DNR, KLPD), Amsterdam, 8 August 2005.
3. Officer at the Dutch SIRENE bureau (DIN, KLPD), Zoetermeer, 7 September 2005.
7. International Contact Officer (ICO) at the NCB The Hague (DIN, KLPD), Zoetermeer, 4 October 2005.
9. JHA Counsellor at a Member State’s Representation to the EU, Brussels, 17 February 2006. Includes email correspondence after interview.
29. Senior Dutch police officer, formerly involved in the Netherlands Financial Intelligence Unit. Interview by e-mail, response received 6 February 2009.
30. Senior forensic expert, National Forensic Institute, Rijswijk, 5 February 2009.
31. Senior German police officer, 7 July 2009.
32. Senior German police officer, liaison officer, BKA, Berlin 27 September 2009.
34. Senior Dutch police officer, Driebergen, 4 November 2009.

2. Written answers
1. Senior officer in the high-tech crime unit.
2. Senior officer in the child abuse unit.
3. Specialist at the public order maintenance and security information point.
4. Senior officer in the close protection unit (DKDB).
5. Counterfeiting specialist in the national criminal intelligence service (Dinpol).
6. Drugs specialist in the national criminal intelligence service (Dinpol).
7. Senior officer in the Dutch Financial Intelligence Unit (MOT/BLOM).

3. Interview protocol

Each interview held in the framework of this thesis started with general background questions on the function and experience of the respondent in international police cooperation and/or EU policy-making related to international police cooperation.

Interviews 1 to 12 were ‘scoping interviews’. Of these, interview 9 and 10 aimed at gathering general data on the Council JHA policy process both from a Member States’ perspective (interview 9) as from an ‘inside’ perspective from within the Council Secretariat (interview 10). The other interviews were aimed at gathering general data on police cooperation practices, where possible in relation to Council instruments. However, no structured questions on Council instruments were posed in these interviews.
Thereafter, interviews 13 to 36 were semi-structured interviews most of which aimed at collecting data about applying a number of the 70 Council instruments in the final sample. Exceptions are:

- interviews 13 and 14 that both aimed at getting background information on the 1999 European Council Tampere Conclusions;
- interview 19 that aimed at gathering background information on the EU Council JHA policy-making from a national perspective, as well as the processes and structures relevant for the implementation of Council instruments;
- interview 24 that aimed at gathering specifics on the Council JHA policy process related to joint investigation teams from an ‘inside’ perspective from within the Council Secretariat.

Also the written questions sent to seven experts in the Dutch police aimed at collecting data about applying the 70 Council instruments in the final sample. The questionnaires were sent out in August 2007 by a policy advisor of the International Cooperation Division (DINPOL) of the National Police Agency (KLPD). They were returned in November 2007.

In these interviews, respondents were asked to comment on a number of particular Council instruments from the final sample. For each of these instruments one or more questions were formulated based on the substance of the particular instrument (see below). To keep the interview time within reasonable limits (max. 1.5 – 2 hours), not all instruments were discussed in each interview. Instead respondents were asked about instruments related to their field of knowledge. Also some instruments were not brought up at all in the interviews if, for example, there was enough documentation available on the subject.

Questions about instruments

Joint Action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit. [Sufficient written sources on effect available, not included in general interviews]

Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) [Sufficient written sources on effect available, not included in general interviews]

Council Recommendation of 22 April 1996 on guidelines for preventing and restraining disorder connected with football matches.
To what extent was the standardised procedure of information exchange, including the proposed forms, used by police in [country]? Please elaborate.
Did [country] at that time use the proposed common format (elaborated and replaced in 1999) for police intelligence reports about known or suspected groups of troublemakers?

Joint Action of 15 July 1996, concerning action to combat racism and xenophobia.
Does [country] have dedicated contact points? When were they established? Please elaborate.

**Council Conclusions of 14 October 1996 on measures to combat counterfeiting**
Does [country] have a national central contact point as proposed in these Council Conclusions? Is combating counterfeit products seen as a police or customs matter (or both)? Please elaborate.

**Joint Action of 14 October 1996 providing for a common framework for the initiatives of the Member States concerning liaison officers.** Please explain the process of the recruitment, preparation, training and instruction for liaison officers posted by [country]. Could you elaborate on the role and tasks of liaison officers posted by [country]? Could you elaborate on how choices are made about where to post liaison officers from [country]?

**Joint Action of 15 October 1996 concerning the creation and maintenance of a directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union.**
Has [country] during its Presidency appointed a ‘directory manager’ and if so, has the directory manager performed the tasks regarding the directory as set out in the Joint Action?
(For Europol:) What was the state of the directory when it was transferred under the responsibility of Europol? What has been done since? Can you provide statistics regarding the use of the directory?

**Council Resolution of 29 November 1996 on measures to address the drug tourism problem within the European Union.**
Does [country] have a central law enforcement focal point for coordination in respect of drug tourism?
Has this Resolution led to participation of [country] in cross-border coordination of action against drug tourism?

**Council Resolution of 29 November 1996 on the drawing up of police/customs agreements in the fight against drugs.** [Sufficient written sources on effect available, not included in general interviews]

**Joint Action of 29 November 1996 concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking.**
Does [country] send information on all seized drugs to Europol (and before that to the EDU) in the format as prescribed by this Joint Action? Is information from Europol received in return? If so, in which form (operational, strategic) and to what extent does that information play a role in combating drug crime in [country]?
(For Europol:) Is information received from the Member States as prescribed in this Joint Action? From all Member States and regarding all seizures?
Joint Action of 29 November 1996 concerning the creation and maintenance of a directory of specialised competences, skills and expertise in the fight against international organized crime, in order to facilitate law enforcement co-operation between the Member States of the European Union.

Has [country] submitted contributions for this directory and regular updates of that information? Is an updated copy of the Directory periodically received from Europol? How is it brought to the attention of the police in [country]? How often is the Directory queried and how often has this led to the use of expertise from another Member State? (Since 2001 combined with the Directory on counter-terrorism competences: Centre of Excellence)

(For Europol:) How often is the Directory (now Centre of Excellence) updated and disseminated to the Member States? Are statistics available on its use before/after 2001?

Council Resolution of 16 December 1996 on measures to combat and dismantle the illicit cultivation and production of drugs within the European Union.

Has [country] participated in particular international cooperation prompted by this Resolution? Is an updated manual on the detection of illicit cultivation and production of drugs regularly received from Europol?

(For Europol:) Is a manual on the detection of illicit cultivation and production of drugs produced/regularly updated and disseminated to the Member States?

Joint Action of 16 December 1996 extending the mandate given to the Europol Drugs Unit

[Since sufficient material on effect available, not included in general interviews]


Is a contact authority for this kind of crime appointed in [country]? Has information in this field based on this Joint Action been organised differently so that it is ‘readily accessible and can be effectively used and exchanged with other Member States’ in [country]?

(NL): What has prompted the Dutch initiative and subsequent efforts in setting up national coordination points for missing persons and unidentified bodies? To what extent do the activities in this field have a direct relation with this Joint Action?

Action Plan to combat organised crime, adopted by the Council on 28 April 1997. [Since sufficient written material on effect available, not included in general interviews]

Joint Action of 26 May 1997 with regard to cooperation on law and order and security.

Was a central body appointed to deal with issues of public order in relation to travelling groups? (other than a so-called Football Information Point). If so, when? Was use made of liaison officers for the
international cooperation as regards public order? Was the detailed form for information exchange as proposed by Belgium used in practice?

**Council Resolution of 9 June 1997 on the exchange of DNA analysis results**
Does [country] maintain a national DNA database? When was it established? To what extent is the system tied up to existing standards and has this Resolution prompted any changes in that?

**Joint Action of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime**
Has [country] given the same priority to all requests from other Member States that relate to asset identification, tracing, freezing or seizing, and confiscation as is given to such measures in domestic proceedings, and as obliged under this Joint Action? How was this implemented? Is direct contact between investigators, investigating magistrates and prosecutors as proposed in this Joint Action encouraged?

**Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property**
[Sufficient material on effect available, not included in general interviews]

**Council Decision of 3 December 1998 supplementing the definition of the form of crime 'traffic in human beings' in the Annex to the Europol Convention**
[Sufficient material on effect available, not included in general interviews]

**Council Recommendation of 7 December 1998 on arms trafficking**
Have the police in [country] been involved in any specific joint initiatives aimed at combating arms trafficking based on this Recommendation?
Have the police in [country] contributed to any shared analysis of trends in arms trafficking?
Have the police in [country] in any way developed their shared understanding of national controls to identify relevant capabilities and constraints in countering illegal arms trafficking? Please elaborate.

**Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment.**
[Sufficient material on effect available, not included in general interviews]

**Council Resolution of 27 May 1999 on combating international crime with fuller cover of the routes used.**
Have the police in [country] initiated or participated in coordinated route policing projects? Please elaborate.
Council Resolution of 21 June 1999 concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with international football matches. [Only included in interviews with experts on international police cooperation on football related violence]
Can the handbook be seen as a standard and is it used as such in [country]? Please elaborate.

Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups.
Has this Recommendation been implemented within the competence of the [country] police or of the Intelligence and Security Service? (Or not at all?). Please elaborate.

Do the police in [country] have a central unit for the combat of counterfeit travel documents? Do the police in [country] use the standard model form and questionnaire (as set out in the annex to this Decision) for the exchange of information? Please elaborate.

Action Plan on Common Action for the Russian Federation on Combating Organised Crime adopted 27 March 2000 at the JHA Council [Sufficient written material on effect available, not included in general interviews]

Council Decision of 29 May 2000 to combat child pornography on the Internet
Do the police in [country] have a specialised unit for investigating child pornography on the Internet? If so, was it established based on this Decision or did it exist before 2000? Please elaborate.

Is the EU MACM the default convention used as legal base for cooperation when the police/judiciary from [country] cooperate with police/judiciary from other EU Member States. If so, how is this implemented? Are statistics available? Did [country] sign and ratify the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters? If not, why not? If so, what differences between the MACM, on the one hand, and the CoE convention and its additional protocols, on the other, are perceived in [country]?

Council Recommendation of 28 September 2000 to Member States in respect of requests made by Europol to initiate criminal investigations in specific cases.
Has Europol ever requested the authorities in [country] to initiate criminal investigations in a specific case, and, if so, how was this followed up? Please elaborate. (For Europol:) In how many instances has
Europol requested authorities of the Member States to initiate criminal investigations in a specific case and how were these requests followed up? Please elaborate.

Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information
To what extent is the Financial Intelligence Unit organised as referred to out in this Decision in [country]? When was it established? Please elaborate.

Council Recommendation 30 November 2000 to Member States in respect of Europol's assistance to joint investigative teams set up by the Member States. [Sufficient material on effect available, not included in general interviews]

Council Act of 30 November 2000 drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention. [Sufficient material on effect available, not included in general interviews]

Does [country] have a national contact point for combating fraud and counterfeiting of non-cash means of payment? Please elaborate.

Council Decision of 28 May 2001 on the transmission of samples of controlled sub-stances.
Does the sending of samples of controlled substances take place according to the procedures as laid down in this Decision (via national contact points, use of standard form, informing transit countries, preceding agreement, acknowledgement of receipt). Or do police send it (informally) directly abroad? Please elaborate.

Council Resolution of 25 June 2001 on the exchange of DNA analysis results
Has your country started to 1) use the European Standard Set of DNA markers in forensic DNA Analyses; 2) use the predefined forms as attached to this Resolution and 3) established one national contact point for the exchange of DNA analyses after the adoption of this Resolution? Please elaborate.

Council Recommendation of 25 June 2001 on contact points maintaining a 24-hour service for combating high-tech crime
When was a 24 hrs contact point for combating high-tech crime established in your country? [One extensive background interview on the 24/7 network conducted].
Conclusions adopted by the Council and the representatives of the Governments of the Member States on 13 July 2001 on security at meetings of the European Council and other comparable events

Has [country] set up a permanent national contact point for the collection, analysis and exchange of relevant information regarding security at meetings of the European Council and other comparable events? If so, what does this contact point consist of in practice? Has [country] ever been requested to set up a pool of liaison officers in this respect? Has [country] participated in the making of joint analysis of violent disturbances, offences and groups? Please elaborate.

Conclusions adopted by the Council (Justice and Home Affairs) of 20 September 2001 [sufficient written material on effect available, not included in general interviews]

Council Act of 16 October 2001 establishing the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [Included with the questions regarding the Convention itself]

Council Recommendation of 6 December 2001 on the alignment of statistics on seizures of drugs and diverted precursors.

Does [country] use the proposed definitions for the collection and exchange of information on drug seizures? Do police in [country] collect information (in this way) on all drug seizures made (or with a certain threshold as regard quantity)? Please elaborate.
(For Europol:) Is this the standard used within Europol?
Does Europol get information from the Member States in this format?

Council Decision of 6 December 2001 on the protection of the Euro against counterfeiting

Does [country] collect information on investigations into counterfeiting of the Euro and related offences centrally and shares this with Europol including information received from third countries?
(For Europol:) Do the MS forward the results of expert analyses to Europol? Does Europol receive centralised information from the MS on investigations into counterfeiting and offences related to counterfeiting of the Euro, including information obtained from third countries?

Council Recommendation of 6 December 2001 setting a common scale for assessing threats to public figures visiting the European Union

Does [country] use the standardised evaluation scale for exchanging information on threats to public figures? Is a network of liaisons used and is a central competent authority designated? Is information in this regard transmitted to Europol? Please elaborate.
Council Decision of 6 December 2001 extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention. [Sufficient empirical material on effect available from written sources not included in general interviews]

Council Resolution of 6 December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved. [Only included in interviews with experts on international police cooperation on football related violence] To what extent was the update of the handbook based on practices? Can the handbook be seen as a EU-wide standard on this issue? Is it used as such? Please elaborate.

Council Recommendation of 25 April 2002 on improving investigation methods in the fight against organized crime linked to organized drug trafficking: simultaneous investigations into drug trafficking by criminal organizations and their finances/assets. [Sufficient written material available, not included in general interviews]

Council Recommendation of 25 April 2002 on the need to enhance cooperation and exchanges of information between the various operational units specializing in combating trafficking in precursors in the Member States of the European Union.

Has combating trafficking in precursors received a higher priority based on this Recommendation? Please elaborate.

Has a joint specialised operational unit been set up in [country], dedicated exclusively to combating the trafficking and diversion of precursors? Have direct channels of communication been established between units responsible for combating trafficking in precursors? (If so, how?) Please elaborate.

Council Recommendation of 25 April 2002 for the establishment of multinational ad-hoc teams for gathering and exchanging information on terrorists.

Are you familiar with this Recommendation? Please elaborate. Have the police in [country] ever participated or asked to participate in a team as meant in this Recommendation? Please elaborate.

Council Decision of 25 April 2002 concerning security in connection with football matches with an international dimension. [Only included in interviews with experts on international police cooperation on football related violence]. Does [country] have a Football Information Point (FIP)? When was it established? Is it organised according to the standards as set out in this Decision? Please elaborate.

Council Framework Decision of 13 June 2002 on joint investigation teams.

How many (bilateral/multilateral) joint investigation teams has your country participated in to date? Please elaborate.
Has your country concluded additional bilateral agreements with other Member States on the establishment of joint investigation teams? Please elaborate.

**Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes**

Has a national contact point for the exchange of information on persons responsible for genocide, crimes against humanity and war crimes been designated in your country? When? Please elaborate.

**Council Recommendation of 14 November 2002 on the introduction of a standard form for exchanging information on terrorists**

Does [country] use the proposed ‘standard form’ for the exchange of information on terrorists? Please elaborate.

Is information forwarded to Europol (as requested in the Recommendation)? Please elaborate.

**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.** [entered into force in 2007, not included in collection of data]

**Council Recommendation of 28 November 2002 on the development of terrorist profiles**

Have the police in [country] been involved in the development (and updating) of these profiles? Please elaborate. Is Europol involved in the development (and updating) of these profiles? Is this what is meant by ‘Profile indicators of Islamic extremist terrorists’ as mentioned in the Europol Work Programme 2007? Why is that no longer included in the Europol work programme for 2008? Please elaborate.

**Council Decision of 28 November 2002 setting up a European Network for the Protection of Public Figures** [sufficient data on network available, not included in interviews]

**Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP**

Have the police in [country] designated a central contact point that collects all information on criminal investigations with respect to terrorist offences involving any of the listed persons, groups or entities listed in the Annex to the Common Position? Is this information forwarded to Europol?

**Council Decision of 27 February 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States.** Please explain the process of the recruitment, preparation, training and instructions for liaison officers posted by [country]? Could you elaborate on the
role and tasks of liaison officers posted by [country]? Could you elaborate on how choices are made about where to post liaison officers from [country]?

Council Decision of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes.
Have the police in your country set up a specialist unit for the investigation of genocide and war crimes? How is the coordination between law enforcement, immigration and security authorities organised? Has this Council decision contributed to that? Have genocide and war crimes been investigated?

Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT)
If JITs were set up, did the police in [country] use this model agreement? If not, why not? Please elaborate.

Council Recommendation of 2 October 2003 on measures to protect the Euro against counterfeiting.

Does police in [country] participate in any meetings of the national authorities competent for the fight against counterfeiting? Please elaborate.

Has the role been enhanced of the National Central Office in [country] authorised to conduct police investigations in accordance with national law, with the task of combating crime related to currency counterfeiting? Has a website been set up in [country] or at one of the European institutions in order to provide national police authorities competent for fighting currency counterfeiting up-to-date information on currency counterfeiting?


Council Resolution of 27 November 2003 on the posting of liaison officers, with particular expertise in drugs to Albania (C 97 22.04.04).
Do the police in [country] have a liaison posted in Albania? If so, why? Since when? If not, why not?

Council Recommendation of 27 November 2003 on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings
Are you familiar with this Recommendation? If so, elaborate please.

Council Recommendation of 19 February 2004 concerning a handbook for the co-operation between Member States to avoid terrorist acts at the Olympic Games and other comparable sporting events
Are you familiar with this Recommendation? If so, elaborate please.

**Council Recommendation of 30 March 2004 regarding guidelines for taking samples of seized drugs.** Has your country adopted the 2003 ENSFI standard for taking samples of seized drugs? Please elaborate.

**Council Conclusions of 29 April 2004 on police cooperation to combat football-related violence.** [interviews with experts on police cooperation regarding football-related violence]. To what extent have the elements in the annex to the Conclusions been implemented in police practices and contributed to international police cooperation in this field? Please elaborate.

**Council Resolution of 29 April 2004 on security at European Council meetings and other comparable events.** Are you familiar with this Resolution? If so, please elaborate.

**Council Resolution of 26 July 2004 on Cannabis**
Has an AWF been established on international organised cannabis trafficking since the adoption of this Resolution? If so, does your country contribute to this AWF? Have JITs been set up with a view to dismantling criminal networks involved in large-scale trafficking and distribution of cannabis? Please elaborate.
(For Europol:) Has an AWF been set-up and do Member States contribute with information?

**Council Recommendation of 2 December 2004 concerning the reinforcing of police cooperation especially in the areas surrounding the internal borders of the EU**
Has [country] concluded any bilateral/regional agreements with neighbouring countries? Were these prompted by the Recommendation? Please elaborate.

**Council Decision of 22 December 2004 on tackling vehicle crime with cross-border implications**
[Sufficient written sources on implementation available]
Appendix B
EU Council instruments on police and judicial cooperation
adopted between 1995 and 2004

This appendix provides a comprehensive overview of the 137 EU Council instruments on police and judicial cooperation adopted between 1995 and 2004 that form the basic sample in this thesis.

For each of these instruments, the following eight variables were determined and described:
- Year of adoption (Yr);
- Year of initiative (Yr-I);
- Presidency under which the instrument was adopted (Prcy);
- Type of instrument (Type);
- Type of instrument originally proposed (Type-I);
- Origin of the initiative for the instrument (Init.);
- Whether the initiator held the (incoming) Presidency (Stat.);
- Time-lag in the policy process from first draft until adoption measured in days (Tlag).

For the 70 instruments aimed particularly at police cooperation, the values on the following two variables were also assessed and recorded:
- Professional rationality in the policy-making (Pr);
- Effect of the instruments on police cooperation practices (Eff).

The values for all variables were numerically coded to support quantitative analyses. The coding took place within a predefined scheme as explained in Chapter six. At the end of the description for each instrument, a score box is provided of the following type:

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Example

The evidence in this appendix is to a large extent based on policy documents from the EU Council. Because of their high volume, however, these are not all included in the bibliography; rather, they are referred to in this appendix by either the number and date under which they are included in the Council’s registry of documents (e.g., 10042/95 22.09.95) or, if applicable, the number and date of the official journal (hereafter, OJ) in which they were published (e.g., OJ C329 04.11.96).
1. **Council Resolution of 17 January 1995 on the lawful interception of telecommunications**

   (OJ C329 04.11.96)

   **Description**

   This Resolution was adopted under the Presidency of France. The initiative was drafted in a joint effort by the delegations to the Police Cooperation Working Party (9898/04 21.10.94). Originally, the proposal was aimed at a Council Decision; however, in the third pillar, a Decision was not yet an instrument that the Council could adopt. The purpose of the Resolution was to establish legal bases in the Member States for interception of telecommunication. However, although such establishment could have had an effect (as an enabling condition) on police investigative work in general, it had no foreseeable direct consequences for the way police cooperate internationally. This instrument, therefore, was not included in the research sample.

   **Coding for quantitative analysis**

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2. **Council Act of 10 March 1995 drawing up the Convention on simplified extradition procedure between the Member States of the European Union**

   (OJ C78 30.03.95).

   **Description**

   This Convention was adopted under the Presidency of France on a Belgium initiative (8768/94 26.07.94). However, extradition falls into the category of judicial cooperation, and even though in practice it might be facilitated and even executed by police, this measure has little to do with police cooperation practices. Therefore, this instrument was excluded from the research sample.

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3. **Joint Action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit**

   (OJ L62 20.03.95).

   **Description**

   This Joint Action aimed to formalise the decision of the European Council at its meeting on 9 and 10 December 1994 in Essen on the extension of the mandate of the Europol Drugs Unit (EDU) to the fight against illegal trade in radioactive and nuclear materials, crimes involving
illegal immigration networks, vehicle trafficking and associated money laundering operations (12030/94 12.12.94). The Joint Action also provided the EDU with a legal basis under the TEU. Earlier, in December 1991, the TREVI Ministers had agreed that the unit should be set up as a forerunner to Europol and to that end signed a ministerial agreement on 2 June 1993 in Copenhagen (Bunyan 1995: 35). The Joint Action was adopted under the Presidency of France, which forwarded a first comprehensive draft in January 1995 (12321/94 10.01.95); this text, however, shows that a draft had already been discussed in the K.4 Committee in December 1994.

Rationality

The rationale underlying the EDU as predecessor of Europol is primarily a derivative of the rationale for Europol. The urgency to establish the EDU as an operational forerunner for Europol, however, was minimally, if at all, underpinned by a professional viewpoint. Rather, the preamble to the instrument refers only to political and legal arguments, and this Joint Action is in fact a codification of the following political agreement: ‘... in view of the urgent need to deal with the problems posed by international illicit drug trafficking, associated money laundering and organised crime, the Ministers recommended at their special meeting on 18 September 1992 that Europol's first phase, the Europol Drugs Unit (EDU), be in place by 1 January 1993 at the latest’ (12321/94 10.01.95, p. 3).

Assessment of effect

The EDU had originally become operational on 3 January 1994 with a mandate to combat international illicit drug trafficking, associated money laundering and organised crime. This 1995 Joint Action, however, extended that mandate to include the fight against illegal trade in radioactive and nuclear materials, crimes involving illegal immigration networks, vehicle trafficking and associated money laundering operations. On 1 October 1998, the Europol Convention came into force, and Europol replaced the EDU, even though officially Europol was not launched until 1 July 1999.

By the end of 1998, EDU/Europol personnel totalled 160 (135 in 1997), 42 of whom were Europol liaison officers and assistants to the liaison bureaux from the 15 Member States. According to the annual report for 1998, the organisation received a total of 252 requests for analytical expertise (of which 191 were so-called minor requests) and developed numerous secondary activities. The number of cases handled by the liaison officers rose from 1,470 in 1995 to 2,298 in 1998 (see table).
As regards information exchange through the liaison officers, the 1998 annual report of the Dutch Desk strongly criticises the low level of case complexity, pointing out that 85% of the cases were ‘category 1’ requests; that is, simple cases of information exchange on a license plate or phone number.\(^2\)

Moreover, as the report also notes, 70% of all cases in 1998 were bilateral requests that could also have been routed, for example, through Interpol. In reality, however, routing these through Europol has shown little added value. That is, in 1998 Interpol (1999: 10) exchanged a total of 2.2 million messages, over 50% of this message traffic concerned the European region.

Nonetheless, the official Europol (1999: 3) annual report for 1998 concludes that the value and role of Europol have been recognised and are ‘reflected in the increased complexity of the cases being referred to Europol and of the underlying investigations’. The Dutch Desk report, however, openly contradicts this conclusion, noting that the underpinning is meagre and that ‘in the opinion of the Dutch Desk it is not the case that these results would not have been reached if Europol had not existed’.\(^3\)

In sum, although the EDU most probably contributed considerably to the foundation of Europol, its direct effect on police practices in Europe can be qualified as low. In fact, in terms of the percentage of cases related to the stipulated issues and the overall low complexity of the cases handled by the EDU, it can only be concluded that the extension of the EDU mandate as a result of this Joint Action had no effect whatsoever on police cooperation practices.

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4.  **Council Act of 26 July 1995 drawing up the Convention, based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) (OJ C316 27.11.95).**

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\(^1\) Annual reports Europol Dutch Desk 1995 – 1998. These annual reports of the EDU Dutch Desk were released under a FOIA request in 1999.

\(^2\) Europol Drugs Unit Dutch Desk annual report 1998, Section 1.5.

\(^3\) Europol Drugs Unit Dutch Desk annual report 1998, Section 1.7 [author’s translation from Dutch].
Description

The proposal for this Convention was an elaboration of the 1991 political decision to establish a European Police Office (Europol), agreed upon as part of the TEU which in turn was based on a German initiative put forward at the European Council meeting of 28–29 June 1991 in Luxembourg. At another meeting in Lisbon from 26 to 27 June 1992, the European Council recommended that the Convention necessary for the establishment of Europol be drawn up, and in 1993, the Council agreed that Europol would be stationed in The Hague. Discussions on the Convention began in the Europol Working Group in July 1993 under a UK Presidency (9756/2/93 22.11.93); however, although this Presidency presented the first draft (9757/93 08.11.93), this text appears to be the result of a collaborative effort. After two years of drafting and negotiations, the Convention was signed in 1995 under the Presidency of Spain, although it took another three years before all Member States ratified it. On 1 October 1998, the Europol Convention entered into force and, following a number of Convention-related legal acts, Europol took over from the EDU on 1 July 1999.

Rationality

Discussions in the Europol Group on the text for the Convention centred on political and legal considerations related to the role, tasks and institutional position of Europol (see e.g., 9756/2/93 22.11.93). The discussions at this stage of the development seemingly reflected no professional rationality: the preamble to the instrument refers only to political objectives and statements.

Assessment of effect

Some commentators do note, however, that in recent years, operational results have been increasing and Europol has ‘matured’ (e.g., Brady 2007); the effect of some features – for example, the European liaison officers – is higher in this than in other fields. Nevertheless, according to a 2008 internal assessment, in terms of police cooperation in organised crime cases, Europol’s overall market-share has generally only been between 2% (for most Member States) and 5% (rather exceptional). This percentage, although estimated to be higher in some niches – for example, combating Euro counterfeiting – may be even lower in more common cases such as drugs (interview #28). Hence, even though Europol has played a significant role in specific areas (e.g., combating child pornography and Euro counterfeiting), the overall direct effect of Europol on police cooperation practices in the first 10 years of its existence is judged to be low.

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5. **Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities’ financial interests (OJ C 316 27.11.95).**

Description
This Convention was adopted under the Presidency of Spain. Although the issue had been under discussion since 1991, the first comprehensive draft for an instrument was a draft Joint Action by the UK in March 1994 (5342/94 17.03.94). This draft, combined with a draft Convention tabled by the Commission in July 1994, formed the basis for the discussions on this Convention (see explanatory report in OJ C 191 23.06.97). This Convention, aimed at criminalising and penalising fraudulent behaviour affecting community revenue and expenditure, contained no provisions that directly influenced police cooperation practices.

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Description
The Action Programme was adopted under the Presidency of Spain (10042/95 22.09.95). Although the first programme activities took place in June 1995, its first draft was apparently prepared by the Working Party on International Organized Crime at its meeting on 18 September 1995. Aimed largely at judicial cooperation, the Action Programme contained no provisions on police cooperation.

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7. **Conclusions of the Council of 23 November 1995 on extradition (unpublished adopted text in Council document 11712/95 17.11.95).**

Description
These Conclusions, which were adopted under the Presidency of Spain on its own initiative (111393/95 09.11.95), originally aimed at a Council Declaration. Declarations, however, were
not used in the third pillar. The differences between the text of the initiative and that of the final instrument are minimal: extradition falls under judicial cooperation, and even though in practice it is facilitated or even executed by police, it has little to do with police cooperation practices. The instrument was thus excluded from the research sample.

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Description
This Resolution was adopted under the Presidency of Spain on an initiative of France (4055/95 05.01.95). Although aimed at judicial procedures that guarantee proper protection of witnesses and facilitate judicial assistance in this area, this instrument was not directly aimed at police cooperation and thus was excluded from the research sample.

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Description
This Joint Action was adopted under the Presidency of Italy on its own initiative (12745/95 13.12.95). Because the exchange of liaison magistrates is a form of judicial cooperation that has no direct effect on police cooperation practices, the instrument was excluded from the research sample.

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Description
This Recommendation contained three provisions related to police cooperation in this type of situation: 1) the use of a common format for police intelligence reports about known or suspected groups of troublemakers and rapid transmission of these reports; 2) encouragement of police officer attendance at relevant training courses in other Member States and 3) a specific procedure for asking police support from other Member States. An annex to the Recommendation also included an agreed format for the exchange of information. This Recommendation was adopted under the Presidency of Italy on an initiative of the UK (9140/95 19.07.95).

Rationality
The provisions of the Recommendation can be seen as supplemental to those formulated by the Council of Europe’s Standing Committee on the 1985 European Convention on spectator violence and misbehaviour at sports events, in particular at football matches,4 in which context most discussions and activities on the problem of football-related violence have taken place. These Committee recommendations were based on best practice throughout Europe. Nevertheless, problems related to football violence – often defined as ‘spectator violence and misbehaviour at sports events’ – had been discussed by TREVIR Ministers since at least 1991 (8739/94 26.07.94), and a questionnaire on hooliganism in sport and how Member States were dealing with it was initiated by Spain (8845/95 06.07.95). The first draft of the UK initiative on which the Recommendation was adopted refers to the existence of proven good practices in this area and calls for their more coherent use. Subsequent drafts also show that the recommendations of the Council of Europe Standing Committee on the 1985 Convention, particularly, were discussed at length. Moreover, in the preamble to this instrument, four of the eight points are argued from a professional viewpoint, indicating that professional rationality was a factor in the discussions on this Recommendation. However, the choices for the proposed measures and proposed forms of information exchange, having been drawn up by the UK football information unit, were not explicitly underpinned by professional rationality (see 12284/96 03.12.96, pp. 112–113).

Effect
During a seminar on violence in sport held from 19 to 20 November 1996 in Dublin, participants discussed the experiences stemming from this Recommendation. One seminar presentation brought to light that ‘the standard format for the exchange of police intelligence on

4 http://www.coe.int/t/dg4/sport/violence/trvpc_en.asp (last visited 14 February 2010)
football hooligans … was not used to any great extent by any of the competing countries’ (12284/96, p.113). The use of liaison officers, on the other hand, was useful (ibid.). Such usage, however, had already been in practice before the Recommendation was adopted (Council of Europe 1999, section 46).

Data from this study’s interviews with experts from the Football Information Points of two Member States also clearly indicate that the effect of this particular instrument and the use of the standard form have been minimally significant. Specifically, these participants explained that although some Member States were already more or less working in the manner proposed by the Recommendation, true coordinated cooperation only began based on the 1999 handbook (interview #15 and #20, see instrument #52 in this appendix). Hence, because this Recommendation was the first EU Council instrument in this area and mostly codified existing practices agreed upon in another forum, and because actual cooperation was (still) dominated by the agreements made in the CoE Standing Committee, the overall assessment of its effect is low at best.

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Description

This Joint Action was aimed largely at the harmonisation in the Member States of legislation on racism and xenophobia and the approximation between them of corresponding judicial and administrative practices. It did, however, include two small provisions on international police cooperation. The first, Title I, B-(c), called upon Member States to provide information to another Member State that would enable it ‘to initiate, in accordance with its law, legal proceedings or proceedings for confiscation in cases where it appears that tracts, pictures or other material containing expressions of racism and xenophobia are being stored in a Member State for the purposes of distribution or dissemination in another Member State.’ The second, Title I B-(d), required Member States to establish contact points that ‘would be responsible for collecting and exchanging any information which might be useful for investigations’. The Joint Action was adopted under the Presidency of Ireland on an initiative from Spain (9219/95 24.07.95).

Rationality
The rationale for the inclusion in this Joint Action of the two provisions on police cooperation is unclear. Although the preamble to the instrument does contain political statements, no professional arguments for these measures appear in either the original initiative or in the discussions and subsequent drafts. That is, there are no references to reports, seminars or other forums, or expert opinions that would support the necessity and effectiveness of the proposed measures on police cooperation in this matter.

Assessment of effect

The Council’s own evaluation report on the implementation of the Joint Action in Member States (7808/98 21.04.98) clearly indicates that, with regard to the question of actual operational cooperation, the Joint Action had little effect. Although about half of the Member States organised some type of national contact point, they did so in different ways, with some assigning the contact point role to judicial authorities and others to law enforcement agencies. The evaluation also shows that the idea of making these contact points known to other Member States was generally not considered. Moreover, at the time of evaluation, the Member State that had initiated this Joint Action (Spain) had not yet even installed the proposed contact point but was still holding it ‘under consideration’ (7808/1/98 29.04.98, p. 7).

Even though half the Member States had not organised a contact point and a majority indicated making no changes to existing legislation, the evaluation still concluded that ‘the measures provided for in the Joint Action had been adopted to a very significant degree by Member States’ (7808/1/98 29.04.98, p. 7). It did, however, advise further implementation and a review and, in 2000, the Council Secretariat drew up a questionnaire for this purpose (12787/1/00 12.12.00). Not only did only nine Member States respond, but their responses – never published in a formal report – indicate that little had changed in these States since the previous evaluation and that, for example, the ‘instruments provided for in existing judicial cooperation agreements between the EU Member States afford a whole range of possibilities for the exchange of information’ (response from the Netherlands, document SN 1699/01, ADD2 16.03.01, emphasis added). Therefore, the overall effect of this instrument on operational police cooperation is assessed as low.

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5 Communication from the Council Secretariat to the author, received 23 May 2007 (reference 07/0723-jd), which includes the responses of nine Member States to the questionnaire.
Description

This Convention was adopted under the Presidency of Ireland. Although the first coherent draft only emerged in January 1995 (7968/95 12.06.95), drafting had actually begun after the Council discussed an interim report (10318/93 22.11.93) in November 1993. Article (13) of the Convention, however, is a literal copy of the agreement between the Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests, concluded on 26 May 1989 in Donostia/San Sebastian (Vermeulen 2006: 65). Moreover, as previously pointed out, extradition falls under judicial cooperation and although it is in practice facilitated or even executed by the police, this instrument does not aim at enhancing of changing police cooperation practices.

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Description

The Protocol was adopted in July 1995 under the Presidency of Ireland on an initiative from Spain (11080/95 15.07.95)\(^6\). Like the underlying Convention, the Protocol was aimed at criminalising and penalising fraudulent behaviour that affects community revenue and expenditure and therefore contains no provisions directly aimed at influencing police cooperation practices.

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14. **Council Conclusions of 14 October 1996 on measures to combat counterfeiting (unpublished adopted text in Council document 7332/96 14.05.96).**

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\(^6\) The exact date of document 11080/95 could not be established because the document is no longer available. According to the Council Secretariat, the original draft was annulled and replaced by document 11270/95 dated 03.11.95 (letter from the Council Secretariat to the author, 9 November 2006, reference 06/1881-jj). Nonetheless, document 11270/95, which contains the proceedings of the meeting of Steering Group III on 30–31 October 1995, explicitly discusses the proposal contained in document 11080/95 and mentions that this document was forwarded in July 1995. Hence, for this study, 15 July 1995 is used as the document date.
Description
These Council Conclusions were aimed at setting up central units that could respond to requests for information or verification from correspondents in other Member States, organise the operational measures to be carried out, and be of use for the purposes of conducting enquiries by means of international letters of request. They were adopted under the Presidency of Ireland on an initiative submitted by France during its Presidency in the first half of 1995 (6181/95 03.04.95).

This initiative was first discussed by the Working Party on Drugs and Organised Crime and then later by the Customs Cooperation Working Party. Although the final text was adopted by the K.4 Committee in May 1996 (7332/96 14.05.96) and put on the Council’s agenda, the exact format that this instrument was to be given is unclear. Five months later, during the 1954th Council meeting on 14 October 1996, it was adopted as ‘measures’, but for this research it has been designated ‘conclusions’.

Rationality
The original French proposal called for action ‘based on a simple principle’ that would be ‘workable in practice’ and ‘operate around a central structure, which in each State would be the most important or even the mandatory interlocutor in measures to combat counterfeiting’ (6181/95 03.04.95, p. 4.). Both the proposal and the parallel discussions by the Customs Cooperation Working Party (see 7167/1/95 01.06.95) referred to the existence of the problem and the need for common action, and the discussion in the policy documents on the scope of the problem and possible measures does include arguments from different perspectives – including a professional viewpoint. Nevertheless, it offers no tangible professional perspective for establishing a centralised national contact point for police cooperation on this issue. In fact, no arguments whatsoever were put forward to support this solution. Admittedly, however, the proposal should probably be seen against the background of a strongly centralised and hierarchically oriented French law enforcement system (Anderson 1989: 82) in which centralisation was a standard strategy.

Assessment of effect
Because the instrument was apparently largely directed at customs cooperation, it is somewhat unclear about the idea of creating national contact points for police. In most Member States, combating counterfeit goods (and piracy) was largely, if not fully, a customs competency. Hence, for example, a Finnish note to the 1999 CCWP (10707/99 03.09.99) cites regulation (EC) No 3295/94 on counterfeit goods and various initiatives by customs authorities but makes no reference to police cooperation or police contact points even while citing the Conclusions. The effect of these Conclusions on police cooperation therefore appears to have been negligible.
15. **Joint Action (96/602/JHA) of 14 October 1996 providing for a common framework for the initiatives of the Member States concerning liaison officers (OJ L268 19.10.96).**

**Description**

The discussion on formalising the use of liaison officers in the EU was initiated by the Italian Presidency early in 1996 (4003/96 04.01.96). The ideas for a Joint Action were modelled on the TREVI ministers’ recommendations of June 1991, and the note to these included a questionnaire to be filled out by Member States. Based on the survey results and a note from the German delegation (5103/96 19.02.96), the Italian Presidency drafted the Joint Action (6126/1/96 28.03.96), which was adopted in the second half of 1996 under the Presidency of Ireland.

**Rationality**

The use of liaisons as an effective tool for information exchange (especially in combating organised crime) is based upon proven practices (e.g., 5103/96 19.02.96) in that European countries have employed this strategy in police cooperation since the 1970s (Bigo 1996: 30). However, the idea for a common framework for the use of liaison officers was apparently based on political ambition, as illustrated by the Italian Presidency’s first discussion note on the issue: ‘it would therefore appear desirable for the Member States to agree on a strategy to identify areas for action and procedures for possible shared use of the networks of liaison officers’ (4003/96 04.01.96, p. 3). A subsequent note from the German delegation, however, although it supports most of the Italian suggestions, tempers the Italian ambition by clearly stating that ‘liaison officers are deployed according to national considerations’ (5103/96 19.02.96).

Moreover, although the preamble to the instrument refers to ‘the outcome of the surveys of the liaison officer networks of the Member States’, the Italian initiative (6126/1/96 08.05.96) contains no proposals that are based on the actual outcome of the questionnaire. Also, there are no traces of a discussion during the policy-making of elements that could influence the feasibility of a shared use of liaison officer networks, for example, the divergent legal systems and traditions between EU Member States and the differences in police powers, police tactics, structures and cultures. When some professional rationality is observable in the discussions, it concerns the proven tactic of the use of liaison officers *per se* for police cooperation and not the specific idea of a common framework. In sum, the professional rationality in the policy-making of this instrument can be assessed as low.
Assessment of effect

In 2001, the Joint Action was evaluated via questionnaire (as set out in 10452/01 02.07.01). Based on the outcomes, it was concluded that only limited use was being made of the scope for collaboration (5086/02 09.01.02). Not only had Member States not informed one another of the steps taken in relation to the posting of liaison officers and of the duties assigned to them, but there had been very little progress in cooperation through liaison officers posted to third states. In 2003, the Joint Action was replaced by a Decision on the same subject (see instrument #111 in this appendix). In sum, the effect of the Joint Action is assessed as nonexistent.

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16. **Joint Action (96/610/JHA) of 15 October 1996 concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counterterrorist cooperation between the Member States of the European Union (OJ L273 25.10.96).**

Description

The purpose of this Joint Action was to set up a common Directory of specialised counter-terrorist competences, skills and expertise (Centres of Excellence) developed in the Member States and considered useful enough to make available to all Member States. During the one-year start-up phase, the UK was to be responsible for compiling, maintaining and disseminating the directory, after which each Presidency was to appoint a specific office (the directory manager) to maintain and disseminate it. The Joint Action was adopted under the Presidency of Ireland on an initiative of the UK (6811/96 25.04.96).

Rationality

The rationale underlying the UK initiative is set out in a discussion note (4260/96 12.01.96) that preceded the first draft of the Joint Action. Unlike the first draft, this note does reveal some professional consideration for establishing a central database or ‘clearing house’. Nevertheless, this idea is not underpinned with, for example, best practices or research. Moreover, neither the initial note nor the later documents and discussions mention the existence of the Police Working Group on Terrorism (PWGT), which had been an informal channel for information exchange between police counter-terrorism units in Europe since 1976 (see Chapter 3). In the closed world of police counter-terrorism units, most contacts go through this informal channel (interview #22), so not taking this channel into account in the policy-making shows low professional rationality.
Assessment of effect

The Joint Action obliged the directory manager to report to the Council twice yearly. In reality, however, such reports were never transmitted.\(^7\) In fact, Gregory (2007: 15–16) very politely concludes that ‘the Joint Action has not really been fully and continuously implemented owing to the variability of responses from Member States’. Likewise, an expert at Europol, interviewed for this study, explained that before the maintenance of the directory became a Europol task, it was maintained by the UK in paper version only and, although Member States had contributed to this booklet by forwarding a number of specialised counter-terrorist competences, in his opinion these contributions have been rather superficial (interview #27).

This interviewee also explained that Europol became involved in the maintenance of the directory in 1998 after presenting a plan to maintain it electronically at an October 1998 meeting. To date, the directory is being maintained separately from the OC directory within the Knowledge Management Centre (KMC) Unit. The content of this CT directory is marked confidential, and KMC staff do not supply any of its information to applicants without prior permission from the Head of the Terrorism Unit at Europol. As of 2008, 216 items provided by 17 Member States, Europol and the U.S. had been registered in the CT KMC database. The last database update, however, took place in 2005, and the database has barely been used (interview #27): in practice, CT units still use their PWGT contacts to locate the expertise they need (interview #22). Hence, the effect of the Joint Action is assessed as nonexistent.

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17. **Joint Action (96/636/JHA) of 28 October 1996 on a programme of incentives and exchanges for legal practitioners (‘Grotius’) (OJ L287 08.11.96).**

Description

This Joint Action was adopted under the Presidency of Ireland on an initiative from the Commission (COM (96) 253 final 31.05.96), even though at that time the Commission did not have the right of initiative. The proposal was adopted by the Council anyway, but the reference to the Commission’s proposal was deleted in the final text (compare draft 9992/1/96, dated 18.10.96, to the earlier draft 9992/96, dated 01.10.96). As a supporting policy instrument (i.e.,

\(^7\) Communication from the Council Secretariat to the author (reference 06/0920-ch, 26.02.06) noting that ‘the envisaged mechanism has been superseded by other means of information sharing, especially since the entry into force of the Amsterdam Treaty’. This communication does not elaborate on these ‘other means of information sharing’.
financing), this instrument had no aim to establish or change operational police cooperation practices.

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18. **Council Resolution of 29 November 1996 on measures to address the drug tourism problem within the European Union (OJ C375 12.12.96).**

Description

The proposal for this Resolution was based on conclusion #30 from the Action Plan on drugs adopted at the 1995 Madrid European Council. The Resolution invited the (appropriate) Member States to improve and accelerate information exchange, coordinate operational actions and mutually enhance procedures for the application of national law on drug tourism. More specifically, it assumed the existence of a central law enforcement focal point to enhance coordination on the drug tourism problem. It also encouraged personnel exchange and/or the use of existing liaison officers, as well as consultation on planned action on each side of the border.

The Resolution was adopted under the Presidency of Ireland on its own initiative. The Irish Presidency had begun discussions on the Resolution at the start of its term (8805/96 03.07.96), and a first draft was discussed on 2 October 1996 in the Drugs and Organised Crime Group. The Irish Presidency then presented a new draft on 10 October 1996 (BDL Telex N° 3961, 08.10.96).

Rationality

The rationale for the Resolution is supported by a drug expert group’s report on drug abuse in the Union endorsed at the Madrid Council (12247/95 30.11.95) and a report on drug tourism based on Member States’ answers to a questionnaire submitted by the Irish Presidency (8806/1/96 15.07.96). The preamble to the Resolution recognises that ‘drug tourism is in evidence in only some Member States and that there is considerable variation in the extent of the problem experienced by those Member States’.

This considerable variation is evident in the report of the questionnaire outcomes (11649/96 14.11.96). Five out of 15 Member States reported having no (significant) problem with drug tourism (p. 6), while most other Member States pointed to the Netherlands as the destination for drug tourists from their country. Sweden and Finland pointed to Denmark as the drug tourism destination for their citizens, while Austria and Germany mentioned Slovakia (p. 7). The report also admits that its statistical evidence on drug tourism is fragmented at best and that the survey
data suggest the drug tourism problem is not significant, with the possible exception of Sweden, which reported the largest numbers of possible drug tourists. It fails to clarify, however, exactly what these figures represent. In terms of police cooperation, the Member States surveyed indicated that cooperation was taking place along existing channels and reported no particular problems with that practice.

Nevertheless, even though the questionnaire responses indicated that there is not a significant EU-wide problem with drug tourism and no reported problems with police cooperation, the Irish Presidency put the initiative for the Resolution forward. Like other Irish proposals for EU instruments to combat drugs, this proposal should probably be viewed against the domestic public outrage and political pressure on the Irish government after the June 1996 murder by Irish drug dealers of Veronica Guerin, a journalist covering the Irish drug business for the *Sunday Independent* (BBC News 1998). It is also interesting to note that the first results of the questionnaire were drafted on 21 October 1996 (10823/96 21.10.96), 3 days after the Working Party on Drugs and Organised Crime reached agreement on the draft Resolution on 18 October 1996 (10820/96 18.10.96). Overall, therefore, the policy-making shows little to no professional rationality.

Assessment of effect

As explained in the preamble to the Resolution, at that time only some Member States were suffering from drug tourism, and there was considerable variation in the extent of the problem they were experiencing, implying that implementation could be expected to vary accordingly. In terms of actual measures, cooperation arrangements that specifically targeted drug tourism were set up around the borders of the Netherlands, including the so-called Hazeldonk cooperation between France, Belgium and the Netherlands and cooperation in the province of Limburg (written answers #6). This cooperation, however, had existed since 1992, although it slowed down after 1994. Nevertheless, its revival in 1996 (Martens and Corten-van der Sande 2006: 18) could possibly be attributed to this Resolution. On the other hand, French political pressure on the Dutch drug policy had always been significant. For instance, the cooperation received additional impetus in 1998 from the Schengen Narcotics Operation Ways (SNOW), the pilot project on drug trafficking routes (Council of the EU 1999i), and from the 1998 bilateral agreement between France and the Netherlands8 (Martens and Corten-van der Sande 2006: 19).

Over the years, the Hazeldonk cooperation has evolved and, since 2006, two so-called joint hit teams, which include French and Belgian police officers (Martens and Corten-van der Sande 2006: 20), have been permanently stationed in Breda and Maastricht, respectively, each covering a route often used by drug tourists. Combined operations take place regularly, like the recent Operation Etoile by the law enforcement agencies of Belgium, the Netherlands, Luxemburg and

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8 Akkoord betreffende samenwerking op het gebied van politie en veiligheid tussen de regering van de Franse Republiek en de regering van Nederland van 20 april 1998 (Staatscourant 1998, no. 81/p. 5).
France. These arrangements, however, existed prior to the Resolution, and this research has found no indications of any direct application of the Resolution in Member States other than these four. In sum, the Resolution may have contributed to the Hazeldonk cooperation, but whether it had any of the intended effects on other police practices cannot be determined.

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**Description**

This Resolution promoted the conclusion of agreements between police and customs in the fight against drugs. Such agreements would cover such issues as exchange and sharing of relevant intelligence; exchange of *modi operandi*; exchange of information on the application of risk analysis techniques; exchange of liaison officers; jointly agreed-upon press statements; joint task forces, where appropriate, for intelligence and/or investigative purposes; mutually agreed-upon procedures for operational matters involving both these agencies; joint mobile patrol squads; joint training programmes and sharing of equipment.

The Resolution was adopted under the Presidency of Ireland on its own initiative (9659/96 04.09.96) but was replaced on 27 April 2006 by a Recommendation (6856/06 23.03.06) that, in recognition of the notable involvement of criminal groups in the smuggling of goods other than drugs, extended the scope of such agreements to all other relevant areas of crime.

**Rationality**

In July 1996, the Irish Presidency organised an expert meeting on police and customs cooperation in combating drugs for police, customs and other relevant law enforcement agencies from the Member States, as well as participants from Interpol and the World Customs Organisation. The most prominent subjects discussed were existing agreements, information exchange and practical cooperation (9076/96 12.07.96). It was noted, among other things, that agreements between police and customs on combating drugs in the Member States already existed; therefore, the substance of such agreements was discussed, together with examples of the operational cooperation they engendered. The Irish Presidency announced that it would propose an instrument to further the use of police/customs cooperation in combating drugs in the EU, and in the preamble to its subsequent initiative (9659/96 04.09.96), a substantial number of

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the considerations raised argue the need for police/customs agreements based on professional rationality.

Assessment of effect

The implementation of the Resolution was evaluated in both 1998 (7403/98 03.04.98) and 2000 (5488/00 19.01.00). According to the 1998 evaluation, the Resolution had prompted many Member States to set up projects or establish working groups tasked with reviewing agreements already in place, and 9 of the 15 Member States had either concluded or were in the process of consulting on new cooperation agreements. Likewise, the 2000 evaluation indicated that ‘prior to the Resolution all Member States already had formal or informal agreements at [a] national level governing cooperation between police forces and customs authorities. In many cases, however, the Resolution prompted a review of existing agreements or the conclusion of new cooperation agreements.’ It also reported that between 1998 and 2000, three Member States (Netherlands, Portugal and Sweden) had concluded new agreements, and that two Member States had brought agreements concluded before the last evaluation into line with the Resolution. In fact, according to one note from the Dutch delegation to the Customs Cooperation Working Party, this evaluation concluded that

… scrutiny of the replies to the questionnaire for evaluating the implementation of the Council Resolution on the drawing up of police/customs agreements in the fight against drugs has shown that the Resolution has been almost fully put into effect. All 15 Member States have either formal or informal agreements at [a] national level between police forces and customs authorities. In most of them those agreements are being constantly expanded and adjusted. The Council Resolution plays a significant role here. Exchange of relevant information continues to be the core feature of the agreements. (11316/3/05 10.01.06)

Nevertheless, although these evaluations provide detailed evidence for a wide application of police/customs agreements on cooperation in combating drugs, in a number of Member States these agreements had already been in existence. In that respect, the Resolution might have coincided with – or may have been prompted by – an existing trend of multidisciplinary cooperation within the Member States. On the other hand, the Resolution does appear to have resulted in further elaboration, widening and standardising of police/customs agreements in the fight against drugs. For example, in 1997 in the Netherlands, the first so-called hit-and-run container teams were established (Tweede Kamer 1996: 10), that represent a strong and successful cooperation arrangement between police and customs in the fight against drugs (Volkskrant 2006). In sum, the effect of this Resolution on police practices can be assessed as high.

Coding for quantitative analysis
20. **Joint Action (96/699/JHA) of 29 November 1996 concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking (OJ L322 12.12.96).**

Description
This Joint Action was aimed at the establishment of a more cohesive mechanism for the transmission and dissemination of the results of drug profiling in Member States. Specifically, it envisaged the exchange of information related to the chemical profiling of cocaine, heroin, LSD, amphetamines and their ecstasy-type derivatives MDA, MDMA and MDEA, as well as such other drugs or psychotropic substances as Member States saw fit to include. It also named the Europol Drugs Unit (EDU) as the designated authority to which chemical profiling information would be transmitted by Member States in a predefined format. The EDU would in turn re-transmit all the information to all Member States. The initiative was based on a measure proposed (under IV.B.2) in the drug expert group’s report on drug abuse in the Union that was endorsed at the Madrid Council (12247/95 30.11.95). The Joint Action was adopted under the Presidency of Ireland on its own initiative (10238/96 27.09.96).

Rationality
This proposal built on the outcomes of a July 1996 expert seminar on the chemical profiling of drugs (9864/96 12.09.96), at which participating experts supported the idea of sharing the chemical analysis of confiscated synthetic drugs. Hence, the preamble to the initiative shows a clear underpinning of the instrument by professional rationality.

Assessment of effect
As one of the interviewees for this study remarked, the capabilities of the EDU before it became Europol should not be overestimated. As regards this particular Joint Action, it appears that the ambition was of a higher level than the EDU’s capacity to implement (interview #17). Despite a claim in Europol’s (1999: 6) 1998 annual report that ‘the chemical profiling of synthetic drugs and the drugs purity indicator system were prepared in close co-operation with the German Federal Police Office (BKA) and the European Network of Forensic Science Institute (ENFSI)’, later discussions in the Council (see 6053/01 08.02.01; 7317/01 22.03.01) reveal that, as of 2001, no standards had actually been reached and little information had been transmitted to and disseminated by Europol. In fact, one Dutch expert indicated that, at that time, no information on chemical profiles was being sent by the Dutch police to Europol (written answers #6), and the Europol annual reports do not a mention system for exchanging such information. Moreover,
one Europol liaison officer interviewed remarked that although, the CASE project (see instrument #70 in this appendix) initiated by Sweden exemplifies a good cooperation project in this area, he was less aware of the activities of his own organisation in the field of chemical profiling (interview #28). Overall, even though the activities of Europol in relation to the ecstasy logo’s are widely recognised, the effect of this Joint Action must be assessed as nonexistent.

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Description
This Joint Action tasked the Europol Drug Unit with establishing, maintaining and disseminating a Directory of specialised competencies, skills and expertise for the fight against crime. Member States were to forward an indication of any specialised competencies, skills or expertise they had developed in the fight against organised crime that they considered useful enough to make available to all Member States, who would then receive a copy of the directory. The Joint Action was adopted under the Presidency of Ireland on an initiative of Belgium (9787/96 12.09.96). After the initial discussion, the initiative was presented as a combined initiative of Ireland and Belgium (9787/2/96 03.10.96).

Rationality
No explanatory information on the introduction of this instrument is available, other than a few lines in the preamble that indicate that the initiative was introduced directly in the K.4 Committee, with no apparent prior discussion of its substance in, for example, the Police Cooperation Working Party. The instrument was underpinned primarily by the arguments that ‘strengthening of the cooperation between Member States’ police forces is necessary’ and that the existing expertise ‘should in principle be available’ to all Member States. No reference was made, however, to such aspects as the possibility of existing practices in this area, expert opinion or previous successes with similar measures.

Assessment of effect
From the discussions in the Council structures, it appears that in 1997 the Centres of Excellence were in the process of being set up within the EDU, and a number of Member States had already
sent details (8663/97 03.06.97). According to a Europol expert interviewed for this study, since
that time over 800 Centres of Excellence have been registered in the Knowledge Management
Centre (KMC) database on organised crime at Europol. These centres were based on
contributions from law enforcement organisations in the Member States and expertise gathered
by KMC staff members. In September 2007, an update was initiated of the content of the KMC
database, which maintains separate registrations on, for instance, expert negotiators or experts in
the areas of witness protection, high-tech crime or West African crime. Nevertheless, on a yearly
basis, the KMC database receives only about 150 queries from either law enforcement
organisations in the Member States or staff members at Europol (interview #27). Hence, the
effect of these few exchanges on police cooperation practices in the EU can be assessed as low.

Coding for quantitative analysis

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22. Joint Action (96/700/JHA) of 29 November 1996 establishing an incentive and exchange
programme for persons responsible for combating trade in human beings and the sexual

Description
This Joint Action, adopted under the Presidency of Ireland on an initiative from Belgium
(9786/96 10.09.96), was a supporting policy instrument (i.e., financing) with no tangible goal of
establishing or changing operational police practices.

Coding for quantitative analysis

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23. Council Resolution of 16 December 1996 on measures to combat and dismantle the illicit

Description
This Resolution was an elaboration of conclusion #27 of the report by drug experts on drug
abuse in the Union endorsed at the Madrid Council (12247/95 30.11.95). As regards police
cooperation, it aimed to enhance the effectiveness of operational personnel in tackling the
problem of the illicit cultivation and production of drugs. To that end, Article 4 of the Resolution
stated that Member States should improve their a) exchange of operational and strategic
intelligence; b) cooperation with forensic laboratories; c) provision of specialised training courses and seminars; d) exchange of skills, knowledge and expertise; e) assessment of equipment for the detection of illegal laboratories, and f) that they should compile a manual on the detection of illicit cultivation and production of drugs, which the EDU was tasked with regularly updating. The Resolution was adopted under the Presidency of Ireland on its own initiative, which was first presented in the Drugs and Organised Crime Working Group in October 1996 (Telex 4117/96 15.10.96).

Rationality
The necessity of the instrument was apparently prompted by the political drive from the 1995 Madrid European Council and, possibly more importantly, by the previously mentioned Irish domestic politics on drugs (see instrument #12 in this appendix). The proposed measures are based on answers from a questionnaire administered to Member States on existing measures for combating illicit cultivation and production of drugs and in particular cannabis (10822/96 18.10.96). Nevertheless, the measures in the Resolution remain ambiguous. Also, they were presented without further discussion or underpinning of their effectiveness and necessity from a professional viewpoint, nor with any connection to the questionnaire outcomes. Hence, the professional rationality in the policy-making is assessed as low.

Assessment of effect
In general the encouragement of cooperation in this Resolution is not clearly defined, and it should be noted that, throughout the 1990s, combating drugs was already a high priority for most, if not all, EU law enforcement agencies. The most tangible indicator for the effect of this Resolution is the EDU’s production and dissemination of a manual on the detection of illicit cultivation and production of drugs, and one Dutch drug expert did recall receiving a handbook from Europol (written answers #6). However, he also indicated that to his knowledge no joint actions against cannabis had been initiated based on the Resolution (written answers #6).

In fact, the Europol annual reports indicate that Europol produced and disseminated several different manuals on combating drugs, but when asked whether these were prompted by this Resolution, another interviewee commented that it would be difficult to find unambiguous evidence for that link (interview #27). Hence, although manuals may possibly have contributed to the standardisation of EU police practices in this area, it is difficult to gauge the extent to which the Resolution had a particular intended effect on police cooperation practices. Moreover, production of the manual was only one of the instrument’s six projected outcomes, and no evidence has been found for the other five. Overall, the effect of this Resolution is assessed as nonexistent.

Coding for quantitative analysis
24. **Joint Action (96/748/JHA) of 16 December 1996 extending the mandate given to the Europol Drugs Unit (OJ L342 31.12.96).**

**Description**

This Joint Action, adopted under the Presidency of Ireland on its own initiative (9665/96 04.09.96), was aimed at extending the mandate of the Europol Drugs Unit to include trafficking in human beings.

**Rationality**

As is clear from the preamble to the Joint Action, this measure was proposed solely based on political rationality that laid emphasis on political commitment to combating the traffic in human beings. Thus, although the necessity of information coordination on a European level as a tactic for more effectively combating human trafficking could well be argued from a professional rationality point of view, no such argument nor any discussion on the substance of the Joint Action appears in either the initiative, its subsequent drafts or other related policy documents.

**Assessment of effect**

As argued under instrument #1 in this appendix, notwithstanding the EDU’s preparatory work for establishing Europol, its overall operational effect can be assessed as low, especially as an overview of its caseload reveals that, in 1998, human trafficking cases accounted for less than 5% of the EDU’s total workflow (see the table under instrument #3 in this appendix). This instrument therefore did have some effect in that the EDU began supporting cases of human trafficking, but it did not do to the same extent as for its other competences. In sum, the effect is assessed as low. It should also be noted, however, that Europol’s later activities fall outside the evaluation of this instrument because the Joint Action was specifically aimed at the EDU mandate, whereas the mandate of Europol is provided for in the Europol Convention.

**Coding for quantitative analysis**

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Description

This Joint Action was adopted under the Presidency of Ireland on an initiative of France (10694/96 16.10.96). Although the instrument was, as its title suggests, aimed at the approximation of practices, it makes reference to police cooperation practices in only quite general terms. Hence, it is impossible to pinpoint its potential direct effect on these practices.

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26. **Council Resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organised crime (OJ C10 11.01.97).**

Description

Although this Resolution was adopted under the Presidency of Ireland, the French Presidency took the initiative for action in this matter in 1995 and the Spanish Presidency administered a questionnaire on this subject in the second half of 1995 (5332/96 26.02.96). A first comprehensive draft for the instrument, however, was tabled by the Italian Presidency in 1996 (4118/96 09.01.96). The Resolution was aimed at introducing enabling conditions into the national laws of the Member States to encourage individuals to cooperate with the judicial process. It did not, however, include any provisions on police practices.

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27. **Joint Action (97/12/JHA) of 20 December 1996 providing a common programme for the exchange and training of, and cooperation between, law enforcement authorities (‘Oisin’) (OJ L7 10.01.97).**

Description

This Joint Action, adopted under the Presidency of Ireland on its own initiative (10369/96 02.10.96), aimed to provide a common programme that both funded training activities and promoted operational cooperation by funding the ‘organization of joint operational projects, having a limited duration, involving the participation of law enforcement authorities’ (Article 5) and ‘exchange of information on operational matters of common interest to all Member States’
(Article 6). Nevertheless, although the instrument was aimed at supporting cooperation, it was not aimed at actually changing operational practices.

Coding for quantitative analysis

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28. **Council Resolution of 20 December 1996 on sentencing for serious illicit drug trafficking (OJ C10 11.01.97).**

Description
This Resolution, adopted under the Presidency of Ireland on its own initiative (9172/96 16.07.96), aimed to harmonise the criminalisation and penalisation of drug trafficking without any direct effect on police cooperation practices.

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29. **Joint Action (97/154/JHA) of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children (OJ L63 04.03.97).**

Description
Although this Joint Action was primarily aimed at the harmonisation of procedural and substantive criminal law, its Title III supports international cooperation between Member States by calling for ‘the widest possible judicial cooperation’ and urging that Member States ‘where appropriate, take the necessary measures to allow the direct transmission of requests for assistance between locally competent authorities.’ Title III also provides even more tangible provisions by stipulating that Member States shall do the following:
(D) take the necessary measures, to allow the direct transmission of requests for assistance between locally competent authorities;
(E) appoint one or several contact authorities which may be contacted in the event of difficulty in complying with urgent letters rogatory;
(F) grant each other assistance in the exchange of information which in one of the Member States is administrative in nature or falls under the competence of administrative authorities;
(G) ensure that information concerning missing minors and persons convicted of offences set out in this Joint Action as well as information which could be useful for investigations and
prosecutions of such offences is organised in such a way that it is readily accessible and can be effectively used and exchanged with other Member States.

The original initiative also included a provision for setting up in each Member State ‘a Missing Persons Unit responsible for centralizing and exchanging information concerning missing persons and persons convicted of paedophilia which could be used as a contact point with the other Member States’ (9785/96 10.09.96). The proposal did not, however, contain any underpinning for the relevancy and need for such centralised missing person units in relation to human trafficking, and this provision was later removed, apparently because some Member States saw it an infringement on their freedom to organise their own law enforcement processes (9785/3/96 15.10.96., footnote 3 with Title III G on p. 12).

The Joint Action was adopted under the Dutch Presidency on an initiative by Belgium, which, it should be pointed out, was at that time shocked by the disappearance, sexual abuse and murder of a number of young girls. In August 1996, the infamous Marc Dutroux was arrested, and the last two girls that he had abducted and abused were rescued.

Rationality
Overall, the proposal was based on a number of unsupported assumptions: for example, it provided no evidence for the assumed relation between human trafficking and the sexual exploitation of children (by paedophiles). Nor did it offer any support for the establishment of a missing persons unit responsible for both centralising and exchanging information on missing persons and persons convicted of paedophilia. More specifically, the proposal contained no statistics, expert opinions, practitioners’ contributions or best practices on the subject of the Joint Action.

Assessment of effect
Interestingly, during the instrument’s implementation, attention focused largely on the idea of missing persons even though a tangible provision on that subject was removed from the Joint Action text during the drafting process. When the Dutch delegation began discussing implementation in June 1997, it focused not on missing persons and convicted paedophiles as initially proposed by Belgium, but rather on missing persons and unidentified corpses (6214/97 23.06.97). Likewise, the related proposal for Council Conclusions10 was based on practical police experience in this area (e.g., Interpol practices) and was not aimed particularly at combating human trafficking and the sexual exploitation of children. Nevertheless, this Joint Action has been used as a legal (and political) foundation for furthering cooperation in this area,

10 In this research, these Council Conclusions are not regarded as an independent instrument but rather, as the Council also explicitly argued, as part of the implementation of the 1997 Joint Action.
and in practice, provision III-G of the Joint Action can be seen partly as the basis for common action on missing persons.

The Council adopted the proposal in March 1998 (6274/98 26.02.98) as an implementation measure on the Joint Action. This particular phase of the implementation was evaluated in 1999 (12299/99 28.10.99) and a conclusion drawn that some approximation of practices and good cooperation on this subject was visible in the Member States. In 2002, the idea of an EU-wide database was launched (9235/02 28.05.02) but as yet has produced no concrete results. Nevertheless, over the past few years, close cooperation in this area has emerged through Interpol (see 11707/05 22.08.05 and 11231/06 04.07.06), which has a system of so-called notices in place, i.e., standardised messages used to diffuse information globally. The yellow notices relate to missing persons, and the black notices relate to unidentified bodies. Between 1998 and 2005, Interpol (1999-2006) issued over 1,500 yellow notices and almost 800 black notices. Also Interpol has developed internationally agreed-on standards on the exchange of information on missing persons and unidentified bodies.\(^\text{11}\)

As regards the implementation of the provisions of the original Joint Action, Article IV-B provided for a Council assessment by the end of 1999. However, Article 6 of the Council Decision of 29 May 2000 (see instrument #58 in this appendix) on combating pornography on the Internet stipulated that the assessment envisaged in the 1997 Joint Action should not be carried out but should be replaced by a broader evaluation that also includes an assessment of the provisions of the 2000 Council Decision. This evaluation was supposed to be held using the mechanism for evaluating the application and implementation, at a national level, of international undertakings in the fight against organised crime, as agreed on in the Joint Action of 5 December 1997 (see instrument #38 in this appendix). In other words, the implementation of the Joint Actions was to be evaluated within the system of mutual evaluations by the Multidisciplinary Group on Organised Crime (MDG). However, as of January 2009, no MDG reports that touched on this particular subject were found.

In the initiative for a Framework Decision on human trafficking, however, the Commission stated that ‘the Joint Action of February 1997 failed to achieve its objectives’ (COM (2000) 854 final /2 22.01.01, p. 4). On the other hand, in practice, provision III-G of the Joint Action does appear to have been implemented to some extent. Most practical advancements, however, have come from developments within Interpol. The overall effect of the Joint Action is therefore assessed as low.

Coding for quantitative analysis

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\(^{11}\) See for example, the Interpol standard forms for disaster victim identification (DVI) that can also be used for investigating cases of missing persons and unidentified bodies (http://www.interpol.int/Public/DisasterVictim/default.asp last visited 14 March 2011).
30. **Action Plan to combat organised crime, adopted by the Council on 28 April 1997 (OJ C251 15.08.97).**

Description

The discussion on this Action Plan began in December 1996 when, during the Dublin II European Council from 13 to 14 December 1996, it was decided to establish a high-level group to draft an action plan containing specific recommendations for action against organised crime. Based on the work of the group and contributions from the Member States, an extensive discussion note was produced by the Dutch Presidency (5869/97 11.02.97).

The final Action Plan contained 15 political guidelines and 30 more detailed recommendations and was thus a hybrid between a strategic plan and a policy instrument aimed at tangible measures. Hence, the assessment for this research takes into account only the tangible recommendations aimed at enhancing police cooperation. The Action Plan was adopted under the Dutch Presidency, which coordinated the work of the high-level group and presented the first tangible draft in February 1997 (6276/97 27.02.97). After being adopted by the Council in April, the plan was endorsed by the Amsterdam European Council in June 1997.

Rationality

The discussion note from the Dutch Presidency (5869/97 11.02.97) reveals that the various subjects in the plan were discussed in depth based on professional rationality.

Assessment of effect

The Action Plan has had a significant effect on police cooperation practices in the Member States through the creation of national centralised contact points for the coordinated exchange of criminal intelligence in particular (see Den Boer and Doelle 2002: 49). Today, in most Member States, these national contact points commonly include the SIRENE office, the Interpol NCB, the Europol National Unit, the liaison officer contact point and other centralised contact points created under the Council instruments, a network that would have been difficult to develop prior to the plan. Such strong implementation of the Action Plan, one interviewee noted, was at least partly due to the efforts of one Dutch Justice Ministry official person who was the ‘father’ of the plan (interview #17).

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31. **Council Act of 26 May 1997 drawing up the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C195 25.06.97).**

Description

This Convention was adopted under the Dutch Presidency after a first draft was forwarded by Italy (4265/96 12.01.96). Although aimed at introducing and harmonising criminal liability related to corruption in the national laws of the Member States, it contained no provisions that could affect police practices other than a general remark in Article 9 on ‘effective cooperation’.

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32. **Joint Action (97/339/JHA) of 26 May 1997 with regard to cooperation on law and order and security (OJ L147 05.06.97).**

Description

This Joint Action aimed at information exchange via central bodies (Article 1) on ‘sizeable groups which may pose a threat to law and order and security [that] are travelling to another Member State in order to participate in events’. According to the preamble, such events include ‘sporting events, rock concerts, demonstrations and road-blocking protest campaigns …’. The Joint Action also detailed the kind of information to be exchanged (Article 2), the use of liaison officers and the coordination arrangements between the central bodies (Article 3). It was adopted under the Dutch Presidency on its own initiative that was originally aimed at a Council Resolution (5692/97 10.02.97).

Rationality

The Joint Action built on earlier initiatives in this field, in particular the 1994 Council Recommendation on information exchange on the occasion of major events and meetings (4289/96 22.01.96) and a 1996 Council Recommendation on guidelines for preventing and restraining disorder connected with football matches (see instrument #10 of this appendix). Discussion on this Joint Action began in the PCWP in 1995 and 1996 and also took into account notes from the German Delegation (9037/95 13.06.95; 4289/96 22.01.96; 12147/96 27.11.96) under the heading ‘Information exchange between crisis management centres’. These notes, however, provide limited support for the practical background of the proposed provisions: for the most part, the argumentation built on previous Council agreements and not on practical experience. Moreover, the exact goal of this Joint Action is in some ways unclear because it
mixed together very different types of public order issues – particularly football hooliganism related to public order problems – for which different instruments were later devised.

Assessment of effect

As part of the implementation of this Joint Action, the Belgian delegation suggested a very extensive standard form for information exchange (12448/97 18.11.97). The findings of this research, however, indicate that neither this form nor the standards proposed in the Joint Action at that time were used, at least not with regard to the cooperation on football-related violence (interview #15; written answers #3). Moreover, the official report (7652/98 15.04.98) of a questionnaire sent out by the UK delegation in late 1997 to assess progress on the implementation of the Joint Action (13232/97 09.12.97) concluded that although events with international participants had taken place in most Member States (§ 2.1.1), information and intelligence on these events was often not passed on in a timely manner (§ 2.1.4) and there was concern about the large number of different systems used for information exchange (§ 2.1.5).

According to the 2007 Schengen police cooperation handbook (10694/07 ADD 2 REV 1 13.02.08), each Member State had appointed (or established) a central body in relation to Article 1 of the Joint Action. However, in the Netherlands, for example, this ‘central body’ is a departmental body – the National Crisis Centre (NCC), located within the Ministry of the Interior12 – whose actual operational effectiveness in this type of information exchanges is questionable. That is, the NCC is not part of any operational police structure and is not authorised under Dutch law to receive or handle any information from police databases, let alone exchange it internationally.13 According to the handbook, a number of Member States had chosen a ministry outside operational structures as their central body for this Joint Action.

A review of cooperation on football hooliganism specifically provides strong indications that structured cooperation in that area only began during the Euro 2000 football championship, and was based on a 1999 Handbook for international police cooperation in connection with international football matches. According to Tsoukala (2007:13), the specifications in this resource were based on the Joint Action (see the findings under instrument #52 in this appendix); however, no reference to the Joint Action appears in any of the relevant policy texts relating to the handbook.

The Joint Action did, however, provide the basis for cooperation on other forms of public order issues. For example, it provided the starting point for developing additional instruments on demonstrations and violent protests (see e.g., instrument #78 in this appendix). Nevertheless, although there are arguments to support this Joint Action’s effect on police practices, its effect

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13 See article 17 of the Dutch Law on Police Information (Wet Politiegegevens) in conjunction with article 5:1 of the Regulation on Police Information (Besluit politiegegevens).
has primarily been the designation of contact points. The overall effect of the Joint Action on police cooperation practices is thus assessed as low.

Coding for quantitative analysis

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33. **Council Resolution of 9 June 1997 on the exchange of DNA analysis results (OJ C193 24.06.97).**

Description
This Resolution called on Member States to consider building national DNA databases – preferably using the same DNA markers – and to take into account the results of investigations carried out by the ICPO-Interpol DNA Working Party. It also urged them to consider the creation of a network of compatible national DNA databases. The Resolution was adopted under the Dutch Presidency on its own initiative (7025/97 02.04.97) in the same year (1997) that the Netherlands began filling its own DNA databank with the first DNA profiles (NFI 2006).

Rationality
In preparing the Resolution, advice was sought from the European Network of Forensic Science Institutes (ENFSI) (6467/97 07.03.97), and the discussions in the K4 Committee (6539/97 07.03.97) show consideration of the work of the European DNA Profiling Group (EDNAP).¹⁴ Use was also made of the results of a questionnaire on practices in this area (11643/1/95 15.12.95). Of most relevance is a discussion note from the Netherlands (11853/1/96 11.02.96) that distinguishes four approaches to the issue: technical, legal, political and ethical. Professional rationality therefore played a major role in the policy-making in this instrument.

Assessment of effect
A 1999 evaluation by the PCWP concluded that the number of DNA databases in the EU Member States had not changed since 1997 (10763/99 8.09.99); however, not all Member States contributed to this evaluation. On the other hand, responses to a questionnaire sent out by the Commission in 2006 (9445/3/06 19.07.06) show that, at that time, 11 of the 15 old Member States had DNA databases. Indeed, as shown in the table below, in the three years after the Resolution was adopted, the number of databases containing the DNA samples of suspected and convicted persons tripled.

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¹⁴ The EDNAP was established in October 1988 in London when a group of forensic scientists from various European countries came together to find a way of harmonising the DNA technology for crime investigation. At the 14th Congress of the International Society for Forensic Genetics (ISFG) in Mainz (1991), EDNAP was accepted as a Working Group of the ISFG. See [http://www.isfg.org/EDNAP](http://www.isfg.org/EDNAP) (last visited 3 May 2011).
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<tr>
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</tr>
<tr>
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<tr>
<td>Luxembourg</td>
<td>2006</td>
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<tr>
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On the other hand, it should be noted that external events combined with the swift scientific advancements in this field could also have prompted the establishment of DNA databases in the Member States (Schiermeier 1998: 749). According to one expert interviewed, developments in the DNA field are driven less by political decision-making than by the activities of members of the European Network of Forensic Science Institutes (ENFSI) (interview #31). In 1998, this institute reached an agreement on seven markers for DNA exchange in Europe. Given these other developments at the end of the last century, the effect of the EU instrument on the actions of the Member States in this regard is assessed as medium, particularly since in 2001 the Council adopted another Resolution on DNA exchange (see instrument #71 in this appendix).

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34. **Council Resolution of 9 June 1997 on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy (OJ C 193 24.06.97).**

Description

Adopted under the Dutch Presidency on its own initiative (7537/97 21.04.97), this Resolution was based on the results of a seminar held from 19 to 20 March 1997 in Amsterdam (Tweede
Kamer 1997: 9). However, although its preamble makes reference to the fact that ‘police cooperation is seen by the Member States as a matter of common interest’, none of the Resolution articles aimed specifically at police cooperation.

Coding for quantitative analysis

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35. **Joint Action (87/372/JHA) of 9 June 1997 for the refining of targeting criteria, selection methods, etc., and collection of customs and police information (OJ L159 17.06.97).**

Description
This Joint Action was adopted under the Dutch Presidency on an initiative from Ireland (10739/96 17.10.96) and was based upon a recommendation by drug experts (12247/95 30.11.95). Despite its title, it was aimed largely at customs cooperation and little at police cooperation. Its Article 6 did make a small reference to police cooperation, ‘customs, police and other law enforcement authorities shall as far as possible intensify mutual exchanges of available intelligence and information and where appropriate’, and its Article 7 briefly urged law enforcement to ‘analyse the intelligence and information available’. However, the Joint Action included no tangible measures for influencing police cooperation practices.

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36. **Joint Action (97/396/JHA) of 16 June 1997 concerning the information exchange, risk assessment and the control of new synthetic drugs (OJ L167 25.06.97).**

Description
This Joint Action was adopted under the Dutch Presidency on its own initiative (7071/97 27.03.97), after first being discussed in January 1997 in the Horizontal Drugs Group (6449/97 06.03.97) based on a Commission staff working paper (SEC(97) 157) and a note from the Netherlands (5439/97 24.01.97). It was repealed, however, in 2005 by the Council Decision of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ L127 20.05.05). Although information exchange was an important issue in this Joint Action, its main aim was to establish an early warning system for new ‘designer drugs’ in
order to enable a common Decision on taking necessary measures or introducing controls. It included no tangible measures aimed at police cooperation.

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Description
This Second Protocol was adopted under the Dutch Presidency. The first proposal for the protocol was put forward by the Commission (COM(95) 693 final 20.12.95) even though at that time, it held no right of initiative. The Italian Presidency then tabled a redrafted proposal (7752/96 30.05.96), which, like the underlying Convention, aimed at criminalising and penalising fraudulent behaviour that affects community revenue and expenditure. It did not, however, contain any provisions directly influencing police cooperation practices.

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38. **Joint Action (97/827/JHA) of 5 December 1997 establishing a mechanism for evaluating the application and implementation at a national level of international undertakings in the fight against organised crime (OJ L344 15.12.1997).**

Description
This Joint Action, adopted under the Presidency of Luxembourg on its own initiative (10406/97 08.09.97), aimed to set up a structure for peer evaluation of policy implementation, but was not aimed directly at concrete police cooperation practices.

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Description
This Joint Action was adopted under the Presidency of the United Kingdom. The first draft was forwarded by the Commission (COM (97) 528 21.10.97), even though at that time it did not have the right of initiative. After informal discussion of the draft in the MDG (11694/97 29.10.97) and in a JHA Counsellors’ meeting, the Luxembourg Presidency forwarded a revised draft (12369/97 17.10.97) that would form the basis for further discussion. The programme aimed primarily at financing training and technical cooperation to improve skills, although its scope was so wide that it could also have been used to finance ‘all other measures that may promote the implementation of the Action Plan to combat organised crime’ (Article 1.3). It contained no concrete measures, however, for operational cooperation.

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Description
This Joint Action was adopted under the Presidency of the United Kingdom on its own initiative and submitted when it held the incoming Presidency (13300/97 10.12.97). The instrument promoted standards for judicial cooperation and was not aimed at police cooperation practices.

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Description
This Joint Action was adopted under the Presidency of the United Kingdom on an initiative of Belgium (9804/97 09.07.97), although the idea for a European Judicial Network (EJN) derived
from recommendation #21 of the 1997 Action Plan on combating organised crime. This network, inaugurated on 25 September 1998, was the first practically structured mechanism of judicial cooperation in the EU to become operational. The EJN’s purpose is to identify and put in touch those persons in every Member State who play a fundamental practical role in the area of judicial cooperation on criminal matters, in order to create an expert network and ensure the proper execution of mutual legal assistance requests through direct contacts between competent judicial authorities. The Joint Action, however, was solely aimed at judicial, not police, cooperation.

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42. **Joint Action (98/699/JHA) of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ L333 09.12.98).**

Description

This Joint Action aimed primarily at harmonising the approach of the Member States towards the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime, and national legislation on the confiscation of the proceeds from crime on request of another Member State. In terms of operational cooperation, Article 2 stipulated that Member States should agree to produce user-friendly guides, and Article 3 stated that Member States should give the same priority to all requests from other Member States related to asset identification, tracing, freezing or seizing, and confiscation as is given to such measures in domestic proceedings. Article 4 stipulated that Member States should agree to ‘encourage direct contact between investigators, investigating magistrates and prosecutors of Member States making appropriate use of available cooperation arrangements, to ensure that requests for assistance through formal channels are not made unnecessarily’. Articles 5 and 6 were related to judicial procedures and training. The Joint Action was adopted under the Presidency of Austria based on an initiative from the UK (5516/98 29.01.98).

Rationality

The preamble to the instrument provides sizeable indications of the influence of professional rationality, an influence made even clearer by the UK initiative’s use of a 1996 expert seminar in Dublin and practical experience to support the necessity of the instrument and its particular provisions (5516/98 29.01.98). In sum, the policy-making on this Joint Action was to a great extent built on professional rationality.
Assessment of effect

A Council review of this Joint Action was planned before the end of 2000; however, at that time, a proposal for a Framework Decision repealing the Joint Action was already under discussion (9903/00 30.06.00) and no evaluation was held. Nevertheless, Borger and Moors (2007: 15) conclude that the agreement on producing user-friendly guides has not been not adequately met. It is difficult to assess whether Member States have given the same priority to all requests from other Member States related to asset identification, tracing, freezing or seizing, and confiscation in domestic proceedings. One expert from the Netherlands did remark that foreign requests related to confiscation measures do usually receive higher priority than domestic requests because of the time constraints attached to the coercive powers (written answers #7). He also noted, however, that the Joint Action was in line with existing practices.

In fact, the direct contacts promoted in the Joint Action were already widespread, for example, between the Dutch and Belgian Financial Intelligence Units (FIU) who have been fully sharing information since 1999. For instance, one officer from the Dutch FIU reported that he had been working one day a week in the Belgian FIU since 1999 and even had his own desk in the unit office (interview #29). Indeed, Borger and Moors (2007: 10) suggest that the success of cooperation might overly depend on such direct contacts, with little involvement of organisations like Europol and Interpol. Overall, the effect of the Joint Action can be assessed as medium at best: some of the proposed measures already existed in practice and were merely codified by the Joint Action.

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<td>4</td>
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43. **Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property (OJ C26 30.01.99).**

**Description**

This Council Decision was adopted under the Presidency of Austria on an initiative of Spain (5284/98 15.01.98), although political agreement on the issue had already been reached in the Council on 19 March and from 28 to 29 May 1998. Europol’s responsibility for addressing terrorism, however, had already been set out in Article 2 of the Europol Convention, which stipulated that Europol could achieve its objective progressively but should begin dealing with terrorism within two years at the latest following enforcement of the Convention. Hence, the
Decision instructing Europol to deal with terrorism was little more than an elaboration of a provision in the Europol Convention.

Rationality
The only rationality observable in the policy-making for this Decision is political, i.e., the implementation of previous political agreements. The Spanish initiative (5284/98 15.01.98) makes no reference to any form of professional rationality in support of Europol’s being tasked with combating terrorism earlier than stipulated in the Europol convention.

Assessment of effect
Until the events of September 11 2001 in the U.S., the counter-terrorism unit at Europol (SC5) was a small unit, and even though Europol’s counter-terrorism task became somewhat more visible after and as a result of these events, counter-terrorism in fact only gained real priority at Europol after the 2004 bombings in Madrid (interview #28). Since 1979, however, counter-terrorism-related police cooperation in Europe takes place primarily through the Police Working Group on Terrorism (interview #22). Also, as one respondent noted, it would be unrealistic to ‘expect that France and Spain would route their, nowadays strong, cooperation on combating ETA terrorism through Europol’ (interview #28). Hence, the effect of this instrument is assessed as nonexistent.

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Description
This Decision, designed to give Europol a broader remit by widening the definition of human trafficking, resulted de facto in an extension of the Europol mandate, for example, by enabling Europol to combat the trafficking of pornographic material containing pictures of children. The Council Decision was adopted under the Presidency of Austria, which also formally tabled the first draft (12367/98 27.10.98). The issue, however, had been under discussion since the Netherlands placed it on the agenda in June 1997 (8663/97 03.06.97), which resulted in an agreement by the Council on 4 December 1997 to supplement the definition of the form of crime ‘traffic in human beings’ in the Annex referred to in Article 2 of the Europol Convention.

Rationality
The conclusion that the traffic in pornographic materials in which images of children appear could not be effectively dealt with by Europol under the text of the Convention and its Annex was based on a 1996 expert meeting on the international dimension of new forms of trade in human beings, including child pornography and other forms of child abuse (8663/97 03.06.97). Both the text of this document (8663/97 03.06.97) and its subsequent revisions reveal that, although this issue was in general discussed from a political and legal perspective, the necessity and urgency of this mandate extension, particularly, was based to a certain extent on professional rationality. Hence, the level of professional rationality in the policy-making is assessed as medium.

Assessment of effect
The effect of this instrument can be assessed as high largely because the Decision led to the harmonisation of the definition of child pornography in Europe and the activities of Europol in this area. In fact, even though Interpol had been coordinating efforts in this domain for years, it is recognised that Europol has played a relatively significant role in the coordination of cooperation in the fight against child pornography through its AWF Twins, which supported 67 investigations of child pornography in 2006 and 73 investigations in 2007 (interview #28).

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Description
This Recommendation promoted, in a 10-point plan, the coordination on a national level of law enforcement, intelligence, security and other competent agencies; the reviewing of national legislative controls and procedures on legal arms trafficking; the improvement and extension of information and intelligence exchanges; the development of shared understanding of national controls; the identification of national contact points; shared analysis; Joint Actions; and the sharing and promotion of best practice. Except for the designation of national contact points, however, the Recommendation in fact aimed at prioritising efforts against arms trafficking. It therefore did not introduce new procedures or measures.

The Recommendation was adopted under the Presidency of Austria on an initiative from the UK (6139/98 23.02.98), which was originally aimed at a Joint Action. There was insufficient support, however, for a binding Joint Action (10097/98 06.07.98). So, after further discussion, it
was agreed that the instrument should take the legal form of a Recommendation (11071/1/98 22.10.98).

Rationality
The Recommendation was one of many 1997/1998 EU initiatives on arms trafficking (Greene 2000:171–175), beginning in 1997 with the EU Programme for preventing and combating illicit trafficking in conventional arms that was agreed upon at the Amsterdam summit. A code of conduct (8675/2/98 05.06.98) was also agreed upon, and a Joint Action specified the Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons (OJ L9 15.01.99). This Recommendation was aimed particularly at the contribution of the national law enforcement and security and intelligence agencies with a focus on the better sharing of information and intelligence.

Under the 1997 Programme, in early 1998, the UK organised the European Conference on trafficking in arms, in which 130 European experts from police, customs, intelligence agencies, ministries and Interpol participated. One primary conclusion of this seminar was the need to optimise the exchange of information, analysis and intelligence on an international and interagency basis (6138/98 23.02.98). The preamble to the initiative itself (6139/98 23.02.98), therefore, is written with professional rationality underpinning most of its proposed measures, whereas the preamble to the final instrument (11071/1/98 22.10.98) is supplemented with arguments based on a legal and political rationality.

Assessment of effect
As noted above, the Recommendation was part of coordinated efforts under the 1997 Programme for preventing and combating illicit trafficking in conventional arms, whose 2000 annual report shows enhanced coordination of information on arms trafficking at the national level in the Member States, and the start of an EU-wide project (OJ C 15 19.01.00). This was an operational project, set up by Finland under the name Operation Arrow, against illicit arms trafficking, which, according to the final project report (9178/01 30.05.01), was primarily prompted by the Council Resolution of 27 May 1999 on combating international crime by covering the routes more comprehensively (see instrument #50 in this appendix). The 2001 programme focused on clear attention to this issue by the Member States, in particular regional cooperation in the Nordic countries (OJ C 216 01.08.01). Various efforts by the Member States were also identified in a 2003 UN study (Mclean et al. 2003).

Nevertheless, it should be taken into account that such prioritisation may have been motivated more by the 2001 UN Programme of Action in this area and the events of 9/11 than by the 1998 Recommendation. Moreover, although national contact points on arms trafficking have been established in all EU Member States (IANSA 2003: 26–27), these appear, at least according to
the 2007 Schengen police cooperation handbook (10694/07 ADD 2 REV 1 13.02.98), not to fall directly within the realm of police cooperation.

Overall, the intended effect of the Resolution has been medium at best: identifiable law enforcement efforts within the EU Member States, including regional cooperation and an EU-wide project on combating arms trafficking, do exist, but widespread cooperation is not documented. Moreover, from 2001 onwards, alternative causes can be identified for efforts to combat arms trafficking.

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Description
This Resolution was adopted under the Presidency of Austria on its own initiative when it held the incoming Presidency (9986/98 29.06.98). The strategy document was based on the 1997 Action Plan to combat organised crime, adopted by the Council on 28 April 1997. The only tangible measure called for in this Resolution was the designation of national contact points for exchanging information on crime prevention. The instrument therefore includes no measures directly aimed at police cooperation.

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47. **Joint Action (98/733/JHA) of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351 29.12.98).**

Description
This Joint Action was adopted under the Presidency of Austria on the initiative of Luxembourg when it held the Presidency (10407/97 08.09.97). The instrument was aimed at establishing and
harmonising criminal liability in the Member States, not at particular police cooperation practices.

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Description
This Joint Action was adopted under the Presidency of Austria on an initiative of Luxemburg when it held the Presidency in 1997 (10017/97 30.07.97). The instrument was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

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49. **Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment (OJ C149 28.05.99).**

Description
This Decision was built on an ongoing discussion about EU action to combat the counterfeiting of the Euro currency, one important aspect of which was the identification of the functions and tasks of three possible partners (ECB, UCLAF and Europol). The Decision, adopted under the Presidency of Germany after agreement in the Council on 3 December 1998 based on an initiative from Europol (10708/98 29.07.98), was later consolidated in an act of the Europol Management Board (6320/99 09.03.99) that served as a draft Council Decision.

Rationality
According to the proposal, ‘Europol should be instructed to deal with the forgery of money (including the Euro) and means of payment’, a dictum that implies the rationale for a centralised gathering of information on Euro counterfeiting: ‘it seems logical that Europol will focus on the law enforcement aspects regarding the counterfeiting of the Euro’. The issue had in fact been discussed extensively since 1996 in various expert meetings in which the European Central Bank
and the UCLAf were represented (7868/98 23.04.98). Although the choice of the EU-level institute to be tasked with this responsibility (whether ECB, UCLAf and Europol) was political, the various notes show that expert opinions played a considerable role in the discussions (see e.g., 7474/1/98 21.04.98).

Assessment of effect
According to Europol’s annual reports, dealing with Euro counterfeiting has been a priority area since 1999. As noted in one of the annual reports:

In July 2005 Europol was designated as the central office for the suppression of Euro counterfeiting. This extended legal status nominates Europol as the worldwide contact point for Euro counterfeiting. Europol successfully continued the cooperation with the private sector in combating non-cash payment fraud. Impressive results were also obtained in training law enforcement officers from various Member States in tackling card fraud. Payment card fraud, and especially its connections with other types of serious crime, is still an underestimated problem. The team working on payment card fraud will continue the current projects on skimming and carding. (Europol 2007a: 14)

This text suggests that this field is one in which Europol has had an effect on police cooperation in Europe, a supposition confirmed by an interviewed Europol Liaison Officer (interview #28). Also, the organisation has established a dedicated organisational unit (e.g., Europol 2010: 5) and, if Europol press releases are any indicator, since 2003 it has been one of the most prominent operational fields in which Europol provides operational support. The effect of the instrument is therefore assessed as high.

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50. **Council Resolution of 27 May 1999 on combating international crime with fuller cover of the routes used (OJ C162 09.06.99).**

**Description**
This Resolution aimed at simultaneous deployment on specific routes to ensure maximum possible police success, ‘especially in the form of arrests, to coordinate joint police action and smooth communication and to obtain additional intelligence on criminal behaviour and methods of committing crime’. The Resolution was adopted under the Presidency of Germany on its own

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initiative for a Joint Action forwarded when it held the incoming Presidency (14060/98 17.12.98). After discussion in the Police Cooperation Working Party on 20 January 1999, the draft was changed into a draft Resolution (6416/1/99 12.03.99).

Rationality
According to the initiative (14060/98 17.12.98), the proposed instrument was built on good practice and previously successful police joint operations between certain Schengen countries that had adopted this tactic to combat international crime. The text therefore argues that, ‘with a view to the imminent integration of Schengen into the European Union, care must be taken to ensure that operations on crime routes are continued by the EU Member States and where appropriate extended to other areas of crime’. Nonetheless, it remains unclear what the scope and extent of the problem was, what the added value of the instrument was over existing Schengen tools – which in that same year were integrated into the EU framework – and whether (and why) it made sense to transfer the best practices cited to an EU level. The professional rationality was therefore assessed as low.

Assessment of effect
A route surveillance operation, designated Operation Arrow and designed to last 18 months, was planned by Finland at the end of 1999 (13208/99 23.11.99) and discussed in the PCWP (10046/00 04.07.00). According to the final Operation Arrow report (9178/01 30.05.01), it was implemented as a joint operation against illicit arms trafficking and was realised in the form of a joint European action that took place between 13 to 26 November 2000. The operation was not a success in all respects, however: although 13 of 15 Member States took part in the operation, the efforts in some of these Member States were limited (Spapens 2007: 378). Moreover, although the final report also contains a number of recommendations for future route policing projects, no indications have been found in this research of any further projects based on the Resolution. In fact, one senior German police officer interviewed noted that, with regard to route policing, ‘this is nothing more than a standard instrument which is already well-known but now has been incorporated on an EU level’ (interview #30). The effect of the Resolution is thus assessed as low.

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Adopted under the Presidency of Germany on its own initiative (7042/99 26.03.99), this instrument was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

52. **Council Resolution of 21 June 1999 concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with international football matches (OJ C196 13.07.99).**

Description
This Resolution aimed to establish a standard handbook for police activities in relation to football matches with an international component that would standardise the mechanisms of international information exchange in this area. The Resolution was adopted under the Presidency of Germany on an initiative from the Netherlands (6197/99 25.02.99).

Rationality
The proposal built on several expert seminars in the preceding years, and experience gained during the 1996 European Championship in the UK and the 1998 World Cup in France, as well as the extensive cooperation that existed between a number of Member States using tried and tested practices. It was seen as important, however, to establish a European framework for police forces in the Member States in terms of the content and scope of police cooperation, even for Member States that at that moment had not yet faced the problem of football hooliganism.

The handbook was prepared by a group of experts and presented to the Police Cooperation Working Party, and the Netherlands led the related efforts with a view to preparing for the Euro 2000 Championship held in the Netherlands and Belgium. The final product reflected the best practices of cooperation in the Member States that had sufficient experience with the football hooliganism problem, for example, Belgium, Germany, France, Italy, the Netherlands and the UK (interviews #15 and #20).

Assessment of effect
Adang and Cuvelier (2001), in their evaluation of the organisation of the 2000 European football championship held in the Netherlands and Belgium, document extensive use of the handbook during the event, noting particularly that its contents proved very valuable in the international context.
police cooperation effort during the championship. In their words, 'the fact that the handbook exists, has been adopted by EU countries and has been used explicitly, has undoubtedly made an important contribution to the maintenance of public order during Euro 2000 (ibid.: 77). Since then, the handbook has become the standard for police cooperation in the EU with regard to police cooperation connected to international football matches (interviews #15 and #20).

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53. **Council Decision (1999/615/JHA) of 13 September 1999 defining 4-MTA as a new synthetic drug, which is to be made subject to control, measures and criminal penalties (OJ L244 16.09.99).**

Description
This Decision, adopted under the Presidency of Finland based on an initiative of the Commission (10084/99 14.07.99), was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

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54. **Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups (OJ C373 23.12.99).**

Description
This Recommendation aimed at improving the exchange of information on the structures and modi operandi used to finance terrorist groups operating in more than one Member State. It thus proposed that a competent Council working party (i.e., the Terrorism Working Party, or TWP) should deal with those terrorist groups that presented a specific threat and should therefore be more closely examined by the Member States’ security authorities. Information should then be transmitted through ‘Bureau de Liaison channels’, and Europol should participate in this cooperation. This provision was in fact somewhat extraordinary in that it tasked the TWP, which is part of the Council policy-making structure, with operational matters.

The Recommendation was adopted under the Presidency of Finland on an initiative of Germany (7650/99 26.04.99). Although the subject had already been under discussion in the TWP since
1997 (12556/97 20.11.97) and a UK discussion note (13397/97 18.12.97) presented a number of points for agreement, it was the German document that formed the first recognisable draft for the instrument.

Rationality
Discussions on this topic began in 1997 with an expert seminar (12556/97 20.11.97), after which the UK presented an extensive and comprehensive discussion note on terrorism funding that was based on professional rationality (13397/97 18.12.97). The German proposal then built on these discussions. The original idea also appears to have been prompted by the professional rationality of certain participants of the TWP, and the early notes on the problem of financing terrorism reveal a profound professional knowledge of the subject. On the other hand, the reason for tasking a policy-making committee with an operational task remains unclear.

Assessment of effect
It is also unclear to what extent this matter was expected to be a police cooperation issue. On the one hand, Article 9 of the Recommendation explicitly referred to ‘procedures of police cooperation between Member States’; on the other, this Recommendation was discussed in the Terrorism Working Party, which largely comprised representatives of the security and intelligence services from some countries only. The divergent organisational practices in the Member States therefore hamper any clear delineation. The TWP does appear to have been very productive in this area but, as most TWP documents are not publicly accessible, insufficient data are available for a valid assessment.

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55. **Action Plan on drugs between EU and Central Asia adopted by the Council on 14 February 2000 (unpublished adopted text available in Council document 5376/1/00 25.01.00).**

Description
The Action Plan was adopted under the Presidency of Portugal on an initiative from Finland (12844/99 19.11.99). Although the need for an Action Plan had apparently been a subject of discussion since the 1996 Dublin Council (see also 10085/99 13.07.99), the actual first draft came from Finland when it held the Presidency. The instrument contained no concrete police cooperation elements.
56. **Council Decision (2000/261/JHA) of 27 March 2000 on the improved exchange of information to combat counterfeit travel documents (OJ L 81 01.04.00).**

**Description**
This Decision was aimed at standardising the information collection on false travel documents with a particular focus on serial numbers. To that end, it introduced a reporting system for detecting counterfeit travel documents that included direct information exchange using two standard forms: one for information exchange on documents, the other a format questionnaire to collect information on the origin of the false document. Originally, the idea was to oblige Member States to establish a centralised unit to handle this matter; however, in the text, this description was later changed to ‘system’ (5003/2/99 22.04.99). Nevertheless, Article 2 of the Decision assumed the existence of a ‘central unit’ in each Member State without further specification of what kind of unit it would be.

The Council Decision was adopted under the Presidency of Portugal on an initiative of Germany forwarded during its Presidency (5003/99 04.01.99). At the time, the initiative was tabled as a draft Joint Action, but at the meeting of the K4 Committee from 29 to 30 April 1999 it was agreed that, in view of the imminent entry into force of the Treaty of Amsterdam, the draft Joint Action would be transformed into a draft Decision (7960/99 4.5.99). This transformation led to a renewed initiative by the German Presidency (8457/99 25.05.99) and to an extra delay in the procedure of at least five months.

The Decision itself also encountered reservations from the Commission and proposed amendments by the European Parliament based on the argument that it was actually an instrument for fighting illegal immigration and should have a first-pillar legal base (i.e., Article 63(3)(b) TEC instead of Article 34(2)(c) TEU). Both arguments were dismissed in a meeting of the JHA Counsellors (6837/00 10.03.00), and discussions on the proposal continued within the JHA structures.

**Rationality**
Although the necessity of information exchange on false travel documents is obvious, the whole idea (and proposed manner of implementation) of the reporting system is unclear, both in the instrument and in the available drafts and other documents. The text of the initiative does, however, suggest three primary methods as promising:
– greater use of the document serial number in the search for stolen items;
– specific interrogation of illegal immigrants who have used counterfeit travel documents;
– tracing of the colour photocopying machines used to produce false documents (5003/99 04.01.99).

As regards the use of serial numbers to identify false documents, the Schengen Information System (SIS) covered the exchange of such information from 1995 onwards and, from SIS’s inception, stolen documents have been the largest category in its database, making up 76% of the records (Sénat 2006: 10). Nevertheless, the initiative makes no mention whatsoever of the SIS. It also remains unclear how and to whom the collected data on travel documents (as specified in Annex 1 of the Decision) or background information (as collected by the questionnaire in Annex 2 of the Decision) should be reported and who would make what use of these data. In regard to the very detailed proposed questionnaire in particular, one could argue that it would be rather naïve to assume that police in the Member States would begin interviewing illegal immigrants with the aim of collecting these data without any idea of what the data would be used for and/or to whom it should be sent. Hence, the professional rationality in the policy-making in this instrument is assessed as low at best.

Assessment of effect
As regards the notification of the Council Secretariat between 2001 and 2006, a total of 23 overviews containing statistics from individual Member States on the false documents encountered were circulated as room documents in meetings of the Frontiers/False Documents Working Party.21 The large majority of these notifications came from Italy, with 10 other Member States submitting between one and three overviews over the course of these six years. At the end of 2005, the UK sent a questionnaire to all Member States, of whom 20, together with Switzerland and Bulgaria, responded.22 Overall, however, there is little evidence that the notification of the Council Secretariat was taken seriously by the Member States, with the possible exception of Italy. Also, no indications have been found that the questionnaire details were put to any use. The effect is therefore assessed as low at best.

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Description

This Action Plan describes preferable action in the fields of judicial cooperation, law enforcement cooperation, and cooperation in other forums. On the subject of law enforcement cooperation, the plan sums up 17 possible arrangements, suggesting particularly that ‘special attention can be devoted by the Russian Federation law enforcement authorities to priority issues’ (p. 8), ‘technical, operational and strategic information and intelligence can be exchanged’ (p. 9), and ‘central Russian Federation contact points will be identified’ (p. 9). It also endorses the development of ‘common principles as appropriate’ (p. 10) and states that ‘training courses will be held with Russian Federation law enforcement personnel to develop good practice in the field of international cooperation’ (p. 10). It devotes a special paragraph to the Member States’ liaison officers in the Russian Federation, which specifies that ‘these officers [should] meet on a regular basis … exchange relevant information [and] should have the opportunity to consider the implementation of the action plan and to put forward proposals for strengthening that process’ (p.10). The Action Plan was adopted under the Presidency of Portugal based on an initiative of Finland (10532/99 10.08.99).

Rationality

The idea of developing closer cooperation with Russia on this subject was launched in the 1997 Action Plan on organised crime (7421/97 21.04.97, recommendation 4). The UK began preparatory work at the end of 1997 (12784/97 27.11.97) and identified elements for a strategy (7771/98 28.04.98). The preamble to the Action Plan notes that, among other things, the discussions on organised crime at the meetings of the liaison officers from Member States based in Russia and the conclusions of the conference held between the EU and Russia on organised crime in Helsinki from 15 to 16 December 1999 have also been taken into account. It therefore appears that the content of the Action Plan has received some input based on professional rationality. There are, however, no explanatory documents available that provide a more elaborate underpinning of the proposed measures. Moreover, the discussions during the conference with the Member States’ liaison officers in the Russian Federation were carefully directed by the Presidency using pre-drafted conclusions.23

Also noteworthy is the absence of concrete goals, timeframes, budgets or – most importantly – actors defined as responsible for the actions outlined in the Action Plan. Sensitive points related to inefficient organisational practices and corruption in the Russian law enforcement agencies have also been carefully avoided. Hence, overall, the professional rationality in the policymaking of this Action Plan can be assessed as low.

Assessment of effect

23 Based on field observations by the author during the December 1999 EU/RF conference in Helsinki.
The Action Plan has been used on several occasions as a supporting argument for JHA projects in the framework of the TACIS and Falcone programmes, although such use hardly qualifies as ‘action’. In practice, the only identifiable consistent police cooperation-related action taken based on the plan since 1999 has been the organisation of meetings for the EU liaison officers by (almost) every presiding EU Member State since 2000. The value of these meetings, however, is less apparent given the habitual use of pre-drafted conclusions. Moreover, although EU Member States’ liaison officers have put forward several proposals since 2000 for the type of tangible action recommended in the Action Plan, there has been no follow-up on these proposals. Likewise, action from the Russian side has – other than its presence at some meetings with the EU liaison officers – been negligible. In fact, the Finnish minister of the Interior noted in 2002 that ‘… the practical implementation of this program has perhaps been too much based (sic) on the actions of the EU police liaison officers in Moscow.’ Hence, there is no indication of a concrete effect of this instrument on operational police cooperation practices.

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58. **Council Decision (2000/375/JHA) of 29 May 2000 to combat child pornography on the Internet (OJ L 138 09.06.00).**

Description

In terms of police activities, this Decision aimed to set up specialised units to deal swiftly with information on the suspected production, processing, distribution and possession of child pornography (Article 1.2); communicate with already established points of contact, set up on a 24-hour basis, as well as with specialised units (Article 2.2); inform Europol, within the limits of its mandate, of suspected cases of child pornography (Article 2.3); organise regular meetings of competent authorities specialising in combating child pornography on the Internet (Article 2.4); and notify the Council secretariat on the organisational unit or units acting as points of contact (Article 2.5).

The Council Decision was adopted under the Presidency of Portugal on an initiative of Austria when it held the Presidency (10850/98 02.09.98). This initiative was aimed at a Joint Action, and political agreement was reached in the JHA Council meeting on 3 December 1998 (13783/98 12.07.99, point 15). However, six months later, after a discussion in the MDG, Austria resubmitted a draft, this time aimed at a Council Decision (9518/99 30.06.99).

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25 Speech by Ville Itälä, Minister of the Interior for Finland, during a seminar at the Centre for Strategic Research, Moscow, 24 January 2002.
Rationality

Although many of the provisions proposed under the Decision appeal to common sense, the initiative contains barely any explanatory text on the extent and characteristics of the problem and/or the perceived efficacy of the proposed measures, nor does it make any reference to expert opinion, seminars, problem analysis or statistics. Rather, the preamble to the Decision is dominated by citations to other political initiatives. Professional rationality was therefore assessed as nonexistent.

Assessment of effect

The first factor to be noted is that, at that time, the police of most Member States already had a unit for combating child pornography. For example, in the Netherlands, a national unit for this was set up in 1997 (written answers #2). Strangely the 2007 Schengen police cooperation handbook (10694/07 ADD 2 REV 1 13.02.08) makes no mention of national units or units acting as contact points. Moreover, although the Council Secretariat claimed that all 27 Member States had notified the secretariat of their national units, it put out the following statement:

The General Secretariat of the Council has not been able, after thorough research, to identify the requested documents. There is no overview, analysis or report on the notifications of the Member States as referred to in your request.26

The role of Europol in combating child pornography (Article 2) in Europe, however, has apparently become significant even though Europol only gets involved when the crime shows a certain level of organisation. Not only does child pornography often have a strong cross-border dimension, but there are also only a few specialists on combating child pornography in each Member State, who tend to know one another. Further, Europol regularly organises expert meetings (interview #28).

In practice, cooperation in combating this kind of crime takes place within small communities of experts in which both Europol and Interpol play an important role (interview #28; written answers #2). However, this was already the case before the adoption of this Council Decision. For example, in 1998, this type of crime already had the full attention of Interpol (Interpol 1999: 13) and, in 1998 and 1999, it began receiving increasing attention from Europol (Europol 1999, 2000), especially after the definition of human trafficking was harmonised by the Council Decision of 3 December 1998, thereby effectually expanding Europol’s mandate to include child pornography (see instrument #44 in this appendix). Therefore, as regards the activities of Europol, this Council Decision appears primarily to have codified the existing situation, so its actual effect is assessed as low.

59. **Council Framework Decision (2000/383/JHA) of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro (OJ L 140 14.06.00).**

**Description**

Adopted under the Presidency of Portugal on a German initiative (9966/99 09.07.99) that was later amended by the Council Framework Decision of 6 December 2001, this instrument was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

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60. **Council Act establishing the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union (OJ C 197 12.07.00).**

**Description**

Although the Convention on mutual assistance in criminal matters between the Member States of the European Union (the EU MLA Convention) was aimed primarily at judicial cooperation, mutual legal cooperation in criminal matters has significant importance for the daily practice of international criminal law enforcement. For instance, mutual assistance arrangements are the legal basis for many actions by police cooperating in the combat against organised crime (see Harfield 2005). In addition, in Europe, police and judicial cooperation are interlinked to a large extent (see Fijnaut 2004) in that similar investigative competencies may be the remit of the judicial authorities in one Member State but part of police powers in another.

The EU MLA Convention aimed to supplement the provisions of a number of extant legal instruments – in particular, the Council of Europe Convention on mutual assistance in criminal matters of 20 April 1959, its 1978 Protocol and Articles 48–53 of the Schengen Convention – and facilitate their application among EU Member States. In reality, the EU MLA Convention did introduce a number of important general concepts, of which the *forum regit actum* rule is the
most revolutionary in European practice of the past decennia (Vermeulen 2006). This rule is the reverse of the traditional *locus regit actum* rule, which specifies that legal assistance is governed by the formalities and procedures stipulated by the requested state. A second amended general concept with possible importance for police cooperation is the provision for the direct sending and answering of requests between competent local judicial authorities rather than requiring, as previously, that they be routed through the formal channel of central authorities. A third new provision allowing the spontaneous exchange of information in judicial cooperation in criminal matters expanded the provision, under Article 46 of the Schengen Convention.

A number of other Convention provisions also enabled particular investigative tactics, such as hearing by videoconference (Article 10), hearing of witnesses and experts by telephone conference (Article 11); controlled deliveries that can also be applied in combating crime other than illicit drug traffic (Article 12); joint investigation teams (Article 13), covert investigations (Article 14) and direct transmission of telecom interceptions (Article 18).

In 1995, a Working Party on Mutual Assistance in Criminal Matters was set up for the purpose of preparing the Convention (12854/95 19.12.95). After establishing its working method and compiling an inventory of Member States’ preferences on mutual assistance in criminal matters, the working party produced a first comprehensive draft of the Convention under the Italian Presidency in April 1996 (5978/96 16.04.96). The Council Act establishing the Convention was adopted under the Presidency of Portugal after almost five years of deliberation.

Rationality

The relevant documents show that these discussions were been driven predominantly by legal rationality and to a lesser extent by political rationality. Nevertheless, a number of the innovative aspects of the Convention were introduced based on professional rationality, for example, by way of the German delegation’s note on ‘modern’ forms of cross-border investigation (6416/96 10.04.96). In fact, with the exception of joint investigation teams, the modern forms of cross-border investigation methods proposed are clearly explained in the German note from a professional perspective. Likewise, the negotiations on the Convention’s provisions on the interception of telecommunication paid attention to the practicalities of real international cooperation (see Vermeulen 2006: 86–87). Hence, overall, the professional rationality is assessed as medium.

Assessment of effect

In August 2005, the EU MLA Convention came into effect for most Member States. In reality, however, most of the ‘new’ provisions were actually mere codification and standardisation of existing investigative practices. For example, sending copies of requests directly to the competent authorities for execution was already an established practice based on an ‘urgency’
clause (Article 15.2) in the 1959 Council of Europe MLA Convention. In these instances, the ‘official’ request would still be simultaneously sent to the central authorities to maintain procedural integrity; however, doing so had little effect on actual cooperation because these communications sometimes arrived after the case had already been dealt with (see e.g., Harfield 2005: 137). Likewise, particular investigative methods such as video conferencing, parallel (joint) teams and covert investigations were already-established practices to the extent that they were allowed by national legislation and bilateral agreements between the involved parties.

On the other hand, this new Convention provided a clearer and more standardised legal framework for a number of investigative methods in all Member States, which in effect could have triggered their use. Some such changes – for example, the forum regit actum rule and the direct sending, receiving and executing of requests – were obligatory, but the latter had been in full effect in the Netherlands since 2006 anyway (interview #21). Nevertheless, the provisions on interceptions of telecommunications are often used in the daily practice of cross-border cooperation, even though differences in national legislation and regulations can impede their smooth implementation (interview #30). Hence, if we leave the joint investigation teams out of the equation (see Chapter 7), the overall effect of the Convention on police cooperation practices in criminal investigations can be assessed as high.

Coding for quantitative analysis

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61. **Council Recommendation of 28 September 2000 to Member States in respect of requests made by Europol to initiate criminal investigations in specific cases (OJ C 289 12.10.00).**

**Description**

This Recommendation, adopted under the Presidency of France on its own initiative (7369/00 05.04.00), was an elaboration of Article 30 (2)(b) TEU and recommendation 45 from the Tampere Conclusions.

**Rationality**

The text of the initiative shows no underpinning by professional rationality. Rather, it appears to be fully politically motivated in that the idea, despite objections by the Europol Management Board, was pushed by the Director of Europol out of frustration with Europol’s minimal involvement in operational cases (interview #17).

**Assessment of effect**
The potential influence of the instrument on police cooperation lies in the fact that it asked Member States to give due consideration to Europol’s requests that they start an investigation and inform Europol of the investigatory outcome. After a similar – though binding - provision was incorporated into the Europol Convention by the Protocol to that Convention of 28 November 2002 (see instrument #103 in this appendix), this Recommendation became outdated. Moreover, despite both provisions, Europol has never formally requested that a Member State initiate a criminal investigation (interviews #16, #17, #23 and #28) as far as anyone knows.

Coding for quantitative analysis

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**Description**

This Decision was partly aimed at judicial and administrative cooperation because in many Member States, FIUs are subordinated to the judicial authorities or are as a so-called administrative type FIU subordinated to central bank structures. Other Member States, however, have designated a police authority as their FIU, which makes this Decision also relevant for police cooperation. The Decision reflects the standards and principles established by the Egmont Group\(^\text{27}\) as well as the recommendations of the Financial Action Task Force (FATF). Specifically, the Decision laid down obligations to exchange information, either on request or spontaneously (Article 1), and to structure the FIU according to the definition given in the Decision (Article 2). It also prescribed the kind of information that should be exchanged (Article 3).

The Decision was adopted under the Presidency of France based on an initiative forwarded by Finland (9661/99 20.07.99) during its Presidency. This original initiative, however, most probably had a French influence, not only because France had already sent a note on this subject (6409/99 09.03.99) to the MGD, but because in 1999, money laundering was a priority for the French and had been included as an item in the Tampere Conclusions at their request (interview #13).

**Rationality**

\(^\text{27}\) The Egmont Group is an informal cooperation network of FIUs set up in 1995. See [http://www.egmontgroup.org](http://www.egmontgroup.org) (last visited 16 March 2011).
Before the formal initiative for this Decision was tabled, the issue was discussed in the informal Money Laundering Experts Group (12706/98 06.11.98) and by the German Presidency in a note to the MDG (6409/99 09.03.99) with proposals for a follow-up on the expert report. An earlier note from the French delegation (8694/99 3.05.99) had voiced a clear objection to the German idea of letting FIUs exchange information via Europol. Both these notes show a clear level of professional rationality in the discussions.

Assessment of effect
An evaluation by the Commission on the implementation of this Decision in 2007 concentrated mainly on legislation and less on operational aspects of cooperation. Nonetheless, the evaluation concludes that modalities for information exchange seemed to be implemented at operational level, although it could not judge the exact level of implementation on the basis of replies received (Commission 2007: 9). It is important to note, however, that by 2000 cooperation between FIUs was already quite elaborate via the Egmont Group.

Cooperation initiatives had also been emerging within the EU since 1998 when the Dutch Ministry of Justice and the FIUs of Belgium (CTIF-CFI), France (Tracfin), the Netherlands (MOT) and the UK (NCIS) initiated a project (FIU.NET) to establish appropriate and protected communication channels between the FIUs in Member States (House of Lords 2009b: 254, see also 9459/02 31.05.02). A pilot project began in June 2000, and a 2004 evaluation of the EU Drugs Strategy and Action Plan (14322/04 8.11.04) reports that, as of that time, FIUs in eight Member States were using FIU.Net as a means of information exchange. By the end of 2010 FIUs of 24 Member States are connected to one another through FIU.NET. 28 It therefore appears that this Decision partly codified pre-existing practices of information exchange and the establishment of a platform for FIUs. Nonetheless, the discussions suggest that it simultaneously added some standardisation (e.g., 12905/02 9.10.02). Its effect is therefore assessed as medium.

Coding for quantitative analysis

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28 See http://www.fiu.net/welcome/history (last visited 15 June 2011)

63. **Council Recommendation 30 November 2000 to Member States in respect of Europol’s assistance to joint investigative teams set up by the Member States. (OJ C 357 13.12.00).**

Description
This Recommendation, an elaboration of Article 30 (2)(a) TEU, had been the subject of discussion since early 1999 (6245/99 26.02.99), after which it was mentioned as
recommendation #43 of the Tampere Conclusions. The proposal aimed to allow Europol to
support joint investigation teams (in coordination of operations, analysis, and technical advice)
and to forward data resulting from their work to Europol. A formal provision on the same issue
was later incorporated into the Europol Convention by the Protocol to that Convention of 28
November 2002 (see instrument #103 in this appendix).

The Recommendation was adopted under the Presidency of France, and, although the Portuguese
Presidency proposed the Council Conclusions (7370/00 05.04.00) that led to this
Recommendation in early 2000, it was the French who tabled the actual draft while holding the
incoming Presidency (9639/00 26.06.00).

Rationality
Both a discussion note from Europol to the Europol Working Party (7316/00 05.04.00) and a
French note to the same party (8325/00 08.05.00) to some extent discuss the subject using
professional rationality. Nevertheless, the initiative, the further discussions and the preamble to
the instrument show only political and legal rationality underpinning the instrument.

Assessment of effect
The legal basis for setting up joint investigation teams in most Member States, either through
ratification of the EU MLA Convention or through the transposition of the Framework Decision
of 13 June 2002 on joint investigation teams, was only established in 2004 (COM (2004) 858
final), and the first JITs were established in that year (see Chapter 7). Being somewhat
premature in the first four years after its adoption, this Recommendation had no effect
whatsoever on police cooperation practices. Since 2004, however, Europol has provided
analytical support to JITs in a number of cases (interview #16, see also Rijken 2006), although
this practice does not seem widespread. According to one interviewee, by the end of 2007
Europol had actually provided support for four JITs, but there is no definitive data to support this
fact (interview #23), and in 2009, this Recommendation was superseded by the Council Decision
establishing Europol (Council of the EU 2009d). The effect of this Recommendation can thus be
assessed as low at best.

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64. Council Act of 30 November 2000 drawing up on the basis of Article 43(1) of the
Convention on the establishment of a European Police Office (Europol Convention) of a
Description
This Act, by establishing a Protocol that amended Article 2 and the Annex to the Europol Convention, provided for the extension of Europol’s mandate to cover money laundering irrespective of the nature of the predicate offence. It was adopted under the Presidency of France based on an initiative from Portugal (9426/00 26.06.00), which held the Presidency at the time of forwarding the proposal.

Rationality
The preamble to the Act cites the invitation to the Council in the (Tampere) European Council Conclusions to extend Europol’s competence to money laundering in general, regardless of the type of offence from which the laundered proceeds originated. This expansion would give ‘Europol more effective tools to fight money laundering in order to reinforce Europol’s possibilities to support the Member States in this fight.’ Hence, the proposal was a simple elaboration of the Tampere Conclusions with no further (detectable) discussion.

Assessment of effect
This first Protocol to the Europol Convention entered into force in March 2007. However, because the 2003 Protocol amending the Europol Convention (see instrument #120 in this appendix) came into force only one month later, the changes it introduced lost their relevance. The Protocol can therefore by definition never have had any effect on police practices.

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Description
This Decision was adopted under the Presidency of France. The original idea of a provisional unit was conceived during the discussions on setting up Eurojust; however, when it was realised that Member States’ notions and concepts of the tasks and powers Eurojust should have varied rather widely, an initiative of Portugal, France, Belgium and Sweden (10354/00 13.07.00) was merged with Germany’s initial Eurojust initiative (8777/00 25.05.00) to produce a draft for this Decision (11344/00 18.09.00). The instrument was aimed at setting up a structure for judicial cooperation without any direct effect on police cooperation practices.

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Description
The Council Decision was adopted under the Presidency of France, which explains the acronym CEPOL (*Collège européen de police*). The idea for a European Police College (or European Police Academy) had already been voiced in the 1980s (Fijnaut 2002: 263) and was brought up again in 1999 by Germany during the informal consultations for the Tampere European Council (interview #13). It was also presented in the UK position paper for the Tampere European Council (House of Commons 1999, par. 12). The idea was subsequently adopted as conclusion #47 of the Tampere Council Conclusions.

The notion came under intense discussion beginning in early 2000; however, a draft for a Decision forwarded by the French (SN 2891/00 18.05.00) was considered by CATS to be only a progress report (8542/00 06.06.00). Shortly afterwards, Portugal presented an almost similar draft for a Decision (9679/00 27.06.00) that was based on Tampere, a background report prepared by the Finnish delegation on European training facilities (14030/99 13.12.99) and a preliminary study by the Council Secretariat (6391/00 22.02.00). An Italian proposal for the establishment of a European Police College (6066/00 09.02.00) submitted at around the same time appears never to have been seriously discussed. Instead, the French Presidency added two new articles to the original Portuguese proposal (11037/00 11.09.00).
Interestingly, the acronym CEPOL was introduced into the text only at the last moment when the Council had already adopted the Decision on 14 December 2000 (14210/00 COR 1 19.12.00), so the text was subsequently re-adopted on 22 December 2000. Being merely a supporting policy instrument (i.e., training), however, it has no aim to establish or change operational police practices.

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67. **Council Framework Decision (2001/220/JHA) of 15 March 2001 on the standing of victims in criminal proceedings (OJ L 82 22.03.01).**

**Description**
This Framework Decision, adopted under the Presidency of Sweden on an initiative of Portugal (7797/00 14.04.00), was aimed at establishing and harmonising matters of criminal procedure in the national laws of the Member States and does not address police cooperation practices.

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68. **Council Decision (2001/427/JHA) of 28 May 2001 setting up a European crime prevention network (OJ L 153 08.06.01).**

**Description**
This Framework Decision was adopted under the Presidency of Sweden on an initiative of France and Sweden (13464/00 01.12.00). Although aimed at setting up a crime prevention network in the Member States, it had no effect on police cooperation practices.

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69. **Council Framework Decision (2001/413/JHA) of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149 02.06.01).**
Although this Framework Decision was aimed primarily at judicial harmonisation (defining punishable conduct), Articles 11 (cooperation between Member States) and 12 (information exchange) were designed to enhance police and judicial cooperation. Article 12, in particular, specified the obligation to ‘designate operational contact points’ or ‘use existing operational structures for the exchange of information and for other contacts between Member States’. It also prescribed that Member States should inform the Council Secretariat of these contact points and that the Council Secretariat should subsequently inform the other Member States.

The Framework Decision was adopted under the Presidency of Sweden based on an initiative from the Commission (11217/99 15.09.99 containing COM (99) 438 final). Discussions began in October 1998 in the Working Party on Criminal and Community Law (11655/98 05.10.98) when the Commission presented a communication that contained a proposal for a Joint Action (COM (98) 395 final). Subsequently, even though the Commission had no right of initiative in JHA policy-making in 1998 (under the Maastricht regime), the initial proposal was taken under discussion but with various proposed amendments (10173/99 30.07.99).

Rationality
The Framework Decision was – not surprisingly given its substance – largely discussed on the basis of legal rationality, although its preamble emphasises that effective action against fraud ‘cannot be sufficiently achieved by the Member States in view of the international dimension of those offences’. Nevertheless, both the Commission’s initial communication (COM (98) 395 final) and the initiative show strong professional insight into the subject matter. However, the only provision that directly touches police cooperation practices – the establishment of contact points – was not included in the original initiative. Instead, it was proposed later by France during the CATS meeting of 19 May 2000 (see 8453/00 15.05.00 and 8658/00 22.05.00) with no particular professional perspective offered for the necessity of centralised and specialised contact points for this type of criminality.

Assessment of effect
The Framework Decision specified that Member States were to forward the texts of the provisions transposing the decision obligations into their national law by 2 June 2003. By that date, however, no Member State had done so, and the Commission postponed its evaluation and only published its report in May 2004 after most contributions had been received (9316/04 7.05.04). In retrospect, it is apparent that only five Member States met the 2 June 2003 deadline by taking all the measures to comply with the provisions of the Framework Decision. The evaluation, however, focused only on the legal side of the Framework Decision transposition and gathered no information on the establishment of national contact points and their functioning. Moreover, as previously emphasised, the 2007 Schengen police cooperation handbook
makes no mention of contact points on combating fraud and counterfeiting of non-cash means of payment. When asked for information on this issue, the Council Secretariat provided the following answer:

The General Secretariat of the Council has not been able, after thorough research, to identify the requested documents. There is no overview, analysis or report on the notifications of the Member States as referred to in your requests. However, the General Secretariat of the Council can confirm that all the 27 Member States have notified the General Secretariat of the Council of their points of contact pursuant to the Article 12 of the Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment. (2001/413/JHA)

It remains a mystery how the Council Secretariat, without any actual documentation, can confirm that it received notification of points of contact from all Member States.

In the Netherlands, the contact point was organised within the national criminal intelligence structures and was not designated an independent contact point as such; instead it was part of an already existing unit that handled fraud-related cases (interview #17). Given the response from the Council Secretariat, it seems likely that other Member States took a similar approach. Overall, therefore, the effect of the Framework Decision on police cooperation practices is assessed as low at best.

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70. **Council Decision (2001/419/JHA) of 28 May 2001 on the transmission of samples of controlled substances (OJ L150 06.06.01).**

**Description**

This proposal aimed to introduce a system for legally sending samples of seized illegal narcotic substances between the authorities of the Member States with the purpose of analysing them in order to obtain intelligence useful in the fight against drug trafficking. At that time, such a system had not yet been formally arranged in the EU. The Decision was adopted under the Presidency of Sweden on its own initiative (14008/00 12.12.00) when it held the incoming Presidency.

**Rationality**

The proposal was accompanied by a detailed explanatory note (14009/00 05.12.00) that discusses the purpose, necessity and background of the instrument, based on professional rationality. This note even provides estimates of the expected costs for the Member States, a rare inclusion in Council JHA policy-making (14009/00 05.12.00, p. 9). The attention to professional rationality is equally visible in the preamble to the instrument in which two of four points underpin the instrument from a professional perspective.

Assessment of effect
A list of the national contact points referred to in this Decision was published in October 2002 (OJ C253 22.10.02), and the contact points listed clearly reflect the widely varying organisation of the Member States in this respect. In February 2005, Member States were invited to update the list and Member States that had joined the Union since 2004 were invited to forward the information on their contact points (5817/05 01.02.05).

Two years later, an evaluation questionnaire was disseminated to the delegations from the Horizontal Working Party on Drugs (10396/07 05.06.07), and on 10 October 2007, this group discussed and analysed these replies (13993/07 17.10.07). Their analysis shows that many Member States used the system:

<table>
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<tbody>
<tr>
<td>0</td>
<td>Cyprus, Luxemburg, Romania, Slovakia</td>
</tr>
<tr>
<td>Less than 10 times</td>
<td>Malta, Italy, Latvia, Greece, Poland Portugal, Lithuania, Czech Republic</td>
</tr>
<tr>
<td>Between 10 and 20 times</td>
<td>Netherlands, Spain, Denmark, Estonia, Belgium</td>
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<tr>
<td>More than 20 times</td>
<td>France, Finland, Ireland, Germany, UK, Sweden.</td>
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Views on the usefulness of the system, however, differed. For example, the UK found the system invaluable, but Germany thought it cumbersome. The suggestion was therefore put forward that it should be replaced by a simpler reporting system modeled on the one used in the Interpol procedure that was also for use by Member States. The use of the system, nevertheless, indicates that this Decision had a high effect on police practices.

Coding for quantitative analysis

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30 Communication from the Council Secretariat to the author (26 October 2009, number 09/1838) containing a Horizontal Working Party on Drugs unnumbered room document, dated 10.10.07.
Description
The aims of this Resolution were the standardisation of forensic DNA analysis using the European Standard Set (ESS) of DNA markers (Article II.1); the formulation of specific procedures of information exchange, including predefined forms (Article III.3); and the establishment of one national contact point for this kind of cooperation (Article III.3). The Resolution was adopted under the Presidency of Sweden based on an initiative originally put forward by Finland during its Presidency but at that time proposed as a Framework Decision (11634/99 07.10.99). After Portugal, which held the Presidency in early 2000, expressed many reservations, the proposal was watered down to a Resolution in May 2000 (8937/00 29.05.00). It is interesting to note in this respect that Portugal had no database of suspect DNA – only a collection of stains – and therefore could not agree with a binding Decision that would affect its domestic organisation of DNA analysis.

Rationality
Earlier discussions on the subject of DNA exchange had resulted in a 1997 Resolution (see instrument #33 in this appendix), which was necessarily more general because at that time no common standard yet existed. In 1998, agreement was reached in ENFSI’s DNA working group on seven joint markers. The content of this Resolution is thus in line with wider international practices by, for example, Interpol and is based on the opinions of experts from the Member States through the ENFSI.

Assessment of effect
Although the Resolution codified the 1998 agreement among practitioners on the use of seven joint markers, there are no indications that it changed anything in their practices, particularly as these seven markers were the de facto standard for the exchange of DNA profiles in Europe even before the Resolution. Moreover, the contact points had already existed in many Member States in the form of national laboratories. In addition, the actual exchange of DNA analysis results remained fragmented and on a case-by-case basis until implementation of the Prüm Convention (interview #31). Hence, overall, the effect of this Resolution can be assessed as low.

Coding for quantitative analysis

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72. **Council Recommendation of 25 June 2001 on contact points maintaining a 24-hour service for combating high-tech crime (OJ C 187 03.07.01).**
Description
This Recommendation aimed to harmonise the national structures (contact points on a 24-hour schedule) and standardise cooperation practices for combating high-tech crime (participation in the G8 cooperation network) through adherence to the practices in this field as set by the G8. The Recommendation was adopted under the Presidency of Sweden on its own initiative (7273/01 22.03.01).

Rationality
The necessity for the recommended measures is clearly underpinned by professional rationality, i.e., the need to reach out globally to swiftly secure evidence in environments in which information can quickly be lost or destroyed (7273/01 22.03.01, p. 2). The documents also provide extensive explanation of why existing cooperation structures (i.e., through Interpol) do not suffice and give an example of practical experience with the G8 network (the ‘love letter’ virus).

Assessment of effect
Even before the Recommendation, in 1998 the Council had endorsed membership in the G8 high-tech crime network (Council of the EU 1998g) and, by 2001, 9 out of the 15 old Member States were network members (Council of the EU 2001r). Since 2001, however, the network has expanded, with 35 participating countries in early 2004 and 52 participating countries in 2007, including 12 of the 15 old EU Member States and 7 of the 12 new Member States (interview #5). Nevertheless, this post-2001 expansion could also be explained by the Council of Europe’s Convention on cybercrime, adopted at the end of 2001, whose Article 35 required all parties to have a 24/7 contact point. Hence, although the Recommendation partly codified existing practices, the Council’s Convention on cybercrime provides a viable alternative explanation for its apparent effect. The effect of this Recommendation is therefore assessed as low.

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Description
32 Council of Europe Convention on Cybercrime, Budapest 23.11.01 (ETS No. 185). All EU Member States are members of the Council of Europe and have signed this Convention.
This Framework Decision, adopted under the Presidency of Sweden on an initiative of France (9903/00 30.06.00), was aimed at establishing and harmonising matters of criminal procedure and criminal liability in the national laws of the Member States. However, unlike the 1998 Joint Action (see instrument #42 in this appendix) on which it was built and some of whose articles it repealed, it largely contained provisions aimed at judicial not police cooperation.

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74. **Council Decision (2001/512/JHA) of 28 June 2001 establishing a second phase of the programme of incentives and exchanges, training and cooperation for legal practitioners (Grotius II –Criminal) (OJ L 186 07.07.01).**

Description
This Decision, adopted under the Presidency of Sweden on an initiative of the Commission (14740/00 18.12.00), was a supporting policy instrument (i.e., financing) with no aim to establish or change operational police practices.

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75. **Council Decision (2001/513/JHA) of 28 June 2001 establishing a second phase of the programme of incentives, exchanges, training and cooperation for law enforcement authorities (Oisin II) (OJ L 182 07.07.01).**

Description
This Decision, adopted under the Presidency of Sweden on an initiative from the Commission (14740/00 18.12.00), was a supporting policy instrument (i.e., financing) with no aim to establish or change operational police practices.

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76. **Council Decision (2001/514/JHA) of 28 June 2001 establishing a second phase of the programme of incentives, exchanges, training and cooperation for persons responsible for combating trade in human beings and the sexual exploitation of children (Stop II) (OJ L 182 07.07.01).**

**Description**

This Decision, adopted under the Presidency of Sweden on an initiative of the Commission (14740/00 18.12.00), was a supporting policy instrument (i.e., financing) with no aim to establish or change operational police practices.

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77. **Council Decision (2001/515/JHA) of 28 June 2001 establishing a second phase of the programme of incentives, exchanges, training and cooperation for the prevention of crime (Hippokrates) (OJ L 182 07.07.01).**

**Description**

This Decision, adopted under the Presidency of Sweden on an initiative from the Commission (14245/00 06.12.00), was a supporting policy instrument (i.e., financing) with no aim to establish or change operational police practices.

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78. **Conclusions adopted by the Council and the representatives of the Governments of the Member States on 13 July 2001 on security at meetings of the European Council and other comparable events (unpublished adopted text in Council document 10916/01 16.07.01).**

**Description**

These Conclusions called for measures related to security at the meetings of the European Council and comparable events. Agreement was reached on the following items:

– police cooperation (§ 1), including the activation of a permanent national contact point in each Member State, a pool of liaison officers, the involvement of the Police Chiefs Task Force and an examination of the possible involvement of Europol in this area;
— information exchange (§ 2), including the collection, analysis and exchange of information, the exchange of such information through liaisons, the drawing up of incident and evaluation reports and the sending of these to the national contact points;
— measures related to the crossing of borders (§ 3);
— judicial cooperation (§ 4);
— organisational measures (§ 5).

The Conclusions were adopted with extraordinary speed under the Presidency of Belgium. After the violent demonstrations during the European Council Summit of 14 to 16 June in Gothenburg (BBC News 2001), the Belgian Presidency called for a special meeting of the PCWP on 4 July in Brussels that would include public order ‘experts’. Meanwhile, in Salzburg, protestors rioted during the World Economic Forum held from 1 to 3 July (The Independent 2001).

The events during the summit in Gothenburg were discussed during a meeting of the European Judicial Network, also in Gothenburg, held just after the summit. The proceedings of this meeting (10525/01 03.07.01) show that these incidents had had a substantial effect on the participants’ state of mind. There in fact appears to have been a certain state of panic that led to some remarkable ideas, such as comparing the EURO 2000 lists of football hooligans with the names of the protestors in Gothenburg and the thought that ‘criminal organisations’ might be involved.

During the PCWP meeting of 4 July 2001, a first draft of the Council Conclusions was distributed to the meeting participants (10795/01 12.07.01). This draft – no existing copy of which could be located in the Council’s register of documents by the Council Secretariat33 – was then discussed in a 5 July 2001 meeting of COREPER, which subsequently instructed the JHA Counsellors to examine it. This examination led to a number of changes after the Counsellors expressed several reservations, particularly on the exchange of data on troublemakers by either accessing national files or setting up a European database and on the freedom of movement of persons (10731/01 10.07.01, p. 1). This amended document is the earliest draft still available. After this text was discussed by COREPER on 11 July 2001, further changes were made (10731/1/01 11.07.01) and the final text (10916/01 16.07.01) includes these additional amendments.

Rationality
The preamble to the instrument states that ‘the Council and the representatives of the Governments of the Member States believe that the following operational measures may help to reduce the risk of serious disturbances of law and order’. It also states that the Conclusions build

33 Communication from the Council Secretariat by email to the author, 14 September 2009.
on the Schengen Convention and the Joint Action of 26 May 1997 with regard to cooperation on law and order and security (see instrument #32 in this appendix). However, in neither the original initiative nor the subsequent (limited) discussions or final text are the necessity and presumed effectiveness of the proposed measures explained.

Rather, the available documents indicate that the most balanced discussion on these Conclusions took place in the Police Cooperation Working Party on 4 July 2001 by experts on public order maintenance (10795/01 12.07.01). The proceedings of this meeting contain not only the key points on the events that led to the Conclusions (Gothenburg, Salzburg) but also a number of ideas for different possible measures. According to the text, the experts proposed the measures from various angles, including attention to privacy concerns, took a balanced approach that included dialogue, made some insightful remarks about the possibilities of involving Europol and issued a warning that football hooligans should not be confused with protestors. Interestingly, no mention is made of the activation of a permanent national contact point in each Member State or the setting up a pool of liaison officers (§1 of the final Conclusions). Another notable aspect of these Conclusions is that most measures proposed – for example, temporarily posting liaison officers, spontaneous information exchange and national contact points – are in fact already covered by the Schengen Convention, which was integrated into the EU legal framework in 1999.

In sum, although professional considerations were voiced in the PCWP discussions, the actual Conclusions were built largely upon political considerations related to a sense of urgency resulting from the events in Gothenburg and Salzburg. In fact, the texts show less consideration from a professional perspective than might be expected given the detail of the proposed operational measures. The level of professional rationality is thus assessed as low at best.

Assessment of effect

For the implementation of these Conclusions, the Belgian Presidency prepared both a checklist (11572/01 10.09.01) and a format for the exchange of strategic information (11694/01 10.09.01). However, no indications have been found that these were actually ever used nor has the idea of involving Europol in information exchange on public order issues as yet materialised, even though some years later this idea received renewed attention in a Friends of the Presidency report (9184/1/06 19.05.06, p. 6). Finally, a number of the measures proposed in the Conclusions were actually implemented through a handbook (12637/3/02 12.11.02) and through the Resolution of 29 April 2004 (see #129 in this appendix). Therefore, given that many of the proposed measures were covered by existing instruments and structures, and that no evidence has been found of the actual application of the remaining measures (checklist, format for information exchange, Europol involvement), the effect is assessed as nonexistent.
79. **Council Conclusions of 20 September 2001 (unpublished adopted text in Council document 12156/01 25.09.01).**

**Description**

These Conclusions, adopted under the Belgium Presidency at an extraordinary meeting nine days after the terrorist attacks in the U.S., put forward 33 measures to strengthen counter-terrorism activities in the Union. Four were directly aimed at police cooperation in the EU:

- Measure #8 requested the PCTF to coordinate the cooperation between the anti-terrorist units that later would become known as ‘ATLAS’;
- measure #9 urged the Member States to quickly pass relevant information to Europol and instructed the Director of Europol to report back on the Member States’ input;
- measure #10 reported the Council’s decision to set up a team of counter-terrorist specialists – later renamed the Counter Terrorism Task Force (CTTF) – within Europol; and
- measure #11 asked Europol to update the Directory of counter-terrorism competences (see #16 in this appendix).

**Rationality**

The Council convened the day after the attacks and invited the Presidency, the High Representative for the Common Foreign and Security Policy and the Commission to submit a report on the concrete measures to be taken (11795/01 12.09.01). Although the ‘paper’ history of the measures is negligible, those documents that are available show that the justification and rationale for the Conclusions were solely political, with the Commission playing a significant role (see Kaunert 2010a), and that there was little to no elaboration on the necessity and nature of the proposed measures in relation to the problem. Rather, the reaction to the events of 9/11 was dominated by the political urge of ‘something must be done’ (Den Boer 2003: 189–190; see also Schneier (2006: 241) on the political rationality relating to security related incidents).

**Assessment of effect**

Two of the above measures on police cooperation have had a very visible effect on police cooperation in the EU. First, the responsibilities of the CTTF were transferred to the standing structure of Europol on 31 December 2002 (13699/1/02 08.11.02). Two years later the task force was revived after the 2004 attacks in Madrid (7906/04 29.03.04 p. 7). It was nonetheless agreed that this task force would be closed and its activities would be assimilated into the activities of the standing Europol CT units, SC5 (8081/06 05.04.06, p. 17). Further, the meetings of the counter-terrorist units were brought under the aegis of the PCTF (the ATLAS cooperation, see
Block 2007a) (13747/01 09.11.01 p. 6). Hence, overall, the Conclusions had a relatively high effect on police cooperation practices, although that may have also been partly caused by the ‘sense of urgency’ existing after 9/11.

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Description
This Protocol aimed at supplementing the EU MLA Convention and other underlying conventions. As regards police cooperation, its relevant provisions cover requests for information on bank accounts and (monitoring of) banking transactions (Article 1, 2 and 3), the obligation to provide such information and the obligation to be lenient about accepting additional requests (Article 5 and 6). The Act establishing the Protocol was adopted under the Presidency of Belgium on the initiative of France when it held the Presidency (9843/00 29.06.00).

Rationality
The explanatory note to this instrument, although it addresses legal and political considerations, argues the necessity for the provisions from a professional point of view with reference to their effectiveness. It is not completely clear, however, to what extent this underpinning relies solely on the French point of view.

Assessment of effect
The Protocol entered into force for most Member States on 5 October 2005 and was therefore excluded from data collection because it fell outside the research timeframe. In any case, operationally, data collection would have been nearly impossible because of insufficient management information on the use of ILORs (interview #21, see also Harfield 2005).

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**Description**
This Recommendation aimed to standardise definitions and provide a standardised data collection model in order to achieve better comparability of law enforcement drug seizure statistics. This issue of drug statistics had already been raised in 1999 under the German Presidency, and Europol had also studied the various systems of drug statistics collection in the Member States (9102/01 28.05.01). The Recommendation was initiated and adopted under the Presidency of Belgium (12411/01 10.10.01).

**Rationality**
According to the explanatory note, the definitions and model were developed by Europol and experts who came from eight volunteering Member States and acted as a ‘reflection group’. In developing the harmonised indicators and the methods of data collection for compiling drug seizure statistics, Europol also cooperated closely with the EMCDDA and made use of questionnaire responses from 12 Member States (9102/01 28.05.01). On the one hand, the discussions on this Recommendation show significant professional consideration of its substance; on the other, they pay little attention to the proposal’s practicability, i.e., whether a standardised 32-page model could really be used with each and every seizure. Therefore, the overall level of professional rationality in the policy-making is assessed as medium.

**Assessment of effect**
Full implementation of this Recommendation would imply that, for every drug seizure in all Member States, the 32-page model or parts of it would have to be filled in and the information forwarded to Europol. Yet, several years later the EU Drugs Action Plan (2005–2008), in its objective 18.2, notes that Member States still need to improve the ‘consistency with which they forward seizure data to Europol’ (8652/1/05 19.05.05, p. 15). This observation can thus be read as an indication that the effect of this Recommendation is low. This interpretation was corroborated by a Dutch police drug expert, who indicated that the form included in the Recommendation is not in use in the Netherlands, and that, although the information flow to Europol is admittedly not comprehensive, Europol has since introduced another format for the submission of drug statistics (written answers #6).

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**Description**

This Decision obliged the Member States to communicate to Europol information on investigations into counterfeiting of the Euro and related offences, including information received from third countries. It also prescribed the minimum requirements for the content of such information exchange on a detailed operational level and stipulated that Member States should – where appropriate – use the facilities offered by the Provisional Judicial Cooperation Unit (later Eurojust). Finally, it attempted to influence the internal procedures in the Member States by obliging them to obtain expert analysis from the National Analysis Centre in any investigations into counterfeiting of the Euro and related offences. The Decision was adopted under the Presidency of Belgium based on an initiative tabled by France when it held the Presidency in 2000 (14945/00 22.12.00).

**Rationality**

Although the centralisation of information on the counterfeiting of one single currency in the EU could easily be supported from a professional perspective, the French proposal document and its addendum indicate that the idea was predominantly supported by the political rationality that underpins all 13 points made in the preamble. The Decision can thus be seen as an addition to the 2001 Council Regulation on the protection of the Euro (OJ L181 04.07.07), which is regarded as the ‘the cornerstone of the Euro protection edifice’ (14935/00 ADD 1 22.01.01). It is true that the explanatory note does argue that a JHA instrument should be added to the Decision, ‘in the interests of efficiency’, to make:

‘the authorities charged with carrying out technical analyses also responsible for such analyses during criminal investigations; to improve the coordination of criminal proceedings, a task entrusted to the Provisional Judicial Cooperation Unit and to prevent any shortcoming in the police cooperation arrangements by expressly stipulating the communication of relevant information gathered during criminal investigations’ (14935/00 ADD 1 22.01.01, p. 2).

This one paragraph, however, is the only text that gives some consideration to the content of the discussion, which itself provided no further professional underpinnings for such points as why the Provisional Judicial Cooperation Unit should be involved or what shortcomings in police cooperation arrangements were being referred to.

**Assessment of effect**
Elements of this Decision have been implemented in the Netherlands at a national level by the existing counterfeit and payment fraud unit (interview #17). Moreover, according to one expert from Europol’s money forgery unit, the level of information sharing by Member States on this subject is good, especially compared to other forms of crime, most probably because of a ‘commonly felt responsibility’ for Euro forgery (interview #25). Nevertheless, the standard detailed format put forward by this Decision is seldom, if ever, used (interview #25). Another respondent confirmed that this area is one in which cooperation through Europol is relatively strong, even though recent data suggest that the ELOs still only send about 32% of their communication on this subject to Europol (interview #28). Overall then, the effect of this instrument can be assessed as high.

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83. **Council Recommendation of 6 December 2001 setting a common scale for assessing threats to public figures visiting the European Union (OJ C 356 14.12.01).**

Description
The main aim of this Recommendation was, as the title suggests, the adoption of a common scale for evaluating threats to public figures visiting the European Union. It also made the following recommendations:
- step up the volume and quality of the exchange of information on the assessment of terrorist threats to official public figures visiting the countries of the Union;
- designate a competent service to assess this threat;
- use the network of liaison offices;
- associate Europol with this cooperation if it falls within its mandate.

The Recommendation was adopted under the Presidency of Belgium based on an initiative tabled by France (11605/00 02.10.00).

Rationality
The discussion on this Recommendation was begun by France, which tabled a discussion note during its incoming Presidency (9898/00 30.06.00). After the death of Princess Diana of Wales in Paris in 1998, France had placed the issue of protecting public figures on the agenda and administered a questionnaire in the PCWP, arguing that this problem needed ‘a totally professional approach’ (6238/98 26.02.98). In its 2000 discussion note, France argues the necessity of the proposed measures based largely on professional rationality, a perspective made
clear in the preamble to the Recommendation. The level of professional rationality related to the policy-making in this instrument is thus assessed as very high.

Assessment of effect
Although the Recommendation called for an examination of the results of the stipulated cooperation within three years of its full introduction, no evidence of such evaluation could be found in the register of the Council Secretariat. One expert on close protection, however, did confirm that threat evaluation is standardised throughout the EU and that the information exchange works properly; however, Europol is not involved in this area (written answers #4). This latter is not surprising given that prior to 2010, this issue did not fall within the Europol mandate. Therefore, in light of the Recommendation’s primary purpose of introducing a common evaluation scale, its effect is assessed as high.

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84. **Council Decision of 6 December 2001 extending Europol’s mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention (OJ C 362 18.12.01).**

Description
This Decision aimed to fulfil the following provision in Article 2 of the Europol Convention: ‘The Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof.’ The Decision was adopted under the Presidency of Belgium on an initiative from Belgium and Sweden (9093/01 11.06.01).

Rationality
The main argument for this Decision was that the ‘effectiveness of the cooperation within the framework of the Europol Convention would be enhanced if Europol, within certain prioritised areas, could perform its tasks in respect of all aspects of international organised crime listed in the Annex to the Europol Convention’ (9093/01 11.06.01, p. 2). No professional underpinnings or other arguments for the necessity of this measure appear in the Decision or related documents.

Assessment of effect
Although Europol’s mandate was widened by the Decision, its activities and priorities have been little affected. Rather, as shown by Europol’s subsequent annual reports, Europol’s priorities have remained largely the same:

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There appears, however, to have been one unintended effect: as one respondent explained, the number of so-called ‘out-of-mandate’ requests exchanged between the ELOs decreased significantly as a result of the Decision (interview #28). Despite differing opinions on the legality of these ‘out-of-mandate’ requests – requests sent between ELOs relating to cases (and other issues) not directly covered by the Europol Convention – ELOs from some countries have always interpreted the tasks and mandate of the liaison broadly and therefore acted on every reasonable request regardless of whether it was in- or outside the Europol mandate. Yet not all ELOs have adopted this viewpoint, and some have refused to accept out-of-mandate requests. This particular Council Decision, however, more or less formalised the informal practices of the ELOs in that every serious crime that affects two or more Member States now falls within the mandate (interview #28). On the other hand, as this same respondent pointed out, Europol’s priorities were not really affected by the Decision because they derive from a mix of national (political) push – for example, the UK’s recent focus on VAT fraud or France’s on IP theft – and pull from the operational field (interview #28).

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85. **Council Resolution of 6 December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension in which at least one Member State is involved (OJ C 22 24.01.02).**

**Description**

This Resolution introduced a number of amendments to the existing handbook agreed on by the Council in the 21 June 1999 Resolution (see instrument #52 in this appendix), which further
codified existing practices in this field. The Resolution was adopted under the Presidency of Belgium on its own initiative (10536/01 04.07.01).

Rationality
The Belgian initiative was built on 1) practical experience during the 1996, 1998 and particularly the 2000 football championships, 2) an academic evaluation (see Adang and Cuvelier 2001) and 3) the outcome of an international expert seminar, held in Brussels from 22 to 23 May 2001, on the prevention of and the fight against soccer hooliganism (9833/1/01 20.06.01). The level of professional rationality in the policy-making of this Resolution is therefore assessed as very high.

Assessment of effect
Adang and Cuvelier (2001), like two of the study respondents (interviews #15, #20), conclude that the handbook developed in 1999 did make a contribution to successful international police cooperation during the 2000 European Championship. The amendments introduced by this Resolution, however, appear to have been preceded – or even initiated – by existing cooperation practices on a decentralised level. Hence, for many Member States, this Resolution merely codified what was already in practice, while other Member States switched to these practices only reluctantly (interview #15). The Resolution’s effect, therefore, is assessed as medium.

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Description
This Framework Decision, adopted under the Presidency of Belgium on an initiative of Sweden (9961/01 19.06.01), was aimed at establishing and harmonising criminal liability in the Member States, not at specific police cooperation practices.

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Description
This Action Plan was adopted under the Presidency of Belgium. The idea emerged in April 2000 when Ukraine suggested the conclusion of an agreement between the EU and Ukraine on organised crime and presented a text in September 2000. Although various bodies worked on a draft, including the Commission, the Article 36 Committee, the SCIFA and the JHA Counsellors, the first comprehensive draft was presented by the Commission and the Belgian Presidency.

The Action Plan was aimed at directing efforts in prioritised cooperation with Ukraine in matters of Justice and Home Affairs. Unlike the similar Action Plan of 2000 on the cooperation with Russia (see instrument #57 in this appendix), this Action Plan contained no measures for establishing/changing police cooperation practices.

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88. Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63 06.03.02).

Description
This Decision was adopted under the Presidency of Spain based on an initiative put forward by Germany (8777/00 25.05.00) and a subsequent proposal by Portugal, France, Sweden and Belgium (10355/00 13.07.00). The instrument was aimed at setting up a structure for judicial cooperation with no direct effect on police cooperation practices.

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89. Council Decision (2002/188/JHA) of 28 February 2002 concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA (OJ L 63 06.03.02).

Description
This Decision, adopted under the Presidency of Spain on an initiative of the Commission (15143 10.12.01), was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

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90. **Council Recommendation of 25 April 2002 on improving investigation methods in the fight against organised crime linked to organised drug trafficking: simultaneous investigations into drug trafficking by criminal organisations and their finances/assets (OJ C 114 15.05.02).**

Description
The aim of this Recommendation was to promote the ‘special technique’ of simultaneous investigation of drug trafficking and criminal assets. It also encouraged the setting up of groups specialised in asset investigation and joint investigation teams that would apply these ‘techniques’ in which Europol would be involved. The Recommendation was adopted under the Presidency of Spain, which initiated the proposal during this same Presidency (5154/02 14.01.02).

Rationality
The discussion on this issue began with a note in which the incoming Spanish Presidency explained the practicalities of the measures as they were deployed in Spain. A questionnaire was also sent to the delegations in the Working Party on Drug Trafficking (13619/01 03.12.01), but the initiative for the Recommendation (5154/02 14.01.02), launched by Spain one month later, makes no mention of any questionnaire outcomes. Although the preamble to the initiative seems to be written from a professional perspective, many of the statements are in no way professionally underpinned, nor do the other available policy documents show any indications of professional rationality in the discussions. Hence, the professional rationality in the policy-making is assessed as low.

Assessment of effect
Although this Recommendation is designated ‘action taken’ in some policy documents (e.g., 10925/03 30.06.03), no indications have been found of any direct operational follow-up in the Member States. Moreover, the ‘follow-the-money’ methods of crime control included in the proposed ‘special techniques’ can be traced back to the 1970s and 80s in the U.S., where they were driven by the apparent failure of more traditional law enforcement methods and the
conviction that the world-wide drug trade was providing drug traffickers with enormous profits (Naylor 1999: 6). As Nadelmann (1993: 388) puts it, ‘by the end of the 1980s, the notion that “going after the money” was the most effective way to immobilize drug traffickers had become conventional wisdom among government investigators and legislators in the United States, Canada, much of Europe and a number of other countries’. Then in 1990 the FATF, established in 1989, published a series of recommendations that included the use of special techniques and the setting up of units specialised in asset investigation.34

In the early 1990s, many European countries also began setting up organisational units for financial investigations as part of the fight against organised crime, and they too applied the ‘technique’ of simultaneous investigations (e.g., Klerks 2000: 328–329; Pütter 1998: 125). For example, in 1993, the Netherlands introduced a legal basis for specific investigations of criminal assets as part of its Criminal Process Code,35 and this method has since been widely used in combination with traditional investigative techniques. Against that background, it can be concluded that this Recommendation is a codification of already widespread existing practices and thus had at best a low effect on actual police cooperation practices.

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91. Council Recommendation of 25 April 2002 on the need to enhance cooperation and exchanges of information between the various operational units specializing in combating trafficking in precursors in the Member States of the European Union (OJ C 114 15.05.02).

Description

This Recommendation aimed to promote action in the EU to combat trafficking in precursors. It thus proposed the following tangible measures to enhance police cooperation in this area:

– strengthening the direct channels of communication between those responsible at a national level for combating trafficking in precursors (Article 1);
– maximising the potential of Europol and the PCTF (Article 3);
– setting up joint specialised operational units dedicated exclusively to combating the trafficking and diversion of precursors (Article 4).

The Recommendation was adopted under the Presidency of Spain based on its own initiative (5159/02 14.01.02).

34 See the 40 FATF recommendations at http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF (last visited 30 April 2011).
35 Article 126 of the ‘Wetboek van Strafvordering’ (Code of Criminal Procedure) introducing the possibility of a ‘judicial financial investigation’ (in Dutch, strafrechtelijk financieel onderzoek)
Rationality
The preamble to this instrument stresses the necessity of international cooperation and refers to two operations in this field. Likewise, the initiative by Spain, in supporting the necessity of action in this area, addresses a number of considerations from a professional perspective. Nevertheless, there is no specific underpinning for the proposed measures, so the professional rationality in the policy-making is assessed as medium.

Assessment of effect
In November 2002, based on a UK initiative, the European Joint Unit on Precursors (EJUP) was created, which brings together senior police officers from Britain, Belgium, France, Germany, the Netherlands and Austria to specifically target the trafficking of precursors into Europe. This unit is financed by the Commission, located at Europol and supported by Europol through an Analysis Work File (Commission 2004b: 57; Unit Synthetische Drugs 2003: 14). The establishment of the EJUP does appear to have been prompted or at least facilitated by the Recommendation. Although only six Member States actively participate in the unit, the EJUP seemingly drives the AWF Synergy project on synthetic drugs and precursors, which combines the original AWF Genesis (associated with the EJUP) and the AWF Case. According to one Dutch drug expert, it is quite likely that the Recommendation led to a higher priority being given to combating precursors (written answers #6). Hence, the effect of this Recommendation is assessed as high.

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Description
This Recommendation promoted the establishment of multinational teams of police working together in counter-terrorism investigations in which there was ‘an operational shortfall’ between the work of the security and intelligence services and the police. The wording of the Recommendation, however, is ambiguous and offers neither a clear legal or organisational framework nor any goal other than ‘the establishment of such teams in individual cases’. The Recommendation was adopted under the Presidency of Spain on its own initiative (5715/02 29.01.02).
Rationality

Although the necessity of this instrument seems at first glance to be underpinned by professional rationality, closer inspection of the arguments actually explains nothing about the proposed concept or the nature of the working teams. The Spanish Ministry of the Interior (Ministerio del Interior 2001) did make reference in one press release to similar teams cooperating with Italy, Portugal and Greece in combating anarchist terrorism; however, no information on this experience was included in the policy-making process. The professional rationality is therefore assessed as nonexistent.

Assessment of effect

According to one counter-terrorism expert from a northern EU Member State who attended a meeting in Madrid to discuss the multinational teams, the discussion was characterised by a

‘huge north-south polarisation. All the southern states wanted [the teams], and none of the northern states understood what they were about. I sat through several meetings, and I really can’t work out what exactly the Spanish wanted, even today. The idea was stalled during Spain’s Presidency, and got going again under the Italian Presidency, but never got further than an undertaking to exchange contact points.’ (Interview #6)

This version of events was confirmed by a second counter-terrorism expert from another northern EU Member State (interview #9).

In 2003, the Italian Presidency proposed an ‘operational project’ as a follow-up to the Recommendation (10913/1/03 18.07.03), which was subsequently adopted by the JHA Council in November 2003 (cf. 13747/03 06.11.03). The Terrorism Working Party discussed the subject several times during 2004 and 2005, and the summary of these discussions suggests that the meetings produced some sort of handbook and a list of contact points (7257/05 14.03.05). Measure 3.4.7 of the Action Plan on terrorism does stipulate the ‘regular updating of the network of contact points … in respect of multinational ad hoc teams’; however, the last entry to this effect was in the June 2005 update (10694/05 27.06.05). Multinational ad hoc teams are not mentioned in either a November 2005 note on the Action Plan’s implementation (14734/1/05 29.11.05) or in the first version of the Action Plan issued in 2006 (5771/1/06 13.02.06). The north-south polarisation on this subject is also apparent in the summary of the discussions of the WPT on 18 March 2002 (7584/02 04.04.02). Overall, therefore, the effect of this Recommendation is assessed as nonexistent.

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93. **Council Decision (2002/348/JHA) of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121 08.05.02).**

**Description**
This Decision aimed to set up football information points (FIP) in the Member States that would act as direct contact points for the exchange of relevant information and for international police cooperation in connection with football matches. The Decision was adopted under the Presidency of Spain on an initiative of Belgium when it held the Presidency in 2001 (11088/01 19.07.01). It was proposed simultaneously with an update to the football cooperation handbook (see instrument # 85 in this appendix).

**Rationality**
The proposal for this Recommendation builds on practical experience from the 1996, 1998 and 2000 football championships, an academic evaluation (see Adang and Cuvelier 2001) and the outcomes of an international seminar of experts on the prevention of and the fight against soccer hooliganism, held in Brussels on 22 and 23 May 2001 (9833/1/01 20.06.01). The professional rationality is therefore assessed as high.

**Assessment of effect**
According to the explanatory memorandum attached to the Belgian initiative, by 2002 the UK, Germany and the Netherlands were already operating national information centres on a permanent basis. In fact, the Dutch FIP had been operational since 1986, the UK FIP since 1989 and the German FIP since 1992 (Piastowski 2001: 18). These various FIPs were already following the agreed-upon working arrangements almost to the full extent, even though their exact roles and tasks varied substantially according to the extent and nature of the football hooliganism problem in the different Member States. However, although the Decision codified existing practices in some Member States, in some other Member States FIPs were established as a result of the Decision (interview #15). Its effect is therefore assessed as medium.

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94. **Council Framework Decision (2002/465/JHA) of 13 June 2002 on joint investigation teams (OJ L 162 20.06.02).**
Description
The aim of the Framework Decision was to bring into force, ahead of time, Article 13 of the 2000 EU MLA Convention, which provided for the establishment and operation of joint investigation teams. The Framework Decision in fact reproduced Articles 13, 15 and 16 of the Convention, which had not yet entered into force because of delays in its ratification. An earlier attempt to lift Article 13 (on joint investigation teams) out of the Convention and make it into a Framework Decision with a much speedier implementation had already been made during the 2000 Portuguese Presidency; however, that measure failed. Then the 9/11 attacks provided a window of opportunity, and political agreement was reached in COREPER with virtually no discussion (Nilsson 2004b: 15). Belgium, France, Spain and the UK tabled a joint initiative for this Framework Decision (11990/01 19.09.01), and it was adopted by the Council 10 months later under the Presidency of Spain.

Rationality
Although the initial draft of the decision, drawn from the Tampere Conclusions, limits the operation of JITs to three types of crime, this limitation is deleted in the final text even though one reference to it is retained in point 6 of the preamble. Discussions of the necessity of this instrument were based (and argued) entirely on the political wish to take the JITs further as soon as possible, most likely under the pressure of recent events. Hence, the professional rationality in the policy-making is assessed as nonexistent.

Assessment of effect
According to a report from the Commission on the national measures taken to comply with the Framework Decision, this envisaged ‘escape route’ from the protracted implementation of the EU MLA Convention of 2000 yielded few results: only a handful of Member States had fully complied with its provisions by the end of 2004 (Commission 2005a). It should, however, be noted that the Commission adopted a strictly legislative perspective in its evaluation by vigorously comparing the exact texts of the legislation implemented in the Member States with the articles of the Framework Decision. From that perspective, France, for instance, was ‘not fully compliant’ (Commission 2005b: 11), whereas in reality, a French/Spanish joint investigation team on ETA terrorism, in place when the Commission was drafting the report, qualifies as the first operational JIT in the EU (see Chapter 7).

A decision to designate JIT experts in each Member State was made as part of The Hague Programme (Council of the EU 2004a), and these experts first convened at Eurojust, in cooperation with Europol, on 23 November 2005 (15227/05 2.12.05). The Commission, however, in its 2006 Progress Review on the implementation of the EU Drugs Action Plan (2005–2008), notes that ‘the experiences made in setting up and cooperating within joint investigation teams have revealed juridical, administrative and practical problems leading to
considerable delays and the hindrance of the proper flow of information. The existing constraints and the lessons already learnt should be evaluated and considered carefully when preparing a JIT’ (Commission 2006d: 19–20).

Technically, the Framework Decision was superseded by the coming into force of the EU MLA Convention in August 2005, so its effect on police cooperation practices in the three years between its adoption by the Council and August 2005 can be assumed to have been none. That is, although the number of JITs established seems to have increased gradually up until December 2008, fewer than 40 JITs were actually operational, a negligible number in European police cooperation in criminal investigations (see Chapter 7).

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95. **Council Decision (2002/494/JHA) of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 167 26.06.02).**

**Description**

This Council Decision prescribed that Member States should designate a contact point for war crimes within their police or justice departments in order to facilitate mutual cooperation in investigating war crimes in the individual Member States. It also defined the primary task of these contact points and provided some standardisation of the communication between them. The Decision was adopted under the Presidency of Spain on an initiative from the Netherlands (11587/01 05.09.01).

**Rationality**

Professional rationality is obvious in points 6, 7, 9 and 10 of the preamble (11587/01 05.09.01) and is extensively discussed in the explanatory note (11587/01 ADD 1 05.09.01). The professional rationality in the policy-making is therefore assessed as very high.

**Assessment of effect**

Within one year, as prescribed by the Decision, all Member States had designated contact points (11483/1/03 07.08.03), and the Conclusions of the second network meeting in 2005 indicate that the network was active and fulfilling its role as envisaged in the Decision (10754/05 04.07.05). In the Netherlands, however, this contact point is located within the Ministry of Justice and has no access to operational information. Hence, much of the operational information exchange
takes place directly between investigators in this rather small field of expertise (interview #34). Nevertheless, overall, the effect of the instrument should be assessed as high.

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**96. Council Framework Decision (2002/475/JHA) of 13 June 2002 on combating terrorism (OJ L 164 22.06.02).**

Description

This Framework Decision, adopted under the Presidency of Spain on an initiative of the Commission (12103/01 24.09.01), was aimed at the establishment and harmonisation of criminal procedure and criminal liability issues in the national laws of the Member States with regard to terrorism. It therefore contained no provisions that could directly affect police cooperation practices.

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**97. Council Framework Decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190 18.07.02).**

Description

This Framework Decision was adopted under the Presidency of Spain on an initiative of the Commission (12102/01 24.09.01). Discussions on extradition and ‘judicial surrender’, however, have a long history in Council JHA policy-making, for example, Belgium forwarded a proposal on the judicial surrender of persons involved in cases of consent as early as 1994 (8768/94 29.07.94). Nevertheless, although extradition is a form of judicial cooperation that in practice might be facilitated and even executed by police, it has little to do with police cooperation practices.

Even so, some have used the European Arrest Warrant (EAW) as an explicit example of ‘police cooperation’. For example, Jachtenfuchs et al. (2005), in their analysis of the degree and aspects of change in the internationalisation of the monopoly of force, include the EAW as one of their 12 ‘international police cooperation’ cases. From a police practitioner perspective, however, the
EAW merely represents a different legal basis for arrest and makes no changes to the actual practices of police executing the warrant. More specifically, instead of a warrant being issued by a national judge based on the evaluation and validation of an extradition request from abroad, in EAWs a request for arrest issued by a judicial authority from another jurisdiction is (almost) directly recognised as valid and then administratively transformed into an executable warrant for the national police. The only change in practices that police might encounter is a change in the forms that have to be filled out after execution of the warrant; it is the judiciary (i.e., the prosecutor or judge) for which the practices change when an EAW is used instead of an ‘old-fashioned’ extradition procedure.

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98. **Council Recommendation of 13 June 2002 regarding cooperation between the competent national authorities of Member States responsible for the private security sector (OJ C 153 27.06.02).**

Description
This Recommendation was adopted under the Spanish Presidency on its own initiative (15206/01 13.12.01), and it was actually aimed at a Council Decision. Only after discussion in the PCWP on 9 and 10 April 2002 was the text changed into a Recommendation (cf. 6462/1/02 18.03.02 with 8370/02 26.04.02). Nevertheless, even though in many Member States the police are the authority responsible for the supervision of the private security sector, the measures envisaged in this Recommendation have little to do with police cooperation practices.

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99. **Council Framework Decision (2002/629/JHA) of 19 July 2002 on combating trafficking in human beings (OJ L203 01.08.02).**

Description
This Framework Decision, adopted under the Presidency of Denmark based on an initiative of the Commission (5206/01 15.01.01), was aimed at establishing and harmonising matters of criminal procedure and criminal liability in the national laws of the Member States with regard
to trafficking in human beings. It included no provisions that would directly affect police cooperation practices.

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100. **Council Decision (2002/630/JHA) of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters (AGIS) (OJ L 203 01.08.02).**

Description

This Decision, adopted under the Presidency of Denmark on an initiative of the Commission (14963/01 10.12.01), was a supporting policy instrument (i.e., financing) with no aim to establish or change operational police practices.

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101. **Council Conclusions of 14 October 2002 on electronic exchange of information between law enforcement authorities of Member States (unpublished adopted text in Council document 11752/3/02 10.10.02).**

Description

These Conclusions were adopted under the Presidency of Denmark on its own initiative (10394/02 27.06.02). Although the original initiative was aimed at a Council Decision, the subsequent draft (11752/02 06.09.02) was aimed at Council Conclusions. The Conclusions themselves stipulated only ‘an examination that should be conducted with a view to clarify[ing] legal, operational, financial and technical aspects of electronic exchange of information between law enforcement authorities of the Member States’. It thus anticipated no direct actions aimed at police practices.

Despite this, some of the ideas voiced in the Conclusions resurfaced in 2005 when the Commission launched its proposal (COM (2005) 490 final and annex SEC (2005) 1270 12.10.05) for a Council Framework Decision on the exchange of information under the principle of availability. However, neither that proposal nor the accompanying effect assessment mention either the 2002 Council Conclusions or the outcomes of any examination supposed to be
undertaken by the Danish. Some elements of the discussions on this instrument did, however, resurface in the proposal for a Framework Decision on simplifying the exchange of information and intelligence based on an initiative from Sweden (10215/04 04.06.04) which was adopted in December 2006 and is known as the ‘Swedish Framework Decision’ (OJ L386 29.12.06).

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Description
This Recommendation, adopted under the Presidency of Denmark on an initiative from Spain (5712/02 29.01.02), introduced a standard for exchanging information on terrorists as a ‘useful tool in preventing activities carried out by terrorist organisations’. The original initiative was aimed at the adoption of a Decision; however, when the Spanish Presidency met significant resistance to the text, it decided to rephrase it into a Recommendation (see 5712/5/02 13.05.02). The final text, approved by CATS in May 2002 (5712/6/2 29.05.02), was only silently approved as an A-point five months later at the 2,462nd Council meeting (see 13839/02 14.11.02).

Rationality
The original initiative assumed a somewhat outlandish link between protestors at European summits and terrorists, arguing that the ‘increase in violence and criminal damage was orchestrated by radical extremist groups, clearly terrorising society’ and that ‘these acts are the work of a loose network, hiding behind various social fronts by which we mean organisations taking advantage of their lawful status to aid and abet the achievement of terrorist groups’ aims’ (5712/02 29.01.02). No supporting evidence was presented, however, for this hypothesis. Therefore, after significant objections by many delegations, the text was subsequently rewritten. Then, at a meeting of CATS, the final text was drafted as a Recommendation instead of a Decision (5712/5/02 13.05.02). The available policy documents show no professional rationality on the alleged problem and/or the necessity and choice of the proposed measures.

Assessment of effect
No evidence exists of the actual implementation or application of this Recommendation, nor has there been any evaluation even though it is designated ‘action taken’ in the Report on the
measures and steps taken with regard to the implementation of the Recommendations of the European Union Strategy for the Beginning of the New Millennium on Prevention and Control of Organised Crime (8673/2/03 30.06.03). Given this lack of evidence, as well as the resistance met during the policy procedure, it is unlikely that this instrument had any effect on actual practices of police cooperation in the EU. In fact, one Dutch expert on public order issues clearly stated that that the form proposed in this Recommendation is not used by the Dutch police and that no standard information exchange takes place with Europol in this regard (written answers #3). Likewise, an officer in the Dutch police counter-terrorism unit explained that they did not use the model form and that in fact most information exchange takes place bilaterally through PWGT contacts not Europol (interview #22).

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103. **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 16.12.02).**

**Description**

This second Protocol to the Europol Convention, adopted under the Presidency of Denmark, aimed to establish a legal basis both for requests made by Europol to initiate criminal investigations and for Europol’s participation in joint investigation teams. Several initiatives for this Act were tabled and considered: a first initiative was forwarded by Belgium when it held the Presidency (14546/01 27.11.01), a revised version was tabled in early 2002 by Belgium and the then Spanish Presidency (5455/02 28.01.02) and a third was submitted by Denmark during its Presidency (10307/02 02.07.02). The original Belgian initiative also contained a proposal to amend Article 43 of the Europol Convention on amendment procedure to allow a simplified procedure in which a Council Decision would suffice to bring amendments to the Convention into force instead of ratification by all Member States (see 13284/01 26.10.01). After objections from several Member States in CATS, the Decision was taken not to pursue this amendment (12521/02 30.09.02).

**Rationality**

The provisions in the Protocol are an elaboration of Articles 30(2)(a) and (b) of the TEU, which were the subject of two Council Recommendations in 2000 (see instruments #31 and #33 in this appendix.) Hence, the preamble to the final Protocol gives only a legal-technical motivation (i.e.,
one based on Article 30(2) TEU) for enabling Europol to participate in joint investigation teams and ask Member States to initiate criminal investigations. The professional rationality in the policy-making is therefore assessed as nonexistent.

Assessment of effect
Because the Protocol entered into force in April 2007, no data were collected on this instrument.

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104. **Council Decision (2002/996/JHA) of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (OJ L 349 24.12.02).**

Description
This Decision, adopted under the Presidency of Denmark on an initiative from Spain (8811/02 13.05.02), was aimed at the establishment of an evaluation mechanism, not at actual police cooperation practices.

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Description
This Resolution, adopted under the Presidency of Denmark on its own initiative (10683/02 09.07.02), aimed to establish and harmonise criminal liability related to new synthetic drugs in the national laws of the Member States; it was therefore not aimed at police practices.

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Description
This Framework Decision, adopted under the Presidency of Denmark on a French initiative (10676/00 03.08.00), aimed to establish and harmonise matters of criminal procedure and criminal liability in the national laws of the Member States with regard to the facilitation of unauthorised entry. It contained no provisions aimed directly at police cooperation practices.

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Description
This Recommendation called for coordination between the Member States (police and security services) and Europol in the development of terrorist profiles. It was adopted under the Presidency of Denmark based on its own initiative, which was first presented in the TWP on 17 May 2002 (9135/02 27.05.02, 10414/02 01.07.02 (restraint) and the ‘open’ version 11858/02 13.09.02).

Rationality
The action proposed in the Recommendation is grounded in a professional motivation – elaborated in Annex A – that is (partly) based on Member States’ responses to a questionnaire on their work on terrorist profiles, which were to be used to define best practice in this field. Most, although not all, EU countries reported that they were working on such profiles (11858/02 13.09.02). Hence, the professional rationality in the policy-making on this Recommendation can be assessed as very high.

Assessment of effect
Following this Recommendation, from 24 to 25 June 2003, a pilot group of experts from a number of EU Member States and Europol held an initial workshop on terrorist profiles at the headquarters of the German Federal Police that was then followed by other such seminars (cf. 7220/04 12.03.04 and 7846/04 30.03.04). More recently however, the value of – or better, the
feasibility of – developing valuable profiles is being contested in counter-terrorism circles (interview #22). Nevertheless, this Recommendation has led to coordinated activities on terrorist profiling between the various CT units in the EU.

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Description
This Decision was aimed at the setting up of a European network for the protection of public figures, one that would ‘allow for exchanges of officials, information and experience and, therefore, the setting of common minimum criteria for action in this field’. It was adopted under the Presidency of Denmark on an initiative of Spain (5087/02 09.01.02).

Rationality
This subject matter had already been discussed in Council structures (see e.g., instrument #83 of this appendix) and the proposal for this Decision as forwarded by Spain elaborated it largely from a professional perspective. Specifically, it underpinned the necessity of the proposed measures with technical details and the operational complexity of the subject. It also referred to earlier discussions in the relevant working groups and the outcomes of a questionnaire administered to the Member States. The proposal had thus clearly been formulated based on a professional perspective.

Assessment of effect
The Decision was evaluated three years after its adoption by means of a questionnaire sent out by the Council Secretariat (CM 328/06 25.01.06). According to the note on this evaluation (9940/06 30.05.06), contact points were designated in the Member States, annual meetings were organised and a handbook was drawn up that was in widespread use and regarded as a useful tool. The Decision thus appears to have been implemented fully. On the other hand, the questionnaire responses raise questions about the extent to which the instrument itself led to changes in the practices of cooperation between responsible departments. Most particularly, individual answers indicated that such information exchange was already good and may not have changed much as a result of the Decision. For example, according to the UK delegation (response to CM 328/06 25.01.06), the exchange of operational information took place primarily ‘through direct contacts’ that were ‘sometimes the same as the Network contacts [because]
operational information can only, and should only, be exchanged with those involved in the security operation’.

One Dutch expert on close protection did report that an ENPPF form had been developed but that, actually to his relief, the flow of information on upcoming visits continued to go through the embassies and Ministries of Foreign Affairs of the respective countries. He further remarked that if his service used the ENPPF forms, it would make more extra work than should probably be done by an operational unit (written answers #4). In sum, this instrument did have a concrete effect, but one not fully in line with the aims of the Decision.

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**Council Decision (2003/48/JHA) of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (OJ L16 22.01.03).**

Description

This Decision required, among other things, that Member States designate a central contact point within their police services that would have access to and collect the information concerning and resulting from criminal investigations with respect to any of the persons, groups or entities listed in the Annex to the Common Position referenced (Article 2.1). It also described certain standardisation of the information to be collected, and obliged Member States to forward all information to Europol (Article 2.2). The provisions contained in Article 3 were similar but were directed at the judicial authorities and their obligation to forward information to Eurojust.

The Decision also required Member States to take the necessary measures to set up joint investigation teams, where appropriate, when investigating terrorist offences and to handle other Member States’ requests for mutual assistance on investigations into terrorist offences involving any of the listed persons as a matter of urgency and priority (Article 4). The Decision was adopted under the Presidency of Denmark based on an initiative of Spain (7153/02 18.03.02).

Rationality

The addendum to the initiative (7153/02 ADD 1 21.05.02), which formulates the underpinning for the initiative, was produced two months after the initiative. Like the preamble, it bases the support for the instrument’s necessity largely on political rationality. In fact, as the initiative itself acknowledges, it is a specification of Article 4 of the Common Position:
Although the obligations set out in the above position would have immediate effect, on the basis of the existing instruments of police and judicial cooperation, the aim of this initiative is to flesh out the provision by describing a development already implied in its initial formulation and by specifying in real and effective terms the reference made to mutual assistance through police and judicial cooperation. (7153/02 ADD 1 21.05.01, p. 2)

There is no further underpinning of the instrument’s necessity, so the professional rationality in its policy-making is assessed as nonexistent.

Assessment of effect
There is little information available on the application of this Decision in practice. By 2002, most, if not all, EU countries already had a centralised counter-terrorism unit that could act as the central point referred to in the Decision. Some of these countries do send information to Europol; others do not (interview #28). Since 2004, there have been some JITs on terrorism – for example, between Spain and France, France and Belgium and France and Germany – however, it is unlikely that these teams were initiated specifically as result of the Decision, and no indicators were found that point in that direction.

This Decision was in force for less than three years because it was repealed by the Council Decision of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (11259/05 05.09.05). Overall, it had at best a low effect on police counter-terrorism practices.

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110. **Council Framework Decision (2003/80/JHA) of 27 January 2003 on the protection of the environment through criminal law (OJ L 29 05.02.03).**

Description
Adopted under the Presidency of Greece on an initiative from Denmark (11301/99 28.09.99), this Framework Decision was annulled as result of a judgement by the Court of Justice of the European Communities on 13 September 2005 (Case C-176/03 Commission v Council, see COM (2005) 583 final). Regardless of its annulment within two years of adoption, the instrument was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

Coding for quantitative analysis

Description
This Decision sought to replace the Joint Action of 1996 on this subject (see instrument #6 in this appendix), which was consequently repealed. It thus aimed to strengthen coordination and cooperation between the Member States via their respective liaison officers and to facilitate Europol’s ability to obtain information from a Member States’ liaison officer in third countries or international organisations in which Europol is not represented. In fact, it put particular emphasis on cooperation and coordination in third countries by asking Member States to ensure that their liaisons in these nations provided assistance to one another and shared tasks.

The difference between this Decision and the 1996 Joint Actions lies in its creation of two possibilities: 1) direct exchange between Member States’ liaison officers and between the authorities of one Member State and the liaison of another Member State stationed in a third country and 2) Europol’s ability to forward requests to be handled by Member States’ liaison officers.

Although the Decision was adopted under the Presidency of Greece, the actual initiative was forwarded by Denmark (SN02753/02 13.06.02). The discussion on this subject, however, actually began in 2001 with a proposal from the Swedish Presidency to open ‘joint liaison offices’ (5406/01 17.01.01), an idea that received a lukewarm welcome from the other Member States (see 8013/01 19.04.01).

Rationality
The good multilateral cooperation between liaison officers within the Nordic (PTN) alignment is an exception in Europe, one that could explain the efforts of Sweden and Denmark in this area as they sought, apparently, to extend their own domestic ‘best practices’. However, although the preamble to the Decision does provide some motivation for the existence of such cooperation (points #7, #12 and #13), it does not convincingly support the specific measures proposed. Seemingly based in part on the evaluation of the 1996 Joint Action, this text stresses the necessity to strengthen some – unspecified – aspects of the cooperation between liaisons, which it claims is ‘already extensive’. Yet the evaluation of the 1996 Joint Action concluded that ‘only partial use has been made of the scope for collaboration and police cooperation between Member States under the Joint Action’ (5086/01 09.01.02). Moreover, the actual answers on which that
conclusion was based (7859/02 12.04.02) suggest that such cooperation was taking place predominantly on an informal and bilateral basis.

An Austrian note to the MDG on cooperation with the Russian Federation underscores the fact that the *use* of liaison officers in the fight against organised crime is a proven concept in the EU:

In particular, past experience has shown that, in the fight against drugs, [liaison officers] have developed into an absolutely vital means of ensuring efficient cooperation with the law enforcement agencies of other States in the ‘advance deployment strategy’, direct provision of information, direct cooperation with the law enforcement agencies on the spot and constant evaluation with regard to the emergence of new criminal trends in the receiving States. This wealth of experience in practical cooperation which the liaison officers possess should be drawn upon constantly. (9790/98 23.06.98)

The *common use* of liaison officers, however, is a different matter, one that, as noted earlier (see instrument #15 in this appendix), has been discussed under TREVI since 1986. However, the deliberation on the proposal reflects significant political ambition, but no discussion of the feasibility of transposing the ‘Nordic model’ to a European Union level. That is, although certain issues are discussed, no attention is paid to the important potential obstacles, such as lack of trust, different police cultures, different institutional settings, language problems and differences in legal systems. The professional rationality in the policy-making in this instrument is therefore assessed as low.

**Assessment of effect**

As prescribed in the 2003 Decision, its implementation was evaluated two years after its adoption (8357/05 21.04.05). This evaluation painted a picture similar to that produced by the evaluation of the 1996 Joint Action on liaison officers: the conclusions that the exchange of information was functioning quite well were based on case examples instead of statistics, and task sharing or processing requests from Europol were non-existent. Likewise, representation of another Member State by liaisons appeared to be taking place only in the framework of bilateral or multilateral agreements and usually between smaller entities as, for instance, in the Nordic police and customs cooperation. Nevertheless, meetings were being held both formally and informally but not necessarily as a result of the Decision (e.g., Block 2007c).

Interestingly, one pilot for enhanced cooperation between the liaisons of the Benelux countries did not yield the success that may have been expected given this alignment’s long history of enhanced police cooperation and existing legal agreements (interview #18). Further, one ELO expressed doubt whether, in general, Europol makes use of Member States’ liaison officers, remarking that Europol certainly does not use the liaison officers from his home country (interview #28). In sum, this Decision has had some effect on the practices of EU liaison offices, although such influence appears to be low, for example, one interviewee mentioned the poor
coordination he encountered between EU liaisons officers stationed in the Western Balkans (interview #16). Even where cooperation does exist, informal ties between liaisons appear to be the driving force (see Chapter 8).

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112. **Council Conclusions of 8 May 2003 on the tracing of the use of prepaid mobile telephone cards in order to facilitate criminal investigations (unpublished adopted text in Council document 7808/03 26.03.03).**

Description

Adopted under the Presidency of Greece on an initiative of Spain (5157/02 14.01.02), this instrument aimed to establish and harmonise criminal procedure – specifically, the requirements for tracing the use of prepaid card technology – and was not aimed at particular police practices.

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</table>

113. **Council Decision (2003/335/JHA) of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes (OJ L 118 14.05.03).**

Description

This Decision aimed at harmonising national structures and procedures (i.e., coordination on the national level between law enforcement, immigration authorities and security services), including the setting up of specialist units for the investigation and prosecution of genocide and war crimes. The Decision was adopted under the Presidency of Greece based on an initiative submitted by Denmark when it held the incoming Presidency (10204/02 19.06.02), although the proposal was first discussed in the MDG.

Rationality

The explanatory note to the initiative (10204/02 ADD1 02.07.02) provides an extensive explanation for the necessity of this Decision, which is seen as a continuation of work along the lines set out by the 2002 Decision on the network of contact points in this area (see instrument #95 in this appendix). Hence, although the note makes reference to political agreements in this
area, it also argues for the setting up of specialised units using a professional rationale. This is well illustrated in the following paragraph:

Due to the complex nature of most cases relating to these types of crime it is considered that it will facilitate considerably the effectiveness of efforts by Member States both individually and jointly, if relevant knowledge and expertise is accumulated in a few specialised units dealing especially with the investigation and prosecution of such crimes. Such accumulation of knowledge, expertise, and responsibility within law enforcement authorities will also facilitate the rapid exchange of relevant information between these and the immigration authorities. (10204/02 ADD 1 02.07.02, p. 5)

It should also be noted that when Denmark forwarded this initiative to the Council, it was in the process of establishing a specialised domestic unit for investigating war crimes. The professional rationality in the policy making is assessed as medium.

Assessment of effect
Those who investigate the very specific type of crimes addressed by this Decision often know one another personally through, for example, courses at the Institute for International Criminal Investigations (IICI) and the International Criminal Court (ICC) (interview#34). However, as the table below shows, not all Member States have a specialised unit:

<table>
<thead>
<tr>
<th>Member state</th>
<th>Established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Belgium</td>
<td>A specialised unit was set up in or before 1994</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Denmark</td>
<td>Unit was set up in 2002</td>
</tr>
<tr>
<td>Estonia</td>
<td>No specialised unit, although they are active in the ‘Justice Rapid Response’ initiative</td>
</tr>
<tr>
<td>Finland</td>
<td>A specialist unit is being established (2009)</td>
</tr>
<tr>
<td>France</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Germany</td>
<td>A specialist unit was set up in 2009</td>
</tr>
<tr>
<td>Greece</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Ireland</td>
<td>No specialised unit but some Irish are active as trainers in IICI courses.</td>
</tr>
<tr>
<td>Latvia</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Lithuania</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Luxemburg</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Malta</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Netherlands</td>
<td>A specialised unit set up in 1994, later formalised in 1998 (Wijers et al. 2005)</td>
</tr>
<tr>
<td>Poland</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Portugal</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Romania</td>
<td>No specialised unit</td>
</tr>
<tr>
<td>Spain</td>
<td>No specialised unit</td>
</tr>
</tbody>
</table>
| Sweden       | Central unit since 2007, before which war crimes investigations were carried out by three designated officers in the Stockholm, Skåne and Västra Götaland regions.

UK In 1991, following the 1991 War Crimes Act, a specialist unit was established within the Metropolitan Police Service (MPS). The unit was disbanded, however, in the late 1990s. In 2003, the Metropolitan Police made an apparently unsuccessful bid to re-establish a war crimes unit based on an apparently increasing number of war crimes investigations. The responsibility for the investigation of suspected war criminals within the UK currently sits within MPS Anti-Terrorist Branch (House of Lords 2009a: evidence 23).

If no other references are provided, the data in this table were obtained during interview #34, 7 November 2009.

This table reveals that this Decision has had no impact on the establishment of specialised units for investigating war crimes in the Member States. In fact, according to one expert, almost all currently active war crimes units in the EU are led by a police officer (or officers) with field experience in peace missions (interview #34). As the interviewee pointed out, it takes significant persuasiveness to get policy makers to free up funds for investigating this type of crime, especially if it must compete with other priorities like terrorism (ibid.). Overall, no direct effect of this Decision has been found.

Coding for quantitative analysis

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114. **Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT) (OJ C 121 23.05.03).**

Description
This Recommendation was adopted under the Presidency of Greece based on its own initiative when it held the incoming Presidency (15830/02 20.12.02). Discussed in the MDG, it aimed to support the setting up of JITs by providing a common standard in the form of a template (model agreement) that defined a number of standard paragraphs to be included in any JIT agreement.

Rationality
The argument for this instrument’s necessity was based on the outcome of an October 2002 conference in Dublin at which it was noted that ‘there appeared to be an imminent need for a template or model agreement to facilitate the setting up of joint investigation teams’ (15830/02 20.12.02, p. 2). After initial discussion in the MDG, the expectation was also noted that the model ‘would have to be adapted according to the particular circumstances in which a JIT is set up. Therefore, not all headings of this model agreement will have to be used in each and every case’ (15830/1/02 17.01.03, p. 1). Both the initiative and the further discussions, therefore, show high professional rationality.

Assessment of effect
Although the model agreement was used for the earliest JITs (interview #4), it has been amended to the specifications of the different Member States. For example, the Nordic countries use a ‘more flexible model’ (interview #16), whereas France uses its own the model, which is in fact an adaption of the original. In fact, the report of the Eurojust seminar in July 2008 indicates

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39 France included model JIT agreements in the bilateral agreements it has concluded with several Member States. See for example http://www.justice.gouv.fr/art_pix/1_1_1_modeleProtocoleaccordBulgarie.doc (last visited 16 March 2011)
that the model should be more exhaustive and operational while still remaining flexible. Nevertheless, it has been used for its intended purpose and has also apparently been used as a template for other model agreements. Therefore, because it provided a spring board for JIT organisation, the effect of this particular instrument is assessed as high.

Coding for quantitative analysis

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<td>139</td>
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</tbody>
</table>


Description

This Framework Decision, adopted under the Presidency of Italy on an initiative from Denmark (9953/02 14.06.02), aimed to establish and harmonise matters of criminal procedure and criminal liability in the national laws of the Member States with regard to corruption in the private sector. It is not expected to have any particular effect on police cooperation practices.

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116. **Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196 02.08.03).**

Description

This Framework Decision, adopted under the Presidency of Italy on an initiative of France, Sweden and Belgium (13986/00 30.11.00), aimed to establish and harmonise matters of criminal procedure in the national laws of the Member States. It contained no provisions directly aimed at police cooperation practices.

Coding for quantitative analysis

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</table>

Council Recommendation of 2 October 2003 on measures to protect the Euro against counterfeiting (unpublished adopted text available in Council document 12822/03 29.09.03).

Description
This Recommendation, adopted under the Presidency of Italy on an initiative of Greece and Germany (6927/03 28.02.03), aimed – among other things – at the enhancement of the National Central Offices on counterfeiting for the purpose of combating crime related to currency counterfeiting. It also encouraged Member States to organise regular meetings of European counterfeiting experts, and recommended the setting up of a centralised information system (i.e., a BITMAP intelligence centre at Europol), as well as EU-coordinated courses on currency counterfeiting that would facilitate the development of a common European training standard.

Rationality
The arguments for the necessity and substance of the Recommendation built on the results of a conference held by the German police in Munich in November 2002, as well as on developments related to the counterfeiting of Euros. Strangely, the professional rationality is missing from the preamble in the adopted text despite the fact that it is clearly present in the preamble to the original initiative (points #10 to 16).

Assessment of effect
Police training on Euro counterfeiting is now included in the standard CEPOL curriculum. Also, regular expert and training meetings are held at Europol and the efforts in this field are coordinated with Interpol (interview #25; written answers #5). The envisaged central online system has indeed been set up, although it falls under aegis of the ECB (Counterfeit Monitoring System). For this reason, the role of Europol is considered to be significant in this field (interview #28).

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</tbody>
</table>

Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (OJ C 260 29.10.03).

Description

41 See [http://www.cepol.europa.eu](http://www.cepol.europa.eu)
This Resolution, adopted under the Presidency of Italy on its own initiative (11920/03 07.08.03), aimed at little more than encouraging the Member States to commit to combating trafficking in human beings.

Coding for quantitative analysis

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<td>74</td>
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Description
This Resolution was adopted under the Presidency of Italy on its own initiative (10966/03 30.06.03), and was initially aimed at a Council Decision. Directed at establishing and harmonising a policy on stadium bans and the exchange of related information, it is not expected to have had any particular effect on police cooperation practices.

Coding for quantitative analysis

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<td>140</td>
</tr>
</tbody>
</table>


Description
This Protocol aimed at ‘strengthening Europol’s operative support capacity in relation to the national police authorities’, thereby empowering Europol in some cases to exchange information directly with competent national authorities instead of sending it exclusively via the ENU channel. It also provided a legal basis for Europol to function as a European contact point for the suppression of counterfeit Euros and amended the legal basis for the opening of Analysis Work Files. Its most relevant aspect, in terms of operational police cooperation in Europe, was its amendment of Article 4 of the Europol Convention to allow direct information exchange with competent national authorities. The Decision was adopted under the Presidency of Italy on an initiative of Denmark forwarded when it held the Presidency (10307/02 02.07.02).
Rationality
The explanatory note (10810/02 10.07.02) to the Protocol makes clear that the Danish initiative meant to ‘continue the implementation of the Vienna Action Plan based on the political priorities and guidelines decided by the European Council and results achieved during previous presidencies’ with regard to the need to give Europol the necessary support. This note also briefly mentions the operational necessity of the proposed measures, although it provides no further underpinning of their substance from a professional viewpoint. The professional rationality in the policy-making is therefore assessed as low.

Assessment of effect
Because the Protocol came into force outside the period under study (April 2007), no data were collected on its effect.

Coding for quantitative analysis

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<td>513</td>
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</tbody>
</table>

121. **Council Decision (2003/847/JHA) of 27 November 2003 concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2 (OJ L 321 06.12.03).**

Description
This Decision, adopted under the Presidency of Italy on its own initiative (11599 04.08.03), was aimed at establishing and harmonising criminal liability in the Member States, not at police cooperation practices.

Coding for quantitative analysis

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122. **Council Resolution of 27 November 2003 on the posting of liaison officers, with particular expertise in drugs to Albania (OJ C 97 22.04.04).**

Description
This Resolution, adopted under the Presidency of Italy based on its own initiative of July 2003 (11051/03 03.07.03), aimed to enhance the use of liaison officers in police cooperation with Albania on combating drugs.
Rationality
Although Italy had already expressed its interest in joint liaison efforts in this area in 2001 (8013/01 19.04.01), the arguments in the initiative for the necessity of joint efforts on drug trafficking in general and on drug trafficking and other crimes originating from the Balkans, including Albania, adopt a largely political viewpoint. That is, although some mention is made of a sizeable increase in cannabis smuggling through Albania into Italy and the rise of Albanian organised crime groups in drug trafficking in general (#8-#10 of 11051/03 03.07.03), no further underpinning is provided for the use of liaison officers. Reference is made, however, to the Council Decision of 27 February 2003 on the common use of liaison officers posted abroad by law enforcement agencies of the Member States (see instrument #11 in this appendix). In sum, this Resolution primarily attempted to prioritise efforts, and the professional rationality in its policy-making is assessed as low.

Assessment of effect
By 2009, nine EU Member States had stationed a police liaison in Tirana. Of these, two Member States – Italy and Greece – already had a liaison office in Tirana prior to 2003, and two were ‘new’ Member States that joined the EU after 2004. Hence, five ‘old’ Member States posted a new liaison officer after 2003. Even so, given that crime groups from Albania have emerged over the years as a serious nuisance all over Europe (see Arsovskat 2008), it is hard to judge to what extent this expansion has been the result of the 2003 Resolution. It is, for example, more likely that violent organised Albanian crime on their own territory did prompt Denmark in 2005 and Belgium in 2006 to post a liaison officer in Tirana (Copenhagen Post 2005; Expatica.com 2007). For this reason, the overall effect of this Resolution is assessed as low.

Coding for quantitative analysis

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<td>147</td>
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</tbody>
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Description
This Recommendation aimed at the prevention of trafficking in human beings (THB) through both training and analysis that would improve action against perpetrators and knowledge of
criminal organisations’ *modi operandi*. In fact, the Recommendation aimed to prioritise the fight against THB and proposed the following measures directly aimed at police cooperation:

- application of methods to investigate organised crime which also target their finances and assets;
- utilisation of police and judicial liaison networks;
- encouragement of police forces to adopt similar, effective methods of operation and information gathering, inter alia through the involvement of Europol;
- consideration of measures, including use of high-tech devices, for prompt detection of document abuse;
- encouragement of joint investigations;
- enabling of police forces, making use of information gathered by labour inspection authorities.

The Recommendation was adopted under the Presidency of Italy on its own initiative. This original initiative, which was aimed at Council Conclusions (11374/03 11.07.03), refers to a number of earlier instruments (see instruments #99 and #106 in this appendix) and to the comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union, approved by the Council in February 2002 (6621/1/02 27.02.02).

**Rationality**

The initiative for this Recommendation was not accompanied by any explanatory note, and the preamble to the instrument refers largely to earlier policy documents and declarations. Interestingly, in spite of the apparent lack of knowledge on *modi operandi* (implied by the perceived need for analysis), the Recommendation proposed a number of detailed measures to ‘make law enforcement agencies more effective in tackling organisations and networks engaged in human trafficking’. The effectiveness of these proposed measures and methods, however, was neither underpinned nor explained. Additionally, neither the Recommendation nor the related policy documents contain any reference to expert meetings, conferences, best practices, proven concepts, academic studies, statistics or any other items that would reflect professional rationality in the approach to this subject.

**Assessment of effect**

Both the Netherlands’ 2004 attempt to set up a joint investigation team to combat THB (e.g., Rijken and Vermeulen 2006) and the actual 2008/2009 joint investigation team set up between the UK and Romania on THB could indicate heightened priority. On the other hand, combating THB has been a priority in the Union for the past decade, as illustrated, for example, by its position as a priority area for Europol since its inception (Europol 2000a–2009a). This priority continued even after the adoption of this Recommendation, and no particular indications could
be found of significant improvements in methods of investigation or cooperation in THB cases. The effect of this Recommendation is thus assessed as low.

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Description
This Resolution, adopted under the Presidency of Italy on its own initiative (11052/03 03.07.03), was aimed at different aspects of training, not at police cooperation practices.

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Description
This Framework Decision, adopted under the Presidency of Italy on an initiative of the Commission (5206/01 15.01.01), aimed to establish and harmonise matters of criminal procedure and criminal liability in the national laws of the Member States with regard to the sexual exploitation of children and child pornography. None of its provisions were aimed directly at police cooperation practices.

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This Recommendation, adopted under the Presidency of Ireland, aimed at introducing a handbook for police cooperation in the security of large sporting events at which security incidents could have transnational consequences. Although the initiative was formally tabled by Ireland at the beginning of its Presidency, the actual 11-page handbook was drawn up ‘in the margins of the Working Party on Terrorism and agreed by all delegations participating in its preparation’ (5744/05 29.01.04). These preparations were begun by an ad hoc working group formed at the request of the Italian Presidency and the Greek delegation in the TWP, which first convened on 24 November 2003. The German delegation to the TWP then took up the drafting work and presented a first draft of the handbook in the TWP on 2 December 2003 (5250/04 15.01.04).

Rationality
The Recommendation was drafted at the request of the Greek delegation to serve as a practical instrument that would provide guidelines and inspiration for competent authorities in Europe undertaking the responsibility for security at the 2004 Olympic Games. Not only did it build upon earlier comparable handbooks on event security in the EU (see instrument #85 in this appendix, see also 12637/3/03 12.11.02), it was drafted by professionals in the TWP, who set a standard for the structure and procedures of security measures and police cooperation. The professional rationality in the policy-making is therefore assessed as very high.

Assessment of effect
In actuality, the handbook codified existing practices and knowledge, which implies that its effect on real practices might not be high. Moreover, although used as a basis for (and superseded by) the 2007 Handbook for police and security authorities concerning cooperation at major events with an international dimension (14475/05 17.11.05), its actual use in practice could not be assessed, and one expert from the Netherlands reported having no knowledge of its use (written answers #3). In sum, there is insufficient information available to make an assessment of its effect.

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</table>

Council Recommendation of 30 March 2004 regarding guidelines for taking samples of seized drugs (OJ C86 06.04.04).
This Recommendation aimed at the aligning of national practices by introducing a system of drug sampling for analytical purposes based on internationally accepted guidelines. These guidelines were to be followed, in particular, in those cases in which the samples were likely to be relevant for other Member States. To that end, the Recommendation asked Member States to consider the European Network of Forensic Science Institutes’ guidelines of November 2003 on representative drug sampling. It also asked them to maintain certain minimum standards for sampling and adopt appropriate measures to guarantee the chain of custody in sample transmission. The Recommendation was adopted under the Presidency of Ireland based on an initiative of Spain (5264/02 15.01.02) after the need to first complete the ENFSI standards caused a delay in the decision-making.

Rationality
The Spanish initiative elaborated the necessity for such standardisation from a predominantly professional perspective, arguing the necessity of standardising both the exchange of information on the analysis of the samples collected in synthetic-drug seizures for profiling analyses and protecting the chain of custody to ensure admissibility as evidence in proceedings on drug-related crimes. The original initiative (5246/02 15.01.02) consisted of an annex that provided highly detailed descriptions of the procedures to be followed. Later, during the discussions, it was decided that the 2003 guidelines of the ENFSI would be used as the standard. Professional rationality was used to defend this standardisation (see e.g., 10686/03 20.06.03).

Assessment of effect
With the exception of Luxembourg and Malta, all EU Member States are represented in the ENFSI, so the Recommendation in fact advocated practices that Member States had most probably already implemented. The effect could, however, not be assessed with sufficient certainty.

Coding for quantitative analysis

<table>
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<th>Prey</th>
<th>Type</th>
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**Council Conclusions of 29 April 2004 on police cooperation to combat football-related violence (unpublished adopted text in Council document 7016/1/04 12.03.04).**

Description
These Conclusions were aimed at updating existing measures on football-related violence, including those aimed at operational police cooperation such as reviewing and updating the

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handbook, regular meetings of experts, introducing a system of mutual evaluations and developing a website. Adopted under the Presidency of Ireland on its own initiative (7016/04 04.03.04), for which preparations had already begun in December 2003 (15990/03 11.12.03), the Conclusions delineated, in an annex, the possible effect of their provisions on police practices.

Rationality
Although a discussion note presented ahead of the initiative (15990/03 11.12.03) acknowledges the good level of cooperation among Member States’ police forces in this area, it also notes a need to further the existing arrangements. The initiative was thus aimed at identifying any weaknesses in the current practices and any gaps in the overall strategy for countering football-related violence. The discussion note itself builds on a number of issues identified in the annual Situation Report of May 2003 on football hooliganism in Member States (8877/03 05.05.03) and on consultations with professionals working in the field (interview #15). Also, its annex details a number of issues linked to related police practices. In sum, a very high level of professional rationality is visible in the policy-making in this instrument.

Assessment of effect
Once during each Presidency, an expert meeting is held under the Police Working Cooperation Party (see e.g., 6988/06 20.03.06), and the Dutch FIP organises annual ‘Champion League’ conferences. A system of mutual assessments of police operations at football matches has also been introduced, and a website for information exchange has been developed (interview #15). As with other instruments in this specific field, the adjustments proposed are widely followed, although some Member States are still not complying with all aspects. Realistically, the level of compliance depends strongly on the individual in charge (interview #15), according to one expert. Nevertheless, the overall effect can be assessed as high.

Coding for quantitative analysis

<table>
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Description
This Resolution aimed at the exchange of information on groups ‘in respect of whom there are substantial grounds for believing that they intend to enter the Member State with the aim of disrupting public order and security at the event or committing offences relating to the event’. The information exchanged ‘should include their overall composition, their routes and their
transit and stopping-off points, and their means of transport’. Such information was to be exchanged for the purpose of ‘border checks ... [and] to prevent offences or to ensure public order and security at the event’. The Resolution was adopted under the Presidency of Ireland on an initiative of Italy (10965/03 30.06.03).

Rationality
The rationale underlying the Italian initiative most probably derives from two events: the clashes during the Summit in Thessaloniki just before the proposal was tabled in June 2003 (BBC News 2003), and Italy’s own experience just before the July 2001 Genoa G8 Summit when its increased border controls led to problems at different border crossings and the refusal of entry to over 2,093 persons, including 150 Greek protesters. Because the Greek authorities had sent no prior information about the demonstrators, their identification had to be carried at the port of Ancona.43

The proposal itself built on several other instruments from preceding years that all had more or less similar aims (see instruments #32, #78 and #85 in this appendix). It included some provisions of the 1997 Joint Action with regard to cooperation on law and order and security, which were copied into the text verbatim (10965/1/03 22.07.03, p. 2). Other input for the Resolution was taken from the Security handbook for the use of police authorities and services at meetings of the European Council and other similar events, proposed by the Danish Presidency in 2002 (12637/02 04.10.02). This handbook, however, had never been formally adopted by the Council because the Member States could not reach consensus on whether it should be submitted to the Council as part of a Resolution or for informational purposes only (see 12637/2 REV1 18.10.02, p. 2).

The rationale for the proposal was the ‘lack of specific information and of alerts regarding named troublemakers from another country has reduced the potential effectiveness of checks reintroduced under Article 2 of the Schengen Convention (as these) have also led to the border being blocked, with resultant public order problems and serious encroachment on the general principle of free movement’ (10965/03 30.06.03, p. 2). However, although this rationale appears logical, no in-depth underpinning was provided for the proposed measures. That is, there is no indication anywhere in the initiative or in any other relevant preparatory documents that the proposed measures build on actual experience or have been formulated in interaction with police professionals. Instead, the proposal primarily reiterated previously adopted instruments and texts.

Another weakness of the instrument is its assumption that Member States would be in possession of substantiated and detailed information on groups and individuals that ‘intend to enter the Member State with the aim of disrupting public order and security at the event or committing offences relating to the event and that this information would include the overall composition, routes and transit and stopping-off points, and means of transport’. This assumption presupposes an improbably high level of surveillance, and the legal powers and capacity to sustain it.

Assessment of effect

The proposal did in fact do little more than reiterate the necessity of the exchange of information and the possible use of liaison officers, meaning that it simply parroted earlier instruments and texts on these issues that the Council had already adopted. There is no indication that any changes in methods or structures resulted from this Resolution. For example, the Dutch police route their international information exchange on matters of public order through the National Information Point (the so-called NIK), which existed long before 2004 (Inspectie Openbare Orde en veiligheid 2004; written answers #3).

Coding for quantitative analysis

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Description

This Decision, adopted under the Dutch Presidency on an initiative from Ireland (15400/03 12.12.03), amended Decision 2000/820/JHA (see instrument #66 in this appendix) with the aim of providing CEPOL with a legal persona. Being a supporting policy instrument (i.e., training), it did not aim to establish or change operational police practices.

Coding for quantitative analysis

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This Decision, adopted under the Dutch Presidency on an initiative of the UK (5121/04 13.01.04), amended Decision 2000/820/JHA (see instrument #66 in this appendix) with the aim of establishing the seat of CEPOL in Bramshill (UK). Being a supporting policy instrument (i.e., training), it did not aim to establish or change operational police practices. In September 2005, Council Decision 2005/681/JHA repealed Council Decision 2000/820/JHA, and on 1 January 2006, CEPOL began operating as an agency of the European Union.

Cruising for quantitative analysis

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Description

This Resolution aimed at setting up a dedicated Analysis Work File (AWF) within Europol for the collection, analysis and dissemination of criminal intelligence on international organised cannabis trafficking in the framework of law enforcement action at the European Union level. It also urged Member States to consider setting up JITs ‘with a view to dismantling criminal networks involved in large scale trafficking and distribution of cannabis’. The Resolution was adopted under the Dutch Presidency on an initiative from Sweden (10192/04 07.06.04) that, according to a text from the 6 July 2004 meeting of the Horizontal Working Party on Drugs, was ‘the result of many bilateral contacts’ (11669/04 26.07.04).

Rationality

In the preamble to the Resolution, the urgency of the problem and need to prioritise this issue is to a large extent argued from a professional perspective. From the law enforcement aspect specifically, it is argued that cannabis is the most frequently seized drug in the EU (both in instances and total quantity) and that the involvement of organised crime in the trafficking is growing. A number of public health arguments are also brought forward. Yet nowhere in the initiative or in the other relevant preparatory documents is there any further evidence that the proposed measures build on actual experience or have been formulated in interaction with police professionals. For example, there is no evaluation of any possible quantitative or quantitative deficits in the investigation of cannabis trafficking. Nevertheless, the Resolution did promote the use of AWF and JITs, albeit without any explanation of why these tools were chosen. The level of professional rationality should therefore be assessed as medium at best.
Assessment of effect

A Dutch drug expert indicated that, as of 2007 at least, no AWF on cannabis existed and that cooperation took place via informal channels (written answers #6). Also, there have been no COSPOL projects aimed at cannabis trafficking, although one JIT established in 2009 between France and Belgium to address this problem (La Voix du Nord 2009). Only in 2010 did Europol start a new drug-related project on cannabis (Project Cannabis), which includes an AWF on cannabis (Commission 2010b: 24). Overall, therefore, the effect is assessed as low.

Coding for quantitative analysis

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**Description**

This Framework Decision, adopted under a Dutch Presidency on an initiative of the Commission (10372/01 28.06.01), was aimed at establishing and harmonising criminal liability in the Member States, not at particular police cooperation practices.

Coding for quantitative analysis

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134. **Council Conclusions of 2 December 2004 on an improved use of Eurojust in the fight against serious crime (unpublished adopted text in Council document 12561/4/04 22.11.04).**

**Description**

These Conclusions, adopted under the Dutch Presidency on its own initiative (12561/04 05.10.04), addressed the structure for judicial cooperation and thus had no direct effect on police cooperation practices.

Coding for quantitative analysis

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</table>

Description
These Conclusions, adopted under the Dutch Presidency on its own initiative (11977/04 31.08.04), simply reflected a political position taken in the JHA-Council that professional police standards for international cooperation should be developed. Having no real content, they had no direct implications for police practices.

Coding for quantitative analysis

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136. **Council Recommendation of 2 December 2004 concerning the reinforcing of police cooperation especially in the areas surrounding the internal borders of the EU** (unpublished adopted text in Council document 15105/04 23.11.04).

Description
This Recommendation aimed to support police cooperation in border regions by putting in place structural, flexible and efficient law enforcement cooperation, particularly as it relates to the problems relevant to the areas concerned. The Recommendation was adopted under the Dutch Presidency, which first forwarded a discussion note announcing the initiative and soliciting input from the other Member States (11048/04 01.07.04), and then presented the initiative (14037/04 28.10.04).

Rationality
This Recommendation built on the seminar Police without Frontiers, held in early 2004 (8770/04 23.04.04), which provided insight into the problems, solutions and preconditions for an effective regional cross-border approach. Although the Recommendation provided no specific tools – trying instead to give the issue higher priority by stressing the urgency for cooperation in border regions and mentioning existing tools such as the bilateral and/or regional agreements on enhanced cooperation between police forces at internal borders provided for in Article 39.5 of the Schengen Convention – it was based extensively on professional rationality. The professional rationality in the policy-making is consequently assessed as high.

Assessment of effect
One possible indicator of enhanced cooperation in the internal border areas in the Union is the establishment of so-called Police and Customs Cooperation Centres, sometimes called joint commissariats. These are centres located on or near the border between two or more Member States at which police and sometimes customs officers from these Member States are based in one building. In addition to around-the-clock joint coordination of incidents at or near the border, these centres also function as information hubs that often have a much wider remit than anything in their neighbouring area. The first such centre was opened in 1999 by France and Germany based on the 1997 Mondorf agreement.

In 2003, there were 13 joint commissariats (15732/03 12.12.03, p. 85–92). By 2005, this number had increased to 18 according to a note from the French delegation to the CCWP of 6 October 2006 (13650/06 06.10.06). Since then, a further proliferation has taken place, and currently over 50 joint stations exist at or near the border. However, many of these centres appear to be little more than a joint ‘cantina’ in which officers from both sides of the border meet but without a wider information-sharing remit. About 38 of these stations, however, are open 24/7 and have a wider information-sharing remit than originally intended (MEPA 2010). Yet, although the number of PCCCs and other joint stations has increased significantly since 2004, this increase could also be attributed to stations along the borders with and between new EU Member States that entered the Schengen area in 2008. Nonetheless, the significant development of PCCCs and efforts to harmonise their practices indicate that the Recommendation has certainly had a medium effect.

Coding for quantitative analysis

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Description
The aim of this Decision was to align practices at a national level, establish central contact points and standardise procedures for international information exchange on vehicle crime. The Council Decision was adopted under a Dutch Presidency based on its own initiative forwarded in early 2004 when it held the incoming Presidency (5450/04 27.01.04). The first note on this subject – although not accompanied by a specific proposal for an instrument – was tabled by the Netherlands in 1999 (12715/99 11.11.99) and the discussion – driven by the Dutch delegation – has continued since. Specific measures proposed in this instrument to enhance the cooperation between police on the issue of vehicle crime include establishing vehicle crime contact points in each Member State; annual meetings between these contact points; issuing of alerts for stolen vehicles and registration certificates.

Rationality
The argument for the necessity and focus of this action was motivated by the estimated damage from vehicle crime as well as its connections to other crimes, an impetus derived from expert meetings on the topic in relation to the 2000 discussions (see 8215/00 08.05.00 and 11222/00 27.07.00). Although the connections with other crime appear to be based in part on unfounded assertions about the nature and extent of the problem, still the preamble is largely underpinned by professional rationality, which is assessed as very high in relation to the policy-making in this instrument.

Assessment of effect
Police from 22 Member States attended the first annual meeting on the vehicle crime contact points, held at the Europol offices in The Hague on 20 January 2006 (6591/06 21.02.06). The second meeting, held under the Finnish Presidency from 28 to 29 November 2006, drew police participants from 16 Member States. The focus of this second meeting was to further develop the list of 20 action items drafted during the first meeting (6227/07 12.02.07), a list that clearly indicates participant discussion of concrete problems and sharing of methods and best practices. In fact, one evaluation carried out by the Commission in early 2008 drew the following conclusion:

Most Member States feel that the objectives of the Council Decision have largely or at least partially been reached, even though in a number of Member States this is rather the result of national policy than a follow-up to the Council Decision. However, an effect of the Council Decision welcomed by all is the setting up of the network of national contact points in matters of cross-border vehicle crime. (7710/08 19.03.08)

The effect of this Decision is therefore assessed as high.

Coding for quantitative analysis

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<tr>
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APPENDIX C

Output of the statistical package SPSS on the statistical analyses presented in Chapter 6

1. *Cross tab analysis as presented in Section 6.1.3, table 6.3*

Crosstabs

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Chi-Square Tests

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a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 27.39.
b. Computed only for a 2x2 table
2. *T-test analyses as presented in Section 6.1.5*

**T-Test**

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**Independent Samples Test**

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**Independent Samples Test**

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<th></th>
<th>Levene's Test for Equality of Variances</th>
<th>t-test for Equality of Means</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F</td>
<td>Sig.</td>
</tr>
<tr>
<td>Time lag in days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equal variances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>assumed</td>
<td>8.531</td>
<td>.004</td>
</tr>
<tr>
<td>Equal variances not</td>
<td></td>
<td></td>
</tr>
<tr>
<td>assumed</td>
<td>-4.494</td>
<td>131.260</td>
</tr>
</tbody>
</table>

3. *Correlation between legal nature of the instrument and its effect as presented in Section 6.2.1 (table 6.7)*

**Effect high/low * Legal nature cross tabulation**

<table>
<thead>
<tr>
<th>Effect high/low</th>
<th>None-Low</th>
<th>Count</th>
<th>% within Legal nature</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medium-Very</td>
<td>Count</td>
<td></td>
<td></td>
</tr>
<tr>
<td>High</td>
<td></td>
<td>14</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>44.1%</td>
<td>35.5%</td>
</tr>
<tr>
<td>Total</td>
<td>Count</td>
<td>33</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>% within Legal nature</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Total</td>
<td>Total</td>
<td>39</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td></td>
<td>60.0%</td>
<td>40.0%</td>
</tr>
</tbody>
</table>
4. Correlation between the professional rationality in the policy-making of an instrument and its' effect as presented in Section 6.2.2 (table 6.8)

Effect high/low * Professional rationality high/low cross tabulation

<table>
<thead>
<tr>
<th>Effect high/low</th>
<th>Professional rationality high/low</th>
<th>None-Low</th>
<th>Medium-High-Very High</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>None-Low</td>
<td>Count</td>
<td>32</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>% within Professional rationality high/low</td>
<td>94.1%</td>
<td>23.3%</td>
<td>60.9%</td>
<td></td>
</tr>
<tr>
<td>Medium-Very High</td>
<td>Count</td>
<td>2</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td>% within Professional rationality high/low</td>
<td>5.9%</td>
<td>76.7%</td>
<td>39.1%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>Count</td>
<td>34</td>
<td>30</td>
<td>64</td>
</tr>
<tr>
<td>% within Professional rationality high/low</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square Tests

<table>
<thead>
<tr>
<th></th>
<th>Value</th>
<th>df</th>
<th>Asymp. Sig. (2-sided)</th>
<th>Exact Sig. (2-sided)</th>
<th>Exact Sig. (1-sided)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pearson Chi-Square</td>
<td>.323a</td>
<td>1</td>
<td>.570</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuity Correctionb</td>
<td>.098</td>
<td>1</td>
<td>.755</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Likelihood Ratio</td>
<td>.324</td>
<td>1</td>
<td>.569</td>
<td>.616</td>
<td>.378</td>
</tr>
<tr>
<td>Fisher's Exact Test</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Linear-by-Linear Association</td>
<td>.318</td>
<td>1</td>
<td>.573</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of Valid Cases</td>
<td>64</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

N of Valid Cases: 64

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 12.11.
b. Computed only for a 2x2 table
In de afgelopen decennia is de politieke, academische en zeker ook publieke belangstelling voor politiesamenwerking aanzienlijk toegenomen. Desalniettemin is de kennis over (de dynamiek van) politiesamenwerking en de wijze waarop aan politiesamenwerking sturing gegeven kan worden, nog relatief beperkt. Pas vanaf eind jaren ’80 van de vorige eeuw verschenen de eerste serieuze publicaties op dit terrein. Politiesamenwerking in Europa heeft een geschiedenis die begint in de 19de eeuw en is lange tijd hoofdzakelijk het domein van professionals geweest die de samenwerking veelal bilateraal en informeel gestalte gaven. Halverwege de jaren zeventig van de 20ste eeuw ontstaat Europese politieke aandacht voor politiesamenwerking en het verbeteren van die samenwerking wordt in 1992 als gezamenlijk doel in het Verdrag van Maastricht opgenomen. Op dit terrein verwerft de Raad van de Europese Unie (EU) daarbij, in wat tot 2010 de derde pijler van de EU heette, een intergouvernementele beleidsbevoegdheid en heeft het sindsdien honderden besluiten aangenomen met als doel de verbetering van de politiesamenwerking. Voorbeelden zijn onder meer de oprichting van Europol en het Kaderbesluit aangaande de instelling van gemeenschappelijke onderzoeksteams.

Hoewel in het huidige Europa zonder grenzen ‘meer politiesamenwerking’ een vaak gehoord politiek mantra is als reactie op uiteenlopende veiligheidsincidenten, blijkt politiesamenwerking politiek nog immer een lastig onderwerp tussen de EU lidstaten. Een groot deel van de instrumenten die de Raad van de EU ter verbetering van de politiesamenwerking heeft aangenomen, zijn daarom niet-bindend, hetgeen volgens velen de effectiviteit ervan ondermijnt. De beleidsvorming speelt zich bovendien af binnen een gesloten circuit waarbinnen politieprofessionals een steeds kleinere rol spelen en door sommige auteurs wordt mede daardoor de praktische waarde van de instrumenten van de Raad van de EU ter verbetering van de politiesamenwerking, die vooral op een politieke en juridische rationaliteit lijken te stoelen, in twijfel getrokken. Derhalve doemt de vraag op wat het effect van de instrumenten van de Raad van de EU maatregelen op de praktijk van de politiesamenwerking is en hoe eventuele verschillen in effect kunnen worden verklaard. Deze vragen staan centraal in dit promotieonderzoek dat tevens als doel heeft nadere empirische inzichten te genereren met betrekking tot Europese politiesamenwerking.

Het onderzoek is ingedeeld in twee delen; in het eerste deel, weergegeven in hoofdstuk 2 tot en met 4, heeft een uitgebreide literatuur- en achtergrondstudie plaatsgevonden, zowel naar de praktijk van
politiesamenwerking in Europa als naar de processen en praktijk van de besluitvorming van de Raad van de EU ten aanzien van politiesamenwerking. In het tweede deel, dat is weergegeven in de hoofdstukken 5 tot en met 9, is aan de hand van de bevindingen uit het eerste deel een tweetal hypotheses geformuleerd met betrekking tot verbanden tussen aspecten van de beleidsvorming van de Raad gericht op de verbetering van de politiesamenwerking in de EU en het daadwerkelijk effect van de door de Raad aangenomen instrumenten op die samenwerking. Hierbij is aansluiting gezocht bij de stelling van Snellen (1987) dat goed overheidsbeleid tegelijkertijd moet voldoen aan de randvoorwaarden vanuit vier rationaliteiten, te weten de politieke, juridische, economische en wetenschappelijke/professionele rationaliteit. Vervolgens is een veldonderzoek ontworpen en uitgevoerd waarbij gegevens zijn verzameld over de totstandkoming (beleidsvorming), en het daadwerkelijke effect van instrumenten van de Raad van de EU gericht op de verbetering van de politiesamenwerking. Deze gegevens zijn geanalyseerd op eventuele verbanden tussen aspecten van het beleidsproces en het effect van de instrumenten. Aan de hand van twee casus is tevens een diepere beschouwing gegeven van de samenhang tussen het EU beleid ter verbetering van de politiesamenwerking en de politiesamenwerking in de praktijk.

Uit de bestaande theoretische perspectieven op politiesamenwerking en resultaten van eerdere empirische studies, kan worden opgemaakt dat, naast de politieke en juridische situatie, met name een relatieve institutionele autonomie en een gedeeltelijk belang drijvende krachten zijn in het bevorderen van succesvolle samenwerking. Belangrijke onderliggende aspecten zijn hierbij de ontwikkeling van politie als professionele organisatie en de discretionaire vrijheid die politieprofessionals hebben in hun handelen. Dit is met name te zien in de pragmatische afwegingen in de samenwerking, die vooral worden gemaakt op basis van een eigen professionele rationaliteit en situationele logica.

Op basis van deze observaties en de eerdere beschreven kenmerken van het beleidsproces in de voormalig derde pijler op het gebied van politiesamenwerking, is in deze studie een tweetal hypotheses geformuleerd. De eerste daarvan luidt – afwijkend van de algemene aanname in de literatuur - dat voor het effect op de praktijk van de politiesamenwerking het niet van belang is of een besluit van de Raad juridisch wel of niet bindend is. De tweede hypothese luidt dat de mate waarin in de beleidsvorming in de Raad rekening wordt gehouden met (randvoorwaarden gesteld door) de professionele rationaliteit met betrekking tot politiesamenwerking, wel van belang is voor het effect van het resulterende instrument.
Om deze hypothesen te testen zijn in een veldonderzoek van alle 70 instrumenten gericht op de verbetering van de politiesamenwerking aangenomen door de Raad van de EU tussen 1995 en 2004 gegevens verzameld op negen variabelen van het beleidsproces. Tevens is als tiende variabele het effect van deze 70 instrumenten op de praktijk van de politiesamenwerking in kaart gebracht. De variabelen zijn vervolgens gecodeerd in een kwantitatieve dataset waarmee middels statistische analyses verbanden tussen de verschillende variabelen zijn onderzocht. De analyses laten zien dat geen verband is aan te tonen tussen het wel of niet juridisch bindend zijn van een instrument en het effect op de praktijk van de politiesamenwerking; de eerste hypothese kan dus niet verworpen worden. Er blijkt wel een statistisch significant verband te bestaan tussen de mate waarin rekening wordt gehouden met de professionele rationaliteit in de (verschillende fasen van) het beleidsproces enerzijds, en het effect van het resulterende instrument in de praktijk anderzijds. Anders gezegd, het niet erkennen in het beleidsproces van de randvoorwaarden gesteld aan het beleid vanuit de professionele rationaliteit levert instrumenten op die door de politieprofessional als niet rationeel worden gezien, en niet worden toegepast. De onderzochte instrumenten waar bij de totstandkoming wel aandacht is besteed aan de professionele rationaliteit met betrekking tot politiesamenwerking, hebben een significant groter effect op de praktijk van de samenwerking. De tweede hypothese kan derhalve ook niet verworpen worden. In twee casus, die focussen op respectievelijk gemeenschappelijke onderzoeksteams en verbindingsofficieren, wordt dieper ingegaan op de praktijk van de politiesamenwerking op deze specifieke onderwerpen, de Europese beleidsvorming daarover en met name de samenhang daartussen.

Kortweg gezegd is de centrale conclusie dat indien bij het maken van beleid op het gebied van politiesamenwerking inhoud boven vorm gaat, de kans op daadwerkelijk effect van het betreffende instrument groter is. Hoewel een groot deel van de onderzochte instrumenten (61%) geen direct effect op de praktijk van de politiesamenwerking laat zien, wordt in deze studie geenszins geconcludeerd dat het EU beleid geen invloed heeft gehad op de wijze van samenwerken tussen de politiediensten van de lidstaten. Integendeel, gedurende de afgelopen decennia heeft de voortgaande samensmelting van Europa en het daaruit ontstane beleid op het gebied van politiesamenwerking een hele duidelijke invloed gehad op die samenwerking. De onderzoeksresultaten wijzen echter op het belang van het voldoen aan de randvoorwaarden vanuit de professionele rationaliteit in het beleidsproces. Hierdoor ontstaat een gebalanceerd beleidsinstrument met een grotere kans op effect.
Mogelijke implicaties van de bevindingen van het onderzoek hebben, ook nog, en misschien wel met name na de wijzigingen als gevolg van de invoering van het Verdrag van Lissabon, primair betrekking op het EU beleidsproces ten aanzien van politiesamenwerking. Vooral de Europese Commissie zou in haar nieuwe rol in het beleidsproces het belang van de professionele rationaliteit kunnen onderkennen en er zorg voor kunnen dragen dat hieraan aandacht wordt besteed vanaf de start van het proces. Ten aanzien van de praktische politiesamenwerking is het belang van de discretionaire bevoegdheid als mogelijk verklarend element voor (de wijze van) de samenwerking aan het licht gekomen, hetgeen een uitdaging biedt voor empirisch internationaal onderzoek.