European Commission

Study to support the preparation of an impact assessment on EU policy initiatives facilitating cross-border law enforcement cooperation

Final Report

Annex V

Synopsis Report of the Consultation Activities

October 2021

This report has been prepared by EY and RAND Europe for the European Commission, Directorate-General for Migration and Home Affairs.

European Commission

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1 Introduction

This document presents the objectives and main types of stakeholders consulted as part of the *Study to support the preparation of an impact assessment on EU policy initiatives facilitating cross-border law enforcement cooperation*, as well as the main consultation methods and tools used.

A glossary and list of abbreviations is provided at the start of the main body of the final report for the study.

1.1 Objectives and types of stakeholders consulted

As part of this study, various consultations, both with key stakeholders and the public at large, were carried out. The aim of these consultations was to provide the European Commission with factual evidence concerning possible problems and additional measures in the area of intra-EU law enforcement cooperation. A wide range of stakeholders operating both at the EU and the national levels was consulted, using a combination of different consultation tools. The stakeholders can be organised into a number of general categories described in the Table below.

Table 1 - Categories of stakeholders involved

Stakeholder category	
EU Agencies, Bodies and Networks	European Commission
	EU bodies with relevant expertise
	LEWP members
National authorities	National LEAs
	National judicial authorities
	National data protection authorities
Mixed EU level and national level stakeholders	EMPACT Support Managers
	EMPACT Drivers
Other	Members of the Academia and think tanks
	Members of the general public

Source: Author's own elaboration

1.2 Consultation methods and tools

The following consultation methods were used as part of the study:

- Online survey with LEAs, data protection authorities and judicial authorities;
- Interviews with:
  - EU bodies;
  - EMPACT actors;
  - Member State representatives (case studies);
  - Academia;
- Focus groups with representatives of Member States that cooperate within the framework of bi-/tri-/ multilateral agreements; and
- Technical workshops with representatives of Member States and Schengen Associated Countries, as well as EU-level stakeholders.

In addition to these methods, in line with its *Better Regulation Guidelines*, the European Commission implemented an *Open Public Consultation* (OPC) of all relevant stakeholders interested, including members of the general public. The consultation was hosted on the European Commission's website (ec.europa.eu) in all EU official languages. The OPC ran for eight weeks, from 19 April 2021 to 14 June 2021. In total, 20 replies were received. The results of the OPC have informed the study. Its results have been analysed in detail and provided to the European Commission in Annex VI and are, thus, not presented hereafter.

Online survey with LEAs, judicial authorities and data protection authorities

An **online survey** was deployed using the contractor's survey tool. The survey targeted national LEAs, national judicial authorities (specifically, Eurojust national desks and European Judicial Network contact points) and national data protection authorities. The consultation ran for eight weeks, from 5 March 2021 to 30 April 2021. In total, 239 responses were received: 216 from national LEAs' representatives, 13 from national judicial authorities and 10 from national data protection authorities.

The results of the online survey are presented in section 2.1.

Interviews with EU bodies, EMPACT actors, Member States, and Academia

In total 48 individual **interviews** were conducted with key stakeholders. These included:

- 20 interviews with EU bodies;
- 10 interviews with EMPACT drivers and two group interviews with EMPACT support managers (in total 21 interviewees); and
- 4 interviews with academics and members of think tanks (see Annex I for further reference).
- 12 group interviews with Member State representatives for the case studies.

The interviewees were selected in agreement with the Commission. The interviews were conducted online, for most part via Teams. The interviews were used to collect data on the problems, possible solutions and the impacts of these.

The **interviews with EU bodies, academia and think tanks** were focused on collecting expert views on gaps and deficiencies affecting the current EU framework for law enforcement cooperation, as well as qualitative and quantitative information concerning possible impacts of additional measures. The interviews with members of academia served to provide relevant inputs based on their knowledge and past research on cross-border police cooperation.

The involvement of **EMPACT support mangers and operational action plan (OAP) drivers** helped gaining a better understanding on the state play in the use, implementation and effectiveness of cross-border law enforcement cooperation measures/practices and investigative tools with regard to each specific priority crime area of the EU Policy Cycle, in order to understand whether there are measures/tools that are particularly used and effective in certain crime areas, but not in others. In other words, this data collection exercise allowed the Study Team to change the angle of the analysis from the legal basis (EU/national/international) to the area of utilisation of specific measures/tools (i.e. priority crimes).

In addition**, interviews with national LEAs** were performed at the end of phase 1 of the study in order to follow up on specific findings and issues identified during the assessment of the problems.

To account for possible national differences in the assessment of the impacts of the policy options, the Study Team undertook case study interviews with national stakeholders from a selected number of Member States to better comprehend the heterogeneity of the institutional and regulatory law enforcement frameworks in the Member States and SAC, and related impacts of the options. Within this framework, an additional **12 interviews with 26 participants from five countries (Austria, France, Slovenia, Sweden and Switzerland)** were conducted to provide Member State-level deep dives concerning the expected impacts of the policy options in their country.

The results of the interviews are presented in section 2.2.

Focus groups with representatives of Member States and SAC

In order to collect first-hand information on the use, practical implementation and effectiveness of four relevant bi/tri/multilateral agreements (i.e. the Benelux agreement; DE-CZ agreement; CH-FR agreement; and Nordic countries agreement), the Study Team organised **four separate focus groups** convening the parties involved in each agreement. The focus groups allowed the

Study Team to develop an in-depth understanding of the content and scope of said agreements, as well as of their practical implications, including both strengths and weaknesses. The Study Team collected the necessary information to understand whether the agreements are outdated/underused or, on the opposite, whether they include measures on cooperation mechanisms or investigative tools that are innovative or have proved to be particularly effective in combating cross-border crime. The focus groups involved a total of 48 participants. Each group included participants from each Member State and SAC who has signed the agreement and included stakeholders from different agencies (for example, police, customs, and other specialist departments).

The results of the focus groups are presented in section 2.3.

Technical workshops with representatives of Member States and SAC

Two full-days technical workshops were organised and animated by the Study Team. Each workshop involved close to 200 participants. The objectives of each workshop were as follows:

- The **first technical workshop** took place on 24 March 2021 in Phase 1 of the study and involved representatives from DG HOME, DG JUST, the Council, Europol and Cepol, as well as representatives from all EU Member States and SAC. The participants were asked to provide their feedback on the nature and scale of identified problems, the EU dimension of the problems and the effective need for further EU action, thus allowing the Study Team to fine-tune the problem definition and the analysis of the evolution of the problem in the absence of any additional EU action. The first technical workshop also allowed the Study Team to cross-check information collected through other sources and collect missing data and information to develop a more complete evidence-base. Finally, this meeting was also used by the Study Team to discuss and explore possible policy options addressing identified problems to be taken into consideration.
- The **second technical workshop** took place on 24 May 2021 in phase 2 of the study. This workshop involved the same types of stakeholders as the first workshop, namely representatives from DG HOME, DG JUST and the Council, as well as representatives from all EU Member States and SAC. The participants involved in this workshop had the possibility to both give their feedback on the preliminary content of the policy options to address the current problems affecting cross-border law enforcement cooperation and to provide additional information on the likely impacts of the options, thus allowing the Study Team to fine-tune the definition of the options and the assessment of their impacts.

Each workshop included:

- **Plenary sessions** for the discussion of the study interim findings and preliminary results; and
- **Break-out sessions** in smaller groups according to the three main areas of the core problems, namely (i) information exchange; (ii) joint operations for public order and safety; and (iii) operational cooperation to fight serious and organised crime.

The results of the technical workshops are presented in section 2.4.

In addition to both technical workshops, the study team gave a presentation at the law enforcement working party (LEWP) meeting on 16 March 2021. The presentation focused on the study's objectives and methodology. This synopsis report does not include a detailed summary of this meeting since the study team was only present for its own presentation.

2 RESULTS OF THE CONSULTATION ACTIVITIES

This chapter presents the main findings derived from the various consultation methods.

2.1 Online survey with LEAs, judicial authorities and data protection authorities

As indicated above in section 1, in total 239 responses were received to the online survey: 216 responses were received from national LEAs' representatives, 13 from national judicial authorities and 10 from national data protection authorities.

Measures/practices existing at EU and national levels including investigative tools

As concerns the **existence of bi-/tri-/multilateral agreements** concerning law enforcement cooperation, almost all of the survey respondents among LEAs (98%, n=62[1]) confirmed that their country is part of at least one agreement with one or more countries. Moreover, numerous LEAs also confirmed that the agreements in many cases go beyond the provisions in EU instruments (n=19). A lower number of respondents indicated that they address specific legal challenges countries may face when cooperating on specific topics or using specific tools (n=5). A very limited number of respondents stated that the agreements they have entered into with other countries were an affirmation of cooperation, which either already existed prior to Schengen or is based on cultural values (n=3). Furthermore, according to a limited number of respondents, the perceived added value of the agreements included the clear outlining of rules and competencies (n=5), and fast information exchange and additional competencies beyond what is outlined in EU documents (n=3). Three respondents explained in this regard that the agreements in their country had more added value when they were created, compared to now, but that there is still value in them now. One respondent described the agreements as a daily manual for their tasks.

The online survey also included questions on **data protection in relation to bi-/tri-/multilateral agreements**, which were targeted at data protection authorities. Two thirds of the respondents from this stakeholder group (66% (n=6) confirmed that they had previously been asked to advise or comment on a bi-/tri- or multilateral agreement their country is part of. More than two thirds (70%; n=7) stated that there are no differences in breaches between the implementation of multilateral agreements and the implementation of other cross-border cooperation matters.

Finally, according to the judicial authorities that responded to the survey, 9% (n=1) of the respondents stated that **judicial authorities** always need to be **involved in the authorisation of investigative tools**, while 27% (n=3) confirmed an occasional involvement. However, equally many respondents (37%; n=4) stated that no involvement of judicial authorities is required, while 27% (n=3) indicated that they do not know. Regarding the **supervision of investigative tools**, 43% (n=3) stated that judges or prosecutors are involved in supervising the measures, while an even higher number (57%; n=4) stated that they are not.

The need to harmonise investigative tools and for EU action

According to the survey respondents, at the **national level** surveillance is the most frequently used tool to investigate serious and organised crime (SOC), and the different categories of surveillance, controlled delivery and undercover operations are on average perceived by LEA stakeholders as the most effective investigative tools.

At **cross-border level**, interception of communication and cross-border surveillance (physical) are the most frequently used tools and, together with controlled deliveries, are those with the highest degree of perceived effectiveness.

[1] The number of responses ("N") denotes the number of valid answers for a specific question, not the number of replies to the survey overall. Therefore, 62 responses can e.g. refer to a share of 98% of respondents whereas, at the same time, 131 responses can also correspond to a share of 82%. The "N", thus, also always needs to be understood in view of the specific questions and number of answers given to a particular question – not the overall number of respondents to the survey.

Considering barriers to the use of investigative tools during cross-border investigations, the most commonly identified challenge was stated to be the differences in national legislation regarding the offences for which a tool may be authorised, while trust between countries did not appear to be a significant barrier.

The **need for EU intervention** in the field of **cross-border exchange of and access to information** is widely supported by the LEAs answering the survey, with 82% (n=131) of the respondents reporting a need for EU action from a 'moderate' to a 'very high' extent. The percentage of those supporting EU intervention to **strengthen operational cooperation for public order and safety** was somewhat lower, with 52% (n=44), reporting a need to intervene from a 'moderate' to a 'high' extent. Similarly, 54% (n=83) of LEAs answering the survey reported a strong need for EU intervention to **improve operational cooperation to fight SOC**.

The problem definition

Considering the issue of **access to and exchange of necessary information** among law enforcement authorities, LEAs answering the survey stated that information exchanges related to operations against SOC are frequent, and those related to **public safety** are frequent as well, although slightly less so. However, the majority of LEAs responding to the survey (82%, n=98) reported to have experienced some problems when sharing information with other countries, such as time delays to receive the information request (30% of the responses, n=82). As pointed out by the majority of the respondents (62%, n=98), such issues are mainly due to the fact that the foundational EU legal framework is not consolidated in all areas, it is spread across several legislative instruments and allows for significant flexibility to the Member States and SAC regarding the implementation of relevant EU provisions.

Regarding the issues related to **cross-border operational cooperation to fight SOC**, the vast majority of LEAs responding to the survey (95%, n=94) reported to have faced some problematic cases. Out of these, 28 LEAs faced problems in more than 20% of the cases. When comparing the share of problematic cases of cooperation to fight SOC reported by LEAs with the ones reported in relation to the cooperation for public order purposes, the implementation of cross-border cooperation to fight SOC appears to be more problematic.

2.2 Interviews

2.2.1 EU bodies

Interviews conducted in Phase 1

In the first phase, interviews with EU bodies were conducted to explore the functioning of current law enforcement cooperation practices, including current problems and the need for EU action (CEPOL, EDPS, EJN, EJTN, EMCDDA, EPPO, EUCPN, Eurojust, Europol, FRA, OLAF).

Measures/practices existing at the EU and national levels including investigative tools

The representatives from EU bodies specified that the current EU framework for operational cooperation seems to be overall effective in supporting cross-border law enforcement cooperation. At the same time, they underlined the presence of some weaknesses that need to be addressed.

Concerning information exchange, the stakeholders consulted indicated that the quality of information and processes through which information is exchanged should be enhanced with the aim to avoid possible overlaps as concerns the use of different channels. On the one hand, duplication of the use of the channel of communication could undermine the quality and knowledge of information exchanged. On the other hand, the wide array of instruments that can be used to exchange information may create more difficulties than solutions for practitioners. Moreover, the functioning of one of the main information sharing tools – the Secure Information Exchange Network Application (SIENA), which is managed by Europol - is affected by the limited access that LEAs have (especially customs) across the EU. To conclude, the stakeholders highlighted the scarce interoperability of databases, which hampers the proper exchange of information.

The awareness of the importance of data protection has been vastly improved in recent years, notably thanks to the implementation of the Law Enforcement Directive (Directive (EU)

2016/680). However, due to the fact that the LED needs to be transposed at the national level, it may lead to divergent approaches to data protection. In a similar fashion, it was observed that there is not a common regulation on data retention and that data protection legislation on artificial intelligence, management of big data and facial recognition is still missing.

When it comes to the bi-/tri-/multilateral agreements, it was underlined that they play a great role in cross-border law enforcement cooperation. However, they also create difficulties and disparities in the instruments they regulate as oftentimes there are overlaps between the provisions of the agreements and those stemming from the EU legal framework.

The need to harmonise investigative tools and for EU action

Representatives from EU bodies reported that all investigative tools covered by the study were deemed relevant for LEAs' cross-border cooperation. One point was made on the fact that the relevant tools tend to be regulated mostly at the national level, leading to a high fragmentation in terms of their applicability across EU. This is the case for cross-border surveillance and interception of communication for which, despite the existence of an EU framework, national legislation still regulates the access to relevant data. The effectiveness and efficiency of investigative operations may be hampered not only by asymmetries on the use and implementation of tools, which prevent and limit cross-border cooperation, but also by language barriers, which are still present and strong in some countries.

Representatives of EU bodies argued that it would be beneficial to have one single framework for law enforcement cooperation. However, it was pointed out that a "one fits all solutions" cannot be considered due to national differences and that an effort should be made to try to expand the current framework to areas that Member States and SAC can benefit from. Moreover, it would be useful to have EU-wide guidelines setting out common approaches and standards concerning the harmonisation of tools and practices. This would avoid the risk of creating binding provisions, which are not really necessary and which could create a more confused and fragmented legal panorama.

Policy objectives

Representatives from EU bodies expressed the need to develop instruments setting common standards and ensuring:

- A convergence of LEAs towards a common understanding of the use of tools;
- A common and shared assessment of threats affecting the EU;
- A common practice to gather information from all EU Member States in a similar way and have comparable data available;
- The promotion and the use of the same tools in similar situations to ensure a higher degree of efficiency.

On a more operational level, guidelines for information sharing were seen as flexible instruments as they allow Member States to maintain "room for manoeuvre" and adapt them to their specific needs. Non-binding documents were seen as a compromise reached at the political level, as it is hardly possible to commit 27 Member States to only one binding still more effective document.

Stakeholders agreed that the interoperability of databases is an important aspect to be addressed with the aim to ease cross-border cooperation and to overcome the current issues related to the presence of divergent approaches.

According to EU bodies' representatives, EU should also implement measures and mechanisms to compel Member States to share information with each other and with the relevant EU agencies. The final outcome should be the implementation of an automated process to access databases, in order to have a centralised system that every Member State and third countries can benefit from.

Regarding data protection, it was seen as important that the legislative framework of data protection is up to date to integrate new forms of cooperation resulting from technological innovation (artificial intelligence or big data). Legislative interventions concerning data protection should address:

- Limited quality of data quality stored in databases;
- Difficulties comparing data retrieved from different databases as they are stored differently;
- Children’s fundamental rights as part of cross border investigations;
- Sharing of sensible data with third countries, which may not apply EU standards concerning data protection.

With reference to the investigative tools, EU bodies’ representatives expressed the need to harmonise investigative techniques used in cooperation, by setting common standards for law enforcement cooperation. The current use of tools was stated to result in several operational obstacles, especially during the implementation process. The harmonisation of the investigation techniques, especially with regard to the *modus operandi* was seen as beneficial.

A major issue reported by the representatives from EU bodies is the fact that when it comes to public order and other safety related issues is the political feasibility of the measures. In this regard, it was stated to be important to propose solutions, which are ready to be accepted by the Member States and SAC. In so doing, EU rules should always take into consideration the principles of proportionality and the least intrusive measure.

The problem definition

Developments in the Public Order and SOC landscape

According to representatives from EU bodies, technology is one of the major drivers enabling the development of new forms of crime. The increasing role of digitisation in society has been posing some difficulties to law enforcement cooperation, creating asymmetries between the ability of crime groups to exploit emerging technologies and the oftentimes comparatively slow response of LEAs, which are often not fully capable of exploiting the new technological advancements to counter organised crime.

While illegal migration, trafficking of human beings, dark markets, drug trafficking and money laundering issues, terrorism and radicalisation still remain the thorniest issues for LEAs, COVID-19 has represented a game changer in the crime panorama. Indeed, the pandemic acted as an accelerator of some criminal trends, providing a “breeding ground” for criminal activities, and organised crime groups were able to quickly shift their activities online through the use of digital devices. For instance, social media apps allow criminals to:

- Reach a wider audience;
- Get in contact with each other more easily;
- Find partners in the countries of origins and destinations;
- Reduce the costs of their criminal activities;
- Avoid the risks to be detected.

As result, the changing threat landscape is creating vulnerabilities in the security system of the EU.

Law enforcement cooperation

Law enforcement cooperation is limited by the existing asymmetries and differences between the Member States regarding national approaches to the same area of crime. Indeed, the presence of numerous actors and multifaceted and horizontal approaches to crimes make cooperation harder. Moreover, law enforcement cooperation is a sensitive political and cultural matter for Member States. Indeed, countries may have a different perception of which criminal activities should be prioritised, further delaying the design of common solutions. However, the increasing volumes in the number of persons and goods moving across EU and the rest of the world not only pose new challenges to national LEAs that are called to cooperate more frequently, but also have an impact on the workload of LEAs, which are supposed to provide checks on and control these flows. As a consequence, the response of policymakers need to be developed to tackle all these different aspects.

EU bodies’ representatives highlighted the German-Czech bilateral agreement to be particularly effective and contain examples of good practice, reflecting the special relationship between the two countries (Germany and Czechia). Indeed, the agreement allows a smoother implementation of cross-border surveillance compared to previous agreements and it covers also public order and security. Another agreement that was highlighted as good practice is the agreement between Sweden and Norway. The two countries share a long border and the development of practical ways to manage cross-border surveillance activities was a necessity, which needed to be adjusted to new circumstances (e.g. the building of a bridge required to modify the previous agreement to allow for efficient cross-border surveillance).

Interviews conducted in Phase 2

As second round of interviews with EU bodies were conducted in phase 2 of the assignment (CEPOL, EDPS, EJN, EPPO, EUCPN/ENAA, Europol, FRA, OLAF).

The interviews served to gather additional detailed information concerning:

- Possible EU measures to address current problems affecting cross-border law enforcement cooperation; and
- The likely impacts of these possible EU measures.

During the interviews, specific topics of (a) the access to and exchange of information, and/or (b) operational cooperation for public order and safety, and/or (c) operational cooperation for SOC and terrorism were discussed in more detail.

The assessment of the impacts of the policy options

Regarding **information exchange via SIENA and other communication channels**, interviewees from one EU body did not expect immediate positive direct impacts if English was established as the default language for the use of SIENA. The stakeholders instead saw positive impacts if bilateral communication takes place in (common) national languages, as this would allow for a quicker management of information requests. Instead of establishing English as the default language for the use of SIENA, the representatives considered the introduction of a translation tool as more suitable for information exchange concerning cross-border cases. One interviewee from another EU body also highlighted that obstacles stemming from language barriers hamper efficient information exchange and stressed the need to address language barriers in the near future. In yet another interview, a critical opinion towards the establishment of SIENA as the preferred/default channel for information exchange concerning intra-EU cross-border cases was voiced. Since it was cumbersome for one interviewee to get access to SIENA in his/her operational work due to security restrictions of his/her organisation, s/he could not agree on positive impacts stemming from this potential EU measure.

Concerning the **definitions of requirements for data**, one interviewee highlighted the importance of data accuracy in relation to data, which is subject to exchange. Errors in databases, which appear to be common, undermine the added value of databases and can have a negative impact on fundamental rights, for instance if an innocent individual becomes subject to proceedings.

As concerns **training activities**, interviewees from one EU body did not see immediate positive impacts if shorter intervals between the EU-STNA were introduced (e.g. a reduction from four to two years) since a longer cycle allows for better strategic planning. Similarly, this stakeholder advised against the introduction of mandatory training on EU law enforcement cooperation for officers in specific roles relevant to cross-border law enforcement and at specific levels, as this stakeholder did not have positive experiences with the implementation of mandatory training a year ago. Free and voluntary learning methods were considered as the more feasible option in this regard.

Interviewees from other EU bodies highlighted the importance of awareness raising campaigns within the EU law enforcement community. Positive impacts from awareness raising campaigns were expected, as many officials were stated to not be aware of the existing measures and policies in place to facilitate information exchange.

2.2.2 EMPACT actors

Objectives and overview of the interviews with EMPACT drivers and support managers

Interviews with EMPACT stakeholders were conducted as part of the study, including:

- Ten individual interviews with EMPACT drivers; and
- Two Group interviews with EMPACT support managers (4 and 7 interviewees respectively).

A total of 21 stakeholders were interviewed in the individual and group interviews.

Key results from the interviews

Interviewees were asked about a series of aspects concerning cross-border cooperation, their efficiency and challenges encountered.

Structures for cooperation

Interviewees in the individual and group interviews were asked about the **use of multiple structures in place in cross-border cooperation**. The following structures were provided as prompts to the interviewees: Single Point of Contact (SPOCs); Police and Custom Cooperation Centres (PCCCs), National SIRENE Bureaux; Europol Liaison Officials; Swedish Framework Decision (SFD); Manual on cross border cooperation National Factsheets (13920/20).

There was **no overall consensus** on which tool is the preferred tool. Different structures seem to be used in different crime areas and countries. For example, the PCCCs between two countries were stated to work well, but this cannot always be replicated in other countries due to resource constraints. The Swedish Framework Decision was highlighted as particularly useful for financial crimes. Each structure in place was created with a specific purpose within cross border communication. As most of these structures were created decades ago, interviewees voiced concerns over these structures not reflecting the current needs of investigation teams, in particular with regard to cybercrime, where quicker and more direct cooperation with experts in the field is needed.

The **potential of centralisation** of these structures into one structure was discussed. Interviewees agreed that the existing structures should be revised instead of creating a new one. Centralisation into one system was raised as potentially problematic due to the number of requests which would be going through the system per day.

Interviewees acknowledged that **cross-border cooperation has increased** over the past decades. Cooperation has improved significantly already, however, the changing crime landscape is posing new challenges. Cross-border cooperation needs effective tools to address new types of crimes, such as cybercrimes, and new types of criminal networks, online and dispersed over several countries. There is a need to reflect this in national legislation and the agreements guiding cross-border cooperation. Currently the required paperwork and often the national legislation is slowing investigations down.

Information exchange platforms

Interviewees in the individual and group interviews were asked about the **use of information exchange platforms** in place in cross-border cooperation. The following structures were provided as prompts to the interviewees: SIENA; the Schengen Information System (SIS); the Europol Information System (EIS); Interpol exchange channels; and the Visa Information System (VIS).

Interviewees found that there are currently too many different platforms and databases for exchanging information. As with the cooperation structures, interviewees highlighted that these platforms/ databases were each created with a specific purpose in mind. However, different countries have different preferences concerning which platform to use. Because of the amount of platforms countries can choose from, information is often scattered and it is unclear what information is available. Interviewees suggested reviewing and reforming existing platforms and potentially link them, rather than creating a completely new tool.

Trust between the countries involved in cooperation was mentioned as the most important aspect for the efficient sharing of information. Interviewees explained that most countries are reluctant to upload sensitive information to share with everyone else and with Europol.

Multilateral Agreements

Interviewees in the individual and group interviews were asked about their **awareness of bi-/tri-/multilateral agreements** and how they are being used in practice. Few interviewees had experience working under bi-/tri-/multilateral agreements. It was nevertheless highlighted that for those colleagues working in the border regions, these agreements are useful to ensure smooth cooperation. It was highlighted that sometimes the bureaucracy and national legislation related to the agreements can slow down cooperation in border areas and make it more complicated for the officials working with them.

Investigative tools for cross-border cooperation

Interviewees in the individual and group interviews were asked about the **use of investigative tools** in cross-border cooperation, including surveillance, interception of communications, covert investigations, controlled deliveries, using informants, and undertaking hot pursuit.

The different investigative tools work reasonably well according to the interviewees. The tools used differ in each crime area and also in terms of which tools are allowed by national governments. Countries tend to allow the use of different investigative tools on their territory, and these can only be used within specific rules laid out by each country. The different rules across the countries and the difference in priorities of the tools in the countries sometimes hamper cooperation. For example, one country does not consider controlled deliveries a priority. They have the provisions for controlled deliveries in their law, but do not allocate sufficient resources to do controlled deliveries.

Public Order and Safety

Interviewees in the individual and group interviews were asked about cross-border cooperation in relation to **public order and safety**. The following structures were provided as prompts to the interviewees: Investigative tools in relation to football matches, tourism, major cultural events, natural disasters, health crises, safeguarding public order and preventing offences.

Not many of the interviewees had experience of cooperation for the purpose of events relating to public order and safety. One interviewee who gained some experience in this area in a previous role remarked that cooperation for large events or disasters is needed, but there are usually no specific channels, which are used for the cooperation in those cases.

For football matches, the National Football Information Point network was mentioned as an essential part of the coordination and cooperation in this area.

Future Needs

Interviewees in the individual and group interviews were asked about the **future needs** in cross-border cooperation. Most interviewees acknowledged the progress that has been made in cross-border law enforcement cooperation between different countries. However, interviewees requested reforms to reflect the changing crime landscape. Especially in the area of digital crimes legal reforms are required to account for the fast pace of the crimes.

The harmonisation and revision of structures, tools and legislation was also mentioned as a point for EU wide action.

Good practices

Interviewees also provided valuable information on 'good practices' in different areas of cross-border law enforcement cooperation. Suggestions included:

- **SPOCs:** For countries where the single points of contacts are well established, the SPOCs were seen as an added value to establish a course of action for the cooperation.
- **Trust / Personal Networks:** Interviewees mentioned trust as the key element for cross-border cooperation. It was explained that informal networks with officials from other countries with whom cooperation has existed for years are often the first point of contact when it is necessary to establish cooperation with another country. The network

of the Europol liaison officials was also mentioned as a good practice for cooperation, where trust is built and which facilitates direct cooperation between the countries.

- **Trust / Crime-area specific network:** The Joint Cybercrime Action Taskforce (JCAT) was mentioned as a good practice. This taskforce connects cybercrime experts from across the EU to facilitate cooperation. Through continuous cooperation trust can be built, which results in better cooperation. One interviewee highlighted that shared knowledge of the language and terminology in this crime area has resulted in smoother cooperation. 'SMOKE' was also mentioned as an effective network of cooperation between police, customs and the tobacco industry in combatting counterfeit cigarette production.
- **Accessibility of communication tools:** In some countries the accessibility to, for example, SIENA computers, was highlighted as well developed. Two countries were mentioned as good examples, since SIENA computers are accessible across these countries and available to the officials who may need it.
- **Bilateral agreements:**
  - **Cooperation in border regions:** Bilateral agreements are seen as the most effective way of cooperation in the border regions and day to day cooperation.
  - **Rights for foreign officials:** Foreign officials having the same or similar rights to local law enforcement officials is seen as a good practice in direct cooperation through bilateral agreements.

Challenges

Interviewees were generally in favour of international cooperation and the structures and investigative tools which can be used. However, the interviewees highlighted a set of challenges they face when employing the available structures and investigative tools in practice.

- **Lack of harmonisation** and persistent **structural differences** between countries were considered the biggest challenges for law enforcement cooperation.
  - **Legislative perspective:** Several interviewees spoke about the challenges of using tools in cross-border cooperation due to the different legislation in the Member States. The rights of officials in countries across the EU and the Schengen area differ significantly and it is not always clear to foreign officials what rights they have. In addition, the authorisation of requests and tools is often regulated by national laws, creating substantial difficulties in cross-border cooperation.
  - **Operational perspective**: Across different countries the LEAs responsible for investigations may vary distinctively. These differences may relate to the structure of the police and customs bodies within the countries or to the rights each law enforcement agencies has within their own country. This can hinder cooperation, if it is difficult for foreign officials to assess who the cooperation should be with. This challenge was highlighted in relation to structures, tools and information exchange.
- **Challenges related to the exchange of information**:
  - **Existing information**: It is often unclear what kind of information exists in other countries on persons or goods relevant to an investigation. Interviewees highlighted that using a two-step approach, i.e. making a request first to see if information is available and then to request the information itself often prolongs the investigation process. Member States often seem hesitant to share information in joint databases, often leading to a lack of data in those databases.
  - **Access to communication tools**: The access to communication tools differs significantly across Members. For example, in some countries SIENA computers are only available to officials in their capital city.

  - **Usage of information sharing tools**: While recognising that existing structures for information exchange serve different purposes, the large number of different tools in use can pose challenges. There is variation with regard to which tool is used for what purpose across the Member States. Sometimes this is due to the accessibility or procedures within the Member States. This lack of harmonisation leads to information for one case being partially shared through one tool and partially through another, sometimes with different recipients on these tools. This results in officials not having all necessary information. It was also mentioned that occasionally requests are submitted through different channels resulting in duplication of request.

- **Lack of human resources for cooperation:** The lack of personnel allocated to handle requests for cross-border cooperation was highlighted as a challenge for cooperation. Interviewees highlighted that those handling the requests are often overwhelmed with the number of requests received, which can delay responses to requests. It was also highlighted that often those persons that are responsible for handling the request may not be familiar with the specific crime area of the request, which can lead to issues in addressing it.
- **Lack of awareness of structures, tools and platforms:** Several interviewees mentioned that a lack of knowledge about the different cooperation tools available to officials on the national level can hinder cooperation on the EU level.

In summary

Overall, the interviews provided a wide range of views regarding cross-border law enforcement cooperation in terms of what is working well and what is not working so well, seen through the eyes of these stakeholders. The interviews shed light on the cross-border law enforcement cooperation and the practical realities the stakeholders are faced with every day. While some structures seem to be working well and facilitate cooperation, officials are often using informal structures to ensure smooth cooperation, as trust in officials from other countries is mentioned as the base of cooperation and the amount of channels and structures available are often confusing to use and need to be revised. There was a consensus that the overall cooperation tools were introduced for a good reason, but a revision needs to be done, especially within the changing crime landscape the EU and the Schengen Area are facing.

2.2.3 Member State representatives (case studies)

In agreement with the EU Commission, Austria, France, Slovenia, Sweden, and Switzerland were selected as case study countries. The five case study countries provide a mix in terms of the following criteria:

- **Population size:** The selected case studies encompass countries with rather small (Slovenia) and large population sizes (France). In total, 23% of the population in the countries analysed in the study are covered.[2]
- **GDP per capita:** The selection of case studies includes countries with rather low (Slovenia) and high (Austria, Sweden, Switzerland) GDP per capita.
- **Number of reported challenges in the countries:** The selected case studies encompass four countries (France, Slovenia, Sweden, Switzerland) that have high numbers of issues in existing sources that refer to all three core problems identified.
- **Number of bi/tri/multilateral agreements identified in the study:** The selected countries are either countries with medium number of agreements (France, Slovenia, Sweden) and high number of agreements (Austria, Switzerland).
- **Scope of the bi/tri/multilateral agreements analysed in the study:** The case study selection includes countries with agreements that cover most categories, i.e. SOC and public safety, information sharing as well as investigative tools and joint operations

[2] Eurostat (2021) Population on 1 January. Available at: link.

(Austria, France, Slovenia), and countries that e.g. cover mostly SOC and not all investigative tools and joint operations (Switzerland, Sweden).

- **Coverage of investigative tools:** Among the selected case studies, all but one country (Switzerland) cover all types of investigative tools.
- **Categories of competent authorities for the SFD:** The selection of case studies covers countries with rather low numbers (Slovenia) and rather high numbers of categories (Sweden) of competent authorities for the SFD.

Table 2 – Criteria for the selection of case study countries

Country	Population Size in 2020	GDP per capita in 2020	Number of Reported Challenges in key sources	Number of Agreements Identified	Scope of the Bi-/Tri-/Multilateral Agreements Analysed			Investigative Tools Coverage	Number of Categories of Competent Authorities for the SFD
					SOC / Public Order and Safety	Information Sharing	Investigative Tools and Joint Operations		
Austria	8,900,000	42,110 €	5	11-15	Both	Yes	Yes	All	3
France	67,300,000	33,690 €	9	6-10	Both	Yes in all but one agreement	Yes in all but one agreement	All	3
Slovenia	2,100,000	22,010 €	10	6-10	Both in all but one agreement	Yes	Yes	All	2
Sweden	10,300,000	45,610 €	8	6-10	Only SOC	No	No	All	4
Switzerland	8,600,000	75,890 €	9	11-15	Only SOC in six agreements	Yes	Yes in all but two agreements	All but use of informants[3]	3

Source: Author's own elaboration, based e.g. on Eurostat and desk research

[3] As part of the research for this study, reference was only made to the use of informants as investigative tool in the available literature - not the use of sources. Therefore, the use of sources is not covered by this study.

A total of 26 national representatives were interviewed in the five case study countries (see Table 3) in 12 individual case study interviews. Additionally, two follow-up interviews were conducted with representatives from Belgium.

Table 3 –Number of participants per case study country

Case study country	Number of interviews	Number of participants
Austria	1	1
France	4	12
Slovenia	4	6
Sweden	1	1
Switzerland	2	6

Source: Author's own elaboration, based on case study interviews

The case study interviews were conducted to gather additional detailed information concerning:

- Possible EU measures to address current problems affecting cross-border law enforcement cooperation; and
- The likely impacts of these possible EU measures.

The interviews were structured around the three topics of: (a) the access to and exchange of information, (b) operational cooperation for public order and safety, and (c) operational cooperation for SOC and terrorism.

<u>*Access to and exchange of information*</u>

The interviewees from the case study countries were either indifferent or favourable towards the potential EU policy measures that had been developed to address current challenges in relation to access to and exchange of information.

With regard to the **set-up and competencies of the SPOCs and PCCCs**, interviewees from two case study countries specified that they assume positive impacts from the policy options for those Member States that have not already set up their SPOCs and PCCC in line with the presented policy options. However, they expected little impact for their own countries as they are mainly already complying with the presented measures. For instance, the interviewees highlighted that they already have SPOCs operating 24/7 and that if there is an information request, requests can be handled in real-time with no delays, particularly in urgent cases. Other representatives, nevertheless, also estimated that if the SPOC were to have full access to relevant national case management systems, the time saved would be at least several days, as for non-urgent cases signatures by competent authorities are always required.

As concerns the SPOC/PCCC **Case Management Systems (CMS)** in the Member States, one representative explained that they are already in the planning phase for a CMS in their country, which would comply with the presented policy options such as the usage of Universal Message Format or that the degrees of urgency should be linked with deadlines. Hence, no major impacts were expected from the introduction of these potential EU measures. Interviewees from another case study country, however, expected positive impacts from the provision of a list of common requirements for functionalities, since the existing CMS are typically based on inhouse solutions and, consequently, not necessarily tailored to the needs of cross-border law enforcement cooperation.

Interviewees voiced different expectations about the impacts in relation to information exchange via SIENA and other communication channels. On the one hand, representatives from two case study countries only saw limited added value if **English were to be established as the default language** for the use of SIENA and found SIENA user-friendly already. Stakeholders from another country did, however, expect to see positive impacts in terms of a reduction in working time currently spent on translation if English was established as default language for the use of SIENA. These stakeholders were of the view that SIENA could be made more user-friendly if a translation tool was integrated in SIENA, which would allow SPOCS to allocate human resources currently dedicated to help out on translation issues to other urgent tasks.

The stakeholders from the first two countries were more favourable towards **new, simpler, and more user-friendly forms**, which could result in a limited positive impact. Similarly, representatives from the third case study country indicated that they would expect clear positive impacts if more user-friendly forms were established.

As concerns the establishment of SIENA as the **preferred or default channel for information exchange**, representatives from one case study country indicated that, although they use SIENA already very frequently as their most important information exchange channel, their LEAs would greatly benefit from even more Member States and SAC using SIENA as the preferred channel.

One representative stressed that they in particular expected positive impacts from EU measures addressing the use of secure communication means. They currently rely on WhatsApp for fast cross-border communication and for sharing initiative information without personal data, but would prefer a police communication mobile app or platform linked to SIENA with encrypted messaging. Hence, the development of **common standards for secure communication means** and the development of a "central LEA app" would help to solve the security problems with respect to WhatsApp and reduce delays when waiting for replies and reactions from officials from the other side of the border.

Interviewees expressed different expected impacts concerning **training activities**. If English were defined as an appropriate criterion for specific roles within certain LEAs working on primarily on international cases, one interviewee saw little added value as those officials working in cross-border cases in his/her country who need to speak English have a sufficient command of English. On the other hand, representatives from another case study expected positive impacts. They illustrated their opinion with the example of the usage of SIENA: If an official needs support to fill in a form in SIENA, then the SPOCs helps with the translation. If appropriate English skills were defined as an entry criterion, then the SPOCs could spend fewer human resources (or less working time) to assist with translations. Concerning the introduction of mandatory training on EU law enforcement cooperation for officials in specific roles relevant for cross-border law enforcement, one interviewee stressed the positive impacts that could stem from a reduction in specific initial training, which are set up in advance before each joint operations. If training was more standardised, administrative costs for the performance of trainings and working hours spent by officials on trainings could be reduced.

Operational cooperation for public order and safety

The interviewees from the case study countries did not bring up any negative expected impacts of potential EU measures with respect to public order and safety.

As concerns the **financial and human resources to expand the use of joint operations**, the interviewees generally expected positive impacts if appropriate financial instruments were established by the EU Commission (e.g. through the International Security Fund), as this would reduce joint operation costs for accommodation and expenses (such as gas for cars), which are currently borne by the Member States themselves. Interviewees from different case study countries stressed that joint operations are generally cost-intensive and financial support by the EU Commission is welcomed. One example of the estimated costs currently borne by Member States was given by interviewees from one case study country: In order to send six officials to another Member State in a joint operation, the total travel expenses amounted to 3,900 Euro in total, i.e. on average around 650 EUR / person.

Interviewees generally saw positive impacts stemming from the **conferral of certain operational powers to officials** of seconding Member States involved in joint operations. If rules were harmonised and officials more empowered, this would reduce insecurities of officials when operating on foreign soil, reduce costs caused by specific training, and facilitate workflows.

As concerns the **remote access to specific police databases for officials on the ground**, one representative remained indifferent about the impact for his/her country, but could imagine positive impacts for other countries. S/He stressed that in his/her country, officials operating in joint operations do have access to all needed information, thus EU measures with respect to remote access to specific police databases for officials on the ground would have little impact in this case.

Representatives from one case study country could not see any immediate positive impacts stemming from the **sharing of risk analysis and threat assessments**. They highlighted that the needed information is already shared with neighbouring countries in the planning process of joint operations.

Operational cooperation for SOC and terrorism

The representatives of the case study countries expected largely favourable impacts of the potential EU measures foreseen in the policy options with respect to **operational cooperation for SOC and terrorism**. Representatives from one case study country stressed that for their country, the potential EU measures for surveillance are much more important than the ones for hot pursuit, as hot pursuit is only carefully used when there is a clear added value.

As concerns **surveillance**, representatives expected positive impacts from the extension of the current EU legal provisions to also cover the use of cross-border surveillance in relation to waterways, sea, and air borders. They stressed that the majority of surveillance is done on soil, but still generally expected positive impacts if it were expanded as it would facilitate work processes. The interviewees also expressed that they expect positive impacts if the possibility for technical means of surveillance (e.g. GPS trackers, drones) were ensured in a cross-border context. If physical surveillance could partly be substituted by technical means of surveillance, they would expect a reduction of the operational risk for foreign officials. Furthermore, if more technical means of surveillance were ensured and their usage harmonised, more human resources would be available for other tasks. The majority of interviewees highlighted that they would see positive impacts if a common and rather generous maximum time allowed to carry out cross-border surveillance activities would be agreed upon, as this would reduce delays when waiting for replies for requests. Representatives from one case study country expected that ensuring streamlined possibilities to use technical means of surveillance in other countries could increase the frequency of cross-border surveillance by up to 30% over the next couple of years.

As concerns **hot pursuit**, representatives from one case study stressed that they do not deem it feasible to harmonise operational powers, e.g. to arrest or stop and search cars, as it would be too sensitive in political and social terms to have officials act on their own on foreign soil. However, representatives from another case study country did expect positive impacts from harmonisation and the establishment of common rules for hot pursuit, as this would reduce the uncertainties for officials operating in a foreign country as to what exactly they are allowed to do and what not.

2.2.4 Academia

Measures/practices existing at EU and national levels including investigative tools

The four academics interviewed highlighted the important role of the **multilateral agreements**. It was mentioned that the agreement between the Nordic countries and the Nordic Council represents a very good example of cooperation. This is a consequence of the fact that when these countries establish new legislation, they do not establish it at a supranational level, but they simply try to coordinate this with each other. The discussion does not need to reach the Council level and ministers can directly negotiate the new legislation, a model which has resulted in having greater similarities across the Nordic countries.

In general, the representatives from Academia confirmed that bi-/tri-/multilateral agreements usually go beyond EU rules, notably as it would be very difficult to export the same set of rules across all 27 Member States and SAC. At the EU level, especially when discussing a binding measure, often the lowest possible denominator is agreed, since many times a small group of Member States opposes a certain measure.

The need to harmonise investigative tools and for EU action

Interviewees among the academics reported the **need to improve training** of officials to increase the use of investigative tools used in cross-border investigations, as those provided by CEPOL are not considered sufficient. It was suggested that the training should focus on regional threats.

Furthermore, it was highlighted in these interviews that there are **regulatory asymmetries between Member States** that should be reduced and an agreement at the European level could be necessary. In particular, it would be important to simplify the tools and mechanisms used in cooperation through the development of "strengthened" guidelines and organisational incentives.

The problem definition

Developments in the Public Order and SOC landscape

According to the academic experts interviewed, the current challenges related to law enforcement cooperation **do not have a strong link to public order**. This is due to the fact that most of the mass events requiring public order interventions are foreseeable and therefore police can plan in advance. Even when it comes to football matches, in the past LEAs were not sufficiently prepared, but nowadays they have increased their capacity in relation to these events.

Overall, the interviewees agreed that **major issues are related to collaboration to fight SOC**. In particular, the experts reported the presence of three main types of organised crime groups:

- *Mafia-like groups*: A group that has a significant size and structure, which could be active in the economic sphere in infiltrations and in the illegal economy.
- *Local groups*: Small groups linked to the territory where many different groups operate, performing different activities and having a flexible organisational structure.
- *Emerging groups*: A mix of ethnic and local groups that has resulted from the migratory process that has affected Europe.

With reference to these groups, the consulted experts reported that in Europe expect that while there will be fewer mafia-like groups, emerging ethnic groups will be increasingly important in the future.

Law enforcement cooperation

The academic experts reported that, overall, the actual practice of law enforcement cooperation has not significantly changed in the last ten years and is still strongly based on **direct contacts and trust** between law enforcement officials, rather than on formal cooperation schemes.

Moreover, according to the academic experts consulted, **law enforcement capacities are limited** across the Member States, especially in terms of the available human and financial resources. While there is strong pressure to enhance law enforcement effectiveness, this pressure has not led to an adequate increase in budgets. For instance, surveillance activities require a significant amount of resources in terms of specialised teams and tools. For this reason, available resources are planned according to the priorities of the single Member State and, in most of the cases, a cross-border request has to compete with national investigations for resources. In this context, national interests are always paramount and tend to dominate over foreign investigations.

Information sharing

Academics reported that one of the main emerging issues is the **high volume of data** (Big Data) to be analysed, since the analyses is challenging in cases of vast amounts of information, including the amount of additional human resources that are currently required.

With reference to the exchange of information, experts were critical towards the current **availability of external analyses concerning information exchange**. For instance, key EU bodies were stated to give no access to independent researchers, which hampers transparency and objective analysis.

Policy objectives

Academic experts highlighted that when designing policies, it is important to take into account different and sometimes conflicting types of rationales. The main types which are usually considered are: Economic rationality; political rationality; legal rationality and practical rationality. Therefore, it is fundamental to achieve a proper balance between the different rationalities and consider the relevance of all of them. However, according to the academics consulted, EU policies usually stem from political rationality and this in many cases contrasts with practical and professional rationality.

Over the last ten years, there have been some important developments, but the steps forward have not translated into operational practices that are easy to implement. Indeed, there are regulatory asymmetries between Member States that need to be reduced. Such asymmetries between Member States are exploited by criminals.

2.3 Focus groups

Objectives and overview of the focus groups

Four focus groups were carried out to inform the Study to support the preparation of an impact assessment on the EU policy initiatives facilitating cross-border law enforcement cooperation.

To inform the study and to make recommendations for possible additional measures in the area of intra-EU law enforcement cooperation and to propose, assess and compare policy options for possible future action, the Study Team conducted interviews, analysed existing bi-, tri-, and multilateral agreements on law enforcement cooperation between EU Member States and carried out three hours long focus groups on four agreements.

This synopsis report provides an overview of the focus groups conducted, which included:

- The bilateral agreement between Switzerland and France;
- The bilateral agreement between Germany and the Czech Republic;
- The trilateral agreement between Belgium, Luxembourg and the Netherlands (*BENELUX agreement*); and
- The multilateral agreement between Norway, Sweden, Denmark, Finland, and Iceland (*Nordic agreement*).

These four agreements were selected in consultation with DG HOME. They were chosen due to the strong history on law enforcement cooperation between the countries involved, which was expected to yield examples of good practices and remaining challenges in the area of law enforcement cooperation. The focus groups were conducted in the second half of March 2021.

In total 48 stakeholders participated in the focus groups (see Table 4). The stakeholders were selected for their experience working under the respective bi-/tri-/multilateral agreement. This included stakeholders with either strategic or operational level experience and stakeholders from either police, customs, or, other specialist departments.

Table 4 – Number of participants per focus group

Agreements	Number of participants
Benelux Agreement (BE, NL, LU)	9
DE – CZ agreement	12
CH – FR agreement	10
Nordic countries agreement (DK, FI, IS, NO, SE)	17

Source: Author's own elaboration, based on interviews of focus groups

Results of the focus groups

Benelux Agreement

The focus group on the *Treaty between the Kingdom of the Netherlands, Kingdom of Belgium and the Grand Duchy of Luxembourg on police cooperation* was conducted on 19 March 2021.[4] A total of nine stakeholders participated: five representatives from the Netherlands, two from Luxemburg and two from Belgium.

The purpose of the Treaty is to intensify political cooperation in the territories of the Contracting Parties in terms of prevention, investigation, and detection of criminal offenses as well as the maintenance of public order and safety. As the Treaty is currently in the process of being ratified by the three Member States, the focus group also looked at differences between the currently applicable version of the Benelux Treaty adopted on 8 June 2004, and the new one of 23 July 2018. Discussions and responses from stakeholders during the focus group indicate that overall, the treaty aligns with the wider EU framework for cooperation and exchange, and it is effective in supporting daily police cooperation. It enables law enforcement activities to be conducted without being hindered by borders. Examples include having central contact points and providing joint training for specialised interventions to police units. Moreover, two improvements under the new Benelux treaty include the fact that across border observation can start in the other country territory and that in the case of hot pursuit, authorities will have complete and unlimited access to proceed in other countries of the agreement.

CZ – DE Agreement

The focus group on *the Treaty between the Czech Republic and the Federal Republic of Germany on Police Cooperation* was held on 17 March 2021.[5] A total of 12 stakeholders took part: three representatives from the Czech Republic and nine from Germany.

The agreement aims to generally strengthen the cooperation between the two countries and to prevent and investigate criminal activities. This includes cases that are classed as a crime by one party and as an administrative offence by the other party.

During the discussion, the participants highlighted the need, importance, and effectiveness of this bilateral agreement. They explained that cooperation between the two countries is important because of crimes occurring regularly in the border region. Overall, the participants considered the cooperation between the two countries to be speedy, efficient, and overall uncomplicated. For instance, the agreement allows to exchange information directly with customs investigation officials and mobile units. This is useful especially during drug investigation cases or in the fight against smuggling. Moreover, customs and police from both countries have the possibility to join common training, which are often both theorical and practical.

The discussion also indicated that a more centralised system and an increased involvement of the judicial authorities would be useful to further improve the cooperation and avoid possible duplications in the exchange of information.

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[4] Treaty between the Kingdom of the Netherlands, Kingdom of Belgium and the Grand Duchy of Luxembourg on police cooperation (2018).
[5] Treaty between the Czech Republic and the Federal Republic of Germany on Police Cooperation and on amendments to the Treaty between the Czech Republic and the Federal Republic of Germany on amendments to the European Convention on Mutual Assistance in Criminal Matters from 20 April 1959 and the facilitation of its application from 2 February 2000.

CH – FR Agreement

The focus group on the A*greement between the Swiss Federal Council and the government of the Republic of France on Cross-border Cooperation in judicial, police and custom matters* was conducted on 15 March 2021.[6] A total of ten stakeholders joined the discussion: five from Switzerland and five from France.

The objective of the agreement is to prevent and investigate crimes and offences, as well as to ensure public order and safety. It came into force at a time in which Switzerland was yet part of the Schengen agreement, which means that the country actively pursued bilateral treaties with neighbouring countries. The idea of the agreement was to be *en pair* with the EU standards and to further address the needs of the police on the field. They rely on efficient communication and a common language to ensure effective cooperation. For instance, they make use of liaison officials, of various platforms that connect different agencies, and of more informal communication activities. Moreover, due to the area hosting many international organisations, the agreement also allows a smooth cooperation during demonstrations (e.g. demonstrations: against the Turkish government; for Armenian rights; for taxi drivers; for women rights), and the possibility to share information concerning risks and threats to the public order.

However, some existing processes make it difficult for officials to obtain information and intelligence quickly. Also, the lack of a common legal procedural code is limiting. Large differences in the two countries' legal structure can sometimes hinder effective cooperation.

Nordic countries Agreement

The focus group on the *Nordic Administrative Agreement on Cooperation between Police Authorities in the Nordic countries (NO-SE-DK-IS-FI)* was conducted on 22 March 2021.[7] A total of 17 stakeholders participated: two representatives from Norway, six from Sweden, three from Denmark, three from Finland and three from Iceland. The participants decided to start the focus group by delivering a brief presentation about the agreement. As part of this presentation, the stakeholders mentioned the strategic objectives for the Nordic police cooperation (2019-2022) which include effective law enforcement, progressive and future-proof policing, a strong regional voice on the international Arena and good conditions for police work, in the Nordic region.

The agreement, which is currently being evaluated, aims to prevent, detect, and investigate criminal offences in order to ensure public order and internal security. The discussion with the stakeholders indicated that this agreement constitutes a *memorandum of understanding,* setting out the parameters of the cooperation between the Nordic countries. Stakeholders believe that the cooperation is effective because it is mainly informal and based on trust. Cooperation takes place on a daily basis and is continuous between the Nordic countries. They have liaisons officials now covering 32 countries, which facilitates communication and the fight against crime. All countries that are party to the Nordic agreement have access to the different liaison officials (e.g. Norway has access to Danish liaison officials). They also have constant operative operations, e.g. on the bridge between Sweden and Denmark.

Good practices

The focus group activity also informed the identification of good practices and remaining challenges. Several focus group participants expressed that bi-/tri-/multilateral agreements are useful, as they can provide additional provisions that may be not covered in other existing frameworks, such as the Schengen Agreement[8] and the Prüm Convention.[9]

The discussions of the participants during the focus groups highlighted the following as good practices:

[6] Agreement between the Swiss Federal Council and the government of the Republic of France on Cross-border Cooperation in judicial, police and custom matters (2007).
[7] Nordic Administrative Agreement on Cooperation between Police Authorities in the Nordic countries (2016).
[8] The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (1990). Available at: link.
[9] Prüm Treaty (on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration). Available at: link

- **Common training**: Considered very useful to learn and practice new skills, establish trusting relationships and further foster the willingness to engage in cooperation. This also includes information sessions provided to local police forces with the aim to explain the links between the operational level and the bilateral agreement by showing the judicial viewpoint of the agreement as well as the practical implementation.
- **Regular meetings**: considered good opportunities to share experiences, discuss particular issues across countries, exchange information and explore strategies to prevent serious organised crime as well as an opportunity to further foster cooperation. During the COVID-19 pandemic these have been replaced by video conferences, and have also been used to discuss the latest infection rates and how each country was coping with the situation.
- **Mixed brigades**: These units include mixed intelligence groups (from all the parties of the agreement) that conduct basic intelligence analysis to then inform police forces.
- **Direct communication**: Th participants explained that quick communication is an essential facilitator of successful collaboration. Police forces need to communicate efficiently to be one step ahead of criminals.
- **Liaison officials**: These are considered essential for an effective cooperation. However, the number of liaison officials differ between the countries. For instance, the Nordic countries have liaison officials (both customs and police forces) in about 32 countries, giving all countries that are a party to the Nordic agreement access to this kind of network, but it is not the case everywhere.
- **Exchange of resources**: Some participants highlighted the importance of using contingency plans to exchange resources for public order matters. This includes the exchange of materials, special equipment, and staffing**.**
- **Specific investigative tools**: For example, in the case of hot pursuit, this involves the abolition of the distinction required between 'urgent' and 'not urgent' requests, and the unlimited possibilities to pursuit.
- **Willingness to cooperate:** By all the participants this was considered a fundamental ingredient of effective cross-border cooperation.

Challenges

Although the focus group participants mentioned many advantages of the bi-/tri-/multilateral agreements in question, and shared various good practices, they also touched upon some remaining challenges. During the discussions they identified a few shortcomings of - and gaps in - the EU framework for intra-EU law enforcement cooperation and shed light on internal cooperation issues. The key points highlighted below:

- **Lack of harmonisation** and persistent **structural differences** between countries were considered the biggest challenges for law enforcement cooperation.
- **Legislative perspective:** A key deficiency identified is the lack of harmonisation between national criminal procedural codes, which hampers coordination during cross-border criminal investigations. Moreover, there is a lack of understanding of the procedures and regulations on investigative tools (e.g. surveillance and hot pursuit), which also differ between countries, leading to challenges using these tools.
- **Operational perspective**: Another key deficiency identified is the limited effectiveness of SPOCs, often due to the limited resources allocated to them at the national level, both in terms of number and type of police forces available.
- **Challenges related to the exchange of information**: Difficulties to easily find out what type of information is available in other countries, and logistic, budget and personnel limitations hinder the ability to exchange information and follow up quickly.

In summary

Overall, the focus group activity provided a wide range of views regarding cross-border law enforcement cooperation in terms of what is working well and what is working less well. The focus groups shed light on the cross-border law enforcement cooperation related measures and practices existing at the EU and national level, within the countries of the agreements selected. The discussions also indicated difficulties following a lack of harmonisation in the investigative tools used to tackle and combat organised crime as well as a need for a minimum EU standard for organised crime investigations.

2.4 Technical workshops

2.4.1 First technical workshop

The first technical workshop, which was held on 24 March 2021 and to which close to 200 participants registered, involved a presentation by the Study Team of preliminary findings concerning notably the problem assessment and interactive parallel workshops.

The main findings from the discussions in the break-out sessions in the workshop were as follows:

What are the issues at stake?

Access to and exchange of information

- Key issues include limited awareness of and access to relevant EU and national databases as well as limited interoperability of national systems;
- Some issues specifically relate to the implementation of the SFD, notably the forms included as an annex to the SFD are too cumbersome and the definition of urgency/timeframe is not clear;
- Police-to-police requests instead of other equally effective mechanisms (such as EUCARIS, ECRIS, VIS etc).

Cross-border and pan European operational action for public order and safety purposes

- Many participants use Joint Patrols to a moderate or low extent. Differences exist concerning "sending" and "receiving" officials. There is more intense cooperation with direct neighbours than with other Member States;
- The main practical issues stem from differences in scope between Prüm (e.g. Art. 17) and the CISA. In addition, there are differences between EU legislation and bi-/tri- and multilateral agreements. Prüm is "theoretical" and not used in practice;
- Knowledge and experience on how and which agreement to use is currently necessary; the current landscape of agreements is very complex and time-consuming to understand.

Cross-border and pan European operational action against serious and organised crime

- There is a need for a common legal framework (e.g. to understand police/customs involvement, and to clarify the preferred channel of communication);
- Tools to communicate and exchange data securely are not available to all authorities;
- The numerous agreements in place lead to a complex situation, but bi-/tri-/multilateral agreements are still needed, since there is not a general framework for every tool (e.g. surveillance and controlled deliveries in a transit context, hot pursuit).

How are the current problems expected to develop in case no further EU action is taken?

Access to and exchange of information

- Current problems will become more relevant in case no further EU action is taken;
- The worsening of current problems is mainly attributed to new and evolving technological developments likely to affect the access to and exchange of information.

Cross-border and pan European operational action for public order and safety purposes

- Problems will remain to exist if EU legislation continues to refer to national law.

Cross-border and pan European operational action against serious and organised crime

- Problems may become more relevant, and the role of EU agencies may expand in the future.

Is there a need for EU intervention to address current problems?

Access to and exchange of information

- Current problems need to be addressed at the EU level.

Cross-border and pan European operational action for public order and safety purposes

- *See next point on actions to be taken.*

Cross-border and pan European operational action against serious and organised crime

- Harmonisation of the definitions and procedures relating to investigative tools and improving the consistency of existing measures should be key outcomes of any codification process;
- The variety of tools (e.g. controlled deliveries, surveillance, hot pursuits) need to be harmonised, and new tools as audio recording, GPS tracking should be taken into consideration.

What types of policy measures could be considered to address the current problems?

Access to and exchange of information

- In order to improve access to and information exchange, EU intervention should ensure full interconnection and streamlining of available systems for the exchange of information, the overall consistency of the EU legal framework, and the full awareness and capacity of national law enforcement authorities. It should also ensure the integration of modern requirements into fundamental rights and data protection rules.

Cross-border and pan European operational action for public order and safety purposes

- Most important for the way forward were stated to be:
    - Constantly gather feedback from operational officers on the ground and try to improve operational collaboration;
    - Training should be developed and implemented;
- Potential Internal Security Fund (ISF) funding for Joint Patrols.

Cross-border and pan European operational action against serious and organised crime

- The long-term solution would be to have one Law Enforcement Cooperation Code. If a Code is proposed by the Commission, it should be balanced and be a Law Enforcement Cooperation Code and not a Police Code;
- Extend the scope of surveillance (e.g. need of including more crimes under the same framework - tobacco smuggling).

2.4.2 Second technical workshop

The second technical workshop aimed at collecting national stakeholder's points of view on possible EU measures to address current problems affecting cross-border law enforcement cooperation in relation to the access to and exchange of information, operational cooperation for public order and safety and operational cooperation for SOC and terrorism, as well as the discussion of likely impacts of these potential EU measures. Similarly to the first technical workshop, close to 200 persons signed up for the workshop. The workshop took place on 25 May 2021.

The main findings from each of the three breakout sessions are as follows:

Breakout session 1 - Access to and exchange of necessary information

- Set-up and competences of the SPOC and PCCCs
    - Strengths: Time savings, more clarity of competences, responsibilities and rules, increased monitoring of possibilities for the SPOCs concerning the cases, the access to national and international databases and platforms, possibility to ask for judicial authority support at any moment, and common standards of CMS;
    - Weaknesses: The feasibility of some of the measures depending on the national-set up was questioned, and the structural differences of SPOCs, PCCCs and judicial authorities between Member States, and the actual availability of data highlighted as challenges.
- SPOC/PCCC Case Management Systems in the Member States
    - Strengths: An intelligent tool would facilitate the workflow, presence of minimum essential requirements for CMS for all Member States, time savings, better data quality, avoidance of duplications, establishment of similar workflows in different Member States;
    - Weaknesses: Costs for Member States in developing the CMS, feasibility linked to national specificities (the integration of specific solution within the national systems might be challenging, depending on the current individual solution used in the Member State).
- Information exchange via SIENA and other communication channels
    - Strengths: Time savings, increased clarity on which communication channel should be used when, increased level of security;
    - Weaknesses: Complexity of access rights.
- Use of secure communication means
    - Strengths: The idea of a "LEA app" was considered as interesting by some participants.
- Training activities
    - Strengths: Additional material provided by CEPOL would be welcomed, and harmonisation of the procedures would simplify the training;
    - Weaknesses: Training should not be too general but targeted, both in terms of the form and the content (e.g. efficient use of SIENA). The limited availability of time for the officials on the ground should be considered.

Breakout session 2 - Operational cooperation for public order and safety

- Conferral of certain operational powers to officials of seconding MS
    - Strengths: This would facilitate operational cooperation since the Member States are closer aligned in practice, and "foreign" officials are quicker to respond to situations than "domestic" officials, e.g. in remote locations;
    - Weaknesses: Exact legal definitions of the types of powers to be conferred are still somewhat unclear. It is necessary to elaborate exact legal definitions that could form a base for common action. The political feasibility of the measure depends on the legal definitions and how it is presented.
- Access to police databases for officials on the ground

  - Strengths: Access potentially increases the clarity of what can/should be done in critical situations;
  - Weaknesses: There is a need to define what officials involved in joint operations can do with the different types of available information. Access to data can potentially be abused by officials if shared with other Member States.
- Establishment of appropriate financial instruments by the Commission
  - Strengths: Support to setting up joint operations may facilitate political discussions, increased budget should be spent on training of law enforcement officials, including on technical means to facilitate training and knowledge sharing on the ground;
- Sharing of risk analysis and threat assessment with other Member States for the purpose of tailored joint operations
  - Strengths: Improved cross-border cooperation as Member States can base their action on common knowledge and implement tailored measures, intelligence-lead approach.

Breakout session 3 - Operational cooperation for SOC and terrorism

- Surveillance
  - Strengths: Extending the list of offences for which surveillance is allowed under CISA, clarifying/harmonising the rules on the use of technical means of surveillance, extending use surveillance under CISA to waterways, sea and air borders, clarification of the definition of surveillance as well as common minimum criteria for applying this tool;
  - Weaknesses: Some of the measures included in the options may require additional resources from Member States. There should be careful consideration of the impacts on national competences.
- Hot pursuit
  - Strengths: The list of offences for which hot pursuit is permitted should be extended. The suggested options could improve the clarity of existing rules;
  - Weaknesses: Kilometre ranges/time limits are not the key issues to improve hot pursuits.

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