

A-2241 WODC Research Project

“International Police Information Exchange”

Monica den Boer

SeQure R&C

EXECUTIVE SUMMARY

Information bears considerable relevance for the police organisation. In order to deliver effective policing, the organisation depends on timely, reliable and correct information, both nationally as well as internationally. This report presents the findings of research that was undertaken on the selection of information channels for the purpose of international police information exchange. The research project sought to achieve a mapping of the current state of affairs with regard to international police information from a Dutch perspective. Inter alia, the Netherlands police exchanges information with police organisations in the member states of the European Union. International police information exchange is performed along many different channels. The Dutch legislation enables the police organisation to exchange information with services abroad. In the Netherlands, the structure for international police information exchange is based primarily on the International Legal Assistance Centres which are connections between the units of the Dutch National Police, the national International Legal Assistance Centre and the available channels.

The research demonstrates that the developments in the arena of international police information-exchange have happened at very fast rate. The possibilities have been extended considerably at regulatory, organisational and technological level. Three trends have been identified. The first is the growing volume of agreements, legal instruments, information systems and agencies, necessitating countries, organisations and professionals to adapt themselves to the new possibilities and rules. Second, police organisations are expected to exchange data internationally with other authorised organisations with a security task. The multi-disciplinary character of the information-exchange implies that the police has to act as a reliable partner in the information exchange with non-police and private organisations. Third, the international information exchange increasingly focuses on the exchange of intelligence, or processed data which may have been collected prior to the suspicion of a concrete criminal offence. Fourth and finally, within the European Union, information exchange increasingly adopts a mandatory character. This is accompanied by agreed norms with regard to the kind and volume of the data to be exchange between police services.

The initiation document of the Research and Documentation Centre of the Dutch Ministry of Security and Justice, raised the question how and what kind of information is exchanged by the Netherlands police with police organisations in a number of EU member states. This question was divided in a number of sub-questions, namely when and in which cases information is exchanged directly, which communication channels are used by the Dutch police and foreign police organisations, and what kind of information is exchanged. These questions were answered on the basis of literature and documentary analysis, an expert meeting, interviews and a case analysis. The theoretical point of departure of the research is based in the rational choice theory as well as the interpretative policy analysis. While the first theory presupposes that strategic, organisational and individual actors apply rational deliberation prior to choosing a communication or information channel, the second theory allows verification of sense-making effects and normative frameworks.

The most important treaties and legal instruments for international police information exchange are the Schengen Implementing Convention (SIC), the Prüm Treaty, the Senningen Treaty, the Enschede Treaty, the Swedish Framework Decision and the EU Convention on Mutual Assistance in Criminal Matters. All legal instruments offer ample opportunity for the direct cross-border police information exchange. Information can only be exchanged if the rules of the national law are complied with. The treaties are largely complementary, but the Senningen Treaty only applies in the Benelux and the bilateral Treaty of Enschede is limited to the Netherlands and Belgium. The Prüm Treaty, which applies to a number of EU member states, is an important complementary instrument to the Schengen Implementing Convention, because it enables the exchange of other information, such as fingerprints

and car vehicle data. The objective of the Swedish Framework Decision is primarily to accelerate and simplify international police information exchange within the EU.

For the purpose of international police information exchange, five co-existing channels can be used. All channels are situated within the National International Legal Assistance Centre of the National Unit of the National Police. These channels are Europol, Interpol, SIRENE, the International Legal Assistance Centres and the liaison officers. Europol is the EU centre for the storage and processing of intelligence and information concerning cross-border organised crime. The agency offers support to the member states in the control of serious and organised crime and terrorism, for instance by means of information exchange. Europol works with a system of Europol National Units (ENU's). They form the bridge between Europol and the relevant authorities in the 28 EU member states. In the Netherlands, the function of ENU is performed by International Police Information Service (formerly IPOL) of the National Unit (formerly "KLPD"). The liaison officers from the member states are authorised to exchange information between their national unit, Europol and other EU member states. They also have access to a variety of computer systems in use by Europol in order to be able to perform their tasks. Europol liaison officers (ELO's) assist predominantly in the information exchange between their national unit and Europol, to provide the national unit with information from Europol, and to co-operate with other officers within Europol by supplying them with information and advice about the analysis of information which originates from their member state. The second channel is Interpol: this is a global network of national contact points or bureaus for the exchange of police information. Some of Interpol's members are countries with whom the Netherlands does not maintain a mutual legal aid relationship. The Department of International Legal Aid in Criminal Cases is involved in cases with non-EU members. The National Central Bureaus are responsible for international police information exchange from and to the police organisation in the member state and are the bridge with the Interpol Secretariat, which is responsible for all the message exchanges, the maintenance of the information systems and crime analysis. Interpol disseminates alerts about persons and objects, and provides information about crime phenomena. The cooperation between the national police organisations via Interpol is voluntary. Interpol cannot impose demands upon the national alerts and the way in which data are processed. SIRENE is the third channel. It is related to Article 108 of the Schengen Implementing Convention. Every signatory state that is connected with the Schengen Information System (SIS) has a SIRENE bureau which runs on a 24/7 basis. The Schengen signatories are supposed to furnish the SIRENE-bureau with human and technical resources in such a way that continuity can be guaranteed. In practice, the signatory states incorporate SIRENE in a national or central unit which also accommodates the Europol National Unit and the National Central Bureau of Interpol. In the Netherlands, these desks are accommodated within the National Legal Assistance Centre, which manages all information channels. The legal assistance centres are the reception desk for operational colleagues in relation to all international information exchange and legal assistance. The fifth channel consists of the liaison officers (LO's), which are an important addition to the previously mentioned channels for international police information exchange. The specific task of the LO depends strongly on the country where he or she is stationed. LO's are stationed within an official Dutch presentation and are awarded a diplomatic status. To the extent necessary, LO's are also accredited for neighbouring countries. The LO is authorised to receive and provide confidential criminal investigation information to the relevant police and judicial authorities, if so permitted by a legal instrument. One of the tasks of the LO's is a fast and reliable exchange of operational (sensitive) information with foreign criminal investigation services.

Within the EU, there has been a vast expansion of the number of information system, of which the data can be used by the police. The most important supra-regional information systems are the Europol Information System (EIS), the Secure Information Exchange Network Application (SIENA), the Europol Analysis System (EAS), the Schengen Information System II (SIS II), and the European Car and Driving License System (EUCARIS). EIS enables member states to exchange information about serious organised crime. The system allows identification of persons or objects in a member state related to a criminal investigation. If this is the case, member states can exchange information bilaterally. The information system works like a reference sourcing system and enables criminal investigation authorities in the member states to exchange information. According to Europol the number of data that are stored in EIS has gone up significantly. Also the messages that are exchanged via SIENA have noticeably increased. The Netherlands is now one of the largest users of SIENA, but it is still not fully used. In the course of 2014/2015, SIENA is rolled out to all IRC's and a variety of police partners. The decentralisation of SIENA is an important theme within the EU. SIENA will become interoperable with EAS, allowing the data, which are sent by the member states via SIENA to Europol, to be directly imported into EAS. Subsequent to validation of the data, they can be incorporated into a Europol Analytical Work File. The SIS II is an information system which is used in

the whole Schengen area by the National Police (law enforcement), the Royal Marechaussee, Customs, and organisations which have migration and visa tasks (such as the Immigration and Naturalisation Service in The Netherlands). SIS II is a central database (with national copies), accommodating alerts with regard to certain categories of persons and objects. These alerts can be reported by EU member states which participate in SIS II. If a match can be found between the data in the system and the present alert, the requesting state receives a notification in the form of a "hit". Hence, SIS II (and its predecessor SIS) is also called a "hit-no-hit" system. Additional information can be requested from the SIRENE network on a 24/7 basis. EUCARIS is an IT-system which enables EU member states to prevent fraud with driving licenses and vehicles, because it allows all the connected countries to request registration data of licenses and vehicles. Following the transposition of a large part of the Prüm Treaty into an EU Council Decision, all EU member states had to use EUCARIS by the end of 2011 for the exchange of vehicle data. User-friendliness, interoperability and decentralisation are important objectives in the further development of these information systems: there does not seem to be a demand for new systems, but for a more practical use.

Evaluations which have been carried out by the EU demonstrate a number of concerns with regard to the laborious implementation of the EU legislation and regulation in the area of international police information exchange. Moreover, in many instances, police officers still exchange information bilaterally, without storage in for instance the information systems of Europol. Another concern is that member states demonstrate limited commitment to supply Europol with information (particularly in the area of terrorism), and that this information is not supplied in a timely manner. The European National Units are human interfaces and hence act as filters. Police cultures in Europe are very diverse, and often there is still an attitude not to share. From this research it appears that one is about SIENA, particularly because the system allows standardisation of data. But there are also some specific concerns, for instance that the system is in English, that files cannot be copied, and that the Europol capacity stagnates against the backdrop of a growing volume of data which are subject to international exchange. Respondents in this research have high expectations of the decentralisation of SIENA. SIS II is perceived as an accessible system which allows rapid dissemination of responses. Due to the nature of the alerts, the system appears to have less relevance for tackling criminal offences. The objective of SIRENE / SIS II is different from that of Interpol, where consultation takes place at the national level. Following a recent action plan, there has lately been more emphasis on transparency and the protection of personal data in the application of the Schengen Treaty. By means of information exchange, one has sought to consolidate the control of local phenomena and to understand local cross-border issues, thereby enhancing a more efficient use of the means of the Benelux Treaty. Informal information exchange still seems to be preferred at the bilateral level. There is still ample room for improvement when it comes to joint criminal analysis with the neighbouring countries. The European Police Information and Coordination Centre EPICC has matured into a switchboard between the Netherlands, Belgium and Germany. This research has shown that the channel of liaison officers is used regularly, particularly by criminal investigators for the exchange of police-to-police information. Moreover, this research has shown that, except for the obstacles that have been identified, there is still overlap in the cross-border information exchange between EU member states, leading to duplication and under-exploitation. In addition, there are still many different systems with large groups of diverse users.

Positive developments in the area of international police information exchange include the standardisation of information, the improvement of the interoperability between the systems, and the de-central access to international information by means of mobile police performance. An important development at the level of Europol is particularly its draft Regulation, but also SIENA which since 1 May 2014 has facilitated the sending of structured personal data, based on the Universal Message Format (UMF). EU member states are not obliged to use structured data, but when these data are sent to Europol, the agency will be able to provide a faster service in the form of for instance automated cross-checks. EU member states are generally expected to develop towards a Single Point of Contact (SPOC) concept, in which operators are able to deal with all incoming and outgoing international messages, irrespective of the selected channel. In some member states it is difficult to handle the SPOC-concept at national level, for instance when the operators are geographically dispersed. In comparison with other member states, the Netherlands seems quite advanced with the development of its information architecture. A current development is the establishment of the European Police Records Index System (EPRIS), which will facilitate the police to quickly verify whether and how information about specific persons can be found. Meanwhile, a feasibility study has been completed.

The strategic management of international police cooperation is based on the strategic country policy, cooperation within the European Union, information exchange and legal assistance, peace missions and cooperation within the Royal Kingdom of the Netherlands. The three objectives of the cooperation are that the cooperation with other countries should lead to a (positive) security effect, that it contributes to the acknowledgement of the Netherlands as a reliable partner, and that it should be subject to uniform and unambiguous management. The policy intention at organisational level is to achieve a concerted process in the first choice for a channel for outgoing legal requests by the international legal aid centres. The channel choice model is specifically intended for implementation within the structure of the international legal aid centres. Police and judicial requests are processed via the Europol channel if and when the request concerns organised crime, terrorism or another form of serious international crime which has an effect on two or more EU member states which require a concerted effort from the EU member states which are involved. The policy intention with regard to the liaison officer channel is that direct contact (by telephone) with Dutch and foreign liaison officers is allowed to discuss and clarify issues. Dutch liaison officers who are abroad are activated when it concerns a case of serious and/or organised crime which cannot be processed by another channel due to its complexity, urgency or a substantial risk of harm. In short: the policy intention is that Europol is the rule, and the use of a liaison officer is the exception to the rule. Interpol can be used for cases outside the European Union which cannot be dealt with by liaison officers. When it concerns the management at the level of police professionals, it primarily applies to applicable legal norms. In principle, police officers are allowed to deal with a foreign police request on their own when it concerns data which are stored in national police information systems. As soon as a foreign request implies the recruitment of information which involves the use of coercive means, the relevant request needs to be forwarded to the Public Prosecution Service. These limitations preserve the Direction for the application of article 552i of the Dutch Criminal Procedure Code which offers substantial discretionary power to individual police officers to exchange information internationally.

Findings resulting from this research reveal that at the level of strategic management, while the Netherlands seeks to comply with international demands and developments, a gap remains between the policy intentions and daily performance. Moreover, with regard to organisational management, the research shows that concerted and unambiguous management are recognisable policy intentions, but that the organisation does not yet work in full accordance with these principles. Concerning the level of the management of professionals, the research has demonstrated that international police information exchange is predominantly perceived as a specialised professional task. In addition, it has been observed that individual police professionals do not comply with the (normative) channel choice model, because they are used to a certain pattern and because there is little police educational attention for it. More concretely with regard to Europol, the conclusion resulting from this research is that the joint management efforts at strategic, organisational and professional level have not yet resulted in a better usage of this channel. A gap remains between the policy intention with regard to the use of this channel and its use in daily police practice.

This research project has also demonstrated that foreign counterparts characterise international police information exchange by the Dutch National Police as professional and well-considered. However, there is also criticism, mainly concerning the speed of the information exchange. In the eye of several respondents this is caused by the role of the management and assessment groups in the Dutch National Police, involving different levels in the information chain. The lack of criminal investigation capacity in the Netherlands is also seen as a problem in the operationalisation of the information, which means that the principle of mutuality may be undermined. An additional observation is that foreign respondents regard the Dutch separation between national and international police information exchange as special: it should be an ordinary working process embedded within the organisation. The establishment of the legal assistance centres at national and unit level are regarded as a step forward. Additionally, foreign respondents are of the opinion that the strict coordination model is not (yet) complied with.

Dutch police officers do not or cannot find their way to the Europol channel, which effectively means that this channel is subject to under-exploitation. The analysis of five cases on serious and organised international crime clearly demonstrate that criminal investigators do not follow a standard protocol for the recruitment of information from foreign police services. The more complex the case, the more innovative the relevant criminal investigator deals with the available channels. In these kind of cases, "simple" information systems such as SIS II are used hardly or not at all. The Europol channel is actively used in some cases but in other cases not at all. If the Interpol channel is used at all, it is used for the information exchange with non-EU countries. Criminal investigators see added value in the 24/7 availability of the Interpol channel. For criminal investigators who deal with complex transnational cases, the bilateral liaison officers are primarily seen as beneficial. If authorisation can be obtained

from the Public Prosecution Service, a Joint Investigation Team can be used to raise international information exchange to an optimal level, but the road to this instrument is only found with great difficulty and is paralleled by a decision-making process which is not in the hands of the police service. A prototype flowchart for international police information exchange cannot be developed: each case commands its own direction.

Several respondents reported that informal police information exchange at international level still occurs. Moreover, there are still issues with regard to professionalization and education. Given the technical and highly sensitive character of the information exchange, education is seen as very important. With regard to the strategy on international police cooperation, international police information exchange is one of the core pillars. With regard to the organisational level, it is instructive to create a business-case on the short term which seeks to improve the connection of information in the chain and which focuses on the standardisation of information exchange between the international legal assistance centres to the flow of international information of the police partners of the police, such as the Royal Marechaussee, the Fraud Intelligence – and Investigation Service (FIOD) and the Customs service. With regard to police professionals, the quality level of employees in the international legal assistance centres needs to be developed and preserved, given the growing volume of international police information and the binding deadlines which apply to the processing of international police information requests. The research report closes with a range of recommendations to a variety of internal and external stakeholders at strategic, operational and professional level. The National Police is advised to establish a new corporate strategy on international police cooperation, of which international police information exchange is an essential pillar. Police managers are advised to encourage their professionals to grow familiar with international police information exchange and with the applicable channel choice model. Standardisation of information processing procedures, training and education are crucial conditions for an effective, efficient and legitimate international police information flow.