



Council of Europe

CROSS BORDER COOPERATION IN THE COMBATING OF ORGANISED CRIME

Organised crime – Best Practice Survey n°5

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1 Introduction

1.1 BACKGROUND

The Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime (PC-S-CO) was established in 2000. Its terms of reference state that the Committee should - *inter alia* – carry out best practice surveys.¹ These surveys should allow member States to benefit from the experience of other member States in combating organised crime.

Each survey concentrates on a particular approach or method. For practical reasons, only a few countries are selected for analysis on the basis of their experience in the particular field and to permit different legal systems and geographical region within Europe to be reflected.

The present BPS deals with cross-border cooperation, a topic that has gained significantly in importance in the fight against serious and organised crime. The process of globalisation means *inter alia* the integration of numerous local, regional and national economies and the liberalisation of the circulation of goods, services and people. But this process is accompanied by an increase in trans-national crime. Petty offenders as well as organised criminal groups exploit new opportunities. The events of 11 September 2001 have underlined the necessity for law enforcement organisations to work together across national borders in order to track down the perpetrators and gather the evidence required by the judicial system.

Much has been written about international police cooperation. In most cases reference is made to the framework provided by bi- or multilateral treaties or the work of inter- or supranational organisations like Europol. Little information, however, is available on police and customs cooperation across borders at local and regional levels. From what is known, it would seem that at these levels new and innovative ways have been found to cooperate effectively and overcome obstacles caused by different legal systems, organisational structures, culture or languages.

The present report is intended to provide insights as to how international police cooperation is starting to take shape at the ‘grass roots’ level. It does not attempt to provide a complete picture of the cross-border cooperation by the countries surveyed, but concentrates on some elements, which could serve as good examples (‘best practices’) to other member States of the Council of Europe.

¹ So far, Best Practice Surveys on witness protection, the reversal of the burden of proof, interception of communications and crime analysis have been published.

1.2 ORGANISATION OF THE SURVEY

Three countries have been visited to study the situation regarding cross-border cooperation:

- Slovenia, with special attention to the cooperation with law enforcement authorities in Austria
- Finland, with reference to the relationship between customs and police in the Russian Federation and the Baltic states
- France, with an emphasis on policing in the border region with Germany.

They have been selected on the basis of the following considerations:

- they all are particularly familiar with the specific obstacles regarding policing across national borders
- they all experience problems because of the illegal activities of organised criminal groups operating on a trans-national level
- they have different legal and institutional systems suggesting that different ways would be chosen to organise cross-border cooperation.

The three countries were visited in June and October 2001 by a PC-S-CO mission. The delegation was composed of Mr Kauko Aromaa, Director of the Helsinki Criminological Institute and member of the Committee, Mr Toon van der Heijden, Senior researcher at the National Police Agency of the Netherlands and chairman and scientific expert of this Committee, and Ms Valérie Moulherat from the Secretariat of the Council of Europe.

In every country the delegation met representatives of law enforcement agencies, including police units and competent agencies within the respective ministries of interior, such as the National Police, the Gendarmerie and Customs in France and the National Bureau of Investigation, the Customs Administration and the Frontier Guard in Finland. In Finland the Eastern Border Station at Vaalimaa was also visited. Furthermore, the delegation visited the Common French-German Centre of Police and Customs Cooperation in Offenburg (Germany). The purpose of the visits and discussions was to obtain an overview of the scope of cross-border cooperation in the countries involved, including infrastructure, working methods and legal framework, as well as gather illustrative examples of good practice concerning cooperation in the area of combating organised crime.

In addition to the interviews, relevant documents provided by respondents and other available literature were made use of. The present BPS report has been drafted on the basis of these materials. The views expressed here do not necessarily represent official views of the Council of Europe. The authors would also like to stress that this survey is not meant to be a comprehensive study of cross-border police cooperation. It is nevertheless expected that the findings will provide food for thought for countries seeking to enhance the quality of trans-national law enforcement.

2 General background of the member States surveyed

2.1 SLOVENIA

Slovenia gained its independence in 1991 and is now an EU candidate country. As it is small (surface just over 20,000 square kilometres; population 1.9 million), there is a lot of cross-border traffic of people and goods, especially between Slovenia and Austria.

Slovenia only has one police force, the National Police. Its tasks include not only the maintenance of public order and the prevention, disclosure and investigation of criminal offences, but also the protection of state borders and the implementation of border control. The Criminal Investigation Service of the National Police includes special units for the fight against organised crime at both national and local level.

2.2 FINLAND

Finland is one of the Nordic states. It has a surface of 305,000 square kilometres and a population of 5.2 million inhabitants. It shares an over 1,300 km long border with the Russian Federation. The border is controlled by the Finnish Frontier Guard, which includes the coast guard. Its most important tasks are border control on land borders and sea areas and border checks at border crossing points, ports and airports.

The centralised Finnish police is divided into three levels: the district police at local level, the provincial police command and the supreme police command at national level. The authority for international cooperation is with the National Bureau of Investigation (NBI), which is subordinated to the Police Department of the Ministry of the Interior. Among other things, the NBI is responsible for operational supervision of liaison officers which have been assigned abroad for the purpose of enhancing international cooperation and, in particular, prevention of serious and organised crime targeted at Finland from other countries. The NBI also acts as the national centre for Interpol, Europol and Schengen.

2.3 FRANCE

France is one of the large countries in Europe, with a surface of 546,000 square kilometres and about 60 million inhabitants. It has a long and well-known legal tradition. The French Republic is characterised by a highly centralised structure. This means that coordination between various law enforcement bodies, such as the National Police and the National Gendarmerie, and between police and other organisations, such as customs, tends to be concentrated at the national level. This also counts for international cooperation in the field of combating crime. Paris is the seat of the Central Criminal Investigation Directorate of the Ministry of Interior Affairs. One of the sections of the Directorate is the Central Section for Operational Cooperation (SCCOPOL), covering Interpol, Schengen and Europol. France has an extensive network of liaison officers, which is managed by the International Police Cooperation Service (SCTIP). This service also is under the Ministry of Interior Affairs.

In the last few years, cross border cooperation has evolved in several border regions. This has resulted in a number of common centres for police and customs

cooperation, all located near national land borders. The first centre of this kind has been established in the German town of Offenburg, not far from Strasbourg.

3 Formal bases for cross-border cooperation

3.1 INTRODUCTION

Back in the 1980's, a debate opened up in the European Communities about facilitating the free movement of persons across national borders. Since it was not possible at that time to reach general consensus, five member States decided in 1985 to create a territory without internal borders, the so-called Schengen. But in order to reconcile free movement of people with freedom and security, it was decided that the abolition of border checks would be accompanied by so-called 'compensatory' measures. This involved improving coordination between the police, customs and the judiciary and taking necessary measures to combat terrorism and organised crime. Little by little the Schengen area was extended to include all EU countries with the exception of the UK and Ireland.² In 1999 the original agreement of 1985 was incorporated into the European Union legal framework through the adoption of a protocol to the Treaty on European Union, also known as the Treaty of Amsterdam.

As two of the three countries in our survey are EU members, the Treaty on European Union is an important legal framework for cross-border cooperation between law enforcement agencies. Two provisions are of particular relevance in this respect, namely articles 30 and 32. Article 30 (ex-Article K.2) states that common action in the field of police cooperation shall include – *inter alia* – operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services of the member States in relation to the prevention, detection and investigation of criminal offences. It also includes cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment and forensic research. Article 32 (ex-Article K.4) stipulates: 'The Council shall lay down the conditions and limitations under which the competent authorities (...) may operate in the territory of another member State in liaison and in agreement with the authorities of that State.'

Based upon the treaty is the Convention on mutual assistance in criminal matters between the member States of the European Union (2000). The convention lays down the conditions under which mutual assistance is granted. As a general rule, requests for mutual assistance and communications are made directly between judicial authorities with territorial competence. But spontaneous exchange of information may also take place between member States regarding criminal offences, as long as the handling falls within the competence of the receiving authority. The convention also offers options for two or more member States to set up joint investigation teams, and to carry out controlled deliveries and covert investigations on the territory of another member State.

Of particular importance for customs cooperation in the EU is the 1997 Convention on Mutual Assistance and Cooperation between Customs Administrations (the so-called Naples II Convention).

² Since May 2000, the United Kingdom takes part in some aspects of Schengen, namely police and legal cooperation in criminal matters, the fight against drugs and the Schengen Information System.

For non-EU member States, the 1959 European Convention on Mutual Assistance in Criminal Matters of the Council of Europe and the Additional Protocol of 1978 and the Second Additional Protocol of 2001 to this Convention are the most important multilateral instruments for cross-border cooperation.

3.2 SLOVENIA

The government of Slovenia has signed and ratified a range of relevant international instruments, including the European Convention on Mutual Assistance in Criminal Matters (in 2000). Furthermore, it has concluded agreements with a number of countries on fighting organised crime and police cooperation. Slovenia gives priority to EU cooperation, especially as regards the pre-accession strategy. It has also concluded bilateral agreements with various countries. In this respect four groups of countries are distinguished: a) neighbouring countries; b) EU member States; c) Luxembourg group (EU applicants); d) countries with operational problems, e.g. in the field of illegal immigration and organised crime (including the Federal Republic of Yugoslavia, Iran, Iraq and China).

Bilateral agreements were signed recently with a number of countries, including Belgium, Yugoslavia, Russia and Germany. They usually cover the three fields of organised crime, illicit drugs and terrorism and concentrate on knowledge exchange, experts and mutual police actions. The protection of personal data is always part of the agreement. The agreements with Belgium, Russia and Germany are somewhat different. With Belgium there are some articles on the use of experts in the fields of money laundering, drugs, etc. It would seem that negotiations with some countries are difficult due to strict data protection rules in Slovenia. In the case of other countries (e.g. Iran and China), Slovenia negotiated agreements on cooperation against organised crime and agreements on the re-admission of illegal immigrants in one package.

International cooperation has been made easier for the Slovenian police by the recent Police Law of 1998 and amendments to the Criminal Procedure act in 1999, which facilitates data exchange and direct communication across borders. Law enforcement instances may use all kinds of communication, including e-mail, in order to obtain permission for investigative actions. On the basis of a request and in accordance with Slovenian law, wide-ranging assistance can be provided to foreign countries, including freezing, seizure and confiscation of proceeds from crime. On occasion, Slovenian courts ask the police on what formal basis the international cooperation took place. In the absence of bilateral agreements, the general Interpol agreement is used.

Slovenia has also concluded agreements of mutual understanding with Hungary and Montenegro, signed by heads of Criminal Investigation Departments.

3.3 FINLAND

Cooperation between the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) is primarily based on the 1974 Nordic Convention on mutual assistance in criminal matters. The Finnish government also has signed and ratified formal agreements on mutual assistance in the prevention and repression of crime with the respective governments of a number of countries which are not members of the European Union, including Poland, Russia, Estonia, Latvia and Lithuania. The Central Bureau of Investigation, which is part of the Finnish Police Force, has the main responsibility for the implementation of bilateral agreements with other

countries on crime prevention. Cooperation consists mainly of the granting of legal assistance on a reciprocal basis and, in particular, in exchanging information on organised crime. This includes, *inter alia*:

- hearing of persons concerned and interrogation of complainants, suspects and accused persons, witnesses, victims and experts
- procuring and handing over to the requesting authority evidence relevant to the offence
- establishing the identity of persons as well as searching for and identifying persons
- execution of searches and seizures
- initiating a pre-trial investigation on request of the other party
- procuring documents required for the investigation of the offence or for legal proceedings
- exchange of information pertaining to the prevention of organised crime and narcotics offences.

The agreements define who the competent authorities are in each country and describe the form and content of requests for assistance. The possible reasons for refusal of assistance are also mentioned. The most important ones are incompatibility with the basic principles of the law of the requested party or the likelihood that the request will prejudice the sovereignty of the requested party.

The Finnish and Russian border control authorities have a long tradition of cooperation. This is based on the Border Regulation Agreement of 1960, amended by a protocol signed in 1997. The agreement specifies detailed aims, forms and in part procedures for cooperation for all levels of the organisation. Under the agreement, the authorities exchange information on illegal immigration, investigate border incidents and maintain order.

3.4 FRANCE

France belongs to the five EU member States, which signed the Schengen Agreement as early as 1985. In criminal matters there is a long tradition of cooperation with neighbouring and other countries, which has been strengthened over the years by both multilateral and bilateral agreements.

The formal basis for the German-French common centre of police and customs cooperation (CCPD) in Offenburg is the Schengen Agreement of 1985 and the Schengen Implementing Convention of 1990, more precisely article 39 of the convention. In 1997, the Governments of France and Germany signed the Mondorf Agreement to cooperate more closely in matters of internal security and customs. The agreement is composed of three parts. The first part establishes the CCPD, defines its tasks, describes the structures and names the participants. The second part sets out the operational missions of direct cooperation between the neighbouring services. The third part finally concerns the general arrangements for cooperation.

The agreement refers to three German states (Länder): Baden-Württemberg (population 4.7 million), Rheinland-Pfalz (1.4 million) and Saarland (1.1 million) as well as three French departments: Haut-Rhin (0.7 million inhabitants), Bas-Rhin (1.0 million) and Moselle (1.0 million). The total surface of these jurisdictions is almost 73,000 square kilometres, more than three times the size of Slovenia.

4 Cross-border cooperation in practice

4.1 SLOVENIA

4.1.1 General picture

Cross-border cooperation in Slovenia basically starts with the Interpol unit or with the unit for international cooperation of the Slovenian police. In complex cases teams composed of officers from operational and others units are formed sometimes also with representatives of the Ministry of Internal Affairs. In 1998 the police became more independent from the Ministry, and since then it has its own unit for international cooperation.

The general feeling among Slovenian law enforcement is that with Europe uniting in more and more areas, justice and home affairs cannot stay behind. Therefore, all police inspectors are trained in the legal aspects of international cooperation. However, the fact (as in most other countries) that many police officers at the working level do not speak foreign languages is problematic (this is not a major obstacle in the countries that belonged to the former Yugoslavia, at least amongst themselves). Another problem is that the police forces in these countries often do not have sufficient amounts of human, financial and other resources. In cooperation with Romania and Bulgaria (which are also pre-accession states of the EU) the financial situation in these countries is a big obstacle, since they do not have money for training and equipment. The responsibility for covering expenses in joint cases always is a major issue. If Slovenian police want to conduct operational activities in Italy or Croatia, it takes at least 48 hours to obtain the proper authorisation. In Hungary, action can be taken without delay, but the results cannot be used in court.

It has been suggested that police cooperation could be improved as regards illegal immigration. Slovenian law enforcement authorities cannot handle all requests from police forces from other countries. Priority is given to cases of drug trafficking, especially if seizures are possible. Trafficking in human beings is considered much less important and thus involves considerable delays in requests for assistance.

Requests involving data on the ownership of (prepaid and other) telephones is problematic. When the number is not public, Slovenian authorities need a court order to provide the personal data of the subscriber. The judge demands justification of the need for this information before he will allow the requested data to be made available. Very often this background information is not given and the request remains unanswered. Since usually the request comes from a national Interpol office and contact details of the requesting police force are not known, supplementary information is difficult to obtain. Liaison officers could help overcome such problems, but because of the heavy costs involved, Slovenia does not have any.

The majority of Slovenian interlocutors considered formal agreements less important than informal networks. In their eyes, a formal agreement alone is never enough. Sometimes an informal network does work effectively, though where the outcome has to be used in court, this can lead to evidential difficulties later.

4.1.2 Use of special investigative means

In Slovenia, undercover agents from domestic origin as well as from other countries are used, and civilian undercover agents are allowed. Undercover agents may not commit criminal offences, with certain exceptions. When foreign agents operate in Slovenia, they need to obey Slovenian law. If a Slovenian undercover agent is borrowed by the Hungarians, he can apply more techniques. This is not possible in joint cases. Slovenia, given its modest size and the risk that its local agents get identified, uses foreign undercover agents very often.

Very important for the practical side of cross-border cooperation is to know whether or not specific investigative measures (e.g. undercover agents) are legal in the countries involved. They are for example not allowed in “the Former Yugoslav Republic of Macedonia”. In Austria there are no formal legal rules for special investigative measures. The head of police can approve covert policing and the court accepts this. In such a case, the results are also acceptable to Slovenian courts. Cross-border hot pursuit into Austria is not possible at present, since Slovenia is not a Schengen partner. Slovenia is working to integrate the contents of the Schengen treaty in bilateral agreements with Austria, Germany and other countries.

In the recent past, the Austrian police have been working on criminal intelligence in Slovenia. However, the Slovenian authorities need to give their approval. Twice an Austrian unit performing secret observation in Slovenia did not notify the Slovenian authorities because of a lack of trust of the head of this particular unit (who was involved both times); they had even brought their guns. The Austrians were apprehended, spent one night in jail and were sent back after paying a small fine. Similarly, Slovenian undercover agents had been working in Croatia and although Croatian police authorities were informed, the investigative judge was not. The consequence was that the results were excluded as evidence, although the undercover work itself was not regarded as illegal. The general feeling among Slovenian respondents is that legal or other formal obstacles are less important than organisational structure and trust.

Knowledge of technical and legal possibilities is most important as regards the tracking of criminals and goods. For example, all countries through which a drug shipment is going will need to be notified. In the case of Germany, it includes all the Länder used as transit regions. In the Netherlands, a controlled delivery cannot be carried out with a civilian collaborator of justice; a police undercover agent is needed, in which case no authorisation is required. Sometimes, the Slovenian police have the legal possibility to allow certain operations for which a foreign authority would need the approval of a prosecutor (e.g. in the Netherlands). Nowadays, even e-mail is used to transmit letters rogatory, followed by a message sent by ordinary mail. For money laundering, direct information exchange between financial intelligence units is possible.

Joint operational teams are not possible. However, there is experience with other forms of cooperation. In one case, a Slovenian police officer spent three weeks with the police of Bosnia and Herzegovina. His role was to provide advice – but not perform – any executive actions. In the context of other cases, representatives of Slovenian law enforcement had weekly meetings with the Italian police. Cooperation also includes joint training. For example, police officers from the region (including the Former Yugoslav Republic of Macedonia, Bosnia and other Balkan countries) have taken part in Slovenian training seminars.

4.2 FINLAND

4.2.1 Cooperation in the border region with Russia

Regarding the control of the Finnish-Russian border there are four tiers involved: the heads of the two countries' frontier guard organisations, a joint working group, the regional border delegates and the local control authorities.

At the strategic level the general framework for cooperation is formed between Frontier Guard Chiefs. It is based on exchange of strategic information on illegal cross-border phenomena. Two to four meetings are held annually. The results are strategic decisions and guidelines.

The main body responsible for the preparation of the meetings of the highest level is the joint permanent Finno-Russian Border Guard Working Group. The chairmen of this group are the deputy chief of the Finnish Frontier Guard and his colleague the chief of North-West Border Guard Administration (St. Petersburg). The group makes use of four sub-groups.

The third level, consisting of border delegates on regional level, is the most important one in terms of practical cooperation. It is estimated that about a hundred meetings a year take place at this level. All border incidents either in the land border zone, the sea border area or at border crossing points are definitely processed on this level. If it is not possible to find consensus they can send the case to the permanent Finno-Russian Border Guard Working Group.

At the lowest level the individual border crossing points can cooperate in daily practice, for example to solve the question of authenticity of a travel document. Every year there are hundreds of meetings with heads of border crossing points and experts.

The Finno-Russian border cooperation takes place in the form of meetings, exchange of information, exchange of practical experience, training and common investigations and joint actions. Direct telephone lines at all levels guarantee 24-hour communication. Liaison officers of the border control bodies of both nations are also placed in embassies in the respective capitals. But more important are meetings. There are scheduled meetings on a regular basis but also ad hoc meetings when there is a need felt by one of the parties. Their main aim is to process all open border incidents and exchange information. Delegates are also responsible for determining opening hours of border crossing points as well as working procedures of smaller border crossing points. Local officers also discuss problems like long queues or false documents.

Not only do the Frontier Guards meet the Russian border control officers once a month; they also have visits from individual Russian officers for several days. This helps them become acquainted with Finnish procedures and create personal networks. Difficulties sometimes arise from differences in culture, bureaucracy (more reliance on hierarchic structures on the Russian side) and professionalism. Russian counterparts are not trained to the same level as Finnish Frontier Guards usually are. Seminars have therefore been organised, for example on dog handling and passport control. One form of joint operation at this level is performed in the field of documentation examination. It is possible for Russian border guards to use Finnish equipment if they suspect that there could be a problem with a travel document.

Russian officials make use of the modern X-ray facility at the Vaalimaa border crossing point to check the loads of trucks. They use the Finnish X-ray scanning equipment several times a month. Two-thirds of customs offences occur at the Finnish-Russian border. They include attempted smuggling to Finland of cigarettes and alcohol. Illicit drugs are mainly coming from EU countries and Estonia (especially by ferry from Tallinn). Tax fraud, double invoicing etc. are major problems nowadays. Russian authorities ask for information about export traffic to Russia very frequently. Half of the heavy trucks leaving Finland for Russia have freight from other EU countries; the other half transport Finnish goods. Controlled deliveries are possible. In short, the exchange of experience and information is carried out at different levels and in different contexts.

The Finnish Frontier Guard also passes on reports about incidents whereby civilians who want to cross the Russian-Finnish border have been asked by Russian border control officers for (usually small amounts of) money or other goods. This appears to be functioning in the sense that officers involved often no longer work at that specific border crossing point.

4.2.2 Cooperation with Estonian law enforcement

The cooperation between the Finnish Frontier Guard and its Estonian counterpart is based on a customs agreement containing three elements: exchange of information on goods and passengers, planning and implementation of joint enforcement operations and proposing of training issues. There is one steering group and three sub groups: Harbour, Crime and Airport. Each sub-group prepares an annual plan. Since the autumn 2000 there has been a cooperation link between Helsinki and the Estonian Board of Customs in the field of (sensitive) drug enforcement, but the lack of resources on the Estonian side as well as the priority they give to tax issues (and not to law enforcement) is problematic. Even soft (intelligence) data is shared with Estonians. The essential thing is to have a reliable partner in Estonian customs, so that only a few people have access to sensitive data. From the five people constituting the drugs teams, two can exchange intelligence data, including unconfirmed criminal intelligence data.

Finesto is an example of a particular cooperation project between police forces in Finland and Estonia. It is a joint team of 4 Finnish and 3 Estonian police officers cooperating full-time. However, the Finnish stay in Helsinki and the Estonians in Tallinn. They act more or less as liaison officers and do not have special powers. The team handles dozens of requests per month and takes care of the operational follow up. The Estonians do not have access to Finnish police files, but they can require information from their Finnish colleagues, in which case they need to explain why. There have also been joint operational teams, but only for specific cases.

4.2.3 The Nordic liaison network

One of the most important channels for international cooperation is the liaison network. PTN stands for the Nordic cooperation of police and customs against drugs. There are many similarities between the Nordic countries and this makes cooperation a lot easier. The network has been in existence since the seventies. Its main tasks are drug trafficking prevention, training of investigators on narcotics offences, control cooperation at airports and investigative activities. PTN has 36 liaison officers from the various Nordic states seconded to 16 countries. The Finnish PTN liaison officer is stationed in Cyprus. Liaison officers of the various Nordic countries visit the other countries before they are sent to their foreign posts. It involves the police and customs. There is a PTN steering group and there are

regular meetings of PTN contact persons, but also common projects such as the South-West Asian heroin project, the doping project, etc. The liaison officers exchange information on trends but also carry out ad hoc common operations, examples of which are the project Viking (on Albanians involved in heroin smuggling), and the Gulf of Finland project (on amphetamine smuggling).

4.3 FRANCE

4.3.1 The International Technical Police Cooperation Service

Cross-border cooperation in France mainly takes place at two levels: national and regional. The national level is partly described in the next chapter, as far as it concerns the cooperation structured by Schengen, Europol and Interpol. But there is also the International Technical Police Cooperation Service (SCTIP), which is a section of the General Directorate of the National Police and is composed of a central service in Paris and standing delegations abroad.

56 delegations of SCTIP are located mainly in Europe and Africa, and to a lesser extent in America and Asia. Each delegation is headed by a police attaché who is accountable to the ambassador and covers one or several countries. SCTIP manages over 360 police officers working in over 80 countries. The unit is not specifically devoted to combating crime but participates in the implementation of the French foreign policy in terms of internal security. In this connection, it carries out surveys on technical cooperation activities, then designs plans and manages operations. SCTIP delegates can suggest and implement programmes of cooperation and assist the French community in the country.

4.3.2 Liaison officers

Since March 2001, the management of SCTIP also supervises liaison officers for immigration. They perform their duties in cooperation with national immigration services or border police headquarters in the various countries where they are located. This started after the implementation of the Schengen Agreement. Nowadays, immigration officers are posted in five countries: United Kingdom, Netherlands, Germany, Spain and Italy. Last year the territorial competencies of the various officers were extended, e.g. the liaison officer posted in the Netherlands also has authority for the Benelux, the one in Italy for Malta, the one in the UK for Ireland and the one in Germany for Austria. The liaison officers are placed at operational level. Their main role has become the fight against illegal immigration. So far, they do not deal with other types of crime. Here is a practical example of the job of the liaison officer in Rome:

1. Verify identity documents, passports, car registrations, residence licenses, telephone numbers, etc. on behalf of the French police. The Italian police can ask the French police through this officer similar questions regarding French documents encountered in Italy.
2. Clarify Italian policy or legislation matters that are relevant for the French police. The liaison officer can provide intelligence and information regarding rules, regulations and laws on employment, illegal immigration, etc. He has to gather and centralise information on new rules and changes in laws and provide this to the French police.
3. Provide legal (judicial) assistance, e.g. when investigating a case of illegal immigration the Italian authorities can ask for specific investigations to be carried out by the French police. The reverse can happen as well.

4. Check if investigations regarding illegal immigration carried out in Italy have any effect on the French situation. Whenever a case is investigated in Italy whereby there is a link with France, he contacts the Italian judge of instruction and tries to prepare/mediate the possible visits of French police to Italy.
5. Act as an ombudsman, e.g. in case of problems at airports concerning people with false papers who are sent to other airports by the airport authorities.
6. Prepare and take part in meetings of heads of border police and immigration services of Schengen countries. Liaison officers prepare the agenda, make proposals for further cooperation and formulate suggestions, for example for combined border actions and other operational plans.
7. Ease the exchange of investigative information. Liaison officers help in the dismantling of criminal networks. In one case an Asian individual with a false or forged Belgian passport was arrested with two Chinese minors at an airport in Rome. He was trying to immigrate to the US and was carrying an agenda containing several telephone numbers. A few days later a Colombian individual accompanying four minors was apprehended. The liaison officers compared the various telephone numbers found in their diaries and uncovered a criminal network. Italian police came to Paris to discuss the case and finally arrested several Chinese suspects who were involved in smuggling minors to the USA in a systematic manner. Another case, which took place in 2001, involved a ship apprehended near the French city Fréjus carrying about 900 Kurdish people. Italian law enforcement authorities found out that the ship originally had another name. They also traced eleven similar cases. The French liaison officer in Rome played a major role in these investigations in channelling information between the French and Italian authorities.

The national bureau on drugs trafficking OCRTIS also has liaison officers posted in other countries. In total, 17 officers are located abroad, including two in the USA, two in Colombia, one in Venezuela, one in Peru, one in Pakistan, one in Lebanon, one in Morocco, two in the Netherlands, two in Spain, two in Romania, one in Belgium and one in Turkey. They cooperate and exchange ideas and experiences with liaison officers of other countries. Drug liaison officers also provide general information on the economical and political situation. In the host country they use the consulate network. In some countries there is not only a drug liaison officer, but also other representatives of French law enforcement. Drug liaison officers increasingly deal with other types of crime as well, including paedophilia, organised crime, theft of art, money laundering, etc.

4.3.3 Regional cross border cooperation

At the level of regions, collaboration across borders has been amplified over the past few years by the establishment of common centres for police and customs cooperation. One of the main reasons for the creation of these centres was the finding that most international law enforcement structures, like Europol and Interpol, give priority to serious and organised crime. However, trans-national criminality not only concerns organised crime but also thefts, burglaries and the like, which are often perpetrated by criminals who live less than twenty kilometres away from the scene of the crime. Apprehending them is often difficult because they misuse national borders the same way as organised criminal groups do.

The main tasks of these centres are:

- exchange and analysis of information
- enhancement of trans-national cooperation
- support to criminal investigations
- collaboration with requests for mutual judicial assistance

- cooperation in the coordination of operations
- conduction of common crime pattern analyses
- collaboration in educational matters regarding trans-national cooperation.

The French-German common centre for police and customs cooperation (CCPD) in Offenburg was established in 1998. It is defined as a non-operational service, created with the aim of:

- warning of threats to security and public order as well as the prevention and investigation of punishable deeds
- participation in the coordination of operations which involve several authorities from different sectors (e.g. surveillance operations, hot pursuits, search operations)
- transmission in accordance with a common standard of any information gathered (regardless of duties to inform national headquarters)
- exchange of personal data, which are necessary to a criminal investigation or the readmission of nationals from a third country.

The most important services provided for are the following:

- identification of owners and drivers of vehicles
- requests regarding drivers' licences
- enquiries into actual addresses and places of residence
- identification of authorised users of telephones
- verification of the identity of individuals
- information in illicit drug cases
- information concerning cross-border surveillance (in urgent cases)
- information concerning cross-border hot pursuit
- preparation of investigative plans and harmonisation of investigative measures
- inquiries into the trafficking history of certain goods, especially arms and vehicles
- requests for arrests (filed in the Schengen Information System).

In order to understand the advantages and the difficulties of having a common centre, one needs to realise that there are many differences in the nature of the two countries involved. Many problems in law enforcement cooperation are caused by misunderstandings due to differences in culture and language. The concept of national borders, for example, is not the same. In France, the frontier is considered as a line, whereas in Germany one thinks of a border area. Until 1995, when the Schengen Agreement was implemented, the French conception was probably more realistic, but nowadays the German approach seems to be more pragmatic. Furthermore, the countries differ in the way they have structured their systems for internal security and law enforcement. France has a highly centralised state structure, whereas Germany has a federal structure. In Germany an important role is played by the political authorities of the Länder, while in France most matters are regulated by the centralised Ministry of Interior Affairs in Paris. Criminal laws and criminal procedures are different too. German police officers have more autonomy and discretionary power during the initial investigation, while in France the prosecutor immediately takes the lead of the criminal investigation. In the early phases of the centre there was a lot of misunderstanding on the German side of the French system, in which police officers are closely supervised by prosecutors.

The Offenburg centre also has to deal with differences between the various agencies involved. On the German side these are the state police forces from Baden-Württemberg, Rheinland-Pfalz, Saarland as well as the federal border police (Bundesgrenzschutz) and the customs (Zoll). On the French side these are the

National Police (including the border police – Police au Frontières and the judicial police – Police Judiciaire), the National Gendarmerie and the customs (Douane). All organisations have their own history, culture and working procedures, which can make it very difficult to collaborate. Details of the interagency cooperation are given in the next chapter. Relevant here is the notion that five of the agencies involved are under the auspices of a central, and two of a regional government. At central level, three different types of ministries (Interior Affairs, Finance and Defence) are involved.

The CCPD is open 24 hours a day, 7 days a week. However, the majority of requests (77% in 2001) are received during office hours. In 2001, the total number of requests was 8,350, which is 21% more than in the previous year. The majority of requests concerned the ownership of cars. Relevant in this respect is the fact that approximately 100,000 people cross the Rhine river on a daily basis, for commercial or cultural reasons or simply as tourists. There were 11 common cases of cross-border surveillance (5 in 2000) and one case of hot pursuit across the German-French border. Last year there were 90 requests for judicial assistance (against 63 in 2000).

How do the officers of the CCPD deal with these matters? Interviews suggest that pragmatism is necessary for cooperation to materialise between officers whose backgrounds greatly vary. On the one hand the functioning of the centre depends very much on individuals whose knowledge and experience are decisive. On the other hand the centre can only operate legally within the space provided for by the formal framework. In practice, CCPD staff encounters large numbers of legal obstacles and hindrances as well as time-consuming procedures. Trustful collaboration and real teamwork are essential in dealing with such obstacles.

Although there are many examples nowadays of joint cross-border cooperation in Europe, the CCPD forms a unique mixture of institutions of formal control. In fact, the centre serves as a mediator institution between the various organisations involved. By a process of successive adaptation of procedures, working habits and cultural aspects, CCPD staff is more and more successful in attaining the centre's objectives.

5 Interagency cooperation within countries

Interagency cooperation with a country is an important pre-condition for effective cross-border cooperation and measures against transnational organised crime in general. It is thus appropriate to assess the situation within each of the three countries surveyed.

5.1 SLOVENIA

The Slovenian police and customs have an agreement of cooperation for combating drugs offences. While the customs authorities have a special unit for the trafficking of illegal goods they do not have executive powers. For arrests, house searches etc they need to cooperate with the police. The police in turn discuss controlled deliveries with customs. Moreover, customs officers participate in training seminars organised by the police.

The economic crime division of the Slovenian police is trying to conclude a memorandum of understanding with tax and customs authorities to improve cooperation. But such an agreement would not mean general access by the police to the files of customs without authorisation.

According to several representatives interviewed, Slovenia is so small that it does not need a great number of coordinating institutions, that Slovenian police are able to cooperate and exchange information efficiently. Contact points in Vienna and Budapest dispose of elaborate networks. Slovenian law enforcement can operate 24 hours a day using all kinds of special techniques. They do not need hard data to start up an investigation; a simple request is sufficient. There exists a central database including soft data with various levels of authorisation and there is a central unit for crime analysis involved in all major cases. It now also possesses several packages of analytical computer software, the same as that used in neighbouring countries.

Nevertheless, according to information received during the visit, interagency cooperation in Slovenia, to a large extent, seems to depend on the quality of the personal relationship of representatives of different institutions.

5.2 FINLAND

While cooperation between the Police and the Frontier Guards is facilitated by the fact that both belong to the Ministry of Interior Affairs, cooperation with Customs is a necessity in view of overlapping competencies in the field of border control. The long history of cooperation between Finnish Police, Customs and Frontier Guard has recently been confirmed by the Council of State in a decree (2001).

Interagency cooperation exists on three levels:

- At the national level an Executive Group has been formed, composed of the Chief of the Frontier Guard, the National Police Commissioner and the Director General of Customs.
- At the regional level Management Groups have been established, each consisting of the Commander of the Frontier or Coast Guard district, the Provincial Police Commander and the Head of the Customs district. Cooperation planning takes place at that level.
- At the local level practical collaboration between the three agencies focuses on the border crossing points. Information is exchanged and operations are

carried out jointly. Cooperation at the national borders is complemented by interagency cooperation at the telecommunications centre of the National Bureau of Investigation in Helsinki. This centre is part of the Finnish Police, but also houses liaison officers from both the customs and the Frontier Guard. It handles messages for all international police channels, including Interpol, Schengen, Europol and Bureaux des Liaisons (BDL). This solution is considered efficient, since the centre has the most experience regarding the appropriate channels to be used in a particular case.

5.3 FRANCE

Interpol, Schengen and Europol are the three main formal structures for the operational cross-border cooperation used by French law enforcement agencies. Within the Ministry of Interior Affairs a special unit (the Section Centrale de Coopération Opérationnelle de Police – SCCOPOL) has been established, which is dedicated to this type of cooperation. The unit handles over 130,000 messages a year. It is an interdepartmental unit which does not only work for the national police force (Police Nationale), but also for the National Gendarmerie (under the Ministry of Defence), the customs (under the Ministry of Economy and Finance) and the bureau for mutual legal assistance (Mission Justice rattachée au Bureau de l'Entraide Répressive Internationale et des Conventions – BERIC).

The National Police is represented in SCCOPOL with 52 officers and translators. Apart from operational case-files, that staff carries out logistical tasks (translation, international negotiations, management, secretariat, and computer maintenance) for all parts of the system. The National Gendarmerie contributes 23 and customs one (an Inspector) staff. Two judges with four assistants represent the Ministry of Justice. They check the legal validity of requests and take care of the necessary authorisations, especially in Schengen cases. These include – *inter alia* – provisional arrests with a view to extradition of suspects whose names are filed in the Schengen Information System (SIS). Furthermore, it issues the authorisations required to deal with cross-border tracing requests from Schengen partner states.

6 Conclusions

6.1 BOTTLENECKS IN CROSS-BORDER COOPERATION

6.1.1 Absence of legal frameworks

Although mutual (legal) assistance in criminal matters has a long tradition, there still is a lack of legal instruments in the area of cross-border cooperation. Until recently, formal international cooperation was heavily focused on judicial cooperation, including extradition, transfer of proceedings, or transfer of the execution of sentences. The growth of cross-border traffic of both persons and goods over the years has had a significant impact on trans-national crime. Therefore, the need for cross-border police cooperation has increased enormously.

The majority of member States of the European Union are participating in the Schengen Agreement, which offers opportunities for cooperation between law enforcement agencies of neighbouring countries.³ But for the remaining European countries it is much more difficult to reach a satisfactory level of cross-border cooperation. Countries should therefore urgently ratify those international instruments facilitating direct police and judicial cooperation across borders and supplement them with bi-lateral agreements.

6.1.2 Risk of violation of the sovereignty of neighbouring countries

The internationalisation of investigations can lead to situations in which detectives or other law enforcement officers carry out investigative actions in the sovereign territory of a neighbouring country. At the moment, it is not always clear how far they can go. The basic principle is that foreign officers can never exercise powers exceeding those of the national investigating officers in the country in question. But they are also bound by the legislation of their own country. This means that the strictest rules apply, resulting in a minimum arsenal of authorised actions.

In practice, failure to properly respect national sovereignty in the course of cross-border investigations may occur caused by a lack of time – e.g. when immediate action is called for in cases of hot pursuits – or a lack of knowledge. The latter is the more important factor. This mainly refers to not knowing the rules of the neighbouring country that are applicable in a particular situation and/or the correct channels for requesting necessary authorisations for specific actions. A third factor is a lack of trust. Law enforcement officers often look for clear and visible successes in the fight against crime and they do not want to leave the ‘laurels’ to the authorities of another country. Furthermore, in some cases there is a risk of corruption. For this reason, information is not shared with counterparts across the border or it is shared at the latest possible moment and only if it cannot be avoided. Moreover, necessary notifications of competent authorities sometimes take place only at the latest possible moment. In some cases local investigating officers of the neighbouring country are informed, but not the judicial authorities. It is quite clear that this behaviour does not help build up trust and establish a cooperative attitude between parties on both sides of the border.

³ The Schengen Agreement of 1985 was followed by the Schengen Implementing Agreement of 1990. Both were integrated into the European Union structure in 1999 by the Amsterdam Treaty.

6.1.3 Diverging legislation

Many of the persons interviewed during this survey mentioned major differences between countries regarding laws and regulations in criminal matters. A lot of concrete examples were brought forward. For instance, some European countries have very strict rules on the application of special investigative means, whereas others are much more flexible and tolerant in this respect. Another area in which there are important differences between countries is criminal procedural law. What is generally regarded acceptable as evidence in a criminal trial in one country is not necessarily accepted by the judge in a neighbouring country. It is obvious that these differences have an obstructive effect on cross border cooperation.

6.2 BEST PRACTICES

6.2.1 Integration of channels for cross-border information exchange

In the past, police officers who wanted to communicate with their counterparts across national borders could choose between two types of channels: an informal and a formal one. The informal network consisted of the well known 'old boys network' of personal relationships. The most commonly used formal network was the Interpol organisation. But times have changed. The number of messages exchanged between police and judicial authorities from different countries has increased enormously. Also the number of channels through which messages can be sent has expanded, especially within the European Union. Apart from the two already mentioned, there is now also the Schengen Information System, Europol and the extended networks of liaison officers. Furthermore, the technical means by which communication can take place have been enlarged. It includes not only ordinary mail, telex and telephone but also e-mail and in some cases direct data communication links. At the same time, these developments make it much more difficult to know which channel and what means should be used to communicate across borders in a particular case and to keep track of and follow-up to requests sent out and received from foreign counterparts. Traditional informal networks, which have anyway been unstable because of staff fluctuations, have diminished in importance.

These developments call for structural coordination of international exchange of communications.

Finland and France have acquired good experience with national bodies to handle the increasing flow of messages sent to and coming from domestic and foreign law enforcement agencies. Both the Telecommunications Centre of the Finnish National Bureau of Investigation and the Central Section for Operational Police Cooperation of the French Ministry of Interior Affairs can serve as examples of best practice in this area, as they provide an integrate approach to the cross-border exchange of messages in criminal matters. Moreover, both centres have a staff composed of representatives from various agencies and disciplines. This ensures that appropriate level of expertise needed for an adequate choice of channels and the correct application of formal procedures. Apart from simplifying the way the work is organised for the benefit of investigators and courts, the centres offer the dual advantage of coordinating the response from different departments and providing foreign partners with a single contact point. Finally it makes it possible to ensure that full advantage is taken of the way the various communication and cooperation channels dovetail with one another, functionally and geographically.

6.2.2 Formal agreements and informal personal networks

All three countries in the survey have bilateral agreements with neighbouring states on crime prevention and control in order to overcome differences in legal and institutional systems. But the signing and ratification of a formal agreement by governments is not enough. In order to cooperate effectively across borders, agencies involved need to be educated and trained. And perhaps even more important is that they need to build trustworthy relationships with their counterparts on the other side of the national border. The relevance of establishing and maintaining personal networks on various levels should not be underestimated. The posting of liaison officers in other countries as well as the organisation of regular meetings between counterparts of both sides of a national border can help build such networks and are examples of good practice in this respect.

Direct contacts on various levels between representatives of agencies involved form an essential complement to formal agreements and structured communication networks, firmly based and embedded in the agencies involved. Best cooperation across borders is achieved when both formal and informal structures and channels are used.

6.2.3 Multi level cooperation

The establishment of a coherent three-tier framework for the cooperation between Finnish and Russian police ensures that problems are addressed at the appropriate level. Thus, it forms an excellent instrument for improving cross-border cooperation and for overcoming the considerable differences in legal systems, organisational structures and working procedures between the two countries involved.

6.2.4 Combining cross-border and interagency cooperation

The experience acquired by the Offenburg common centre for police and customs cooperation over the past two years shows that very good results can be achieved by combining cross-border cooperation with interagency cooperation. All relevant law enforcement agencies are represented in the centre, except judicial authorities.

In general, the sharing of information between police forces across borders is not very common. Sometimes it is difficult to pay sufficient attention to international matters as national cases are given priority. Placing under one roof officers of the various agencies in the two countries involved has facilitated a climate of trust, which is essential for the exchange of knowledge and information. In the common centre, cooperation between French and German law enforcement agencies is focused on a specific region and operational matters. This focus stimulates collaboration. Such a regional model would seem the most appropriate approach to many problems. Centres of this type are also foreseen for the border regions with Switzerland, Italy, Belgium and Spain.

6.2.5 Extension of the competencies of liaison officers

In France, a discussion has started on enlarging the mandate of liaison officers for illegal immigration and drugs. So far, it is not clear what the conclusion will be. Nevertheless, in practice, drug liaison officers already deal with other types of crime, in particular of organised crime, as well. Although the handling of distinct types of crime may pose certain difficulties, an extension of the competencies of drugs and immigration liaison officers would bring advantages, in particular in

view of interagency cooperation. Considering the way criminal organisations operate, a restriction to drugs and immigration issues does not seem very useful.

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