

*EU Balance of Competences Review: Police and Criminal Justice report*  
**Stakeholder Roundtable**  
**Brussels, 19 June 2014**

The following is a summary record of key points made by participants during the event. It was agreed that the event would run under the Chatham House Rule. An agreed note of the meeting would be used as evidence for the Police and Criminal Justice Balance of Competences report, but contributions at the event would not be attributed directly to any individuals or organisations.

**General comments - Has the development of EU police and criminal justice competence over the years led to improved cross-border co-operation?**

1. It was generally agreed that EU action in this area has been positive but improvement is needed. This is a young policy area; it has only been active since 1999.

*Positives*

2. Europol, Eurojust, the European Judicial Network, the 2000 EU Mutual Legal Assistance Convention<sup>1</sup> and the financing programmes are all useful tools and none of them would have existed in that form without an EU competence. Although it is recognised that alternatives may have emerged through the Council of Europe, they would not have existed in the form of the EU measures. A weakness in such an inter-governmental approach is that criminal conventions would have to be ratified in national parliaments. This would not be an easy alternative and even though the conventions of 1957,<sup>2</sup> 1959<sup>3</sup> and 1990<sup>4</sup> were successful, this is not the norm.
3. Attendees pointed out that Eurobarometer polls generally show the public to be in favour of EU-wide police cooperation.
4. The speed with which action can be taken as a result of EU measures was highlighted as being particularly good.

*Criticisms*

5. It was suggested by some attendees that instruments have been effective in cooperation, but potentially at the expense of the impact of the individual's (/fundamental) rights. This was later echoed in further comments expressed that prosecutorial and law enforcement measures had advanced more than provision for the rights of victims/defendants.

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<sup>1</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

<sup>2</sup> European Convention on Extradition, Paris, 13.XII.1957.

<sup>3</sup> European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20.IV.1959.

<sup>4</sup> Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8.XI.1990.

6. One major problem that was highlighted is poor and inconsistent implementation. This was seen to be the fault of Member States, rather than the EU. One example given was the European Supervision Order; which has not been implemented with enthusiasm. This 'cavalier' attitude of Member States towards implementation includes not delivering to deadlines and inaccuracies in transposition.
7. It was suggested that the current situation might have progressed further than it has if Member States did what they could as opposed to what they wanted.

### **Judicial Cooperation**

8. Co-decision with the European Parliament is welcome and will help in this area, improving on the former simple inter-governmental set-up. This is because there is a greater emphasis put on procedural rights by the European Parliament and measures have to be negotiated with a higher degree of transparency. The voices of NGOs and citizens will be heard through direct access to MEPs. Ultimately there is a wider range of views coming through the European Parliament as opposed to the weight of prosecutorial and law enforcement opinion on national government negotiations. The result is greater contestability and an example was given where Human Rights refusal grounds were incorporated into the European Investigation Order (EIO). Some attendees were hopeful about the EIO in that it would 'take the strain' from 'misuse' of the European Arrest Warrant.
9. It was noted that the UK is one of the biggest users of Joint Investigation Teams (JITs) – many investigations would not have been conducted without Eurojust funding.
10. One attendee offered a case study of a drug smuggling case concerning an EU citizen who was arrested in Japan. This case involved the use of the 2011 EU-Japan Mutual Legal Assistance (MLA) treaty, a JIT, the European Judicial Network and a liaison magistrate, financed by Eurojust and JITs. This showed that the total set-up worked together successfully.

### **Police co-operation**

11. EU action in this area has opened up opportunities. The Europol service costs the UK approximately £8m per year; it was suggested that it was possible for the UK to do it 'on its own' without Europol, but it would undoubtedly be far more expensive.
12. Furthermore, the extent of the UK's usage of Europol was commented upon and that only France, Germany and Belgium used Europol more than the UK.

13. If Europol did not exist, the work that it carries out is not the type of work that could be facilitated by Interpol, so that work would have to be done bilaterally.
14. It was suggested that the UK could make more use of Europol. In the future, it was expected that there would be a need for even more police cooperation; for example in the field of cyber criminality. The idea of Europol becoming a “European FBI”, with coercive powers was, however, clearly dismissed. Europol operates in cooperation with Member State authorities in order to help those authorities.
15. Europol is useful in coordinating and facilitating the cooperation of Member States, especially in one-off projects.
16. There is limited EU competence in police cooperation apart from through Europol. Articles 87 and 88 of the Treaty on the Functioning of the European Union set out the legal basis for police cooperation, which is sufficient. It is the policy of the EU to do as much as possible through Europol – it has a legal base on which it operates and flexibility already exists, so there is no need for any further changes.
17. It was suggested by attendees that the balance in this area is focusing too much on the pursuit of perpetrators without looking at the safeguards. There needs to be increasingly ‘joined up thinking’.
18. A point was made in regard to Passenger Name Records (PNR) that there is no adequate data retention protection in place currently in regard to the proposed EU-US agreement and that this should be a priority for cooperation in this area. Reference was made to the recent annulment of the Data Retention Directive by the Court of Justice of the European Union.

#### **Minimum standards in criminal law and procedure?**

19. There was generally positivity about the new measures being proposed such as the EIO.
20. There were concerns, however, in regard to the selective participation of the UK in JHA proposals. The UK is seen as a benchmark in a lot of minimum standards, operating under the rule of law. The perception of the UK is undermined such as in the decision not to opt in to the ‘access to a lawyer’ measure. If the UK has equivalent domestic legislation already in place, this should be a reason to opt in to such measures.

21. It was suggested that this is an area where the UK should lead as it has strengths. It was stated that the UK is not in the Euro or Schengen and this is an area where the UK can 'give' and participate unless there are serious complications at home such as critical consequences for the UK legal systems. There are safeguards in place in the EU such as proportionality and the emergency brake.

*22. Future Challenge: role of the Commission*

One issue that was identified was that the impact assessments that accompany Commission proposals need to be improved. A second issue was that the Commission needs to take Reasoned Opinions more seriously, and cited the European Public Prosecutor Office (EPPO) case study as an example of how the Commission response needs to be improved.