



OVERVIEW PAPER

Clingendael European Studies programme (CESP) Round Table Seminar

From The Hague to Stockholm: the Future of EU's Internal Security Architecture and Police Cooperation

Author: Sarah Wolff¹

On the initiative of the Swedish presidency, an informal Justice and Home Affairs (JHA) Ministerial meeting will take place at Europol, in The Hague on 1st October 2009. Discussions will revolve around two issues: the future of police cooperation in Europe with links to the Stockholm programme and discussions on the development of Europol's operational capacities. This informal meeting provides a unique opportunity to engage in a deeper reflection on the future of EU's internal security and police cooperation. Participants to the Clingendael round table will be senior officials and keynote policy-makers participating the next day to the informal JHA Ministerial meeting.

This informal meeting comes at an opportune moment, Europol having celebrated its 10th anniversary on 1st July 2009, as well as in a context of landmark decisions regarding the future of Europol and police cooperation in Europe. On 6 April 2009, a Council Decision that will replace the Convention of Europol by 1st January 2010, was adopted. This new legal basis will turn Europol into an agency funded from the general budget of the European Union (EU) and subject to the European Community (EC) financial and staff regulations. This will align Europol with other bodies and agencies in the JHA pillar and will ensure some involvement of the European Parliament in the functioning of Europol notably via the budget procedure.

This background paper analyses these policy developments in the light of the Stockholm programme, which will succeed to The Hague Programme. So far, progresses have been slow in criminal law, family law and there has been considerable delays in the transposition in EU Member states' legislation. Other obstacles include a low exchange of information between Member states regarding persons convicted of offences, but also weak operational cooperation between police forces.

After assessing The Hague Programme's achievements in the field of police cooperation, the present background paper analyses the latest Europol Council decision and possible future changes with the Lisbon Treaty in the field of accountability and judicial scrutiny. Then, the paper addresses the issue of the external dimension of JHA, and the leading role taken by Europol in that field; questioning whether the activism that Europol shows in its external relations is not turning it into an hostage of the JHA external dimension, rather than a proactive actor. The paper will conclude raising some key issues that could be taken on board by the Stockholm Programme.

¹ Sarah Wolff is a Research Fellow at the Clingendael European Studies Programme. I am grateful to Professor Den Boer and Suzan Nollen for their useful comments on the paper.

1. A “mixed” assessment of The Hague Programme

Succeeding the Tampere agenda (1999-2004), The Hague Programme² established several policy objectives for the 2004-2010 period. A few months before The Hague Programme expires, policy-makers are debating on the future priorities of the so-called Stockholm programme. It will be followed in 2010 by an Action plan, which will detail the measures to be put in place. Before pointing out recent developments in the field and how this will impact on the future of Europol and police cooperation for the next five years, it is necessary to assess what have been the achievements of The Hague programme, as well as what were the main obstacles.

The evaluation conducted by the European Commission in 2009 reveals a mixed picture in the field of police cooperation.³ The “*principle of availability*” according to which information shall be made available to a police officer from another Member state should be at the core of police cooperation in Europe. But reality on the field shows that its implementation is difficult. Simplifying the exchange of information and intelligence, in order to foster effective and expeditious exchanges between the national law enforcement agencies is not an easy task. The report also stresses that, in the field of police cooperation and mutual recognition in criminal matters, ambitious proposals often have to be reduced to lowest-common denominator policies.⁴

This is partly due to the pillar structure as well as to a lack of transposition of legislative instruments by Member states⁵ and a lack of judicial recourse like the infringement procedure. Because the third pillar has been governed by intergovernmentalism, framework decisions and decisions, the legal instruments provided by article 34 TEU, have no direct effect in the national legal systems of the 27 Member states. Hence, as explained by Ladenburger, “the functioning depends entirely on the good will of each member state to transpose them faithfully in national law, and this all the more so since the Commission has no tools for controlling their correct implementation, such as the infringement procedure of Article 226EC”.⁶ A good example of weak implementation is the obstacles met by the European Arrest Warrant Decision (EAW).⁷

² European Commission (2005). *Communication from the Commission to the Council and the European Parliament of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice*. COM (2005) 184 final, Official Journal C 236 of 24.9.2005

³ European Commission (2009). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Justice, Freedom and Security in Europe since 2005: an evaluation of The Hague Programme and Action Plan*. COM (2009) 263, Brussels 10 June 2009, 17p.

⁴ European Commission (2009). *Ibid.* p. 14

⁵ Legislative instruments in the field of JHA are: Common positions, Framework decisions, Decisions and Conventions

⁶ p. 22. Ladenburger, Clemens (2008). “Police and Criminal Law in the Treaty of Lisbon. A New Dimension for the Community Method”. *European Constitutional Law Review*, 4: 20-40.

⁷ Some obstacles have aroused with the EAW and the case raised by the German constitutional court. In a judgment on 18 July 2005, the *Bundesverfassungsgericht* declared that the German implementing law was against German Basic Law and argued that “extradition of a German would run counter the principles of legality enshrined in the constitution, as citizens cannot be handed over against their will to a legal system which they ignore and in which they do not have confidence”(Fichera, M. 2009: 82) . A new implementing law had to be drafted. The EAW, which also encountered some obstacles in Poland, Cyprus and the Czech Republic, reflects well the discrepancy between a unanimous adopted

The report also insists on the need to address implementation, as well as improving the use of evaluation, since in many areas of JHA, data is not available. As stated in the report, “the credibility of the next multiannual programme will depend on the extent to which the EU can report meaningfully on its effectiveness”.⁸ This is a crucial step to present concrete results to EU citizens, and to improve the legitimacy of judicial and police cooperation.

2. The Europol Council Decision and the Lisbon Treaty: towards enhanced accountability and judicial scrutiny?

Innovations regarding the democratic control of the European Police Office have been the result of intense debates over the last decade.⁹ With the Council decision entering into force on January 2010, Europol will now be accountable, via the budgetary procedure, to the European Parliament. The Council decision also simplifies the amendment of the legal basis with no longer lengthy ratification process required. This will make response to crime trends swifter in the future. The future agency will gain some additional operational capacities, as Europol will be able to support Member states when investigating crimes, which are not necessarily transnational; it will also facilitate the cooperation with third partners and third parties. Lastly, Europol will have greater flexibility to establish new IT systems and will improve its capacity to provide intelligence and analytical support to the Member States.

When assessing progresses towards accountability, some have argued that by changing the legal basis of Europol from a Convention into a Council decision ratified by the 27 Member states, national parliaments, which were earlier involved in the ratification of the Protocols amending the Europol Convention, will be weakened. However, the entering into force of the Lisbon Treaty shall mitigate that risk.¹⁰

In the Lisbon Treaty, the role of the European Parliament (EP) and national parliaments is further detailed: “The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks” (article 88 TFEU).¹¹ This entails that further modifications and amendments to the Europol Council decision would have to be adopted through the “ordinary legislative procedure”, the so-called co-decision procedure where the European Parliament is involved. It is further stipulated that “these regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments”.

Framework Decision by the Member states and the problems of trust between European judicial systems in practice. See Fichera, M. (2009). “The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?” *European Law Journal*, 15(1), January 2009: 70–97.

⁸ European Commission (2009). *Ibid.* p. 16

⁹ For more information over the debate that led to the adoption of the Council decision, please see Wagner, Wolfgang (2006). “Guarding the guards. The European Convention and the communitization of police cooperation”, *Journal of European Public Policy*, 13:8, 1230-1246pp.

¹⁰ Peers, Steve. (2007). “Statewatch analysis Europol: The final step in the creation of an “Investigative and Operational” European Police Force”. *Statewatch*, p.4

¹¹ Treaty on the Functioning of the European Union (TFEU)

Therefore, under the Lisbon Treaty, national parliaments, together with the EP should be more associated to the Europol-related decisions.¹²

In addition, thanks to the protocol on the “role of national parliaments”, JHA provisions, and therefore Europol-related measures, shall be subject to the scrutiny of the national parliaments, which will have an eight weeks period to scrutinise draft legislation. It could be the case also that if there is a majority of national parliaments against a proposal, then they can present a reasoned opinion to the Council or the European Parliament. The “protocol on the application of the principles of subsidiary and proportionality” also introduces an “early warning mechanism” according to which if one third of national parliaments expresses concerns with a particular legislative proposal, the Commission must review it and eventually submit a redrafted version. This threshold will be one quarter for proposals on JHA.

One of the main caveats of these innovations is the still limited jurisdiction of the European Court of Justice. The Lisbon Treaty excludes the competence of the “Court of Justice” when it comes to “review(ing) the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security” (article 276 TFEU). It remains to be seen though whether by having as a legal basis a Council decision, the jurisprudence will address the review of the legal acts of Europol.

Questions for discussion:

- Are those path-breaking innovations announcing the advent of a new police/security governance at European level?
- What are the remaining obstacles for a full judicial and democratic control?
- How can we ensure that future police cooperation will be both effective operationally and legitimately (democratically, legally, socially)?
- Is there necessarily a trade-off between effective operational cooperation and legitimacy?

¹² It should be highlighted nonetheless that the Lisbon Treaty also includes some safeguards against a full communitarisation of JHA issues notably in the field of operational police cooperation. It stipulates indeed that operational cooperation between member states law enforcement authorities (article 87.3 TFEU) as well as legislation which lays down the conditions and limits of law enforcement and judicial authorities which “may operate in the territory of another Member State in liaison and in agreement with the authorities of that State”(see article 89 TFEU) will remain areas under the unanimity rule.

3. What future for operational police cooperation in Europe?

If Europol's competences have been substantially expanded since the creation of the European Drugs Office, police cooperation and security practices have also considerably evolved over the last decade. One may only look at the dynamic policy field that has become JHA, some even arguing that European integration nowadays triggered by the achievement of a European Area of Freedom, Security and Justice.

Looking at the operational side of police cooperation in Europe, there is clearly a multiplicity of channels: Europol, Interpol, Schengen, bilateral relations, etc... In this hazy hub of interlocutors it is difficult for European police officers to know which one should be privileged. Operational cooperation is also hampered by a lack of supply of information to Europol by national police agencies. In some specific fields of police cooperation, such as counter-terrorism, there is indeed a strong preference of national police officers to privilege informal and bilateral contacts with their counter-parts as well as pragmatic and flexible networks (described as *horizontal type of governance*).¹³ Likewise Eurojust, the SitCen¹⁴ and the European Task Force of Chiefs of Police (EPCTF), Europol functions according to a *vertical type of governance*, where hierarchy and central co-ordination play an important role and which is often considered more bureaucratic and cumbersome by professionals.¹⁵

Beyond its information and coordination prerogatives, Europol has so far lacked the executive powers that would turn it into a FBI type of agency. Europol supports European national police thanks to its information systems and pan-European analysis. It cannot for instance arrest people or conduct house searches. This has to be conducted by national police forces, often on the basis of analysis of information provided by Europol. Nonetheless, the Amsterdam Treaty has mandated the Council to adopt measures enabling Europol to participate in joint investigation teams and to invite a member states to conduct investigations on a specific case.¹⁶ With the adoption of the Council decision it can now be expected that past hurdles encountered with the amendments to the European convention will be overcome, and that Europol is likely to see further operational power more easily adopted in the coming years.

¹³ Den Boer, M., Hillebrand, M. and al.(2008) "Legitimacy under Pressure: The European Web of Counter-Terrorism Networks". *Journal of Common Market Studies* 2008, 46(1), pp. 101-124.

¹⁴ The SitCen is directly attached to the High Representative, Javier Solana, and led by director William Shapcott. The SitCen has moved from its initial role in providing intelligence-based foreign policy assessments to expanding its work on counter-terrorism, counter-proliferation and mission support. It is composed of three units: the Civilian intelligence Cell (CIC), comprising civilian intelligence analysts working on political and counter-terrorism assessment; the General Operations Unit (GOU), providing 24-hour operational support, research and non-intelligence analysis; and the Communications Unit, handling communications security issues and running the council's communications centre (ComCen). Around 100 experts staff it.

¹⁵ Ludo Block quoted in Den Boer, M., Hillebrand, M. and al.(2008). *Ibid.*

¹⁶ p.1232. Wessels, Wolfgang (2006). "Guarding the guards. The European Convention and the communitization of police cooperation". *Journal of European Public Policy*, 13(8),pp. 1230- 1246.

The proposals made by the Future Group¹⁷ regarding police cooperation is to deepen police cooperation with a predominant role for Europol when it comes to exchanging knowledge, integrating police file management and security technologies. Proposals include a simplification of the regulations in the field of cross-border criminal investigation as well as the strengthening of Europol as a “*genuine information platform for Member States*”. The Group also proposed to establish a model of Police and Customs Cooperation Centre (PCCC) applicable to all Member States, especially in border zones.

Another debate that is being heavily debated in the field of operational cooperation is the broadening of the access of databases such as SIS, VIS, Eurodac, to Europol and national police forces. If one wants Europol to become the leading agency of the EU intelligence model, not only does it implies technical operability amongst various IT systems, a common approach for the exchange of information, but it also requires finding a balance between data protection and operational needs. One of the measures adopted by the European Commission in September 2009 aims precisely at authorising the 27 police forces and Europol to compare the fingerprints contained in Eurodac with fingerprints in the possession of police forces, in the fields of the fight against terrorism and serious crime, including trafficking in human beings and drugs. The package also regulates the procedure to request those fingerprints and provides a series of guarantees in the field of personal data and fundamental rights.¹⁸ This initiative provoked a general outcry in the NGO community. The Dutch Meijers Commission¹⁹ warned in 2007 against the negative effects of such an initiative, explaining that such measures could risk an annulment by the European Court of Justice, notably because such an extension of the Eurodac regulation would be incompatible with basic principles of European law, constitutional law of the Member states and international standards and would also lack sufficient means to protect the rights of asylum seekers.²⁰

Finally, to effectively implement the “*principle of availability*” of information the Future Group also suggested that information should be shared by automatic data transfer instruments. The Hague Programme introduced this principle in 2004.

¹⁷ The ad-hoc group was composed of the following permanent members: Commissioner Jacques Barrot for Justice, Freedom and Security, Franco Frattini ex Commissioner for Justice, Freedom and Security, Wolfgang Schäuble German Interior Minister, Rui Pereira, Portuguese Minister of Internal Administration, Dragutin Mate, Slovenian Interior Minister, Michèle Alliot-Marie, French Interior Minister, Brice Hortefeux French Immigration Minister, Beatrice Ask Swedish Justice Minister, Ivan Langer Hungarian Interior Minister, and Tobias Billström Swedish Minister for Migration and Asylum. The Informal High Level Advisory Group on the Future of European Home Affairs Policy was created on the proposal, at the Dresden Summit, of the German Interior Minister and the Vice-President of the Commission. It later became known as the Future Group on Freedom, Security and Justice.

¹⁸ Agence Europe (2009). *EU/JHA: Police to have access to asylum seekers' finger prints*. Bulletin Quotidien Europe 9974, 11 September 2009.

¹⁹ The Meijers Commission, also officially called the Standing Committee of Experts on International Immigration, Refugee and Criminal law, was established in 1990 by five NGO's: the Dutch Bar Association, the Refugee Council, the Dutch section of the International Commission of Jurists, the Netherlands Centre for Immigrants/FORUM and the National Bureau against Racism (LBR).

²⁰ See opinion of the Meijers Commission on <http://www.commissie-meijers.nl/assets/commissiemeijers/Commentaren/2007/CM0714%20Note%20Standing%20Committee%20on%20use%20of%20Eurodac.pdf>

The Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement agencies of the Member states of the EU (the so-called "Swedish framework decision" because it was proposed by Sweden in 2002 and entered into force on 18 Dec 2008) was a first attempt to implement the principle of availability. It sets up time limits for answering requests for information and tried to lift restrictions of information exchange between law enforcement agencies based on the principle of mutual recognition of the competences of those agencies. In 2005, seven Member states²¹ adopted an international police cooperation agreement outside EU structures to further implement the principle of availability: "the Prüm Treaty". In 2008 a Council Decision (on the stepping up of cross-border cooperation, in particular in combating terrorism and cross-border crime) was adopted (the Prüm Decision) to integrate parts of the Prüm Treaty related to the third pillar into the EU legal framework. It contains rules on conditions and procedure for the automated transfer of DNA profiles, fingerprints and car registration data. Europol was originally not involved in the Prüm Treaty. However, the 2008 Swedish initiative suggested establishing an Ad Hoc Group on information exchange to deal with implementation of the Swedish framework decision. It proposed to extend the possibilities for Europol to process DNA and fingerprints.

Questions for discussion:

- How can mistrust amongst national police forces be tackled?
- How can Europol become the privileged agency for information exchange and of the EU-led Intelligence Model (European Criminal Intelligence Model- ECIM)?²²
- Is a global inter-agency strategy needed?
- How is it possible to find a balance between data protection requirements and operational needs?
- How will the future Information Management Strategy²³ in the field of JHA look like? How can information management systems help best the enhancement of police and judicial cooperation?
- Will a single entity/framework dealing with the various databases be useful for enhancing operational capacity of police forces?
- Should Europol have access to the Prüm exchange mechanism?

²¹ Austria, Belgium, France, Germany, Luxembourg and The Netherlands

²² The European Criminal Intelligence Model (ECIM) is a methodology developed in 2005 under the UK Presidency. Based on the experience of the National Intelligence Model in UK policing. ECIM was adopted by EU Ministers and implemented at Europol. Its chief instrument is the EU Organised Crime Threat Assessment (OCTA), modeled on the UK Threat Assessment (UKTA). For more information see p.103 House of Lords (2007). *Europol: coordinating the fight against serious and organised crime. Report with evidence*. European Union Committee. 29th Report of Session 2007-2008. 285p.

²³ Within Europol, in the framework of the Strategic Information Management Committee, an Information Management Strategy was developed. It provides priorities in the field of information management, with the aim to strengthen the role of Europol in the exchange of law enforcement information within the EU. In May 2009, a High-level statement about an EU information management strategy was formulated in the Council. While insisting on data protection, the EU IMS in the field of JHA would aim at diffusing mutual recognition, providing horizontal IT support and standardization, as well as a streamlined and reinforced data security regime at EU and national level. See Council of European Union (2009). *EU Counter-Terrorism Strategy- Discussion paper*. 9717/09, Brussels 14 May 2009.

4. The external dimension of JHA and police cooperation: which future for the internal-external security conundrum?

The Future Group identified the implementation of the external dimension of JHA policy as one of the key challenges in the coming years.²⁴ The subsequent section looks at the multiplication of agreements between third countries and Europol, wondering about the impact on the long-term for the efficiency of the organisation; as well as at the increasing linkages between internal and external security via the cooperation between Europol and ESDP missions.

The multiplication of agreements with third countries: Europol hostage or actor of the JHA external dimension?

In its relations with third countries, Europol can negotiate two types of agreements. Following the Council decision of 27 March 2000,²⁵ Europol was authorised to either conclude *operational agreements* or *strategic agreements*. A Europol operational agreement signed with a third country allows for the exchange of personal data, and often implies the posting of a liaison officer at Europol. A strategic agreement would remain circumscribed to the exchange of strategic and technical information. Once a country has signed an operational agreement it has the possibility to request access to one of the core analytical tools of Europol: the Europol's Analytical Work Files (AWF). Those AWF enables law enforcement services in some Member states to exchange sensitive information on specific types of crime (trafficking in human beings, terrorism, credit card fraud, etc). AWF are at the heart of Europol's added value and of trust amongst European police forces. Once a third country, with an operational agreement, asks for access to one of these AWF, how sustainable would it be to forbid that state access to it? Also, how can such an access impact on the trust amongst EU member states and the third country?

When looking at the EU agreements concluded with third countries over the last decade, there is almost systematically a reference to the need for third countries to cooperate in the field of JHA and to develop relations with Europol and Eurojust. If one takes the Four Common Spaces negotiated in 2005 with Russia, the Roadmap for the External Security as well as the roadmap for the Common Spaces of Freedom, Security and Justice present a detailed list of actions for Russia to take on in order to switch from its strategic agreement with Europol towards an operational agreement. It includes ratifying the Council of Europe Convention from 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data; increasing the exchange of information related to terrorism and organised crime between EU Member States and Russian law enforcement agencies as well as Europol within the existing legal framework, etc.²⁶

²⁴ On this issue see forthcoming October 2009 Wolff, Sarah, Wichmann, Nicole and al. (2009). *The External Dimension of Justice and Home Affairs: A Different Security Agenda for the EU?* Routledge, 176p.

²⁵ Council of the European Union (2000) *Council Decision of 27 March 2000 authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU-related bodies* (2000/C 106/01)

²⁶ See the Common Spaces Roadmap (2005). Available at http://ec.europa.eu/external_relations/russia/common_spaces/index_en.htm

As of 31 December 2008, Europol had concluded 9 operational agreements with Australia, Canada, Croatia, Iceland, Norway, Switzerland, the USA, but also Interpol and Eurojust. Strategic agreements have been concluded with Albania, Bosnia and Herzegovina, Colombia, Moldova, the Russian Federation, Turkey, and the FYROM; as well as with a series of organisations such as European Anti-Fraud Office OLAF, the European Central Bank, the European Commission, the European Monitoring Centre for Drugs and Drug Addiction, the European Police College (CEPOL), the United Nations Office on Drugs and Crime, the World Customs Organisation, and finally Frontex.²⁷ Europol has thus multiplied the range of agreements with third countries and international organisations. Potential candidate countries, candidate countries and neighbouring countries are often very keen on cooperating with Europol. But other emerging powers such as China or India²⁸ are also trying to establish closer ties with the European Police Office.

While this increased interest for Europol shall demonstrate the success of the agency over the last decade to establish itself as one of the key partner of international police cooperation, one shall also question the capacity of Europol to deal with such partners. Is that trend is not a consequence of diplomats instrumentalising JHA to do foreign policy? Sometimes the negotiations of such agreements with third countries are so politically driven, that it can become difficult for the EU and Europol to refuse a third country the signature of such an agreement; even though this country do not share the same security and democratic governance norms.

ESDP missions

One of the other concerns of Europol over the last couple of years has been to improve cooperation and coordination with ESDP missions. ESDP missions with civil management purposes often deal with the reform of the judiciary and the police. Therefore instead of “military” being sent overseas, European magistrates and police officers and other “JHA” experts, are being sent to reform the security sector of countries like Kosovo (EULEX), Congo, Iraq, etc. In a way one could argue that the external dimension of JHA is one of the instruments of ESDP.

With the concern to increase coherence and coordination between the internal and external dimensions of JHA, the JHA Council of June 2008 invited the Member states to facilitate the implementation of an administrative arrangement allowing for the exchange of non-personal data between Europol and the civilian ESDP police missions as well as to examine proposals by the General Secretariat Council and Europol on possible ways of

²⁷ See Europol (2008). *Annual Report 2008*. 96p.

Available at <http://www.europol.europa.eu/index.asp?page=publications>

²⁸ See for instance Europol (2006). *To the Article 36 Committee on Co-operation with China*. 11693/06, Brussels, 4 August 2006.

exchanging personal data between Europol and civilian ESDP police missions via the Europol National Units (ENUs) of the Member States.²⁹

Europol has already concluded an arrangement that allows Europol and any civilian ESDP police missions, such as EUPM in Bosnia and Herzegovina, to exchange strategic information via the Council General Secretariat. This entails that non-personal data gathered by ESDP missions, which are relevant to ongoing investigations in the EU, and for information products such as the Organised Crime Threat Assessment (OCTA), can be exchanged.³⁰

Such developments in the field of external relations, demonstrate that external dynamics are prominent in police cooperation. In the case of Europol, obtaining information from outside the EU is crucial to enhancing its analytical capacity. However, given that police cooperation is governed by the principle of reciprocity, what will happen when Europol is exchanging data with third countries, which do not share the same norms and legislation, notably in the field of data protection? As rightly put by Toxopeus and Bruggeman, “this can be a threatening and unhinging perspective”³¹ for national governments, police forces but also European citizens.

Questions for discussion:

- By expanding its strategic and operational agreements with third countries, is Europol constrained by the political dimension of JHA external dimension, or an proactive actor of its external relations?
- What level of trust will remain once Russia or China have access to European databases?
- What is Europol’s and the EU’s guarantee that information sent by third countries has been gathered lawfully?
- Should Europol sign agreements with any country and run the risk of duplicating Interpol?
- How can the Stockholm Programme address coherence and coordination in the JHA external dimension? Will the institutionalisation of ad-hoc groups such as JAIEX³² in the Council survive?

²⁹ Council of the European Union (2008). *Draft Council Conclusions on possible cooperation mechanisms between civilian ESDP missions and Europol as regards the mutual exchange of information*. 9658/08, Brussels, 21 May 2008

³⁰ Salgó, László (2009). Europol Assistant Director. Priorities of Europol in Western Balkans. Visa and Border Management. Intervention in front of the European Parliament, Brussels, 1 April 2009. Available at <http://www.europol.europa.eu/Docs/PrioritiesofEuropolinWesternBalkans01April2009.pdf>

³¹ See p. 174 Toxopeus, Roos and Willy Bruggeman (2009). “Europol and the EU’s Justice and Home Affairs policy”. In: De Zwaan, Jaap, Bakker, Edwin and al. (Eds). *Challenges in a Changing world. Clingendael Views on Global and Regional Issues*. Den Haag: TMC Asser Press, 163-177pp.

³² Under the French Presidency, a new Council working party JAIEX or “JHA-Relex Ad Hoc Support Group” was established. It brings together JHA and Relex counselors to discuss, once a month, issues on the agenda of the external dimension of JHA. It seems though that the success of this group is being put under questioned. DG Relex for instance is not attending those meetings.

5. Conclusion: From The Hague to Stockholm: which Future for EU's Internal Security Architecture and Police Cooperation?

This background paper has briefly looked into the main challenges that remain in the field of police cooperation and more widely in the field of JHA policies, raising remaining issues that should be tackled in the future 5 years by the Stockholm Programme. Issues such as democratic governance, legitimacy or ethics should be at the heart of the debate on JHA policies. Questions such as how to reconcile a 'Europe that Protects' with a 'Europe of Rights', how to combine best operational effectiveness, data protection and individual rights, or the role of the Fundamental Rights Agency in the future EU's internal security architecture should be addressed in the future multiannual programme.

In order to contemplate future scenarios for police cooperation and more widely JHA policies, it is indeed necessary to put at the centre of those policies the rights of European citizens, and beyond to think more thoroughly about their impact upon citizens of third countries affected by police and judicial cooperation with the EU.

The recent dynamics at stake in the external dimension of JHA shall prompt policy-makers to think about the links between development policies, CFSP, ESDP and JHA policies. Is it possible to imagine an Internal Action Service by 2020?³³ Or will the future External Action Service strive for more policy coherence and coordination with JHA policies?

Last but not least the issues raised in this paper point to the need for training. In order to develop some common police culture it is indeed necessary to encourage systematic training. Agencies like CEPOL and other national academies and institutions could play a role in disseminating good security practices and a security ethics praxis.³⁴

³³ Center for European Reform proposal quoted in Toxopeus, Roos and Willy Bruggeman (2009), p. 176

³⁴ See on the issue of Security and Ethics the work done by Workpackage 3 of the INEX project on Ethics and Security. <http://www.inexproject.eu/>