

Bachelor Thesis

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Joint Investigation Teams – problems, shortcomings and reservations

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Declaration of Academic Integrity

I hereby confirm that the present thesis on

Joint Investigation Teams – problems, shortcomings and reservations

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Marvin Klother, Münster 31st May 2014

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Abbreviations

AFIS	Automated Fingerprint Identification System
AFSJ	Area of Freedom, Security and Justice
AWF	Analysis Work File
ENU	Europol National Units
EUCARIS	European Vehicle and Driving License Information System
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Police Office
Interpol	The International Criminal Police Organization
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
NCB	INTERPOL National Central Bureau
P(C)CCs	Police and Customs Cooperation Centers
SIS	Schengen Information System
SIRENE	Supplementary Information Request at the National Entry
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

1. Introduction

A State that is not able to protect its citizens will lose legitimacy and will probably fail (Frevel, 2009, p.201). Therefore, the monopoly of the State on the use of force is the central element of our understanding of nation-states. During the European integration process borders were opened and citizens were provided with extensive freedom rights and the “fear of seeing their borders submerged by all sorts of ‘soft security threats’, including organized crime, illegal immigration and terrorism” (Wolff, Wichmann & Mounier, 2009, p.10) increased. While, on the one hand, cooperation among many policy fields was enhanced, sometimes even completely communitarized, security policy, on the other hand, stayed a sensitive field and was regulated with bi- and multilateral agreements. However, new emerging security strategies focusing on a stronger cooperation of police and judicial authorities soon became necessary. One instrument in this context is the so called Joint Investigation Team (JIT)¹. Initiated in 1999, the legal option was implemented in all Member States until 2005. The idea of this judicial instrument is that police and judicial authorities of different Member States shall be able to jointly investigate on a criminal case that has links across borders. Officers of foreign nationalities shall be enabled to have coercive powers like the national officers have, information shall be exchanged without long formal procedures and in the long term informal relations shall be made as well as the European security network is supposed to be strengthened. Nonetheless, the instrument is not widely used. In 2012 the number of JIT reached a temporary peak with 78 active JITs. Ernst Hirsch Ballin, Minister of Justice of the Netherlands (1989-1994, 2004-2010) said, during his opening speech on the Future of Police and Judicial Cooperation in the European Union:

“[an] instrument for closer cooperation that warrants closer scrutiny is the ‘joint investigation team’ (JIT). This is an important but sadly underexploited weapon in the fight against cross-border crime. The optimal use of joint investigation teams needs to be looked at closely on the basis of experience to date” (Ballin, 2010, p.19)

¹ The term Joint Investigation Team is not defined, what is meant here is the instrument laid down on European level (Convention on Mutual Assistance in Criminal Matters); although, other Joint Investigation Teams exist worldwide.

After a first review of existing literature, it seemed that a multilayered problem exists, caused by the constellation of interests of a range of different actors, the lack of legal harmonization as well as an imperfect construction. Assuming that the instrument itself does not work very well and therefore is used reluctantly and the other way round, this paper looks on the causes for both.

In this paper the main research question is: Why are Joint Investigation Teams no success in European cooperation in criminal matters?

To answer this question the following sub-questions are tried to be answered:

1. How does the legal basis enable officers to work in a JIT?
2. How do other instruments and institutions facilitate cooperation and how do these influence the cooperation through a JIT?
3. What are the obstacles hindering JITs caused by the structure of the EU?
4. Why do operating officers use JITs reluctantly?
5. What can be done to solve the juridical and practical problems in the functioning of JITs?

The description and analysis is made based on literature, therefore, it is a qualitative research. After the introduction the first and second sub-questions are answered each in one chapter. In the second chapter the legal provisions are described and outlined, as laid down in the Convention on Mutual Assistance and the Framework Decision on JITs (question 1). Furthermore, a brief description of the purpose of JITs is given also. In the third chapter, important and influencing instruments that are also in the field of police and judicial cooperation are described (question 2). By classifying JITs among the other instruments like the provisions of the Prüm Treaty it shall become clear what kind of instrument it is and how it is interweaved within the European cooperation network.

Chapter four discusses possible answers to the last three questions. This is achieved indirectly by applying the concept of policy making by Jann & Wegrich. The formulation and implementation of the policy is in focus of the first part. It is examined what is hindering the work of JITs due to the multi-level system of the EU and the differences which still exist between the Member States (question 3). The theoretical concept of Ehrhart is the basis of this part of analysis. In the second part, by looking at the reaction of the addressees –

officers, prosecutors as well as administrative authorities – the perspective of the operators who are ought to use the instrument is analyzed. ‘Security Governance’ as a theoretical concept is supposed to show how the provision of security is guided, what influences the way it is provided and what are the drivers behind cooperation (question 4). In the last part first reactions on the EU level and recommendations for essential improvement are made (question 5), in order to finally get to a conclusion.

2. Joint Investigation Teams: An introduction of the instrument

Fighting crime in Europe and within the European Union has many faces. Cooperation across borders is one main element in a Europe which is growing together more and more. Over the years, a range of instruments, institutions and agreements have been set up. Different forms of cooperation are one result, e.g. shared institutions like Europol, shared databases like the Schengen Information System (SIS), collaboration based on the principle of mutual recognition like the European Arrest Warrant, traditional cooperation through requests based on the principle of mutual assistance, and “co-active cooperation, such as the establishment of Joint Investigation Teams” (Gless, 2010, pp.29-30). Those are only some among many different instruments that can be applied by law enforcement officers in regard to police and judicial cooperation.

In this chapter light will be shed on the instrument of Joint Investigation Teams (JITs) itself, looking at its development at the end of the last millennium, its legal basis and the possibilities within the construction and its purpose, to support the European law enforcement cooperation to finally answer the first sub-question of this thesis, of how the legal basis enables officers to work in a JIT.

2.1. Programmes and Laws

The idea of joint teams came up during the revision and updating of the 1967 Naples Convention on mutual assistance between customs authorities, by the Customs Cooperation Working Group in 1994. The German delegation suggested the creation of those teams based on the experiences of the German police with the “Gemeinsame Ermittlungsgruppen”, facilitating cooperation between federal police agencies in Germany (Sollie & Kop, 2012, p.25). The idea reappeared in the first draft for the Naples II Convention and again in the drafting process of the EU Mutual Legal Assistance Convention in 1996. After being mentioned in the 1997 Action Plan to combat organized crime “the Treaty of Amsterdam formally introduced [...] a general provision that envisaged the involvement of Europol in (unspecified) ‘joint teams’” (Block, 2012, p.90). In 1999 at the conference of the European Council on the creation of an Area of Freedom, Security and Justice in Tampere, Finland Member States obliged themselves to implement Joint Investigation Teams and in conclusion No.43 they were called “to be set up without delay” (ib.). After the conference

2. Joint Investigation Teams: An introduction of the instrument

the legal basis was outlined in Art. 13 of the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (hereinafter Convention on Mutual Assistance)². Due to slow ratification and implementation and after a first initiative had failed, a separate framework decision was set up under the impression of 9/11. This Framework Decision on Joint Investigation Teams (hereinafter Framework Decision)³ was supposed to enable Member States to “base the creation of a JIT on the Framework Decision” (Murschetz, 2010, p.124) instead of waiting for the ratification of the Convention on Mutual Assistance. Therefore, the content of the Framework Decision is a complete reproduction of the Art. 13, 15 and 16 of the Convention on Mutual Assistance with the only difference that there is no limitation of the application of JITs to human trafficking, trafficking of drugs and terrorism as it is part of the Convention on Mutual Assistance, since it is then suggested in the preamble under point 6 (Vermeulen & Rijken, 2006, p.14).

However, the extent to which the instrument can be used depends on how far Member States implement the legal basis for the “various components of maximized JIT cooperation” (Vermeulen & Rijken, 2006, pp.21-22). The Member States are obliged to implement it only fulfilling following requirements: full effect, legal certainty, binding nature of the measure, specificity, precision and clarity; within this framework States have space for interpretation. Due to that space of interpretation, “some States adopted specific laws on JITs [or] inserted JIT provisions in their respective codes of criminal procedure, others have [...] referred to the direct applicability of the [...] Convention [on Mutual Assistance]” (Nagy, 2009, p.147).

Although this Framework Decision in order to speed up the ratification-process was supposed to be implemented by 1st January 2003 (which then only was done by one State), it was delayed by two years and in 2005 all States had proper legislation.

2.1.2 Content of the legal basis

JITs in general are “form[s] of judicial cooperation in criminal matters” (Busser, 2006, p.141), not a classical kind of police cooperation. A JIT is a kind of mutual legal assistance that runs continuous for a certain case. However, police officers are an essential part, they are actors as well as addressees of JITs. Most elements of the legal basis affect the operational level

² OJ C197 of 12.7.2000

³ OJ L 162 of 20.6.2002

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and thereby police officers are concerned, according to JITs' purpose to improve the prosecution and the law enforcement in the EU. JITs have two core elements: first, the extended exchange of information among police forces or prosecutors of different countries, second, an extended operational cooperation, facilitating faster and more effective investigations across borders. The first element is intended to be accomplished through the direct contact between the police officers working at one location, but with different nationalities having access to national and international databases and contact with their colleagues in other national facilities. The second element shall be guaranteed by the fact that officers are working on the same case and are able to use their knowledge with extended competences to add value to the investigation.

In general, a JIT is not a permanent facility but according to Art. 1 paragraph 1 of the Framework Decision limited in time and pursuing a well-defined purpose. All conditions under which a JIT shall take place have to be defined in advance in an agreement. Besides the period of time and the identification of the case or crime issue, this agreement further set up the composition, location, financing and the given competences to team-members who belong to foreign police, but certain details can be amended during the operation (e.g. extending the time period). If one State's investigators recognize links to another country or some other countries in the EU during a criminal investigation or two States are conducting an investigation on the same issue, requests may be made by one Member State asking the other one(s) to set up a team in one country for the purpose of further investigation on the case. If interest is given, a team is to be composed of prosecutors, national police officers and seconded officers from other Member States and lead by an officer of the country where the JIT is located. The competences of the seconded Members are limited to the national law of the State of operation – they do not have additional competences compared to the national officers. Furthermore, the Framework Decision is to enable seconded members, even from another country, to have investigative and operational competences – Member States are obliged to implement this option in the national legislation. However, the team leader is absolutely authorized to withdraw those competences, alternatively those can be prohibited right from the beginning when setting up the agreement. In addition to the seconded members and the national members the Framework Decision foresees the possibility of non-members to support the JIT, those can be from non-participating countries

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in the EU, third States from outside of the EU or European institutions like Europol and Eurojust (Kapplinghaus, 2006, p.30). But, participation or support of non-members can only be given when requested by the JIT⁴. An innovation for joint operations is Art. 2, in which officials seconded to the team are claimed to be treated like national officers. Furthermore, seconded members are fully responsible for any kind of damage they cause and therefore have to recover all damages according to the national laws (Art. 3).

In regard to the enhanced cooperation, Art.1 paragraph 7 is one of the innovative elements (ib.) allowing the seconded officers to request their national agencies for carrying out investigations in their home country avoiding the formal procedures of letters rogatory⁵ if needed. This request then has to be treated as if it came from a national officer or agency. Further information exchange is ought to take place according to Art. 1 paragraph 9 to 12. The seconded members again play key roles in extending available information, by sharing information from their home countries or the other way around by sharing the information gathered during the investigation in the JIT with their national agencies. By this means information exchange can be expanded beyond the purpose of the team, if agreed upon by the participating States, preventing or helping to conduct other crimes and serious threats. The exchange of information, according to paragraph 12, can also be supported by European bodies (like Europol and Eurojust) or third countries, sending representatives, whereas those do not automatically have the rights of national or seconded members – all competences are determined in the agreement. In general, the provisions are limited to the national law of the team members and the national law of the location, as well as to the agreements set in the JIT treaty, therefore many restrictions on the work of a JIT can stem from the legal boundaries.

As mentioned before, the agreement on JITs is crucial for reaching the operation phase and in order to simplify the process of setting up a JIT the Council adopted a Model Agreement⁶ in 2003. It tries to offer “a guide to issues which should be covered in any agreement” (Nagy, 2009, p.155).

⁴ This request will be made by the JIT but through the competent national authority of the country the JIT is located in

⁵ Letter of request for mutual legal assistance

⁶ OJ C121 of 23.5.2003

2.2. Purpose of JITs

When the instrument was set up

"[t]he establishment of JITs was considered necessary as many criminal investigations span over more than two countries and therefore the traditional method of bilateral legal assistance was simply outdated" (Block, 2012, p.87)

The inadequacies in European police cooperation were believed to be solved by an intensified exchange of police officers and judicial personnel. To overcome the hindering problem of a lacking legal option, that was common to all States, a legal basis was considered necessary. While JITs are not to harmonize law enforcement in general, they are to harmonize cooperation in law enforcement and joint operations: "previous joint operations had often failed because of a lack of a framework regulating the activities of the respective investigations" (Busser, 2006, p.139). Further, it was to prevent the States from doubled investigations and to bundle their forces and powers. Due to the huge amount of different cooperation instruments available for legal authorities and diverse channels of information exchange (c.f. Chapter 3), even in cases where agencies are willing to cooperate duplication often occurs (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.53). JITs are ought to tackle organized crime by enabling police of different countries to investigate on the same organization which is divided in several parts, at the same time with a coordinated approach (Busser, 2006, p.142). Databases are always depending on the submission of information by Member States and in addition to the fact that there are many different databases, many difficulties are caused by their insufficient maintenance, especially the divergences of quantity and quality of the provided data between the Member States are a big problem (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.54). The JIT solution therefore is not meant to set up new databases, but to simplify the exchange of data and expertise, as well as to overcome the duplication of investigations and fragmentation of information caused by the different channels.

As mentioned before, the legal basis for JITs does not limit its use to certain crime fields since this was amended in the Framework Decision. However, human and drug trafficking, along with terrorism are emphasized to be predestined fields of use for JITs. In general, in

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literature organized crime is mentioned as the main aim of JITs, additional crime fields that fall within the ambit of this classification as well are narcotics, money laundering and arms trafficking. All of these fields are estimated to be ruled by highly internationalized groups and some which can only be successfully fought against when working together in a European framework, as Ballin stated: "Human trafficking is a type of crime that can only be dealt with at EU level. Cooperation in this area is essential to improve [...] efforts to tackle criminal networks." (Ballin, 2010, p.22) Seconding officers and bringing officers together is supposed to help to fight these crimes, spanning over European countries, in a quick and comprehensive manner. Some authors see additional advantages for the use of JITs in smaller cases, besides the serious forms of crimes, especially to build trust in the beginning⁷ and gain experience for future cooperation (Nagy, 2009, p.150), although this was not the original purpose.

European cooperation in law enforcement is already part of the everyday police and judicial work, although it needs improvement and lacks harmonization across the whole EU. However, the majority of cooperation projects are carried out among neighboring countries (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.45). JITs in this regard have two different aims, first to strengthen existing close cross-border cooperation among neighboring countries and to give legal certainty to police officers who "in the absence of such a legal framework (JITs) [would] run the risk of legal prosecution themselves when embarking on unauthorized cross border missions" (Friedrichs, 2008, p.25) including the legal certainty regarding the criminal and civil liability of officers, when working in the host country. Secondly, JITs intended to simplify the cooperation between more distant States without a common border (like the Netherlands and Bulgaria in human trafficking). It emphasizes mutuality in the whole Union, like the avoidance of formal request for information exchange facilitating informal exchange of specialized knowledge and the coordination of efforts on the spot (Nagy, 2009, p.149). Additionally, another appreciated value of JITs is the fostering of close cooperation between the law enforcement agencies right from the beginning and thereby enabling those to collect

⁷ The Dutch police for example was involved in JITs dealing with car theft and passport fraude (Sollie & Kop, 2012, p.34-35)

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evidence in a coordinated approach (Helmberg, 2007, p.247) gathered in more than one country and “thus not restricted to one partner” (Wree, 2006, p.60).

In general, it can be said that JITs are an attempt to standardize bi- and multilateral cooperation in investigations across the EU. It is (was) estimated to be an easy and effective tool – a legal option common to all EU countries supporting the idea of the European harmonized fight against crime across borders in accordance with the aim of creating the European Area of Freedom, Security and Justice (AFSJ). By facilitating informal information exchange in a framework with legal certainty it is expected to result in a “common European investigative strategy” (Nagy, 2009, p.156), not only between the Member States, but also European bodies like Europol and Eurojust.

2.3. First use in practice

As mentioned before, the implementation of the legal basis did not take place quickly. First attempts to set up a JIT failed in 2004⁸ due to lacking legal implementation and experience. In 2004, the first JIT came into force⁹. It was between the Netherlands and the UK and under the Council presidency of the Netherlands. The political effort to set up the first JIT was the main reason why the case was investigated then by a JIT. Due to the lacking necessity of setting up a JIT and the problems caused, many officers involved in this first JIT stated that it had no added value compared to a parallel investigation (Balcaen, 2006, p.116).

Because of these bumpy starting efforts the Council provided some kind of catalyzers, by the adoption of the Framework Decision and as well as the Model Agreement on Joint Investigation Teams. Furthermore, on the basis of the Hague Programme in 2005, it was called for national experts to serve as contact points within each country to overcome obstacles, exchange information and experiences as well as best practices regarding JITs. This was done in order to promote the use and to reduce the lack of awareness of such teams among authorities (Kapplinghaus, 2006, p.31).

⁸ JIT on Trafficking of Human Beings with the United Kingdom, Netherlands, Germany and France involved, aiming for the combat against the trafficking of children and women from Bulgaria

⁹ A JIT on fighting Drug Trafficking between UK and Netherlands, based on investigations made by the British party, revealing strong links to the Dutch side

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In recent years, France has turned out to be an early user of JITs, having set up 20 JITs by 2008, mostly in cooperation with Spain fighting ETA¹⁰, comprising nine investigations on terrorism, and eleven JITs on organized crime (Nagy, 2009, p.155). Other countries have also increased their use of the instrument, like the Netherlands where 21 JITs have been set up by January 2012, nine alone in 2011 (Sollie & Kop, 2012, pp.34-35). However, JITs are still not used extensively in the EU at the present.

Concluding, the answer on the question of how the legal basis enables officers to work in a JIT can be drawn by the examined. Developed over the years the idea of JITs of the conference in Tampere in 1999 was legally outlined in the Convention on Mutual Assistance in Criminal Matters of 2000, followed by the Framework Decision on Joint Investigation Teams. Police officers and prosecutors of different countries are thereby enabled to set up a facility of mutual legal assistance which is continuously running, for a certain case or a well-defined purpose in a limited period of time. Seconded members have investigative rights on foreign ground and further those are allowed to request national bureaus to carry out investigations, which then have to follow the request as if it is from a national investigation team. Furthermore, national and foreign officers are allowed to exchange information in the JIT. However, the extent of the provisions is depending on the JIT agreement set up in advance. Europol and Eurojust are supporting capacities in those JITs. Officers are enabled to use an instrument, which is a common legal option to all EU States, to fight crimes spanning over European comprehensively with joined forces.

¹⁰ Euskadi Ta Askatasuna – a Spanish (Basque) terror group located in the Basque region between Spain and France

3. The instrument compared to other efforts

The EU provides a range of other instruments besides JITs, many of whom are aimed at helping to exchange information more effectively. The internationalization of crimes and its recognition lead to an increased number of signed agreements on fighting crimes and the recognition of enhanced police cooperation (Nagy, 2009, p.145). Cooperation among European police as well as other judicial services is manifested in networks of information exchange, cooperation centers, databases and operational supporting agencies. Besides regional institutions like the Southeast European Cooperative Initiative (SECI) and the cooperation system for the Baltic Sea Region (COASTNET), institutions on a larger scale exist, namely the national bureaus of Interpol (NCBs), the Europol National Units (ENUs) or the Police and Customs Cooperation Centres (P(C)CCs). All of these instruments and agreements are regulating parts of a wider European (or international) cooperation.

To analyze JITs as a European policy, it is necessary to classify it among the other agreements and institutions that provide law enforcement cooperation. The purpose of this chapter, therefore, is to describe the legal framework on the level of the treaties and its influence on JITs, then to describe measures that have similar regulations concerning information exchange and are innovative or have some extending provisions compared to JITs. The Treaty of Prüm and the Swedish Initiative on information exchange are the two measures mentioned here. Furthermore, some other institutions which also play a key role in the work or set up of a JIT as well will be described. In this regard Europol and Eurojust will be in focus, due to the fact that these two institutions have a substantial influence on cooperation within the EU criminal prosecution. Finally, the regulations of the EU Convention on Mutual Assistance besides the Art. 13 are part of the description. In conclusion, JITs are classified in comparison to the mentioned instruments.

3.1. The European Treaties and the influence on the instrument

The possibility of JITs in a broad manner (with regard to the participation of Europol officials) was first introduced by the Amsterdam Treaty in Art. 30 (2)a Treaty on the European Union (TEU), as operational actions of joint teams between competent Member States and together with representatives of Europol (Buck, 2007, p.254). Besides this first introduction in the basic legal documents, the Amsterdam Treaty continues the three pillar model,

3. The instrument compared to other efforts

introduced by the Treaty of Maastricht, and in addition communitarized visa, asylum and migration policies by moving them from the third to the second pillar (Frevel, 2009, p.212). The first pillar regulated issues regarding the European Community in a supranational way (economic development, environmental protection etc.), the second pillar dealt with the common foreign and security policy intergovernmental and the third pillar comprised the police and judicial cooperation in criminal matters which was also regulated intergovernmental. The objective of this third pillar was “not to create an ‘area of freedom, security and justice’, it [was] to guarantee a high level of safety” (Fijnaut, 2004, p.241), this was meant to be reached by coordinated and common actions of Member States in that field. This third pillar was the legal regime which was sufficient for regulating cross-border investigation and law enforcement cooperation.

Started by the Treaty of Amsterdam and continued by the Treaty of Nice, the process of enhancement of the European Union and its legitimacy were to be completed in the Lisbon Treaty¹¹. In fact, the European Community has become the European Union and the pillar structure has been dissolved by communitarization. In a newly created Title V the principle of the AFSJ was created. That caused a range of changes, especially a change of the legislative procedure. A qualified majority instead of a unanimity vote is now required in the Council with regard to judicial cooperation in criminal matters (Art. 82-86 TFEU), Eurojust (Art. 85 TFEU), Europol (Art.88 TFEU) and non-operational police cooperation (Art.87 TFEU), whereas the operational police cooperation (Art. 87 TFEU) remains subject to the unanimity rule. Shortcomings like the delay in the legislation process and the low effectiveness of the legal instruments as well as the problem that the sufficient outcome was often lacking caused by the unanimity rule were thereby vanished (Nagy, 2011, p.208) (in non-operational police cooperation).

However, while general legal conditions were modified by the Treaty, there was no huge alteration of the specific legal provision concerning police cooperation (Art. 87 TFEU). As Gless stated, “Reorganization of police cooperation is not possible under the Lisbon Treaty” (Gless, 2010, p.41). The focus of police and of law enforcement cooperation is set on exchanging and gathering information (Art. 87 paragraph 2a) as well as training and exchange of staff (paragraph 2b), in order to finally develop common investigative

¹¹ Sealed 18th December 2007, effective 1st December 2009

techniques (paragraph 2c). A certain definition of police cooperation is still missing in the Treaties; although there is a rough outline in Art. 87 and Art. 89 (cross-border law enforcement), it lacks a further guidance. The legal option JITs is one measure which targets on all three elements of this Article. Therefore, it is a kind of practical establishment of the provisions of this Article.

Along with the Treaties, the basic principle of Mutual Recognition was implemented in European cross-border law enforcement. In Art. 82 TFEU Mutual Recognition of judgments and judicial decisions is called for and the adoption of measures is demanded to be brought into force. By this article, conflicts of jurisdiction are meant to be prevented and the cooperation between judicial authorities is to be facilitated “in relation to proceedings in criminal matters and the enforcement of decisions” (Art. 82 TFEU), further rules are supposed to be adopted that take into account the differences between legal traditions and systems of the Member States. This cornerstone of judicial cooperation in criminal matters was first demanded by the Conference in Tampere 1999, repeated by the Hague Program until the Lisbon Treaty made it come into force. Essential for Mutual Recognition is mutual trust on all levels which means that citizens have to hold trust in the EU system and its judicial liability protecting their rights, as well as law enforcement authorities that have to trust each other and accept the judgments of the other States assessing it as expedient. What is more, the legislative bodies (parliament, politicians) have to trust each other and the European system. JITs are supposed to enhance this mutual trust, especially between the authorities and operational forces of the Member States. At the same time JITs depend on the actual level of mutual trust between the authorities, which is essential to the efficiency of the cooperation.

3.2. Treaty of Prüm

Besides the treaties which were adopted within the Union’s framework, multilateral agreements were signed regulating the cooperation in different areas of law enforcement. One of those is the Treaty of Prüm (hereinafter also called Prüm) regulating the cooperation of police and prosecution authorities in operations along with the exchange of data among the agencies. According to the content it shall enhance the cross-border prosecution with focus on fighting terrorism, combating of transnational working organized crime and illegal migration (Papayannis, 2008, p.221). This treaty of international law contains provisions on

3. The instrument compared to other efforts

the set-up of links between the national databases on DNA-information, dactyloscopic¹² data and vehicle registers. It was signed by Germany, Belgium, Spain, France, Luxemburg, the Netherlands and Austria following the model of Schengen, trying to be as pioneering for cross-border cooperation in criminal matters as Schengen was for European integration (Kietz & Maurer, 2006, p.201) and is therefore also called Schengen III.

According to the treaty, every signatory state has to build up a national DNA-database with indexdata on which each State can make an inquiry. The process how inquiries have to be made is special: Authorities inquire for data by a hit/ no-hit process; that means that by feeding in the DNA-sample the databases automatically compare it with the ones already in the database, and alert is given when a fitting sample is found. This quick process makes the Prüm Decision to be rated as

“one of the most efficient tools to identify criminals and solve crimes, based on biometric data knowing if certain type of information is available in another MS [(Member State)] and where, without any formal request, is regarded as enormous value to investigations, gaining time and increasing efficiency”
(International Centre for Migration Policy Development and European Public Law Organization, 2010, p.44)

If there is a fitting data sample, further data (information about the person etc.) can be requested and is only shared in accordance with the national law of the inquired state. This two-step process guarantees that authorities have to check the admissibility and lawfulness of the transmission of data in each case (Schaar, 2006, p.692). However, this kind of data can be inquired only to prosecute not to prevent criminal acts (Papayannis, 2008, p.232). Other databases are the database for dactyloscopic data – the Automated Fingerprint Identification System (AFIS) as well as the European Vehicle and Driving License Information System (EUCARIS).

Art.24-26 of the treaty calls for the setup of joint operations to protect public security and to prevent criminal acts or support in cases of immediate need (e.g. catastrophes, big events). Special to this Article is the provision of executive powers for foreign officers in the signatory States during cooperation (Art.24). Officers are further allowed to cross borders and set up

¹² Dactyloscopic data is biometric data gathered from fingerprints

measures to protect others and themselves in cases of immediate danger or in hot pursuit, but the competent authorities of the foreign State have to be informed immediately (Art.25). These articles can be claimed to be some kind of replica of the JIT provisions, as they contain provisions on the information exchange as well as on joint operations with executive powers for the officers.

With the Treaty of Prüm the Principle of Availability was strengthened in the legal basis of the signing European States. By this, Prüm again followed the Schengen agreement of 1985¹³. It enabled the authorities to obtain information from another authority and information is made available to officers in need for the information to perform their duties. By obliging the States to make information available, the basis for exchanging information has been broadened, while the basis for refusal has been reduced. Essential for this kind of information exchange is mutual trust between the competent authorities.

After other States had become parties to the Treaty of Prüm, its core elements were adopted to European law. The preamble already stated that this adoption along with a further integration is one aim of Prüm. Yet only core elements were adopted, whereas the innovative provision of Art.25 was not, although it comes to full effect in the signatory States (as part of the multilateral agreement). Due to the adoption it was criticized that neither national parliaments nor the European Parliament or representatives of NGOs had influence on the content of the treaty. Parliaments only had the choice between rejection or approval (Kietz & Maurer, 2006, p.206). Kietz and Maurer argue that it was difficult to find conclusions for stronger cooperation among the EU-25. In order to develop cooperation further, multilateral and bilateral agreements were considered important (Kietz & Maurer, 2006, p.203).

3.3. Swedish Initiative

Another legal basis for the information exchange between law enforcement authorities was the Framework Decision¹⁴ on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

¹³ And the 1990 Schengen Convention, implementing the provisions of the agreement

¹⁴ 2006/960/JHA of 18.12.2006, OJ L386 29.12.2006

3. The instrument compared to other efforts

following the Swedish Initiative (or Swedish Initiative). It aims for the standardization of the manner of information exchange and simplifying prosecution and criminal investigation.

It contains provisions on time limits for answering requests by foreign authorities. The obligation for authorities to answer within eight hours on an 'urgent request' is an innovative element and further the determination of time limits for the provision of intelligence and information, e.g. the time is limited to either one or two weeks after the request was made, dependent on whether the information is accessible or not. In this regard, the rules for information exchange are supposed to not be stricter than on the national level. Not allowed according to the content is the use of information as evidence in front of courts as long as there is no permission of the requested Member State available. Similar to the situation in other EU provisions, Europol and Eurojust are mentioned as preferable communication channels. In relation to preceding regulations it replaces (according to Art.12 of the Framework Decision) the provisions of Art. 39(1-3) and of Art. 46 of the Convention Implementing the Schengen Agreement and abolishes the decisions of the Schengen Executive Committee on cross-border police cooperation in the area of crime prevention and detection and on the improvement of police cooperation in preventing and detecting criminal offences¹⁵. Again, the legal regularities set in the Framework Decision only provide boundaries for the denial of exchanging information and reversely, leading to a broader basis for information exchange (in contrast to regulations that were to be created in which only in special cases information is to be exchanged).

In the study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments the Swedish Initiative is assessed as "in principle a good idea but unfortunately seldom used. [...]Users prefer free text reporting, instead of filling several pages of modular information" (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.40). In comparison to Prüm it is assessed to be less effective and too bureaucratic,

"although its purpose is not to exchange information or criminal intelligence, but enables EU MS [Member States] almost instantaneously to know if a certain type of information is available in another MS" (International Centre

¹⁵ SCH/Com-ex (98)51 rev 3; SCH/COM-ex (99) 18

for Migration Policy Development and European Public Law Organization, 2010, p.109-110)

Nevertheless, although urgent data transmission is not often requested, almost 90 per cent of the study participants said that EU partners met the time limits and therefore see the main benefit in the tight deadline for urgent requests (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.37).

Interesting, in this regard, is the lacking efficiency caused by the request forms that have to be made. The study, furthermore, suggests that any formal procedure in every-day work of police officers is not likely to be used. A low level of bureaucratic procedure combined with guaranteed fast responses seems to be demanded.

3.4. Europol

The European Police Office (Europol), set up in 1998, is ought to support national police and legal authorities in combating terrorism, drug trafficking and organized crime, basically its tasks are to uncover crimes with an international dimension and facilitate the exchange of information and support in investigations. Therefore, it is one of the most experienced institutions of police cooperation in Europe, which can serve as channel for communication and hub for expertise. Its broad acceptance and years of experience made Europol the first choice in cross-border communication in terms of criminal matters (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.72) and made it one of the main pillars fighting crimes in Europe (Bukow, 2005, p.53). Some argue that it “has become a knowledge broker whose ability to initiate, lead and support has surpassed the confines of its own mandate that was drafted just a decade ago” (Lemieux, 2010, p.9). However, by the Treaty of Lisbon the work of Europol was improved, expanding its mandate from organized crime to serious cross-border crime and converting it into an EU agency, funded by the Community and provided with the regulations for staff of the European Communities (Murschetz, 2010, p.119), which also simplified their work. Europol’s officers in general do not have the right to take coercive measures; arresting someone or starting investigations is still not part of their mandate. If allowed by national police, those officers can accompany investigations. Contact is established by the Europol National Units (ENU) in each country that supply Europol with information, respond to Europol’s request for

3. The instrument compared to other efforts

information, intelligence and advice and regularly updates information about laws and regulations.

In relation to Joint Investigation Teams, States are not obliged to ask for help but, if requested, Europol is able to provide a communication platform, strategic and forensic support as well as tactical and operational expertise and advice. It is ought to facilitate the secure exchange of information between the parties of the JIT, non-participating States and EU bodies, if requested. These kinds of services can be provided directly through the participation of Europol officers in the JIT carrying out the services¹⁶. Due to the Protocol amending the Convention on the establishment of a European Police Office (Europol Convention)¹⁷ – the Europol Convention provides a basis for the participation of Europol officers in JITs in its Art. 3a. To participate in the JIT certain conditions have to be fulfilled: First, the involvement of the Europol officials must be requested by one or more Member States that participate in the JIT; second, at least two or more Member States (or Third States) have to be amongst the participating States that have concluded a Cooperation Agreement with Europol, and third, the topic of the JIT must fall within the scope of Europol (Buck, 2007, p.257). Following its purpose Europol can support JITs before establishment by drawing an international picture of the crime fields and the cases under investigation to make it possible for national investigators to recognize links and relate their investigation to others. Europol can further show more initiative by detecting connections itself and uniting responsible authorities for cooperation (Buck, 2007, p.263). During the establishing of the agreement that is often claimed to be complicated, Europol offers support and expertise (ib.). When JITs are set up, Europol can offer an instrument called Analysis Work Files (AWF) which is a collection of information about certain criminal activities (Art. 10¹⁸), gathered by national police on the local and regional level and forwarded to Europol, where liaison officers exchange the information and compare them by feeding them into a database (Wree, 2006, p.70).

¹⁶ Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT) OJ C70 of 19.3.2010 – 4.2.2./4.2.3.

¹⁷ OJ C 312, 16/12/2002

¹⁸ Council Act of 3 November 1998 adopting rules applicable to Europol analysis files, OJ C 026 23.1.1999

3.5. Eurojust

Founded in 2002¹⁹, the European Judicial Cooperation Unit (Eurojust), the counterpart to Europol in cross-border cooperation in criminal matters, is to coordinate judicial proceedings. Since 2003 Eurojust coordinates prosecution activities in the EU, aiming for a stronger assistance in fighting crime according to Tampere-Conclusion No.46 (Bukow, 2005, p.49). Such a kind of institution was necessary because many of the States have a law enforcement system in which prosecutors take over leading roles during criminal investigations. Cooperation in criminal matters, especially investigations, is therefore of judicial nature, too. Similar to Europol, Eurojust supports the judicial authorities with information and expertise, and the practical experiences show that Eurojust is also extensively used in these matters. Since the beginning, there has been an annual increase in the number of requests for support; in 2003 there were 381, whereas the number quadrupled up to 1533 by 2012 (Jonge & Birk, 2013, p.61)²⁰.

With regard to JITs which is a judicial instrument, Eurojust is provided with the right to request any Member State's competent authorities through its members to reflect on creating a team (Art.6) and through its colleges to establish a team (Art.7). In the latter case the authorities are obliged to give reasons if such a team is not set up (Elezi, 2014, p.104), which is characteristic for the importance of cooperation attached to Eurojust. Thereby, Eurojust has the ability to "identify operational cases which are suitable for JITs" (Helmberg, 2007, p.249). Contrary to this, Eurojust will not recommend setting up a JIT in individual cases where reconciliation of different national legislatures is not possible. Instead, other forms of cooperation will be recommended (e.g. parallel investigations or traditional ways of mutual legal assistance) (Jonge & Birk, 2013, p.40). Furthermore, Eurojust is ought to provide legal advice and information about the differences in the legal systems during the JIT preparation phase (Nagy, 2009, p.154) and thereby support the negotiations for the JIT agreement. Importantly, during the operational phase Eurojust can "help to ensure [that] the national procedural requirements for gathering of evidence are safeguarded" (Helmberg, 2007, p.249). Another key role in setting up JITs is taken by Eurojust in the field of financing, by the program on "Prevention of and Fight against Crime 2007-2013" financial support for

¹⁹ Council Decision of 28 February 2002 setting up Eurojust with view to reinforcing the fight against serious crime, 2002/187/JHA, OJ L63 6.3.2002

²⁰ Annual Eurojust Report 2012

JITs is given. In 2012, 62 of 78 JITs were financially supported, which is a huge increase compared to 2009 when only five out of ten teams were supported (Jonge & Birk, 2013, p.40). The number of applications for funding also approximately doubled from 71 in 2011 to 143 in 2012, which is a strong indicator for a more extensive recognition of Eurojust and its financial support (ib.).

Europol and Eurojust also cooperate according to their agreement on June 9th 2004, avoiding duplication of efforts. They further started a project in 2005 to support the implementation of JITs. By monitoring all legal conditions (ministerial guidelines, criminal law, prosecutor guidelines etc.) they showed the status of implementation in the different Member States and how to solve the problems and overcome the obstacles (Horvatis & Buck, 2007, p.240). However, contrary to their supportive services the participation of Eurojust and Europol officials in JITs is used very seldom.

3.6. Police and judicial cooperation – Liaison officers, P(C)CCs, SIS

Besides Europol and Eurojust many other forms of cooperation have been set up over the years. National liaison officers are well trained officers of national police with a lot of experience in cross-border cooperation. Those officers are well connected and have a non-operational mandate, but help to exchange information between countries and also between States and European bodies. In relation to JITs, those liaison officers are able to detect suitable cases and give advice to law enforcement agencies on how to make the right request for assistance (Dandurand, Colombo & Passas, 2007, p.286).

Other forms of police and judicial cooperation are based on the Schengen agreement, two of them shall be presented briefly in the following, since they follow the same basic principles as JITs and influence the everyday judicial and police cooperation within the EU: Police and Customs Cooperation Centres (P(C)CCs) and the Schengen Information System (SIS).

P(C)CCs are mainly based on Art.39 of the Schengen Convention. Their tasks are to support the operational service and facilitate cross-border exchange of information. Besides ENUs and NCBs which are focusing on more serious and organized crime, P(C)CCs are responsible for less intensive crimes at internal frontiers of the European Union. Those institutions have access to different national databases and therefore enable officers to quickly transfer

information and respond to requests between local and regional police (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.70-71).

The Schengen Information System (SIS) is a governmental database used by the European countries, collecting information about individuals for purposes of national security, border control and law enforcement. It “allows participating national law enforcement agencies to share data on many key issues almost instantaneously with their colleagues in other countries” (Dandurand et al., 2007, p.284). The so called offices for Supplementary Information Request at the National Entry (SIRENE) are responsible for the contact point of each Member State as well as for the exchange of information, and they have to be operational 24 hours, seven days a week.

The Schengen agreement also provides some other possibilities for agencies to cooperate and take out operational duties. Cross-border observations are possible as well as cross-border pursuits, enabling police officers to “carry out surveillance on suspects [...], with or without prior notification” (Brady, 2008, p.105). In addition, more informal space is given through requests of mutual legal assistance by Commissions rogatories. When parallel investigations in two or more countries take place and they are somehow linked with each other, they can exchange information during meetings and discuss the exchange of evidence in advance (Busser, 2006, p.121).

3.7. EU Convention on Mutual Assistance in Criminal Matters

Besides the regulations on JITs, the EU Convention on Mutual Assistance has to be brought into focus in general as it is a cornerstone of the European cooperation in law enforcement in criminal matters. Two core principles are content of the Convention. First it is

“ensuring [that] assistance between Member States is provided in a fast and efficient manner [and that in a way] compatible with the basic principle of their national law and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights of 1950. [It secondly] introduces a new concept of judicial assistance, more advanced than that found in the Schengen Convention [...] it overcomes the principle of locus

*regit actum*²¹ traditionally adopted in the field of letters rogatory” (Militello & Mangiaracina, 2010, p.176).

General innovative elements can be found in the simplification of sending documents by mail (Art.5), simplification of the formalities for the direct contact between judicial authorities with the purpose of the request of assistance (Art.6) and the enhancement of the possibility to consult and interrogate participants (defendants, witnesses etc.) via video conferences (Art.10) (Militello & Mangiaracina, 2010, p.177). Essential reformation of cooperation did not take place, but key ideas were deepened (Militello & Mangiaracina, 2010, p.170) and the direct cooperation was strengthened.

3.8. Challenges and problems in the European Cooperation in Criminal Matters

All these Treaties, agreements and tools are an expression of a growing recognition of risks and threats. More and more instruments are created to safeguard security, while neither protection nor the individual threat is guaranteed as existing (Papayannis, 2008, pp.249-251). The Future Group on Home Affairs Policy came to the conclusion that police cooperation necessarily has to be more in-depth and therefore, standards are essential in order to guarantee an interoperability of staff, databases, procedures and instruments (Murschetz, 2010, p.122). Gless criticizes that “a coherent European model for police and judicial cooperation that serves as an archetype and mould” (Gless, 2010, p.32) is missing and “the creation of the EU ‘area of freedom, security and justice’ has outgrown their basic idea of mere mutual legal assistance” (Gless, 2010, p.33).

Various authors list different problems occurring in cooperation in criminal matters. A study of the International Centre for Migration Policy Development and European Public Law Organization analyzed what is causing problems in regard to existing instruments used in the exchange of information by law enforcement agencies. According to the study, problems are often caused by differences between the legal systems, like evidence which can be inadmissible in front of court due to different standards or procedures between requested and requesting States, or different authorities who are responsible (like in one country it is part of the police cooperation, while in another it belongs to judicial cooperation) and so

²¹ The kind of law complies with the law of the place

systems cannot comply or requests are submitted incorrectly (International Centre for Migration Policy and European Public Law Organization, 2010, p.97). A legal understanding of offences, how authorities deal with those and the way police and judicial authorities are provided with resources (Frevel, 2009, p.208) were to be harmonized in order to solve most issues.

While informal exchange and cooperation helps to get information quickly, it leads to problems with formal processes due to its “need always to be complemented by formal exchanges if they are to be of value in judicial proceedings” (International Centre for Migration Policy and European Public Law Organization, 2010, p.76). The challenge for the EU is to improve the conditions enabling officers to use the gained information in judicial proceedings, or at least simplify its use.

However, there are other problems that occur: technical issues, like the incompatibility of different software versions, mail capabilities (like size of attachments), ability to open files (security rules, virus protection), discrepancy between technological equipment (some have the latest others the oldest) (ib.).

Dandurand, Colombo and Passas even go further and summarize the obstacles to an efficient cooperation in criminal matters as follows:

"many obstacles [...] still exist [...]. They include sovereignty issues, the diversity of law enforcement structures, the absence of enabling legislation, the absence of channels of communication for the exchange of information, and divergences in approaches and priorities. [...] compound by difficulties in dealing with the varied procedural requirements of each jurisdiction, the competitive attitude that often exists between the agencies involved, and human rights and privacy issues." (Dandurand, Colombo, Passas, 2007, p.288)

3.9. Classification of JITs within the framework

First, a JIT is an optional instrument based on an EU Convention and a framework decision, not on multi- or bilateral agreements (even though this was also possible). Furthermore, it is constructed to involve the existing EU institutions and instruments, especially Europol and Eurojust as bodies proved to be helpful and supportive, not only through expertise but also through financial and technical support. However, States have to implement the provisions

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on JITs but are not obliged to set up JITs. Uniting the central elements of JITs (information exchange and operational cooperation) is in its realization unique and appears to go beyond the provisions of the Prüm Treaty. While the Swedish Initiative is meant to be a general basis for information exchange JITs are more specifically limited to cooperative investigations. In comparison, the complicating and hindering request forms the Swedish Initiative calls for are not required in JITs. But, since a set up JIT is bound to exchange information on a specific case it is not an instrument for day-to-day exchange. Due to the big amount of implemented instruments, treaties and institutions which are facilitating the exchange of information on a multilateral or European basis described in this chapter (which are some not all) and the fact that new technologies make information exchange easier, the value of JITs in regard to information exchange is diminished. Information exchange is not a decisive argument for setting up a JIT anymore, even when a continuous information flow is required. However, the information exchange can be seen as an additional advantage, once a JIT is set up. One of the core elements of JITs thereby is diminished by the surrounding tools. Since JITs are optional the innovative element of operational cooperation is left to be the main argument for setting up a JIT.

Provided in chapter 5, on the Police Cooperation of the Lisbon Treaty in Art.87 paragraph 1 it is stated that the Union “shall establish police cooperation involving all Member States’ competent authorities [...] in relation to the prevention, detection and investigation of criminal offences”. Thereby, the instrument JITs is a measure that follows Art. 87 paragraph 2a regarding the exchange of information, further it follows paragraph 2b by aiming for the exchange of staff, therefore being a practical realization of it.

According to the differentiation of Gless, JITs are co-active forms of cooperation, comparable with the organization of joint controlled deliveries (Gless, 2010, p.29-30), which are cooperative ad-hoc measures, reacting on crimes in the Union. The mentioned institutions surrounding and linked to JITs are shared institutions like Europol and Eurojust, and traditional cooperation based on mutual assistance (Swedish Initiative, Prüm).

4. Problems of and with the instrument

In the preceding two chapters the instrument Joint Investigation Teams was described regarding its content and provisions, its first use and was briefly classified in relation to other instruments directly influencing it. The question now is: Why is it not used more extensively in everyday law enforcement? Since its implementation the number of JITs has increased, but it still is not fulfilling what it was expected to. In the following chapter it shall be examined where the problems lie and of which kind they are.

Following the concept of policy making by Jann & Wegrich (Jann & Wegrich, 2009, p.83) this chapter will have a look at the different phases of the process and the problems that occur within. Therefore, two concepts will serve as theoretical input, namely, the approaches of Benz on the multi-level system of the EU, and Ehrhart and Kahl's approach on Security Governance.

The three concepts together were chosen in order to help understand the origins of problems and giving the analysis a structure, collating the mass of academic assessments and findings.

4.1. Policy formulation and implementation

According to Jann & Wegrich, policy making begins with the phase of policy formulation resulting in the concrete policy in the form of regulations, framework decisions etc. (like the decisions and guidelines for the implementation of a legal basis for JITs). In this first phase, different actors are involved exchanging needs and expertise through negotiation and working groups. During the formulation of the Convention and the JITs Framework Decision representatives of police were not involved and this missing practical perspective is often criticized in literature. Block stated that the EU Mutual Legal Assistance Convention "lacked professional perspective on actual practices of, or obstacles to, cross-border police cooperation in criminal investigations" (Block, 2012, p.90). Furthermore, "practitioners feel ill-represented in Brussels circles and are frequently of the opinion that their concerns are insufficiently voiced within the EU Council's work groups" (Den Boer, 2010, p.43). This might not directly cause problems, but it can be an explanation for issues that occurred with regard

to the use of JITs through police and lacks of practicability (which will be examined in the following).

After the formulation of a policy it has to be implemented. In European law one of the biggest challenges is to harmonize the different regulations and systems. EU policy making can be described as happening in a multi-level system in which power is divided between different actors and units, related with each other on different levels. The concept comprises the political structures and processes existing between the transnational, national and regional institutions as well as the interaction of governmental and non-governmental actors in a system of interdependences (Benz, 2009, p.16). The European Union, even though certain policy fields are more or less organized on a supranational basis within, is still a creation of its Member States, sharing power with the commission and the European Parliament (Benz, 2009, p.33). Therefore, the EU is a construction organized in different institutions on different levels. Governance in this system is described as the coordination between the different levels and on the levels themselves. Benz speaks of intragovernmental and intergovernmental dimensions between (inter) and in-between (intra) the levels, therefore not only institutions and rules but also interaction of the actors determine policies and its use (Benz, 2009, p.14-19). In this relation, JITs can be ascribed to three levels of cooperation. In its approach as bilateral agreement between the competent authorities of the EU Member States (similar to Schengen) it can be ascribed to the level of horizontal cooperation. By cooperate with European agencies (like Europol and Eurojust) which have no operational competences but are able to call for the set-up of a JIT it works on the level of vertical cooperation. Finally it comes to effect on the level of hybrid vertical cooperation involving Member States and EU agencies (Gless, 2010, p.31). Security policy is placed in a tensed field of institutions on different levels (European, national, regional or local). This high degree of interdependence on different levels leads to a high number of actors with autonomous competences, willing to keep their power or their interests. Since the system stays in a sensitive balance of power, every amendment changes the ratio of power, competences and resources between the actors, which results in the wide provisions of the policy and its optional character (Benz, 2009, p.38) but also in the different interpretation and implementation of the legal basis.

Consequently, the different interpretations of decisions from a higher level cause distortion. In case of the trans-border law enforcement in the EU, the roles of certain important institutions are designed in different manners. Difference between the States for example exists in relation to the involvement of public prosecutors in investigative police work to a different degree. To match the different system especially in terms of rules on how evidence is gathered or how cases are investigated causes problems to national legislation. Furthermore, such an in-depth amendment is further not in the interest of the national legislatures as they try to keep the amendment costs as low as possible. Those obstacles prejudiced to the system reasoned that the Framework Decision allows a variable interpretation of the provisions and that the range of the provided coercive rights has to be newly defined in each JIT agreement. A coherent use of the instrument with a certain legal basis for all law enforcers in the EU was thus unlikely from the beginning, causing inoperability and uncertainty with regard to the instrument.

Permanent imbalance exists between the powers provided by national legislature on sent officers of Europol and Eurojust (Brady, 2008, p.108) and the provisions to national police officers seconded to the teams. According to Vermeulen and Rijken, the added value of JITs crucially depends on how far the provisions to seconded members – foreseen in the Framework Decision – are operable, and whether they are from an EU agency or the Member States (Vermeulen & Rijken, 2006, p.13). They emphasize the possibility of seconded officers to be “present during the execution of investigative measures” (ib.) and the ability to fully use and exchange information, no matter if gathered during investigation or earlier measures in the home country (ib.). During the first attempts to set up a JIT, lacking coherence among the implementation of these provisions led to severe problems (Busser, 2006, p.153). This reluctant implementation is also a result of the reservations on legal harmonization in such a core competence field of national States. According to the different legal natures (e.g. British Common Law, German constitutional law), certain components are interpreted differently, especially the core elements like the operational company of seconded officers and the right to use information, obtained lawfully within the JIT, in the home country. In their analysis on the first JITs, Rijken and Vermeulen compared the legal implementation of JITs and detected that legal developments were incompatible with each other in some parts (Rijken & Vermeulen, 2006, pp.24-52). Among the Member

States, opinions differ in the goal of a JIT: Some claim that a JIT should only to be set up when a specific problem is given, whereas others use JITs as a proactive tool, investigating information before specifying the goal (Nagy, 2009, p.157). Thus, JITs are difficult to set up since countries have different provisions on how to use JITs and a common aim or how to accomplish it cannot be defined. Since the different demands cannot always be unified the parties have to agree on a lower level whereby the estimated value is diminished, and advantage of the opportunities cannot be fully taken. Other States use the instrument adequately for their needs with a broad interpretation of JITs, like Spain and France which used JITs to have a common judicial space allowing the sharing of information on investigations related to terrorism in the Basque area, without setting up a team with seconded officers in one country – thereby not using the instrument to full extent, but using it in a flexible way to create additional values.

Besides the different legal ‘cultures’ that influence the different ways of implementation, States simply have differences on their legal basis for law enforcement. The operability and effectiveness of JITs depend on the interstate relations in the law on law enforcement, which is not implemented because of the Framework Decision but was already given as national law – the status quo of interoperability in law enforcement provisions. Even though the instrument was not only to improve the investigation across borders but also to improve the knowledge of each others’ legal system (Sollie & Kop, 2012, p.27), those systems and their lack of familiarity caused obstacles to cooperation (Ballin, 2010, p.19). A decisive factor is, for example the disclosure of sensitive information related to the investigation since the cases strongly depend on how much of the gathered information can be used during investigation (Eurojust Jahresbericht 2011, 2012, p.40). This, for example was evident in the first JIT, when officers were unable to exchange information because of different categorization (as sensitive) and legal standards (Busser, 2006, p.149). Law enforcers have to know the specific regulations of the other State during the set-up of the agreement as well as during the investigative activities to avoid both a lacking admissibility of evidence and an inefficient investigation. The problem of not being able to use evidence in front of court, is “not addressed by the JIT concept” (Block, 2012, p.96) and therefore evidence cannot be exchanged or the evidence gathered in the JIT is not admissible in court (Friedrichs, 2008, p.177). Other issues are the time limits for data storing differing among the countries as well

as different regulations for gathering information and investigative practices like DNA-tracking or telephone tapping. Those differences hinder inasmuch as learnt practices in day to day police work cannot be used, and the aim of solving crimes and enforcing law on criminals fails. A closer look at these different regulations and the caused problems will be elaborated on later in the next chapters as it is stronger linked to problems of the addressees.

Due to its multi-level character, policies in the EU are less confronted with the problem of central and strict hierarchical control but struggle more with coordination problems (Ehrhart & Kahl, 2010, p.9). A consequence of this system is that policies tend to be avoiding conflicts and have a soft-law character, especially in constellations in which different actors have opposing interests or in which the actors fear to be cut from their competences (Benz, 2009, p.38). This reasoned in a possibility for an opt-out, an optional withdrawal from agreements made to intensified cooperation, if interests of the national citizens are violated diametrically (Benz, 2009, p.148). Although this option is not used often European policies are always threatened by blockade, which results in soft lawmaking or policies without a hierarchical regime. Within the field of security policy, competences are core elements of the State and its institutions therefore every measure is sensitive to blockades and predestined for low hierarchical lawmaking – States are reluctant to use a stricter regime. JITs is such an optional tool since it has no binding regime (however, the States are obliged to implement the legal basis). Consequently, it has to compete with other tools in the European cross-border cooperation and its advances have to be convincing in relation to those.

The examined problems within the multi-system of the European Union are the reasons for the JIT agreement to be complicated but even more time and workforce consuming. Even though the Council has adopted a model of such a treaty (Helmberg, 2007, p.247), different implementations and interpretations are to overcome when setting up a JIT agreement. In addition to the formalized procedure, those factors are obstacles for law enforcers and competent authorities on a higher level, like ministries, to set up a JIT (Murschetz, 2010, p.125), further it complicates adjustments of the agreement, e.g. when other countries join in or practices have to be adjusted (Helmberg, 2007, p.248).

4.2. Reaction of the addressees

As a result of the output, problems are almost always unsolved or the aims are not reached. According to Jann and Wegrich, every policy has an impact on the addressee. Probable reactions are (desired) changes in the addressees' behavior or – as the authors described – reluctance and avoiding strategies, or even active opposition (Jann & Wegrich, 2009, p.83). Decisive for the policy to reach its aims are the reactions of the system and the addressees within, called the Outcome, which follows after the reaction of the addressees, called Impact (ib.). In the case of the JITs, the competent law enforcement agencies in the Member States, as well as the European agencies are the ones choosing JITs as an instrument. Furthermore, it is an option for the competent ministries which are supposed to support police and judicial services with intelligence and funding. However, the reaction of these actors is rather diverse than just being reluctant, opposing or according to the aim of the use of JITs. To describe, examine and analyze these reactions, the concept of Security Governance appears to be a suitable framework. Practical problems of the police and judicial authorities as well as the influence of security culture, the characteristics of the policy, drivers of the actors, form of governance and the dimensions will be shown – factors creating a very tensed field in which many issues have their cause and in which the problems during the practical use are apparent.

According to Ehrhart and Kahl, Security Governance is a non-hierarchical concept focusing on the coordination of governmental and non-governmental actors in the security sector (Ehrhart & Kahl, 2010, p.9). Purpose of the coordination is to provide security on the basis of common values, norms or interests (ib.). The concept in general is neither a blueprint nor a theory. It is more a framework for explanation and analysis and simultaneously a concept for measures to provide security in post-national systems. In this context, JITs is an instrument which is part of a bigger security strategy but not actually a hierarchical regime, even though all provisions have to be implemented.

States and their competent authorities, are still the central actors (Hegemann, 2010, p.118), as those are the ones who decide if a cooperation is necessary and useful. In relation to JITs, States are represented by their agencies and institutions imposing their monopoly of force. Through trans-governmental as well as informal networks of law enforcers the States are not weakened but their range of instruments and spheres is broadened; JITs are one of these

instruments and support the construction of such networks. Security Governance (through instruments like JITs) and traditional trans-national cooperation are rather running parallel than replacing each other (Hegemann, 2010, p.124). However, transnational policing and judicial cooperation is shaped by the authorities themselves, not by a democratic public. By this, the traditional idea of national sovereignty is more and more diminished, also influenced by instruments like JITs where coercive powers for seconded officers at the same time cause a sharing of sovereign powers:

“International police cooperation poses a real challenge to states. The reason is that it impinges on the territorial monopoly of the legitimate use of force which [...] is the defining characteristic of modern statehood. [...] states [...] watch jealously over their monopoly of force.” (Friedrichs, 2008, p.1).

The contrast between the sovereignty thinking and the factual diminishing of sovereign powers evokes problems with missing support for JITs. Den Boer also speaks of a “fear of the erosion of national sovereignty within the EU” (Den Boer, 2010, p.61) in terms of the security policy field. That causes reservations on the part of authorities who then refuse to support JITs in a proper way (Kapplinghaus, 2006, p.33), especially in the pre-operational phase. These sovereignty issues strongly apply to authorities on a higher level, like the ministries, which are competent to develop the provisions of the JIT agreements. However, competent law enforcement agencies are complex actors with own preferences and interests but as a governmental agency in core they advocate in the States’ interests. Moreover, they can be claimed as corporative actors in which individuals try to impose their own interests which equate the interest of the organization (Schneider, 2009, p.193) – consequently, on this level national sovereignty does not have to be an issue necessarily since more pragmatic interests of the officers are predominant.

It is not only considered as an ad hoc activity but also as long-term support of informal relations and thereby it is ought to strengthen the European law enforcement network (Sollie & Kop, 2012, p.62). Thus, JITs can have an in-depth indirect impact on the daily police work and prosecution, while depending on how far it is used by law enforcers. However, other authors criticize that the strong “dominance of non-binding instruments and the focus on operational cooperation” (Lavenex, 2010, p.473-474) as well as the “integration in police

matters [...] focused on networking and the development of common operational practices” (ib.) causing a lack of strong institutional and legal framework, have disadvantageous consequences for a broad and flexible Security Governance (Hegemann, 2010, p.122). JITs, in this regard, are a further option of the intergovernmental constructed policy field. However, JITs are a first attempt to create coherent cross-border law enforcement cooperation among European countries and due to its character, it is a steering instrument that works with conviction (Ehrhart, 2010, p.34).

Essential for an effective Security Governance in addition to coherence and coordination is the acceptance of the policy, not only on the political level but also on the operational level. Important for the acceptance of JITs is the expected added value for law enforcement officers and agencies, since those actors are to use it in practice. Assuming that most actors pursue individual interests not directly linked to the solution of the cooperation-problem (Schneider, 2009, p.200) in addition to the solution of the crime, the added value from the perspective of the law enforcement officers has to be analyzed. Among these interests, there is also a concern to use an instrument that is still efficient when considering the work it demands. All problems that occur during the whole process from setting up a team to the operational phase lead to skepticism and thereby to reluctant use of the instrument.

It has already been shown that while competing with other instruments one core innovation of JITs was diminished by the more simple information exchange provisions of those. . As an option to officers, JITs have to convince officers in comparison to other measures. Due to this JITs are described as an instrument that

“has only complemented – not superseded an existing system of bilateral agreements and customary arrangements. Accordingly, [it] must be seen as an institutional rather than a substantive innovation.” (Friedrichs, 2008, p.161)

Since the most innovative and advantageous element of JITs then is the exchange and company of officer during the operational phase, it can be estimated that every issue reducing this element leads to a more reluctant use of the instrument.

One issue among others is the lacking coherence among the implementation of the provisions on seconded members and legal boundaries of national legislature lead to additional problems for seconded members. Problems may arise for seconded officers due

to the fact that they have two superiors – one at the national police and another (international) in the JIT. In cases of contradicting orders this leads to severe dilemmas (Mayer, 2006, p.213). In general, seconded members are supposed to have knowledge about the case and are provided with full competences and a strong mandate (Balcaen, 2006, p.116). This also has to be applicable with regard to gathering information and evidence. Law enforcers have a problem with the mass of legal boundaries that stem from the diversity of national legislation, since this is not solved by the JIT concept which does not have provisions on standardized methods of gathering evidence usable in front of court (Helmberg, 2007, p.248). Besides, investigative practices that are common in one country can be uncommon and prohibited in another, resulting in the fact that not only the gathered evidence is inadmissible, but also the whole investigation can come to a halt due to the illegitimacy of the procedure for one side. Consequently, necessary restructuring may then cause considerable delays. Examples for procedures that are precarious, because of crucial differences in legislation are telephone tapping, DNA-tracking and criminal civil infiltrators, which are prohibited for example in the Netherlands (*criminele burgerinfiltrant*) with regard to gathering evidence (Sollie & Kop, 2012, p.31).

It is necessary that police and judicial officers get training and are well-informed, not only in relation to the different national legal systems but also to work in cooperation, an additional further special training on JITs is necessary to prevent skepticism and avoid operational obstacles in advance. It has become apparent that bottom-up approaches to set up JITs are more effective because law enforcers then have a stronger interest and knowledge, and appreciate a strong cooperation as necessary. In order to use the instrument of JITs, it is then necessary to know how a suitable case is identified and with whom to cooperate (de Wree, 2006, p.55). Such trainings have not taken place sufficiently (yet) and therefore avoidable delays in the process often occur due to lacking knowledge. However, Lemieux states that “enhancing the effectiveness of international police cooperation cannot be accomplished solely by relying on adequate training programs” (Lemieux, 2010, p.17) as long as necessary changes concerning the patterns, drivers and the legal framework have not taken place. Insofar, trainings for police officers make sense when aiming for improving the knowledge about the other system and in terms of the language skill. Language often is a problem in the daily operational work as it affects several aspects: It is necessary for reading

foreign case files and interrogating criminals and as well as for teambuilding purposes and a stronger inclusion of the foreign members (Mayer, 2006, p.215). Additionally, it is of use for interpreting and understanding guidelines, rules and regulations better in order to set up a common basis. Besides the general training, particular teambuilding measures are essential for every JIT, especially in long term investigations, to establish a good cooperation. It further entails an increase of mutual trust and related to the aims of JITs, it fosters a better understanding and more informal relationships. The term 'team', however, sometimes is understood differently, causing problems in the way teams are built and the hierarchy is constructed. Some like the Dutch authorities interpret the JIT as a team with one leader and one location, whereas in other countries JITs are built up fitting individually to the circumstances – 'pragmatically' like in Spain and France (already described) (Block, 2012, p.97-98).

Security culture influences the way security is provided and even though the direct linkage between security culture and Security Governance is difficult to be proved empirically, some studies give hints and reveal indicators pointing into the direction of linkage (Reinke de Buitrago, 2010, p.84). According to Ehrhart, security culture as a pool of norms, values and social preferences is a driver in Security Governance, insofar it has influence on how and for which purposes law enforcers work. In relation to JITs, problems can appear when security culture differs severely between States and therefore discrepancies evolve affecting the work and cooperation of law enforcers. In recent years, security culture was influenced by an increasing recognition of security threats through terrorism and organized crime, as this field is always loaded with emotions, ideology and norms (Bukow, 2005, p.46). Moreover, as a result of globalization security culture was more and more internationalized. Bowling and Sheptycki identified a global security culture strongly depending on the historical circumstances, displaying the trends of each time: "As a set of practices and beliefs, policing is tightly linked to the defining nature of the social system within which it is embedded" (Bowling & Sheptycki, 2012, p.128). They discovered the presence of a strong orientation towards an internationalization of law enforcement in general. In a more detailed view, besides the general trends differences between States (even European) can be detected. Apparent e.g. in the use of force: contrary to French authorities, Germany is very reluctant to use force inside the country and instead emphasizes preventive measures. Another

feature is the sharing of evidence and coercive forces on national ground. Those provisions have to be implemented in the first place, which is also shaped by societal norms and values, but the way law enforcers use the legal provisions and to what extent they take advantage of the interpretation space or legal gaps is influenced by the security culture (besides the individual attitudes). In a JIT, differences between security cultures can lead to conflicts between officers, when it leads to different priorities during set-up or operational measures (Sollie & Kop, 2012, p.59). As an option JITs can be used flexibly to the crime fields and competent authorities have the possibility to decide when and how JITs shall be set up. This decision if JITs are suitable for a certain case is determined by the way security threats are anticipated and how a transnational team would interact to fight the crime, which is strongly connected to the security culture. Furthermore, it is determined by the lack of structures that enables competent officers to identify suitable cases if not detected by Europol, due to the fact that general information exchange about trans-border criminality is not taking place structurally (Sollie & Kop, 2012, p.62). Since this is only the first step, JITs often fail to be set up because of a lack of common interest and divergent norms that hinder the demand for cooperation or “lead to at least some loss of effectiveness and speediness” (Reinke de Buitrago, 2010, p.78), besides the lacking will to overcome conflicts during investigations (Sollie & Kop, 2012, p. 96). Missing capacities are another issue influencing the priority setting of polices. Seconded officers are unable to work in their national office or fulfill their usual tasks and are therefore less flexible. With each decision to set up a JIT, superiors accept a loss of flexibility of their staff, which let them search for other options first (Sollie & Kop, 2012, p. 96). Impeded by the differences of security culture, JITs are also a necessary attempt in order to learn how to manage differences like these and to develop a common security culture in the long run (Reinke de Buitrago, 2010, p.85).

As shown above, JITs are pressured by many obstacles and inadequacies. Besides the legal, procedural and socio-cultural issues the instrument is confronted with reservations of law enforcers and their units, also caused by already existing difficult circumstances and problems during operational phases. At the beginning of this chapter it was said that the assessment of the instrument in terms of its usability is made by law enforcers who weigh up estimated workload against estimated results and advantages. Therefore, officers have to choose from a range of different possibilities regarding European police cooperation in an

individual case and find the most efficient and suitable one with hardly any resources available for assessing (Gless, 2010, p.35). Furthermore, officers often refrain from working in an international team since it is strenuous in many aspects (ib.). Besides the foreign language, the cultural differences and the different working procedures, legal boundaries may weigh upon the officers to behave and act differently than they have learnt and additionally, the workload increases, e.g. in the case of a “German prosecutor running an international JIT carries a significant administrative burden of weekly reports and loss of discretionary power” (Block, 2012, p.101). As a study has shown, law enforcers “prefer free text reporting, instead of filling several pages of modular information” (International Centre for Migration Policy Development and European Public Law Organization, 2010, p.40), but the bureaucratic process to set up a JITs agreement and the duties of the officers to give report to their national offices diminishes the value of JITs in comparison to the workload. Other options like parallel investigations then seem to be more attractive, while the outcome is similar and information exchange can take place through other channels. In general, it can be said that the additional workload of the preparation phase, due to the complicated set up of the JIT agreement, discourages many responsible authorities as well as officers most. All these problems in addition to the diminished added value of direct information exchange due to simplified procedures (Sollie & Kop, 2012, p.68) lead to the thesis that law enforcers “prefer to use traditional procedures or informal agreements” (Lemieux, 2010, p.10) over an instrument that is unfamiliar and with the only real advantage of exchange of staff which is also impinged by issues.

4.3. Reaction of the system

During the process of policy making, the last phase deals with the reaction of the system to the impact caused by the reactions of the addressees and focuses on possible adjustments in the political context. The adjustments are decisive in order to reach the aim of the policy. The final outcome comprises intended as well as not intended results caused by the policy (Jann & Wegrich, 2009, p.83).

With regard to the instrument of JITs, many issues have already been identified, although a further in-depth evaluation on EU level has not taken place yet. The annual report of Eurojust is one rare source of gathered information by European agencies. However, some adjustments and improvements have been made to facilitate the use of JITs. Legal

harmonization of the systems seems to remain one of the major obstacles which is hard to tackle, other circumstance, though were ameliorated.

Since the legal provisions leave open the question for the costs – how the expenditures are divided, to the parties of the JIT-agreement, it has turned out to be an obstacle during negotiations. Main factor in the funding of JITs are the seconded members (lodging, travel expenses, overtime premiums, mobile phones, computers, transportation etc.) (Mayer, 2006, p.211). To solve these problems, the European Commission established a grant for Eurojust with the purpose to support JITs financially in order to cover travel and accommodation costs as well as technological equipment on request (Nagy, 2009, p.156). This support is assumedly one of the main reasons why the number of JITs has increased, as seen in the annual reports of Eurojust, and is used in a great number (see Annual Eurojust reports 2011-2013, earlier described in chapter 3). Another issue that seems to be solved through reactions of the actors, is the limited awareness of the instrument among the police officers and the little knowledge how to use it and whom to contact to receive sufficient support. Especially the more efficient way of setting up a JIT bottom-up instead of top-down requires trained and well (JIT-) educated officers. As demanded by Rijken, there is a need for “an institutionalized procedure for the realization of JITs” (Rijken, 2006, p.227), i.e. for a wider use of JITs it is necessary that those teams are known and skepticism stemming from ignorance is decreased. National judicial services and police, especially the local and regional forces need a broad knowledge about JITs and thereby need to be enabled to have a more “proactive role” (ib.) in providing information on JIT worthy cases. However, JITs in some countries are already used more flexible than in the beginning, adjusted to the needs of the officers. While JITs are still not a common procedure and not used as a matter of routine, experience has grown over the last years. The use of JITs in smaller cases proved to be a good approach as it is easier than in larger ones making the officers familiar with JITs (Sollie & Kop, 2012, p.68).

In general, the acceptance of the instrument needs to be increased by both law enforcement agencies like police and prosecutors as well as administrative executives like the competent ministries. More promotion by the national agencies seems to be necessary in order to boost the instrument and let it come into full effect.

5. Conclusion

When looking on the beginning of this paper the main question to answer was: Why are Joint Investigation Teams no success in European Cooperation in criminal matters? Assuming that the little use of JITs or rather the small number of JITs which reached the operational phase is caused by many different issues it was necessary to look at the instrument from different perspectives. In order to answer the main questions five sub-questions were supposed to be answered.

The first question was how the legal basis enables officers to work in a JIT. Based on the Convention on Mutual Assistance and its Art. 13 as well as the Framework Decision on Joint Investigation Teams States of the European Union had to implement several provisions. JITs is a judicial instrument, which is an legal option common to all European countries for cooperation in investigations. However, polices are actors as well as addressees since the most provisions aim on the operational basis. Officers are able to work in a JIT as national or foreign – seconded officers. The two main elements of JITs are the information exchange and the operational cooperation with the seconding of officers. Seconded officers within a JIT based on the provisions of the Convention and the Framework Decision are enabled to take coercive measures on foreign ground and the ability to call for measures in their countries. These innovative elements are for the purpose of a more effective investigation on trans-border criminality using the knowledge and expertise of all involved countries.

In the third chapter the second sub-question, how other instruments facilitate cooperation and how they influence cooperation through a JIT was answered. It became apparent that Europol and Eurojust as accepted and experienced institutions are sources of diverse support and are able to identify suitable cases. Eurojust is able to give legal expertise on the different legal systems of the Member States which is important especially during the setup of the agreement as well as the funding through grants. In addition, Europol has the resources to provide channels for information exchange as well as technological support. Through the treaties, especially the latest – the Lisbon Treaty – the idea of the AFSJ was pursued. It outlines the basic principles for the police and judicial cooperation in criminal matters and thereby is one of the basic sources for JITs. Besides, the Treaty of Prüm is an example for multilateral agreements, simplifying information exchange and even containing

provisions on operational cooperation and coercive competences for foreign officers. It is assessed as very effective, which shows that in a non-European context the idea of operational cooperation, besides the exchange of information is possible and wanted in general. In addition to Prüm many other instruments like the P(C)CCs, liaison officers and the SIS simplify information exchange in criminal matters. Therefore, one core element of JITs – the information exchange is not that advantageous anymore and consequently is not a decisive argument to set up a JIT.

Due to the multilevel system of the EU measures are placed in a tensed field of interactions between institutions on different levels which leads to the optional character of JITs. Moreover, legal interpretation of the legal basis stem from the intergovernmental regulated policy field and cause problems in regard to the use of the instrument. Furthermore national legislation on law enforcement differ and produce inoperability of police in certain cases. The national legal systems vary especially in terms of gathering evidence and its use in front of courts and the disclosure of sensitive information within a JIT. A further result is that the JIT agreement, which is supposed to avoid legal conflicts in advance, requires a lot of preparation time and workforce. All together these are the main obstacles caused by the structure of the EU (sub-question 3), hindering JITs to work properly and be an advantageous option for officials.

Which then leads to the answer to the fourth sub-question: Why do operating officers use JITs reluctantly? Since coercive rights of foreign officer on national ground impinge the core competences of the State sovereignty thinking is an issue. However, this applies more on the level of higher authorities, which are involved in the setting up process of a JIT and therefore is not that an issue to officers, who have more pragmatic reservations. Those officers are burdened by bureaucratic demands, national legal boundaries and have to deal with cultural and investigative differences which make the work in a JIT strenuous. Furthermore, security culture differs mostly among the European countries so that authorities have different prioritizing and cases cannot even be identified or JITs do seem to only be a suitable instrument for some States. So concluding, officers working in a JIT have massive additional work, especially in advance, while other instruments seem to have more value and are more effective in comparison. A general reluctance on different levels is the result.

At last, it has to be answered what can be done to solve the juridical and practical problems in the functioning of JITs? This question is quite difficult to answer as there are general problems that cannot be solved due to cultural differences and intergovernmental character of the policy field. Some measures like the funding of JITs through the grant of Eurojust seem to be very efficient and help to increase the use. In order to increase the use of JITs though, those have to be tried to out in smaller cases to improve the experience and decrease the skepticism both on the operational and institutional (national) level. Further a more flexible use should be promoted to adapt the concept of exchange of investigators more easily to the certain cases, since this is the big advantage of JITs. Closer exchange of expertise and networking especially between not neighbouring countries would also be helpful to use JITs more often in cases spanning over the EU (and not between neighbouring countries).

Further research with regard to JITs seems to be valuable in the field of legal harmonization. By looking on the individual provisions of national law regulating investigative techniques, research could show where possible adjustments can be made. Moreover, it can show how the legal basis for Joint Investigation Teams has to be amended to make it more efficient. A more in-depth research on the opinion of officers on cooperative instruments and preferred working techniques and exchanging channels would be meaningful to understand how JITs have to be set up to work successfully on the operational level. In general it has to be looked on the different perceptions of problems with the instrument, since it differs between each State's polices and prosecutors.

6. References

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