

European Union Police Cooperation 1991-2013

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1. Introduction

This first, introductory chapter defines the objective of this study and the research problem; it explains the reason for this research and its social relevance. This chapter also contains a literature review of the field. Moreover, this chapter presents the research questions. In the last part of the chapter the outline of the paper is presented.

1.1. Problem Definition

The European Union consists of 28 member states. The number of people who live and work within the European Union was on the first of January 2012 five hundred and three million¹. This means that over half a billion people have the right to move freely within its borders. With this amount of people who can live, work and move as they please public safety and the issue of cross border crimes become important. There are now 28 national independent police forces that work independently as well as in cooperation with each other and in some cases together with EU bodies such as Europol, in order to prevent and solve cross border crimes. Judicial and law enforcement cooperation within the European Union has in the last decades been given an elevated position; from 1993 to 2009 the third pillar in the three pillars was dedicated to Police and judicial cooperation in criminal matters (PJCC); the European Union utilized a three pillar structure between 1993 to 2009; until the enactment of the Lisbon treaty the pillar structure was created in order to allow different kinds of cooperation to advance utilizing different methods.² In June 1991 German Chancellor Helmut Kohl proposed that the EU should establish European Police Office. This office was to be modelled on the American Federal Bureau of Investigation (FBI) and the German Federal Criminal Police Office (BKA). The establishment of European Police Office was planned to be done in two stages; the first stage would be exchange of information and experience and in second stage this office would be given the power to act within the jurisdiction of the member states³. Since chancellor Kohls proposal European cooperation in the area of policing and justice has continued and several new institutions have been established to advance this cooperation, a European Style FBI organization has still not been created.

¹ Eurostat 2013

² cvce 2013

³ Groenleer 2009: 278

1.2. Literature Review

The area of judicial and police cooperation is a vast area with many books and articles being published yearly.

Mathieu Deflem Professor of sociology at the University of South Carolina, has written on the history of police cooperation; in his article “Bureaucratization and Social Control: Historical Foundations of International Police Cooperation”⁴ he argues that police cooperation is not something new (Interpol being formed in 1923). Furthermore, he goes on to state that for international police cooperation the national police forces must achieve a level of institutional independence from their political centre; Police forces that fail to distance themselves will insulate themselves from cooperation or only participate in activities that are closely tied to the national tasks.

Ludo Block (a former Dutch policeman) in his article “Combating Organized Crime in Europe: Practicalities of Police Cooperation”⁵, states that cooperation between European police forces meets certain problems. Differences in legal systems and differences in police traditions do cause more complexity. However, he mentions the factors that might contribute to its success, such as professional autonomy, trusted personal contacts, common interest and a satisfactory knowledge of the differences between legal systems.

H Brady (senior research fellow at centre for European reform), in his article “Europol and the European Criminal Intelligence Model: A Non-state Response to Organized Crime”⁶ argues that the European Unions fight against organized crime is improving and that the police cooperation should look into customs cooperation that is much more advanced within the Union. Brady states that initially the police in the member states were sceptical to Europol and European Union backed police cooperation. However, over time this view has changed and Europol and European Police Cooperation became more accepted; as a senior police officer from the London Metropolitan police states “By making Europe a safer place, we add to the safety and security of this country.”⁷

Another interesting article is “A discussion on the usefulness of a shared European ballistic image database”⁸ by De Ceuster et.al. (2011). The authors discuss the possibility of a European database for comparing bullets recovered from crime scenes in different member states to each other. The

⁴ Deflem 2000

⁵ Block 2008

⁶ Brady 2008

⁷ Brady 2008: 1

⁸ De Ceuster, Hermensen, Mastaglio, Neenstiel 2011

authors state that at present time (21.December.2011) such a database would not be beneficial, however they do acknowledge that such a database would lead to more cases being solved. In the authors view resources would be better used to focus on possible international connections when such a connection could be proven.

Several books have also been published on the subject, among them “The Politics of EU Police Cooperation – Toward A European FBI?”⁹ by John d. Occhipinti a professor of political science at Canisius College in Buffalo New York. Occhipinti begins with the history of police cooperation within the European Union and then elaborates on its history and major changes. Occhipinti gives several explanations for the development of police cooperation within the European Union. For example, he credits functional spillover with demonstrating to the member states that with an open Europe criminals will follow where the people and the money go while the police is still hindered by borders that are becoming more and more irrelevant to the people and companies of Europe. Furthermore, he goes on to describe some of the shortcomings of the cooperation; for example the subsidiarity principle and the member states attachment to it has limited what was included under the third pillar. Occhipinti states that EU police can be described as intergovernmental with the member states being in control. However, there are also indications that the cooperation is moving towards a more supranational route and that Europol in the process will start to be more like the American Federal Bureau of Investigation.

Another book on the subject is “Global Policing”¹⁰ by Ben Bowling, professor of law at Kings College and James Sheptycki ,professor of criminology at the University of York. This book revolves around global policing however, the European Union cooperation is examined in chapter two. Under Developments in Europe the authors give a brief history of the police cooperation within the European Union. Furthermore the authors emphasise the importance of transnational police cooperation for the European Unions development of pan-European governance. The authors also criticize the police cooperation within the European Union, for example the use of the European Arrest Warrant on individuals suspected of very minor crimes such as the theft of two car tyres or the theft of a piglet. Bowling and Sheptycki warn about the democratic deficits and the lack of democratic oversight what they describe as an emerging European transnational state system. The police cooperation is adapting rules and shaping enforcement jurisdiction to suit its operational requirements and have decisively and in an undemocratic way helped to shape the European Union regional state system.

Many scholars for example Block and H. Brady have focused on the practical side of European

⁹ Occhipinti 2003

¹⁰ Bowling and Sheptycki 2012

Police Cooperation. Both authors advocate for European solution, however both authors also identify the persistent problems that exist within the policy field. The criticism of European Union Police Cooperation is not limited to practical problems like for example differences in legal systems; criticism is also levied against the cooperation on human rights grounds. Bowling and Sheptycki in their book “Global Policing” expresses concern over the lack of democratic oversight and the usage of certain instruments like the EEW for minor infractions.

The future of the cooperation is also a subject for study; Occhipinti in his book “The Politics of EU Police Cooperation – Toward A European FBI?” examines the future of European Union police cooperation. Occhipinti states that much of the police cooperation conducted before 9/11 was a result of functional spillover, however 9/11 changed the conditions and “*This contributed to a renewed resolve among member states to strengthen the capabilities of Europol and make better use of its potential services.*”¹¹ This “new” threat intensified the cooperation. Occhipinti states that many European Union Member States were hesitant to advance cooperation in the area due to perceived threats against their neutrality, but two factors increased the Member States acceptance of advanced police cooperation. The first factor was drug trafficking that had continued to increase during the late 1960 and early 1970 and resulted in domestic problems within the Member States; another factor was the terrorist attack on the 1972 Olympic games in what was then West Germany. These two factors contributed greatly to the development of European Union Police cooperation.

1.3. Research Questions

As of August 2014 the proposal put forward by Chancellor Helmut Kohl in 1991 of creating a European style FBI organization has not been implemented. Instead of chancellor Kohls proposal other forms of police cooperation have been developed and enacted since that time. When chancellor Kohl first proposed his European Police Office idea in 1991 the European Union consisted of 12 member states; as of 2014 it consists of 28 member states and a number of combined population is over 500 million citizens.

At the same time as the European Union has grown in both size and competences events outside of its control have changed the security situation for many of its members; the so called global war on terror has created a new security situation for many member states; several member states have experienced acts of terror, for example Spain and the United Kingdom. Another factor is the wide spread use of the Internet; the Internet has in many ways changed the life of the average European, not just the way of communication but also the way we shop and receive and transmit information

¹¹ Occhipinti 2003: 158

has been changed.

With the expansion of both, members and competences as well as the global changes that have and will continue to influence the European Union the question of European Police Cooperation and its future becomes very important. Will the European Police Cooperation continue to be based simply on cooperation between the member states with support from institutions such as Europol or will the cooperation continue to develop? If so will the proposal set out by Chancellor Kohl be reintroduced?

The central research question for this study is:

What kind of conditions enabled the intensification of European Union Police Cooperation between 1991-2013?

In order to answer the central research question three sub questions will be posed:

1. *What kind [character, societal function and mode of control] of European police force was proposed by German chancellor Helmut Kohl in 1991 and how and why was it blocked?*

The answer to this question will describe Chancellor Kohl s proposal, furthermore it will explain how and why the proposal was blocked. Moreover, this question will further the identification of the causes for the proposals failure which in turn will enhance understanding of the processes of European Union Police cooperation.

2. *What progress did the European Union make in creating European Police Cooperation since that time?*

This question will examine what progress has been achieved within the field of police cooperation since Chancellor Kohl s proposal. To identify what forms of police cooperation were successful is necessary in order to answer the third sub question.

3. *How can these successes and failures be explained?*

This question will establish what are the successes and failures of European Union police cooperation. To establish what forms of cooperation have been successful and why are of major importance when addressing the central research question.

1.4. Objective

The main objective of this research is to analyse the European Union Police Cooperation and to answer the question “*What kind of conditions enabled the intensification of European Police Cooperation between 1991-2013?*” To achieve this it is necessary to examine the history of European Union Police Cooperation and to identify which approaches were successful and which were not; besides that to determine what were the main obstacles for enhancing Police Cooperation? To carry out this task this thesis will utilize the theory of multiple streams developed by John Kingdon in his book *Agendas, Alternatives and Public Policies*. The application of Kingdon’s multiple streams theory will allow for detailed studies on how and why policies are enacted as well as to establish what forms of cooperation is successful which is essential for answering the main research question.

Thus, the aim of this study is twofold, first examining European Union Police Cooperation in order to find out which forms of cooperation were successful and why; this is followed by the second part of the thesis where the question of the future prospects of a European FBI will be analysed by applying what have been learned from analysing European Union Police Cooperation.

This study will contribute to the understanding of European Union Police Cooperation, its history, its present form and its potential future. Furthermore, it will deepen the understanding of why the European Police Cooperation has developed into its current form. It will also identify what are the major obstacles for European Police Cooperation, that can be of use when examining other policy areas that historically have been the privy of the state.

1.5. Outline of the paper

The first chapter contains introduction as well as a presentation of the research questions and a literature review that reviews relevant literature on the subject of police cooperation. In the second chapter the methodology will be presented. This is followed by the third chapter where the theoretical approach is introduced. In the fourth chapter Chancellor Kohls proposal will be presented and analysed utilizing the theoretical approach introduced in chapter three. The fifth chapter presents the progress made in European Union police cooperation. This is followed by the sixth chapter where the progress will be analysed utilizing by the theoretical approach from chapter three. In the seventh chapter the conclusions reached will be presented.

2. Methodology

2.1. Methodology

This thesis will address police cooperation within the European Union, its success and its failures and its possible future. For this project Explanatory case study will be conducted using qualitative research methods for data collection and analysis. According to Earl Babbie, explanatory studies are utilized when a researcher wishes to know why a certain event happened or just as important why it did not¹².

The analysis of the cooperation will be performed through the theory established by John W. Kingdon in his book *Agendas, Alternatives and Public Policies*; the multiple streams theory developed by Kingdon will be utilized to further the understanding of the police cooperation. In his theory of policy development Kingdon broke down the policy process into three different streams: the problem stream, the policy stream and finally the political stream. For each subject each stream will be independently analysed.

This project will be focused on academic sources including books and articles. The relevant information will be gathered from online databases and European Union online as well as offline sources. The documents and materials utilized will be drawn from the for the question related sources and will focus on official European Union documents as well as official documents from other competent sources such as human rights groups and Member States governmental records. Relevant information from other sources such as newspapers and online journals will also be utilized. The material included in this thesis will be chosen based on relevance to the topic, emphasis will be on utilizing scholarly material.

When the necessary data is collected qualitative research methods will be utilized in order to collect the relevant information to answer the research questions. Qualitative research is often employed to investigate why and how a policy change occurred. Document analysis will be utilized in order to extract the relevant information from the collected sources.

Moreover, historical research methods will be used when the need for such research arises. Within historical research there are three main approaches, for this study the hermeneutics approach will be used. Hermeneutics is a method for analysing material in context of real world events at the time.

¹² Babbie E (2007) *The Practice of Social Research* – Thomson Wadsworth

2.2 Limitations of the research

This thesis will focus on police cooperation within the European Union member states. I will not look into other forms of cooperation that are related such as Eurojust or other forms of judicial cooperation.

The fact that within the European Union several diverse languages are spoken is something that will lead to a further limitation, the language barrier will prevent access to certain information for example domestic political discussions and parliamentary debates. The language barrier will also in many cases prevent the inclusion of national media such as national newspapers, editorials or opposition criticism. The language barrier limitation will also limit the possibility to include organized domestic political opposition to policy change; many human rights groups as well as other organized political groups that work internationally will publish information in English this is not always the case with domestic political groups that will often only publish information in their local language. This information could have been useful in determining a Member States true intention as well as give a deeper understanding on the causes for a Member States position on a specific policy.

3. Theoretical approach: Multiple Stream Approach

In this thesis the question of why the European Police Cooperation took one direction and not another is posed. In order to provide the best answer to this question this thesis will utilize the work done by John W. Kingdon in his book *Agendas, Alternatives, and Public Policies*. Kingdon developed the so called multi-pule streams approach to explain why certain issues get on the agenda of the decision makers and get passed while others are rejected. The theory's main element is the three different streams within policy that needs to intersect for a policy to be enacted or changed.

The three streams identified by Kingdon are the Problem Stream, the Policy Stream and the Political Stream¹³.

3.1. Problem Stream

In the first stream the Problem Stream the reasons for a change of policy exist.¹⁴ This might be a problem of transportation, cross-border crime or any other problem that policy makers or people in general perceive as a problem. At any one time there are hundreds if not thousands of potential problems for a governmental policy maker to address; out of these some problems are of such a magnitude that they need a change of policy. The problems might be of a systematic nature that has developed into a problem over time; for example health issues due to an overweight population. This problem used to be of less importance due to the low number of individuals it affected, however with time this have grown into a major problem. A Further example could be the environment. Each indicator itself such as a worsened air quality and increased flooding might not by itself be a major reason enough for a change of policy but when combined it constitutes a problem.

Major events or what Kingdon refers to as focusing events are situations that force the decision makers to take action in a response to a specific event or series of events. These can be events like 9/11 or the world wide economic crisis of 2009. Focusing events can also be symbolic, for example a powerful story that exemplifies the need for a policy change or a decision maker with personal experience of the problem. Focusing events such as a crisis is a powerful indicator of a problem but this is not always the situation. What constitutes a problem depends largely on the interpretation of indicators, for example that people are sick and home from work as a cause of sickness is not a

¹³ Kingdon 2011

¹⁴ Kingdon 2011: 90

problem. However, if two statistically similar cities in one state have drastically different reports of the number of people being home sick then this constitutes a problem. Problems can also fade away from prominence due to a number of factors, the decision makers might feel they have addressed the problem with previous policy changes and therefore see the problem as solved. The problem might have been addressed by factors not intended to solve the problem; for example during the 1980s a problem for the Swedish government was car accidents that occurred in rural areas; people who are involved in collisions or other vehicular accidents often need assistance in the form of medical and/or police and finally assistance in moving the vehicle. This was a problem in rural Sweden with a large part of the country sparsely populated. The proposed solution was telephones placed throughout the roads of rural Sweden but with the invention and mass acceptance of cellular phones the problem faded away. A further cause of problems fading away is cost, both financial and societal cost of a policy change can cause decision makers to lose their enthusiasm for addressing a problem.

Problems can come to the attention of decision makers via a myriad of sources. Many indicators of problems today come from the systematic monitoring being conducted by various governmental agencies and non governmental agencies such as NGOs; another example would be studies initiated on a particular problem. A further source is feedback about already existing programs. The feedback from already existing programs can come in three forms; first systematic monitoring of programs where indicators are monitored to ensure program success. The second form of feedback is more informal and consists of decision makers getting feedback from the bureaucrats who administer the program and by being in charge of the implementation of policy often become aware of the problems facing the program. Another source is citizens complaints directly to the decision makers or to other people in charge of receiving citizens complaints, for example a ombudsman. Once a problem has been identified and a change of policy is needed the second of Kingdon's three streams becomes the focus.

3.2. Policy Stream

Within every area of policy there exists a community of experts on that particular field, they can be working within or outside government, in academia or working for companies or lobbying firms. These people all make up what Kingdon refers to as the Policy Community.¹⁵ Every policy is it environmental policy or policy on banking has its policy community. The size of the community differs with the area. For example transportation policy has a very large policy community due to its

¹⁵ Kingdon 2011: 116

fragmentation with different areas within the policy itself, road rail and flight, while other areas have a smaller and more close-knit community. The members of each policy community come up with thousands of ideas, these ideas are then tested against competing ideas and proposals from other members of the community. The origin of an idea is not always tractable within the community as the ideas are combined with parts of other ideas and changed into new ideas with no one remembering who came up with the original idea. Within the policy community the content of ideas are evaluated and members debate the merits of ideas versus other competing ideas. This way of working through problems and proposals instead of utilizing lobbying or mass mobilisations of people to win the argument is prevalent within the policy stream.

For an idea to escape from what Kingdon refers to as the Policy Primeval Soup the idea needs someone to invest their resources in it- time,energy and in cases financial resources. These people Kingdon refers to as Policy Entrepreneurs. Policy Entrepreneurs are people who advocate for a specific policy. These people are not necessarily part of the any policy community they can be elected officials, other persons in government or outside government or for example in interest groups, NGOs or think tanks; what they all share is will for change. The reason for a policy entrepreneur to wish for a policy change can as Kingdon states be “*One fairly straightforward possibility is that people sense there is a problem, and they advocate solutions to solve the problem*”¹⁶. Although Kingdon states that this kind of problem solving does exist, often people in and around government become set on a single solution and then proceed to look for current problems to attach it to.

Kingdon refers to two major sets of incentives for policy entrepreneurs who advocate policy change. The first is because it supports the values of the policy entrepreneur and as such the entrepreneur advocates for changes in public policy to reflect that. This can be described as ideologically driven support where a clear vision of the intended results is matching the ideological goals. The other form is promotion of personal or self interests such as expanding one’s institution or bureaucratic power or even keeping one’s job.

As stated above support from policy entrepreneurs side is often essential for an idea to develop into policy change; the entrepreneurs push for their ideas in a wide variety of forums, within the policy community itself and to the larger public. Often entrepreneurs attempt to soften up both the policy community itself, which tend to be resistant to major change and the larger public. This is done in order to get them used to new ideas and build support for the idea. This can be a very time

¹⁶ Kingdon 2001: 123

consuming period and can sometimes last for years. There are three main groups that the policy entrepreneur attempts to soften up 1) the general public, 2) individuals belonging to the area for which a policy change is desired (for example if the policy is concerning subsidies for wheat farmers then wheat farmers need to be informed), 3) the last group is the policy community itself.

The softening up is essential when a window of opportunity opens up, without this a proposal even the one that comes at a favourable time is likely to be ignored. Another important aspect of softening up ideas is the use of so called trial balloons. A trial balloon is an attempt to gauge the response to a proposal; for example a member of a parliament could introduce a bill not because he or she believes it will be adopted but to gauge the response to certain contents of the bill. Even though most of so called trial balloons fail they are important to the process since they put focus on the proposal and allow for a debate. Certain ideas and proposals come back as solutions to other problems, other times the same idea gets reintroduced at a later time. Another reason for continuing to advocate and introducing legislation that the introducing party knows is not going to get mass acceptance is to keep the issue alive. This is done to ensure that when the time has come for a change to the policy the Policy Entrepreneurs proposal is not dismissed as something new and untested. The policy community is like academia and very susceptible to fads and ideas.

Ideas can swoop policy communities very fast, governments on the other hand are generally not that quick to act. Therefore, to become a basis for future action an idea must first swoop the policy community and then show enough endurance to stay on the agenda when an opportune time arrives. However, an idea needs more than the right entrepreneur and the right time; there are several criteria for the survival of an idea. Kingdon refers to five criteria for an idea to survive.

The first is technical feasibility that refers to the future of the idea. The idea must, as Kingdon states, be “*worked out*”¹⁷. Will it actually accomplish the intended outcome? And “*Can it actually be administered?*”¹⁸ are questions that have to be asked. Also are there any inconsistencies in the idea or will there be unintended consequences of its implementation?

The second criterion is value acceptance within the policy community. The nature of the values of the policy community is to a large extent based on two factors, the first one being the country where the community is located. What can be accepted within the policy community in one country can differ greatly to what is accepted in another. The second factor is ideology; some policy areas are more driven by ideology than others, for example health care policy is more sensitive to ideology than transportation policy.

The third criterion is tolerable cost. The idea must be budgetary sound and not put to big of a

¹⁷ Kingdon 2011: 131

¹⁸ Kingdon 2011: 131

burden on the budget.

The fourth criterion is public acquiescence. The idea must be acceptable to the public or if the policy only affects a specialised segment of the public to that segment. There might be ideas and solutions that the policy community feels would work but that would be unacceptable to the public. For example quadrupling the price of a pack of cigarettes would cause less people to smoke and thereby lower both the number of deaths caused by smoking and the cost for health care related to smoking, however such a proposal would be unacceptable to the part of the population that smokes. The fifth and final criterion is a reasonable chance for receptivity among elected decision makers. The idea must have a chance of being approved by enough members of the deciding body in order to pass, however it can be the case that ideas can be kept alive in hope that the political climate will change enough for it to pass.

If an idea passes all these criteria mentioned above it goes on what Kingdon refers to as a short list. The policy community based on above mentioned criteria establishes a list with proposals for the policy makers to consider. Although the policy community might not be in agreement over one single proposal a consensus begins to form around the most prominent proposal. As Kingdon states *“Gradually, the idea catches on”*¹⁹ and *“An idea with something to recommend it, according to the criteria for survival, becomes accepted by ever larger number of specialists.”*²⁰

3.3. Political Stream

The third stream is the political stream. In this stream factors such as public mood, elections, or change of governments become important.²¹

The national mood is a major factor within the political stream. The national mood also known as public opinion is of major importance for people in and around government, the national mood can be described as the collective opinion of many people on an issue, a problem or a policy solution.

The national mood can have an important impact on both policy agendas and policy outcomes; the national mood can lift an issue to importance or it can push it into obscurity. Decision makers feel that they can accurately sense the national mood and any changes in it; this is primarily done in two ways. Elected politicians get feedback from their constituents in many forms, for example e-mail, small gatherings or delegations or simply interacting with the constituents. Non-elected officials on the other hand tend to follow the politicians sense of the national mood. However, the process is

¹⁹ Kingdon 2011:140

²⁰ Kingdon 2011: 141

²¹ Kingdon 2011: 145

much more complex than described above; for example both elected and unelected officials follow news and read opinions and editorials

Moreover, in the political stream we can find organized political forces. These can range from interest groups to ad hoc political mobilisations and to political parties. People in and around government will react to these groups and if all or a significant majority of these groups point in one direction then this is a strong drive for people in and around government to move their politics in that direction. On the other hand if these groups are in conflict over an issue political leaders have to examine the political cost of both positions. The perception that the proposal lacks support does not however mean that the proposal is dead. The political cost of supporting the idea might outweigh any lack of support.

People in and around government perceive support and opposition to proposals in different ways. The flow of communication is very important. If they receive a lot of attention and communications from one side they will assume that this side is stronger, even if the communications were of equal or roughly equal size, one side might get the upper hand simply because people in and around government believe that this side is more dominant, has more political resources such as electoral mobilisation, better group cohesion or the ability to affect the economy.

It is very common that a balance of organized forces leads to no change at all. Important interests with adequate resources are often able to block not only proposals that would be unfavourable to them but also any serious consideration of the proposal. The advocates of such proposals will often not raise the issue at all to avoid wasting of capital and energy on a proposal they know will not succeed. Another major reason for government inertia is the fact that all existing government programs almost inevitably build a clientèle that will support the program. Once a program has been established the people that benefit from said program will organize into interest groups that will protect the program not only from change but in many cases even from seriously considering proposals that might change the program. To counter this Kingdon states that a constituency that favours change is very commonly used as an argument for change. And changes to policy do happen even when there is a strong protecting force; national moods changes, election leads to changes in parliaments and opens up new possibilities. Other times other organized interests becomes stronger over time while others fade away.

Another major component of the political stream is events within the government itself. Within government factors such as elections and their results have a direct effect on the composition of the government. Proposals can become a priority and proposals can become buried all with a change of administration. Within governmental actors agenda can change in two ways-either the incumbent

holding the position changes his or her priorities or views or the person in the position of power changes. The turnover of key personnel produces new agenda items sometimes allowing for proposals previously blocked to get lifted again, but at the same time it makes it impossible to consider other items that might be equally deserving.

There is a second important component of government within the political stream. The question of jurisdiction for administrative agencies and committees is important because these have their own claims of jurisdiction and this jurisdiction is their basis for power. Many departments and programs have their own jurisdictions to protect from other departments and programs that try to increase their jurisdiction. Once a program or department has been established the people administering the operation will reject most proposals and ideas that negatively affect their own operation; this can lead to different governmental entities having what is known as turf wars. When two or more governmental agencies share a part of administering policy within one field the question on who shall administer a new policy within that field can develop into a turf war where both sides advocate for their own operations to get the increased power. These turf battles can act as a retarding force on governmental action; all of the participants have a stake to preserve their power and funding that makes any change hard. However, at the same time there is the possibility for the opposite to occur; if a proposal is very popular and receives large support from the public a situation where both sides attempt to capitalize on its support might arise (where more than one party attempts to raise same points as to make the proposal theirs). If the issue is a popular one and there is electoral or publicity benefits then a so called turf war could lead to faster implementation, however if the question is unpopular or lacks support a turf war is likely to hinder any progress.

Within the political stream consensus building is an important factor. Consensus building within the political stream is performed differently than in the policy stream. In the policy stream the focus lies on persuasion that one's idea is the most suitable, within the political stream consensus is achieved by bargaining. Coalitions of support are gathered by granting concessions to other parties that in turn support the coalition. The acceptance and joining of the coalition is not pertinent to ones acceptance of its virtue or being persuaded by a superior argument it can also be because of fear of being left out and not receiving any of the benefits of participation.

Kingdon exemplifies the type of consensus building within the political stream with the following exchange "*You give me my provision, and I'll give you yours*"²² examples of this can be big proposals such as for example infrastructure development that contains benefits for both advocates concerned with road maintenance and development and advocates of rail transport and

²² Kingdon 2011: 160

maintenance.

The joining of coalitions in the political stream occur under other factors than in the policy stream. The bargaining process within the political stream entices potential supporters by promise of some sort of benefit and if enough support can be achieved others will join the coalition simply out of fear of being left out. Participants of a coalition within the political stream often especially in the beginning phases stake out their position in a absolutist way refusing to compromise on what they perceive as their principles, these views can be held by groups or parties on principle even though their passage into policy is completely unthinkable and or impossible. These positions can at times be inconsistent with the rest of the coalition and thereby lead to further de fragmentation, however often these views are staked out and held for future negotiations where one's original position is the start of the negotiation.

The political forces within the political stream are not of equal importance. For example national mood and elections have a powerful impact on the policy agenda and have the potential to overwhelm even a broad coalition of important actors.

Another form of proposals within the political stream is solutions without problems, these are proposals that people in and around government will attempt to attach to any and all problems that might arise. For example raising taxes is often used as a solution to various problems. Politicians attempt to couple their favourite solution to any and all problems.

This coupling in the way described above is not of great benefit to the process however coupling together all three streams will dramatically increase a policy chances of being enacted, for example an alternative is being discussed among the experts in the policy field, this alternative is then coupled with a problem within the problem stream this will usually allow the idea to gather support in the political stream and increase its chances of being enacted. If one of the three streams is missing the policies chances of being enacted is greatly diminished and if this is the case the policy will often be pushed away by other more supported policies. This can also work as stalling factor when for example a problem exists the decision makers want to solve it but there are no viable alternatives to consider.

To join the streams what is needed is once again a policy entrepreneur, this is people in and around government that will advocate for a specific policy change. In the political stream these individuals can be found in various places ranging from lobbyists to career bureaucrats as well as academics and elected officials. They all share three qualities that makes them successful. The first being that the person has some claim to be heard, this can mean that the person is for example the leader of a interest group or an expert on the subject or simply in a position that makes him or her important.

The second quality is that the person must be known for having political connections or great negotiating skill. The third quality is persistency the entrepreneur must be persistent in his or hers efforts, the entrepreneur must be willing to invest both time and in some cases money in advocating their idea.

These policy entrepreneur will also wait for an opportune time when the policy window is open. While this process can take a long time the entrepreneurs must be ready if the policy window opens up and have their ideas well developed and worked out in advance. In the process of advocating their ideas the policy entrepreneur couples the three streams, they connect solutions to problems and proposals to political momentum all in an attempt to get their policy enacted, the entrepreneur also bargains and negotiates to make the necessary couplings. Many attempts by the policy entrepreneurs fail, for example they can push for a policy at a time when the window is closed or the coupling failed. However many entrepreneurs continue to try and establish new couplings and then advocate for those.

Many policy fields are slow to change and policy changes happen gradually; these gradual changes are often small and nearly invisible if one is not paying close attention. However, there are times when big changes happen rapidly and a new principle is said to have been established. A new principle can be a small policy change but represent a big change from precedent setting nature.

Once a precedent have been set in one policy area it can cause spillover effects into similar policy areas; these spillover effects can happen for various reasons; for example the group or coalition that resisted change can be defeated and the coalition built to support the original policy can then be transferred to other fights; or the strategy used by the advocates of change can be applied to other policy areas. Spillover can also occur simply because a policy works, the success of the first case is used as an example on why it should be applied to the second. The success in the first case also means that the policy entrepreneurs will refocus their attention and coalitions that were put together to support the original issue can now be refocused on other issues.

If the decision makers decide that a problem is pressing enough they will direct their attention to the policy stream to find a suitable solution; this is also the case if for example the politicians are worried about upcoming elections or if the whole administration follows a single theme in their policies.

There are situations where holding on to one's original position becomes politically impossible, for example when a catastrophic event such as a terrorist attack occurs a governmental response is required.

3.4. Policy window

Policy windows refer to the time when the enactment of a policy is possible. The three streams, Problem Stream, Policy Stream and Political Stream all have their internal struggles for a policy survival; if an idea survives all three steps and arrives at the level of the decision makers in a time when a policy window is open there is a chance for enactment of the policy.²³

A policy window is said to be open when there is an opportune time for a policy to become enacted. There are two main reasons for a policy window to open unexpectedly, that are developments in the problem or in the political stream. Events in the problem stream can be varied ranging from catastrophic events that demand governmental action for example terrorist attacks or a great loss of life in a single accident to existing programmes that have increased in cost. Within the political stream the change of government is the most obvious opportunity for a policy window to open; a new administration allows for advocates to push for proposals that are possible to pass under this administration, this is especially true in the beginning of a new administration when the new administration asks themselves “*what should we do first?*”²⁴ Another way for a policy window to open is change of the political actors, a new minister or an influential new head of a committee can be personally more accepting of certain ideas than his or her predecessor. A further reason is changes in national mood; national mood changes with time and a policy that at one time was negatively perceived by the populace can at a later time become acceptable.

Policy windows can also open in a more predictable fashion. A new governmental budget cycle and reauthorisation of programmes are occasions when the policy window is open. The governmental budget is a predictable event where policy entrepreneurs can advocate for their proposals with advanced warning that the policy window is going to be open. The authorisation of programmes works in a similar fashion; the reauthorisation is needed and often leads to debate, that in turn often results in an open policy window.

A policy window generally does not stay open for an extended period of time, priorities change and the political cost might become too high, therefore when a policy window opens up advocates of proposals must act fast when they believe their proposal stands a decent chance of being enacted. Generally when a policy window opens up within a specific policy field there can be several proposals that advocates wish to get enacted. In these situations the proposal with the least amount of assistance and the greatest support gets priority. There are natural constraints on the workload for the deciding body, however as Kingdon states “*The capacity of the system is not constant from one*

²³ Kingdon 2011: 166

²⁴ Kingdon 2011: 168

time to another, nor is there a fully zero-sum competition for space on the agenda”²⁵ If there is a strong political will the system is capable of great and rapid change.

If the policy window opened due to a major event especially one that caused a lot of damage in regards to both human and economical cost it is easier to get support for a change of policy. As Kingdon states “*Accidents are unfortunate, of course but you do get more money.*”²⁶

Furthermore, a policy window might be closed for other reasons such as the decision makers feeling that the problem has been already addressed with other decisions or enacted policies; another important event that can lead to a policy window closing is if the advocates for a certain proposal fail to get any progress on their issue; this might lead them to be unwilling to further invest time, energy and political capital in something that does not have a high likelihood of being passed.

Another important factor is the perception of people involved in the process on the policy window. There is no objective method of categorically stating that the policy window is open, this means that advocates of proposals might miscalculate their perceived support, which in turn can lead to proposals being voted down. The question of the policy window being open or closed will also lead to hesitation among advocates regarding the best time for pushing their proposal. A push for a proposal when the policy window is closed might affect future attempts to advocate for the same proposal. It is also important that when a policy window opens the proposal is ready and worked out beforehand and that this work is done in preparation for when a policy window would open.

The existence of a policy window within a policy field or the expectation of the creation of one is necessary for the participants in the process to be willing to invest their time and energy as well as political capital in a policy. Many items never reach serious consideration because their advocates do not feel they have a chance of being enacted and or because the political cost of advocating the proposal.

Bargaining also works differently when a policy window is open. When the issue is not subject to passing (i.e. when the policy window is closed) advocates tend to hold to their original position even if these positions seem to be extreme. However, if the policy window opens up these advocates will often become increasingly flexible on what was previously their position. This is done to be included or as Kingdon states “*to be in the game*”.²⁷

²⁵ Kingdon 2011: 185

²⁶ Kingdon 2011: 175

²⁷ Kingdon 2011:168

3.5. Critical acclaim of the multiple approach

The use of Kingdon's Multiple Stream Theory is done for several reasons. The first reason is that the model examines why and how a policy rises to the level of the decision makers. For the purposes of this thesis the question of police cooperation will be examined through the multiple streams theory in order to establish what policies were enacted and which ones were rejected.

A further consideration when choosing Kingdon was the three streams approach; with three separate streams the success or failure of a policy can be analysed on several levels that leads to deeper understanding of the subject.

The third reason for using Kingdon is that although the model was developed for the United States federal government agenda it can easily be applicable to the European Union. Many scholars have written on its application on the European Union, for example, Professor Richardson in his book *European Union: Power and Policy-Making* wrote extensively on its application to the European Union; he states “*There is an almost an uncanny resemblance between this description of US policy making and the perceptions of key actors in the EU policy process.*”²⁸

Another scholar that has utilized Kingdon's Multiple Streams Theory is Dr Raphael Bossong a research fellow at the University of Hamburg. In his book *The Evolution of EU Counter-Terrorism: European security policy after 9/11*²⁹ she utilizes Kingdon's multiple streams theory in order to examine European Union counter-Terrorism cooperation.

The Multiple streams theory also better explains the creation of new policies than for example the incremental theory that generally builds on existing programs or policies; incremental theory also possesses an unwillingness to include changes in the world as a factor for policy change. Incrementalisms focus on existing structures and institutions would for this thesis have put unnecessary limitations on the research, furthermore incrementalism needs there to be no major imbalances of power between the participants of the policy process, something that in the EU policy process is often not the case,

Another important theory when it comes to European Union integration is Liberal Intergovernmentalism (LI); LI makes several assertions that would not be beneficial for this study. It is very state centred theory where the Member States are the drivers of European integration while the European institutions are as stated by Moravcsik about the EC: “best seen as an

²⁸ Richardson 2001: 21

²⁹ Bossong 2012

international regime for policy co-ordination”;³⁰ a further complicating factor is that LI makes the assumption that states are always rational actors as Kingdon states: “*The ability of human beings to process information is more limited than such a comprehensive approach would prescribe.*”³¹ He goes on to state that many actors might behave fairly rationally a fair amount of the time but with a larger number of actors involved in the process rationality becomes more elusive.

Historical institutionalism is also sometimes used in research conducted on the European Union.

This approach is centred on institutions and attempt to explain how political struggles “*are mediated by the institutional setting in which [they] take place.*”³² Furthermore, historical institutionalism puts emphasises on the historical origins of institutions as later changes are “*as much a response to those initial conditions as it is to contemporary demands.*”³³

Historical institutionalism is biased towards explaining continuity and lacks explanatory power to explain change, furthermore it is very path dependent. For this study I felt that historical institutionalism lacked the explanatory power that Kingdon's theory possesses.

4. Helmut Kohl' s proposal

What kind [character, societal function and mode of control] of European police force was proposed by German chancellor Helmut Kohl in 1991 and how and why was it blocked?

The first public mention of a European Police force by Chancellor Kohl was during a meeting in Edinburgh in May 1991. During this meeting Kohl stated that cooperation between internal security forces and juridical authorities was vital and overdue and that this cooperation was essential for the establishment of the Single European Market.³⁴

In June of the same year Chancellor Kohl presented the idea to the other eleven members of the then European Communities during a meeting in Luxembourg; Chancellor Kohl's proposal was the establishment of a European Police Office. The establishment of the European Police Office and its powers should have been a two-step process. The first step was the creation of an information exchange system where information and experience could be shared between the law enforcement entities already existing in the member states.³⁵ The second step would be the enhancement of the

³⁰ Moravcsik, Schimmelfenning 2009: 68

³¹ Kingdon 2011: 78

³² Thelen, Steinmo 1992: 2

³³ Annett 2010: 3

³⁴ Woodward 1993: 9

³⁵ Occhipinti 2003: 35

powers given to the European Police Office; the office would have the power to conduct independent investigations in any member state against drugs as well as organised crime.

The proposal from Chancellor Kohl did not present a unique solution; the Trevi working groups that had a long history within the development of European Police Cooperation had raised the question previously; furthermore, within police circles in Europe in the decades leading up to 1991 there had been discussions about a possible European police agency, however these discussions mainly centred around Interpol and increasing its powers.³⁶

The proposal presented by Chancellor Kohl followed a long tradition of German political and law enforcement support for enhanced European police cooperation. The German federal police the Bundeskriminalamt (BKA) had raised the question on several occasions since the 1970s and were willing to provide the main impetus for a more extensive European Police cooperation,³⁷ The Under-Secretary from the German Ministry for Home Affairs Schreiber states; *“We Germans, with our federalist state structure, have considerable experience with security issues. We should apply the approach used in Germany at European level.”*³⁸

The establishment of a European police force and especially one with such extensive powers as the one proposed by Chancellor Kohl resulted in surprise among other member states. United Kingdom and France expressed particular objections. The British under prime minister John Major were more in favour of the creation of a Police coordinating body on a intergovernmental level than on a supranational level; the French voiced similar concerns with giving executive policing powers to a EU agency.³⁹ Sir Roger Birch former Chief Constable of Sussex and Chair of the Association of Chief Police Officers stated: *“I would question the practicality in the immediate foreseeable future of any form of European FBI operating across frontiers in an executive capacity. I cannot begin to conceive of the difficulties which would face such a team called on to operate outside their own countries where they would need to understand and comply with the multitude of legislative and regulatory requirements”*⁴⁰

Chancellor Kohl and the German proposal for a two-stage establishment of a European Police Office were finally accepted by all member state ministers except the British.⁴¹ In hopes of receiving a more positive response from the British on the proposal at a later date, Chancellor Kohl accepted Prime Minister Majors request not to rush the European Council to decide upon this very

³⁶ Woodward 1993: 11

³⁷ Woodward 1993: 13

³⁸ Fecl 1992

³⁹ Occhipinti 2003: 35

⁴⁰ Woodward 1993: 13

⁴¹ Monaco 1995: 510

thorny issue at that time and the focus of the meeting turned to what was then an erupting conflict in the Balkan region.⁴²

However, Chancellor Kohls proposal was a two-stage process and on the first stage of the process there were consensus on the establishment of a information exchange system with information retention qualities as well as analytical expertise. The decision was made to pursue the first phase of the proposal and to establish Europol.

The acceptance of the creation of Europol by the member states was also helped by the work the Trevi group had performed. The Trevi ministers had previously in 1991 established guidelines for so called Drug Liaison Officers (DLO); that would allow for the DLOs to collect and share information with other relevant law-enforcement bodies in the other member states. The result of this was the establishment of the Ad Hoc Working Group on Europol that was established within the already existing Trevi framework.

Chancellor Kohl continued to advocate for the second stage of the process even after the decision was made to only enact the first phase of his proposed policy.

Kingdon utilizes three steps when explaining why certain policies are successful while others fail.

The first step is to identify the problem that needs to be addressed; Chancellor Kohl s proposal was not ad hoc. The proposal followed wishes expressed by members of German law-enforcement as well as from the political sphere. The proposal was a solution to a perceived problem that would exist when the Single European Market would be established. As the solution was intended to combat a coming problem and was not the reaction to an event it is hard to identify a focusing event that is often accompanying major policy.

Since the idea was not new it benefited from the time and political capital invested in it by other members of the policy community such as Trevi group that helped “softening up” the idea among the community.

Once the problem has been identified, solutions to the problem were presented by the policy community. The idea already existed within the policy community with the Trevi group having “softened up” the idea.

For the idea to survive within the policy community it needed to fulfil several criteria before its possible advancement into a proposal that could eventually pass. The idea needed to be technically feasible as well as acceptable from a value standpoint and have the possibility to anticipate and adapt to future constraints. Objections to the idea mainly centred around its technical feasibility and its acceptance from a value standpoint; the technical feasibility was questioned on the ground of the

⁴² Occhipinti 2003: 38

vast differences that exist within the member states in the field. Different member states have different legal systems and different ways of policing, furthermore different national laws and the vast number of languages in the community at that time increased its technical difficulty. The idea was also questioned on the grounds of value acceptance among elected officials; both high and low policing have traditionally been seen as the exclusive privy of the state. Another factor that helped the idea survive was the availability of alternatives, something that in this case became crucial.

The final step a policy has to pass is the political level. Here the proposal was introduced by Chancellor Kohl acting as the policy entrepreneur himself; the idea reached the political stream of policy by utilizing several methods- it made use of the work the Trevi group had invested in the idea, in the sense that Trevi had “softened up” the community and helped to inform and advocate for the idea. Chancellor Kohl himself acted as the policy entrepreneur, that elevated the question to the highest level.

Chancellor Kohl attempted to build a consensus for the policy between the member states but only the British objected. The British delegation headed by the Prime minister John Major did not accept the second part of the proposal. The British objections to the proposal were numerous, John Major the Prime minister of the United Kingdom at that time stated that Europol was a classic case for intergovernmental cooperation between countries rather than cooperation within the framework of community law.⁴³ Furthermore, the British expressed concern over giving Europol powers to pursue and arrest perpetrators.⁴⁴ John Major expressed his view that the European Council should not be rushed into deciding upon what he described as a thorny issue; Chancellor Kohls attempts to build a consensus was now between himself and the United Kingdom and in an attempt to receive a more positive response at a later time Chancellor Kohl agreed to postpone the vote on the full implementation and only move forward with the first phase of the proposal. This agreement with the United Kingdom to delay the vote on the full proposal, eventually lead to the policy window on the issue being closed.

The policy window for the proposal closed for a number of factors; the timing of the proposal unsettled many leaders that were surprised by what they perceived as a quite extreme position, this can be attributed to not enough political capital invested in the softening up of the idea beforehand. There was also competition for place on the agenda at the meeting; the conflict in the Balkans had escalated and demanded the attention of the ministers that added to push the proposal off the agenda.

Chancellor Kohls vision of a European FBI style organisation was at the end only to be half of what he wished for. The strong British objections to a European Police force with executive powers

⁴³ Bunyan 1993: 6

⁴⁴ Grant 2006

meant that for now at least Chancellor Kohls dream of a European FBI crossing borders and solving crimes was not to be.

Conclusion

Chancellor Kohls original proposal was bold and would have meant significant changes for the Member States. The idea of a European wide police force with powers of investigation and arrest in any Member State was a big change to the current European policing. Many compared Chancellor Kohls proposal to the American Federal Bureau of Investigation (FBI), this comparison aided both sides of the issue. It helped illustrate and exemplify to people the functions of a European Police Office in that it showed an existing organisation performing many of the functions for the proposed European Police Office. However, using the FBI as an example also caused concern; one major difference between the United States and the EU is that the United States is a country made up of States that combine into the country of the United States of America. The European Union is an economic and political union that includes several nations from the European continent not a nation state. This in itself is a major difference between the two starting points. Within the European Union there are Member States who are more in favour of a federal system while others vehemently oppose it.

Kingdon has established a set of conditions that a policy must pass in order to survive-what Kingdon calls the policy primeval soup. For the European Police Office the main objections were, technical feasibility and receptivity among elected decision makers. The technical feasibility of the office was questioned on the grounds of the vast number of different languages, laws and policing methods in Europe. However, the main obstacle was receptivity among elected decision makers; the French and the British objected to give such a broad powers to a European Union Institution. The then British Prime Minister Major was a strong opponent of the second stage of the proposal; during the negotiations Chancellor Kohl acting as a policy entrepreneur managed to achieve consensus between all the Member States except the British who still objected to the second stage of the process. The British Prime Minister expressed the view that this was a complex issue and that voting should be postponed. One important factor that helps a policy survive is the existence of alternatives; Chancellor Kohls proposal consisted of a two-stage process with the British objections mainly regarded the second stage of the process as the objectionable stage. Chancellor Kohls proposal was to vote on only the first stage of the process, this was done in a hope of at a later time when a vote on full implementation should occur. However, the window of opportunity closed and no further vote was to take place.

5. Progress in European Union Police Cooperation

The police cooperation within the European Union have since 1991 grown in all aspects ranging from the creation of organisations such as Europol to smaller forms of cooperation as for example the Council decision on cooperation between special intervention units.

In November 1993 the Maastricht Treaty went into effect radically changing the form of cooperation between the member states. The European Union consisted now of three separate pillars that would use different methods for cooperation. The three pillars were: European Communities (EC)-this pillar was aimed at increasing economical cooperation including the single market as well as areas such as asylum policy and the common agricultural policy; the second pillar was Common Foreign and Security Policy (CFSP) that included areas such as foreign policy and security policy. The third pillar and the pillar with the most interest for this thesis was the Police and Judicial Co-operation in Criminal Matters (PJCC). The third pillar included policies regarding law enforcement cooperation and policies to combat racism. The Maastricht treaty Title VI Article K1(9) begins with stating *“For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:”* the Article goes on to state under section 9 *“police co-operation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).”*⁴⁵ This article recorded the agreement of by that time the twelve member states on establishing a European police office; the exact form and function of the office was already being negotiated and worked out in the so called K.4-committee that began meetings and creating working groups. The working groups were on point to create proposals in several areas such as working groups on police cooperation, terrorism, drugs and organized crime. There was also a K.4 working group that took over the work of the Trevi Ad Hoc working group on Europol.

The inclusion of police cooperation into the third pillar resulted in several constraints for the cooperation. The third pillar was ruled by the Intergovernmental cooperation method, a method that generally only allows for member states that take policy initiatives and gives a very limited role to

⁴⁵ THE MAASTRICHT TREATY 1992

both the European Parliament and the Court of Justice.⁴⁶ However, at the same time constraints were put on the developing cooperation. The fact that the police cooperation was given such a prominent role sent a symbolic message that the European Union was considering cross border crime within the Union as such an important issue that it should be dealt with a supranational level.⁴⁷

The Maastricht Treaty, formally the Treaty on European Union played an important role for the development of police cooperation within the European Union; it laid the groundwork for Europol and for the first time police cooperation. The question of cross border crime was given a prominent role within the cooperation.

5.1. Europol

The Establishment of Europol was to be done by the Europol Convention, however progress on the negotiations and the convention was slow; the European Council set a deadline of October 1994 for its completion. The results of the negotiations was the European Drugs Unit (EDU); the main function of the EDU was to analyse information on drug trafficking as well as money laundering and the people associated with these activities. It was also tasked with facilitating the exchange of intelligence between member states law and customs enforcement.

The origins of the EDU as a proposal can be traced back to Trevi especially Trevi Working Group 3 that had been established in 1985 in order to study strategies for coordinating actions against serious crime focusing on drug and organised crime. In 1987 Trevi Ministers at a meeting in Copenhagen drew up a set of guidelines for the posting of so called drugs liaison officers (DLOs) outside of Europe in drug producing or drug transit countries. These officers would be tasked with information collecting and dissemination from within these countries. At the same time proposals for the establishment of National Drugs Intelligence Units (NDIUs) were confirmed, the NDIUs were to be established in each member state and coordinate intelligence exchange drug-trafficking and other drug related crimes between member states.

In June 1991 Trevi Ministers met again and decided to establish guidelines for the DLOs to work within the European Communities (EC) at that time in order to collect information on crime in general and to coordinate requests on information and investigations to the relevant forces. This meeting happened in June the same month as Chancellor Kohl presented his proposal to the European Police Office. The result of the meeting was the establishment of Ad Hoc Working Group

⁴⁶ European Union 2013

⁴⁷ Klosek 1999: 616

on Europol that was tasked with the establishment of the European Drugs Intelligence Unit (EDIU). The origins of the EDIU came from Trevi, however Chancellor Kohls proposal was joined together with this plan to form the Ad Hoc Working Group on Europol.

The Ad Hoc Working Group on Europol consisted of senior government officials. This working group was tasked with preparing the convention that in turn was to establish Europol and during that time establish areas that would be suitable for actions to be undertaken by the EDIU. This process was estimated to take years to complete, therefore the decision was made to utilize the EDIU at a time a convention could be agreed upon. There were several issues that had to be addressed, and the decision to develop Europol in three stages was reached. The first stage was the establishment of the EDIU, the EDIU would function as focal points for the NDIUs in each member state. The second stage was the establishment of National Criminal Intelligence Services in each member state that would act as points of contact with Europol. Europol would be established with the third stage where the EDIU would be expanded into Europol that would conduct intelligence analysis of organised crime.

In June 1992 Trevi ministers established Project Group Europol (PGE). The PGE consisted of 15 experienced police officers seconded from the member states; they were tasked with drafting a plan for the Europol Drugs Unit (EDU) at that time. The name was changed from European Drugs Intelligence Unit to Europol Drugs Unit.⁴⁸ The 15 men PGE was led by a Jurgen Storbeck from the German BKA and consisted of high ranking police officers seconded from law enforcement agencies in the member states. The PGE started working in Strasbourg in September 1992 with inauguration ceremony attended by the French Home Affairs Minister at that time Paul Quilès who stated that the staff there was the "*the embryo of a European police*"⁴⁹

By the end of 1992 the PGE delivered its plan for the EDU and in June of 1993 at the Justice and Interior Ministers meeting in Copenhagen a Ministerial agreement on the establishment of the Europol Drugs Unit. This document did not have the legal powers of a convention but established the basics of the understanding between the Ministers on what areas the EDU would be tasked with covering. One major roadblock was the location of the headquarters of the new agency. The Dutch preferred The Hague as the new headquarters, citing its central location and the availability of suitable office locations in the old headquarters of the Dutch National Criminal Intelligence Service (Centrale Recherche Informatiedienst) that had relocated to Zoetermeer. The Trevi ministers could not reach agreement on the location of the headquarters and in 1992 in a report to the European Council they state: "*The TREVI Ministers feel that a decision should urgently be taken regarding the future headquarters of the EDU/Europol, otherwise it might not be possible to comply with the*

⁴⁸ Occhipinti 2003: 279

⁴⁹ Fecl 1992

date decided on in Maastricht (Jan`93) for the commencement of its operation. The TREVI Ministers therefore feel that it is extremely important that the European Council should decide on the location of Europol, taking into account existing candidatures.”⁵⁰ The inability of the Trevi ministers to agree on a location for the new unit slowed down the establishment of Europol quite considerably⁵¹ and it was not until December 1993 that the decision to place the new headquarters in the Hague was taken.

The EDU began its operational activities in February 1994. The role of the EDU was strictly limited to analysis and exchange of information on matters of drug-trafficking that affected at least two member states; its role was to assist law enforcement and other competent agencies in the member states to combat these activities. One major concern with the establishment of the EDU was regarding data protection and privacy of the ordinary EU citizen; this concern was so great that the EDU was forbidden to store any personal information in any form. The EDU was not allowed to include names of individuals in the analysis they performed for the member states.

The EDU mandate was quickly expanded, in March 1995 the Justice and Home Affairs Council expanded the powers to include the smuggling of nuclear materials as well as illegal immigration and the trafficking of stolen vehicles. This expansion of the mandate came after clear ambitions from the German presidency of the EU during the second half of 1994; during the same time the Germans published documents listing types of crimes they felt should eventually be under the jurisdiction of the EDU, for example credit card fraud, product privacy and unlawful supply of labor.⁵²

In the second half of 1994 Ireland held the Presidency of the EU; the Irish Prime Minister at the time John Bruton who himself supported the idea of a European FBI⁵³ supported a German French proposal at the Dublin meeting of the European Council. The meeting would give Europol operative powers to conduct investigations in conjunction with competent national authorities; another result of this meeting was the establishment of a high level group of senior law enforcement personnel as well as personnel from justice departments and customs. This group was to recommend methods of intensifying European Union cooperation on matters regarding internal security and report its proposals.

The EDU expanded its role even more with a joint action passed by the JHA council in February of 1997; the EDUs mandate was now increased to cover human trafficking. The human trafficking targeted by the EDU consisted of trafficking in adults as well as children for various illegal

⁵⁰ Bunyan 2007: 43

⁵¹ Woodward 1993

⁵² Occhipinti 2003: 53

⁵³ Smyth 1996

purposes, for example slave labor and forced prostitution.⁵⁴ This expansion of EDU powers came partly in response to the high profile crimes of the Belgian criminal and sex offender Marc Dutroux.⁵⁵ In April of 1997 the high level working group established during the Dublin meeting was finished and presented its findings to the Justice and Home Affairs council meeting in Luxembourg. The high level working groups proposals consisted of thirty recommendations and fifteen guidelines that needed to be implemented by the Member states, the Commission and Europol respectively. The guidelines and recommendations contain several policy decisions that the JHA felt were “of critical importance”⁵⁶. The JHA also called for the establishment of a network for judicial cooperation on a European level. The Action plan also mirrored the proposal from the Dublin meeting presented by Germany and France to give Europol operative powers; article ten under political guidelines states: “*The European Council reiterates its view that Europol should be given operative powers working together with national authorities.*”⁵⁷ The action plan also calls for the Council to examine to what extent and what areas of member states laws can be harmonized and if this could contribute in the fight against organised crime.

The Amsterdam meeting of the European Council in June 1997 supported the Action Plan. This meeting also created a new working group; this new group was the multidisciplinary group on organized crime (MDG) that consisted of senior law enforcement personnel as well as prosecutors and senior level policy makers and was tasked with the implementation of the thirty recommendations described in the Action Plan.

When the JHA met again in June 1998 the MDG reported that all the proposals with a deadline of 1997 or mid 1998 had been completed or were well under way. Several important steps were taken at this meeting, for example joint action on mutual legal assistance in criminal matters and progress on the creation of the European Judicial Network (EJN). Another issue during the meeting was the proposed budget for Europol; by this time all EU member states except Belgium had ratified the Europol Convention. However, the question of budget and staff had not yet been resolved. Germany advocated for massive increases in both the staff and the budget for Europol. The German deputy Interior Minister at the time Secretary of State Schelter stated that the agency would lack credibility if the budget and staff were not increased. An agreement was finally reached and a decision to increase the staff by 50 new positions was reached.⁵⁸ The size and budget for Europol needed to be addressed, the EDU increased its caseload by 20% between 1996 and 1997. The staff was increased several times during 1997/1998 and in June 1998 the then UK presidency proposed to more than

⁵⁴ Treaty on European Union extending the mandate given to the Europol Drugs Unit 1996

⁵⁵ Occhipinti 2003: 54

⁵⁶ Occhipinti 2003: 54

⁵⁷ Action plan 1997

⁵⁸ Fecl 1998

double the operational budget for Europol for the year 1999. The budget for Europol was finally approved on September 24, 1998 by the JHA Council to be 18,904 million Euros for the year of 1999.

The last member state to ratify the Europol Convention was Belgium who finally did so in early June of 1998. The Secretary General of the Council of Ministers received Belgium's notification of ratification on June 12, 1998.

5.2. European Arrest Warrant (EAW)

Another important part of European law enforcement cooperation is the European Arrest Warrant. The European Arrest Warrant (EAW) was established on 13th of June 2002 with a Council framework decision. In the immediate aftermath of the attacks on 9/11 an emergency session of the JHA Council was to take place on 20th of September; for this meeting two major items were being prepared by the European commission. The first was a framework decision that would establish a common definition of what constitutes terrorist act as well as common criminal sanctions for such acts. The second item was also a framework decision that was to replace the then current extradition system that dated from the 1950s with the European Convention on Extradition. Neither of these proposals were a direct result of the attack, both of them having been discussed and debated earlier. During the 1999 Tampere European Council meeting the European leaders stated: *“It considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons,”* It goes on to state *“Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial. The European Council invites the Commission to make proposals on this matter in the light of the Schengen Implementing Agreement.”*⁵⁹ The question of extradition between states is a sensitive issue, many states require the principle of double criminality or dual criminality which states that for a person to be extradited the offending action has to be a crime in not just the state where the crime occurred but also in the state extraditing the person; for example Sweden would not extradite a person to Poland for the crime of blasphemy since that does not constitute a crime in Sweden. Many states also refuse to extradite their own citizens and have other provisions to refuse extradition, for example refusing to extradite on the grounds that the offence is considered political by the extraditing state.

The then current rules for extradition between member states had been established in 1957 with the Councils European Convention on Extradition; this treaty was created to allow for faster and

⁵⁹ Tampere European Council 1999

smoother transfers between the then Member States replacing the then utilized method of each Member State having a treaty established with every other Member State. The Convention states *“The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.”*⁶⁰ However, the convention also contains numerous exceptions and provisions that would allow for a signatory State to refuse extradition. Member States could refuse extradition if they deemed the offence to be of a political nature or offences connected to such offences. The treaty also excluded the extradition of one’s own citizens to other Member States, the treaty states: *“A Contracting Party shall have the right to refuse extradition of its nationals.”* A further complicating factor was that the treaty called for double criminality, the offence has to constitute a offence not just under the law of the requesting state but also under the laws of the state that is to extradite the individual, the treaty states *“Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party”* The 1957 Treaty was improved on two occasions; first in 1995 with the European Union Convention on Simplified Extradition Procedure that attempted to simplify the procedure by listing what information would be considered adequate for an extradition to take place, and again in 1996 with the Convention on extradition between Member States that changed several aspects of extradition at that time; the Convention added conspiracy and association to commit offences to the list of offences a person could be extradited for. Furthermore, the Convention abolished the exception of political offences that had previously allowed for signatories to block extradition on the ground that they considered the offence to be of a political nature; the Convention also changed the rules regarding the extradition of persons based on tax offences; a signatory could no longer refuse extradition on the claim that they did not recognize the tax or the offence.⁶¹ On the meeting on 20th of September 2001 the Commissions proposal for a European Arrest Warrant was presented to the JHA Council. The EAW would eliminate the requirement of double criminality and replace it with automatic mutual recognition of criminal judgements between the Member States; it would also eliminate the exception that previously existed on extraditing one’s own citizens to other Member States. The then Commissioner for Justice and Home Affairs Antonio Vitorino stated: *“the proposed system will be faster and simpler than the existing mechanism since the political and administrative phases of the procedure will be replaced by a judicial one.”*⁶² The EAW would replace the current rules regarding extradition between Member States and replace it

⁶⁰ European Convention on Extradition 1957

⁶¹ CONVENTION drawn up on the basis of Article K.3 1996

⁶² Occhipinti 2003: 150

with a faster and smoother system. The time it took for an extradition to take place before EAW could on times be counted in months and in some instances in years. The EAW put a 90 day limit on the time it could take an arresting state to extradite the person to the requesting state, ten days if the person did not object to the extradition. This was achieved by simplifying the judicial process by only requiring one judicial decision that would cover both arrest and surrendering of the person; this also “judicialized” the process by excluding any involvement of Foreign Affairs departments or Ministers of Justice.⁶³

The EAW would also abolish the traditional principle of dual criminality for a list of 32 offences ranging from offences such as murder and terrorism to illicit trafficking in cultural goods, including antiques and works of art and counterfeiting and piracy of products. The elimination of double criminality in some areas was not without dissent, several Member States expressed concern over the list becoming too broad. Ireland and other Member States were concerned over the inclusion of swindling and xenophobia, arguing that no common definition of those offences existed. Another objector was Italy who believed that the Convention should be limited to only the most serious offences such as terrorism and the smuggling of human beings. The debate over what crimes were to be excluded from double criminality continued and threatened to delay the process. On 11th of December 2001 the then Belgian Prime Minister Verhofstadt (Belgium having the presidency at the time) travelled to Rome for a meeting with the Italian Prime Minister Berlusconi to discuss the matter. Italy’s Minister of Justice had vetoed the framework because of objections to the 32 crimes listed. The negotiations between Prime Minister Verhofstadt and Prime Minister Berlusconi were successful. Prime Minister Berlusconi relying on the opinion of two prominent Italian jurists seemed not to be concerned with the list of crimes being excluded from double criminality protection and he removed the Italian veto.⁶⁴

Another characteristic of the EAW is that it does not recognize political offences or nationality as grounds to halt extradition.

5.3. European Evidence Warrant (EEW)

The collection and sharing of evidence is an important element of Police cooperation. Within the European Union the main conduit for such actions was the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.⁶⁵ This convention deals with matters such as letters rogatory for the examination of witnesses or experts, service of judicial verdicts and other official

⁶³ Bures 2007

⁶⁴ <http://www.utwente.nl/mb/pa/staff/marin/European%20Arrest%20Warrant.EAW%20Italy.Marin.pdf>

⁶⁵ European Convention on mutual assistance in criminal matters 1959

documents as well as the summoning of witnesses and experts or persons in custody. Furthermore, a number of guidelines were established for mutual assistance in criminal matters. Assistance in criminal matters would be separate from extradition that meant that even when grounds for extradition did not exist for example the offence was not serious enough, assistance would still be given if the offence was a violation of the law in both states. The convention also made it optional to assist in cases that were of a political or simply of a fiscal nature; matters of a military nature were also excluded from the convention. Moreover, the convention also states that assistance must be given if the offence that one is to be prosecuted under is an offence in both the requesting state as well as the requested state.

The 1977 European Convention on the Suppression of Terrorism is another important convention. This convention deals with the suppression of Terrorism and is mainly focused on extraditions, however the convention also deals with mutual assistance in criminal matters. The convention establishes an obligation to grant assistance for certain terrorism related offences; the convention states: “*Contracting States shall afford one another the widest measure of mutual assistance in criminal matters.*”⁶⁶

The need for a more modern system to regulate the practices were soon realized and in 1999 at the Tampere Council the European Council stated: “*The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State’s authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.*” The European Evidence Warrant (EEW) was first introduced by the Commission in late 2003 (November) and was intended to standardise evidence requests and speed up the procedure as well as to limit the grounds for refusal of requests. The EEW may be utilized to for the purpose of “*obtaining objects, documents and data for use in criminal proceedings*”⁶⁷ The EEW is based on the principle of mutual recognition, this differs from the previous method cooperation. Before EEW one Member State would request cooperation from another Member State, the state that were being requested would then make a decision based on its own law. Mutual recognition simply allows the requested state to execute a decision taken by the competent authorities in the requesting Member State.

Article one of the convention states: “*The EEW shall be a judicial decision issued by a competent authority of a Member State with a view to obtaining objects, documents and data from another Member State for use in proceedings referred to in Article 5.*”⁶⁸ This excludes some forms of

⁶⁶ European Convention on the Suppression of Terrorism 1977

⁶⁷ European Evidence Warrant 2008

⁶⁸ COUNCIL FRAMEWORK DECISION 2008

evidence for example the taking of DNA evidence from a suspect or interviewing a suspect is not covered by the convention. Furthermore, any evidence that would require ongoing surveillance or monitoring, or any evidence that requires analysis by the requested state is also excluded. However, if this evidence is already in the custody of the requested state then it can be requested. The EEW is to be used for criminal proceedings and may be issued “*with respect to criminal proceedings brought by, or to be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State*”⁶⁹ or proceedings brought by administrative or judicial authorities. The issuing of an EEW can only be done by specific institutions in the Member States, five issuing authorities are recognized: Judges, Courts, an investigating Magistrate, a Public Prosecutor or “*any other judicial authority as defined by the issuing State*” that is competent and authorised to investigate in accordance with national law. If any Member State designates any new judicial authorities, for example Custom Officials to be included in its list of possible EEW issuers and the institution continues to issue an EEW, the receiving Member State can require the EEW to be validated by the judicial authority that would have been required for action in the requested Member State. Member States must also ensure that there are legal remedies available if a person wishes to challenge an EEW this also applies to third parties with standing.

With the European Arrest Warrant (EAW) the question of dual or double criminality becomes an issue. Like the EAW the EEW contains a list of offences where dual criminality shall not be applied. This list includes all the offences listed under the EAW such as murder, grievous bodily injury, counterfeiting currency, organised or armed robbery and corruption. For cases involving any offence on the list and if its custodial sentence can bring more than three years the EEW “*shall not be subject to verification of double criminality under any circumstances*”⁷⁰. In all other instances where the offence is not listed the EEW does not need to be verified for double criminality unless it is necessary to carry out a search and/or seizure.

Once a Member State receives a EEW the competent authorities in the State normally have 60 days to take possession of the requested materials. If for practical reasons this is not possible the requested authority must inform the requesting authority and give an estimated time for when the action can be taken. If a Member State for any reason refuses recognition or execution of an EEW it must inform both the requesting state and Eurojust within 30 days about this. The legal grounds for refusal to comply or execute an EEW are numerous; for example if the form provided to the executing Member State is incomplete or manifestly incorrect, or the case has been referred due to the requesting authority is not originally included in the list the execution of action can be halted until such time when the right form arrives or validation has been given. The execution of a EEW

⁶⁹ COUNCIL FRAMEWORK DECISION 2008

⁷⁰ COUNCIL FRAMEWORK DECISION 2008

can also be temporary postponed if execution could jeopardize or prejudice an ongoing criminal investigation or criminal prosecution. This is a temporary situation and the decision to hold on action must be taken by a judge, court, investigating magistrate or public prosecutor in the executing state. As soon as the grounds for postponement of action has ceased the action originally requested by the EEW shall be taken. There are provisions for refusing recognition or action if action would breach an immunity or privilege in the executing Member State or if action could harm national security, jeopardize the source of the information or involve the use of classified information.

5.4. European Gendarmerie Force

The European Gendarmerie Force (EUROGENDFOR or EGF) was a French proposal. During a meeting between the Defence Ministers of the European Union in October 2003 France and Italy decided to create a study for the creation of a European Gendarmerie Force. During the meeting Spain, The Netherlands and Portugal expressed support for the idea.

This new force (EGF) had to have the capability to carry out a wide spectrum of police activities that would be useful in crisis management and would be available for use by the European Union as well as other International Organisations and coalitions of the willing. Cooperation between gendarmerie forces was not new and had increased as a consequence of the increased usage of gendarmerie forces for international police operations in conflict zones such as the Balkans and Iraq. In 1992 the French gendarmerie initiated a formal framework for sharing information and experience as well as to conduct joint training operations between the French Gendarmerie nationale, the Italian Arma dei carabinieri and the Spanish Guardia Civil. This organisation was named FIEP after the original members. FIEP had two main goals, the first was to develop a capacity that would be recognized at the level of European authorities as a separate forum for police cooperation that would be also capable of leading operations. The second was to “*pursue works begun with the European members of the FIEP, concerning the definition and establishment of an European policeforce , to operate in a context of regional crisis in Europe.*”⁷¹ This cooperation was ongoing on 17th of September, 2004 when the deceleration of intent to start the EGF was signed in Noordwijk, the Netherlands. This was followed by the official inauguration of the EGF that took place with a military ceremony in Vicenza, Italy in January of 2006. After two command post exercises the EGF was declared fully operational on the 20th of July 2006. On the 18th of October 2007 French, Spanish, Dutch, Italian and Portuguese representatives met in the Town of Velsen, in

⁷¹ Fiep 2013

the Netherlands to sign the treaty establishing the EGF. This treaty known as the Treaty of Velsen established the EGF; article one states “*The object of this Treaty is to establish a European Gendarmerie Force, which shall be operational, pre-organised, robust, and rapidly deployable, exclusively comprising elements of police forces with military status of the Parties, in order to perform all police tasks within the scope of crisis management operations.*”⁷² The aim of the new organisation was to strengthen international crisis management capacities and to contribute to the future development of the EU Common Security and Defence policy.⁷³ The headquarters for the EGF is Vicenza in North Eastern Italy and it’s capable of deploying 800 fully equipped officers within 30 days under either military or civilian command. The EGFs mission can be further divided into three phases all with different missions for the EGF. During the initial phase the EGF will carry out stabilizing operations, this can be done by strengthening already existing police functions or replacing them with elements of the EGF. During the second phase, the so called transition or stabilizing phase the EGF will continue its mission either as a stand alone entity or as part of a military expeditionary force coordinating its operations with local or other international police units. During the last, the disengagement phase the EGF will facilitate the transfer of police powers to an appropriate civilian command.⁷⁴ The EGF can perform a broad spectrum of policing activities during a crisis situation, for example security and public order including traffic enforcement, criminal investigations including detection and monitoring of offenders as well as presenting them in front of appropriate authorities. The EGF can also supervise and advice local police authorities in their duties as well as supply training for both officers and instructors

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5.5. Frontex

Another important organisation for police cooperation within the European Union is Frontex. Frontex was established in 2005 and its purpose is to “*reinforce and streamline cooperation between national border authorities.*”⁷⁵ To achieve this the organisation has several areas of activity. Joint operations are intelligence driven operations where Frontex plans to coordinate and execute joint operations utilizing the member states staff and equipment. Joint operations are planned and developed utilizing the Annual Risk Analysis Report (ARA). These reports are developed yearly and are “*intended to facilitate and contribute to informed decisions on investments and concerted actions that are most likely to have sustainable effects on the management of the*

⁷² Treaty establishing the European Gendarmerie Force 2007

⁷³ Eurogendfor 2014

⁷⁴ Lalinde 2005

⁷⁵ Frontex 2014

external borders and ultimately on the internal security of the EU.” Joint operations are proposed and chosen based on their importance and the availability of resources for conducting the operation.⁷⁶ On the request of a member state Frontex can also deploy a rapid reaction force consisting of a European Border Guard Team (EBGT); the team consists of border guards pooled from the Member States that can be deployed to a member state in the event of a crisis.⁷⁷

Frontex also conducts several other functions important to the member states; Frontex has developed the Common Core Curriculum (CCC), a common training program for border guard training in the EU. This program standardised the set of skills and knowledge for basic level border guard training. It was developed to bring together the best practices and shared goals from the various member states.⁷⁸ Risk analysis and Research are two other important elements of Frontex, both of these areas are intended to enhance knowledge for both Frontex and the Member States on subject ranging from the current ongoing situation at the external borders to new technological advances that could help to secure the border. Frontex also established systems for information sharing between member states on emerging risks and other events that can be of significance.

The free movement of people, goods, services and capital (the four freedoms) is a cornerstone of the European cooperation. This cooperation took a major step forward in the 1980s with the establishment of the Schengen area. The Schengen area was originally an agreement between five member states (Belgium, France, Germany, The Netherlands and Luxembourg) to create a territory without any internal borders. The Schengen area eliminated all internal border controls and created an area where the free movement of a person is guaranteed; the Schengen area was later expanded and today (July 2014) consists of 26 of the 28 member states of the European Union. With the elimination of the internal borders a single external border was created; no matter in which member state or at which location a person tries to enter the Schengen area the visa requirements and the right to asylum are the same in all participating states. The new freedom of movement for the citizens of EU was to be balanced with compensatory measures. These measures were intended to improve cooperation and coordination between law enforcement and judicial authorities in the member states; this was done in order to safeguard internal security and combat the organized crime. One of the major measures for this control is the Schengen Information System (SIS) that was developed to allow member states to exchange information on certain categories of goods and persons. In 1999 with the signing of the Treaty of Amsterdam the Schengen cooperation was incorporated into the framework of the European Union; with the Schengen cooperation ongoing the need for further cooperation in the matter of migration, asylum and security became evident. In

⁷⁶ Frontex 2014

⁷⁷ Frontex 2014

⁷⁸ Frontex 2014

1999 in Tampere, Finland the European Council met again and highlighted the relevance of external borders as a strategy for combating cross border crime and illegal immigration within the EU.⁷⁹ During 2001 it became evident that the new member states that were about to join the EU did not meet the external border control capabilities required by EU/Schengen standards. When their ascension was to take place in 2004, the decision was made to maintain the border controls between the new member states and the old member states until the time when the new member states had satisfied the requirements of the old member states and when the controls met standards established by them.⁸⁰

On 9/11 2001 a series of four coordinated terrorist attacks struck the United States causing over 2500 deaths and over 6000 injured as well as billions in damage (the estimated loss to New York in the following months was estimated at 105 billion dollars.)⁸¹ The European Unions immediate response was an emergency meeting of European Union Foreign Ministers that expressed solidarity with the United states; the EU external relations Commissioner Patten stated that the attacks were “*the work of a madman.*”⁸² On the 20 of September 9 days after the attacks the JHA Council held a extraordinary meeting that called for strengthened external border controls as well as encouraged the member states to make more efficient use of the SIS.⁸³ On the 15th of November 2001 the European Commission issued a communication to the Council on a common policy on immigration that states “*Border controls must in particular respond to the challenges of an efficient fight against criminal networks,*” and goes on to call for closer cooperation in the field of border controls and more harmonization in training of border guards.⁸⁴

On 14th and 15th of December 2001 the European Council met in Laeken, Belgium to discuss the future of the European Union; the Council states: “*Better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created.*”⁸⁵ In October 2001 five member states (France, Germany, Belgium, Spain and Italy) conducted a feasibility study on the idea of a European Border Police; this caused concern among several member states especially the United Kingdom who rejected the idea although expressing a wish for increased cooperation in the policy area. This question was not fully resolved

⁷⁹ House of Lords 2002

⁸⁰ House of Lords 2002

⁸¹ New York Magazine 2012

⁸² The New York Times 2001

⁸³ Extraordinary Council meeting 2001

⁸⁴ Communication from the Commission to the Council and the European Parliament 2001

⁸⁵ Presidency Conclusions 2001

by May 2002 when the Commission in its communication called “Towards Integrated Management Of The External Borders Of The Member States Of The European Union” to the Council and the European Parliament stated: *“The Commission recommends that the national services of the Member States receive the support of a European Corps of Border Guards.”* In the short term the Commission advocated for the establishment of an External border practitioners common unit; this unit was on point to perform integrated risk analysis and to co-ordinate on the ground projects; it should have also encouraged convergence in the field of staff and equipment and act as an inspection unit. Furthermore, if the need arose the unit should have also possessed emergency operational measures.⁸⁶ In June of 2002 with the results of the feasibility study being finished and having failed to support or reject the idea of a European Border Police, the European Council responded with the “ Plan for the management of the external borders of the Member States of the European Union.” This document that later would be known as a plan of action or an “action plan” advocated for increased cooperation as well as increased coordination and convergence between the border guards in the European Union; the idea of a European Corps of Border Guards has been replaced with the creation of national pilot projects that would be managed by the External Border Practitioners Common Unit. Ad hoc centres should also be placed in the member states to oversee operational pilot projects. These centres would be placed in various cities in the Member States for example the Risk Analysis Centre was placed in Helsinki Finland and the Air Borders Centre was placed in Rome Italy.⁸⁷

On the question of a European Corps of Border Guards the Council in a less enthusiastic way than the commission states: *“Such steps could include a possible decision on the setting up of a European Corps of Border Guards, composed of joint teams, which would have the function of supporting the national services of the Member States, but not replacing them.”*⁸⁸

After establishment of the Action Plan that effectively stopped any current progress on the creation of a European Corps of Border Guards the progress in operational cooperation slowed down. On 6th of June 2003 the Commission issued a communication to the Council and the European Parliament on the development off the issue. The communication affirms many of the proposals drafted in the earlier action plan by the Council, the Commission states: *“The Commission feels that special attention should be paid to risk analysis, staff training and greater standardisation of verification equipment and procedures.”* The Commission goes on to state that the need for a new body within the community operational structure might arise; the role of this new body would be to implement strategic guidelines adopted by the Council and utilize the already established centres in the

⁸⁶ Communication from the commission to the council and the european parliament 2002

⁸⁷ Frontex 2014

⁸⁸ Plan for the management of the external borders 2002

member states. This body could also be the *“first step on the road to the creation of a European Corps of Border Guards, which the Commission still firmly believes is necessary to support and complement the actions of Member States’ bodies in the management of their external borders.”*⁸⁹

In the later half of 2003 the Greek presidency realising the lack of concrete proposals called for the establishment of a mechanism for the common management of the external borders.⁹⁰ On 18th of November the then Commissioner for Justice and Home Affairs Antonio Vitorino officially presented Frontex to the other commissioners; the commissioners opinions on the powers over external border control varied with Vitorino stressing that the powers for the new agency would be limited and its purpose was to *“help Member States implement Community policy”* on a operational level but the agency would not possess policy making, legislative or implementing powers. Frontex caused division, the Council was concerned with the issue of powers over external border control away from the Member States; the Council stated; *“responsibility for the management of the external borders lies with the member states”* and an agency was only needed in order to *„organise and develop indispensable coordination of operational cooperation”*.⁹¹ Furthermore, the Council added the phrase *“the responsibility for the control and surveillance of the borders lies with the Member State”*; the Council also emphasized the Member States ownership of the borders by stating that the borders were the *“external borders of the Member States of the European Union”* instead of the usage of the phrase external borders of the European Union.⁹²

The Commission that had previously supported the idea of a European Corps of Border Guards and far reaching border cooperation's realized the hostility towards the proposal and as an attempt not to have it rejected limited its influence over Frontex by having its management board consist of 12 members selected by the Member States and only 2 representatives from the Commission, something quite unusual for a European Union agency. This was a result of negotiations with the European Parliament wanting to increase its and the Commissions power over the agency, while the Commission wanted to avoid any controversial challenges to the Member States sovereignty over their national borders.

On 26th of October 2004 Frontex was established by the Council with resolution No 2007/2004: *“establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union”* the resolution states: *”Taking into account the experiences of the External Borders Practitioners’ Common Unit, acting within the Council, a specialised expert body tasked with improving the coordination of operational cooperation between Member States in the field of external border management should therefore be established in the*

⁸⁹ Communication from the Commission to the European Parliament 2003

⁹⁰ Neal 2009: 342

⁹¹ Hobolt 2006: 7

⁹² Hobolt 2006: 7

shape of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as the Agency).”⁹³

6. Explanations of Intensification

6.1. Europol

Problem stream

With the Member States of the European Union achieving a level of corporation and economic integration far beyond its humble beginnings, the free movement of goods, services and people being utilized by millions of people all over Europe each year made it clear to some Member States that there exists “*logical linkages between economic integration and cooperation and the maintenance of law and order.*”⁹⁴ The European Council agreed with this and in 1988 during a meeting in Rhodos they noted in the concluding declaration that the “*Community’s goals were dependent on cooperation in the area of internal security*”.⁹⁵

Europol was first mentioned by Chancellor Kohl during the Luxembourg European Council meeting in June 1991. Chancellor Kohl called for treaty commitments in the upcoming Maastricht conference to combat drug-trafficking and organised crime.

Europe was going through a transformation in the early 1990s, the cold war had ended something that for the members of the EU meant new waves of immigrants. The war in former Yugoslavia further added to the migration flows in Europe. This was happening at the same time as talks about the Schengen agreement about the elimination of internal borders was being conducted. The elimination of internal borders was something that several Member States perceived as problematic from a policing point of view. In 1989 the Trevi 92 was established in order to examine the policing and security implications of single European market. The fear was that with the establishment of the Schengen agreement criminal elements could spread through out the Union with no border checks to stop them. A further problem for the European Union was drug trafficking, not just into the Member States but also between them. For example 80% of the drugs seized in

⁹³ Council Regulation (EC) No 2007/2004 2004

⁹⁴ Occhipinti 2003: 41

⁹⁵ Occhipinti 2003: 42

Germany in the late 1980s were seized at the borders; furthermore drug trafficking had increased throughout the 1980s all over Europe much of it controlled by organized groups both within the Union as well as outside the Union. Chancellor Kohl himself stated in 1991 that a European police force “*would be able to operate without let or hindrance in all the Community countries in important matters such as the fight against drug barons or organized international crime.*”⁹⁶ During the June meeting of the European Council the minutes state: “*Regarding the fight against international drug trafficking and organized crime, the European Council has agreed on the objectives underlying the German delegation’s proposals ... and requests the Ministers with responsibility for drugs matters to submit proposals before the European Council’s next meeting in Maastricht.*”⁹⁷

Terrorism was another issue where certain Member States called for increased cooperation. Terrorism had been and still was a problem for certain Member States; Spain was one of the main proponents of increased cooperation against terrorism and terrorist groups. At this time most of the terrorism in Europe also originated from within Europe for example Eta and the RAF; there was a fear that cross border links would be established by certain terrorist groups.⁹⁸

Policy stream

The original proposal by Chancellor Kohl for the establishment of a European Police Office was received with surprise by the other members of the European Council; the proposed new entity would have far reaching police powers within all Member States; this was not welcomed by all Member States.

The Idea of a European Police force was not something new, the idea had been discussed for decades; the Bund Deutscher Kriminalbeamter discussed the idea in 1974 but their plan would have involved reforming Interpol into a European policing office.⁹⁹ This idea was never materialized however, the idea of a European police force continued to be discussed both within policing circles in Europe as well as within the Union itself. Within the European Union the TREVI cooperation had been established to counter terrorism and coordinate policing within what was then the EC¹⁰⁰.

Chancellor Kohls proposal was to create a European Police Office in two stages. In the first phase would be creation of an information exchange system where law enforcement in the Member States could share information, training and experience. The aim of the second stage would have been to

⁹⁶ Woodward 1993: 25

⁹⁷ House of Lords 2007

⁹⁸ Occhipinti 2003: 44

⁹⁹ Benyon 1994

¹⁰⁰ Bunyan 1993

increase the powers to the then established European Police Office and give its officers the power to conduct independent investigations in any Member State. The French and especially the British objected to the second part of the project, both states felt that the executive policing powers belonged to the state not to a EU agency. In hopes of receiving more support for the proposal at another time Chancellor Kohl took the advice of the then British Prime Minister Major to postpone the second stage of the project and commence on the first stage.¹⁰¹ The first stage of the project was close to a proposal from TREVI that would expand the use of Drug Liaison officers (DLOs) that had up till now been dispatched to non member states that were known as producers of illegal drugs or transit countries for illegal drugs. The proposal from the Trevi Ministers was that DLOs should be placed in each Member State to help with collection of information and assist in coordination of requests from other Member States.

This proposal and the first stage of Chancellor Kohls proposal was joined together, that led to the establishment of the Ad Hoc Working Group on Europol; this group started to work in 1991 and was chaired by a senior British police official. The work on the establishment of Europol was a slow process with major areas of disagreement between the Member States, for example the role of the ECJ (European Court of Justice) in handling disputes concerning the new agency, something that the British were strong opponents of while the Dutch were in strong favour of allowing the court to settle disputes.¹⁰²

For an idea to develop beyond an academic discussion and have a chance of being implemented it needs to “pass” five pre set criteria. It needs to be technically feasible, it needs to have value acceptance within the policy community, tolerable cost, public acquiescence and finally receptivity among elected decision makers. Europol's problems largely stemmed from two of these criteria; receptivity among elected decision makers and technical feasibility. The objections raised against Europol concerning receptivity among elected decision makers mainly came from the British and the French who shared the view that policing should be the privy of the state and not something that should be delegated. Another issue was technical feasibility, the Member States of the European Union have significant differences in their legal systems as well as different policing traditions and customs; furthermore, within the European Union there are 24 official languages that further complicates the issue.

A further important factor in the policy stream is the availability of alternatives. For Europol this factor became crucial when the United Kingdom blocked the second stage of the project. The existence of the proposal from Trevi group 3 did not just act as an alternative, the “work” conducted by the third Trevi group also helped with softening up the idea for the large community.

¹⁰¹ Occhipinti 2003: 35

¹⁰² Statewatch Bulletin 1994

Another important element for the development of Europol was that Chancellor Kohl himself acted as a policy entrepreneur for the policy. A policy entrepreneur is a person who advocates for a policy change and in this case the policy entrepreneur was from the highest levels of government, which helped elevating the question to the highest level.

Politics Stream

The European Union has undergone several transformations since its conception, the areas of influence have grown and the European Union has become a larger part of the average Europeans life and work. Europe has in some ways become smaller with the right to live, work and conduct business anywhere within the Union citizens can go between Member States many times just as easily as they would travel from one city to another. The elimination of internal borders and any sort of requirements for travel and/or conducting business are some of the main benefits for the average European citizen. However, a small percentage of the millions of Europeans who every year travel, move or conduct business in another Member State commit crimes. Europol or as it was originally known the European Police Office was proposed by Chancellor Kohl and was considered by Germany as “*vital and overdue*”¹⁰³ however, this view was not shared by all Member States. The British that are historically hesitant to advance or deepen cooperation into fields perceived as the privy of the state objected to the proposal.

Within the political stream the factor of public approval or as Kingdon calls it the national mood is of immense importance. Within the political stream it is elected officials who make up the deciding body, these officials are subject to the national mood in their respective Member States. John Major the then Conservative party head and Prime Minister of the United Kingdom did not just need to satisfy his European colleagues but also a conservative base that were rather sceptical to the European project. This presented a rather complex situation for the British, on one hand the British perceived the need for increased police corporation but on the other hand the British public and his own party were sceptical to give too much power to the European Union. Another important factor within the political stream is organized political forces. In the case with Europol criticism was raised by several parties; for example Article K. 4 granted something akin to diplomatic immunity to the members of the Europol staff for any act performed during their official functions; this was criticized by both, State watch-a civil liberties group and the then British opposition party-the Liberal Democrats. This particular question also caused parliamentary debates in several Member States among them Sweden, Germany and the Netherlands.

¹⁰³ Woodward 1993: 12

Another issue that caused significant delay to the project was the location of the headquarters for the Europol. Germany wanted its location to be in Wiesbaden Germany, this was rejected by several Member States who felt that Europol should be located in a city without the headquarters of a national police force (Wiesbaden being the home to the BKA) in order to avoid Europol developing along the structure of a national police force. This question was eventually settled with the new headquarters being established in the Hague, Netherlands that all Member States, except France and Germany who wished for the headquarters to be placed within their respective states, had reached agreement on as early as 1992; with the French and German veto this question dragged on for another year until the Hague was chosen in 1993.

Within the political stream consensus is usually achieved through bargaining, with the establishment of Europol bargaining was employed on several occasions. Chancellor Kohls decision to agree to the British proposal to only proceed with the first phase of the project can be seen as bargaining as it commenced the first phase with British consent. Another issue of contention was the inclusion of terrorism to Europol duties, something that Spain was strongly in favour of while the British objected. This question was not resolved until France brokered a compromise between Spain and the British which would include terrorism in Europol's duties; however, this would only happen two years after the convention went into force.¹⁰⁴

Conclusion

An organisation like Europol with its responsibilities and duties was not something that Chancellor Kohl invented, the idea had been around policing and related policy fields for decades leading up to 1991. Furthermore, with a new Europe where national borders were quickly becoming irrelevant and the European Union Member States were making great strides into even deeper European cooperation an organisation to combat cross-border crime was needed.

Policing in modern Europe has always been seen as the responsibility of the state and as such a domestic concern; policing in many cases, especially so called high policing is essential for the survival of the current political order and as such of tremendous importance to the state.

Another factor of importance is European history. Europe mainly consists of medium size countries many of which have in the not too distant past fought wars against each other.

Chancellor Kohls original proposal came during a time when Europe was going through a transformation, the fall of the Berlin wall and the collapse of the Soviet Union created a new Europe with many new states that were now for the first time in decades going to rule themselves.

¹⁰⁴ Occhipinti 2003: 59

Furthermore, the conflict in Yugoslavia had developed into the first war in Europe since the Second World War.

Within the European Union all the Member States have a different view of what the unions influence in certain areas should be. The view and opinion of the European Union differs greatly between the Member States, citizens in different Member States have different views on allocating power to the European Unions various projects. Some Member States have a citizenry that generally looks favourable upon European Union projects while other Member States citizens are more critical or in cases even hostile. For Europol as for other policies in the third pillar each Member State possessed a veto, Chancellor Kohl and the proponents of furthering European police cooperation could not establish Chancellor Kohls proposed European Police Office without British approval. This meant that there were only two options open, either abandoning the proposal completely and if the window of opportunity would open up trying again or with British approval commencing just the first part of the proposed project. The Choice by chancellor Kohl and the proponents to advance just the first phase might have been a hope that if the first phase was successful and proven useful then the second phase might not be rejected at a later date; another reason could have been that it was perceived as better than the alternative.

Europol or an organisation with the same duties and responsibilities was a logical next step in European integration. With the European Union having increased its cooperation into new areas and expanding already existing areas the need for an organisation like Europol became evident, especially with the single market and the Schengen cooperation ongoing. The fact that Chancellor Kohl while having the position of Chancellor advocated so strongly for the establishment of what originally was known as the European Police Office elevated the policy to the highest level and was certainly the catalyst behind the establishment of Europol.

Kingdon often emphasises the importance of policy entrepreneurs, this is especially evident in the case with Europol. The advocacy for Europol from Chancellor Kohl was of great importance, without the advocacy from such a prominent individual as Chancellor Kohl it is unlikely that such a big policy change would have received the support from so many other elected officials. The final failure of the second stage and the implementation of the first stage was a result of negotiations between Chancellor Kohl and Prime Minister Major that utilized bargaining instead of persuasion something that resulted in half of the original proposal being implemented.

6.2. European Arrest Warrant

Problem Stream

The European Arrest Warrant (EAW) was intended to “*remove the complexity and potential for delay inherent in the present extradition procedures.*”¹⁰⁵ Furthermore, the EAW was part of a process that started years earlier, Extradition between states have often been a sensitive issue even so for states within the European Union. Until the enactment of the EAW the main regulation of extradition between Member States had been established in 1957 and was at the time 45 years old; in the years leading up to the EAW there had been attempts to ratify the problems utilizing such an old convention entailed, for example with the 1995 convention on simplified extradition procedures between Member States of the European Union and again in 1996 with the convention relating to extradition between the Member States of the European Union. During the European Council meeting in Tampere, Finland in 1999 the Council called for formal extradition procedures between Member States to be abolished if the person having been sentenced; they go on to state: “*Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial.*”¹⁰⁶ The council asks the Commission to make proposals to this effect. Extradition could in cases take years often over bureaucratic delays and domestic political concerns.¹⁰⁷ The Council states: “*The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own. Criminals must find no ways of exploiting differences in the judicial systems of Member States.*”¹⁰⁸

The attempts to reform the extradition process between Member States was already in process on 9/11 2001 when the terrorist attacks struck the United States of America, however prior to 9/11 the idea of a European Arrest Warrant was highly controversial in certain Member States.

9/11 acted as a focusing event, Monica De Boer¹⁰⁹ states: “[t]he ‘Euro-warrant’ had already been on the shelves but the coordinated fight against terrorism provided a window of opportunity for political decision-making on this instrument.”¹¹⁰ Almost all Member States of the European Union had some experience with terrorism; some Member States like the United Kingdom had decades of

¹⁰⁵ Council Framework Decision 2002

¹⁰⁶ Proposal for a COUNCIL FRAMEWORK DECISION 2001

¹⁰⁷ Occhipinti 2003: 150

¹⁰⁸ Tampere European Council 1999

¹⁰⁹ Professor Comparative Public Administration Amsterdam University

¹¹⁰ Oldrich 2011: 152

experience combating home grown terrorism like the Irish Republican Army (IRA). The Spanish and the French governments had for a long time fought Euskadi Ta Askatasuna (ETA) that at this time remained active in both Member States. Other Member States like Italy and Greece had historically experienced terrorism mainly originating with the far left, for example the Red Brigade in Italy and Revolutionary Organisation 17 November in Greece. However, within the European Union the threat of Terrorism, although it was recognized as a threat, had to compete with other internal security concerns such as organized crime and illegal immigration; for example the work programme established for Europol for 2002 did not identify terrorism among its priorities for that year. This programme was approved by the Europol management board in June 2001 and approved by the Council in July; the highest priorities for Europol in 2002 would have been fighting crimes such as drug smuggling, money laundering, illegal immigration, trafficking in human beings and counter fitting.¹¹¹

9/11 changed the view of terrorism as a threat within the European Union, not only the massive loss of life and damage were greater than any terrorist attack in history but also as stated by Europol's TE-SAT report the focus and methods of terrorism had changed *“a new tendency has been identified within the Islamic extremist groups. They appear to be focusing less on national goals. Although different in origin and purpose, they are now seen to collaborate and provide mutual assistance in terms of logistic support, financing and propaganda.”* The report goes on to state: *“large number of Islamic activists have fought in Afghanistan, Bosnia, Chechnya and Kashmir; some of them were specially trained for terrorist operations. A number of these have left combat zones and settled throughout Europe. Borders do not concern Islamic terrorists. They use forged documents, which enable them to travel worldwide with little restrictions, if any.”*¹¹² This changed nature of terrorism ended much of the delays and objections Member States had. The then Chairman of the European Parliament's Justice and Home Affairs committee stated: *“the proposal would still be on a shelf gathering dust if it hadn't been for the events in New York five days later. Mr. Bin Laden helped make it a reality”*.¹¹³

Policy Stream

The European Arrest Warrant was originally a Spanish initiative called the Euro-warrant and was presented at the first European Conference on Terrorism that was held in Madrid early 2001. Spain's Euro-warrant would allow for the immediate extradition of “heavy” criminals including

¹¹¹ Occhipinti 2003: 141

¹¹² Den Boer 2003: 4

¹¹³ House of Lords 2011

terrorists between Member States.¹¹⁴ Spain had at this time several ongoing bilateral efforts with other Member States to speed up extradition procedures. Spain and Italy had signed an agreement to create a common judicial space between the two Member States to hasten the extradition procedures in November 2000. A feasibility study on the Euro-warrant was launched during the Terrorism Conference in Madrid. Within what Kingdon refers to as the policy primeval soup an idea clashes against other ideas until consensus starts to build; this process pits solutions against problems to establish what ideas are worthy of further interest and what objections might exist.

The European Arrest Warrant was not without its detractors, the list of 32 offences where double criminality should not be applied caused several Member States to lodge reservations. Antonio Vitorino the then Commissioner for Justice and Home Affairs stated: *“some Member States still attach far too much importance to the issue of double criminal liability. Mutual recognition depends upon mutual trust for other Member States’ judicial systems. There is no longer a need for a judicial order issued by one Member State to be scrutinised by a judge in another Member State to see whether the underlying offence is exactly the same as in its own domestic law. This is the traditional, slow and bureaucratic approach to mutual assistance. For mutual recognition to be effective, the traditional “double criminal liability” barrier to mutual assistance must be removed. Unfortunately some Member States have not yet realised this.”*¹¹⁵ Italy originally vetoed the framework objecting to the list of 32 crimes where dual criminality would not be applied; Italy believed that this number was too high and instead wanted to use 6 pre-defined crimes instead of 32. The 6 offences Italy wanted to include would have been terrorism, drugs and arms smuggling, human trafficking, sexual abuse of children and organized crime. These were the crimes covered by the Italian/Spanish extradition treaty that had been established earlier. The Italian veto was removed by Prime Minister Berlusconi after a meeting with the Belgian Prime Minister Verhofstadt.¹¹⁶

Ireland was also unhappy with the list of 32 offences; Ireland objected over the vague definitions of the offences, especially crimes such as extortion, swindling and counter fitting that they felt were not adequately defined in the framework. Ireland later dropped their objections to the list.¹¹⁷ A further complicating factor was Member States with special legislation regarding euthanasia and abortion like for example the Netherlands, that feared that coverage of other crimes than terrorism could potentially be applied in these special cases.

Kingdon states that for a policy to be viable it has to pass five pre-determined criteria; feasibility, value acceptance within the policy community, tolerable cost, public acquiescence and finally receptivity among elected decision makers. The EAWs problems mainly stemmed from two of

¹¹⁴ Occhipinti 2003: 140

¹¹⁵ Euractiv.com 2001

¹¹⁶ Occhipinti 2003: 170

¹¹⁷ De Sousa Santos 2010

these criteria: receptivity among elected decision makers and public acquiescence. Many elected officials had issues with the list of excluded crimes from double criminality; for example Ireland and some Scandinavian Member States expressed concern over the vague definitions of some of the offences, while Italy expressed concern over the large number of offences being covered by the list. Public acquiescence is another criteria, within the European Union Member States the view of the Union and the views of what the Union should be involved in or not differs greatly. In the United Kingdom a Member State with a history of Euroscepticism the press “*gave rise to one of the most astonishing europhobic scare-stories of all time*”,¹¹⁸ the fear was that the EAW would be used to extradite newspaper editors that wrote anti European editorials; a British Member of the European Parliament stated that the EAW “*would give the EU total power to deal with its critics.*”¹¹⁹ Another factor of importance is that no alternatives to the EAW were being debated or proposed; available alternatives to proposed solutions are in many cases important because they give decision makers viable alternatives to a proposed solution; in this case the elected officials did not have an alternative proposal to compare.

Political Stream

The terrorist attacks of 9/11 2001 changed not just the priorities of EU decision makers it also changed the level of cooperation. After the initial shock and customary expressions of solidarity from the EU and elected officials from the Member States the question of a response became the focus.

Within the European Union the question of national mood is a complex issue; each individual Member State and its elected officials are subject to changes in national mood however, on the European level it is different. National mood in the Member States affects the elected officials from that Member State and his or her interaction with other elected officials on a European level. The national mood of one Member State usually has no significant impact on the national mood in another Member State.

The EAW was introduced shortly after the attacks in the United States and its passage is according to some people a direct result of the attacks; the chairman of the European Parliaments Justice and Home Affairs committee stated: “*the proposal would still be on a shelf gathering dust if it hadn't been for the events in New York five days later. Mr. Bin Laden helped make it a reality*”. The EAW was introduced only 9 days after the attacks at a time when the press was still full of speculation and rumours about a possible involvement of persons either living or previously living within the

¹¹⁸ Guild 2008: 118

¹¹⁹ Sievers 2008: 16

European Union; this together with a fear of terrorism and sympathetic public sentiment allowed for further steps to be taken.¹²⁰

Another important factor within the political stream is organized political forces. Several NGOs among them Amnesty International expressed concern that the framework went far beyond terrorism, there was also criticism from organized political parties from within the opposition in the Member States; the United Kingdoms shadow Secretary of State Letwin from the conservative party stated that the judicial systems in many parts of continental Europe were inferior to the British system.

Within the political stream consensus on a proposal is often attributed to bargaining between elected officials, in case of the EAW there is not much evidence pointing to bargaining taking place, the objections levied by the Member States towards the EAW; for example the Italian objected that the list of offences excluded from double criminality was too long, did not result in bargaining between Italy and the other Member States instead Italy was pressured to relinquish its veto. The same is evident with the Irish concerns to certain offences being too vaguely defined. No changes were done to accommodate the Irish. Instead of bargaining with Italy the other Member States and their officials publicly “shamed” Italy and its position. The German Minister of the Interior Schily stated: “*The Italian position is completely unacceptable.*”¹²¹, while the Belgian Justice Minister Verwilghen stated that the Italian Position was “*incomprehensible*”. Antonio Vitorino stated: “*we cannot be held hostage to Council unanimity*”¹²² and that the EAW might proceed without Italian participation, something that was also echoed by Home Office Minister Eagle in the United Kingdom.

In the press there were even speculations that the Italian objections were due to Italian fears that the EAW might be utilized against Prime Minister Berlusconi who had at the time been investigated for fraud and other business irregularities.

Conclusion

At the time when the EAW was introduced the main tool for extradition dated to 1956, since that time the European project has undergone many changes and developed into something that would have been unrecognisable in 1956. At the same time the world has changed, in 1956 the drafters of the Convention could not foresee the globalization that would take place, neither could they anticipate the European Union and the Schengen agreement that would make moving to another Member State as easy as moving to another city. Neither could they foresee the political future of a Europe Union where old enemies would now be working together towards a more united Europe.

¹²⁰ Occhipinti 2003: 148

¹²¹ BBC News 2001, 12, 8

¹²² Occhipinti 2003: 171

Apart from the European Union the world has changed, technology and especially the Internet has drastically changed the way people not only communicate but also in many times how they conduct business. Europe has become smaller with air travel being fast, easy and cheap while at the same time the borders that used to prevent people from moving are being dismantled. That the European Union would at some point reform or replace the outdated Convention was inevitable. They had at times in the 1990s made smaller changes to accommodate the changing times, however these changes were not sufficient.

The attacks of 9/11 changed the situation, elected officials in Europe just like the populace saw the terrible events live on television and could follow all the details in the press. When the investigation started to point towards Europe with several of the perpetrators of the attacks having been living and or studying in European Union Member States the European Union had to act.

The attacks changed the priorities of the Union; crime such as drug smuggling and human trafficking was no longer the top priority, terrorism had replaced them all. Terrorism and especially Islamic terrorism immediately after 9/11 evoked such fears within not only among the elected officials but also within the greater population in many Member States that even EU officials “credit” the attacks of 9/11 with the passing of the EAW. Another factor that contributed to the passing of the EAW is that no other proposal existed or was being seriously debated. Furthermore it was presented 9 days after the attacks as part of a package of antiterrorism legislation for an emergency session of the Justice and Home Affairs Council.

The combination of fear in the elected officials that were being enforced by fear in the populace in large, and the close time proximity to the attacks in conjunction with no other alternative existing greatly contributed to the passing of the European Arrest Warrant.

Kingdon states that major or what he calls focusing events are one way problems can come to the attention of decision makers, this is especially true in the case with the EAW. The European Union is a large body where the decision makers are elected officials from the Member States, this presents a unique situation where events in the problem stream must reach a level of importance that justify action at the European level. The EAW was not originally tied to terrorism and had been debated for years before 9/11 however with the events of that day it was successfully coupled with terrorism and subsequently passed.

6.3. European Evidence Warrant

The European Evidence Warrant (EEW) was intended to replace the then current conventions and measures. The need to improve the system for evidence transfer became evident with the Council Framework Decision on the execution in the European Union of orders freezing property or evidence. This framework only dealt with parts of the judicial spectrum concerning evidence and the subsequent transfer of evidence was not included in the framework.

This exclusion of evidence transfer from the framework meant that the transfer of evidence would have to take place under old mutual assistance procedures; the then existing procedures were considered by the Commission to slow, complicated and subject to too many limitations for the European Union.¹²³

Furthermore in 1999 during the European Council meeting in Tampere Finland, the Council established several milestones in an attempt to create as the Council puts it a genuine European area of justice. Article six Mutual recognition of judicial decisions states: *“The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State’s authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.”*¹²⁴ Mutual recognition should now *“become the cornerstone of judicial co-operation in both civil and criminal matters, including for pre-trial orders in criminal investigations.”*¹²⁵ This decision would influence both the EAW and the EEW. To utilize mutual recognition within the area of criminal justice was originally a proposal from the United Kingdom; the analogy was that if mutual recognition aided in the establishment of the internal market the same could be achieved within criminal justice. This change from co-operation to mutual recognition was significant; it would change how the future of co-operation and integration would progress within the field. It also meant that old and now outdated conventions and agreements had to be renegotiated with the new principle in focus.

The EEW like the EAW is part of The European Union Counter-terrorism Strategy; terrorism and its effects are not unknown in Europe however, the coordinated bombings in the Madrid train system in 2004 that led to 191 dead and over 1800 injured differed from the acts of terrorism Spain had experienced before. Spain had for decades fought ETA a separatist group fighting for independence. ETA also utilized terrorist tactics in their actions however ETAs targets had mainly been persons connected to symbols for the Spanish government. For example ETA has since 1961

¹²³ Murphy 2010: 231

¹²⁴ Tampere European Council 1999

¹²⁵ Proposal for a Council Framework Decision 2003

been responsible for the death of 829 persons, of these the majority (486) belonged to Spanish law enforcement or military.¹²⁶ The deliberate targeting of large numbers of civilians commuting to work in the morning had not been a tactic utilized by ETA as it can be evident by the low number of civilians killed by ETA (343) since 1961. The attacks on the Madrid metro was the 22nd deadliest terror attack to occur in the world and the deadliest to occur within the European Union.¹²⁷ In 2005 on the 7 of July four bombs were detonated in London, three targeted the London metro while one was left to detonate on a city bus. The attacks left 52 dead and over 700 injured. The attacks of July 7 caused the greatest loss of life in terrorist acts within Britain.¹²⁸

Both of these attacks mentioned above were intended to cause a great loss of civilian life that increased the calls for adopting pending dossiers such as the European Evidence Warrant.¹²⁹

Policy Stream

The European Evidence Warrant was introduced by the Commission in November 2003, later in 2004 the European Parliament approved the framework. The Dutch held the presidency at the time and gave high priority to the issue. Criticism for the EEW came from both sides of the issue. One criticism was that the EEW did not cover statements, something that was seen as a weakness by some. Another form of complaint was that Member States that had previously been criticized for judicial corruption would now be allowed to issue EEWs.¹³⁰

The issue of mutual recognition quickly became an issue. Germany strongly objected to principle being applied to what they perceived as “*practically all means of obtaining evidence.*” Germany feared that national standards relating to law enforcement measures, such as audio surveillance that were governed by constitutional rules might be undermined at a European Level. Other Member States such as the United Kingdom¹³¹ and Sweden supported its use for all forms of evidence. Sweden also joined several other Member States that expressed concern over the complexity and sensitivity of the issue and stated that care must be taken to overcome such obstacles. The Netherlands stressed that although they were “*in principle in favour of working towards a comprehensive system based on mutual recognition in the area of obtaining evidence in cross-border matters*”. They also stated that such an instrument might have been too complicated at that time and called for further analyses. The Dutch also expressed concern that their drug policy that was different from the rest of the European Union Member States something that could lead to other

¹²⁶ The Guardian 2011

¹²⁷ Robert Johnston 2013

¹²⁸ Muir, Cowan 2005

¹²⁹ Murphy 2010: 249

¹³⁰ BBC News 2006

¹³¹ United Kingdom Position Paper

Member States overwhelming them with requests. Sweden had stated that they found the trade to be offensive that had led a Dutch government Minister to state: *“I find Swedish trees offensive. They are boring. That is my opinion, but it is none of my business,”*¹³² and referred to the subsidiarity principle.

The differences in the Member States legal systems as well as their legal traditions were a complicating factor. Kingdon states that for an idea to survive within the policy stream it must adhere to five pre-established criteria: technical feasibility, value acceptance within the policy community, tolerable cost, public acquiescence and finally receptivity among elected decision makers. The complexity of the EEW and its technical feasibility was an issue with several Member States expressing concern.

Political stream

Soon after the EEW was first introduced in November 2003, the terrorist bombings of the Madrid metro took place and only sixteen months later the terrorism struck again, this time in London. The EEW was together with the EAW part of the European Unions counter-terrorism strategy and as such the impact of two deadly terrorist attacks within the Union in the span of sixteen months could not have been overlooked.

Within the political stream the question of national mood becomes of importance. A national mood for the whole European Union is a complex issue with the national mood in one Member State usually having no or very little impact on the national mood of another Member State. In the United Kingdom the view that terrorism was one of the two most important issues facing the country increased by 20% after the attacks in London, while same question asked before and after the Bombings in Portugal revealed only a 1% increase.¹³³ This vast discrepancy between the views of the citizens from different Member States makes the process of a unified national mood within the European Union very difficult to establish. Member states representatives are usually only affected by the national mood in their state, however this also means that changes in the national mood of one Member State can be of importance especially if that Member State has historically shown reluctance to advance the cooperation.

The EEW was also criticized by organized political forces outside government, Statewatch a non-profit organization that monitors civil liberties within the European Union stated that although there were protections against abuse these safeguards were not sufficient. The protection for human rights was not as extensive as with other framework decisions; furthermore, the EEW also lacked a

¹³² Mardell 2006

¹³³ Eurobarometer 2005

provision for refusal of executing a warrant based on human rights grounds. Statewatch also wanted the Member States to be able to refuse to comply with a warrant on the grounds of national sovereignty. Amnesty International another non-profit organization that focuses on human rights, states that the European Union should also create strong judicial mechanisms and legislation for protection of the individual in conjunction with the EEW; without those steps Amnesty states that EUs goal of strengthening freedom will produce little results.¹³⁴

Germany and the Netherlands were given exceptions during the negotiations, Germany retained the right to for a five year period utilize the principle of dual criminality on six offences: terrorism, computer related crime, racism and xenophobia, sabotage and finally racketeering extortion and swindling. The Dutch exception consisted of not having to transfer evidence in those cases where the crime occurred within The Netherlands. This was because the Dutch feared a large number of requests from neighbouring Member States seeking evidence of drug offences.

The criticism of the EEW did not subside and even before the legislation came into force in 2011 seven Member States¹³⁵ proposed replacing it with a European Investigation Order. The European Investigation Order (EIO) was to be a more holistic tool for dealing with evidence than the EEW.

Several points of criticism towards the EEW was behind the EIO, many Member States criticized the EEW for being too rigid and only applying to already existing evidence and not being able to launch a new investigation to gather evidence. A further criticism was that the EEW did not protect human rights of suspects to a strong enough degree, an example utilized by critics of the EEW was that with the elimination of dual criminality protection a situation could arise when for example a abortion clinic in a Member State where abortions were legal could be searched for evidence based on a EEW from a Member State where abortion were not legal.¹³⁶

The EIO shares certain elements of the EEW, the legal structure is very similar to the EEW with the executing state receiving the proper documentation and then having 30 days to carry out the EIO. However, the main difference between the EEW and the EIO is that under the EIO an investigation can also be launched something that was impossible under the EEW. The EIO also focuses on what types of investigate measures are permissible, the Member State who issues an EIO decides what type of measures that are to be taken. However, there are exceptions to this for example if the measure is non existing in the executing Member State or the offence is not significant enough for the executing Member States legal system to justify its use.¹³⁷

The EIO also allows for interviews with witnesses to be conducted via video-conference and under

¹³⁴ Amnesty International 2006

¹³⁵ Austria, Belgium, Bulgaria, Estonia, Slovenia, Spain and Sweden

¹³⁶ Euromove 2012

¹³⁷ MEMBER STATES' INITIATIVES 2010

certain circumstances the temporary transfer of persons in custody to another Member State for investigation purposes.¹³⁸

The EIO addressed some of the perceived shortcomings of the EEW, however most of the changes concerned the operational part of the directive. Many other shortcomings pointed out by civil liberties groups such as Statewatch had not been addressed, Statewatch released an analysis paper on the EIO named “*The proposed European Investigation Order: Assault on human rights and national sovereignty.*”¹³⁹ This paper is highly critical of the EIO and calls it a “*fundamental threat to the rule of law*” and a “*attack on the national sovereignty of Member States.*”¹⁴⁰ The EIO was also criticized by other human rights and civil liberties groups; Liberty, a United Kingdom based group that advocates for civil liberties and human rights criticized the EIO for lacking safeguards for fundamental rights, this criticism was echoed by JUSTICE the British section of the International Commission of Jurists an international human rights group.¹⁴¹

Conclusions

The EEW was introduced during a turbulent time. The terror attacks in Madrid and London brought the so called war on terror to European soil; before this, there had been established connections to Europe in the attacks on the United States two and a half years earlier.¹⁴² However these attacks occurred in Europe and as such they required a response from the European Union.

The work to reform the then outdated convention and regulation regarding evidence had begun even before the attacks in the United States; in 1999 the European Council called for mutual recognition to be the bases for a future agreement on the issue. The EEW was introduced by the commission in November 2003 and not much progress was made before the Madrid train bombings in March 2004. The Madrid train bombings led to several new initiatives by the European Union to combat terrorism, among them was the first counter-terrorism coordinator¹⁴³ and calls for the work on the EEW to be taken forward.¹⁴⁴

Progress on the EEW was slow and it was still being negotiated when terrorist struck London in two coordinated attacks against a train and a city bus causing 56 deaths including four suicide bombers and injuring over 700 on the seventh of July 2005. A few days later on the 21st of July a series of another four bombs went off in connection to the public transport system, however this attack did

¹³⁸ Euromove 2012

¹³⁹ Peers 2009

¹⁴⁰ Peers 2009: 8

¹⁴¹ Human Rights Joint Committee 2011

¹⁴² BBC News 2005

¹⁴³ Gijs de Vries

¹⁴⁴ European Council conclusions on combating terrorism 2004

not cause any deaths and/or serious injuries. In the intimidate aftermath of the first London attack a Extraordinary Council meeting was held on the 13th of July, during this meeting the Council called for the Member States to adopt the EEW and other to terrorism related directives such as the Regulation on wire transfers and the Money Laundering directive.¹⁴⁵

The EEW was criticized by several NGOs among them Statewatch and Amnesty International; the criticism mainly centred around the perceived lack of protection for human rights in the directive. The criticism of the EEW was not limited to NGOs, the UK Independent party a British political party that is highly critical of the European Union criticized the EEW on several grounds among them that Bulgaria and Romania, countries that according to the UKIP are having problems with corruption would be allowed to issue EEWs.¹⁴⁶ The criticism in Britain was not contained to small “populist” parties, Bill Cash a member of the British parliament from the Conservative party stated that the EEW was undermining British law.¹⁴⁷

The EEW was not a fast project. First proposed in 2003, it took three years and three major terrorist attacks within the Union for the Council of Ministers to agree in principle on the EEW. It took another three years for it to be adopted and a further two for it to come into effect in January 2011. Even before a single EEW had been issued the need for a new and more comprehensive regime was called for; in 2009 the European Council adopted the Stockholm programme, in this programme the European Council called for a new instrument for evidence related matters that would be more comprehensive yet still based on mutual recognition. This new directive was called the European Investigation Order (EIO).¹⁴⁸ The EIO was intended to fix the inadequacies of the EEW, the most important difference being that EIO could have been used to establish a new investigation for the purpose of gathering evidence and not just for already collected evidence. One important aspect of the EIO is that in the preamble for the directive it states: “*The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand.*”¹⁴⁹ This sentence was important with different actors expressing a wish for a proportionality test, among them the Association of Chief Police Officers in the UK who stated that without this test they would not support the EIO.¹⁵⁰ The EEW had also been criticized for a lack of human rights protection; this criticism did not subside with the introduction of the EIO. Much of the same criticism was directed at the EIO for example lack of human rights protection and that it was

¹⁴⁵ Extraordinary Council meeting 2005

¹⁴⁶ UK Independence Party 2006

¹⁴⁷ Sparrow 2005

¹⁴⁸ Council of The European Union 2010

¹⁴⁹ Initiative of the Member States 2012

¹⁵⁰ Euromove 2012

undermining the law in the Member States.¹⁵¹

The fact that no EEW was ever issued and that a replacement for the directive was established even before the EEW came into force shows the lack of support for the directive not just by the Member States but also by EU institutions such as the European Council. The limitations of the EEW became evident especially the inability to request another Member State to launch an investigation in order to collect evidence that was rectified with the European Investigation Order.

For Kingdon major events are one of the main causes of policy change, this is evident in the case with the EEW. Progress on the proposal mirrored events unfolding within the European Union, the EEW was as many other policies discussed before the events of 9/11 2001 but its progress was stalled. The terrorist attacks first in the United States on 9/11 brought what was then stalled talks about policy change to the forefront, however the attacks in the United States were not change later bad enough. The terrorist attacks that occurred within the European Union, first in Madrid and then later in London led to more direct calls for the passage of the EEW. The EEW was proposed during a turbulent time for the European Union decision makers, two terrorist attacks on two Member States within such a limited time caused fear and apprehension something that contributed to the passage of the EEW, criticism against the EEW continued however much of the criticism changed focus from the EEW being a threat to human rights to the EEW lacking in power. This lack of power lead to called for a replacement to be established, something that was developed even before a single EEW had been issued.

The EEW was introduced as a reaction to terrorist events and its progress mirrored terrorist attacks within the European Union, its progress can be greatly attributed to major events. However this process of advancing the policy as a response to terrorist attacks might have also contributed to its eventual replacement. The realization that the EEW was lacking in capabilities grew at the same time, nevertheless the EEW as part of the response to terrorism continued it progress, even though a realization that it needed to be replaced had been reached by several Member States. The continued progress on the EEW can be explained by the major events that demanded action, even when the policy change was deemed insufficient the nature and consistency of the problem demanded action to be taken.

6.4. European Gendarmerie Force

Problem Stream

¹⁵¹ Peers 2009

In the years preceding the EGF the European Union increased its competences to include limited military engagements, these type of engagements could be overseeing implementation of agreements as was the case with EUFOR Althea in Bosnia and Herzegovina or Operation Artemis in the Democratic Republic of Congo where regional security was the mission.

The EGF was not a new concept, corporation between European Union Member States which possessed Gendarmerie type forces had been ongoing since the early 1990s. The increased deployment of Gendarmerie forces in international crisis management during the early 1990s, for example Balkans and Iraq led to a closer corporation developing between the French, Spanish and Italian gendarmerie forces. This corporation was later expanded to include Portugal and was named FIEP¹⁵²; it was intended to improve domestic security concerns especially terrorism and illegal immigration. The FIEP corporation later expanded to include other both European Union Member States such as The Netherlands and Romania and non member states such as Turkey and Morocco.

Furthermore, three major trends can be identified as contributors to the establishment of the EGF. The first trend is a global demand for forces such as the EGF; the end of the cold war brought with it many new challenges in the form of weak and or collapsing states; civil wars and ethnic conflicts brought a demand for forces such as the EGF. The second trend concerns the supply side of intervention forces; the United Nations is no longer the main provider of multinational peacekeeping/intervention forces this responsibility now falls to international organisations such as NATO or coalitions of willing states. The third trend involves a growing perception that military force might not be the answer in all situations especially in the long term.¹⁵³

In June 2000 a European Council meeting was held in Santa Maria Da Feira Portugal, during this meeting under the banner preparing for the future the Council states: “*The European Council welcomes the setting-up and first meeting of the committee for civilian aspects of crisis management, as well as the identification of priority areas for targets in civilian aspects of crisis management and of specific targets for civilian police capabilities.*” And it goes on to state “*In this respect Member States, cooperating voluntarily, have undertaken that by 2003 they will to be able to provide up to 5,000 police officers for international missions across the range of conflict prevention and crisis management operations. Member States have also undertaken to be able to identify and deploy up to 1,000 police officers within 30 days.*”¹⁵⁴ This reflects decisions taken at the European Council meeting in Helsinki in 1999 where the council stated: “*The European Council underlines its determination to develop an autonomous capacity to take decisions and, where NATO*

¹⁵² France, Italy, Spain, Portugal.

¹⁵³ Arcudi, Smith 2013

¹⁵⁴ SANTA MARIA DA FEIRA EUROPEAN COUNCIL 2000

as a whole is not engaged, to launch and conduct EU-led military operations in response to international crises,” and goes on to state: “a non-military crisis management mechanism will be established to coordinate and make more effective the various civilian means and resources.”

With the European Union clearly trying to establish a separate capability for the Union to act in international crisis situations mainly within its geographical locale and its wish to have a non military management mechanism for crisis management the call in 2000 for the establishment of a 5000 man strong police force is not unexpected.

The European Unions desire to possess a non-military crisis response tool is a reflection on the hesitance of several Member States to advance military cooperation. An inherent problem in using civilian police officers in international crisis management situations like for example in Bosnia is that the security situation on the ground can be very unsafe and the missions differ greatly from the usual role of a civilian police officer. Gendarmerie forces usually bridge this gap by being a military force that is trained for police duties.

Policy Stream

The initiative for the EGF came from France, the original French plan was bold with the EGF having autonomy from existing European Union structures with a permanent headquarters and later expand and utilize units not already committed. This was objected by several other Member States which wanted the EGF to be organized within already existing European Union structures. This process became even more complicated when during negotiations other Member States expressed concern over the usage of police forces of a military nature.

The size of the EGF was another issue of contention, France and Italy both possessed large gendarmerie forces while the Portuguese and Dutch forces were significantly smaller, in addition both the French and Italian Gendarmerie had undergone a reduction of their domestic duties and responsibilities in their respective states. This contributed to both France and Italy wanting to create a substantial force while other Member States wanted to limit its size.

France saw the EGF as a way for them to continue leading southern group of EU Member States, furthermore the French Minister of Defence was involved in an internal bureaucratic struggle with other Ministers over budget and control over the Gendarmerie nationale and saw the new force as a way of insuring both control over the gendarmerie and as a way to increase its budget.

The EGF also caused internal struggles in The Netherlands. The Dutch Minister of Defence saw the Dutch gendarmerie participation in the EGF as a way for the Koninklijke Marechaussee to participate and contribute in international crisis management situations while the Dutch foreign

Ministry wanted to create a broader approach to crises management including economic and humanitarian instruments in conjunction with the gendarmerie force. The Dutch original position was also that qualified non gendarmerie forces should be allowed to join, however this position was not shared by the other EGF members. Both Italy and Spain perceived the EGF as a way of raising their profiles within the European Union and with two of the biggest Member States the United Kingdom and Germany not being able to participate due to their lack of adequate forces their influence would be even greater. The question of what type of units should be allowed to partake in the EGF continued to differ between the Members, for example Poland applied for membership but the force where Poland would pool its participants from (the Zandarmeria Wojskowa) was according to Portugal a military police with some policing skills not a true gendarmerie force. However, this view was not shared by other Member States, for example France who favoured Polish participation. Other Member States also showed an interest in joining Belgium, Hungary and Slovenia however none of these countries possessed the required gendarmerie force.

According to Kingdon a policy needs to pass five pre set criteria to be viable. These five are: Feasibility, value acceptance within the policy community, tolerable cost, public acquiescence and receptivity among elected decision makers. What sets the EGF apart from other policies like for example the EAW or the EEW is that the EGF is completely voluntary for Member States to participate in. The creation of the EGF outside of normal European Union structures makes the application of Kingdon's five criteria difficult. However, the reason the EGF was created outside normal structures was in part due to the second of the criteria, receptivity among elected decision makers. Several Member States have a reluctance to utilize police forces of a military nature for example the Nordic countries and Germany. This meant that the creation of such a unit as the EGF would have been extremely difficult to create utilizing the normal European Union procedures.¹⁵⁵

Political Stream

The creation of the EGF differs politically from the creation of other European Union policies. For a "normal" policy like for example the EAW all European Member States will be involved in both the negotiations as well as the implementation of said policy. In case with the EGF only the Member States who are members of the organisation were directly involved in its development. The creation of the EGF coincided with the first war in Europe in decades, the war in former Yugoslavia would also become its first mission when EGF forces were deployed in Bosnia. Furthermore, in the preceding years the European Union had begun to perform military action both in the Republic of

¹⁵⁵ Lalinde 2005

Macedonia as well as in Bosnia. All these factors have contributed to the development of EGF. For Kingdom the question of national mood is important for the development or lack of development for a policy. With the EGF the question of national mood is limited to the original five members France, Italy, Portugal, Spain and the Netherlands. Furthermore, disregarding the obvious factors like they are all member states of the EU and they all possess gendarmerie forces these states also belonged to the FIEP corporation and had previous involvement with EU military corporation as well as being long time members of NATO. Moreover, the view of EU security corporation was generally positive in these states for example 75% of the French population in 2004 supported a common security and defence policy and 52% stated that EU should be the decision maker on the question of European defence policy,¹⁵⁶ while in Italy also in 2004 74% of the population supported the idea that the EU should possess a rapid military force for use in international crisis situations.¹⁵⁷ In the Netherlands 47% of the respondents (slightly above EU average) believed that questions of European security policy should have been dealt by the EU.¹⁵⁸ All these factors contributed to no real political opposition to the creation of the EGF was forthcoming from the elected officials from the five original members.

The EGF faced criticism from organised political forces working both from outside the European Union as well as from within. Statewatch a non-profit organisation that monitors state and civil liberties within the European Union criticized the militarization of police duties and the dangers of creating paramilitary forces.¹⁵⁹ There were also criticism from within the European Union machinery, Nigel Farage the vocal leader of the UK Independence party and a member of the European parliament called the establishment sinister and stated: *“It is not at all clear to me why the EU needs its own police force.”*¹⁶⁰ Others perceived the EGF as a way for the EU to create a EU police force; Torquil Dick-Erikson, a British constitutional lawyer stated: *“Having different nationalities drilling side by side is clearly part of a plan to create a European police force.”* The British press labeled the EGF as part of the Euro police and the Foreign Minister at that time David Miliband was asked to give assurances that the EGF would never be deployed inside the United Kingdom.

In the political stream consensus is commonly achieved by bargaining between the decision makers. With the EGF the small number of participants and the clear goal of the project made consensus building less complicated than if the project would have been undertaken within normal structures and with all Member States participating. The EGF is a voluntary force and no Member State is

¹⁵⁶ Eurobarometer France 2004

¹⁵⁷ Eurobarometer Italy 2004

¹⁵⁸ Eurobarometer The Netherlands 2004

¹⁵⁹ Schumacher 2010

¹⁶⁰ Groves 2007

forced to join. Another important element of the establishment of the EGF is the refusal of the original members to allow for other competent forces to participate, something that would have increased both the size and the inclusive nature of the project. The blockage of competent forces from participation can be seen as a deviation from the “normal” EU project that usually attempts to be as inclusive as possible. The establishment of the EGF differs as the organization is established by a small number of Member States and no real concessions are made to increase the number of participating Member States.

Conclusions

The European Union having started out in part as a way to prevent another major war has during its existence shown a hesitance to develop a military capability. This hesitance can be explained by a number of factors, the European Union started out as an economic corporation that later developed into a political corporation. This development took decades and with many of the major powers within the European Union already being members of NATO the development of a separate military capability seemed redundant. Another complicating factor is the political history of the Member States, for example the United Kingdom has historically been reluctant to develop any form of military corporation in mainland Europe for political reasons while Sweden has maintained its neutrality in all military matters.

With the end of the cold war the security situation for the members of the European Union changed, old enemies disappeared and newly formed States asked to join the union. A new form of conflict also emerged, the fear of world war three had now been replaced by localized conflicts many with ethnic hostilities, for example former Yugoslavia and the genocide in Rwanda. With the United States showing reluctance involving itself in European security matters to the level it did during the cold war the conflict in former Yugoslavia presented a new problem for the European Union. The European Union did answer and developed a limited military capability that was to prevent hostilities in former republics of Yugoslavia.

The EGF was to become a part of these new capabilities that are at the disposal of the European Union. The EGF is different than most European Union initiatives in several key aspects; the EGF was created outside the normal framework of the European Union and is voluntary for any Member State with the adequate forces to join. These aspects of the EGF are unusual in the area of European Union corporations; these differences can be explained by the unique nature of the EGF.

Many European Union Member States do not possess gendarmerie type forces; other Member States for example Germany and Sweden have constitutional laws that prohibit military forces from

conducting police functions. Another aspect of creating the EGF outside of normal EU structures was that it allowed for its use without unanimity of the European Union Member States.

The EGF differs from other forms of cooperation, it is a voluntary cooperation established outside the normal European Union framework and it was not established as a result of a major event.

The EGF was proposed not as a single solution to a problem but instead it was to address a myriad of problems that had developed. Kingdon talks about problems of a systematic nature, problems that by them selves does not justify action but in a cluster they might constitute a problem, or problems that develop over time. The origins of the EGF come from both these sources. The need for an organisation with the capabilities of the EGF gradually grew with the new security situation that developed after the end of the cold war and the United Nations not being the main provider for peacekeeping/intervention forces, another contributing factor was the realization that military force might not always be the best solution to address certain security problems. The establishment of the EGF outside of the normal EU framework can be explained with the problems the policy would have with elected decision makers within the European Union, several Member States have laws prohibiting military forces from conducting police actions.

6.5. Frontex

Problem Stream

The question of border security had for a long time prior to the establishment of Frontex been a question of importance for EU decision makers. With the incorporation of the Schengen agreement into the Treaty of Amsterdam in 1999 the question of external border security received new focus.¹⁶¹ In 1999 the European Council met in Tampere, the question of border security was raised as a result the European Council identified illegal immigration and related international crimes as a problem in the Tampere Milestones from 1999 and called for closer border cooperation. In 2001 it became clear to the Member States that the external border control capabilities of the new Member States that were to join in 2004 were not on par with EU/Schengen standards and that they needed assistance.¹⁶² These indicators of a problems regarding border security were often raised in studies conducted on the issue, for example the 2001 study on a European Border Police headed by Italy.

These were systematic problems that had developed due to a large extent because of other advances in European cooperation such as the Schengen agreement. The policy makers became aware of the

¹⁶¹ House of Lords 2003

¹⁶² House of Lords 2003

problems mainly by internal indicators such as the study mentioned above. Another perceived problem was the end of the cold war and a change in migratory patterns throughout the European Union; this problem had also received extensive news coverage in the 1990s that had led to public concern.¹⁶³

On 9/11 2001 the attacks on the United States demonstrated the destructive possibility of terrorism for all the world to see. For the European Union terrorism was not a new phenomena, several member states had historic problems with terrorism (United Kingdom, Spain, Germany) but the level of damage both in human lives and material cost as well as the economic impact of the attacks brought terrorism from being a nuisance to being a clear and present danger.

Before 9/11 there were studies conducted on the issue and the problem was systematic in nature, 9/11 did work as a focusing event because of its magnitude and impact, however it did not force the policy makers to the decision on the creation of Frontex; the event acted as a catalyst to speed up the process that would eventually lead to the establishment of Frontex. The problem of border security existed before 9/11 and policies to ratify these problems were in some instances even scheduled to be addressed in September of 2001; 9/11 can be described as a focusing event that puts focus on a problem that the systematic indicators had already established as a problem. What 9/11 did was reinforce and put legitimacy to a problem that was already established.

Policy Stream

There was already an established cooperation on the issue before the establishment of Frontex, the decision that border authorities should cooperate had already been taken. The policy community now had to establish what form this cooperation would take.

There were several proposals for addressing the problem with external border security. Several Member states proposed the establishment of a European Corps of Border Guards. A model for such an organisation was established; the model was presented in a feasibility study conducted by Italy and supported by Germany as well 3 other Member States.¹⁶⁴ This model would have established a European border guard with a complex network of national border forces connected and linked by special centres. There would also be common units for specialised tasks and common risk analyses and financial management.

As mentioned before for an idea to survive within what Kingdon refers to as the Policy primeval soup it must pass five criteria: feasibility, value acceptance within the policy community, tolerable cost, public acquiescence and finally receptivity among elected decision makers. The proposed idea

¹⁶³ Perkowski 2012: 11

¹⁶⁴ House of Lords 2003

of a European border guard as established in the feasibility study did not meet the criteria established when several Member States expressed strong concern and the United Kingdom flat out rejected the idea.¹⁶⁵ Another model was advocated by the Commission which wanted a centralized model that would support national border guards instead of replacing them, this model was also supported by Germany. However, the final proposal from the European Council had replaced the controversial European Corps of Border Guards with national pilot projects and states that in the future: *“steps could include a possible decision on the setting up of a European Corps of Border Guards, composed of joint teams, which would have the function of supporting the national services of the Member States, but not replacing them.”*¹⁶⁶ By the exclusion of European Corps of Border Guards and by explicitly stating: *“not replacing them”* allowed the cooperation to continue without being blocked by any Member State.

The feasibility study conducted by several member states can be seen as a Trial balloon to gauge the reception of such a drastic step in the direction of a European Corps of Border Guards; with the idea being rejected and with the establishment of an Action plan the progress on operational cooperation slowed down. The need for further cooperation was evident and the issue was being kept alive by for example communications from the Commission, however it was not until Antonio Vitorino the then Commissioner for Justice and Home Affairs acting as a policy entrepreneur presented and defended Frontex before the Commission that action on the issue was taken.

Political stream

The European project has brought with it some unintended consequences; while the borders within the European Union were being dismantled the borders to the outside world became more important. At the same time migration patterns in Europe had changed with the end of the cold war something that had on occasions caused problems within Member States; the change of migration patterns and the planned expansion of several East European states into the union caused concern in several EU Member States; that was something that the elected decision makers were aware off. Kingdon refers to the national mood, that in the case of the European Union is impossible to establish, however the states within the Union are highly affected by these changes. Within the European Union the support for the Union from the populace and from the political elite varies; for example Germany has historically been a strong supporter of advancing the European Union cooperation while other Member States such as the United Kingdom have historically been more reluctant to advance the cooperation. With the planned expansion of the Union several Member

¹⁶⁵ Carroll 2002

¹⁶⁶ COUNCIL OF THE EUROPEAN UNION 2002

States were concerned about so called welfare tourism, they feared that would be the result of the expansion; the fear was that citizens from the new Member States would migrate into the old Member States and put a heavy burden on their welfare systems. This fear was not diminished when it was realized that the border protection the new Member States utilized and possessed was below EU standards and with their inclusion the fear was that this could lead to an increase in illegal immigration and other contraband entering the Union from these comparatively less monitored and regulated entry points and then having almost free pass to the entire Europe. The events 9/11 also contributed to a change of the national mood. For a Member state such as the United Kingdom with a population that historically is sceptical of the European Union and which at the same time was being lead by the Conservative party that in turn can be categorised as sceptic to the EU the question becomes problematic. The United Kingdoms refusal to accept the creation of European Border guard because of domestic as well as ideological concerns while realizing the need for and advocating the need for further corporation on the issue allowed for consensus to be built around what the United Kingdom would find acceptable. At the same time there was a fear within certain organized political forces that the European Union is creating a fort Europa, a Europe without internal borders but with high walls to the outside world; this fear still exists.

Conclusions

The need for an organisation such as Frontex quickly became evident after the commencement of the Schengen agreement. With the European Union removing obstacles and borders for movement within the Union, the question of the external border security became the focus. Another important factor was the new Member States that were to join the Union; these new Member States all formerly belonging to the Soviet Union did not possess adequate border control capabilities to ensure a secure border.

These two factors exemplified the need for an EU body that would strengthen or in other ways enhance the border security capabilities of the Member States; that the Union needed such a body was evident on the morning of 9/11 2001 when three coordinated terrorist attacks struck the United States of America. These attacks further added to the call for the establishment of a border control entity.

As a rule, when major decisions are to be taken the European Union requires unanimity between the Member States, this was also the case for the establishment of Frontex. Several Member States called for the establishment of a European Corps of Border Guards something that the United Kingdom flat out rejected. The rejection of the Corps by the United Kingdom meant that a new

proposal had to be established, the United Kingdom stated that they wished for further cooperation, something that allowed for a new proposal to be presented. The European Council responded with an “Action plan” that would create a number of pilot projects under the newly created External Border Practitioners Common Unit; national contact points were to be established for enhanced communication and coordination. However, progress was slow with one Commission official stating: *“The problem of that working group [the External Borders Practitioners Common Unit] was that it met approximately once a month, and it was highly politicized, not really looking at what they needed to do at the European level, but only at promoting individual Member States’ pet projects.”*¹⁶⁷

This lack of progress led to the Greek Presidency resurrecting the idea of a mechanism for the common management of EU external borders, in response to this the Commission proposed Frontex. The Commission realizing that the proposal might be controversial tried to ease fears by not putting the new agency completely under the control of the Commission instead allowing its management board to consist of two representatives from the Commission and the heads of the national border guard services. This was done as not to challenge the Member States sovereignty over their national borders.

The establishment of Frontex or a similar organisation would most likely have occurred even without 9/11; Frontex can be seen as logical continuation of the integration process, with the establishment of the Schengen area, the removal of internal borders and the creation of a single external border. The creation of an agency or other entity to coordinate procedures and management of the external borders is a logical result of this. The attacks of 9/11 acted as a focusing event and accelerated the cooperation.

Kingdon states that problems often come to the attention of decision makers either by being a systematic problem or a major event, Frontex can trace its origins to both these types of problems.

The Schengen accord from 1995 changed the border security situation between the participating Member States, this also put more emphasises on the external borders of the European Union. This in turn shined a light on the external borders of the Union whose borders were also about to change with the planned expansion of the Union. This new Member States many former Warsaw pact and in some cases relatively new countries were lacking sufficient border security according to European Union standards. This constituted a problem that needed to be addressed, the process of finding a policy solution to the problem was ongoing when the terrorist attacks happened on 9/11 2001. The attacks of 9/11 did not directly lead to the establishment of Frontex however they

¹⁶⁷ Neal 2009: 342

increased the political will to take action, this was evident with the United Kingdom who rejected a proposal on the establishment of a European Corps of Border Guards but expressed their wish for continued and increased cooperation in the area. Frontex also benefited from Antonio Vitorino acting as a policy entrepreneur advocating for the policy.

6.6. Summary Table

	Problem	Policy	Politics	Window of opportunity	Result
Europol	Single European Market, Fall of the Berlin Wall	Alternative existed. Only first phase was enacted. Kohl acted as policy entrepreneur. Trevi softened up the issue. Issues with receptivity among elected officials and technical feasibility.	British veto, Compromise	Windown of opportunity for complete passage never existed. Problem stream	First Phase enacted.
Frontex	Systematic indicators, Schengen, 9/11	Alternatives existed, Vitorino acted as policy entrepreneur.	Adapting to the the British can accept. 9/11	Problem stream 9/11	Enacted
EAW	Outdated 9/11 terrorism	No alternatives existed. Issues with receptivity among elected officials and public acquiescence	9/11	Problem stream 9/11	Enacted.
EEW	Outdated 9/11 terrorism	No alternatives existed. Issues with complexity and feasibility.	Terrorism, EIO	Problem stream, terror attacks in Madrid and London	Enacted and replaced.
EGF	Global demand, Un no longer providing troops, military force might not always be optimal.	Alternatives existed. Domestic concerns.	Outside EU framework, voluntarily.	War in former Yugoslavia	Enacted on voluntary basis.

7. Conclusions

European Police cooperation has grown since 1991. The growth was often a reaction to events, what Kingdon would call major events, like the fall of the Berlin wall and the terrorist attacks of 9/11. These events influence the cooperation mainly in two ways; they create support from elected decision makers for already existing plans for more intensive cooperation. Major events also increase the public support in the Member States for the creation of joint European solutions to a major event. One example of this is the European Arrest Warrant; the original idea of the EAW was not as a response to terrorism, however the implementation of the EAW was much facilitated by the 9/11 attacks.

The forms of European Union police cooperation are another important element of European police cooperation. The European Union can be described as an intergovernmental cooperation with supranational elements. In creating institutions that will perform police functions the question of how much power and independence such an organization should have becomes an important issue.

There have been attempts to create a supranational European police institution with broad powers. The first proposal for such an organization was Chancellor Kohl's original proposal for the establishment of a European Police Office. Another example is the proposed European Corps of Border Guards; both of these proposals would have created supranational institutions but there is resistance from member states against this kind of police institution.

Nevertheless the European Union has created several forms of police cooperation, some were rather successful like Europol while others were less successful. The European evidence warrant is one initiative that was perceived as less acceptable. The EEW could not be used to request that another Member State to commence investigation measures, this shortcoming in the EEW was perceived to be of such extent that the EEW was to be replaced.

Kingdon states that policy can be changed when a window of opportunity is open and its advocates can successfully connect two or more components of the policy process. When two or more of the streams converge at the same time and there exists a window of opportunity the chances of policy change increase significantly. Within European Police cooperation there is a tendency to react to events and change policy as a result of a major event; a policy change for example the creation of a new institution can exist and be debated for years until a major event occurs that can be successfully coupled with the already existing policy that way combining two of the streams. The expansion of police cooperation as a result of major events can also be explained with the nature of these events. Kingdon states that major or focusing events are situations that force decision makers to take action, this in turn opens a window of opportunity for policy change. Within European Police

cooperation solutions without problems sometimes exist for years, the EAW is such an example it was not until the attacks of 9/11 that passage was possible as a problem in this case terrorism was coupled with a solution. Furthermore, Kingdon states that the streams are independent; this is clearly evident in European police cooperation, for example the development and structure of Europol came out of the Trevi cooperation where the issue was being debated for years until Chancellor Kohl attempted to couple Europol with emerging problems within the European Union. For this study I have utilized John Kingdon's theory of multiple streams to achieve a better understanding of European Police cooperation, Kingdon and his theory has previously been successfully applied to analyse actions of the European Union. There are other theories about policy making that also could have been used, for example incrementalism. Incrementalism builds on previously existing policy and uses these to explain policy change. For this study I felt that Kingdon's theory better explains the independent development of several European police projects than incrementalism could. Incrementalism's focus on developing existing policies adds unnecessary limits to the research and has the potential to limit the investigation of relevant factors that also influences the policy process. A further complicating factor is that for Incrementalism to function properly there must be no major imbalance of power among the participants, this is rarely the case within the European Union. Kingdon states that incrementalism instead of being used to describe events can be used to manipulate outcomes, he states that apprehension among politicians when it is hard to calculate political fallout might make them shy away from major policy changes and instead prefer an incremental approach, Kingdon also states that policy "*instead of incremental agenda change, a subject rather suddenly "hits," "catches on," or "takes off."*"¹⁶⁸

Another theory that is often used when conducting research on the European Union is Rational choice institutionalism, within rational choice institutionalism institutions are used to reduce the transaction costs of collective action. Rational choice institutionalism is often utilized for conducting research on the European Union however for this study I felt that it would cause unnecessary limitations and complications, for example when utilizing rational choice institutionalism one often utilizes what critics call retroductive theorizing where one tries to develop a model that will explain a set of facts. Some authors argue that this can create a situation where assumptions are manipulated to fit the data so called curve fitting. Rational choice institutionalism also generally work on a high level of abstraction where individuals are not considered; this further complicates the issue in situations where any one Member States have veto power. Rational choice institutionalism's "*very deductiveness, along with its theoretical generality that starts from universal claims about rationality, make it difficult if not impossible for it to explain any one individual's*

¹⁶⁸ Kingdon 2011: 80

reasons for action or any particular set of real political events”¹⁶⁹ Furthermore Rational choice institutionalism *”is founded on abstraction, simplification, analytical rigor and an insistence of clean lines of analysis*”¹⁷⁰ Rational choice institutionalism imposes several limits to conducting research, this can in turn be detrimental to the research.

7.1. Conditions for furthering intensification

Major Events

Major events are the main catalyst behind developments in the European Police cooperation. Many aspects of the European Police Cooperation are reactive in nature. Major events will also create their own window of opportunity, this is especially beneficial since the European Union has grown into such a large organization with 28 Member States. Major events bypass much obstruction from the Member States; especially with the large number of Member States currently in the Union in conjunction with voting rules where every Member State can stop an important policy in the field. Major events play a significant role in the development of European Union police cooperation. Kingdon states that major events often have transient effect unless they are accompanied by a stronger indication of a problem. Within European police cooperation this is evident especially with the attacks of 9/11. The 9/11 attacks were major events as well as planned actions performed by a organised group; this fact exacerbates the problem as Kingdon states: *”such an event only has transient effects unless accompanied by a firmer indication of a problem.”* The fact that the attacks were methodically planned by a group of highly motivated individuals that were willing to sacrifice their own lives in the process was perceived as a problem.

The existence of alternatives

The existence of alternatives to the proposed policy is an important element, the existence of alternatives especially in the cases of Frontex and Europol were crucial to their implementation. In both cases the original proposals were considered as unacceptable by some Member States and alternatives were made available.

The significance of alternatives to the proposed policy gives elected decision makers viable alternatives something that greatly increases its chances of passing. Kingdon states that during the process of policy development alternatives to the proposed policy give decision makers alternatives

¹⁶⁹ Landman, Robinson: 127

¹⁷⁰ Shepsle, K 2006: 11

something that greatly increases the chances of implementation. These alternatives can be versions of the originally proposed policy with smaller changes; Kingdon states: *“the subject with an available alternative” is the one that rises on the agenda.*”

Policy entrepreneurs

Individuals can at times be critical for development. Within European Union police cooperation certain key individuals have played a significant role, this is especially true in regards to the developments of Europol where Chancellor Kohl acted as the policy entrepreneur and in the case with Frontex where the then Commissioner of Justice and Home Affairs Antonio Vitorino was a vocal proponent. These individuals can at times be crucial for policy implementation; Kingdon states: *“They bring several key resources into the fray: their claims to a hearing, their political connections and negotiating skills, and their sheer persistence.”* The value of policy entrepreneurs is not just their advocating for a specific policy, they will often attempt to “soften up” the policy beforehand that way paving the road for eventual implementation.

7.2 Conditions restricting intensification

Overreach attempting to create supranational institutions

A number of Member States have shown great reluctance to advance police cooperation into the supranational area. This position is not shared by all Member States however, with the current framework of the European Union a single Member State has the power to halt further development.

In the case with Europol every Member State except the British was in agreement that the second stage of the processes should be implemented, however with the current rules the British had the power to block the entire project forcing the other Member States to abandon full implementation in favour of what was acceptable to the British.

Number of countries

The high Number of Member States currently 28 is another factor that hinders development. With 28 different positions, needs and wishes the development of Cooperation often takes the route of least resistance and adapts to what the most vocal opponent will accept. For a policy to have a

chance of being enacted it needs to be introduced when there is a window of opportunity for its passage. When such a window opens up within the policy field of European police cooperation the proposed policy still needs unanimous consent, something that is hard to achieve with 28 different Member States.

Domestic concerns

Within the European Union Member States the view of the European Union, its competences and its responsibilities differs greatly; different Member States have different views on the competences and responsibilities for the European Union. The European Union has undergone several transformations since many Member States have joined; these changes have in many ways changed the European Union and its competences. Most Member States held referendums to decide if they were to join the Union or not, however for some Member States it has been decades since the time of this referendum and the European Union have continued to develop. This has resulted in scepticism towards the European Union, something that exists within all Member States but is more prevalent in certain Member States. This creates hostility towards policies originating from the European Union. This negativity towards the European Union is especially high when operating within policy fields that used to be the exclusive competence of the state such as policing.

Within the political stream one of the most important and influential factors is national mood. National mood or public opinion refers to the mood in the Member States, this is one of the major factors that influence elected officials. Elected officials from the Member States must accurately sense the national mood within their respective Member States; for an elected official this is crucial since often his or her position is dependent on public support. With the level of scepticism towards the European Union that exists within some Member States, elected officials from these Member States must balance a national mood that in many cases are hostile to European projects with the wishes from the Member States that are more positive towards the European Union. This often ends in no policy change at all with the elected officials from the more sceptic Member States blocking any policy change out of fear of going against the national mood and jeopardising their elected position.

7.3 Future of the cooperation

The future of European Union police cooperation is hard to predict, much of the progress since 1991 has been reactionary in nature. One possible cause for this is the great number of Member

States; currently in the Union there are 28 different nation states with different local conditions as well as different wants and needs. Under such conditions especially with the current regulations where one Member States can stop a policy progress can be slow. This is evident in the development of the EAW; the need for a new policy was evident with the current regulations for extraditions between Member States dating from 1957 however progress was slow and it was not until the attacks of 9/11 that action was taken and the EAW was implemented. This reactive nature can be found in the establishment of other cooperation's such as Frontex. The unwillingness to take action without a major event is something that is evident in the history of the cooperation.

There is however progress that made advances without a major event. The establishment of both Europol and the EGF occurred without the catalyst of a major event. Europol was established as the EDU and began operations in early 1994. The original plan for Europol was to create a two step process with the first being support to law enforcement in the Member States and the second step the creation of what Chancellor Kohl called a European Police Office with far reaching powers of both investigation and arrest in all Member States. The second step was completely rejected by the British and a decision to only implement the first stage was reached. The British reluctance to advance police cooperation to a more advanced level was to become a common occurrence in negotiations within the policy field. What is evident especially in the case with Europol is the importance of policy entrepreneurs in that case Chancellor Kohl. Commissioner Vitorino also played an important role in advocating for Frontex during its policy process. Policy entrepreneurs have played an important role during the development of police cooperation and it is likely that key individuals acting as policy entrepreneurs will in the future contribute greatly to the cooperation.

The EGF was created outside the normal framework for the European Union and is a completely voluntary organisation that any Member State with the adequate forces can join. The creation of the EGF outside of the normal framework meant that instead of forcing Member States to accept and contribute to the force, participation was completely voluntary. The creation of the EGF outside of the framework and making it voluntary could be an attempt by the more EU positive Member States to advance European police cooperation without the more negative Member States which if the EGF would have been created under normal procedures are likely to have blocked its creation.

Opposition towards European Union police cooperation exists within all Member States, however this opposition differs greatly between Member States. The British opposition towards the establishment of Europol in the early 1990s has continued and they have been the most vocal opponent of police cooperation; this opposition is strong within British politics and have had big implications on the cooperation.

Individuals also play an important role, several times during the development of police cooperation the importance of individuals acting as policy entrepreneurs have been shown. For example Chancellor Kohl advocating for Europol is seen as a contributing factor to its eventual implementation. There is no reason that another individual acting as a policy entrepreneur can at the right time be crucial for its implementation however, such an event is very hard to theorize about.

The reactive nature of the cooperation presents another problem when theorizing about the future of the cooperation, many of the developments have come as a direct result of outside events for example 9/11 and the fall of the Berlin wall. Such events are by nature impossible to predict therefore any future new elements of the cooperation will most likely reflect future major events in a manner consistent with the history of the cooperation. However, major events especially man made events like 9/11 have the potential to cause enormous amounts of damage both in human live and in economic terms; a major terrorist or other man made major event have the potential to drastically change a Member States position on police cooperation.

7.4 Recommendations for the future research

To conduct further research within this field of study several possibilities exist. A deeper understanding of the Member States positions could be achieved with interviews. Interviews with key persons involved in the policy development would give further and more detailed data. This in turn would greatly benefit the understanding of Member States positions.

Another possibility is to examine and compare a similarly politically sensitive field for example military cooperation within the European Union. Military cooperation shares some of the same factors that complicate police cooperation therefore a comparative study might yield policy positions that are acceptable to more Member States.

A further and in depth study could be performed on a selected number of Member States, it would be beneficial to in detail understand the position and reasons for a Member States opposition, especially concerning the more reluctant Member States. Such a study has the potential to identify key policies that have the potential to retard the cooperation.

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