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**Bachelor Thesis:**

**Cross-Border Police Cooperation in  
the European Union at the Example of  
Germany and the Netherlands  
in the EUREGIO Area**

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## List of Abbreviations

EAW	European Arrest Warrant
EC	European Community
ECSC	European Coal and Steel Community
EU	European Union
Europol	European Police Office
EUREGIO	European Region
JIT	Joint Investigation Team
SIS	Schengen Information System
TEU	Treaty on European Union

## 1. Introduction

European integration and collaboration of the member states of the European Union (EU) proceed in many different policy fields; for instance, in terms of economic affairs. The domain of internal security is also not limited to the national level any more. The reason is that, in times of open borders, national states cannot guarantee internal security solely by themselves. Instead, they depend on a European or, respectively, international cooperation of the police for the reason that crime does not stop at borders. Due to modern security problems, such as terrorism, crime prosecution is high on both the national and the European political agendas (Kietz & Maurer, 2006: 3). This thesis will refer to the definition of police cooperation as “all practical cooperation with regard to cross-border criminal investigation involving the police and the competent judicial authorities” (Spapens, 2010: 74). The relevance of the police’s international cooperation has increased significantly because the currently on-going globalization also strikes crime (Knelangen, 2008: 38). For example, in 2013, there were approximately 3600 internationally organized crime groups within the EU, notably active in drug trafficking and fraud (Europol, 2013: 33). This high number underlines the importance and urgency to further improve international police cooperation. In order to meet the challenges for internal security, the institutions need to establish better networks. Thus, the police institutions rely on the networks the European Integration provides (Röhrl, 2010: 294). Moreover, the EU, as a political actor, sets as an objective to “establish police cooperation involving all the Member States’ competent authorities, including police, customs and other specialized law enforcement services in relation to the prevention, detection and investigation of criminal offenses” in Article 87 of the Lisbon Treaty (European Union, 2007). Thus, the cooperation of police institutions is clearly a matter of the process of Europeanization at the operative level (Müller, 2012).

With regard to the European police cooperation, there are diverse tools and measures on the European level. For example, the European Police Office (Europol), as a law enforcement agency, (Europol, 2013: 9) was established in 1998 in order to support national polices from a superordinate level (Kämper, 2001: 56). Another example is the European Arrest Warrant (EAW), which is a declaration that a wanted criminal must be arrested in all EU member states (Lagodny, 2010: 335). Despite this, “police cooperation is not only high on the agendas of the institutions of the EU [...], but also on the agendas of the local authorities in border areas” (Spapens, 2010: 73). Especially regions which are directly located at the borders might benefit from a strong cross-border cooperation. However, several obstacles need to be overcome in order to create a successful bi-national cooperation. One example for such a bi-national cooperation is the cross-border police team in the European Region (EUREGIO) area which is defined as being located at “the Dutch-German border area covering parts of the Dutch provinces Gelderland, Overijssel, and Drenthe

as well as parts of the German federal states Nordrhein-Westfalen and Niedersachsen“ (Euregio, 2015). German Police forces cooperate with the Dutch Police forces by forming teams which consist of policemen of both nationalities. These bi-national teams work primarily along the borders. Additionally, there is the chance of cross-border observations, exchange of data or Joint Investigation Teams (JIT). This thesis will concentrate solely on cross-border forms of police cooperation between Germany and the Netherlands and will not deal with other European tools, like EAW or Europol. Although the latter are very interesting topics for research, the limited scope of this work requires a selection of one precise and specific field. For this reason, this thesis puts its emphasis on analyzing German-Dutch cooperation structures without considering police cooperation forms on the EU-level because my research interest lies in studying how the cooperation in the EUREGIO area works.

The focus of this paper will be on bi-national cross-border cooperations in the context of European police cooperation with main respect to the cooperation of Germany and the Netherlands in the EUREGIO area. Therefore, a main research question is raised: *Under which conditions do the German-Dutch police forces cooperate in selective operative fields in the EUREGIO area along the border?* Certain structures and competences will be analyzed in this context. Another research question to be asked is the following: *How can this police cooperation be classified in terms of European Integration from a political science perspective?*

Concerning the structure of this thesis, a theoretical framework for the latter analysis follows this introduction. The theory of Intergovernmentalism according to Stanley Hoffmann (1965) and the theory of the Europeanization of the police, which was set up by several authors, for instance Wagner, Knellingen, Gusy and Schewe, form the theoretical basis for this research. The third section deals with relevant treaties that provide the legal foundation for police cooperation, taking both EU treaties and treaties of only several states into account. Next, a main analysis of different elements of police cooperation will be employed, including the Cross-Border Police Team, Cross-Border Observation, Cross-Border Hot Pursuit as well as Cross-Border Exchange of Information. Afterwards, the theoretical part will be applied to the cooperation in practice by using a political science approach. Finally, the results of this thesis will be outlined in the conclusion, which also offers a short prospect for the future so that the research questions can be answered.

With regard to the methodology used, this paper is mainly based on a literature analysis. Not only primary but also secondary literature of different authors will be consulted in order to conduct the research and find an answer to the main research questions. Also, newspaper articles and important treaties will be used for the analysis. In general, literature was selected on the basis of the aspects relevance and

currency. Furthermore, the coordinator of international cooperation at the police department of Osnabrück, Markus Piepmeyer, provided me with helpful information about internal structures, such as an e-mail about data exchange procedures.<sup>1</sup>

## 2. Theoretical Framework

In order to provide a sufficient theoretical background for the thesis, this section takes into consideration the process of the European Integration according to the Theory of (Liberal) Intergovernmentalism. Furthermore, it aims at conceptualizing the process of the Europeanization of the police.

### 2.1. The Theory of (Liberal) Intergovernmentalism

There are many different theories trying to explain why and how European Integration happened after the Second World War. At the beginning of the development of the scholarship on that topic in the 1960s, two major theories dominated the academic debate.

On the one hand, there was the Theory of Neo-Functionalism according to Ernst B. Haas (1958). In short, he assumes that (European) integration “is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states“ (Haas, 1958: 16). Another main proposition of Haas was the concept of spillovers, which means that once integration happens in one policy field, it will spill over to other fields and, thus, will further increase.

On the other hand, the Theory of (Classic) Intergovernmentalism according to Stanley Hoffmann, developed in 1966, was a prevalent theory among the spectrum of theories of European Integration (Moravcsik & Schimmelfennig, 2009: 67).<sup>2</sup> It can be classified as a realist theory and also belongs to the classical theories of International Relations. It was basically constructed as a harsh criticism of Neo-Functionalism according to Ernst B. Haas (1958), which dominated the International Relations up to then. Hoffman mainly criticizes the assumption of Neo-Functionalism that the establishment of a new political system is a quasi-natural process. Another point of his criticism refers to the fact that Neo-Functionalists do not differentiate between policy fields which are suitable for integration (low politics) and those fields which are not (high politics) (Bickerton, Hodson & Puetter, 2015: 15). Thirdly, Neo-Functionalism does not take into account that nation states could refuse the shift of competences to a higher level, which Hoffmann assesses as being important (Fa-

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<sup>1</sup> Further quoted as Piepmeyer, 2015, see Annex.

<sup>2</sup> The academic debate about the Theory of Intergovernmentalism in political science is still on-going, See the Theory of New Intergovernmentalism (Bickerton, Hodson & Puetter (eds.) (2015)).

ber, 2005: 89). Hoffmann criticizes the underestimation of governments of nation states, which mainly influence integration (Verdun, 2002: 11). As a consequence of these critical aspects, he generates his own opponent point of view on European Integration.

Relating to the main assumptions of Intergovernmentalism according to Hoffmann, the European Community can be seen as “the result of strategies pursued by national governments acting on the basis of their preferences and power” (Moravcsik, 1993: 496). The most important point made by Hoffmann was his famous statement “that the nation state, far from being obsolete, had proven, obstinate” (Hoffmann, 1966). He assumes that the only legitimate key political actors are the sovereign nation states, which act rationally and aspire towards increased influence and power (Faber, 2005: 87). They are seen as the indispensable units of European Integration because if nation states were not willing to integrate, this process would not be put into motion so that the establishment of a political system is the opposite of a natural process. Intergovernmentalists further argue that integration only succeeds if nations can increase their international influence and amend the performance of their domestic tasks. Due to the fact that nation states predominantly follow their own interests, they see integration as a measure to obtain nation states. There is no intention to create a new (supranational) structure which goes beyond the nation state (Faber, 2005: 88). Their interest is two-sided: On the one hand, they can be seen as gatekeepers aiming at protecting their own sovereignty. On the other hand, they want to foster the common strength of Europe (Faber, 2005: 93). For example, common strategies to solve specific problems could be useful (Faber, 2005: 94). States find solutions by bargaining and negotiating (Moravcsik, 1993: 497).

It has to be taken into account that Hoffmann puts strong emphasis on the differentiation between high and low politics. According to Hoffmann, in high politics the nation states are not willing to integrate because the national interests are too severe to find a compromise. States might risk a loss of autonomy if they integrated in high politics. However, in low politics, it is more probable that integration happens because the national interests are less important; thus, states are more willing to come to a common agreement (Hoffmann, 1966: 144). The “logic of diversity” (Hoffmann, 1966: 144) implies that losses in high politics cannot be compensated by gains in low politics, such as welfare issues, which is why cooperation between states is limited to low politics.

Reformulating the Theory of Classic Intergovernmentalism of Stanley Hoffmann, Andrew Moravcsik developed the Theory of Liberal Intergovernmentalism in 1993. It is highly relevant for this thesis because it focuses especially on regional integration. The Theory of Liberal Intergovernmentalism shares with Hoffmann’s theory its main arguments, namely, that states are seen as the main (decision-making) actors on



the international level and behave rationally by seeking to maximize utility (Moravcsik & Schimmelfennig, 2009: 68). Moravcsik, whose theory concentrates on preference formation and international bargaining, depicts the integration process as a model including three stages: At first, he assumes that the chiefs of governments from the nation states have to aggregate, format, and articulate their national preferences on domestic politics vis-à-vis the EU (Pollack, 2010: 17). In particular, economic costs and benefits influence these national interests (Moravcsik, 1993: 480). Secondly, the rationalist bargaining process is carried out with the aim to realize the national preferences. These are brought to an inter-state bargaining table almost without any influence for supranational institutions. According to the promoters of Liberal Intergovernmentalism, agreements and preference convergence between the nation states show their relative bargaining power, depending on the relevance of the issue that is on the table (Pollack, 2010: 17). In the third step, several institutions and policies are developed as a result from the second stage; for example, such institutions which “secure those outcomes in the face of future uncertainty” (Moravcsik & Schimmelfennig, 2009: 69). It is about institutional choice (Bickerton, Hodson & Puetter, 2015: 17).

Over the years, many other (more modern) theories on European Integration have been developed<sup>3</sup> that challenge the traditional ones. However, (Liberal) Intergovernmentalism has risen to the “the leading theory of European Integration” (Pollack, 2010: 4). Because of its “theoretical soundness, empirical power and utility” (Moravcsik & Schimmelfennig, 2009: 67), the Theory of (Liberal) Intergovernmentalism has been chosen for this thesis. It was proven to be very successful and therefore serves as theoretical background for analyzing cross-border police cooperation.

## 2.2. Europeanization of the Police

It can be stated that a process of Europeanization is in the making. The definition of the term “Europeanization” is highly contented in the literature because many (at least partly) different definitions exist. For example, there is the definition that it is “a process by which domestic policy areas become increasingly subject to European policy-making” (Börzel, 1999: 574). This one only focuses on the content of policies: Those policy fields that classically used to be limited to national policies and that are considered by decision-making on EU-level more than ever. Yet, it does not include general governance structures. A broader definition of Europeanization would be “the emergence and development at the European level of distinct structures of governance” (Risse, Cowles & Caporaso, 2001: 3). This definition emphasizes that

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<sup>3</sup> Apart from Neo-Functionalism and (Liberal) Intergovernmentalism, there are also other approaches, such as Federalism, Supranationalism, Multi-Level Governance, (Historical) Institutionalism, Constructivism etc.

there is a need for a development of governance structures going beyond the nation state. However, quasi merging the two definitions above, this paper regards Europeanization as “the institutionalization of formal and informal rules developed in a process that involves a supranational or an intergovernmental body“ (Vukasovic, 2013: 312). This definition has been chosen because it includes the opposite of supranational and intergovernmental organizations/institutions. Besides, it sets its focus on the institutionalization which can be clearly seen within the EU.

Looking at the beginnings of the EU, there was the European Coal and Steel Community (ECSC), which was set up by six nation states with the Treaty of Paris (1951) in order to unite the European countries after the Second World War (Van Oudenaren, 2005: 31f.). In the following years and decades, the European Integration further proceeded and the influence of those institutions that were established to rule the European Community (EC) continuously increased. For example, the European Parliament’s influence was enlarged and it became more capable of acting. Also, the task of the European Commission today is not limited only to initiating policy suggestions, but it quasi governs the EU.<sup>4</sup> The power, influence, and importance of the EU have risen and more issues are now relevant for the EU policy-making level. In some policy fields, like market, standards, and norms there is an institutionalization to a high degree. In contrast to that, there are also policy fields that are more characterized by policy-making in the nation states. Internal security is a policy field which is classically ruled by the nation states themselves (Occhipinti, 2003: 226).

However, there is not only a general process of Europeanization, but also one that more concretely refers to the crime fighting institution of the police (Occhipinti, 2003: 234). Relating to the process of Europeanization of the police, it has been proceeding during the last years. Wolfgang Wagner (2004: 1) states that cooperation within the EU concerning internal security has been emphasized since the 1990s. At this point the question comes up why internal security, which used to be strongly linked with the nation state’s competences, was recently shifted to being a European issue. Gusy and Schewe (2003: 185) claim that this development is not self-evident due to the general responsibility of the nation state. In the traditional view, the police were usually seen as an institution demonstrating the monopoly of force within a sovereign national state (Knelangen, 2008: 33). Nevertheless, Gusy and Schewe also argue that a cooperation between the police institutions of the individual countries is finally inevitable because there are no frontiers for crimes (Gusy & Schewe, 2003: 186).

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<sup>4</sup> The foundation of the EU with the TEU 2009 is rooted in the EC.

Three tendencies fostering the development of the Europeanization in the field of internal security can be found. At first, transnational terrorism and organized crime have increased and are reasons for the necessity of a cross-border cooperation of European police forces (Wagner, 2004: 1). These new forms of international crimes challenge national police institutions because criminals easily cross European borders, making it hard to locate and catch them. Due to the fact that nation states accept the territorial sovereignty of others, it is very difficult for national institutions to prosecute criminals if these do not stay in one territory (Kämper, 2001: 23). As a reaction to cross-border crimes (for example irregular immigration), the law enforcement authorities of the nation states have adapted and started to intensify cooperation (Müller, 2012).

Secondly, as a consequence of the Schengen Agreement (see Chapter 3.1), it was to be expected that the lacking border controls enhance the opportunities for criminals (Kämper, 2001: 25). Knellingen (2008: 33) depicts the globalization of crimes because, today, there are more global structures of delinquencies than there used to be in the past. These structures benefit from the abolition of passport controls at the internal borders of the members of the Schengen-area. Those used to be an instrument for safeguarding the security at the borders (Wagner, 2004:1). The opportunities of the states to control their territory are weakened due to the open borders. As a reaction to that, the police forces of the different nation states work together and exchange important information (Knellingen, 2008: 34). In this way, they intend to compensate for a potential loss of security (Kämper, 2001: 24).

Thirdly, Wagner argues that a cooperation in the field of internal security is an important addition to an economic integration of the EU countries (Wagner, 2004:1). Governments of the nation states are in need of international cooperation (Knellingen, 2008: 36) when they face modern challenges concerning internal security.

In addition to the process of Europeanization, which includes all member states of the EU, there are also multi- and bilateral cooperation forms which are limited to a certain number of actors and regions. “[S]ince 1999 the EU has experienced both intensified police cooperation and gradual Europeanization in the area of internal security“ (Occhipinti, 2003: 234). It is important to underline that although the Europeanization of the police is continuously advancing, most of the international cooperation still takes place in forms of multi- or bilateral cooperation between several states (Knellingen, 2008: 35). Although these forms do not replace the unification process of the EU, it is important to highlight that they are not contradictory to them. By starting to cooperate, the police forces of the EU member states meet the modern challenges in the field of crime and security which result from increased organized crime and the opening of the borders.

Summing up, the theory of Europeanization of the police provides a good explanation for a cooperation of national police forces in terms of the EU level. This is why this theory will also be consulted in this thesis in addition to (Liberal) Intergovernmentalism. As a next step, a look at relevant treaties forming the basis for cross-border police cooperation is required.

### 3. Legal Foundations for Police Cooperation

The fact that “[o]ver the past few decades, important steps have been taken to enhance the legal framework for police cooperation within the European Union and at national level” (Spapens, 2010: 101), is what stands out upon closer investigation of the legal foundation of police cooperation in Europe. The treaties of the EU,<sup>5</sup> the Schengen Agreement (1985) and Convention (1990), the Prüm Convention (2005), and the Interstate Treaty between Germany and the Netherlands (2006) form the legal opportunities for the German-Dutch police cooperation, and are a consequence of the change of framework conditions (Müller, 2012). Therefore, this section will focus on significant aspects of the four treaties, which mark the most important steps in this context, and explain their relevance. This chapter approaches the treaties beginning with the most general EU treaties, which apply to all EU member states, to the more specific treaties being in force only for several states.

#### 3.1. European Treaties from Maastricht to Lisbon

In the context of police cooperation in the EU, it is important to consider the legal framework of the EU, namely the treaties of Maastricht, Amsterdam, and Lisbon in chronological order. In short, the Maastricht Treaty of 1992 classified different pillars of policy fields that constituted the EU. The third pillar was “Police and Judicial Cooperation in Criminal Matters”,<sup>6</sup> which included the fight against organized crime and cooperation in police issues (Wagner, 2004: 5). This pillar was organized in an intergovernmental form. However, the progress in police cooperation was not as successful as expected (Wagner, 2009: 235), which was why another treaty was set up. Building upon Maastricht, the Amsterdam Treaty of 1997 aimed at creating one single European room of freedom, security, and law. This also includes an inter-EU cooperation of police forces (Baldus, 2009: 61f.). With the Amsterdam Treaty, most of the fields that used to be in the third pillar were moved to the supranational first pillar, the European Community. However, police and justice cooperation remained in

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<sup>5</sup> The most relevant treaties of the European Union for this thesis are the Treaty of Maastricht of 1992, the Amsterdam Treaty of 1997, and the Treaty of Lisbon 2009.

<sup>6</sup> The original title was “Cooperation in Justice and Home Affairs under the Maastricht Treaty“. When the Treaty of Amsterdam was set up in 1997, the title was changed into “Police and Judicial Cooperation in Criminal Matters“ (Kent, 2008: 11).

the third pillar and, thus, still had to face the unanimity rule in the European Council. This means a hindered decision-making (Kietz & Maurer, 2007).

This problem is meant to be solved by the Treaty of Lisbon 2009 (TEU) (European Union, 2007). It formally justified the replacement of the European Community by the EU (Murschetz, 2010: 110) and aimed at turning the EU into a more democratic, transparent, and efficient system by introducing several institutional reforms. Decisive for this thesis is that the TEU included relevant changes of framework conditions in terms of police cooperation (Niemeier, 2010: 198). This has become relevant because “the increase of cross-border criminal activity [was] [...] a genuine threat” (Murschetz, 2010: 110) when border controls were abolished (see Chapter 3.2). With the TEU 2009, the pillar structure was reversed so that the former third pillar became a supranational issue (Murschetz, 2010: 110). The treaty aimed at “communitaris[...][ing]’ police and judicial cooperation in criminal matters” (Militello & Mangiaracina, 2010: 172). The implementation of an ordinary legislative procedure meant a major improvement and simplification of political agreement and cooperation. Instead of the rule of unanimity, a qualified majority in the Council of the European Union is now sufficient to set up new laws. This is likely to speed up decisions (Niemeier, 2010: 199). Also, the tool of emergency break is not applicable so that policy making on EU level in terms of police cooperation is likely to become easier and faster. However, the range of the argument is limited, noting that hot pursuit and operational police cooperation are not covered by the ordinary legislative procedure. Instead, these two aspects, which concern the sensitive field of state sovereignty, are still handled with unanimity (Heid, 2015: 75). Additionally, the TEU further fosters the coordination tasks of Europol and widens its responsibility (Niemeier, 2010: 199). Apart from that, it also includes measures to enhance data protection (Murschetz, 2010: 114) which is important in terms of preventing data abuse.

To put it in a nutshell, the EU treaties make up the superordinate legal framework for the field of justice and police on which the other treaties, which only affect several states, build upon. As a consequence, further treaties can be specified more precisely. The most current TEU strengthens European police cooperation and additionally considers rights for data protection (Murschetz, 2010: 120). Compared with the former EU treaties, the TEU can thus be seen as a major step forward.

### 3.2. Schengen Agreement and Convention 1985/1990

In the time of the Cold War, it was the future vision of a few European states to create a Europe without borders. More precisely, the aim of Germany, France, and the Benelux States was to make the borders of Europe more permeable so as to facilitate the movement of people and goods and to create an integrated market. Another crucial target was to create common security measures in order to fight cross-border

crime. Because of terrorism in several European states in the 1970s, one saw a need for increased police cooperation (LeBeuf, 2002: 56). For these purposes, the six states put that topic on their political agendas and finally signed an interstate agreement on the disestablishment of border controls at their internal frontiers on 14<sup>th</sup> July 1985 (Schott, 2009: 89). In the course of the following years, many other European states joined the agreement so that it has 26 members today. In a second step, the "Schengen Convention" (European Union, 1990), which included long-term compulsory arrangements for the member states, was established (Harings, 1998: 64). While the agreement was formulated in a too general way, the Convention was established to further carry out the agreement in order to make it more effective (Brammertz, 1999: 223). Thanks to the Schengen treaties, the framework conditions for police cooperation were given. Articles 39 to 47 of the Schengen Convention focus on the improvement of collaboration (Brammertz, 199: 224) and thus form the basis for further treaties in this field.

From the implementation on, people could cross the internal borders of the member states without being controlled. Instead of passport controls, some other measures were set up in order to compensate for a potential loss of security; for example, a common visa system in the Schengen area and a common standard of controls at the external borders (Schott, 2009: 90). The Schengen Agreement included "starting points and ideas about rather intensive police cooperation" (LeBeuf, 2002: 56). Such an establishment of a more intensive cross-border police cooperation of the nation states should replace the national border controls (Müller, 2012). Besides, it is compulsory for the police of the states that signed the Schengen Convention to help each other in terms of police work, of course following their national rights and their responsibility (Brammertz, 1999: 227). The Schengen treaties also made the sharing of information possible; for example, by founding the Schengen Information System (SIS) for police tracing, crime prosecution, and prevention (Fijnaut, 2015: 33). With the help of the shared information system's techniques, the police can search more easily for certain criminals, missing persons or those at risk, or objects within the whole Schengen area (Wagner, 2004: 3). In terms of the legacy of an inter-EU exchange of police relevant data, Article 46 of the Schengen Convention provides the legal basis (Brammertz, 1999: 224). It allows sending information between states in order to prevent crimes so as to provide internal security. It will also be possible to exchange information between the police institutions directly if certain urgency is given.

Due to the Schengen Convention, a paradoxical situation has risen: On the one hand, there are free borders because a permeability of borders and the free movement of persons are desired. On the other hand, nation states are restricted in their ability to guarantee internal security (Glaeßner & Lorenz, 2009: 44). Tillmann Schott (2009: 109) states that the lacking border controls are a challenge for the in-

ternational cooperation of the police. This situation requires a close cooperation between the actors in order to grant internal security.

In summary, the integrated Schengen framework shows that the signatory states have a great will to foster European integration (Schott, 2009: 108). It is characteristic for the treaties that they create the foundation for all kinds of police cooperation forms. When the Schengen Convention was implemented, the sensitive question whether foreign policemen could also act on other territories was discussed controversially. Nation states worried about a loss of sovereignty (Wagner, 2009: 234). In retrospective, it can be assumed that the Schengen treaties set the framework and were an impulse for establishing new forms of cross-border cooperation (Wagner, 2009: 234) that were set up several years later, helping to grant security. Although there are some exceptions of states not having signed the treaties, one could assess the latter as being the origin for all further treaties dealing with cross-border police cooperation in the EU and thus an “enormous step forward“ (LeBeuf, 2002: 57).

### 3.3. Prüm Convention 2005

The Benelux States, Germany, France, Spain, and Austria signed the Prüm Convention on 27<sup>th</sup> May 2005, because they wanted to deepen the operative cooperation between the national crime prosecution authorities (Kietz & Maurer, 2007). They aimed at improving cross-border (police) cooperation in the EU, especially in the fields of terrorism, illegal migration, and cross-border crimes (Kietz & Maurer, 2009: 111). More concretely, the Convention aimed at harmonizing the cross-border exchange of police data so that these can be provided at the same conditions as within the nation state (Knelangen, 2008: 37). The Prüm Convention was the result of intergovernmental negotiations outside the EU framework due to the fact that it would have been very difficult to set up such a treaty on that level because of the principle of unanimity. Besides, many states were not willing to share their sovereign rights in the sensitive field of police relevant data (Kietz & Maurer, 2006: 3). The Prüm Convention, therefore, can be seen as increased cooperation of several European states according to the role model of the Schengen treaties (Kietz & Maurer, 2006: 9) in the form of general international law. It goes beyond the regulations of the Schengen Treaties in many aspects so that police cooperation of the Prüm Convention member states can take place on a higher level. However, its regulations do not go as far as those of the bilateral treaty between Germany and the Netherlands (Kietz & Maurer, 2007).

The Prüm Convention created a network and flow of information that was a great progress in terms of police cooperation (Kietz & Maurer, 2009: 121). It mainly deals with an increased, automatic exchange of certain data between the states, for example DNA data and data concerning potential criminals, in order to prevent and

prosecute crimes (Kietz & Maurer, 2006: 5). The signatories of the treaty are networked and can access each other's online DNA databases (Kietz & Maurer, 2009: 121), which was very innovative. By doing so, it can be checked whether a matching DNA or a fingerprint can be found in the databases of other countries. If so, a "request for mutual legal assistance" (Spapens, 2010: 76) can be made so that personal data can be provided. This leads to an easier police work of the member states because they have a wider scope of data available from abroad. Also, the treaty should make the exchange of information faster and more efficient (Papayannis, 2008: 231) so that less costs are necessary in order to attain benefit. Apart from that, the treaty covers precise opportunities for an operative cooperation of police forces (Kietz & Maurer, 2006: 5), for instance common patrols. Moreover, police officers are allowed to "participate in interventions in foreign territory" (Murschetz, 2010: 126) and can get sovereign rights, making interventions faster. The Treaty of Prüm also includes data protection guidelines, control systems by data security authorities, the regulation that data can only be used for a certain defined purpose, and concrete instructions about the time period data is allowed to be stored (Kietz & Maurer, 2006: 7). Most of the contents of the Prüm Convention have been transferred to EU law in 2008.

Summed up, the Prüm Convention can be seen as a "concrete step forward to improve European integration" (Bellanova, 2008: 203). It provides the necessary legal as well as technological instruments that help to make cross-border police work more efficient and has mainly improved the exchange of data (Papayannis, 2008: 230). It should be noted that there are also critical issues about the Prüm Convention, such as the fact that the EU institutions were evaded by the intergovernmental treaty. The treaty sets up regulations that are in force parallel to EU treaties; this results in a fragmentation of regulations (Papayannis, 2008: 245). However, according to Kietz and Maurer (2009: 111), Prüm should be the starting point for more collaboration within the EU in the field of police.

#### 3.4. Interstate Treaty between Germany and the Netherlands 2006

Although the Schengen treaties, theoretically enabling cross-border police cooperation, were already implemented, Wagner claimed in 2004 that further bi-national arrangements between member states are necessary for a concrete exchange of police officers (Wagner, 2004: 5). Germany and the Netherlands had a need for a treaty that specifies the regulations of the other treaties concerning police cooperation. It was their aim to create a legal basis making it possible for police forces from both countries to cooperate so as to be able to better fight international crime and cross-border dangers. Since the implementation of the Interstate Treaty of Enschede between Germany and the Netherlands on 1<sup>st</sup> September 2006, both states have cooperated in terms of criminal prosecution and defense of dangers in a more intensi-



ve way. While the treaties explained above were concluded between several states, the Interstate Treaty is only formed between those two countries. Unlike other treaties that were set up by higher-level institutions, this treaty was established directly by the two countries themselves.

The treaty includes a better exchange of information, cross-border police procedures, and forms of direct support. Furthermore, it gives the opportunity of cross-border observation and pursuit without any regional or temporal limits. Another significant issue is that “communication between the police and prosecution services of Germany and the Netherlands“ (Spapens, 2010: 77) are enabled. The treaty also forms the basis for a legal exchange of DNA while preliminary proceedings are done. Due to the implementation of this treaty, policemen of the other country, respectively, are legally permitted to support the national police forces and to take over sovereign responsibilities (Kietz & Maurer, 2009: 117). On top of that, mutual patrols with police officers of both countries are possible. By addressing these aspects, the treaty clearly aims at establishing a more secure environment in both countries.

Concluding, the German-Dutch Interstate Treaty is of utmost relevance for the police cooperation in the EUREGIO area because it created the required, specified legal basis. It enables concrete opportunities, like cross-border observation and hot pursuit so that the border between the two countries does not represent an obstacle for police work across borders any more. The progressive Interstate Treaty between Germany and the Netherlands demonstrates a very high level of police cooperation, which has not been reached in the EU before (Kietz & Maurer, 2009: 116). The special thing about this treaty is that, theoretically, the police forces have a wide range of legal opportunities to cooperate. According to Wolfgang Schäuble, this Interstate Treaty can be seen as a role model for other bilateral agreements (Bundesministerium des Innern, 2006). It was also a source of inspiration for the Prüm Convention 2005.

This chapter has revealed that today there are more legal opportunities for the police to cooperate with institutions from other states than ever before. Although guaranteeing internal security mostly remains a task of the nation state, legislative powers pay more attention to the need for police cooperation across borders. Nevertheless, it is important to highlight that the treaties do not harmonize national legal systems. There are more possibilities for police forces to act on foreign territory, but the latter have to conform to the law of the territory they are acting on. Theoretically, the Treaties of Lisbon, Schengen, Prüm, and Enschede provide a wide base of legal opportunities. Whether and to what extent these are also used in practice cannot be answered by this thesis. Therefore, an empirical study would be necessary. However, the Interstate Treaty is of big relevance for the next section since it legalized the German-Dutch police cooperation in the EUREGIO area. Compared to the other

treaties discussed above, the Interstate Treaty represents the most specific one focused on practice.

#### 4. German-Dutch Police Cooperation in the EUREGIO Area

The sections above reveal that the continuous progress of European Integration has a high impact on the police which earlier used to be a classical national domain but now undergoes many changes. When the nation states realized in the past that they could not guarantee sufficient internal security solely with their national instruments, they began to push cooperation (Wagner, 2004: 2). Especially when a nation's limit of work ability is reached, police cooperation should be taken into consideration. Kämper stated already in 2001 that there was a need for an increased police cooperation in Europe (Kämper, 2001: 28). This demand was especially covered in the first decade of the 21<sup>st</sup> century. As explained above, European nation states were willing to restrict their own sovereign rights and to set up several treaties that legally enabled police cooperation. Gusy and Schewe (2003: 191) claimed already twelve years ago that the interstate police cooperation should be pushed forward further. This is what Germany and the Netherlands did by providing the legal framework of the Interstate Treaty 2006 and by realizing the cooperation opportunities in practice. The German-Dutch cooperation in the EUREGIO area serves to investigate a bi-national cooperation in depth because it exemplifies very well how two states join their forces in order to face the problem of cross-border crimes.

In practice, there are different ways of realizing a cooperation. Above all, Article 4 of the Interstate Treaty gives an overview of possible cooperation forms, such as cross-border observation or hot pursuit which can be used in the EUREGIO area. When looking at the diverse cooperation forms, different dimensions have to be distinguished. For example, police cooperation can take place at the operational level. Such an operational form of police cooperation could be mutual patrols of two states or bi-national police teams. Another dimension that plays a big role is the technical one. It is a necessary precondition for successful collaboration that a well-functioning (communication) technique is existing and at hand. The SIS serves as an example for cooperation in technical terms. A third significant dimension is law, which differs from state to state. If the legal basis for taking actions is missing, then police cooperation cannot be realized. It should be noticed that police cooperation forms have to be analyzed along certain dimensions in order to offer a structured analysis.

This thesis concentrates on analyzing cross-border police cooperation in consideration of certain framework conditions. In order to find an appropriate answer to the main research question, the following aspects of the EUREGIO cooperation are analyzed in a holistic way, addressing both negative and positive views, and risks and chances: Cross-border Police Team in Bad Bentheim, Cross-border Ob-

servation, Cross-border Hot Pursuit, and Cross-Border Exchange of Data. These four operative fields have been chosen because they make up the most important aspects of a police cooperation.

#### 4.1. Cross-Border Police Team in Bad Bentheim

The Cross-Border Police Team in Bad Bentheim is very interesting because when it was founded in 2008, it was the first one founded as an institution and thus unique in Europe. For this reason, this operational form of cooperation seems appropriate to be used for research. Basically, the Articles 19 and 36 of the Interstate Treaty between Germany and the Netherlands allow for police officers from the other country, respectively, to support national police forces in order to prevent dangers for internal security and to take over tasks which fall into the category of sovereign missions. Before that treaty was implemented, the police institutions of the two states had already worked together but without any formal structures (Anonymous, 2011).

The institutionalized cooperation of the Cross-Border Police Team exists since 26<sup>th</sup> November 2008, and reflects an integrated approach of police cooperation. It concentrated on long-term work which could fight (international) crimes along a border in Europe without being confronted by any barriers (Anonymous, 2014). The Cross-Border Police Team is a mixed organization that altogether consists of about 20 police officers from Germany and the Netherlands, who come from the regions around the German-Dutch-Border: Polizeidirektion Osnabrück, Kreispolizeibehörde Borken, Bundespolizeidirektion Hannover, Koninklijke Marchausee District Noord-Oost and Politie in Oost-Nederland. The organization is located in Bad Bentheim, Germany, in the "Bundespolizeiinspektion" at the highway A30 and is in charge for the region EUREGIO (Bundespolizei, n.d.). In this region, especially drug offenses, but also irregular immigration is registered (Bundesministerium des Innern, 2007: 2, 5). The team is mainly active in the field of crime prevention and prosecution. The mission of the Cross-Border Police Team is operational, which means that it is a practical form of cooperation and not only a theoretical agreement. It aims at leading to a higher level of security for citizens (Kooperationsvereinbarung der beteiligten Behörden zum Projekt „Grenzüberschreitendes Polizeiteam“ [GPT], 2008).

The Cross-Border Police Team provides mutual patrols composed of at least one official belonging to a German police institution and of one official belonging to a Dutch police institution. Basically, the patrols are controlling the highways and the region along the border. In practice, the team can work in civilian clothes or uniformed. If the team is working in Germany, then the German police officer has the leadership (and vice versa) (Anonymous, 2014). The police officer of the other country, respectively, also possesses sovereign competences if the national official is present (Bundespolizei, n.d.). Thus, the area of influence does not stop at the border and the team can continue working. It is important to highlight that no independent

sovereign emerges. Rather, the team can be seen as a symbiosis of several sovereigns so that no national sovereignty feels offended (Polizeidirektion Osnabrück, 2008: 2). By defining the leadership on the particular territory, the cooperation partners from both countries are treated equally.

The chances and benefits of the Cross-Border Police Team's work should be pointed out. Still, it is also necessary to consider the problems and challenging issues that the cooperation brings with it in order to be able to evaluate it critically later. First of all, it stands out that the team achieves very good results of its work. The fact that the team handles approximately 1900 cases per year, which for example concern irregular immigration, burglary or smuggling of drugs (Anonymous, 2014), shows the relevance of such a team with common patrols. A harmonized, coordinated work and a non-bureaucratic collaboration (Bundespolizei, n.d.) simplify crime prosecution in the border region. Because the cooperation is institutionalized, there are clear rules so that misunderstandings are prevented. In order to enable the most beneficial police performance, several conditions have to be fulfilled. First of all, German and Dutch are two different languages so that a direct and fluent communication between the bi-national policemen is hindered. Much time and also money would be necessary if a translator had to translate important information to the other language. Since the police officers working together in the team have to speak their colleagues' language, the language barriers could be eliminated. Also, legal systems and laws differ from country to country. Thus, if the precondition of having intercultural knowledge is not fulfilled, a police cooperation will not be very productive. The police officers of the Cross-Border Team have a sufficient knowledge of the public authorities and laws of the other country. Also, they have intercultural competences which are very useful when working with people from other countries. Furthermore, the police officers can use a big network (Anonymous, 2011) which is helpful when information, detailed knowledge, and expertise are needed. The easier exchange of information is also a big advantage (Anonymous, 2014) (also see Chapter 4.3). All in all, the Police Team working in the EUREGIO area fulfills these requirements for a more fruitful work compared with a situation in which the police institutions of both countries worked only along their side of the border.

The most important positive aspect of the team is its flexibility (Anonymous, 2015) because it is able to intervene immediately. It is able to adapt to requirements of certain situations in a fast way because, in contrast to the national police, the Cross-Border Police Team is able to uncover crimes that were committed on both sides of a border (Anonymous, 2014). In the past, it used to be a problem that a criminal crossing a border could not be pursued any longer because the territorial authority would be with the police of the other country. It used to be problematic that criminals could freely cross borders without being controlled (due to Schengen) which made

national institutions defenseless (Kämper, 2001: 25). With the Cross-Border Police Team, there is no responsibility problem any more in the case the delinquent is crossing the border (Bundespolizei, n.d.) because the necessary legal basis is given (Anonymous, 2011). Since citizens are able to move around freely in the EU, it is also necessary for the police to have the right to work across borders. This also means an increased security for both countries because territorial sovereignty and responsibility cannot hinder the police any more (Polizeidirektion Osnabrück, 2008: 2).

Reinhold Hilbers, member of the parliament of Lower Saxony, sees the Cross-Border Police Team as a positive example for a successful cooperation, leading to the perception of a unified Europe without any visible clear borders (Anonymous, 2015). Both countries are willing to share their national sovereignty which cannot be taken for granted. The functioning example of police cooperation is a proof of a successful application of international understanding in practice. Among the citizens, there is a high acceptance of the bi-national police teams (Bundespolizei, n.d.). Another positive consequence to be underlined is a reduction of prejudices or feelings of strangeness towards the other country (Anonymous, 2011). This is because citizens experience police officers from the other country in their reality and get used to the fact that these officers also have competences on their territory.

The previously mentioned aspects make clear that the cooperation of the police forces of Germany and the Netherlands offers great advantages for both countries which should not be underestimated. The Cross-Border Police Team demonstrates an outstanding adaptation to modern challenges for police work. However, there are also challenging aspects, such as the higher amount of work resulting from the cooperation. Without doubt, more intensive work is required (Anonymous, 2011) to achieve all of the many goals the police have set itself. Technical issues and legal affairs have to be considered (Anonymous, 2015). Furthermore, much coordination is necessary in order to make the cooperation work. Due to that, more resources of time and manpower have to be used. Also, the police officers have to be able to speak the language of the other country, respectively, because a knowledge of the language is indispensable for the cooperation to function. Besides, sensitivity of the other culture, respectively, is essential for members of the team (Röhrl, 2010: 294). The training of the police officers in terms of intercultural competences and language means a big effort in apprenticeship (Anonymous, 2011). In order to fulfill these criteria, the institutions have to invest more money into the education of their police officers. To sum up, a Cross-Border Police Team needs very well-qualified police officers who are willing to further educate themselves to fulfill the demanding tasks of their jobs.

Another problem is the crucial juridical accountability of the police. The question that has to be posed in a democratic political system is how and by whom the

executive in form of the police can be juridically controlled if two countries are involved. The police acting as a national institution are liable to the system of justice in the respective state. However, cross-border police actions make a juridical accountability difficult because several bi-national actors are involved. Apart from that, the protection of data privacy and the question how data abuse can be avoided should be emphasized. This is relevant as international police cooperation mainly targets an exchange of information (Knelangen, 2009: 32).

All in all, the arguments of flexibility and international understanding make a good case for further fostering police cooperation. However, more resources of time and money are necessary, and a big effort has to be put into the protection of data privacy. Weighing up both chances and critical aspects of the Cross-Border Police Team, it is obvious that the advantages predominate although there are some obstacles.

#### 4.2. Cross-Border Hot Pursuit and Observation

This section deals with cross-border hot pursuit because it is a form of “trans-border [police] cooperation“ (Gless, 2010: 30) and thus relevant for the German-Dutch police cooperation in the EUREGIO area. If the police are in hot pursuit of a person and the latter crosses a national border while escaping from the police, the presence of a border will be an obstacle for fulfilling the task. The pursuing police are confronted with a problem of responsibility because their target subject moves to another area of police responsibility. In such a situation, the prosecuting authorities rely on police cooperation so that they can continue the hot pursuit across a national border (Bantekas & Nash, 2007: 407). This is why some European states came to the conclusion that they have to facilitate cross-border hot pursuit for the police. Otherwise, it would be easy for criminals to flee from crime prosecution if they just crossed the border, knowing that the national police had no sovereign rights on foreign territory.

Also, this section will consider cross-border observation which is required in a situation in which an alleged criminal person being observed by the police crosses the border of a country. Especially in the 1990s, police cooperation on EU level emphasized this instrument which is important, in particular, for police procedures across borders and, hence, also for the example of the German-Dutch cooperation in the EUREGIO area.

There are several legal arrangements dealing with these two topics, both on the European and the interstate level. Therefore, this section will analyze which possibilities the police can use, based on several treaties.

##### 4.2.1. Cross-Border Hot Pursuit

Regarding cross-border hot pursuit in the context of the police cooperation between Germany and the Netherlands, it is crucial to have a look at the broader legal

framework. The basic legal basis of cross-border hot pursuit is Article 41 of the Schengen Convention 1990. It allows police officers of one Schengen member state to pursue alleged criminals across a border to another Schengen state if several specific requirements are fulfilled. If a certain urgency is given and the authorities of the state the pursued person stays in would not be fast enough to take over the hot pursuit, the foreign police officers will be allowed to continue the police operation (see Article 41 (1)). A general condition for pursuing a person across a national border is an extraditable offense (Piepmeyer, 2015). The criminal must be caught in the act of committing a certain crime or after having fled from arrest in jail (see Article 41 (4)). The responsible authority of the concerned state has to be informed as soon as possible when police officers of another state cross the border (see Article 41 (1)). In addition, foreign police officers do not have the right to enter apartments or private properties (see Article 41 (5c)).

The Prüm Convention 2005 also includes regulations concerning cross-border hot pursuit. According to Article 25, police officers of foreign states are allowed to cross borders when they act on a hot pursuit (Murschetz, 2010: 126). This article aims at preventing or minimizing security risks or dangers for citizens by enabling foreign police officers to become active on foreign territory until the police institutions of the nation state take over the responsibility for the hot pursuit (see Article 25 (3) of the Prüm Convention). Still, it is obligatory for cross-border police actions to take national law into account, even in urgent situations.

While the Schengen Convention and the Prüm Convention are multilateral treaties, Germany and the Netherlands have set up own laws concerning the handling of German-Dutch cross-border hot pursuit in the EUREGIO area. The Schengen Convention can be seen as a framework for further regulations between two states (Wagner, 2009: 234). It can be claimed that the Interstate Treaty of 2006 further specifies and extends the police cooperation regulations of the multilateral treaties that had been implemented before. In particular Articles 12 and 17 of the German-Dutch Interstate Treaty are to be considered in this case. Article 12 says that a cross-border pursuit can be applied to persons that withdraw from a person's control; this aims at tracing persons suspected of having committed a crime or flee from justice. This is valid for a maximum distance of 150 kilometers from the border. Due to Article 12, the foreign police officers have a sovereign authority on the territory of the other state. It also includes specific instructions about those institutions that have to be informed when a cross-border pursuit takes place on a certain territory. Article 17 enables a cross-border pursuit of persons who cause danger for the public by ignoring signs of stopping and abscond from a border control up to 150 kilometers from the border. The responsible police institution of the other state, respectively, must be informed immediately when a cross-border pursuit becomes obvious. If German police officers pursue a criminal across the border to a Dutch territory and

the responsible police officers from the Netherlands can take over this task, the Germans can either further support the pursuit or stop it according to Dutch instructions. The measure of cross-border pursuit must always be proportional. This means that it would have to be stopped if it led to a disproportionate endangering of persons. However, if the necessary preconditions for cross-border hot pursuit are not fulfilled, such a pursuit can only be carried out by a common patrol consisting of both German and Dutch police officers.

#### 4.2.2. Cross-Border Observation

With regard to the legal conditions under which cross-border observation is done, the Schengen Convention is to be taken into account. It legally enables a cross-border observation of suspected persons (Bantekas & Nash, 2007: 429). In order to be able to do so, several requirements have to be fulfilled (see Article 40 of the Schengen Convention); for example, an extraditable offense must be given. It is important to note that Article 40 will enable a continuation of an observation on foreign territory if the observation starts in the inland. Otherwise, a national border would mark a limit for a police observation. Also, the authorities of the observation's location must be requested official support and must have agreed to it. As for cross-border hot pursuit, certain preconditions for police officers, such as following the state's law, being able to prove their identity, have to be complied with. Entering apartments or buildings that are not open for the public is not allowed. Another precondition is that an observed person cannot be brought to a stop or be arrested. In urgent and severe cases, it is also possible to observe across a border without asking the foreign state beforehand. However, an allowance has to be asked for afterwards.

According to Article 40.6 of the Schengen Convention, bilateral agreements can specify regulations for cross-border observation further. In this matter, the Articles 11 and 16 of the Interstate Treaty between Germany and the Netherlands deal with the concrete bi-national regulations by enhancing the regulations of the Schengen Convention. For example, article 11 (1) includes the opportunity of observing a person if he or she is likely to help identifying a suspected criminal person. Furthermore, a cross-border observation will be permitted if it aims at executing a punishment which presumably leads to a minimum imprisonment of four months (see Article 11 (2)). The article also lists those institutions of both countries that have to be asked for official support. On top of that, Article 16 refers to special cases in which an observation is done in order to prevent an extraditable offense. Only if the institution responsible for the observation does not have the ability to fulfill the task, this step will be possible. In highly urgent cases, no previous approval is needed. An observation in the context of preliminary proceedings is not possible. Also, an observation of for-



foreign police officers is only approvable if no institutions of the nation state or mutual observation groups can achieve the goal of the observation.

#### 4.2.3. Estimation of both Instruments

After having explained the legal possibilities concerning cross-border observation and hot pursuit, this section will deal with a brief estimation of these instruments. Both cross-border hot pursuit and observation are flexible and reliable tools that enhance cross-border police work because the border does not stop or limit police tracing any more. From the relevant regulations in the German-Dutch Interstate Treaty, it can be concluded that the two states have agreed on more specific opportunities for a cross-border observation than the Schengen Convention stipulates. The concerned police institutions of both sides of the German-Dutch border can use this tool of police cooperation to achieve their goal of increased security. If these instruments did not exist, criminals could easily flee from national persecution by crossing the border. Thus, it can be followed that both instruments are helpful for police work in the EUREGIO area and therefore very important.

Critics might mention the argument of a potential loss of sovereignty if foreign officers act on national territory. However, from the perspective of German and Dutch police officers, this can be seen rather as a gain of sovereignty (Piepmeyer, 2015). The clear rules of the Interstate Treaty, which are accepted by both sides, explicitly define what is allowed. Also, the authorities of the state of the observation or pursuit can always stop the measures of the police officers from the foreign country and issue instructions (see Article 35 of the Interstate Treaty). The leadership of operations is always up to the responsible institution of the nation state. Apart from that, the police institutions have an increased pool of tools they can use on the foreign territory. For these reasons, no loss can be noticed; rather, the possibilities are extended.

Summing up, the assumed disadvantages of cross-border hot pursuit and observation can be refuted. The opportunities for (international) police tracing that these two cooperation forms imply clearly stand out. For these reasons, it can be claimed that both cross-border hot pursuit and observation are indispensable instruments for the police in the EUREGIO area, which enable to continue a police operation on foreign territory.

#### 4.3. Cross-Border Exchange of Data

While in the past cross-border hot pursuit and observation used to be at the main focus of the EU, Niemeier (2010: 200) claims that the exchange of information has developed to the probably most important tool within EU police and justice cooperation. Seven years ago, the EU Future Group 2008 stated that the exchange of in-

formation between the institutions of the member states should be further optimized in the future (Röhrl, 2010: 290) because information is considered as an indispensable resource. By the current state of knowledge, such an improvement has happened. For these reasons, it seems to be worthwhile to attach value to the field of cross-border exchange of data in this thesis. The cooperation between Germany and Netherlands is a good example that shows how such an exchange of data concerning alleged criminals can be realized in practice. This section deals with the questions how this form of police cooperation is carried out in practice under which conditions, using the example of the German-Dutch cooperation, and which of those aspects might be critical. By doing this, the focus is set on the legal foundations of an exchange of data.

Today, it is self-evident that European police institutions cooperate on the national but also on the municipal level. They have to be well informed about dangers and risks in order to be able to do rational decision-making (Aden, 2015: 209). As a consequence of this requirement, big information channels and networked data have started to emerge (Röhrl, 2010: 291). It should be the aim for the future to create a situation in which a police officer who is working in the field of crime prosecution gets the information he or she needs from whatever member state can provide it (Niemeier, 2010: 201). In order to be able to access police relevant data from foreign countries, certain technical preconditions must be fulfilled. All Schengen states, and thus Germany and the Netherlands, can use the database of the multilateral system SIS. Concerning the concrete procedure, each member state has one central responsible institution which is allowed to provide SIS-data to a central computer in Strasbourg. Then, the up-to-date data from Strasbourg can be used by more than 35 000 national computers in the Schengen area (Wagner, 2009: 232f.). SIS is one example for a unitary system for police tracing which makes it possible to fight irregular immigration and other cross-border crimes. Because of lacking internal border controls, nation states cannot fulfill the task of controlling these crimes on their own. Due to the data provided at the external borders via SIS, an increased prevention of, e.g., irregular immigration is possible (Wagner, 2004: 4). It is special about SIS that it includes precise instruction for the acting of the police. If, for example, one national police trace an alleged criminal and the criminal is located in another Schengen member state, then this state will be obliged to execute the arrest (Wagner, 2009: 233).

Apart from the exchange of data at the multilateral level, there is also a direct bi-national cross-border exchange of data between police forces of Germany and the Netherlands, which is less bureaucratic than the SIS. The Interstate Treaty of 2006 enabled a cross-border transfer of important information, such as DNA data in terms of preliminary or criminal proceedings (see especially Articles 4, 7, 10, 15, and 20). For this reason, it can be seen as an advancement compared with the Schengen and Prüm Treaties because it makes an easier and direct exchange possible.

The aim of an intensified communication should be realized by sharing information about criminal offenses and criminals that also concern the other country (see Article 4 (1)). It is possible to transfer information to responsible authorities of the other state, on request or on an own initiative (see Articles 7, 15 and 20). The latter will be the case if it can be supposed that knowledge of the information is fundamental for a criminal prosecution, prevention, or averting danger for public security or order.

More concretely, the German police department of Osnabrück in the EUREGIO area can serve as an example because it ensures an exchange of police relevant data across borders through the regional liaison agency in Lingen. It accompanies cross-border investigations, has a network of contacts, and employs translators. Markus Piepmeyer, from Osnabrück police, coordinates the exchange of information, provides the police with the necessary networks, and tries to influence the legislative bodies so that these support the cross-border exchange. The Cross-Border Police Teams in Bad Bentheim and Bad Nieuweschans exchange all kinds of information, too. Apart from that, if there is a police investigation near the border, a contact person for cross-border investigations will be on location and will provide the necessary information (Piepmeyer, 2015). Due to the German-Dutch cooperation, it is also possible for prosecution services and the police of both countries to communicate and directly exchange information about important issues (Spapens, 2010: 77). It can be stated that the cooperation leads to increased possibilities for the police forces of both countries to exchange and share police relevant information, and this, in turn, helps them to better fulfill their task of providing internal security.

Coming to a brief estimation of the cross-border exchange of data, it is a two-sided coin. A positive aspect is, for example, that the SIS leads to a much faster transfer of information and, as a consequence, a quicker arrest of criminals. This results from the fact that current data can be accessed quickly within the complete Schengen area (Karanja, 2008: 181). A police cooperation in form of an unbureaucratic, direct transfer of information between Germany and the Netherlands also enables faster results of police work. If a Dutch police officer is working in the EUREGIO area along the border and needs information from his colleagues in Germany, the border will not represent a quasi-insurmountable barrier any more. Thus, the responsible police authorities have access to a wider scope of information possible so that they are able to achieve better results of their work.

However, the problem of data security needs to be considered because increased cross-border police cooperation implies the development of databases and information networks (Bantekas & Nash, 2007: 416). Since the citizens' trust should not be put at risk, the question emerges of how to ensure a safe data exchange (Aden, 2015: 213). Therefore, high standards of data security must be guaranteed (Niemeier, 2010: 202) for all forms of data communication. Questions concern issues such as what the safest way of data exchange is, where data can be stored, and

who is allowed to access which data. Markus Piepmeyer (2015) claims that the police in Osnabrück ensures data protection by well-qualified police officers who are aware of how to secure data, and by using safe ways of data transmission, for example, by phone or via fax. Nevertheless, he criticizes that a safe e-mail exchange is not possible up to now. It can be concluded that there are still capabilities for further improvement.

Although information networks have a big potential and are of major relevance, an expansion to an overall control and surveillance system of the citizens is not desirable because this could result in a restriction of freedom. The SIS should not be extended to a general information system, but instead be limited to its focus on tracing persons and issues (Bundesministerium des Innern, 2007: 25). Another difficulty related to an exchange of information is that the members of the various national police institutions have differing competences. There is no complete harmonized EU law on internal security policies, but rather multiple laws for the scope of police work which differ from member state to member state. As a consequence, it might be a problem that member state A could use provided data from member state B to a wider extent than member state B would be allowed to use. Since Germany and the Netherlands have different legislation concerning police work and data security, this problem must be considered.

Relating to a final estimation of the exchange of data between institutions of criminal prosecution of Germany and the Netherlands, it can be summed up that it represents a crucial measure to fight cross-border crimes (Piepmeyer, 2015). This section has clearly shown that nation states depend on cooperation so as to be able to attain access to important information concerning alleged criminals. In times of Europeanization of the police, sharing interstate information is of utmost relevance. Still, data security remains a major issue in this context representing a challenge for the future.

#### 4.4. Police Cooperation as a Form of (Liberal) Intergovernmentalism

After the explanation under which conditions the German-Dutch police forces cooperate in selective operative fields in the EUREGIO area along the border, this section refers to a combination of theory and practice. By doing so, it is the aim to find an answer to the research question how police cooperation can be classified in terms of European Integration from a political science perspective. The Theory of (Liberal) Intergovernmentalism according to Stanley Hoffmann (1966) will be applied to the police cooperation because there are some striking parallels. Afterwards, the Theory of Europeanization will also be considered in order to show its relation to the German-Dutch cooperation in the EUREGIO area.<sup>7</sup>

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<sup>7</sup> For more details of the theories see Chapter 2.1 and Chapter 2.2.

Although the German-Dutch Police Cooperation is located at the regional level (EU-REGIO), Germany and the Netherlands as legitimate states formed the required base by implementing the Interstate Treaty. It can be followed that without this treaty, an integration of the police institutions in form of a police collaboration would not have been possible. Actively, the states themselves made the collaboration work and fostered integration. This is also a characteristic feature of the Theory of Intergovernmentalism, which assesses sovereign nation states as the key actors on the international level, acting in a rational way. Germany and the Netherlands as sovereign nation states are the key responsible actors for enabling a cooperation of their police forces. It is the task of both Germany and the Netherlands as states to guarantee internal security for their citizens. By signing the Interstate Treaty of 2006, Germany and the Netherlands followed their rational preferences of pursuing more internal security. Advantages and disadvantages of such a treaty were weighed up, resulting in the awareness that the states could profit from a police cooperation. For example, transnational terrorism challenges the nation states. If states work together, they will be able to maintain themselves and to meet modern police challenges better. Therefore, the intergovernmentalist assumption that integration only happens if nations can thereby amend the performance of their national tasks and enhance their power on the international level is fulfilled. The police officers acting on foreign territory have extended competences and are allowed to continue with their police work even when the German-Dutch border has to be crossed. Nevertheless, the two states did not have an intention to establish a new, shared institution which replaces their own national institutions. Instead, they cooperate in an interstate way so that they do not lose power to a supranational police institution. Thus, they protect their own sovereignty, but also use the advantages of a cooperation. This issue can also be found in the Theory of Intergovernmentalism because according to Hoffmann, even if states cooperate, it is not desired to create a higher institution going beyond the nation state.

The characteristic features of the German-Dutch police cooperation analyzed above reveal that there are some striking parallels. Nevertheless, the theory does not provide a good explanation of the police cooperation in all issues. Consequently, some limits of the theory have to be taken into account. One of the most crucial points of criticism is Hoffmann's differentiation between high and low politics and their suitability for integration. According to him, cooperation between states is limited to low politics such as welfare issues. However, security can be classified as high politics because it severely strikes the sovereignty of the nation state. The German-Dutch police cooperation in the EUREGIO area is related to the field of security. Still, both states set up the Interstate Treaty and thus established a cooperation in a very sensitive concern. In this case, the explanatory power of the Theory of

Intergovernmentalism is limited as it cannot explain why the states decided to cooperate.

At this point, it is wise to consider the Theory of Liberal Intergovernmentalism according to Andrew Moravcsik (1993), which builds upon Hoffmann's assumptions but includes some own aspects. Moravcsik, who especially deals with regional integration, claims that "states must overcome collectively suboptimal outcomes and achieve coordination or cooperation for mutual benefit" (Moravcsik & Schimmelfennig, 2009: 71). This statement can be applied to the police cooperation in the EU-REGIO area because Germany and the Netherlands have come to the conclusion that they can achieve mutual benefit by cooperating. This is an issue that Hoffmann did not take into consideration. However, Moravcsik's theory finds an explanation for the cooperation at the level of high politics. His three-step model of integration serves as a "rationalist framework" of international cooperation" (Pollack, 2010: 18). Before Germany and the Netherlands negotiated the treaty and the details of the cooperation, they had to aggregate their own national interests. Both states then agreed on their will to foster police cooperation, which was the condition for starting negotiating a potential treaty. The setting-up of the treaty and the subsequent cooperation are the outcome of the bargaining process between the two states. Besides, the German-Dutch cooperation has in common with Moravcsik's assumption that no supranational institution is included in agreeing on a cooperation. Yet, there is also a little discrepancy when applying the Theory of Liberal Intergovernmentalism to the cross-border police cooperation in the EUREGIO area. Within his theory, Moravcsik refers to articulating national preferences vis-à-vis the bargaining table of the EU. However, in this case, Germany and the Netherlands agreed on the Interstate Treaty in a binational way between the two states, meaning that the EU did not provide the institutional framework for bargaining.

It is to be said that the Theory of Intergovernmentalism can explain the German-Dutch police cooperation in the EUREGIO area. There are also some parallels to the most important aspects of Liberal Intergovernmentalism. Nevertheless, there is no full compliance with the two theoretical approaches as the points of criticism analyzed above reveal. Concluding, it is justified to classify the cooperation as (liberal) intergovernmentalist because the majority of the theoretical characteristics can be found in practice.

The German-Dutch police cooperation in the EUREGIO area shows up intergovernmental structures. However, from an academic perspective, it is also interesting to have a brief look at the Europeanization of the police which is a process happening parallel to the establishment of bi- and multilateral cooperation forms. Although the Theory of the Europeanization of the police refers, in principle, to the institutionalization of rules on the EU-level, it can also be applied partly to the police cooperation between the two states, Germany and the Netherlands. Especially the three rea-

sons outlined in Chapter 2.2 can also provide an explanation for the agreement of Germany and the Netherlands on their cooperation. Both states have to face the problem of transnational terrorism and other cross-border crimes challenging (national) internal security structures. In addition, the German-Dutch border is open due to Schengen, and standardized passport controls are abolished. As a consequence, it is difficult for the two nation states to provide security; this is why the governments of Germany and the Netherlands were in need of cooperation. However, it should be noted that the cross-border police cooperation in the EUREGIO area does not represent a form of the Europeanization of the police because one crucial element of the definition according to Vukasovic (2013: 312) is missing. A supranational or intergovernmental body involved in the integration process is missing. The two states, which have institutionalized rules by setting up the Interstate Treaty, have agreed on the cooperation of their own accord.

Summing up, it remains to be said that the theory of the Europeanization of the police is an interesting approach to analyzing police cooperation on the EU-level. In some aspects it is helpful in order to explain bi- and multilateral cooperation, too. Still, the German-Dutch police cooperation in the EUREGIO area cannot be fully characterized as a form of Europeanization.

## 5. Conclusion

The police, nowadays, face new challenges, such as transnational terrorism, organized crime, and lacking border controls; these challenges can only be overcome by working together across borders. These issues make a continuing European Integration in the field of police, security, and justice indispensable so that internal security can be provided. The Maastricht Treaty, the Amsterdam Treaty, and the most current Lisbon Treaty legally enable police cooperation within the EU. The latter as an objective should be pushed forward further because it offers so many opportunities. There are still many things left to improve, such as the legal framework for police cooperation which needs further improvement so that administrative obstacles can be eliminated (Spapens, 2010: 101). Yet, one should not expect a general assimilation of national polices (Röhrli, 2010: 298). The biggest problem in this context is the (at least partly) lacking will of nation states to transfer sovereignty to others (Heid, 2015: 77).

However, the legal framework of the level below the EU-Treaties has to be considered, too. It enables a wide range of cooperation forms and represents the conditions under which a police cooperation between two or several states is possible. The most important treaties to be mentioned in this context are the Schengen Treaties and the Prüm Convention. Relating to the cooperation between Germany and the Netherlands, it was in the interest of the two states to foster and intensify the cooperation of their police forces. By signing the Interstate Treaty, the two states

made an institutionalized police cooperation, including the selective operative fields of Cross-Border Observation, Exchange of Data, and Hot Pursuit, possible in the EUREGIO area. Relating to the conditions under which the police forces cooperate, it can be stated that the relevant articles of the above-mentioned treaties constitute the legal requirements that have to be fulfilled. The police forces which are involved in the cooperation must adhere to the law the treaties provide.<sup>8</sup>

However, it is to say that the cooperation forms, except for the Cross-Border Team, are theoretical options that can be used. This thesis cannot make a statement about the extent to which the possibilities are used in practice because an empirical study is needed for such an analysis. Still, it can be concluded that, theoretically, the responsible authorities of both states have many options to cooperate.

Even after the Treaty of Lisbon, decisions about cross-border police cooperation in the EU have still remained a rather intergovernmental issue (Kietz, 2015: 53) instead of a supranational one. Also, most of the cooperation forms in the EU have developed between two or more nation states. Section 4.4 has revealed that, from a political science perspective, the German-Dutch police cooperation can mostly be classified as a (liberal) intergovernmental one in terms of European Integration. Germany and the Netherlands as states are the central actors which enabled the police cooperation in the EUREGIO area without any included supranational institution. Furthermore, the way of setting up the treaty shows how Moravcsik's model of the bargaining process can be realized in practice. Apart from that, the Theory of Europeanization of the police provides some additional background which is useful for explaining the reasons for the German-Dutch cooperation.

Regarding the brief evaluation of the different forms of cooperation, this thesis has pointed out differentiated arguments. Above all, the specific forms of the intergovernmental cooperation between the two countries, such as hot pursuit or observation, have both advantages and disadvantages. Still, the thesis has revealed that, in general, the German-Dutch Police Cooperation can be assessed as beneficial. Whereas, in theory, the police cooperation seems to have many advantages, the actual implementation turns out to be difficult. Bureaucratic obstacles, lacking equipment, and absent JITs are to be criticized. All in all, the positive aspects still outweigh the critical aspects, which is why both countries might benefit from the cooperation.

The future prospects of the German-Dutch Police Cooperation in its different forms are, taken as a whole, very positive. Referring to the Cross-Border Police Team, it is

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<sup>8</sup> For more details of the conditions that have to be fulfilled in certain operative fields, see Chapters 4.1 to 4.3.



to say that it is very popular in the EU, due to its huge success during the last eight years. The cooperation has already set the impulse for other police cooperation along borders, for example in Bad Nieuweschands and Bunde (Anonymous, 2014). It remains to be seen how the Cross-Border Police Team in the EUREGIO will further develop and how it will react on prospective challenges of a globalized world in the future. Should the European integration continue as expected, there will be many reasons for the presumption that more cross-border police teams will be founded.

The same is true for the other three cooperation forms dealt with in this thesis. Referring to cross-border hot pursuit and observation, it can be supposed that the police will continue working together in the future because these two cooperation forms are indispensable for a successful police work in a border region. When it comes to the cross-border exchange of data concerning an alleged criminal, it has already become the most important instrument regarding police cooperation, and its importance is likely to increase further. As this thesis has revealed, the different cooperation forms offer a huge potential, especially if the obstacles and problems can be limited. Therefore, I can only recommend to further foster a German-Dutch cross-border police cooperation in the EUREGIO area. Apart from that, there is enough space for an extended research on this interesting topic, which also has much academic relevance.

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## 7. Annex

E-Mail from Markus Piepmeyer, 28<sup>th</sup> May 2015

### Informationsaustausch

Ohne Informationen und deren grenzüberschreitenden Austausch nach Einzelfallprüfung gäbe es keine grenzüberschreitende Kriminalitätsbekämpfung sowie Gefahrenabwehr, geschweige denn überhaupt grenzüberschreitende polizeiliche Zusammenarbeit.

Der grenzüberschreitende polizeiliche Informationsaustausch wird über alle Komponenten der internationalen Zusammenarbeit bei der Polizeidirektion Osnabrück gewährleistet. Dies wären in der Hauptsache die ‚Regionale Verbindungsstelle‘ in Lingen und die ‚Internationale Zusammenarbeit bei der KRLOS‘ (Kooperative Regional-Leitstelle Osnabrück). Die ‚Regionale Verbindungsstelle‘ hat bestimmte Bürozeiten, in denen Informationen weitergegeben oder angefordert werden. Sie begleitet aktiv grenzüberschreitende Ermittlungen, knüpft die notwendigen Kontakte und beschäftigt einen niederländischen Staatsbürger als Dolmetscher und Übersetzer. Außerhalb der Bürozeiten übernimmt dies in dringenden Fällen der Bereich ‚Internationale Zusammenarbeit bei der KRLOS‘. Daneben werden Informationen aller Art grenzüberschreitend durch das Grenzüberschreitende Polizeiteam Bad Bentheim und Bad Nieuweschan und die bei jeder grenznahen Ermittlungseinheit angesiedelten ‚Ansprechpartner grenzüberschreitende Ermittlungen‘ ausgetauscht. Soweit es Belange der Rechtshilfe angeht sind auch das LKA Niedersachsen und das bei der Polizeidirektion Osnabrück angesiedelte Dezernat ‚Kriminalitätsbekämpfung‘ am Informationsaustausch beteiligt. Meine Aufgabe ist es unter anderem, diesen Informationsaustausch zu koordinieren, die notwendigen Netzwerke zur Verfügung zu stellen und auf die Politik/den Gesetzgeber einzuwirken, die notwendigen gesetzlichen Grundlagen zu schaffen.

Dieser strukturierte Informationsaustausch erfolgt auf der Grundlage der Artikel 39 und 92 ff SDÜ sowie der Artikel 4,7,15 und 20 des Deutsch/Niederländischen Polizei- und Justizvertrages.

Der Datenschutz wird zum einen durch das geschulte Personal und zum anderen durch Nutzung sicherer Übermittlungswege gewährleistet. Als sichere Übermittlungswege gelten zum einen der Austausch über FAX-Geräte, zum anderen der telefonische oder persönliche Informationsaustausch. Leider stehen uns derzeit noch keine sicheren Datenleitungen für den grenzüberschreitenden Informationsaustausch via E-Mail zur Verfügung. Die Nutzung des europäischen sicheren Netzwerkes ‚sTESTA‘ ist der Polizei (noch) nicht zugestanden worden, obwohl sich beispielsweise Niedersachsen seit 2009 darum bemüht. Dies ist auch gleichzeitig der kritische Aspekt bei der Informationsübermittlung. Daneben wird der Informationsaustausch mit personenbezogenen Daten einzelfallabhängig betrieben, garantiert durch das eingesetzte geschulte Personal. Die Gefahr besteht darin, dass

zur einfacheren und schnelleren Übermittlung von Daten E-Mail-Programme genutzt werden. Im sogenannten kleinen Grenzverkehr (direkter Informationsaustausch grenznaher Dienststellen) kann ich die Nutzung dieses Kommunikationsweges nicht ausschließen.

#### Nacheile / Observation

Die Verfolgung von Personen über die Staatsgrenze hinaus unterliegt den Beschränkungen des SDÜ und des Deutsch/Niederländischen Polizei- und Justizvertrages (NLDV). Die Nacheile regelt sich durch die Artikel 41 SDÜ i.V.m., 12 und 17 NLDV, die Observation durch die Artikel 40 SDÜ i.V.m. 11 und 16 NLDV.

Grundvoraussetzung ist das Vorliegen einer auslieferungsfähigen Straftat, derentwegen ich eine Person über die Grenze verfolgen kann. Hierbei habe ich die in den genannten Artikeln beschriebenen Regularien zu beachten. Unter anderem habe ich unverzüglich die niederländischen Behörden zu unterrichten, im Regelfall über die KRLOS. Kann die niederländische Polizei die Verfolgung übernehmen, unterstützt die verfolgende deutsche Streife die niederländischen Kollegen/Kolleginnen oder bricht sie auf Verlangen ab. Liegen die Voraussetzungen der Artikel aus dem SDÜ und dem NLDV nicht vor, kann nur eine gemischte Streife (D/NL) eine Nacheile oder Observation durchführen.

Der potentielle Souveränitätsverlust wird eher als Souveränitätsgewinn wahrgenommen. Durch den NLDV werden klare Regeln auferlegt, derenthalben ich die Grenze überschreiten und begrenzt hoheitlich tätig werden kann. Der zuständige Staat kann die Aktivitäten des ausländischen Staates jederzeit beenden. Somit ist er in seiner Souveränität nicht eingeschränkt, sondern hat durch mögliche hoheitliche Maßnahmen im Nachbarstaat eher eine Erweiterung der eigenen Souveränität erfahren. Diese Ansicht teilen sowohl deutsche als auch niederländische Hoheitsträger.