

**The EU policy on organised crime between
Stockholm and Lisbon"**

**Catania, Faculty of Political Science –
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**"Police cooperation after Lisbon and
Stockholm"**

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Structure

- Police cooperation under Title V, chapter V TFEU – what remains, what changes?
- Stockholm Programme – what do the politicians think?
- Specifically: What's new for Europol?

History

- Police cooperation first determined by Maastricht Treaty 1993
- Amsterdam Treaty in 1999 set objectives in JHA area; creation of area of freedom, security and justice
- Third pillar: lack of transparency, democratic legitimacy?
- Limited jurisdiction of the ECJ; opt out for MS (art.35)
- fear of losing sovereignty in the sensitive area of justice and home affairs
- Tampere Council of 1999 and The Hague Programme: political impetus for development of police cooperation

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- Art. 87 – 89 TFEU deal with police cooperation, including Europol
 - Provisions need to be read together with those of chapter I of Title V (Art.67- 73 TFEU)
 - Art.67(1): “Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States”
 - Art.67(3): “Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, [...], and through measures for coordination and cooperation between police and judicial authorities and other competent authorities,[...]”
 - Art. 68: “European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.”

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- But
 - Art. 69: “National Parliaments ensure that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with [...] Protocol on [...] subsidiarity and proportionality”
 - Art. 72: “This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.”
 - Art 73 – “It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.”, see Art. 87(3) TFEU

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- Main changes compared to old Title VI of TEU (Nice)
 - Legislator is now EP and the Council (previously EP had only the right to be consulted)
 - ordinary legislative procedure (ex-co-decision procedure, giving the European Parliament a right of veto) – Art. 289(1) TFEU
 - Right of initiative lies with the European Commission, but can also be exercised by a quarter of the MS (7)
 - QMV instead of unanimity

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- Judicial control
 - Jurisdiction of the ECJ until end 2014 will stay as is today (Article 10 of Protocol No. 36 TFEU).
Limited to
 - Preliminary rulings on validity and interpretation of certain legal acts adopted under the former Title VI of the TEU
 - Disputes between MS or MS and COM on question of competence or interpretation of acts
 - Individuals have no standing
 - Opt-out clauses for MS

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- After 2015
 - Full powers of the ECJ, e.g.
 - Action for annulment, also by individuals
 - Infringement proceeding against MS

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- Specific points of interest
 - “enhanced cooperation” foreseen under Art. 87(3)
 - Art.87(3) 1st subpara. “The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.”
 - “Special legislative procedure” see Art. 87(3) 1st subpara and Art. 289(2)
 - Scope of application of this article not tested yet; relation with Art. 87(2)?
 - » Art. 87(2): “police cooperation involving all the Member States’ competent authorities [...]in relation to the prevention, detection and investigation of criminal offences” (Art. 87(1)) – ordinary procedure)
 - » Art. 87(3) “measures concerning operational cooperation between the authorities referred to in this Article” – special legislative procedure
 - » Criterion: cooperation concerns all the MS’ competent authorities vs. some MS’ competent authorities or even all the MS’ competent authorities vs. some competent authorities of all MS?
 - » Conflict of competence with EP is likely.

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- “emergency break” (Art. 87(3) 2nd subpara): group of min. nine MS (and not only 1 MS as in the area of judicial cooperation) can involve the European Council, where contentious issues have to be solved by consensus, before they are referred back to Council for adoption. If no unanimity can be found in Council, the initiative has failed.
- “enhanced cooperation”: possibility for enhanced police cooperation between MS according to Art. 87(3) 4th subpara.
 - If no unanimity on certain measure, group of nine MS can move forward on their own; they just have to notify the EP, Council and COM. The provisions on enhanced cooperation are then automatically applicable, especially the act only binds participating MS and is not part of the JHA acquis (for candidate countries).
 - Schengen acquis specifically excluded from enhanced cooperation

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- “yellow card” mechanism of Art. 69 and Art. 7(2) of Protocol on subsidiarity and proportionality: Certain quorum of national parliaments can force the originator of the legal act (mostly the COM) to review the act and to take principle of subsidiarity into account.

Police cooperation under Title V, chapter V TFEU – what remains, what changes?

- What happens to the existing acquis?
 - See Article 9 of Protocol No. 36 TFEU on transitional provisions: “The legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended in implementation of the Treaties.”
- If it ain't broken, don't fix it.

Stockholm Programme – what do the politicians think?

- Selected elements
 - strengthen cooperation of law enforcement, border management, civil protection, disaster management as well as criminal judicial cooperation in order to make Europe more secure.
 - systematic European Training Schemes
- define a comprehensive EU internal security strategy
 - intelligence-led approach,
 - stringent cooperation between EU agencies
- coherence and consolidation in developing information management
 - EU Information Management Strategy,
 - European Information Exchange Model
- ensure a high level of network and information security and measures aimed at protection, security preparedness and resilience of critical infrastructure,
 - tailored to the real needs of users and focus on improving interoperability
- ensure that Europol receives information from Member States law enforcement authorities,
- police cooperation: compatibility of communication systems and other equipment, use of undercover agents
- reflection document on how best to ensure that the activities of Europol may be scrutinised and evaluated by the European Parliament, together with national parliaments
- Police Cooperation Code which would consolidate existing instruments
- adopt a decision on the modalities of cooperation, including on exchange of information between EU agencies, in particular Europol, Eurojust and Frontex
- EU agencies to conclude operational arrangements between themselves and develop their participation in regional initiatives conducted by Member States and in regional bodies
- common quality standards within the forensic field,
- organised crime strategy, within the framework of the Internal Security Strategy,
- set its priorities in crime policy by identifying the types of crime against which it will deploy the tools it has developed
- Recommendation for specific areas of crime (trafficking in human beings, sexual exploitation of children, cyber-crime, drugs, terrorism)

Novelties for Europol

Novelties for Europol – consolidation, integration, development

1) The Europol Council Decision

- Changes of mandate, operational possibilities, governance

2) Europol under the Treaty of Lisbon

- Legal-procedural dimension
- The new legal basis (Article 88 TFEU)
- Democratic accountability
- Judicial control

Novelties for Europol

1) The Europol Council Decision

- Replaces Convention – no ratification
 - Amendments, however, have to be formalised by re-adopting the Europol Decision as a Europol Regulation (Art. 88 TFEU in conjunction with Article 9 of Protocol No. 36 TFEU)
- Europol financed from a contribution from the budget of the EU
 - The financing of Europol shall be subject to an agreement by the European Parliament and the Council as budgetary authority (Article 42(1) Europol Decision)

Novelties for Europol

- Europol financed from a contribution from the budget of the EU (cont.)
 - Consequences:
 - More democratic control via agreement on the budget
 - Greater accountability:
 - » Annual auditing by the European Court of Auditors
 - » OLAF has powers to investigate misconduct of Europol Staff against the financial interests of the Union
 - Alignment of administrative practice
 - » Application of EU Financial Regulations and EU Staff Regulations

Novelties for Europol

- Wider mandate

- Before: “(...)preventing and combating serious international crime where there are factual indications or reasonable grounds for believing that an organised criminal structure is involved (...)”
- After: “(...)preventing and combating organised crime, terrorism and other forms of serious crime (...)”
- Change: Europol is now competent for serious crime committed in a non-organised fashion
- However: areas of crime for which Europol is competent remain the same
- However: no exclusive competence for a particular form of crime; 2 or more MS have to be affected
- However: no coercive powers

Novelties for Europol

- Possibility to set up new information system
 - Possibility for MS to entrust Europol with the management and use of new information systems
 - Approval of Council for each individual system necessary
- Enhanced possibilities for Europol to establish relations with third parties
 - Exchange of non-personal and non-confidential data also prior to the entry into force of agreements; in the case of EU institutions and agencies even personal data
 - Europol can receive (personal) data from private parties residing in the EU and in non-EU countries

Novelties for Europol

- Changed governance structure
 - 2/3rd majority for decisions of Europol's governing board, the Management Board (MB)
 - Only 2 organs (Director and MB) instead of 4
 - European Commission has a right of vote in MB, only observer under the Europol Convention

Novelties for Europol

2) Europol under the Treaty of Lisbon

- Legal-procedural dimension
 - New legal basis for Europol under Article 88 TFEU
 - Europol Regulation, to be adopted via the ordinary legislative procedure (ex-co-decision procedure, giving the European Parliament a right of veto)
 - QMV instead of unanimity
 - Right of initiative lies with the European Commission, but can also be exercised by a quarter of the MS (7)

Novelties for Europol

- The new legal basis (Article 88 TFEU)
 - Slightly extended mandate, which has to be defined more precisely, however: “(...) *coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities* (...)”
 - Coercive powers continue to be excluded
 - No exclusive investigative powers relating to a particular area of crime
- Europol, in the context of the creation of a European Prosecutor's office, may be entrusted with carrying out investigations (Article 86 TFEU)
- However: preservation of Europol acquis until repealed, annulled, amended (Article 9 of Protocol No. 36 TFEU)

Novelties for Europol

Democratic accountability

- Enhanced parliamentary control – way towards greater public scrutiny
 - Article 88(s) TFEU: “(...) *These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments (...)*”

Novelties for Europol

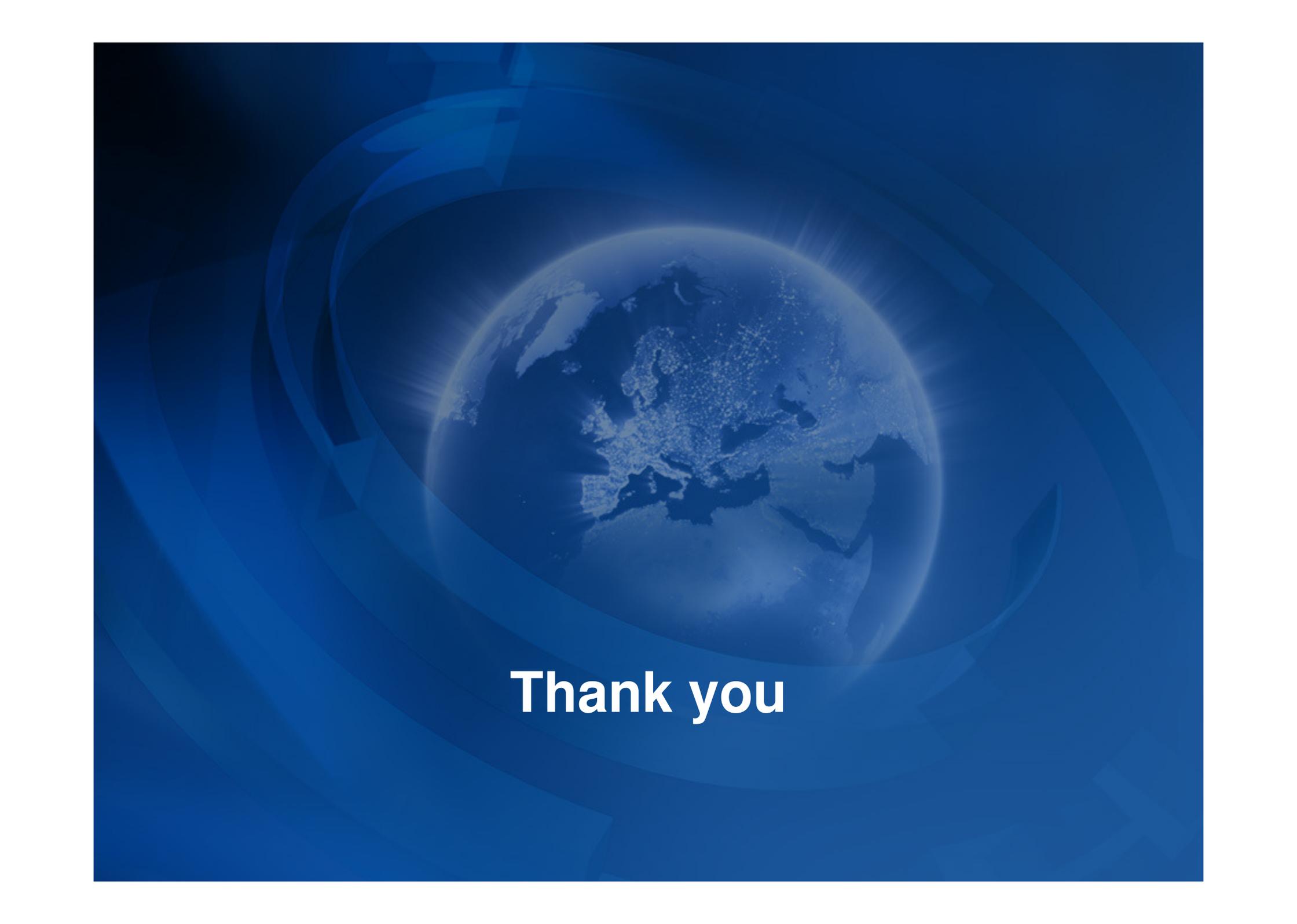
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Novelties for Europol

Consolidation, integration, development

- Europol continues to operate with a trusted legal framework and tools. Changes brought by the ECD and the Treaty of Lisbon rather indicate an evolutionary than a revolutionary concept.
- Greater integration in the “family” of agencies already thorough Europol Decision
- Further integration in the new “one pillar” structure after adoption of a Europol Regulation under Article 88 TFEU

The image features a central, glowing blue-tinted globe of the Earth, showing the continents of North and South America. The globe is surrounded by several thick, semi-transparent blue lines that swirl and curve around it, creating a sense of motion and depth. The background is a solid, dark blue color. The text "Thank you" is centered at the bottom of the image in a white, sans-serif font.

Thank you