Europol

IS THE CENTRALISED MODEL OF INFORMATION EXCHANGE THE MOST APPROPRIATE FOR EUROPOL?

BY MICHAEL SANTIAGO

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### CONTENTS

#### CHAPTER 1: INTRODUCTION

1.1: Aims of Thesis  
1  
1.2: The Maastricht Treaty  
2  
1.3: The Third Pillar  
3  
1.4: The Intelligence Function  
5  
1.5: Organisation of Thesis  
9

#### CHAPTER 2: LITERATURE REVIEW

2.1: Chapter Introduction  
11  
2.2: Neofunctionalism  
11  
2.3: The Macro, Meso and Micro Levels of Police Cooperation  
22  
2.4: The Internationalisation of Police Cooperation  
24  
2.5: Structural Fatalism v Naive Separatism  
27
2.6: The Post Hobbesian State

2.7: Push - Pull Factors

2.8: General and Specific Order

2.9: Conclusion

CHAPTER 3 METHODOLOGY

3.1: Chapter Introduction

3.2: Case Study Approach

3.3: Research Quality Tests

3.3.1: Construct and Internal Validity

3.3.2: External Validity

CHAPTER 4: POLICE COOPERATION IN EUROPE

4.1: Chapter Introduction

4.2: Inter - Police Forms of Cooperation

4.2.1: Interpol

4.2.2: The Drug Liaison Officer Network

4.2.3: Informal Bilateral Contacts

4.2.4: Other Forms of Cooperation
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3: Intergovernmental Forms of Police Cooperation</td>
<td>64</td>
</tr>
<tr>
<td>4.3.1: Formal Bilateral Agreements</td>
<td>64</td>
</tr>
<tr>
<td>4.3.2: The Schengen Agreement</td>
<td>71</td>
</tr>
<tr>
<td>4.4: Conclusion</td>
<td>76</td>
</tr>
</tbody>
</table>

**CHAPTER 5: EUROPOL**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1: Background</td>
<td>78</td>
</tr>
<tr>
<td>5.1.1: Chapter Introduction</td>
<td>78</td>
</tr>
<tr>
<td>5.1.2: Trevi</td>
<td>78</td>
</tr>
<tr>
<td>5.2: The Genesis of Europol</td>
<td>84</td>
</tr>
<tr>
<td>5.2.1: Early Developments</td>
<td>84</td>
</tr>
<tr>
<td>5.2.2: The Ministerial Agreement</td>
<td>88</td>
</tr>
<tr>
<td>5.3: The Structure of Europol</td>
<td>89</td>
</tr>
<tr>
<td>5.3.1: The Management Board</td>
<td>89</td>
</tr>
<tr>
<td>5.3.2: Liaison Officers and National Units</td>
<td>90</td>
</tr>
<tr>
<td>5.3.3: Working Languages</td>
<td>97</td>
</tr>
<tr>
<td>5.3.4: Budget and Financing</td>
<td>98</td>
</tr>
<tr>
<td>5.3.5: Objectives and Tasks</td>
<td>99</td>
</tr>
<tr>
<td>5.3.6: The EDU/Europol's Remit</td>
<td>101</td>
</tr>
<tr>
<td>5.4: Accountability</td>
<td>108</td>
</tr>
<tr>
<td>5.4.1: Current Situation</td>
<td>108</td>
</tr>
<tr>
<td>5.4.2: The European Parliament</td>
<td>109</td>
</tr>
<tr>
<td>5.4.3: Accountability and National Parliaments</td>
<td>111</td>
</tr>
<tr>
<td>5.4.4: The European Court of Justice</td>
<td>113</td>
</tr>
</tbody>
</table>
5.4.5: The Headquarters Agreement

5.5: Data Protection
   5.5.1: Current Situation
   5.5.2: The Joint Supervisory Board
   5.5.3: The National Supervisory Bodies
   5.5.4: Information Exchange Technique
   5.5.5: Europol's Data System

5.6: The EDU's Track Record
   5.6.1: Use Made of the EDU to Date
   5.6.2: Operational Successes

5.7: Current Situation

CHAPTER 6: GERMAN CASE STUDY

6.1: Background
   6.1.1: The German Federal System
   6.1.2: The German Police and Judicial System
   6.1.3: The Bundeskriminalamt
   6.1.4: The Landeskriminalamt
   6.1.5: Computer Systems

6.2: Information Flows
   6.2.1: International - National Information Flows
   6.2.2: National - Regional Information Flows
   6.2.3: Direct Contacts by LKA with the EDU
   6.2.4: Direct Access for Judicial Authorities
6.3: Results of Above Data

6.4: Data Protection
   6.4.1: International - National Levels
   6.4.2: National - Regional Levels
   6.4.3: Direct Lander Participation in Supervisory Bodies
   6.4.4: Contributions of these Findings to Reformulation

6.5: Operational Considerations: Strategic/Tactical
   6.5.1: International - National Considerations
   6.5.2: National - Regional Operational Factors
   6.5.3: Special Treatment
   6.5.4: Conclusion

CHAPTER 7: UK CASE STUDY

7.1: Background
   7.1.1: The Police and Judicial System
   7.1.2: The National Criminal Intelligence Service
   7.1.3: Computer Systems

7.2: Information Flows
   7.2.1: International - National Information Flows
   7.2.2: National - Regional/Force Considerations

7.3: Direct Contacts
CHAPTER 7: DATA PROTECTION

7.4: Data Protection Considerations
7.5: Operational Factors
  7.5.1: International - National Factors
  7.5.2: National - Regional Factors
7.6: Conclusion

CHAPTER 8: DUTCH CASE STUDY

8.1: Background
  8.1.1: The Dutch Political System
  8.1.2: The Dutch Judicial and Policing System
  8.1.3: The Centrale Recherche Informatiedienst (The CRI)
8.2: Information Flows
  8.2.1: International - National Factors
  8.2.2: National - Regional Information Flows
  8.2.3: Direct Contacts with the EDU
8.3: Data Protection
8.4: Operational Factors
  8.4.1: International - National Considerations
  8.4.2: National - Regional Considerations
8.5: Conclusion
CHAPTER 9: SWEDISH CASE STUDY

9.1: Background
9.1.1: The Swedish Political System
9.1.2: Judicial and Police Systems
9.1.3: The Rikskriminalpolisen (RKP)

9.2: Information Flows
9.2.1: International - National
9.2.2: National - Regional

9.3: Direct Contacts

9.4: Data Protection Considerations

9.5: Operational Considerations
9.5.1: International - National
9.5.2: National - Regional

9.6: Conclusion

CHAPTER 10: SYNTHESIS OF RESEARCH FINDINGS

10.1: Europol as a Centralised Model

10.2: Proof of Basic Iteration
10.2.1: Intelligence Exchange Criteria
10.2.2: The Usage of ELO's Time
10.2.3: Direct Contacts
10.3: Consequences of Research Findings

10.3.1: Macro Level Developments

10.4: Conclusion

BIBLIOGRAPHY
ABSTRACT

This research examines the European criminal intelligence agency known as Europol, both within the context of its genesis and development to date, and against the background of police cooperation in Europe generally. In doing this, the research asks the question, is the centralised mode of information exchange upon which Europol is grounded, the most appropriate?

This model, termed the centralised state model, postulates a system in which a single national or supranational body controls the exchange of information/intelligence. The application of this model to Europol indicates that a strategic intelligence approach that maintains national sovereignty and autonomy has been given preference. This thesis examines the application of this model to the information/intelligence exchange process between Europol and selected member states since its inception. The data gathered will be analysed to show whether or not, in the light of the organisation's experiences and evolution over its first four years, the centralised model is the most appropriate, or whether either another model should have been adopted, or another one has evolved over a period of time.

The relevance of this answer is that it will have significant implications for the concept of state sovereignty in Europe. A Europol based on the centralised model does not threaten the nation state's traditional monopoly on the powers of coercion. A Europol however that has evolved into another model which includes increasing tactical and operational involvement, could indicate the transfer of some policing competence from the national to the European level. Such a development will have an enormous impact upon the concept of the nation state in Europe.
CHAPTER 1: INTRODUCTION

1.1: AIMS OF THESIS

This thesis asks the question, is the centralised mode of information exchange upon which Europol is based, the most appropriate? In addressing this question, the research for this thesis will look specifically at the liaison process between Europol and selected member states since the inception of the organisation. From the data collected and analysed, it will indicate whether or not the centralised model was the most appropriate, another model should have been chosen instead, or that Europol has evolved into something other than what was intended.

In policing terms the significance of the research findings will be the utility and extra value that Europol can add to the process of combating serious transnational crime in Europe. However the most significant impact is likely to be in terms of the socio-political significance of the research findings. A Europol which is limited to the analysis and exchange of strategic intelligence can be a tool of national governments, without any commensurate threat to state sovereignty and autonomy. However, a Europol which is becoming increasingly involved with operational and executive matters can herald the possible future transfer of some policing competence to the European level. This can have a dramatic impact on the future of the European Union as an entity.
1.2: THE MAASTRICHT TREATY

While the evolutionary process of Europol will be explored in chapters 4 and 5 against the backdrop of the police cooperation process in Europe generally, and the Trevi network specifically, the main political impetus for the formation of Europol came from the signing of the Maastricht Treaty. The Treaty on European Union, or the Maastricht Treaty as it is better known, was signed on 7 February 1992 in the Dutch city of Maastricht. It brought into being a European Union, that on the one hand, built on the previous EC treaties, but on the other, brought under an intergovernmental umbrella such diverse areas as the implementation of a common foreign and security policy, and justice and home affairs issues. As such, the treaty consists of three pillars. "The first (Titles II, III and IV) amends the EEC, ECSC and Euratom Treaties (as revised most recently by the Single Act), formally naming them the European Community. The second pillar (Title V) concerns foreign and security policy, and is built upon the existing intergovernmental procedures of European Political Cooperation. The third (Title VI) covers justice and home affairs" (Duff 1994: 19).

Professor Malcolm Anderson has quoted Shonfield (1973) by calling the process of European union/integration a journey to an unknown destination (Anderson 1992: 22), and the separation of the new Union's architecture into three distinct pillars, has done little to clarify the situation. While in one sense the Union is served by a 'single institutional framework' presided over by the European Council, which is made up of heads of state
or government, and the Presidency of the EC Commission, (Duff 1994: 26) there is still an institutional imbalance between the different pillars. While the first pillar is overseen by the main institutions of the Community: the Commission; the Council of Ministers; the European Court of Justice and the European Parliament, the other two pillars are purely intergovernmental in character. This means that the main supranational institutions of the Community have minimal input into the decision making processes of the second and third pillars. An example of this imbalance can be found in the fact that the decision making process in many first pillar issues is governed by qualified majority voting, whereas the decision making process of the second and third pillars, being intergovernmental, requires unanimity.

1.3: THE THIRD PILLAR

The third pillar has been described as an exercise in crisis management, (Chalk 1994: 11) whereby disparate ad hoc elements of police cooperation have been brought under a single intergovernmental umbrella. The third pillar is headed by the Justice and Home Affairs Council that consists of the interior and/or justice ministers of the 15 member states. The main work however is conducted by the K4 Committee, which consists of senior interior ministry officials. Below the level of the K4 Committee are three Steering Groups, which consist of senior police officers, and high/middle ranking interior ministry officials. Each Steering Group deals with a different area of
4)

internal security. Steering Group I deals with immigration and asylum matters; Steering Group II with police and customs cooperation; and Steering Group III with judicial cooperation in the criminal and civil spheres.

Article K.3 of the TEU listed among its areas of common concern; 'police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organisation of a Union-wide system for exchanging information within a European Police Office (Europol)'.

This Union wide information exchange system came into being in February 1994, and comes under the umbrella of Steering Group II. In keeping with the tensions between those member states wishing to pursue a gradualist line towards further integration, and those wishing for a quantum leap, the Europol that has emerged, is a centralised intelligence exchange organisation based in the Hague, which has no operational or executive functions or powers. The Ministerial Agreement and Convention that gives Europol its legal validity, both state that each member state is required to designate a single national agency as a national unit, and that these national units are the only agencies allowed to liaise with Europol. The rationale for these restrictions, are based primarily on the lack of desire among the EU member states for a supranational investigative authority with executive powers. The emphasis on a centralised mode of information exchange is therefore consistent with the ideal that Europol will deal with strategic intelligence only, as this approach mandates that, in
the interests of efficiency and preventing duplication, all information is routed through/to one agency. The research question therefore asks the question: is the centralised mode of information exchange as encapsulated in the current Europol remit the optimum one. As such the research includes a major element of policy evaluation, although such evaluation is necessarily based on the relatively short period of Europol's operation to date.

1.4: THE INTELLIGENCE FUNCTION

The police's concept of intelligence has come some way from the traditional view of intelligence as information collection. Throughout the course of this research, a standard question put to all persons interviewed has been, "how would you define intelligence within the context of the work you do?" In virtually every instance, the response has been to see intelligence as the product of information that has been analytically refined into a package that is operationally actionable. This concept is in keeping with the views of most commentators on the intelligence function.

For example, Godson states that intelligence cannot be viewed simply in terms of a specific purpose or aim, but in terms of a process or cycle which involves the elements of collection, analysis, counter-intelligence and covert action." (Godson 1987: 4, Robertson in Anderson 1994: 107) Robertson further develops this point by stating, "In this view (i.e. that of Godson) it is the integration of the many parts into a whole which defines
intelligence. Raw information is not intelligence, it is only when information has been processed that it becomes intelligence. Intelligence is information which enables decisions to be taken." (Robertson in Anderson 1994: 107)

In developing a normative model of the criminal intelligence function, Schneider gives a definition of the two components of criminal intelligence as follows:

"The intelligence unit must have both a tactical and strategic analytical capacity. Tactical intelligence contributes directly to the success of an immediate law enforcement objective. A tactical analyst dissects and reassembles the pieces of data gathered through the collection effort, recreating a story, scenario, or description of the inter-relationship of a criminal network. The analysis is guided by the objectives of the investigation...... A police agency must also incorporate a strategic intelligence function which acts in support of management's policy-making function, strategic planning, and enforcement goals. Unlike tactical intelligence, strategic analysis is proactive in nature. It must look beyond the immediate period, detect patterns of criminal activity and use these patterns to predict where future criminal activity will occur." (Schneider 1997: 8)

There is therefore a close relationship between tactical and strategic intelligence, and police criminal intelligence units are required to provide both, in the interests of short term operational as well as long term planning considerations. However, there invariably tends to be an over-emphasis on the
tactical at the expense of the strategic. Pressures for a quick return on resources invested, coupled with the universal desire of police officers to maintain control of information and investigations, means that time and resources tends to be frequently lavished on the short term gains of tactical intelligence, rather than the nebulous long term benefits of strategic intelligence. This will be a particular area of emphasis in this research, so as to ascertain the extent to which Europol has been affected by these tensions.

In developing an analytical basis for the increasing process of police cooperation in Europe, Anderson has developed a three-fold model of information exchange.

a) The Centralised State Model: In this model, a single national body controls all communication with other parties, including the exchange of information;

b) The Decentralised State Model: In this scenario, all levels are allowed to communicate with all other parties, the flow of information being unregulated except by the judgment of individual officers;

c) The Qualified (De) Centralised Model: This model represents an intermediate form in which the communication is normally controlled by a central body but with independent communication being allowed in special circumstances.
In assessing the three-fold model, Robertson argues that a purely strategic intelligence approach mandates that all communications and exchanges of information take place through a central body, as to perform this function, the central body will require access to all information. On the other hand, a purely tactical or investigative approach will require the ability to freely and independently communicate with all other policing agencies. In other words, a purely strategic intelligence function requires a centralised mode of information exchange, whereas a tactical approach requires a decentralised mode.

In reality, policing in most states involves a combination of the two. Within most European states, such as the UK, police officers are free, in the normal course of their duties, to contact and exchange tactical information with their counterparts in any part of the country. However in developing a strategic intelligence function, either in terms of the exchange of intelligence from force to force via force intelligence bureaus, or internationally via national criminal intelligence agencies, police forces have been obliged to impose a centralised mode of strategic information, collection, collation, analysis and exchange. This is in recognition of and in response to the fact that different crimes require differing approaches, (Robertson 1994: 111) and varying proportions of tactical and strategic planning.

In the absence of a general desire for an FBI style supranational policing facility in Europe, Europol was fashioned as a purely (strategic) intelligence exchange agency.
Consequently a requirement was imposed upon each member state of the European Union, to designate a national unit that would be the only agency in each state allowed to liaise with Europol. This stipulation clearly identifies Europol as being based upon a centralised mode of information exchange, in the interests of providing it with all the information it requires with which to fulfil its strategic remit. In line with the research question therefore, this thesis attempts to evaluate how appropriate this mode of operation is, in relation to the policing function and priorities of certain targeted states within the European Union.

1.5: ORGANISATION OF THESIS

The research for this thesis is based on case studies of the international police cooperation function of 4 northern European states, particularly as it pertains to Europol. Although Europol involves the posting of some customs liaison officers to the agency, the research has concentrated almost exclusively on police officers. The layout of the thesis therefore includes a review of the rather sparse literature on the topic of police cooperation in Europe, as well as a chapter outlining the main forms of inter-police as well as intergovernmental police cooperation. Chapter 5 deals with Europol from inception to its current status. Chapters 6 through 9 will consist of the case studies of the 4 targeted states, these being: the UK, the Netherlands, Germany and Sweden. The reasons for choosing these particular states will be dealt with in the Methodology chapter.
Finally Chapter 10 will concentrate on an analysis of the data presented in the preceding 4 chapters, as well as the development of a grounded theory showing the effects of the research findings on both the evolutionary progress of justice and home affairs, as well as the integration process generally in Europe.

Although the research concentrates on northern European states, where applicable, it will provide some evidence and perspectives from certain southern European states, specifically Italy, Spain and Portugal. This is of particular use in measuring the effects of the decentralised approach of policing in northern European states to the more centralised and inflexible method of southern European states. The usage however of a southern European perspective in this thesis is very limited, and inasmuch as it is outside the purview of this research, represents a fruitful source of further investigation.
CHAPTER 2: LITERATURE REVIEW

2.1: Chapter Introduction

The field of police cooperation in Europe is still a comparatively new area of study, which partly reflects the fact that it has only recently acquired significance within the context of the integration process in Europe. Much of the work done to date has been purely descriptive, and has concentrated on institutions and processes. Only with the signing of the Treaty on European Union in the past four years, has any serious academic effort been put into developing a conceptual framework for the process of police cooperation in Europe. The difficulties that have been encountered thus far are factors of, at one level, the plethora of formal and informal police cooperation networks that have developed over the past twenty years, and at another level, the ambiguity surrounding the final destination of the European integration process.

The literature presented in this chapter will therefore attempt to show the current state of progress in conceptualising police cooperation in Europe, particularly as it applies to the research parameters of this thesis, as well as delineating the theoretical grounds of the debate.

2.2: NEOFUNCTIONALISM

The theory of functionalism, as a conceptual means of explaining progress towards integration, was initially developed by David Mitrany during the inter-war years. He described the
functional approach as emphasizing the common index of need. He states: "There are many such needs that cut across national boundaries, and an effective beginning could be made by providing joint government of them. This approach is not a matter of surrendering sovereignty, but merely of pooling so much of it as may be needed for the joint performance of the particular task" (Mitrany: 72-73).

Central to functionalism's contribution to the understanding of the process of integration in Europe has been what Taylor describes as the twin ideas of: "its expansive logic of enmeshment or interdependencies and its emphasis on attitudinal change" (Taylor 1990: 133). Martin Holland further elaborates on this point by stating: "This first aspect of functionalism, the assumption of its expansive logic, suggests that once the process of functional organisation began, the power of nation states to act independently would be, it argued, progressively reduced as a web of functional interdependent relations developed. This logic held true whether there were several independent or just one joint functional authority" (Holland: 15-16).

The second strand of thought on attitudinal change, posited that the collective experience of transnational cooperation, would eventually translate into a change in popular attitudes towards the institutions and ideas of integration. Both of these ideas have been refuted, the first on the grounds that tensions between nation states in Europe still exist despite the existence of systems of interdependence, and the second on the grounds that there is little empirical evidence to show that international
institutions are capable of becoming the focus of loyalties at the expense of the state (Taylor: 133).

It was in response to these weaknesses in functionalism, as it pertains to integration in Europe, that the theory of neofunctionalism was developed by Ernst Haas. In commenting on the basic tenets of neofunctionalism Harrison states: "Neofunctionalism contains a normative objective - a European federation; central institutions with supranational authority are to provide the mechanism for achieving this; the process of integration is to begin with the economic sector and is dependent on interest group involvement; and the incremental creation of de facto solidarity would lead automatically, if by stealth, to integration" (Harrison 1990: 139 - 141).

Central to the success of the integration process was the idea of what Haas termed spillover. Pentland describes this by emphasising that: "integration by sector cannot be achieved in isolation; as one sector is integrated there will be consequences, both advantageous as well as disadvantageous, for related sectors and a spillover effect will occur, suggesting a kind of inevitability to the process" (Pentland 1973: 119). Holland further takes up this point and argues that even the original objective can only be realized through such spillover. "Spillover is also reflected in the typical Community bargaining process whereby agreements across disparate areas are tied together. Decision making does not take place in sectoral isolation, but rather concessions or agreements in one policy area will have implications and often direct consequences for other policy areas. Thus the logic of neofunctionalism was
relevant to both the general integration across functional sectors and to the functional and political aspects of Community decision making" (Holland: 17).

In the evolutionary history of the European Community it is possible to see both the incremental nature of neofunctionalism and the workings of spillover. These processes have produced a progression from a coal and steel treaty, to a wider economic treaty, which first included the formation of a customs union, aimed at the removal of internal tariffs, and culminated in the realisation of a single market that allows the free movement of goods and services. In like manner, this same logic of progression drives further incremental movement towards the realisation of monetary union, via a convergence of economic policies and the introduction of a single European currency and central bank.

Professor Malcolm Anderson in applying neofunctionalism to the process of police cooperation in Europe stated: "The events preceding the Maastricht conference and its outcome have given a new relevance to the 1960s debate between the functionalist, neofunctionalist, pluralist and federalist perspectives. ... this author finds neofunctionalism the most plausible of them. Within the neofunctionalist framework the "intermediaries" - governments, ministries, agencies, political parties, interest groups, international organisations - play a crucial role in the integration process. They articulate the various functional requirements of the system but it is their interaction, in certain conditions and circumstances, which results in political integration" (Anderson 1992: 36-37). Anderson identified within
this system a process of decision making based upon compromise and bargaining whereby competencies were transferred from the national to the European level. The basis for this authority/legitimacy transfer from the national to the supranational level, was the functional requirement for increased police cooperation to combat a perceived security deficit, associated with the completion of the internal market, and the abolition of some frontier controls.

In practically analysing Anderson's application of neofunctionalism to police cooperation in general and Europol specifically, it is first informative to list the main attributes of neofunctionalism as elaborated by Holland. These are as follows:

a) That neofunctionalism contains a normative function, a European federation;
b) Central institutions with supranational authority are to provide the mechanism for achieving this;
c) The process of integration will begin with the economic sector and is dependent on interest group (elite) involvement;
d) Incrementalism;
e) The incremental creation of de facto solidarity would lead automatically, if by stealth, to integration;
f) The process will be dependent on the idea of spillover.

(Holland 1994: 16 - 17)

In addition to these basic aspects of neofunctionalism, other salient points can be included. These are:

a) Egrenage. This concept has been posited by Groom, (Nelson and
Stubb 1994: 116-117) and consists of a locking in process by which incremental gains are consolidated in preparation for the next incremental step;

b) Forward Linkage. This represents a process model, theorized by Nina Heathcote, (Groom and Taylor (eds) 1975: 44) which implies a growth in integration (i.e. in scope and capacity) through an expansion of the common task;

c) Spillback. This is one facet of a general retraction process model again posited by Heathcote, which also draws on Output Failure. They both represent a withdrawal from a previously agreed area of activity and a decline in the levels of scope and capacity even to the point of complete disintegration (Groom and Taylor 1975: 44).

It is possible to examine the relevance of neofunctionalism to the process of police cooperation in broad terms. The emergence of a perceived security deficit out of the internal market with its attendant four freedoms of movements (of goods, services, money and persons), can in theory be considered a classic example of spillover in action. Integration in an economic sector has quite literally spilt over into another unrelated sector, causing a wide range of compensatory cooperative and integrative measures.

The process of cooperation under the third pillar has been driven by political elites. There has been a marked lack of transparency with regards to the deliberations of the K4 Coordinating Committee and the three Steering Groups. They are all composed exclusively of senior civil servants and police officers, and very little information is disseminated to the
public about the content or results of the decision making process. The third pillar has also been based on a process of incrementalism, which reflects Malcolm Anderson's opinion on the ambiguity of the final destination of the European unification journey. For example, the current Europol Drugs Unit is only the first stage of Europol proper, which has the potential for dealing with a wide range of transnational offences. Schengen is the first stage of a more comprehensive External Frontiers Treaty that will include a European Information System. At the time of writing, the Schengen System has already been incorporated into the general EU architecture, with the signing of the Treaty of Amsterdam in 1997. This treaty has also moved immigration and asylum issues to the first pillar, and while justice and home affairs remain for the time being within the intergovernmental third pillar, it is possible that in the foreseeable future, justice and home affairs may also be transferred to the first pillar. This would give the supranational institutions of the Community competence over third pillar issues, and could pave the way for such initiatives as: an operational Europol (bearing in mind that Europol has already been granted quasi-operational powers under the Treaty of Amsterdam); the implementation of European criminal legislation; moves to harmonise criminal justice systems and procedures in the Union etc. This would in effect take the Union a substantial step closer to some form of federal or political union, which is the normative function/objective of neofunctionalism in the first place.

However, having at first promoted the application of neofunctionalism to police cooperation, Anderson has now
critically re-evaluated its complete relevance. His reservations about neofunctionalism include the following:

1) Neofunctionalism has struggled to account for the period of stagnation in the integration process in the 1970s up to the signing of the Single European Act in the mid 1980s.

2) Neofunctionalism has tended, by concentrating almost exclusively on the European level as a closed system, to exclude external socio-economic and political factors.

3) Neofunctionalist discourse has failed to take into account fully the uniqueness of the European Union.

In support of this Anderson argues: "The search for theoretical innovation can, paradoxically encourage a negative form of analysis, an emphasis upon what the Union is not, rather than an explanation of its uniqueness. A rigid dichotomy between the state and the European Union, risks failing to do justice to the uniqueness of the new Europe, in blending some of the qualities of the conventional state into a supranational organisation with a novel structure and a distinctive dynamic" (Anderson 1995: 96)

These criticisms are part of a general re-evaluation of neofunctionalism in the light of the failure of its forecast that the integration process in Europe would be one of uniform progress. The automatic process of spillover from sector to sector has not as yet lead towards political union. Instead national self interest and intergovernmentalism has persisted. The European Commission, as a result of an institutional imbalance that has left the Council of Ministers as the supreme decision and law making body, has been unable to adequately
fulfil its predicted role as instigator of spillover. Moreover it has yet to be proved that the attitudinal change predicted by neofunctionalists such as Pentland, whereby international institutions are capable of becoming the focus of loyalties at the expense of the state (Holland 1994: 6) has occurred. These criticisms are evident when examining police cooperation in Europe despite the linkages that exist between it and the basic principles of neofunctionalism.

The Maastricht Treaty is an intergovernmental agreement and the negotiations and deliberations for the setting up of the various third pillar initiatives such as Europol were overseen and agreed by the Justice and Home Affairs (JHA) Council. The K4 Coordinating Committee and the three steering groups are ultimately accountable to the JHA Council, and even their decision making abilities are affected, and often circumscribed by, the exigences of national self interest. The experience of Europol provides a prime example. Despite the much trumpeted need to fight transnational crime, the signing of the Europol Convention was held up for almost two years due to infighting among member states. The Commission only has observer status, the role of the European Parliament has been emasculated, and to date a system of variable geometry exists with regard to the European Court of Justice's jurisdiction over the Convention, in that one state has negotiated an opt out for itself. Furthermore, the decision making requirement of unanimity gives even more power to the member states.

In light of these deficiencies, Keohane and Hoffman have put forward a re-formulation of neofunctionalism that eliminates the
automaticity of the spillover effect, and which places greater emphasis on the intergovernmental aspect of the European integration process. In this re-working, spillover is no longer an autonomous process, like the workings of the market, which is self-sufficient within itself to bring about or stimulate integration. Instead spillover is dependant on and is the product of successful intergovernmental bargaining based on compromise and common interests. To illustrate this point, Holland states: "To guide research, Keohane and Hoffman provide a working hypothesis that successful spillover requires prior programmatic agreement among governments, expressed in an intergovernmental bargain (Holland 1994: 287). Thus the process they outline specifies external catalysts leading to an intergovernmental bargain which in turn will result in task expansion for the Community and sectoral (political or economic) spillover internal to the EC. Spillover is stripped of its previously implied causal role and becomes a secondary, conditional consequence" (Holland 1994: 19).

The application of this reformulation to an organisation such as Europol therefore indicates that instead of being driven by an original normative and mandatory requirement to establish an FBI for Europe, the process will be based on intergovernmental compromising, so as to meet the functional requirement of combating transnational crime. This will result in Europol's remit being incrementally increased when and where necessary by the Justice and Home Affairs Council (task expansion), with the subsequent spillover consequences into areas such as extradition, data protection, harmonisation/approximation of police practices
etc likewise being controlled by the JHA Council.

In time functional requirements may mandate the evolution of an even more supranational style of decision making, whereby member states cede some/more of their sovereignty to Europol, in what Haas terms a cumulative pattern of accommodation, in which participants refrained from unconditionally vetoing proposals, and instead seek to attain agreements by means of compromises upgrading common interests (Haas 1964: 280). This would of necessity involve an extension of the practice of qualified majority voting from first to third pillar issues. Such an extension would enhance the decision making process and eliminate the current stagnatory system, that allows one member state to block progress that has been endorsed by the other fourteen.

It can be argued therefore that the progress of Europol to date, like other areas of European cooperation and integration, has been based not on a general sense of federal idealism, but rather on a pragmatic convergence of national interests. Despite its failure in the past, a reformulated neofunctionalism, that takes into account the importance of intergovernmental considerations, stands a better chance, than either functionalism or the original concept of neofunctionalism, of analysing the uniqueness of a European integrative process that is part federal, part confederal.
2.3: The Macro, Meso and Micro Levels of Police Cooperation

Professor Benyon, in his seminal work, Police Cooperation In Europe: An Investigation, was one of the first to develop a conceptual framework for the developing process of police cooperation in Europe. The framework centred around the division of police cooperation into three overlapping and non mutually exclusive levels, which he termed the macro, meso and micro levels. The macro level is concerned with the intergovernmental arena in which important decisions such as constitutional and international legal agreements, extradition procedures, asylum policy and harmonisation of national laws are made. The meso level deals with "structural and procedural frameworks within which operational policing occurs" (Benyon 1995: 8). Included within this level would be: the establishment of new cooperative policing structures, such as Europol; the development of cross national communication systems for the purpose of facilitating the exchange of information and intelligence; and the cultivation of direct contacts between police officers in different countries in the form of the exchange of liaison officers. Finally the micro level covers "the investigation of specific offences and the prevention and control of particular sorts of crime" (Benyon 1995: 9).

Professor Benyon himself has acknowledged the obvious interrelatedness of these different levels. For example while the micro level can be said to include the mosaic of formal and informal police networks that exist across Europe, it is also true to state that the establishment of these networks is a function of the meso level, to the extent that many micro level
instances of cooperation depend on effective meso level arrangements (Benyon 1995: 9-10). Also, while meso level structures and processes do not always require intergovernmental sanction, it is sometimes the case, as with Europol, that they are the direct result of political initiatives.

This tripartite division therefore has served a useful function in terms of establishing an early framework for analysing the various emerging police cooperation structures and processes in Europe. However its very interrelatedness now tends to highlight the current inadequacy of this concept as a continuing analytical tool. The three levels are in effect three hierarchical drawers in which one can place particular processes and structures, taking into account the potential for overlap from one level to the next. What this model fails to do on its own however, is to articulate how the levels relate to each other. What is the significance of any relationship that may exist between the intergovernmental decision making procedure of the macro level, the cooperative policing structures of the meso level, and the tactical investigation and prosecution of offences at the micro level? And of even more significance, what relevance do the three levels hold for the general process of integration in Europe?

While this model has utility in terms of categorising the process of police cooperation in Europe, it can only be seen as a seminal framework that needs further analytical development.
2.4: The Internationalisation of Police Cooperation

Piet van Reenen as Director of the Netherlands Police Academy has conceptualised police cooperation from the perspective of internationalisation which he describes as: "the process of extension of police systems (police organisations and political and bureaucratic steering arrangements) across national borders, as a consequence of changes in work or of political formations" (van Reenen 1992: 48). He goes on to list a variety of facets of internationalisation which are as follows:

- the gathering and exchange of information
- personnel or material assistance
- standardisation
- coordination of activities
- border crossing authority
- border crossing organisations
- granting of powers over the police to foreign authorities
- supranational organisations
- supranational authority over the police

These forms of internationalisation are then grouped into three main categories which are as follows:

A) Cooperation: This grouping consists of any type of police cooperation which does not affect existing police systems and powers, as well as state sovereignty. Of the main list given therefore, areas such as the gathering and exchange of information, coordination of activities, and personnel and material assistance would all constitute forms of cooperation within the context of van Reenen's grouping.
B) Horizontal Integration: This form of police integration occurs where the police obtain the authority to operate in the territory of another state, or where government officials of one state are granted authority over the police of another state. Within the context of this grouping, aspects of the Schengen Agreement which allows the right of hot pursuit and cross border observations and surveillance, can be considered as forms of horizontal integration. However, despite the element of sharing authority, state sovereignty remains as important in this grouping as it does with the area of cooperation.

C) Vertical Integration: Finally van Reenen describes this form of integration as "where an authority of a higher order than the national authority develops over the police (and eventually provides a police organisation that operates under a higher authority than that of the national states).... This exists when a police organisation is being created that can operate within the area of the EC. Such an organisation presupposes a central authority on which it depends, probably a central political power at the EC level" (van Reenen 1992: 48-49).

While he admits that there is little likelihood of vertical integration coming into existence within the foreseeable future, his use of incrementalism as the preferred explanation for the future development of police cooperation shows how the above mentioned groupings are tied together. As applied to internationalisation, incrementalism refers to a step by step growth in police cooperation/integration in a practical way, according to need and possibility (van Reenen 1992: 49). Whereas
the functional requirements of police cooperation have initially lead to such initiatives as the coordination of activities, particularly via bilateral contacts and agreements, and the exchange of information/intelligence via organisations such as Interpol and the TREVI Group, the increasing need for closer ties has lead police cooperation to spill over into horizontal integration. Apart from the above mentioned Schengen Agreement, other forms of horizontal integration (some of which pre date Schengen) include the right of pursuit within the Benelux states, and also between Norway and Sweden, and the Channel Tunnel policing initiative between the United Kingdom and France. The evolution of Europol, and the current moves towards giving the supranational institutions of the European Union direct jurisdiction over Europol, can be construed as a further incremental movement towards vertical integration one day.

Finally, van Reenen emphasises the salience of competition as opposed to just cooperation and integration. Areas of conflict that he identifies include the encroachment of the market on policing systems with respect to examples such as different national training strategies and facilities, competition over the sale of computer systems, weaponry, accessories, armoured vehicles etc. Other internal examples of conflict (in terms of resources, influence etc) that impact on the internationalisation of police cooperation include: "competition in Germany between the Bundeskriminalamt and the Polizein der Lander; in France between the Police Nationale and the Gendarmerie; in Spain between the Guardia Civil and the municipal and regional forces; in the Netherlands competition between the Ministries of Internal
Affairs and Justice; in Belgium between the Judicial Police and the Gendarmerie" (van Reenen 1992: 51).

Within the context of the research for this thesis, the unique emphasis on competition as opposed to the more conventional area of cooperation is of particular relevance, especially in relation to the tensions that exist between strategic and tactical considerations, as well as the attempts to impose a centralised form of intelligence exchange (via Europol) that does not take sufficiently into account the tactical requirements of the varying policing tiers that will be responsible for providing the bulk of information/intelligence.

2.5: STRUCTURAL FATALISM V NAIVE SEPARATISM

Professor Walker has used the dichotomy between what he calls 'structural fatalism' and 'naive separatism' to analyse the relationship between police cooperation development and political development in Europe. He describes structural fatalism as: "A perspective which rests upon an inference that the final shape of policing in the Community depends upon the final shape of the Community itself as a political entity, and that since this wider vision remains hazy and contested it would be pointless to advocate new policing practices and mechanisms on anything other than a provisional, flexible and modest basis" (Walker 1994: 23). This perspective therefore can be used to explain the ad hoc and incremental nature of many developments in police cooperation.
such as the TREVI arrangements and the Schengen Agreement. It posits that horizontal and vertical integration in the area of police cooperation will be difficult, if not impossible to achieve in a coordinated manner until the final destination of the European project is decided on.

On the other hand in describing naive separatism he states: "From this perspective, models of police cooperation are assessed and evaluated independently of wider political forces. The requirements of international law enforcement are seen as paramount, and little attention is given to the realpolitik of international relations, and how this might impede the development of optimal systems of cooperation" (Walker 1994: 23). This tendency is often reflected in the unrealistically optimistic initiatives that are started, and which quickly run into difficulties, because the political realities were not sufficiently taken into account. Examples of naive separatism that have been noted are Europol, which has been held up due to political and national self interests, and the Schengen Agreement, which has been delayed due to the security needs of certain states, particularly France.

Despite the fact that these two concepts appear to be diametrically opposed to each other, Professor Walker has also identified a sense in which they are interrelated. The marginalisation of certain initiatives, which because of naive separatism, fail to take into account political realities, may in fact lead to structural fatalism. The Schengen Agreement, which aimed to remove border checks at the internal borders of
the European Union, failed to achieve Union wide membership due to the reality of political opposition in the United Kingdom. This failure has in effect reinforced the applicability of structural fatalism, in the sense that the differing British view on the end product of European integration has influenced the final, variable nature of the Schengen system, despite the benefits that accrue to the police under this system.

These two concepts are useful therefore once their interrelatedness is fully taken into account. Using them as isolated either/or scenarios can be deceptive, in that certain police cooperation initiatives such as Schengen can sit just as easily within either camp.

2.6: THE POST - HOBESIAN STATE

By adopting the concept of the post - Hobbesian state, Walker has highlighted the uniqueness of the European Union as a novel political form. The original Hobbesian concept of the nation state was grounded in the need to secure authority and sovereignty over a specific territorial area (Hobbes: Leviathan). Walker cites the evolution of the post - integration Europe as "lying somewhere between sovereign units, each with an unambiguous monopoly on violence.... and diffuse networks, based upon multiple voluntary exchanges" (Walker 1994: 34; also quoted by Schmitter in Bryant 1991: 204). What emerges in this scenario is what Schmitter depicts as a prototype 'post Hobbesian state', or European supranational nonstate (Walker 1994: 34).
Walker uses this scenario of a supranational nonstate, to pose the twin future possibilities of Europe, either developing into a state without a police force, or developing a European police force without any corresponding supranational state apparatus. These hypotheses have specific resonance within the context of this research as it asks the questions, will Europe be able to achieve political integration one day without the corresponding requirement for a supranational policing presence? Or conversely is it practicable to theorise on the possibility of Europol one day acquiring executive powers, without the necessity of corresponding supranational initiatives, such as harmonisation of criminal justice systems, the implementation of European criminal legislation etc? The latter is of particular interest to this research, as one of the main obstacles to Europol developing executive capabilities, has been the fear that such a development would inevitably lead one step closer to a federal European state. The possibility of achieving a supranational policing capacity, without the attendant baggage of political integration, would aid the functional need for Europol to grow to meet the threat of transnational crime in Europe. It is one area that the research findings of this thesis will seek to address.
2.7: PUSH - PULL FACTORS

In considering the authority/legitimacy transfer of competence from the nation state to the supranational level, Walker has posed the question, "Are there any social and political developments which make the state a less authoritative site for policing institutions than before, and are there any developments which make the EU an increasingly attractive site"? (Anderson 1995: 113) In other words, what factors are involved in the nation state pushing policing competence towards the European level, and likewise, what factors are pulling the policing function from above, towards the European level?

Walker identifies the push factor as emanating from a shift in the concept of political power being centred exclusively at the nation state level in Western Europe. The pooling of sovereignty at a European level, and the supremacy of European law and institutions within defined parameters, has weakened the historical authority of the nation state. The monopoly of policing functions, which accompanied the development of the nation state in consolidating the notions of national identity and unity, can now be construed as not necessarily being in the exclusive domain of nation statehood. While Walker acknowledges that at present there is only the mildest of pushes away from the state towards the European level, he also emphasises that there is "no insurmountable obstacle to the disassociation of the policing function from the nation state." (Anderson 1995: 115)

The pull factor on the other hand is dependant on the ability of the post Hobbesian state to reproduce the circumstances, which
encouraged in the first place, a close association between the Hobbesian state and an exclusive policing function. While Walker readily admits that for the post Hobbesian state, there is not a direct link between the integrity of the political entity and the policing function, he locates the need for the EU to go beyond the argument for the necessity of a supranational policing function to protect economic prosperity. Instead he argues that the European public would be more likely to endorse an authority/legitimacy transfer of policing functions to the European level, if the EU becomes seen as a legitimate means for the protection and enforcement of citizenship rights. The positioning of EU institutions as the guarantor of rights and obligations, could act as a powerful magnet attracting enforcement powers to the supranational level.

From a purely policing perspective, the four case studies presented in this research will attempt to show whether or not the police of the targeted states bypass their national units in order to deal directly with Europol, and if they do, the push factors which impel these actions. The research will also attempt to delineate the pull factors with respect to Europol (if any) which encourage police officers to bypass their state level national units.
Walker also draws a distinction between specific and general order. Specific order he describes as the interests of dominant political and social elites, whereas general order consists of public tranquillity, or in English terms, the keeping of the peace. (Anderson 1996: 90) Connected with the maintenance of these two types of order, are the concepts of high and low policing.

With respect to the former, Walker states: "High policing is about the preservation of the specific forms of order upon which the security of the state most immediately rests - combating terrorist organisations and activities or gathering comprehensive information on political dissidence, or laying contingency plans in the event of the widespread breakdown of public order" (Anderson 1996: 90). Low policing on the other hand he associates with the maintenance of general order and describes as: "the preservation of those minimum standards of private security and public peace necessary for the working of all societies and from which all social actors benefit." (Anderson 1994: 25)

This differentiation may however in some respects be incorrect, as criminal offences and activities do not always fall neatly into one category or another. For example terrorism invariably poses a distinct threat to the state, while at the same time impinging upon social order. In this respect, terrorism can be a threat to both specific and general order. Several other categories of offences such as organised crime, drug trafficking
and the trafficking in nuclear materials can all straddle the boundary between the two forms of order.

Where the distinction between specific and general order does have implications for this research, is the paradox that exists in police cooperation whereby, "many areas in which demand for collaboration on functional grounds is most persuasive are also those which bear most intimately upon state-specific interests". (Anderson 1996: 100) Once again terrorism provides a prime example of this. The negotiation of the Europol Convention witnessed strong objections by several EU states to the proposal for the inclusion of terrorism into Europol's remit. The Spanish however questioned how an offence such as trafficking in stolen vehicles, which does not threaten the security of the state, could be included, while terrorism was excluded.

The logical implication of this example is that while states may find it easier to cede authority in areas that distinctly comprise general order, there will always be a problem in sharing sovereignty in areas of specific order, where arguably a supranational response is most needed. The eventual and reluctant inclusion of terrorism in Europol's remit, two years after full ratification of the Convention, indicates that states may be persuaded to cede authority in areas of specific order, subject to a convincing demonstration of tangible benefits or added value.

The question therefore of the future potential of Europol acquiring executive powers, may lie in its ability to add operational value to what is already available at the national and regional levels. Only in this way may states be persuaded to
accept a supranational tier of police coordination, be it in the realms of general and/or specific order.

2.9: CONCLUSION

In relation to the central research question of the applicability of the centralised mode of coordination, the areas highlighted in this chapter are not intended to be an exhaustive analysis of the literature on the topic. It is however meant to be a review of the main theoretical positions that have some bearing on the data, analysis and conclusions presented in this thesis. Consequently, many of the ideas expressed in the literature review will be incorporated into the thesis where relevant. However it should be emphasized again that the study of police cooperation in Europe is still a comparatively new field. The struggle to find an analytical framework to explain the process of cooperation/integration, mirrors the problems that beset the wider field of European integration generally. The fact that the eventual destination of the European project is still unknown, ensures that cooperation and integration theory are fields, that for the foreseeable future, will easier be accomplished with hindsight than with foresight.
CHAPTER 3 METHODOLOGY

When this research was started in October 1994, the Europol Drugs Unit had only been in existence for seven months. Consequently there was little in the way of specific research on the topic. The lack of transparency surrounding the TREVI forum, out of which Europol was conceived, also meant that there was little or no dissemination or availability of official documentary sources. This dearth of information therefore ensured that the initial phases of the research would have to be exploratory in nature, and that a significant amount of time would have to be devoted, not just to the literature survey, but also to establishing my credentials and trustworthiness to the police officers and agencies on whom I was depending to provide the data for this research. In this, my position as an ex police officer was vital, in that I was accorded access to individuals and sources that would not have otherwise been forthcoming.

Because of the major focus of Europol's activity being centred on the national unit of each European Union member state, it was therefore decided at an early stage to base the research around case studies of selected national units. The methodology would be predominantly qualitative, but would also include an element of quantitative data collection and analysis in the form of the dissemination of questionnaires to police officers at varying levels in the selected states.

As originally conceived, the case studies would be based on five national units across the European Union. These would be firstly the United Kingdom and Germany. These two were chosen because of the juxtaposition of the UK as a unitary state with
Eurosceptic credentials, with Germany which is a federal state that is the prime European mover for a federal European Union, as well as the evolution of Europol into an operational European FBI. The Netherlands was chosen as a representative of the Benelux states, as well as for its proactive approach to criminal intelligence. Sweden was selected as both a representative of the Scandinavian countries and for its position on the periphery of the European Union. Finally Italy was also originally chosen as a representative of southern European states, although time constraints and insufficient resources meant that this state had to be eventually excluded.

By making these choices it was intended that there would be a balanced representation of views and perspectives from across the Union, although the eventual exclusion of Italy resulted in the research producing a uniquely northern European perspective. With hindsight it is possible to see from the results of the data collected that it would have been advisable to have included France as well. This is based on research indications that a different response may have been elicited from strongly centralized states as opposed to the four fairly decentralised states that comprised this research. It should be noted however that the lines of distinction between states with centralised and decentralised policing systems are becoming increasingly blurred, with some southern states such as Spain adopting greater levels of decentralisation. Consequently the views of representatives of some southern European states have been gathered in certain key areas, and where relevant these considerations will be emphasised in the case study analyses.
3.2: CASE STUDY APPROACH

The case studies were to be based on the following iterative approach:

1) Make an initial theoretical statement or an initial proposition about policy, social behaviour etc.

In keeping with the general research question on the adequacy of the centralised mode on information exchange for Europol, the following initial proposition was formulated:

Because of the interconnectedness between tactical and strategic considerations re combating (transnational) crime, a centralised mode of information flow, that indicates a purely intelligence lead approach, will prove to be inadequate.

2) Compare the findings of an initial case study (eg, the BKA in Germany) against such a statement or proposition.

3) Revise the statement or proposition in light of these findings.

4) Compare other details of the case against the revision:
   - data protection
   - compatibility of computer systems
   - criteria for type of crime dealt with
   - whether the national unit is operational or not
   - ability to task other units
   - restrictions on information exchange
   - reluctance to share information by other policing levels
5) Compare this revision against the findings of the other cases (i.e. the UK, the Netherlands, and Sweden).

3.3: RESEARCH QUALITY TESTS
3.3.1: CONSTRUCT AND INTERNAL VALIDITY

The establishment of the correct operational measures would involve the following data collection methods:

a) Use multiple sources of evidence. These would include the following:
   i) Interviews

The early stages of the data collection process consisted of a series of open interviews in which the interviewees were invited to discuss in broad terms, their respective involvement in the European police cooperation process. The main thrust of these questions revolved around the following:

a) Personal and official concepts of intelligence within the context of work performed;

b) The functional utility of national borders in combatting transnational crime in Europe;

c) The perceived need for Europol, and whether or not it should ever acquire operational powers;

d) Personal and agency relationships with Interpol;
e) Perceptions or empirical evidence of the extent and nature of transnational crime in Europe;

f) Personal considerations of what drives police cooperation in Europe: whether it is driven by political determinism or by the need to combat transnational crime;

Once a sufficient body of background data was assembled, the interview process became more focused on individuals involved with the intelligence exchange process in the targeted states. These interviewees were generally situated either within the national units of each state, or were regional intelligence officers. Samples of the questions asked are as follows:

1) The extent and nature of the particular unit's analysis capacity;

2) Whether or not the analysts were civilian, police officers, or a mixture of the two;

3) The rules which govern the exchange of information between different policing levels within each state: i.e. between the national unit and Europol; between the regional and national levels; and between the local and force/regional levels;

4) The perceived balance between strategic and tactical matters, and whether or not one outweighs the other;
5) The techniques used for the acquisition of information and/or intelligence;

6) The relationship with the Drug Liaison Officer (DLO) network and Interpol;

7) The means used to avoid information overload;

8) The nature and extent of direct contacts with external police officers and agencies, particularly with Europol;

9) The perceived levels of duplication between different agencies such as Europol, Interpol and the DLO network;

10) The compatibility of computer systems at varying policing levels throughout the country.

Eventually seventy interviews were conducted.

ii) Observation:

Observation was a prime source of evidence used throughout the data collection process. The first use of observation was a visit to Kent Constabulary's European Liaison Unit at Folkestone which is primarily responsible for policing the Channel Tunnel. This proved to be an important practical example of active bilateral cooperation between the English and French police, and helped to raise questions that would subsequently be asked at other interview sessions.
The other main areas of observation were the four field visits to the Europol Drugs Unit Headquarters in the Hague, and the field visits to the national units of the four targeted states, these being: the National Criminal Intelligence Unit in the UK; the CRI in the Hague, the Netherlands, the Bundeskriminalamt in Wiesbaden, Germany, and the RKP in Stockholm, Sweden. The observation aspect of each trip was extremely useful in emphasising certain areas that were not revealed by interviews. For example the sight of Europol's Assistant Coordinator having to take his own calls by continuously rushing into the front room of his office, spoke volumes about the lack of adequate resources that have been allocated to Europol, despite the grand political posturings of some European governments. The after hours recreational activities of the various European Liaison Officers (ELOs) based at Europol, such as five-a-side football, tennis, pub visits etc, illustrated the increasing informality of relations between representatives from different EU states. And the revelation that computer equipment that had been installed at the Swedish national unit for automated liaison with Europol, had still not been turned on 9 months after installation, emphasised the current state of information exchange between Europol and Sweden, despite what had been revealed to the contrary during the interview sessions.
iii) Legislation

In the absence of the dissemination of information by the organs of the European Union on the official developments in police cooperation, and third pillar issues under the Maastricht Treaty, legislation proved a rich source of information. The areas of legislation that were of special significance to this research were the Treaty of Rome 1957 and the Treaty of European Union or Maastricht Treaty of 1992, the Ministerial Agreement of 1993 which brought the Europol Drugs Unit into being, and the Europol Convention of 1995 which brought Europol proper into being. Other areas of legislation that were important in providing information on the intelligence exchange process were the BKA Law of Germany, and the Data Protection Laws of the four targeted states.

iv) Documentary evidence:

As mentioned in the section above, this research was hampered by the lack of transparency in European Union issues generally and third pillar issues specifically. Attempts to sit in on Justice and Home Affairs meetings, K4 Committee sittings, Steering Group II meetings or Europol Working Group sessions all met with failure. The lack of dissemination of information about these meetings meant that an inordinate reliance had to be placed on the limited Press Briefings as well as the civil rights monitoring organisation, Statewatch.

My status as an ex-police officer meant that I was sometimes afforded access to official documents and copies of restricted correspondence, while particular reliance was placed upon the
Centre for the Study of Public Order at the University of Leicester, which was a source of documentary evidence on the now defunct TREVI forum. In other respects Germany and the Netherlands, with their more open approach to freedom of information, were more accessible sources of acquiring documentary information that was not forthcoming in the UK.

v) Questionnaires:

It was originally intended to disseminate 50 questionnaires to regional and local intelligence officers in each of the four targeted states so as to acquire a bottom up perspective on the information exchange process. However this idea was abandoned due to problems in gaining a uniform response across the four states. There were serious problems in getting these questionnaires distributed in Germany because of the federal system. Despite initially going through the Bundeskriminalamt (BKA) or federal intelligence agency, requests for access would still have to be routed through the Interior Ministry of each State or Lander, and then to each Landeskriminalamt (LKA), or State intelligence unit. Because of the bad relationship that exists between the LKAs and the BKA, I was advised that the chances of the LKA complying with my requests were slim, especially as the BKA routinely have difficulty in getting cooperation from the LKAs with their own research questionnaires. While it would have been theoretically possible to approach each State Interior Ministry individually, time restrictions did not permit this approach. Similar problems were also encountered in Sweden, while of the 50 questionnaires
disseminated in the Netherlands, too low a return was received to be of any significance.

b) Establish a chain of evidence.

This procedure would firstly attempt to prove the basic iteration of Europol being formally based upon a centralised mode of information exchange, by testing it against the following list of non-equivalent variables:

i) The premise will be based on legal validity;

ii) The national supervisory body will have its own legal tools for maintaining national control over the flow of information;

iii) The central body will take steps to avoid duplication and a lack of coordination;

iv) Initiatives will be set up to ensure the compatibility of computer systems across varying levels;

v) Officers will be discouraged from creating or developing individual means of communication based on personal contacts.

If in examining Europol, these predicted values are found, while eliminating any threats to internal validity, then a strong inference can be made that Europol conforms to the centralised state mode of information exchange. This in turn conforms to the general political view in the European Union that Europol should be exclusively an intelligence exchange organisation.
The next step in establishing a chain of evidence would involve extrapolating evidence from the data collected from the various national units, that in practice Europol does or does not in fact conform to the intended centralised mode of information exchange. In achieving this, the chain will look at the passing of information and intelligence between different levels: force to regional; regional to national; and national to international, and ask the question, does the evidence hold true for each level to level transfer? In this respect the element known as 'the necessity test' from the principle of subsidiarity will be used to assess the criteria for passing information from level to level.

c) Have draft case studies reviewed by the key informants (in this case each of the relevant national units). To date only one national unit has returned the case study forwarded for review.

3.3.2: EXTERNAL VALIDITY

This quality test deals with the problem of knowing whether or not the research's findings are generalizable beyond the immediate case studies. In other words, are the results applicable to other national units. This problem was addressed by interviews with officers and liaison officers from other states who are based at Europol.
Finally the research findings will be used as a basis for a series of recommendations on the future course of police cooperation and in the European Union. Developments in this area continue to proceed at a fast pace, and this research can be used, not just as a basis for future research on the topic, but as a means of demonstrating the pivotal role that Europol plays in the unfolding process of the EU's acquisition of competence in the fields of judicial harmonization and internal security.
CHAPTER 4: POLICE COOPERATION IN EUROPE

4.1: INTRODUCTION

The field of police cooperation in Europe has been the subject of various attempts at classification. Some of the categories used have been highlighted in the literature review section, such as Professor Benyon's threefold mode of cooperation: macro; meso and micro levels, and van Reenen's division into: cooperation; horizontal integration and vertical integration. Examples of other modes of classification have been: Anderson's separation of old as opposed to new forms of cooperation, and a distinction between formal as opposed to informal modes of cooperation.

For the purposes of this research, this chapter will examine the various types of police cooperation prevalent in Europe, from the perspective of inter-police as opposed to intergovernmental forms of cooperation. An understanding of the advantages and disadvantages of these forms of cooperation, will provide an adequate background for analysing the importance and significance of the genesis of Europol as a centralised form of information and intelligence exchange.

4.2: INTER-POLICE FORMS OF COOPERATION

4.2.1: INTERPOL

While Interpol is not an exclusively European form of police cooperation, it is nevertheless particularly important to the topic, not least because of the fact that approximately 66% of
Interpol's business is specifically European. It has existed as an organisation since 1914, when the first International Police Congress was held in Monaco, during which legal experts and police officers from 14 different countries and territories met for the purpose of debating the establishment of an international body, that would be specifically concerned with such matters as the collation of international criminal records, and the harmonizing of extradition procedures.

With the outbreak of the First World War, any further developments were put on hold. However after the war, a Second International Criminal Police Congress was held in Vienna in 1923, at which agreement was reached as to the setting up of the International Criminal Police Commission. The ICPC's first President was Dr Johann Schober, the Austrian chief of police, and his assistant, Dr Oskar Dressler was appointed Secretary General.

From the outset, the ICPC was happy to deal with general criminal offences such as counterfeiting, forgery, drug trafficking, murder, theft etc. Its position on political offences however was much more ambiguous. The post World War Two statutory prohibition on Interpol becoming involved in offences of a political, religious or racial nature has lead, in the past two decades, to serious criticisms of the organisation. However the position during the inter war years was far from straightforward, and the Interpol historian Fenton Bressler concurs that this vagueness was deliberate. He quotes Schober as saying, "The objective that we are pursuing [in setting up the Commission] is devoid of all political aims". (Bressler 1992: 39)
However he goes on to give examples of Interpol expediently involving itself in political offences, arguably the most notorious being the organisation's part in 1934, in warning the German police of a plot against Adolf Hitler's life. (Bressler 1992: 43) This episode served as a prelude to the experiences of the Second World War when the ICPC and its records fell into the hands of the Nazis. The organisation's headquarters was moved to Berlin, under the Presidency of Reinhard Heydrich, and there is an enduring suspicion that its files were appropriated by the Nazis in their campaign of extermination against Europe's Jews.

The ICPC was re-constituted after the war at a conference held in Brussels in 1946, at which new statutes and a new headquarters based in Paris were adopted. The organisation's name changed in 1956 to the International Criminal Police Organisation - Interpol, or ICPO - Interpol. The General Secretariat moved location again to Saint-Cloud, outside Paris in 1966. According to Article 2 of Interpol's Constitution, the purposes and aims of the organisation are:

a) To ensure and promote the widest possible mutual assistance between all criminal police authorities, within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights.

b) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

Article 3 however lays down the limits of Interpol's competence by stating: "It is strictly forbidden for the Organisation to undertake any intervention or activities of a political,
military, religious or racial character." This stipulation effectively prohibits Interpol from becoming involved in terrorist offences, and was a prime contributor to Interpol losing out in the seventies, in terms of progressive police cooperation initiatives in Europe. The threat of terrorism in this decade meant that alternative structures such as the TREVI forum were adopted. However, unfortunately for Interpol, TREVI did not stop at terrorism but went on to embrace other facets of transnational crime such as drug trafficking and organised crime.

Other principles of cooperation laid down in the Constitution include the following:

a) **Respect for national sovereignty:** Cooperation at all times must be based on actions taken by police forces in the various Member States, operating within their own national boundaries and in accordance with their own national laws.

b) **Enforcement of ordinary criminal law:** The Organisation's field of activity is limited to crime prevention and law enforcement in connection with ordinary criminal offences. This is the only basis on which there can be agreement between all Member States.

c) **Universality:** Any Member State may cooperate with any other, and cooperation must not be impeded by geographic or linguistic factors.

d) **Equality of all Member States:** All Member States must be provided with the same services and have the same rights, irrespective of their financial contributions to the Organisation.

e) **Cooperation with other agencies:** Cooperation is extended through the National Central Bureaus to any government agency
concerned with combating ordinary criminal offences.

f) Flexibility of working methods: Although governed by principles designed to ensure regularity and continuity, working methods must remain flexible enough to take account of the wide variety of structures and situations in different countries. Respect for these principles means that Interpol cannot have teams of detectives with supranational powers who travel around investigating cases in different countries. Instead, international police cooperation must be based upon coordinated action on the part of the police forces of the Member States, all of which may supply or request information or services on different occasions. (ICPO - Interpol 1992: 7)

The heart of Interpol's operations revolves around the various National Central Bureaus (NCBs) in each Member State. The government of each Member State is obliged to designate a permanent department that acts as the focal point for all communications between Interpol and the police forces of the respective state. The NCBs are generally staffed by police personnel of the respective country and are tasked with such activities as:

a) The collation of all intelligence, documents etc that are relevant to international police cooperation;

b) The communication and transmission of requests for information, cooperation etc;

c) The ensuring that requests for operations requested by the NCB of another state are carried out.

The smooth transmission of information, requests etc is facilitated by a communications network that includes different
media such as electronic message-handling, facsimile and phototelegraphy. The X.400 standard, which is an international message-handling standard defined in a series of International Telegraph and Telephone Consultative Committee (CCITT) recommendations, has been adopted by Interpol. Its adoption has enabled the organisation to claim that when added to its encryption service and the Automated Search Facility (ASF) (a computer based system that allows automatic database searches by Interpol NCBs), it now possesses "the necessary foundations on which to develop a comprehensive, world-wide network based on up-to-the-minute technology, capable of transmitting encrypted texts, images etc." (ICPO - Interpol 1992: 20)

Interpol has been able to justifiably boast that it is the only truly global form of police cooperation. The experience it has gathered over many years of facilitating the transmission of requests, information and intelligence, means that it is the staple means by which police forces today communicate with their counterparts in other parts of the world. Interpol has become particularly proficient in what can be termed low policing (i.e. ordinary crime control). An example of this is the colour coded notices system that Interpol has operated in the past. Examples of these include: red notices which according to Bressler act as international arrest warrants; (Bressler 1993: 127) yellow notices for missing persons; black notices requesting the identification of dead bodies; green notices for information about international criminals on the move and blue notices for personal information such as aliases.
However the organisation has also come in for severe criticism on a number of issues. The first of these is with regard to its perceived lack of accountability. Anderson sums up this view by stating: "...Interpol has little political influence. This derives from its origins as a "policeman's club" whose membership was unclear - originally its members seemed to be police officers rather than governments. It developed into a recognised inter-governmental organisation but it remained concerned with "low policing" (ordinary crime control) rather than "high policing" (policing concerned with security or overtly political issues), it had no treaty basis (except the Headquarters Agreement with the host country) and governments had no publicly declared obligations to support it financially or otherwise." (Anderson 1992: 25)

In respect to being governed by a treaty, Interpol has always been reluctant to have one, firstly because it believed that the organisation should be free of undue political and governmental control, but also because of the practical difficulties involved in the ratification of a treaty by over one hundred and seventy member states. This lack of a treaty base and governmental accountability however was one of the prime reasons why the idea of Europol being incorporated into Interpol was rejected, and why it can well find itself marginalised in the areas of high policing and the development of a coordinated European strategic intelligence system.

Interpol has also suffered in the past from a reputation for lack of speed. In operational terms this problem can have serious consequences, and Interpol has gone some way to correcting this
deficiency by the adoption and installation of state of the art communications equipment over the past ten years. In fairness to the organisation, this complaint is often out of its control, as it can only be as fast as the state that is dealing with a request. This research has revealed that most of the officers interviewed were relatively happy with the speed of response from Interpol. There was also a sense however that communications via Interpol could be a hit or miss scenario. Some states reply promptly whereas with others it could take months, and in some cases not at all.

An even more serious criticism however has come in the form of a perceived lack of security. Interpol's communications system is based on a reciprocal basis. In the interests of equality and cooperation it is constrained to freely share information with all its members. However the exigencies of high policing intelligence and operations, mandate that sensitive information is kept secret, and not freely disseminated, particularly to states that are involved with transnational crimes, such as those that sponsor terrorism. Examples of this problem were given by officers of a regional organised crime unit of the Dutch police who stated that they were often reluctant to share information on drug trafficking with Interpol for fear that it fell into the hands of the Moroccan state authorities who, it was believed, were cooperating with the transit of drug consignments through Morocco.

Other related criticisms revolve around the misuse of Interpol, or the inefficiency of the organisation in communicating vital information. An example of the former was reported in Statewatch,
whereby the Immigration Department of the police (Fremdenpolizei) of the Zurich Canton in Switzerland had inappropriately used Interpol channels to check the identity of undocumented asylum seekers in order to aid deportation. This act was contrary to Interpol's statutes which state that requests for identity checks should only be used if there is an ongoing criminal investigation. (Statewatch Vol 6 No 3 1996: 6-7) An example of the latter was again given by Anderson whereby the Head of the US National Association of Chiefs of Police (NACOP) asserted that, "Interpol knew that George Habash, head of the Popular Front for the Liberation of Palestine, was planning to enter France for medical treatment but that the organisation failed to notify the authorities which showed that "it is a liability to effective law enforcement." Yves Barbot, the President of Interpol described the attack as based on "deep ignorance", saying that Interpol was not an intelligence service and not one of its 158 members had communicated any information about Habash." (Anderson 1992: 25)

This assertion in the last paragraph by the President of Interpol that it is not an intelligence service, leads to the final substantial criticism. Whatever the criticisms of Interpol in the areas of accountability, speed and security, it has proved its worth repeatedly in the day to day business of low level police cooperation. Where it has failed to be convincing is in the development of high end strategic analysis and intelligence. For its part, Interpol has publicized the many initiatives it has undertaken in this respect. Some of these include the following:
a) Operation Paxo: a series of meetings held in 1991 and 1994 on
organised vehicle trafficking from Europe to the Middle East and Far East;

b) Project EASTWASH: initiated in 1993, this is a project which concentrates on the activities of criminal organisations in Eastern Europe and the former Soviet Republics;

c) Project MALE: which focuses on the money laundering activities of Italian criminal organisations

d) Project Rockers: which deals with outlaw motor cycle gangs involved in criminal activities which include extortion, intimidation, acts of violence, weapons offences, drug trafficking and the theft and distribution of stolen motor cycle parts;

e) The "Probalkan" program which assists European states to counter the trafficking of heroin from Turkey primarily by TIR trucks along the Balkan Route;

f) Project Nuclear which is an analytical study regarding the traffic in radioactive substances. (ICPO - Interpol 1995: 3-10)

Despite these and several other similar projects, the image still persists of Interpol being incapable of filling a void in strategic intelligence at the European level. This can partly be due to the difference between descriptive analysis and actionable analysis. Several respondents during the course of the research commented on this difference by stating that what was not needed, was more descriptive reports that outlined what trafficking routes existed in Europe etc. What was increasingly being called for however was hard intelligence that was actionable, i.e. that
would lead directly to specific operations and prosecutions. This is in keeping with the customary pressures on police forces for tangible short term tactical payoffs, as opposed to nebulous long term strategic benefits.

Interpol will remain unchallenged in the area of its greatest strength, that being what Anderson terms "voluntary reciprocal mutual aid." (Anderson 1994: 16) It will for the foreseeable future continue to be the preferred medium for the bulk of international police cooperation. However the growing mosaic of policing needs means that no one organisation will be able to be all things to all people. As the remainder of this chapter shows, there are varying other forms of police cooperation in Europe that are all filling various other needs.

4.2.2: THE DRUG LIAISON OFFICER NETWORK

The Drugs Liaison officer network consists of a network of police and customs officers from various European countries, who are not only posted to fellow European states, but also to strategically important states outside of Europe. These liaison officers operate from their home embassy in the host state, and enjoy diplomatic immunity and First Secretary status, so that they can not be constrained to testify in the courts of the host state. In recent years the UK's DLO network has been complemented by a Counter Terrorism Liaison Officer network (CTLOs), officers of which are posted in France, Germany and the Benelux states. The CTLO network has emerged out of the Police Working Group on Terrorism (PWGOT), which is funded and staffed entirely by
officers of the Metropolitan Police, and who are accountable to the European Liaison Section (ELS) of this force. (ACPO 1996: 40)

As from 1996, the role of the UK DLOs has been extended to encompass all forms of serious crime. However the definition of what constitutes serious crime is not stated, either in the NCIS Annual Report of 1995/96 or in the ACPO study on International, National and Inter-Force Crime of February 1996. This raises the suggestion that the definition of serious crime will be a subjective one that is decided on a case by case basis.

At present the UK has 42 DLOs posted throughout the world, the majority of whom are HMCE officers. They are posted in 24 countries, 8 of which are in Europe. Of those posted in Europe, 40% of the work undertaken is in providing assistance and advice to the operational teams of HMCE and the RCSs, 30% is in proactive tactical intelligence gathering, 10% is in the gathering of strategic intelligence, 4% is in rendering advice and assistance to other government departments, and 16% is in giving assistance and advice to the law enforcement agencies of host countries. (ACPO 1996: 39) This breakdown clearly shows that there is an imbalance between the gathering of tactical and strategic intelligence, which highlights the pressures that operational as well as intelligence agencies face in acquiring intelligence that is geared towards short-term operational successes.

The NCIS 1995/96 annual report emphasises that during a 12 month period covered by the report, the UK DLO network took part in or proposed 60 controlled deliveries of drug consignments. The
involvement of the DLO network highlights the current problem of duplication in the field of police cooperation. Research evidence gathered from the Bundeskriminalamt in Germany emphasises the belief that controlled deliveries are easier to facilitate via the DLO network due to the experience gathered over the years in coordinating such operations. However the Europol Drugs Unit, since its inception, has become increasingly involved in initiating and coordinating controlled deliveries as well. The organisation boasts of its ability to organise a controlled delivery in one hour, based on the convenience of having all its liaison officers under one roof.

The ACPO Report on International, National and Inter-Force Crime of February 1996 revealed clear evidence of a lack of coordination between the work of the DLO network, Interpol and Europol leading to significant duplication of effort. The report states: "Following the visits to Interpol, Europol, officers in the DLO, and to a lesser extent CTLO network, the working group believe that there are a number of issues to be addressed. The first is clarity of roles. It seems that Interpol, Europol and the DLOs are undertaking very similar roles, especially in the area of drug trafficking.....The consequence of this is that a British police officer, making enquiries from the UK, is very well served by the policing networks currently operating in Europe. The same enquiry could be made to any of the above organisations who would undertake to deal with it. This is of course of benefit to the customer but one has to question whether in fact the duplication in roles is operationally and financially sound. During the course of their visit the working group were
told of ongoing operations being undertaken by the ELOs in Europol, and the DLOs. These operations were similar in nature and could have been facilitated by either or both organisations. In addition to the above the working group found little evidence of coordination between Europol, the DLOs and CTLOs." (ACPO 1996: 40)

This was a uniform response in the other states targeted for this research, to the question of duplication between the DLOs, Europol and Interpol. Persons interviewed in the national units of Germany, Sweden and the Netherlands all admitted to varying degrees of duplication between the three agencies. The ACPO report went on to recommend a review by ACPO of the effectiveness of coordination between UK law enforcement representatives overseas, without giving any concrete recommendations about how this might be achieved.

The advantage of the DLO network in Europe appears to be its experience in gathering intelligence in strategic countries and its ability to effectively organise controlled deliveries, while its main disadvantage appears to be in the area of duplication and lack of coordination with other similar agencies. Also the emphasis on purely national concerns and objectives means that the DLO network is seldom able to develop a coordinated strategic approach to combating serious crime at a European level.
4.2.3: INFORMAL BILATERAL CONTACTS

Bilateral contacts represent one of the oldest and most ubiquitous forms of police cooperation in Europe. These links are frequently formed in the process of operational necessity, and then nurtured for the duration of the respective officers' service. The advantage of these forms of cooperation are the speed they bring to operations, as officers know that the cooperation they require is only a phone call away. Informal bilateral cooperation also fosters a sense of transnational trust, as officers begin to gain an understanding of the problems faced by their colleagues in other countries, such as different extradition and evidence requirements, different judicial practices and police powers etc.

This mosaic of contacts, while possessing operational advantages, can also have its drawbacks. The most obvious disadvantage is that carefully cultivated contacts die with the transfer, retirement or the death of at least one of the contacts. With the breaking of these links invariably goes the intelligence and experience that may have been carefully built up over a number of years. Also the natural inclination of police officers to keep information 'as close to their chests' as possible means that informal bilateral contacts can theoretically lead to duplication, as the analysis formed by a closed bilateral contact may not necessarily be shared with other colleagues. Furthermore this form of cooperation invariably is only of any functional use in specific tactical operations. It seldom has any scope for the production of strategic intelligence or analysis.
4.2.4: OTHER FORMS OF COOPERATION

In addition to these main forms of inter-police cooperation, there are a series of shadowy unofficial forms of cooperation that have only come to light in recent years, through commentators such as Professor Benyon and the magazine Statewatch. Some of these networks include the following:

a) The Vienna Group or Club: This group consists of Austria, France, Germany, Italy and Switzerland, and is concerned with the exchange of information on the combatting of terrorism in the participating countries;

b) The Berne Group or Club: This network is likewise concerned with exchange of information on terrorism, but has a wider membership which includes the original 12 EU states as well as Austria and Switzerland;

c) Kilowatt: This network comprises an "information alliance between the security services of around eighteen states." (Benyon 1993: 212)

While these examples are by no means an exhaustive list of the varying interlocking forms of inter police cooperation in Europe, they give an idea of the disadvantages and shortcomings that need to be addressed. Some organisations such as Interpol fail in the areas of speed and security. Others such as informal bilateral contacts, fail to provide a coordinated strategic overview, that the effective combatting of transnational crime increasingly requires. And others, such as shadowy inter police cooperation networks, are unaccountable and lack transparency, and by extension democratic legitimacy. As a consequence, the second section of this chapter will briefly examine the
intergovernmental forms of police cooperation that have been the first steps in rectifying these deficiencies.

4.3: INTERGOVERNMENTAL FORMS OF POLICE COOPERATION

4.3.1: FORMAL BILATERAL AGREEMENTS

Arguably one of the most established and advanced forms of formal bilateral cooperation in Europe can be found in the policing of the Channel Tunnel. Cross channel cooperation and liaison between the Kent Constabulary and its counterparts in France, Belgium and the Netherlands can be traced to 1967 when in response to a perceived illegal immigration crisis, the then Chief Constable Dawney Lemon, made formal applications for ongoing regional cooperation with the French and Belgian police. This initiative resulted in the formation of the Cross Channel Intelligence Conference and the appointment of a Kent Constabulary Cross-Channel Liaison Officer.

However the main impetus for improved cooperation came with the advent of the Channel Tunnel project in 1986. Following upon the signing of the Channel Tunnel Act in 1987, and the designation of the Chief Constable of Kent as the lead police authority in conjunction with the British Transport Police, and the Metropolitan Police Special Branch, a Channel Tunnel Policing Unit became operational in 1989. This new unit was able to build on the experience gathered from the Cross Channel Intelligence Conference started in 1969, and in 1991 the designation of this unit was changed to Kent Constabulary's European Liaison Unit.
Today this unit, according to its head Detective Inspector Gallagher, "provides an essential point through which information of a European nature can flow in and out of the Force. Externally it provides a single point of contact and reference for our immediate neighbours. Overall their role minimizes the danger of duplication of effort by providing the coordinated approach to Force inter-departmental European activities, whilst at the same time noting the importance of cultural, legal, linguistic and protocol requirements likely to ameliorate such police cooperation." (Gallagher 1995: research interview) In addition to fulfilling the needs of Kent Constabulary, the ELU is primarily responsible for the policing and security of the Channel Tunnel, and the policing of this vital frontier.

The exercise of policing functions is governed by the Protocol on policing the Channel Tunnel which was signed in November 1991, (Article 3) and which requires the two countries to work closely together and 'to the fullest possible extent cooperate, assist one another and coordinate their activities in discharging their duties.' (Hebenton and Thomas 1995: 91)

In addition to the Protocol, other sources and tools of bilateral legitimacy include:

a) The Anglo French Agreement 1989 concluded between the British Home Secretary and the French Minister of the Interior, which allows for a joint commitment to 'the struggle against terrorism, organised crime, drug trafficking and illegal immigration,' and aims to facilitate the exchange of officers at a national level as opposed to a regional or local level (Gallagher (undated): 101)
b) An exchange of letters between the Chief Constable of Kent and the Prefet of Pas-de-Calais, which has facilitated such areas as the exchange of information for operational purposes, operational procedures concerning the Channel Tunnel, and police exchanges between Kent and Pas-de-Calais;

c) The signing of Memoranda of Understanding dealing with the rendering of mutual assistance between Kent, Western Flanders, Le Nord, Zeeland etc;

d) The development of a 'Euroregion' Memorandum of Understanding for local authorities between Kent County Council, and its counterparts in Nor/Pas-de-Calais, Flanders, Wallonia and Brussels.

The significance of these developments lies in the fact that what began as a formal bilateral intergovernmental agreement between the UK and France, has over time evolved into a multi lateral Euro policing region. Another contentious outcome of these arrangements has been the initiation of a system of juxtaposed controls, whereby separate zones are delimited by virtual protocols, which allows British officers to operate on French soil, and French officers on British soil. Passengers to France are therefore checked by French authorities before leaving Kent, and British staff act in a similar manner in France. (Hebenton and Thomas 1995: 91)

Consequently every day, uniformed French frontier police known as the PAF, arrive on British soil for the performance of normal policing and immigration functions. In practice therefore there is a daily movement of British and French officers through the Channel Tunnel. Travellers are checked at French frontier
controls in Britain, and in the event of someone being registered as wanted on French computers, the French officers have the power to arrest the wanted person on British soil (but only within their delimited zone) and transfer the wanted person back to France.

This facility however does not allow the French zone to be considered as French territory as in diplomatic cases. In the event of a criminal matter arising or a case of public disorder, it would still be the responsibility of the British police to deal with it.

Inherent in the system of juxtaposed controls is the further contentious issue of French police officers carrying firearms while on British soil. While at the time of the observational research visit to Kent Constabulary's European Liaison Unit this situation had not been resolved, a compromise was in the process of being negotiated, that would allow French officers to retain their firearms while on British soil subject to certain controls. The British for their part, appear to have no intention of carrying firearms on French territory.

Another example of bilateral cooperation leading to a multilateral arrangement is the example of the border area between Belgium, the Netherlands and Germany. The national regions involved consist of: the Belgian provinces of Limburg and Liege with a population of 1.8 million; the Dutch province of Limburg with a population of 0.7 million; and the German region of Aachen with a total population of 1.1 million. The police cooperation in this area, which had been traditional for much of the post war period, was put on a formal basis in 1969 with the
creation of NEBEDEAG-Pol, which was an association of the chiefs of police of this region. Its aim was the development of strategies for cooperation that would be shared and implemented by the police officers of the three national regions.

Cooperation instruments included: a border alert search system; the establishment of liaison offices and the exchange of liaison officers; direct cross border radio links and links to each others police vehicles; seminars on common problems; language courses; cross border surveillance; the right of hot pursuit; and even consideration of the establishment of bi-national police stations.

This in turn has spawned other localised forms of cooperation. For example the Dutch local authority of Kerkrade and the German local authority of Herzogenrath joined together under the title EURODE as the first "European local authority." An external expression of this cooperation was a road running through the centre of the district. The unique feature of this road was that it was also the former border between German and Dutch sovereign territory. The border, initially a wire fence, later a small wall, ran right through the middle of the road, separating the two carriageways.

In a spirit of European unity, the border wall was removed and the two carriageways joined. The new tarred surface was paid for jointly. However problems arose when it came to street signs and the validity of traffic regulations, the question of dealing with traffic accidents, police jurisdiction, action and the prosecution of crimes, and breaches of the regulations on the
road. There has proved to be no legal solution to these problems, and while the police intervene, as best they can, to date the legal position has not been clarified. (Petermann 1996: 19)

A report on the cross border cooperation in the NEBEDEAG-Pol region by the Aachen police, makes the statement that: "Specific bilateral agreements are only an interim stage and are no substitute for a readiness for European (police) integration." As with other forms of police cooperation, this statement draws attention to the limitations of formal bilateral cooperation. The EURODE case is only a microcosm of the types of routine problems that can occur.

The examples given are arguably the two most advanced forms of bilateral cooperation in Europe, both of which have fairly rapidly evolved into multilateral police cooperation arrangements. However they are both concerned with specific localized policing problems. Once again neither is geared towards combatting the issues of transnational crime on a European level. Furthermore, the potential of isolation in dealing with localized or regional issues can cause inefficiency and duplication. For example, intelligence gained via bilateral arrangements at the Austrian/Slovenian border may have importance for bilateral cooperation at the German/French border. However in the absence of a more integrated system, this intelligence may not find its way to all the parties that it should.

Likewise, a deficiency in harmonized and integrated policing and judicial systems and practices at a European level, can mean that the benefits of formal bilateral arrangements are diluted. Again a prime example of this problem is the contrast between the
'opportunity principle' of the Dutch judicial system and the German 'legality principle'. The Dutch 'opportunity principle' allows for "project management" even in the prosecution of offences. This allows the police to decide on a program of priorities with the public prosecutor for a fairly long period, and to devote the appropriate financial and staff resources to it. Specifically this means that offences not included in the program do not have to be prosecuted on practical grounds. It also means that there is flexibility in the right to prosecute. Oftentimes when dealing with serious criminality, such as organised crime, it may be expedient not to act on information in hand, in the interests of gathering sufficient information and evidence to effect a more substantial prosecution at a later date. Under the mandatory prosecution rules of the German system, this flexibility is not always possible. Consequently, the Dutch police are often reluctant to pass on information about long term organised crime measures, for fear that the Germans will be constrained to take immediate action, and by so doing, jeopardise long term objectives.

Formal bilateral police cooperation therefore, while being highly successful in dealing with regional crime, also has significant drawbacks in terms of tackling the wider problem of transnational crime in Europe. Nevertheless despite these drawbacks, bilateral cooperation of both a formal, and particularly an informal nature, are generally the backbone of police cooperation across national boundaries, and as such, limitations notwithstanding, its importance should not be underestimated.
4.3.2: THE SCHENGEN AGREEMENT

The Schengen Agreement which established the general goal of abolishing all frontier controls, and harmonising cross border procedures for goods and persons was signed in 1985. This was followed up by the Implementation Convention of 1990. The impetus for this agreement came from the political declaration of the EC member states, following the adoption of the Single European Act, to the effect that the promotion of the free movement of persons, should be supported by cooperation in combatting cross border offences such as drug trafficking and terrorism, as well as in regard to the entry to and movement in the EC of nationals of third countries. Schengen therefore represented a compensatory measure for the perceived security deficit resulting from the lowering of internal borders.

In terms of cross border cooperation, the Schengen Convention allows for the following measures:

1) MOVEMENT OF PERSONS
   a) abolition of checks on persons at the internal borders of the signatory states;
   b) intensification of checks on persons at the external borders of the signatory countries on the basis of uniform criteria;
   c) uniform regulations on the entry of aliens;
   d) uniform criteria for issuing visas to aliens;
   e) creation of a uniform "forgery proof" visa, valid for all Schengen countries;
   f) uniform criteria for refusing aliens entry to Schengen countries;
g) arrest and deportation of aliens staying in a Schengen country and not fulfilling the required conditions;
h) uniform criteria for dealing with applications for asylum and asylum seekers.

2) SPECIFIC FIELDS OF CRIME
   a) intensification of drug law enforcement;
   b) harmonisation of legal provisions on firearms.

3) CROSS BORDER COOPERATION
   a) mutual police assistance;
   b) exchange of police liaison officers;
   c) technical cooperation at the border;
   d) cross border surveillance by police;
   e) cross border (hot) pursuit by police.

4) JUDICIAL COOPERATION
   a) facilitating legal assistance and extradition matters;
   b) facilitating the enforcement of penal sanctions;
   c) facilitating the serving of official documents.

The implementation of the Schengen Agreement has been complemented by the Schengen Information System (SIS), which is a computer-assisted system for the entry and retrieval of data on wanted persons and property within the signatory countries, consisting of a central service computer in Strasbourg (CSIS), and National Schengen Information Systems (NSIS) in the signatory
states. Since the implementation of Schengen, Big SIS has become an everyday tool of police cooperation among the Schengen states.

At present the membership of Schengen is divided between those states that have signed, ratified and implemented the agreement, and those states that are in the process of either signing, ratifying or implementing the agreement. The breakdown of these states are as follows:

1) States that are already implementing the agreement: Germany, France, Belgium, Luxembourg, the Netherlands, Spain and Portugal.

2) States in the process of signing and ratifying the agreement:
   - Austria (signed and ratified)
   - Denmark (signed and ratified)
   - Sweden (signed)
   - Finland (signed)
   - Greece (signed)
   - Italy (signed)
   - Norway (non EU associate member status only) (signed)
   - Iceland (non EU associate member status only) (signed)

(Statewatch Vol 7 No 3 1997)

The United Kingdom and Ireland have refused to participate although the Treaty of Amsterdam contains provisions whereby these two states may opt in to certain Schengen procedures under specified conditions.

With respect to Britain's self imposed exclusion from Schengen, there is every indication that in operational policing terms, the British police have been losing out by not having had access to the SIS in the past. One example given by German Federal Border
Police operating along Germany's northern seaports, involves the routine discovery of suspicious containerised motor vehicles in transit to Russia. Whereas vehicles that originate within one of the Schengen states can be checked on the SIS, a stolen British vehicle would not appear on this database, and therefore, short of time consuming formal checks with British counterparts, there is no way of ascertaining the legitimacy of containerised British vehicles. Therefore motor vehicles stolen in Britain in transit to Russia, are often going unrecovered due to Britain's self imposed exclusion from the Schengen system.

The Schengen system represents the first form of horizontal integration on a Europe wide basis, whereby, according to van Reenen, police officers obtain the authorization to operate in the territory of another country. This is distinct from the mere posting of liaison officers in other states. While the right of hot pursuit has been a regular feature of police cooperation between the Benelux states, this right has now been extended to most of the European Union.

At present a system of variable geometry exists with respect to the right of hot pursuit, whereby each state has different limits on the right of incursion into their territory. For example Germany allows officers from other Schengen states to travel any distance within German territory and for any duration, and also gives these officers the right to apprehend and detain persons, while pursuing offenders for extraditable offences or who have escaped from prison. The Netherlands on the other hand only allows hot pursuit within a distance of 10 km from the border, and persons apprehended may only be detained within the
10 km limit. During the course of the research, examples were given of Dutch police officers who chased a suspect from Dutch soil all the way to Munich, where he was arrested by the Dutch officers. In another case, on the initiative of a commanding Dutch officer, several hundred Dutch officers crossed the border with Germany, and travelled several miles into German territory, to help the German police defuse a potentially violent confrontation with a large number of Kurdish demonstrators.

Today the Schengen system has become a routine aspect of everyday continental policing, although it still has significant drawbacks in terms of fighting cross border crime. While it has been described as a horizontal one shot 'hit, no hit' system, it has virtually no capacity for the vertical formulation of strategic analysis with which to combat transnational crime. Furthermore it suffers from being outside the framework of the European Union. It is overseen by an Executive Committee consisting of the Council of Ministers of the member states, with routine management being undertaken by a Central Group consisting of senior civil servants and police officers, as well as a secretariat based in Brussels.

However this has not prevented the Schengen system from being criticised for a lack of accountability and transparency, particularly in respect to parliamentary oversight and judicial control. Benyon has highlighted the concerns that have been expressed with regard to the human rights implications of the rules on refugees, aliens and visas, the data protection issues surrounding the SIS, and the complaints of Members of the European Parliament with regard to the secrecy surrounding
Schengen, and the paucity or inadequacy of replies to questions raised. Finally as an agreement, it has suffered from the implementation of variable geometry in that there is not universal membership across the entire EU. (Benyon 1993: 147-149)

It is for these and other reasons that moves have been made at recent European Council summits to incorporate Schengen into the EU system. A special meeting of the European Council held in Florence in June 1996 included consideration of this option, with a possible first step being the amalgamation of the Schengen Secretariat with the EU Secretariat, along with consecutive meetings of the Schengen Executive Committee and the EU's Council of Justice and Home Affairs Ministers at the same time and venue. Allied to this is the expectation that the SIS will one day complement the Europol database in an interconnected relationship. (Statewatch Vol 6 No 4 1996: 18, 23) Within the context of van Reenen's three-fold form of the internationalisation of policing, the achievement of such an incorporation presages the evolution of a policing matrix in Europe that will eventually encompass all three forms: cooperation, horizontal integration and vertical integration.

4.4: CONCLUSION

The various forms of cooperation examined in this chapter, both of an inter police and an intergovernmental nature, have clearly been forms of cooperation as delineated by Van Reenen, with only the Schengen system being identified as a form of horizontal
integration. It is therefore possible to theorize on the likelihood of police cooperation evolving in a progressive and incremental manner from a level of pure cooperation to one which includes an element of vertical integration. The potential for such a scenario will be investigated in the next chapter, through an examination of Europol.
5.1: BACKGROUND

5.1.1: Chapter Introduction

This chapter will look at Europol not only as a natural progression from the forms of police cooperation outlined in chapter 4, but also as an organisation that potentially differs significantly from any that has gone before. Central to this is the belief that Europol has the potential to become, as was emphasized in the last chapter, a form of vertical integration which is located outside of and above the nation state. To achieve this, it is necessary to first examine the genesis and structure of the organisation, before presenting and analyzing the data in later chapters on the national units of the selected states, so as to ascertain the validity of this hypothesis, as well as the iteration that is the basis of this research.

5.1.2: TREVI

The background of Europol is grounded in the now defunct TREVI structure which came into being in the mid 1970s as a response to the terrorist threat to Europe. This was necessary because of Interpol's practice of not dealing in offences of a political nature. Fijnaut elaborates on the genesis of TREVI by stating: "The initiative to set up this consultative body, which was institutionalised within the European Political Cooperation framework of the EC, was taken by the European Council in Rome 1975. The Council then agreed that the respective Ministers of
Internal Affairs would regularly get together to discuss issues of order and security. This decision became much more important a year later when on 29 June 1976 in Luxembourg, these ministers adopted a resolution to the effect that a number of study groups were to be established as part of a body which was to be called TREVI, a name derived from the famous fountains in Rome.” (Fijnaut 1991: 108)

Described as a forum rather than an organisation, TREVI's principal aim was the promotion of police cooperation, initially in the field of terrorism. Its membership consisted of the then 12 members of the EC, and it operated on 3 levels. The highest level consisted of the interior ministers of the 12 member states, who exercised overall political control. Beneath them was the TREVI group of senior officials which consisted primarily of senior police officers, civil servants and other officials who were responsible for the development of policy advice for the ministers, as well as the coordination of the work of the working groups which formed the third level.

The working groups also consisted of civil servants and police officers, as well as representatives from relevant organisations. (Benyon 1993: 152) The remit of Working Group I dealt with the exchange of intelligence on terrorism, and the movement and discovery of arms and explosives. Working Group II dealt with the exchange of information on police training, police equipment, public order and forensic science. The events of the Heysel stadium tragedy in 1985 also lead to cooperation on combating football hooliganism being added to the remit of this group.

Working Group III came into being in June 1985, and was
concerned with increasing cooperation in the detection and prevention of serious organised crime including drug trafficking. Areas of crime under this group's remit included environmental crime, trafficking in works of art, trafficking in stolen vehicles, armed robbery and money laundering. This group was also responsible for the introduction of the Drug Liaison Officer (DLO) system, the development of a comparative approach to the analysis of crime in Europe, and the establishment in each member state of a national drugs intelligence unit.

Other planned working groups either never got off the ground or were not fully developed. For example the original Working Group IV dealt with fire, and its aim was the exchange of views, information and experience on all aspects of measures against fire, and the promotion of cooperation in these and related matters such as fire protection, organisation and control of fire services, firemen's protective clothing etc. This group however never reported to the TREVI Senior Officers or Ministers and was eventually disbanded. (Undated confidential Home Office memo)

Finally the fourth TREVI working group became known as Trevi 1992, and was primarily concerned with the security and crime implications of any relaxation of border controls on the completion of the Single European Act on 31 December 1992. The importance of the Trevi forum lies in the framework for police cooperation in Europe that it developed both in terms of political commitment, and in the practical mechanisms for the sharing of information techniques, best practice etc. Some of its achievements include:
a) A ministerial agreement in 1986 for the regular analysis and assessment of the terrorist threats to EC countries for the purpose of assisting the counter-terrorist agencies of all the member states. This agreement also included plans for the establishment of a new secure communications system between European police forces to allow the rapid exchange of Trevi information, especially with respect to the targeting of terrorist movements, supplies of money, arms and equipment, so as to facilitate disruption of these activities.

b) The institution of Troika meetings at Senior Official and Ministerial levels comprising the past, present and future Presidencies, in the interests of ensuring continuity. The Troika was also given responsibility for briefing third countries such as Norway, Canada, the United States, Switzerland, Austria etc which often attended Trevi meetings.

c) An initiative in 1989 for the establishment of a secure Trevi facsimile link, a centre in Germany for holding information on true and forged Arab documents, and a proforma for transmitting intelligence to other member states immediately following a terrorist attack. (undated Home Office memo)

Arguably one of Trevi's most important achievements was the Paris Declaration of Trevi Ministers of 15 December 1989. In noting the effects of the implementation of the Single European Act, the increasing ability of organised crime to exploit the limits of competence of national police agencies, the differences between legal systems in Europe, and the gaps in cooperation
between respective services, the Ministers made a range of recommendations. Some of the most significant were the creation of a common information system available to member states, designed to combat the most serious forms of crime, and the institution of structures to centralize and coordinate information and to exchange intelligence, with particular reference to decisions already made to set up national intelligence units on drugs, allied to the requirement for the extension of these national units at a European level.

Despite these developments however, Trevi suffered from significant drawbacks. The most often voiced criticism was its secrecy and lack of accountability. Hebenton and Thomas highlight this problem by stating: "The UK Government has never been persuaded that anything more than a written answer to a Parliamentary Question was needed to keep the UK Parliament informed of TREVI deliberations. In fact, the first such written answer concerning a body that had been meeting since 1976 only appeared in June 1990. The Government has refused to give Parliament the minutes of TREVI meetings or to disclose the cost of British participation. Even a Home Office circular to Chief Constables advising them of TREVI's structure and issued on 2 September 1977 remains a classified document to this day." (Hebenton and Thomas 1995: 77-78)

In addition to its secrecy and lack of accountability, Trevi never had a permanent headquarters or secretariat. In the absence of formal intergovernmental agreements, this was largely due to an inability of the member states to agree on a venue. There were also frequent disagreements over the choice of languages to be
used and the poor provision of translation services. A confidential report on a meeting of Trevi Senior Officials gives some indication of the extent of these problems. "The irritating fly in the ointment was language: both literally and symbolically. The Greeks complained that this was the first Senior Officials meeting where there was no translation into Greek, possibly essential for a delegation which is notoriously composed of non-linguists. The Danes suffered the same problem. The French, displaying far from good European manners, demanded, as a matter of principle, that French and English both be used for training courses which nationals of various states are invited to attend. This suggestion went down like a lead balloon with other delegations. All this was in addition to the usual problems of translation, either actual or imagined for the purposes of diplomacy." (Home Office Notes of Trevi Senior Officials Meeting, The Hague, Nov 21-22 1991)

Despite these problems however, Trevi served its purpose as providing a springboard for the third pillar of the Maastricht Treaty, which according to Anderson, "established the beginnings of a truly effective EU crisis management structure that brings together disparate police, customs and judicial authorities under one clearly defined, legally based, authority framework," (Chalk 1994: 11) and out of which Europol was born.
5.2: THE GENESIS OF EUROPOL

5.2.1: EARLY DEVELOPMENTS

The main impetus for a European wide police agency came at the European Council meeting in Luxembourg on 28-29 June 1991, when Chancellor Kohl proposed the formation of a single European Criminal Police Office, akin to both the Federal Bureau of Investigation in the USA and the German Bundeskriminalamt (BKA). According to Woodward, Chancellor Kohl envisaged this body being oriented towards tackling international drug trafficking and organized crime. It would be established by 31st December 1993 and would develop in two stages. First a relay station would be established for the exchange of information and experience, and then secondly, after 31st December 1992 further powers to act within the member states would be granted, including jurisdiction and executive powers to investigate drug offences and organized crime (Woodward 1993: 10).

While these proposals took some member states by surprise, the idea was by no means new, original or undebated. Fijnaut notes that as early as 1974 the Bund Deutscher Kriminalbeamter (German CID Officer's Association) discussed possible changes to the role of Interpol and the possible development of a European policing office (Fijnaut 1987: 37-38). This view was further corroborated by the Belgian MEP and rapporteur Lode van Outrive who stated in his Working Document on Europol that:

"Since the early 1970s, the issue of a European criminal investigation department has been raised repeatedly in Germany. The German Criminal Investigation Department (ie BKA) has constantly shown itself willing to provide the main impetus
for more extensive police cooperation. Schreiber (the Under­Secretary of the German Ministry of Home Affairs) argues, "we Germans, with our federalist state structure have considerable experience with security issues. We should apply the approach used in Germany at a European level" (van Outrive 1992: 3).

However both the British government, and senior British police officers took opposing views on the nature of any future federal European policing organization. The former Metropolitan Police Commissioner Sir Peter Imbert stated in 1989: "The time is not right to consider a European Police Force - and those who are currently advocating it are perhaps expecting us to run before we have shown we can walk" (The Job 21/7/89: 6). This position was supported by Roger Birch, the Chief Constable of Sussex and Chair of the Association of Chief Police Officers' International Advisory Committee who stated in 1991: "I would question the practicality in the immediate foreseeable future of any form of European FBI operating across frontiers in an executive capacity. I cannot begin to conceive of the difficulties which would face such a team called on to operate outside their countries where they would need to understand and comply with the multitude of legislative and regulatory requirements" (quoted in The European 12-14/7/91 and the Guardian 29/11/91).

These British reservations have not abated with the passage of time. As late as February 1994, on the eve of the opening of the Europol Drugs Unit in the Hague, Anthony Langdon, Britain's representative to the K4 Committee stated Britain's position that Europol should remain an intelligence swapping operation
similar to Interpol. "The prospect of federal agents from Germany or France being deployed in Britain is likely to cause uproar among Tory Eurosceptics" (Daily Telegraph, 3 February 1994). Further evidence for this position has been acquired from research findings (interviews and NCIS briefing papers) which indicate that the British National Criminal Intelligence Service (NCIS) views the main purpose of Europol as to give added value to NCIS's operations. Far therefore from Chancellor Kohl's vision of each member state's NCIS being a satellite of Europol, from the British nation-state centred view, it is Europol which is the satellite of NCIS. Furthermore there is evidence to indicate that the British view is mirrored by the Dutch CRI, which in itself is quite noteworthy in light of general Dutch Euro-enthusiasm. Research evidence supporting this view will be presented in the case study on the Netherlands.

Despite the reservations of the British however, the Council decided on the formation of the Ad Hoc Working Group on Europol (AHWGE) which would work under the existing Trevi umbrella towards the establishment, in the first instance, of the Europol Drugs Unit.

The plans for the creation of Europol were given a substantial boost by the inclusion in the Maastricht Treaty 1992 of Title VI which deals with cooperation in Justice and Home Affairs issues, and the annexed Declaration on Police Cooperation (Benyon 1993: 159). The perceived threat to internal security caused by the provisions of the Single European Act, which helped create a single market without internal frontiers, was the main justification for closer police cooperation. As a consequence
Article K.1(9) of the Maastricht Treaty declared police cooperation within the European Union to be a matter of common interest, thereby reaffirming the agreement on promoting practical police cooperation at the Council meeting of June 1991 (Benyon 1993: 159).

For the purposes of bringing the EDU into existence, two bodies were formed. The first of these was termed Project Team Europol and was tasked with the drafting of a plan for the Europol Drugs Intelligence Unit (as it was then known) which would constitute the first phase of Europol (Woodward 1993: 14). The PTE consisted initially of 15 members drawn from 9 of the then 12 member states under the directorship of Jurgen Storbeck of the German BKA, and was temporarily based in Strasbourg. The remit of the group included work on technical coordination, data processing and communications systems, intelligence, and material and personnel affairs. The PTE reported to the previously mentioned Ad Hoc Working Group on Europol (AHWGE) (Woodward 1993: 14).

The AHWGE on the other hand consisted of between 40 and 60 middle ranking civil servants under a permanent British Chair who was a senior government official in the Police Department at the Home Office. It was accountable to the then Trevi group of Senior Officials who passed on recommendations to the Trevi ministers for agreement. The body was responsible for preparing the Convention which would provide the basis for the eventual establishment of Europol, and with establishing the areas of action which can be undertaken by the EDU before the Convention is agreed. It was envisaged that the AHWGE would continue its
work until the Convention formally establishing Europol was signed (Woodward 1993: 12-13).

5.2.2: THE MINISTERIAL AGREEMENT

The Ministerial Agreement which brought the Europol Drugs Unit (EDU), as the forerunner of Europol, into being, was signed at the meeting of the Interior Ministers (including Immigration/Trevi officials) in Copenhagen on 1-2 June 1993. This agreement was meant to be an interim measure pending the signing of the Convention proper that will give Europol a legitimate legal basis on which to commence operating.

The terms of reference laid out for the EDU specified that it was to be a non operational organization tasked with the collection, analysis and exchange of intelligence on drug trafficking in Europe, along with ancillary offences such as money laundering. Other stipulations of the agreement included: The future appointment of a Coordinator to head the EDU; the setting up or designation of one, or a limited number of national central authorities, through which all information to or from the EDU must be channelled; the requirement of each country to appoint one or more liaison officers who will liaise with their home country's central national intelligence authority (in the case of the UK, NCIS); and the procedure governing the passing of information from one state to another.

The agreement specifically prohibited the transmission of personal information to non member states or to international organizations by the liaison officers, as well as the central
storage of personal information. The issue of the location of Europol's Headquarters was not finalized, with Rome, the Hague and Strasbourg all competing as possible venues. Up to this point the EDU had been operating provisionally on the same site as the Schengen Information System in Strasbourg (between Sept 1992 and Dec 1993). However at the summit of the EC Prime Ministers in October 1993, it was agreed that the permanent headquarters of the organization would be in the Hague on the site previously occupied by the Dutch central intelligence service (the CRI). The EDU's offices were eventually opened on 16th February 1994 by the Dutch Minister of Justice Mr Ernst Hirsch Ballin, whose inaugural speech included reference to the future establishment of a European Law Enforcement Network in the longer term, and common investigation teams in the short term (Statewatch Vol 4 No 2 1994: 5).

5.3: THE STRUCTURE OF EUROPOL

5.3.1: THE MANAGEMENT BOARD

Distinct from the Management Team is the Management Board of Europol, which will only come into existence once the Convention has been ratified and Europol proper starts operating. It will consist of one representative from the Interior Ministry of each member state. The Board will be chaired by the country currently holding the EU presidency and its main responsibilities, in conjunction with the Director, will be the drawing up of a three year work program for Europol, and a twice annual report for the K4 Committee and the Council of Justice and Interior Ministers.
The Board will be obliged to meet twice a year and the European Commission will only be allowed to attend these meetings as an observer. At present the Europol Working Group carries out the functions of the future Europol Management Board.

5.3.2: LIAISON OFFICERS AND NATIONAL UNITS

The Ministerial Agreement requires each member state to designate at least one agency that will act as the national unit for that state. The designated national unit is the only conduit for the dissemination or reception of information to and/or from the EDU/Europol. To date only in the UK has a single function national unit been established, with other departments of law enforcement agencies in other member states being adapted to fulfil the role of national unit. At present the developmental status of the various national units varies from country to country, and its characteristics differ with regard to:

a) whether the department concerned is operational or not;
b) the assignment of liaison officers;
c) the development status of the database;
d) regional and local coordination;
e) whether the Interpol NCBs (National Central Bureaux) are part of the department or not (ENFOPOL 58: 4).

An analysis of these and other differences and similarities will be presented in the various case studies. For the present however, the general purpose of the various national units is to collect, assess, collate, analyze, develop and circulate intelligence and information of regional, national and
international interest concerning crimes and criminals, so as to
assist with the coordination of operational activities.

The objectives assigned to the national units are consequently
intended to:

a) Combine at national level intelligence gathering operations,
data analysis reports etc which today are fragmented or
scattered;

b) Create a common national database together with all law
enforcement agencies and departments involved in combatting
drug trafficking and other forms of organized crime and/or
enable effective use of existing databases;

c) Facilitate the operational activity of the investigation
agencies and departments by providing them with up to date
intelligence;

d) Establish a national central contact for the exchange and
sharing of information at an international level (ENFOPOL 58
p.3).

The national unit of each member state is allowed to allocate
at least one liaison officer to the EDU/Europol, with the
Management Board deciding by unanimous decision the number of
liaison officers allowed to each member state. It is the
responsibility of each liaison officer to represent the interests
of his or her respective national unit within Europol, and in
doing this they are subject to the national law of the seconding
state. Under these provisions therefore, the liaison officers,
in the current EDU phase, are all under secondment. Jurgen
Storbeck, as the Coordinator/Director of the EDU currently has
no formal authority over the ELOS, and the flow of information
is officially strictly on a bilateral basis, vertically between liaison officer and national unit, or horizontally between liaison officers.

The principal duties of the liaison officers or European Liaison Officers (ELOs) as they are officially known are:

a) to provide Europol with information and intelligence from the seconding unit;

b) forwarding information from Europol to the seconding national unit;

c) the provision of information and advice in the analysis of information concerning the seconding state.

In addition to these main duties, the terms of reference of the ELOs has been expanded to encompass a system of clustering whereby groups of ELOs are tasked to work together on various aspects of Europol's remit. The EDU's official response to the system of clustering has been in the past that it is merely an informal ad hoc meeting of ELOs with similar interests. When asked about this initiative Mr Valls Russell's (one of Europol's Assistant Coordinators) response was as follows: "there's no formal clustering in that sense. I think there are two aspects. One is, in taking some subjects it's been more on the basis of volunteers. If we're going to study stolen vehicles, we say, let's get in 2 or 3 ELOs with an interest from different countries, as you don't want 15 people round a table as a sub group. We just get a small group of people to take an interest. But it is not a formal thing. So it is not that France has been designated to be the king of the nuclear or something like that,"
although that might be appropriate just now." (Valls Russell 1995:)

Internal documentation however reveals that this is an official initiative by the organization itself. Appendix B3 of the EDU/Europol Intelligence Business Plan states that "In relation to gathering more expertise it is not only for the individual ELOs but also for the EDU as a whole and each National Bureau (NCIS) will profit from the various specializations of the ELOs" (p.14). Each team of specialists is lead by a coordinator who is selected by the team, the process of which is overseen by Colonel Bruggeman (Deputy Coordinator/Director). Each group coordinator is responsible for one specific speciality although they can participate in other teams as members. Each coordinator is required to present a working program (with time schedule) to Colonel Bruggeman.

Some of the criteria involved in allocating ELOs to specific clusters include:

a) The individual know how (special skills, personal experience etc) of the relevant ELO;
b) The crime situation in the sending state;
c) Crime risk (prognoses);
d) Number of ELOs per member state.

Some of the selected areas of cluster responsibilities are as follows:
A) External Threat (outside EU) Geographical Approach:
   i) Traffic by sea
   ii) Traffic by air
iii) Balkan route
iv) Eastern Europe
v) South American routes and Colombian cartels (cocaine)
vi) Far East, Middle East and South East

B) Internal European Thematic Drugs and Money Laundering Related Criminal Activities (product oriented, geographical or criminal organizational oriented approach):
i) Precursors/essential chemicals
ii) Money laundering
iii) Cannabis
iv) Cocaine
v) Heroin
vi) Synthetic drugs
vii) Hells Angels (involved in mobile criminality)
viii) Internal EU drug routes
ix) Chinese groups
x) Turkish groups
xi) African groups (eg Nigerian groups).

C) Specific Police Relevant Items:
i) Witness protection
ii) Calculations concerning the relation of drugs being seized world wide per year by drug enforcement agencies to the amount available on the illicit market
iii) Undercover operations
iv) Prices of drugs in the EU on the free market
D) Legal and Tactical Problems
   i) Competencies of law enforcement agencies
   ii) Methodology and working practices in both the fields of intelligence and operational activities
   iii) Effectiveness of intelligence resources plus recommendations for improvement
   iv) Other points of the planned general situation report.

E) Internal EDU Organization Related Items
   i) Coordination of training
   ii) Management of documentation and general information
   iii) File management
   iv) Intelligence
   v) Crime analysis

For each of the above listed categories the ELOs concerned are required to perform the following EU-internal police related duties:

a) Study, summarize and update themselves on the area of special responsibility;

b) Know exactly who and what other organizations are currently active in that area of responsibility;

c) Make an inventory of police project teams, special units or special groups of activities for that purpose in the member states;

d) Study national, bilateral and multilateral initiatives (e.g., Germany, the Netherlands and Belgium are setting up anti-drugs tourism strategies);
e) Participate at relevant meetings (by an ELO of the member state where the meeting is located, or by one for that item specialized ELO, or by a member of the directory board);
f) The gathered information on each relevant item (continuously updating of the list and the content is necessary) must be of direct use to study and to solve internal EU problems.

(ENFOPOL 58: 14-18)

It is uncertain, given the detailed development of ELO clustering, why members of the EDU management interviewed in the past have felt constrained to describe the process as nothing more than a loose talking shop for ELOs with similar interests. There are however two speculative reasons why this may be so. The first centres around the original constraints against the EDU/Europol having any form of operational capacity. It may have been feared that clusters coordinating intelligence with respect to specific groups (Chinese, Turkish, Nigerian), undercover operations, drug routes etc may cross the line between intelligence gathering/disseminating and coordinating operations. In light of Europol's increasing role as a coordinator of transnational operations, this constraint is now no longer valid. Secondly, in its EDU phase, the organization is specifically prohibited from holding personal information centrally. However it may be feared that the pooling of personal data within ELO clusters may be construed as infringing this restriction. Nevertheless, the existence and practice of ELO clustering, or project based work as it is more popularly termed, has been readily referred to and explained by ELOs throughout the
research, despite the reluctance of members of management to acknowledge its existence. In fact it has become a cornerstone of Europol's intelligence procedure, and is steadily increasing in importance as the organisation's remit grows.

5.3.3: WORKING LANGUAGES

In its current BDU phase, the organization has no official language. Inasmuch as the BDU has been described as a clearing house for the bilateral exchange of information (Valls Russell 1995), each ELO uses his/her native tongue when communicating with his/her national unit. When communicating with each other, the appropriate common language is used in each particular situation. Inevitably this is usually English but could just as easily be Dutch or French.

The designated working languages for Europol proper however are: English, French and German. This has been a source of controversy with the Spanish, during the deliberations leading up to the signing of the Convention, entering a reservation on Spanish being excluded from the internal working languages. While there has been no official complaints from the Dutch, there must also be a question mark over Dutch being excluded as a working language given that Europol is based in the Netherlands. It would have been unthinkable for French not to have been included as one of Interpol's working languages, given that it is based in Lyon, and the same consideration should surely be applicable to Europol.
Finally the French have, in the past, also entered a reservation on English being the sole language used in the storage of data and for information requests.

5.3.4: BUDGET AND FINANCING

The EDU/Europol is financed by contributions from member states based on the gross national product of each state for the year preceding the one in which the budget is drawn up, as well as any other revenue accruing to the organization. The Coordinator/Director is obliged to draw up a draft budget by the 31st March each year, and to submit it first to the Europol Finance Committee, which consists of one budgetary representative from each state, and then to the Management Board for approval. For its part, the Management Board requires a majority of two-thirds for the draft budget to be recommended. Once approved, it is then forwarded to the Council which also requires a two-thirds majority for the budget to be finally approved. The EDU's first budget for 1995 was 3.7 million Ecus.

It is also the duty of the Coordinator/Director to submit a report on the EDU's annual accounts by 31st May of the following year at the latest for an audit, which it is planned will be performed free of charge by the Court of Auditors of the European Communities.
5.3.5: OBJECTIVES AND TASKS

As laid out in the draft Convention the objectives of the EDU/Europol are to help improve the effectiveness of the member states in preventing and combatting terrorism, unlawful drug trafficking and organized crime where there is evidence that two or more member states are affected, and where the scale of the offence is sufficient to warrant a common approach. In addition to this, the EDU's Business Plan states the following:

A) Mission Statement: To make a significant contribution to the EU's law enforcement action in:
   i) combatting serious crime and
   ii) dismantling international criminal organizations.

B) Business Plan Objectives (1): To become the leading EU law enforcement centre by:
   i) achieving the most effective law enforcement cooperation;
   ii) being the focal point for information and intelligence exchange;
   iii) being the lead agency for crime analysis and intelligence analysis;
   iv) being the centre of excellence for law enforcement practices;
   v) being the centre of research and development of new law enforcement competencies and methodologies.
C) Business Plan Objectives (2): To achieve and maintain a dynamic common European spirit and a climate in which personnel are:
   i) well informed;
   ii) motivated;
   iii) responsible;
   iv) know that they are valued.

D) Business Plan Objectives (3)
   i) to maximize value for money;
   ii) to make the best use of available resources.

(Valls Russell presentation to the Bramshill Police Staff College 6th February 1995).

Article 3 of the Convention lists the organization's primary tasks as follows:
A) To facilitate the exchange of information between the member states;
B) To collect, collate and analyze information between the member states;
C) To notify the competent authorities of the member states without delay via the respective national units of information concerning them and of connections between criminal offences detected;
D) To support national investigations by forwarding all relevant information to the national units;
E) To maintain computerized collections of information;
F) To develop expertise in the investigative procedures of the competent authorities in the member states and to provide
advice on investigations;
G) To provide strategic intelligence to assist and promote efficient and effective use of national operational resources;
H) To prepare general situation reports.

Finally within the constraints of staffing and budgetary limitations, the EDU/Europol may also assist member states through advice and research in the following areas: training; organization and equipment; crime prevention methods; technical and forensic police methods and investigative procedures.

5.3.6: THE EDU/EUROPOL'S REMIT

As it's name implies, the primary remit of the Europol Drugs Unit is the combatting of drug trafficking and related money laundering activities. Because of the close relationship that generally exists between drug trafficking and organized crime, the latter has also been tacked on to the organization's remit despite the fact that no definition of organized crime is given in the Convention.

The vagueness of this term is emphasized by Tony Bunyan in Statewatch's publication on the Europol Convention: "The UK Home Office said in evidence to the House of Lords inquiry that: as in other European countries, our knowledge of the nature and scale of organized crime.......is at present largely descriptive. Criminal statistics in the UK, like in a number of other EU countries, are collected by offence and as there is no offence of committing an act of organized criminal activity...it is not
possible to identify amongst recorded offences those which result from organized crime. What appears to be happening is that recorded crimes are being re-assigned to this category on an ad hoc basis by EU police forces" (The Europol Convention, Statewatch 1995: 1-2).

At the Essen European Council summit in December 1994, the failure to ratify the Europol Convention was compensated for by the inclusion of the following offences in the EDU's remit: the prevention and combatting of crime connected with nuclear and radioactive substances; illegal immigration smuggling; motor vehicle crime (in particular trafficking to other states and theft of goods in transit), and once again illegal money laundering activities connected with these forms of crime.

Following protracted lobbying by Spain it was also decided that terrorism would be included, but only two years after the complete ratification of the Convention by all 15 member states. In the face of opposition from some member states, particularly the UK, Spain had long insisted that terrorism should be included in Europol's remit. How, asked Spain, could car crime be included while terrorism was excluded? Britain for its part has rigorously objected to the inclusion of terrorism in the EDU's remit. In evidence given to a House of Lords Select Committee on Europol, Mr Peter Wrench, head of the Home Office's F3 Division (Police Department), outlined the government's thinking in wanting terrorism excluded. Firstly in response to a question by Lord Slynn of Hadley on why terrorist offences were excluded he
replied: "Certainly the United Kingdom's approach in negotiating this Article has been firstly to concentrate on having a clear and effective way of expanding Europol's remit progressively so that we do not give it too much to do from day one so that it is overwhelmed, but we build up from the initial concentration on drugs and associated money laundering that the Europol Drugs Unit has started with. Terrorism raises particular problems, because Member States tend to have very specific domestic arrangements for dealing with it, that are not necessarily plugged into the same communication networks that deal with the other matters of drugs and organized crime that will be the initial focus. Europol will be essentially a police and customs organisation and, certainly looking at the way we are structured in the United Kingdom, dealing with terrorism in those sort of channels is by no means straightforward, so we have argued strongly that terrorism should not be one of the initial tasks of Europol" (House of Lords Minutes of Evidence 1994: 11-12).

Then in response to further probing by Viscount Colville of Culross as to why the transnational cooperation in fighting terrorism in the past could not be applied to Europol, he elaborated: "There are two points to that. Firstly, as you said, the communication between European agencies on terrorism is already very good and that is one of the reasons why we are saying it is not an initial priority for Europol. We have got the mechanisms there in place and they are working well, so why disturb them by making it an initial task of Europol. We have got the structure in the Convention that, having started on those activities described in the first sentence of Article 2(2), there
is then the mechanism described in the rest of that paragraph for the Council to decide to focus Europol's attention on the other forms of crime that are listed in the annexe to the Convention and, as you will see, the first on the list in that annexe is indeed terrorism, so the capacity is there for the Council to decide subsequently that either terrorism or specific manifestations of it should be assigned to Europol" (House of Lords Minutes of Evidence 1994: 12-13).

The inclusion of terrorism therefore represents a compromise between the concerns of Spain and the UK. On the one hand it opens the way for the organisation to deal with terrorism, but on the other, by bringing in this provision two years after complete ratification, it has effectively postponed this, possibly for several years.

Finally Europol's remit was again extended in a Joint Action that was formally adopted by the General Affairs Council on 24 February 1997 to include, the international trafficking in human beings, and the sexual exploitation of children (Statewatch Vol 7 No 2 1997: 3). In the intervening year since the EDU's remit was first expanded at the Essen summit, the organisation has been formulating procedures by which it may begin carrying out its responsibilities in the new areas of motor crime, illegal immigration networks, nuclear crime, and now international prostitution and paedophilia. The UK contingent of the Management Team has in the past taken the sceptical view that the extension of Europol's remit is nothing more than a convenient political tool. Where a clear criminal threat exists, it is politically expedient to be able to say: "we recognise the threat and we have
passed it on to Europol," irrespective of the fact that the organisation hasn't to date been given adequate resources or powers with which to deal with the added responsibilities" (Valls Russell 1995).

There has also been concern over the fact that the EDU's role can be drastically extended at a stroke without any reference to the European Parliament or national parliaments; a move which Jurgen Storbeck, in a talk given in Bonn in early December 1994, described as, "a legally and politically relatively simple extension of the Ministerial Agreement" (The Europol Convention, Statewatch 1995: 4).

The Convention also provides scope for substantial further extensions. Article 43.3 states:
However, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, may decide, on the initiative of a Member State and after the Management Board has discussed the matter, to amplify, amend, or supplement the definitions of forms of crime contained in the Annex. It may in addition decide to introduce new definitions of the forms of crime listed in the Annex.

The Annex to the Convention lists these additional crimes as being:

A) Against life, limb or personal freedom:

- murder
- grievous bodily harm
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage taking
- racism and xenophobia

B) Against property or public goods including fraud:
- organised robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling and fraud
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
- forgery of money and means of payment
- computer crime
- corruption

C) Illegal trading and harm to the environment
- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters.

Furthermore, Statewatch highlights the sheer breadth of offences that Europol can one day be empowered to deal with:
"If the forms of crime to be tackled are, in the main, obvious ones it is the breadth of "suspicion" allowed which must be a
cause for concern. It empowers Europol to gather, hold and distribute intelligence on what Article 3.2 defines as "related criminal offences":

- criminal offences committed in order to procure the means for perpetrating acts within the sphere of competence of Europol;
- criminal offences committed in order to facilitate or carry out acts within the sphere of competence of Europol;
- criminal offences committed to ensure the impunity [to exempt from punishment] of acts within the sphere of competence of Europol.

Whether or not a crime can be defined as a "related criminal offence" will depend on the varying definitions of the different police forces. For example, the UK could include conspiracy charges where there only has to be a belief that a person has conspired with persons unknown. The breadth of each "crime" is further extended in later Articles (Arts. 8 and 10)" (The Europol Convention, Statewatch 1995: 5-6).

It is difficult to ascertain whether the inclusion of such a range of offences is a further means of political expediency (in that areas of threat can be conveniently passed across to Europol), or a means of delineating a list of future transnational 'European' crimes, that a future operational Europol will be responsible for. The recent development of common European definitions for racist offences and organised crime suggests that this may be the case. What is certain is that the option of Europol moving into even some of the areas listed in the Annex would require a far greater investment in resources
than is now apparent. The juxtaposition of these grandiose ideas with the current reality of the Coordinator having to publicly call for greater resources, shows the need for Europol to be properly funded, resourced and empowered before any further incremental responsibilities are added to its remit.

5.4: ACCOUNTABILITY

5.4.1: CURRENT SITUATION

The Coordinator/Director is directly accountable firstly to the Europol Working Group, then to the K4 Committee, and ultimately to the Justice and Home Affairs Council (JHA). In reality there is currently a multifaceted system of accountability in that each ELO is accountable to his or her own national unit and ultimately to the Interior Ministry. Since its inception, there has been considerable controversy over the perceived lack of accountability and transparency of Europol. There has been little or no public debate or information about the organisation, and the British public generally know nothing of its existence. This stands in direct contrast to the highly politicised levels of debate on police accountability generally during the 1980s. Lord Morris, during a House of Lords debate on Europol quite aptly noted that, "I suspect that the average British citizen, if asked, "What is Europol?" would probably tell us that Europol is some kind of French parrot!" (House of Lords Select Committee Minutes 1993: 1352)
Europol has been conceived, debated, initiated and developed in some secrecy. The organisation has in the past been restricted from disseminating any information about itself, even when that information may be acquired elsewhere, and members of staff have in the past been in the ludicrous position of having to await Statewatch publications and Internet files to acquire information re the EDU's development. Paradoxically, the organisation is, in one sense, happy with the prevailing level of secrecy, as they see it as an advantage in combatting organised crime. The less that is generally known about the organisation's existence, the better the surprise factor in acquiring strategic intelligence and turning it into tactically viable operations.

5.4.2: THE EUROPEAN PARLIAMENT

As early as 1992, the Belgian Member of the European Parliament (MEP) and rapporteur, L. van Outrive, in a motion for a resolution on the setting up of Europol called for, "The European Parliament and national parliaments to be intensively involved in deciding the objectives, powers and instruments of Europol and of the European Information System." (European Parliament - Report of the Committee on Civil Liberties and Internal Affairs on the setting up of Europol, 26 November 1992: 6) Unfortunately the EP has been denied any substantial role or powers in monitoring the EDU/Europol.

Early drafts of the Convention gave the EP the right to be informed of Europol's activities via the President of the (JHA)
Council, who is in turn obliged to forward an annual report to the EP. The EP, for its part, had the prerogative to raise questions and to express its opinion, and the Director (of Europol) in turn was obliged to make a statement within one month to the Presidency of the Council on questions by the EP to the Council regarding Europol's work.

These minimalist provisions ensured that the EP, as the only directly elected European body, was effectively excluded from exerting any control over Europol. This fact was emphasized in the Memorandum by Liberty (The National Council For Civil Liberties) to the House of Lords Select Committee on the European Communities: "We would only note that the provisions in Article 31 for keeping the European Parliament informed represent the bare minimum that the Council could offer without being in breach of its obligations under Article K.6 of the Treaty on European Union; such indeed was the advice given by the Council's Legal Service in 1993. Despite that, press reports have indicated that attempts were made in the latest negotiations to erode even this nominal involvement. As an indication of the scant regard paid to the views already expressed by the European Parliament, few of the 26 recommendations made in the 1992 report on the subject were incorporated into the draft Convention. Since Article K.6 TEU makes no mention of consulting national parliaments, they are simply assured in Article 31(6) of the draft that the rights of the European Parliament are without prejudice to the rights of national parliaments. This is clearly grossly unsatisfactory, since no elected body will have effective power
to control Europol. The Home Office suggestion of an annual report would in our opinion be quite inadequate." (Liberty 1995: 14-15)

Despite these nominal provisions, Liberty's suspicion of attempts to further erode the involvement of the EP proved to be well founded. The Convention that was eventually signed in 1995 merely requires the Council Presidency to forward to the EP each year, a special report on the work of Europol. The right of the EP to be consulted is now limited to any future amendments to the Convention. In terms of accountability therefore, the EP is obliged to fall back on the provisions of Article K.6 of the TEU. Inasmuch as this article was effectively ignored during the negotiation stages of the Convention (with the EP not being consulted but merely sent a copy of the drafts for its view - The Europol Convention, Statewatch 1995: 9) and in light of a general failure to adopt most of the EP's recommendations, it is unlikely that the TEU on its own will rectify the accountability deficit that exists with Europol.

5.4.3: ACCOUNTABILITY AND NATIONAL PARLIAMENTS

The Europol Convention will enter into force 3 months after being completely ratified by all 15 member states. While it is expected that the remaining 14 states will ratify by the end of 1998, ultimately the only choice facing national parliaments will be either to ratify or not to ratify. They will have no power to amend it in any way.
As for the UK, it was the first state to ratify the Convention. The reason for this dispatch however was that there was very little parliamentary debate on the issue. This lack of parliamentary scrutiny was foretold by Tony Bunyan, the editor of Statewatch who stated:

"Under the archaic "Ponsonby rules" the Convention will be "laid" before Parliament by listing it in the daily Order Paper and if no MP objects it can be formally ratified by the UK state 21 days later. Arthur Ponsonby, an Under - Secretary of State at the Foreign Office in the Labour Government of 1924 gave an undertaking during the second reading of the Treaty of Peace (Turkey) Bill on 1st April 1924, that the House of Commons would in future be informed of all treaties and agreements and that they would be "laid" before the House for 21 days. This minor concession to parliamentary accountability - in an area where the government exercises the royal prerogative on behalf of the monarch - remains the constitutional position to this day. Most other national legislatures have written constitutions giving parliaments formal powers to ratify treaties and agreements. Parliament will only discuss the issue if enough MPs are able to get a debate inserted in the agreed parliamentary timetables of the front benches." (The Europol Convention, Statewatch 1995: 2)

This lack of parliamentary accountability is further exacerbated by the fact that whereas Article K.6 TEU at least gives the European Parliament the right to be consulted, no mention is made of this right being applicable to national parliaments. Parliamentary accountability is therefore left to
the constitutional requirements (or lack thereof) of each individual state.

In keeping with Tony Bunyan's prediction, the UK was the first state to ratify the Convention in December 1996 (Statewatch Vol 6 No 6 1996: 16-17). While this has been held up by the Home Office as an example of the UK's 'good European' credentials, it is in reality only vindication of the relative lack of accountability of the British parliamentary system.

5.4.4: THE EUROPEAN COURT OF JUSTICE

Throughout the deliberations and negotiations for the signing of the Europol Convention, it has been the adamant view of all member states, with the exception of the UK, that the European Court of Justice (ECJ) should have a prominent role in interpreting the Convention. The UK, for its part, has favoured the collective responsibility of national parliaments, a dedicated arbitral tribunal for dealing with grievances against Europol and the Joint Supervisory Body (dealt with in the section on data protection).

The true reasoning behind this opposition has been the UK's determination to keep all organizations and processes under Title VI of the Maastricht Treaty completely intergovernmental. Consequently it has campaigned to squeeze out all Community institutions with supranational qualities and characteristics. The European Commission has been granted observer status only, the role of the European Parliament, as mentioned earlier has been emasculated, and ECJ involvement has been successfully
hampered until a compromise was reached allowing the UK to effectively opt out of ECJ jurisdiction. Under this compromise, "any member state can make a declaration to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Europol Convention," (Statewatch Vol 6 No 4 1996: 21-22) thereby leaving the UK free to avoid usage of the ECJ.

This point was emphasized by a top Home Office official, who in highlighting the UK's objection to involvement by another Community institution, this time the Court of Auditors stated: "The United Kingdom favours the second option (i.e the setting up of a special joint committee to carry out auditing functions) really on the same general basis of not wanting to import a role for a Community institution into Title VI activity unless there is particular reason for doing so." (Evidence taken before the Select Committee on the European Communities, 23 November 1994: 36)

As with the Court of Auditors, the UK put forward what it called other options, and what the other member states referred to as ploys to exclude the ECJ. These included the granting of the European Court of Human Rights in Strasbourg the responsibility for deciding disputes and the use of Article 182 of the Treaty of Rome 1957 likewise for the solving of disputes. Both options were rejected for varying legal reasons.

In response to British intransigence, and despite the signing of the Convention, several states such as the Netherlands, Belgium, Luxembourg and Germany indicated that the Convention would not be laid before their respective parliaments for
ratification until such time as the outstanding issue of the ECJ's role was resolved. Eventually a compromise was reached whereby each state was allowed the right to decide whether or not to use the ECJ. This was in effect a fudge that allowed the UK to retain its opt out, but which leaves unanswered the arbitral procedure for cases that involves disputes between the UK and other member states, or UK and Europol.

5.4.5: THE HEADQUARTERS AGREEMENT

Article 37 of the Convention lays down the requirement for a Headquarters Agreement to be signed between the EDU/Europol and the Netherlands which will cover the accommodation and facilities to be provided for Europol in the Netherlands. The Headquarters Agreement will require the unanimous approval of the Management Board and although negotiations are currently nearing a conclusion, to date the agreement has still not been signed.

One aspect that has now entered the negotiating equation is the perceived need for the organisation as well as the liaison officers to be afforded diplomatic status. This has arisen because of the differential in status between the ELOS and the DLOs who are attached to their home embassies in the country in which they are posted, and all have First Secretary status. This has the twofold advantage of giving the DLOs immunity from prosecution as well as added authority when requesting the allocation of resources.
5.5: DATA PROTECTION

5.5.1: CURRENT SITUATION

At present, because the EDU is not allowed to own central databases or to hold personal data, as with accountability, there is a multifaceted system of data protection. In essence, the data protection legislation and provisions of each member state applies to their respective liaison officers. Because the EDU management describes the organisation as nothing more than a clearing house for bilateral cooperation, these arrangements have been adequate for the first few years of the EDU's existence. However the Convention lays down very specific data protection provisions and since its signing, the EDU has been engaged in preparatory measures in anticipation of the future ratification of the Convention when its data protection measures will take effect. In the interim however, the EDU is once again having to operate in an ad hoc manner.

5.5.2: THE JOINT SUPERVISORY BOARD

The Joint Supervisory Board (JSB) will be an independent body consisting of no more than 2 representatives of each national supervisory body (in the case of the UK, the Data Protection Agency) who will be responsible for ensuring that the processing of personal data by Europol does not infringe upon the rights of the subject. It will also be tasked with supervising the retrieval of data by liaison officers and the general supervision
of the operation of Europol with regard to the processing of data so as to ensure that the provisions of the Convention are complied with.

For its part, Europol will be obliged to assist the JSB in carrying out its remit and in accordance with this it must if requested:

a) supply the information that the JSB requests;
b) give it access to all documents and paper files as well as access to the data stored in the system;
c) allow it free access at any time to all of Europol's premises;
d) carry out the JSB's decisions on appeals.

The JSB will have the right to make complaints to the Director of Europol on any violations it detects of the Convention's data protection provisions, and the Director, on receipt of a complaint, must both reply within a time limit decided by the JSB, and keep the Management Board fully informed of the entire process.

The JSB will however be substantially limited in its power to effectively control Europol in terms of data protection. While the Director will be obliged to answer complaints against the organisation, the JSB will have no power of enforcement. It will not be able to order Europol to correct its files or ensure non-violation of the Convention's provisions. Nor will it be able to place restrictions on the transfer of data to third states or third bodies (The Europol Convention, Statewatch 1995: 8).

Finally the JSB will be required to draft regular activity
reports. While the Management Board will be entitled to give an opinion, the decision as to whether or not to publish these activity reports will reside with the JSB. The JSB will also be entitled to be consulted on the part of the Europol budget which affects it, and its opinion must be annexed to the relevant draft budget.

5.5.3: NATIONAL SUPERVISORY BODIES

Each member state is required by the Convention to designate a national supervisory body whose task it is to monitor, independently and in accordance with its respective national law, the permissibility of input and retrieval of data and any other communication of personal data to Europol by the member state concerned, and to examine whether this violates the rights of the data subject. This supervisory body will have access via the national central unit (eg NCIS) to the data bank of the (Europol) information system for this purpose. In this respect, the national supervisory body also supervises the activities of its respective liaison officers, and for this purpose will have access to the offices and documents of the respective liaison officers.

Each individual has the right to request his/her respective national supervisory body to examine the permissibility of input of data into the information system and of any other communication of his personal data to Europol, as well as the retrieval of data by the member state concerned. This right must be exercised in accordance with the national law of the member
state to the national supervisory body of which the request is made. The national supervisory body is obliged to inform the person making the request in general terms of his right to appeal to further supervisory bodies.

5.5.4: INFORMATION EXCHANGE TECHNIQUE

The EDU/Europol's information exchange system is based on the following network:

a) ELOs in the Hague (working places linked in a LAN);
b) External mail facility through the server;
c) Access control/encryption and modem equipment;
d) Public telephone network;
e) Member state access control/encryption and modem equipment;
f) National mail working station within the NCIS.

(Valls Russel Presentation, 6 February 1995)

5.5.5: EUROPOL'S DATA SYSTEM

Articles 6 and 7 of the Convention stipulate Europol's requirement to establish and maintain a computerised information system into which member states and Europol can directly input
and from which they directly extract data. The system will consist of 3 tiers, these being:

a) An information system which will contain data put in by each national unit and their ELOs, and accessible to the ELOs and Europol's staff;

b) A system of work files which contain the product of analysis carried out by Europol which can be disseminated in the form of intelligence packages;

c) An index system which will allow an enquiring party to ascertain whether or not an item of information is stored, and what files are of concern to him/her. The enquirer will not however be able to determine from the index, connections or any further conclusions.

Under the Convention, Europol's computerised system is prohibited from being linked to any other computerised system other than the automated processing systems of the various national units, although there are already moves to remove this restriction, and link the system, when it comes on line, to the Schengen Information System, Interpol, and the World Customs Organisation.

Access to the second tier of work or analysis files is to be restricted, and it was on the thorny issue of access to this tier that the Convention was prevented from being signed at least a year earlier than it was. France, in opposition to virtually every other member state, wanted national units to have ready access to both tiers of data including the contents of analysis files. This point was spearheaded by the then French Interior
Minister Charles Pasqua, who held up the signing of the Convention for several months on this point. In connection with these demands 'The European' quoted one source as saying, "If France gets its way, Europol files would be circulated in more than a dozen countries. That invites trouble through tip offs to criminals or simply through careless talk. It is an elementary rule of police work that when you are planning a 'bust' which could put officers' lives at risk, nobody - not even a senior officer - is told anything except on a need to know basis." (The European, 'France In Isolation On Europol' 28 October - 3 November 1994)

In any event France did not get its way and the work files tier of the Europol computer system will remain restricted in accordance both with the historical complaint about Interpol's lack of security, and the EDU's stated wish, in the interests of operational efficiency, to remain as secret as possible.

5.6: THE EDU'S TRACK RECORD

5.6.1: USE MADE OF THE EDU TO DATE

Despite a slow start, the EDU was increasingly used by national units of the EU during its first year (1994). The number of requests for information rose from 146 in the first half of 1994 to 449 in the second, totalling 595 requests for the year. An example of the number of requests made by certain states in the first half of the year as opposed to the second are as follows:
- Germany was up from 16 to 104
- Belgium from 5 to 103
- France from 49 to 66
- the UK from 3 to 62
- Portugal from 3 to 22.

These figures increased dramatically in 1995 with the EDU processing 660 requests in the first six months of that year alone. (Statewatch, The Europol Convention 1995: 4)

5.6.2: OPERATIONAL SUCCESSES

Apart from the routine processing of requests, and information exchange, Europol fairly quickly moved into the coordination of operations and investigations across Europe. Because it houses liaison officers from all 15 EU states under one roof, it was ideally placed to develop into a facilitator of transnational operations and investigations that involved more than 2 member states. It therefore became an ideal central meeting point for police officers and investigators from across the EU.

By the end of 1995, the EDU had coordinated approximately 44 operations across Europe which included several controlled deliveries of drug consignments. The Director/Coordinator of the EDU, Jurgen Storbeck, believes that the organisation can effectively fill a vacuum in the fight against international gangs, which runs rings around national police forces whose powers stop at their territorial borders. Examples of the EDU's operational successes are as follows:
1) In a typical case, German customs officials called the EDU after they found 100 kg (220 pounds) of marijuana stashed in a lorry crossing from the Czech Republic to France and the Netherlands. The driver did not know he had been discovered, but the German police could delay him for only two hours before his suspicions would have been aroused. Within that time, the EDU was able to win permission from German authorities for the drugs to be brought into the country, and it lined up eight surveillance teams from three different countries to trail the lorry to its destination.

2) Belgian police were conducting observations on a drugs laboratory and were on the point of raiding it when they noticed a car with Italian number plates in the vicinity. Checks on the conventional databases in Italy, Belgium and Interpol revealed nothing. However, still harbouring suspicions, the Belgian officers, as a last resort, asked the EDU for assistance. A rapid conference was organised by the Belgian ELO and his counterparts at the EDU in the Hague. As the Belgian police were constrained to raid the laboratory within two to three hours, speed was of the essence. Within an hour a German ELO was able to reveal that the car was connected to an Italian mafia gang in Munich. Armed with this information the Belgian police were able to hold off long enough to make the eventual raid more productive in terms of the quality of persons arrested and evidence gathered.

3) In 2 similar drug surveillance operations, one in Marseilles and the other in Denmark, the local police quickly found
themselves out of their depths with enquiries streaming off in about 5 other member states in both cases. In both instances, the ELOs of France and Denmark first called a meeting of the ELOs of the countries concerned. This was immediately followed up by a meeting of the investigators from the various other countries, which was chaired by the ELO of the lead country. Out of these meetings came a coordinated plan of action for simultaneous operations in all the countries concerned, as well as provisions for feedback and follow up meetings. The important aspect of these cases however was that it involved not just the respective liaison officers of the EDU, but investigators as well which further blurred the distinction between intelligence gathering and operational intervention.

4) Finally in another instance, a consignment of drugs was found on board a Greek ship in a Greek harbour. As per usual, no member of the crew had any knowledge of the consignment, and as it was impractical to arrest the entire crew, the Greek national unit asked the EDU for assistance. The EDU was able to furnish information that 3 members of the crew, apart from having previous convictions for drug dealing offences, were of particular interest due to their connections with certain associations. This information gave the Greek authorities a base from which to start their investigations.
5.7: CURRENT SITUATION

To date (March 1998) the member states which have ratified the Europol Convention are the UK, Denmark, France, Spain, the Netherlands, Portugal, Finland and Sweden. Germany, Austria and Ireland have completed the parliamentary ratification process, but have not as yet delivered the ratification instruments to the Secretariat General of the Council in Brussels. The remaining states, Belgium, Italy, Luxembourg and Greece have yet to complete their parliamentary ratification processes. (Statewatch Vol 8 No 1 1998: 21) Inasmuch as there must be a time period of three months between the deposition of the ratification instruments of the last ratifying state, and the coming into being of Europol proper, it now seems unlikely that Europol will become operational before the end of 1998.

However there is the suspicion that the information system will not be ready for use when Europol becomes functional. Stage 1 of the development, which dealt with the framework of the system, has been completed, and stage 2, which deals with the software requirements was conducted throughout 1997. A questionnaire was disseminated to all the member states in the early part of 1997, following which, Europol personnel along with representatives of the supplier Unisys, were due to visit each member state in summer 1997 to help agree a common framework of user needs. In the interim a number of specialised groups were set up including:

a) Group Europol: which is in charge of the "strategic direction" and includes experts from the member states;
b) Project Committee: this is headed by the Coordinator/Director of Europol and consists of "police and information technology experts" from the 15 member states as well as the Commission;

c) Project units: these consist of a "project coordination" unit, a "quality assurance" unit, and a "project support" unit;

d) A series of permanent committees and ad hoc sub groups: these cover areas such as data protection, user needs, data security, training etc. (Statewatch Vol 6 No 2 1996: 21)

However at the current pace of developments, it seems highly unlikely that the information system will be ready for a projected start in late 1998. In fact a report prepared for the General Affairs Council on 26-27 February 1996 estimated that the Europol computer system would not be ready until mid 1999! This has been followed up by a report given by Jurgen Storbeck to the European Voice in which he stated that the Europol computer system will now not be ready until the year 2000. (Statewatch Vol8 No1 1998: 21) This means that even after ratification, Europol may be obliged to continue operating on its current bilateral system of information exchange for quite some time.

Nevertheless it is the area of the macro level that the most challenging developments to Europol are taking place. A number of proposals emerged from the 1996 Intergovernmental Conference, as well as subsequent summits which included the following:
1) Proposals to incorporate the Schengen Treaty into the Treaty on European Union. At present only the UK and Ireland have not signed up to the Schengen Treaty, and the proposals suggest that as a preliminary move, the Schengen Secretariat should be incorporated into the EU Secretariat, and the Schengen decision making powers, which do not require national ratification, should be co opted into the third pillar.

Such a development would mean that in addition to a vertical intelligence system in the Europol information system, Europol would also have access to a horizontal information system in the form of the Schengen Information System.

2) Proposals to incorporate the third pillar into the first. Such a move would mean that the supranational institutions of the European Union would, for the first time, have a direct input into the workings of justice and home affairs. The Commission would have the power to initiate legislation or to draft directives, and the European Parliament would have much closer powers of scrutiny of the workings of justice and home affairs. It would also have the power of co-decision on the passing of any legislation in this area. Finally the European Court of Justice would have the power of jurisdiction over such legal instruments as the Europol Convention.

3) The EU-US Summit of 3 December 1995 laid the foundation for a new global role in combating transnational crime for the EU and by extension Europol. The Joint EU-US Action Plan was signed by President Clinton and the then President of the European Council
Felipe Gonzalez (Spanish Prime Minister). One of the main planks of the plan termed "Responding to global challenges" stated:

"We are determined to take new steps in our common battle against the scourges of international crime, drug trafficking and terrorism. We commit ourselves to active, practical cooperation between the US and the future European Police Office, Europol. We will jointly support and contribute to ongoing training programmes and institutions for crimefighting officials in Central and Eastern Europe, Russia, Ukraine, other new independent states and other parts of the globe." (Statewatch Vol 6 No 1 1996: 21)

This initiative is complemented by others such as the Barcelona Declaration which came out of the Euro-Med Conference of 27-28 November 1995, which among other things, aims to strengthen cooperation between the EU and Mediterranean, Maghreb and Middle Eastern states on illegal immigration, drug trafficking and terrorism, the Interregional Cooperation Agreement (Mercusor) of 15 December 1995 between the EU and the countries of Latin America, which is also aimed at increasing cooperation in the fight against drug trafficking and money laundering, and the P8 Declaration of 12 December 1995 which sets out a raft of measures aimed at increasing the effectiveness of cooperation against terrorism (the P8 states are: the USA, the UK, Canada, France, Germany, Italy, Japan and Russia). (Statewatch Vol 6 No 1 1996: 20-22)

4) The remit of the EDU was extended again at a Council of Ministers meeting on 16 December 1996 to include trafficking in
human beings. This mandate includes not just international prostitution but paedophile rings as well. Within 3 years of its coming into existence therefore, the EDU's remit has increased from drug trafficking and associated money laundering activities to include the following crimes:

a) organised crime
b) trafficking in stolen vehicles;
c) trafficking in nuclear substances;
d) illegal immigration networks;
e) international prostitution;
f) paedophile networks;
g) money laundering activities connected with any of the above;
h) terrorism: to come into effect 2 years after the Convention is ratified and Europol proper comes into existence (although moves are currently afoot to have it incorporated immediately upon ratification).

5) A decision was reached at the Dublin Summit of 13-14 December 1996 to the effect that: "Europol should have operative powers working in conjunction with the national authorities to this end." (Statewatch Vol 6 No 6 1996: 16) This statement was further clarified in an action plan that was adopted at Justice and Home Affairs Council meeting on 28 April 1997, and was agreed at the European Council Summit in Amsterdam in June 1997. The new Treaty allows that:

a) Europol be enabled to facilitate and support the preparation, coordination and carrying out of specific
investigations.... including operational actions of joint teams (with Member States) comprising representatives of Europol in a support capacity. However the precise meaning of these provisions in terms of executive powers was not specified.

b) Europol be allowed to ask Member States to conduct investigations in specific cases.

c) "One or more suitable legal instruments be drawn up to enable Europol to "entertain" cooperation and liaison with "third countries and international organisations" including the Commission, Interpol and the World Customs Organisation (WCO)." (Statewatch Vol 7 No 2 1997: 2)

6) The new Treaty has also laid out plans for the following:

a) the creation of new bodies to coordinate judicial and prosecution policies as well as the formulation of a working European guideline towards defining the offence of organised crime;

b) authority for "competent authorities" to operate in another member state;

c) the harmonisation of laws on arrest, charging and sentencing.

As with other provisions, the precise nature and workings of these new powers were not elaborated.
7) Finally the EU and the FBI have jointly introduced a plan for the development of a global system for the surveillance of telecommunications. The proposed system deals specifically with the powers of law enforcement agencies to intercept communications such as phone calls, e-mail and faxes. A list of "requirements" of both the FBI and the EU include the following:

a) Law enforcement agencies require access to the entire telecommunications transmitted, or caused to be transmitted, to and from the number or other identifier of the target service used by the interception subject;

b) Law enforcement agencies require a realtime, fulltime monitoring capability for the interception of telecommunications. (Statewatch Vol 7 No 1 1997: 1-3)

This raft of initiatives suggests that within the space of three years, the initial concept of Europol as purely an intelligence exchange agency re drug trafficking offences has changed almost out of all recognition. What is instead emerging is the framework for an extensive supranational internal security network, that will also have the power to deal outside the limits of the EU with other states and international agencies. It is a development that has as much resonance for the future of the nation state and its sovereignty as the single currency, with the exception that these developments have not attracted the
attention that the single currency has.

These initiatives however are macro level developments that are being imposed from the top down. The same can also be said of Europol's centralised mode of information/intelligence exchange which forms the basis of this thesis's research question. The data collection and analysis aspect of this research however will concentrate on the bottom up response to the centralised mode of information exchange so as to ascertain whether the priorities of police agencies at the national and regional levels of the targeted states are in congruity with what has been imposed from the top down. The results of the following four case studies will then be used to gauge whether there is a functional need at the meso and micro level of the policing of transnational criminality to justify the developments that are taking place at the macro level.
CHAPTER 6: GERMAN CASE STUDY

6.1: BACKGROUND

The German case study, as well as the other case studies of this thesis, will seek to establish how closely each unit conforms to the centralised mode of information exchange upon which Europol is based. In doing this, each case study will examine the criteria governing the exchange of information from the regional to the national levels as well as from the national to the international levels. In addition to this, each study will also examine other areas which impinge upon the national unit's ability to conform to the centralised mode of information exchange. In each case study these will consist of data protection as well as operational considerations.

6.1.1: The German Federal System:

Federalism has been described as "a system of government in which central, regional and local authorities are linked in a mutually interdependent political relationship; in this system a balance is maintained so that neither level of government becomes dominant to the extent that it can dictate the decisions of the others, but each can influence, bargain with, and persuade the others" (Wistrich 1994, p.99). The roots of the current system of federalism in Germany are grounded in the previous policies of the Nazi government which concentrated on the
suppression of regional and local autonomy, and the promotion of strong centralism as facilitated by the Reich Reconstruction Law of 30 January 1934, which transferred all sovereign powers still held by the Lander (states) to the Reich. Allied post-war policy became a reaction against the centralising tendencies of the Nazis, and was aimed at the drafting of a democratic federal constitution which would give rise to a form of government which protected the rights of the Lander, through administrative decentralisation and dispersal of power.

The German system of federalism revolves around the existence of two levels of government - national and regional - with constitutionally protected divisions of power between either level. The federal state consists of member states which each has its own constitution and government, which must adhere to the general principles laid down in the Basic Law. The relationship between the Bund or Federation and the member states or Lander is one of equality, whereby the Lander voluntarily surrender a measure of power and autonomy to the Bund. The Bund for its part cannot disestablish the system or institute changes without the consent of the Lander, and is obliged to exercise restraint in any tendency towards a greater centralisation of power, so as not to undermine the status and authority of the Lander.

A rough consensus appears to exist by most commentators (such as: Wistrich, Vile, Lijphart, Elazar, Burgess and Zimmerman) on the basic characteristics and principles of federalism. These include, apart from a written constitution, decentralised government and devolution of powers, and a division of
legislative competence between central and regional governments. This division of competencies raises the issue of compatibility with the current institutional tendencies within European police cooperation towards greater centralisation. The intelligence led centralised mode of information exchange as encompassed in Europol, mandates that each state's national unit maintains a monopoly on contacts with the supranational organisation. Yet when this system is superimposed on a federal state in which the constituent states all have theoretical autonomy and equality with the federal state, there is the potential for greater decentralisation than is allowed for in the Europol Convention.

6.1.2: The German Police And Judicial System

The German judicial system is based on the federal structure, and while the Constitution (Grundgesetz, GG) provides a guiding and correcting function with respect to criminal procedure, the central sources are the Code of Criminal Procedure and the Judicature Act (van den Wyngaert 1993: 137-138). The judicial system is an inquisitorial one in that less emphasis is placed on the rules of evidence and more importance is placed on acquiring and determining the facts. Consequently, the judge plays a more active part than in common law jurisdictions and possesses wide powers so as to ensure that all the facts of the case are acquired. After the judge the most pivotal judicial actor is the public prosecutor, whose roles include the launching of prosecutions and conducting the process of investigation. While there is a federal prosecutor who is accountable to the
Ministry of Justice, each Lander also has its own prosecutor's office, which is hierarchically organised from the "prosecutor general", who acts directly under the authority of the minister and has competence in the area of a high court, down to the district prosecutors who are locally attached to the district court and are subordinate to the prosecutor general (van den Wyngaert 1993: 141).

The police are also aligned with the federal structure. The following police services operate at the federal level:
- The Bundeskriminalamt (BKA) ie the Federal Criminal Police
- The Federal Border Guard (B.G.S)
- The Transport Police
- Police Officers attached to the Federal Parliament for protection/security purposes

Each Lander also has its own police structure that includes forces, regulations and codes. Each Land force is divided into four branches as follows:

a) The Schutzpolizei or 'Schupo' which comprises the uniformed constabulary.

b) The Kriminalpolizei or 'Kripo' which comprises the criminal investigation units but also includes a central criminal intelligence agency known as the Landeskriminalamt (LKA) and is the state counterpart of the BKA.

c) The Bereitschaftspolizei or 'Bepo' the remit of which includes specialist public order support functions.

d) The Wasserschutzpolizei or river police (Benyon 1994: 27)
Both the federal police and the state police forces are accountable to the Federal and State Ministries of the Interior respectively. However as an auxiliary body of the public prosecutor, the police often also come under the authority of the Ministry of Justice. This situation is in keeping with the habits of other continental states such as the Netherlands, whereby, in the interests of democratic accountability and to avoid an excessive concentration of powers, the policing and judicial functions of the state are devolved to more than one ministry, a practice which can sometimes have the effect of blurring the lines of responsibility.

6.1.3: The Bundeskriminalamt

The German Bundeskriminalamt (BKA) came into being with the drawing up of the "Law Concerning the Establishment of a Federal Criminal Police Office (Bundeskriminalamt) - BKA Law" in 1951. This law was in keeping with the Basic Law of Germany which states that as a federal state, while sovereignty in police matters rests with the states or Lander, the Federation has exclusive legislative competence over "the cooperation of the Federation and the States....in CID matters" as well as over "the setting up of a Federal Criminal Police Office and international crime control" (Article 73 (No.10)). The constitution therefore authorises the Federation to set up, by way of federal legislation, "central facilities for police information and communications for criminal police" (Article 87 (1)).
The BKA was initially established in Hamburg on the site of the previous Criminal Police Office for the British Zone of Occupation. However from May 1952 onwards the BKA was gradually transferred to its new location in Wiesbaden. With an original staff of approximately 395 personnel, of whom 192 were detectives, the BKA's principal role was to be the central office for the collection and analysis of all information and documents of interest to the CID function and, in this respect also for the electronic data network jointly operated by the Federal and State authorities (Article 2(1)(No.1) BKA Law). It is noteworthy that although the BKA was embedded within a federal structure, it did not at first possess executive powers, but restricted itself instead to the centralised collection and analysis of information. It was only on rare occasions that BKA officers conducted investigations, and then only on behalf of the Federal Minister of the Interior or on request by a State Criminal Police Office.

By the mid 1960s however, the need for the BKA's expansion became obvious. The Law Amending the Law Concerning the Establishment of a Federal Criminal Police Office (Bundeskriminalamt) of 19 September 1969, and the Second Law Amending the Law Concerning the Establishment of a Federal Criminal Police Office (Bundeskriminalamt) of 28 June 1973 clarified and solidified the BKA's remit in the 1951 BKA Law of fighting against criminal elements who are, or may be expected to become active beyond State or national borders. The effect of the 1969 and 1971 amendments was to extend the BKA's
responsibility for the police side of prosecuting criminal offences where:
- an appropriate State authority so requests, or
- the Federal Minister of the Interior so orders

Furthermore the 1969 amendment also enabled the BKA, on request or at its own discretion, to send officers in individual cases to support the State detective forces or to assign, in agreement with the judiciary and the appropriate State authorities, the investigation to one particular State where the ramifications of a given case extend beyond the territory of a single State.

In addition, the 1973 amendment conferred the following responsibilities upon the BKA for prosecution of cases involving:
- internationally organised trafficking in arms and ammunition
- internationally organised trafficking in explosives
- internationally organised trafficking in narcotics
- internationally organised production or distribution of counterfeit money
- offences against the life or freedom of the Federal President, members of the Federal Government, the Bundestag, the Federal Constitutional Court or of guests of the constitutional institutions.

6.1.4: The Landeskriminalamt

In accordance with the sovereignty of the Lander in police matters, and also to ensure cooperation between the Federation and the Lander, each Lander is required by law to maintain its own central criminal police department which is tasked, among
other things, with providing the BKA with the information and documentation necessary for the performance of its functions. It is also incumbent upon each State to provide its LKA with the appropriate personnel and equipment to enable it to fulfil the responsibilities specified in the BKAG. The States are allowed autonomy, however in deciding the structure and organisation of their respective LKAs, and the definition of responsibilities in the BKAG likewise does not preclude the Lander from assigning additional responsibilities to the LKA as they see fit. The Lander have all taken advantage of this opportunity although their main function remains the dissemination of information to the BKA and the acting as a conduit between the BKA and local police officers.

6.1.5: Computer Systems

In 1972, an information and retrieval system was created for all the police forces in the Federal Republic of Germany. This system, called INPOL, was an electronic police information system, run on a joint basis by, and with the work divided between, the Federation and the States, with the BKA as the central office. The input, up-dating, and retrieval of information takes place decentrally at the State level as well as at the BKA, thereby ensuring that the data is as up-to-date as possible. Police services have the ability to directly input their current information into the INPOL system, thus avoiding time-consuming message channelling. Seconds later this intelligence is available to all authorised services. According
to its working principle, INPOL is therefore a passive retrieval system in that what goes in is what comes out. There is no capacity for analysis and it only offers information as to whether a certain person is wanted by the judiciary or police if specifically queried to that effect.

Every police officer can directly access INPOL's "wanted" information, which is subject to parallel storage in the computers of the BKA and of the State police forces. Many police installations in the Federal States, at border crossings, and in airports are equipped with visual display units, on which enquiries to the computer are entered via a keyboard, and the responses appear within seconds. Besides these screen-type terminals, telex machines also hooked up to INPOL computers are in operation as further "branches" of the INPOL system. In addition, mobile portable radio terminals are in use. These mini versions of the stationary terminals permit direct dialogue with the computer over the air waves.

Besides pertinent grounds for action, a prerequisite for the INPOL system to release any wanted-person information is proper user authorisation, which the computer automatically checks before it gives the desired response. This constitutes one of the many data protection as well as data security measures which are features of the INPOL system.

Where immediate access to the INPOL "wanted" files is not possible via direct data telecommunications (police offices without terminals, field units on patrol without radio terminals), queries are transmitted via telephone, voice radio or teletype to local or regional centres equipped with terminals.
An important sub-system of INPOL is the PIOS system, which is a specially protected database, access to which is only via the terminal-computer link. The strict confidentiality requirement of the data held on the PIOS system means that it can be categorised as embargoed information, which means that transmission of the data held on this system to external sources is very strictly controlled and as such, there will be very strong reservations about the future Europol information system having a direct computerised link to it. Within this sub-system there are secondary sub-systems such as APOK, APIS and APR. The APOK system particularly deals with information on persons, objects and institutions relating to organised crime. This system is specifically used in conjunction with special State anti-organised crime units.

The usage of APOK however can affect the flow of information from the local to the State/LKA level due to the fear of the LKA taking over the operation. For example if the local police of Tübingen, which has approximately 300 thousand inhabitants, is dealing with an organised crime case, they are obliged to report the relevant information of the case to the APOK system. However in reality they don't, as to do so, would mean informing the LKA of their operation. With its extra resources, the LKA can hand pick the interesting cases to take over, and this leads to a dichotomy that research interviews have revealed exists at all levels of policing in Germany. While the decentralised computer systems such as INPOL, PIOS and APOK allow for access to greater resources, there is always a tension between these extra
resources on the one hand, and losing operational control on the other. The potential effect of this can be that the APOK system sometimes does not acquire the information on organised crime that it needs to adequately fulfil its remit.

6.2: INFORMATION FLOWS

6.2.1: International - National Information Flows

The national - supranational flow of information between Germany and Europol is based on a centralised mode, both from the top down and from the bottom up. From a top down perspective, Article 4 of the Europol Convention obliges each EU state to establish or designate a national unit to perform the following tasks:

1) Supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
2) Respond to Europol's requests for information, intelligence and advice;
3) Keep information and intelligence up to date;
4) Evaluate information and intelligence in accordance with national law for the competent authorities and transmit this material to them;
5) Issue requests for advice, information, intelligence and analysis to Europol;
6) Supply Europol with information for storage in the computerised system;
7) Ensure compliance with the law in every exchange of information between themselves and Europol.
From a bottom up approach, the designation of the BKA as Germany's national unit is in keeping with its sole jurisdiction in international cooperation. BKA Law allows the BKA to pass on personal details to police and judicial authorities and other public departments responsible for the prevention and prosecution of offences and to international and supranational organisations likewise responsible for the prevention and prosecution of offences. The BKA is also allowed, with the permission of the Federal Ministry of the Interior, to make non-personal data available for automatic retrieval by the central police authorities of other countries for the purpose of tracing property (property searches). The BKA is also empowered, at the request of a competent authority of a foreign state, to circulate details in a wide range of areas such as:

- missing persons and minors
- persons wanted for extradition
- the identification of a particular person

In all cases, the responsibility for the admissibility of the transmission lies with the BKA, and it is obliged to record in all cases the transmission and its grounds. Despite the sovereignty of the Lander in policing matters, the BKA is under no obligation (particularly in relation to the communication of data to Europol) to comply with Land Law simply because the data was originally collected by the Land. In keeping with the emphasis on the centralised control of information flows, data is therefore transmitted to Europol exclusively under federal law and the applicability of federal law is consequently linked to
the BKA's central headquarters function irrespective of the source of the data.

The BKA therefore has the exclusive right to official liaison with foreign police and judicial authorities. The only exception to this rule is in connection with the border areas and the Federal Border Police, and this exception is governed by agreements between the Federal Minister of the Interior and the highest Land authorities. Even in this respect however, the border police are still constrained, where circumstance permit, to liaise through the BKA. In other cases, the BKA must at least be notified of any liaison activities.

Inasmuch as the BKA officially has a near monopoly on the transmission of data outside of Germany, it is also its responsibility to decide on which channel of communication to use. These may include the four main channels of international police cooperation, these being: Interpol; the Europol Drugs Unit; Schengen and the Drugs Liaison Officer (DLO) network. However depending on the case and circumstances, other channels may be utilised such as formal bilateral contacts, NATO, foreign armed forces etc. This near monopoly on international contacts ensures that this complicated field of activity which is dependent on a variety of national and international laws and agreements, is kept under centralised control. This is also in keeping with the BKA's role of maintaining a strategic overall control on the development, analysis and dissemination of intelligence between the sub-national and the supranational levels.
Thus it can be seen that the criterion upon which information is passed between the national and the supranational levels is officially based very firmly on legislation, both from the top down in the form of the Europol Convention, and from the bottom up in the form of the BKA Law. However the research has revealed that this is not the only criterion on which the decision to pass (or not to pass) information to the Europol Drugs Unit is made. Other criteria affecting the flow of information from the national to the supranational level can be categorised as those factors which encourage as opposed to those factors which hinder the exchange of information.

Those factors which encourage the flow of information are as follows:

1) Familiarity: Inasmuch as Germany has eight ELOs posted to the EDU, and because of the extensive contacts that have been developed at all policing levels across the country, police officers in Germany feel increasingly comfortable in bringing a problem that has international characteristics to their ELOs. This of course has repercussions on the entire system of centralised control that Europol is founded on, but this issue will be explored in a subsequent section.

2) Speed: Europol places much store by its growing reputation for speed of response. Because all ELOs are housed under the same roof, and always within easy reach through pagers etc, the response times to requests for information, assistance etc has been impressively quick. This is diametrically opposed to Interpol which has suffered in the past due to its lack of speed.
Europol claims via its Coordinator, Jurgen Storbeck, and several of the ELOs interviewed during this research, to be able to, and to have in the past, mounted a controlled delivery operation in one hour, and because of this, police officers, faced with tactical emergencies, requiring quick responses, are increasingly turning to Europol for assistance.

This speed however may be construed as a function of the limited range of requests that the organisation currently receives a year. The EDU currently processes approximately 1500 requests a year, whereas the BKA can receive 1500 requests a day. A senior source in the BKA voiced his belief that it would break down completely were it to be faced with 15,000 requests a year, instead of only 1500. However, for the moment, speed of response represents an important criterion affecting the decision to pass on information to the EDU.

3) Language: From a German perspective, a common setback with Interpol is the fact that German is not one of the organisation's official languages, although this is somewhat offset by the fact that German liaison officers are posted to Interpol. This in turn tends to have a further effect on the speed of Interpol's response as communications have sometimes to be translated. This is not a problem faced by the EDU, as German police enquiries can be directed to German ELOS. This is therefore another criterion that affects the decision-making process as to when to use the EDU.

Conversely, the factors which hinder the exchange of information between the BKA and the EDU are as follows:
1) No operational status: This was a recurring factor throughout the research. A senior source within the BKA voiced what is a common opinion that an error was made with Europol from the very inception of the idea. From a German perspective, there are other agencies that can do, and have been doing the EDU's current job. For example the Drug Liaison Officer network was responsible for the organisation and coordination of controlled deliveries prior to the EDU. There are numerous bilateral arrangements that cover cross border operational contingencies. Some of these outlined during the research included: the German - Italian Working Group on Organised Crime; the German - Russian Working Group on Organised Crime; the German - American Organised Crime Working Group etc. Also from an information exchange perspective, most of the BKA's international business has historically been conducted via Interpol anyway (at present the figure stands at in excess of 90%), despite its disadvantages. Within this respect, Interpol has a distinct advantage in being global, whereas the EDU is only European, and does not include Switzerland, which is of significant importance to the German police.

It is therefore felt within German policing circles, that in its current state, Europol could have more effectively been a European NCB (National Central Bureaux, which is the Interpol contact point in each member state) within Interpol. However it is felt that this option was rejected because European governments wished to put police cooperation increasingly on an intergovernmental footing, and this could not be achieved within the framework of Interpol which is seen to be a private police
organisation. However there is the belief that Europol's ability to add value is limited by the fact that there are already institutions in Europe performing its function. To truly add value, Europol must have the powers and resources to complement national initiatives by adding a supranational layer of investigative and operational competence.

2) Allied to the above point, an additional impediment to the flow of information to the EDU, is the growing evidence of duplication between it and other agencies such as Interpol and the DLO network. In the absence of a specific department which allocates the appropriate channel for a particular enquiry, investigation etc, decisions are invariably the responsibility of the respective case officer. This can lead to a deficiency in coordination, as one caseworker may not know what another one is doing.

Another area specifically identified as being particularly prone to duplication, is the production and dissemination of strategic situation reports. While there have been moves to deal with this problem, especially with respect to Interpol and EDU representatives having observer status in each others' working group meetings, there is still a marked similarity in the content of 'sitreps' from the two organisations. In addition, there is as yet little evidence of coordination between the DLO network and the ELOs so as to avoid duplication.

Consequently, German officers can feel that the EDU, in its current state, is of little use to them, particularly in relation to the quality of the 'sitreps' and analysis packages. One source
within the BKA who liaises with the EDU made the astonishing claim that the flow of analysis packages have mostly been from the BKA to the EDU, rather than the other way round as intended. The Europol Situation Report on Drugs for 1995 gave very detailed explanations of the main drug routes into the European Union, facts that are already well known. A common criticism however was that the 'sitrep' did not give concrete intelligence that could be operationally useful. For example the Balkan route, the Golden Crescent, the use of Nigerian couriers and transit countries etc are all well known and well documented. What is increasingly being called for is viable intelligence and analysis packages that allow major operations to be launched.

One factor that has been constant throughout the examples listed of the criteria that encourage or hinder the passing of information to the EDU is the emphasis placed on the tactical relevance and usefulness of information flows between the national and supranational levels. It is virtually an axiom of policing at whatever level, that police officers are primarily interested in the most direct route to the solving of offences and the prosecution of offenders. Examples given of liaison between the BKA and the German ELOs would include a routine request for information (these routine requests were stated by one interviewee as being in the interest of not allowing the EDU to starve) concerning a stolen vehicle, stolen property, a wanted person or suspect etc. The request would be passed on to the relevant liaison officer at EDU headquarters, who would in turn contact the relevant ELO from the state that may be able to assist in the enquiry. This ELO would then acquire the necessary
information from national databases, and then convey this information to the requesting ELO, who would in turn relay the information back to the BKA. However the number of such cases a year averages around one hundred only, compared to the thousands of similar cases that are handled annually by the other main channels: Interpol; Schengen; the DLO network and bilateral contacts.

While it must always be borne in mind that Europol is currently labouring under the handicap of not as yet having a ratified Convention that will allow the storage and use of personal data, it is questionable whether the removal of this impediment will significantly change the over-emphasis on the tactical at the expense of the strategic. As stated in chapter 6, the access that the ELOs have to the personal data on their national databases, and the fact that this information is routinely shared horizontally within the organisation, negates the argument that the EDU is unable to develop fully a strategic overview in Europe due to its not being allowed to store personal data. The revealing remark of the need to pass information to Europol in the interest of not allowing it to starve, tends to re-emphasise the point that within a German context, a non-operational Europol is of little use to German policing at the national-supranational level.
6.2.2: NATIONAL - REGIONAL INFORMATION FLOWS

Section 3 of the BKAG (BKA Law) requires the Lander to set up central headquarters (Landeskriminalamter) to act as intermediaries between the BKA and the central investigation police in the Lander. The Lander are also required by law to provide the LKA with the appropriate personnel and equipment to enable them to fulfil the responsibilities specified in the BKAG, particularly with reference to the flow of information. As no conditions are laid down for the structure and organisation of these regional offices, the Lander are allowed autonomy in these areas.

The definition of responsibilities in Section 3 does not preclude the Lander assigning additional responsibilities to the LKA, and as such, all the Lander have taken advantage of this possibility and therefore cooperation with the BKA is often only part of the LKA's work. Nevertheless one of the main tasks of the LKAs remains the passing on of information to the BKA that is necessary for the performance of its functions.

While the 1951 BKA Law laid down the obligation of the federal states to create central offices, the power to decide on the necessity and the extent of the information/material to be passed on to the BKA was not regulated by law. The 1973 amendment went some way towards clarifying the situation by enumerating the tasks of the BKA, and by extension the cases in which the transmission of information to the BKA would be required. However there still exists a shortfall in transmission criteria, with the BKA constantly having to strive to make up for the missing
prerequisites and authorisations, by means of cooperation and coordination with the State police authorities, in order to discharge the functions assigned to it in the best possible way.

In this respect, an important role is played by the meetings of the "Working Group of the Heads of the State Criminal Police Offices with the Federal Criminal Police Office (CID Working Group)" under the chairmanship of the BKA President. Through the exchange of experience and the forming of opinions which takes place there, CID questions and problems affecting the relationship of the Federation to the Federal States and the States among each other are solved by mutual consent. In this way therefore, with respect to important areas of law enforcement, binding structures and methods have been developed for the entire German system of criminal investigation. Despite the difficulties arising from the intricacy and lack of uniformity of the structures and responsibilities of police authorities at the State level this system has enabled the criminal investigation process to achieve a sufficiently high level of proficiency without which the smooth interaction of Federal and State authorities in crime control matters would be impossible. Guidelines serving this aim have been issued for example for the entire exchange of police (crime) information, for federal crime statistics, the maintenance of central collections and file indices, dealing with missing persons, narcotics and counterfeit offences as well as in the field of combatting terrorism.

The criteria therefore for passing information up to the BKA is divided between formal legal requirements, and quasi-formal
cooperation between the BKA and the LKA. Other crucial factors however, revealed during the research, are the play-off between the extra resources that become available when a case is taken over, either by the LKA or the BKA, and the traditional police fear of losing control of a case. Examples were given of areas such as Bavaria and Baden Wurttemberg, which are quite wealthy, and therefore possess the resources to deal with most large cases themselves. In areas such as these there is greater reluctance to share competence with the BKA. However, in poor areas such as Hamburg, lack of resources means that there is a greater likelihood of large, manpower intensive operations being passed over to the BKA. Therefore resource variance plays an important part across Germany, in deciding when competence is passed over to the BKA.

This tension between gaining extra resources, and losing control can be better understood within the context of the ambiguity of the law and quasi-official procedure relating to the authority of the BKA over the LKA. As already mentioned, the BKAG obliges the LKA to pass on information within the confines of the BKA's remit. The BKA also has the right to exercise the police function in the field of criminal prosecution if:

a) requested to do so by a competent Land authority or;
b) ordered to do so by the Federal Minister of the Interior on serious grounds or;
c) requested or ordered to do so by the Federal Public Prosecutor.
In such circumstances, the BKA may give the competent LKA instructions for cooperation. However, in all such circumstances, immediate notification must be given to the highest criminal justice and police authorities in the Lander that the BKA has taken over responsibility for a particular case or cases, and in addition either the Federal Public Prosecutor, or the Chief Public Prosecutor for the area in question, must be notified where he is responsible for the conduct of the investigation. In support of these powers, the BKA may also second officers, and local police are obliged to provide the BKA, and any officers it has seconded, with all necessary information and allow them access to all relevant files.

These powers therefore seem to indicate on the one hand that the federation via the BKA has the power to decide the rules for criminal police cooperation as it wishes. On the other hand, the federalist structure of the Federal Republic essentially prohibits intervention by federal authorities in the areas of sovereignty reserved for the Lander (such as policing functions). The BKA's right to instruct police authorities in the Lander would therefore require the consent of the Land concerned or would need to be clearly and unambiguously set out in the Basic Law. Inasmuch as this is not the case, it is difficult to set out a relationship of seniority or subordination between the BKA and the LKA. The BKA is therefore clearly not the "command centre" of the German criminal police structure, but judging from the major part of its tasks and activities, a "service pool" for crime control by the police although due to the socially harmful
impact of the crimes concerned, special emphasis is placed on the law enforcement functions performed by its own staff.

Within this context, the BKA can be construed as being more in the centre of the field of tension between State sovereignty and Federal authority than virtually any other agency. As it has no organisational substructure at the State level, it is dependent on the support and cooperation of the State forces in fulfilling its tasks, to whom as a rule the BKA has no right to give directions. The BKA's specific function, resulting from the country's structure as created by the constitution, leaves no room for considerations aimed at extending its investigative, or other executive powers. This answers the repeated question regarding the creation of a centralised detective force for the entire federal territory. The BKA is therefore keen to demonstrate that it is concealing no ambitions to limit State sovereignty over the police. Consequently, Germany's decentralised policing system that has the BKA as the central office is an example of cooperative federalism in a democratic federal system. This in turn has important implications for the centralised system of cooperation as represented by Europol.

6.2.3: DIRECT CONTACTS BY LKA WITH THE EDU:

Despite the centralised mode of information exchange upon which Europol was founded, the Federal Council petitioned the German Federal Government, during the negotiation of the agreement to set up Europol in 1993/94, for the senior authorities of the
Lander to be allowed to exchange information directly with Europol. This request was based primarily on the constitutionally guaranteed sovereignty of the Lander in policing matters allied to the fact that most of the data passed on to Europol by the BKA would have been obtained in the Lander.

In a letter to the chairman of the IMK dated 5/6.10.94, the Federal Minister of the Interior, Mr Kanther, stated that with regard to the liaison officers, in his view the draft Convention would present no obstacle to the request for direct information links between the LKA and the German liaison officers. While it was true that the Convention did not provide for direct contact between the ELOs and the competent national (i.e. Land) authorities, inasmuch as the links between the ELOs, as a kind of outpost of the national (Land) department and the authorities in the Member State were essentially subject to national law, these links would in practice be organised for implementation within the country. Thus there would be no objection to the LKA contacting the BKA's liaison officers at Europol direct in an emergency, for instance to expedite enquiries, as long as the BKA, as the national authority, was notified at the same time.

Mr Kanther also went on to state that he would welcome the recruitment of experienced Land officers as ELOs on secondment to the BKA.

This position was followed up by a statement by Mr Lintner, the Parliamentary Secretary of State at the 678th meeting of the Federal Council on 16.12.94, in which he re-iterated the Federation's understanding that German ELOs would be drawn from the Lander, and that in emergency cases, the LKA would be
empowered to contact German ELOs directly. However these concessions were emphasised as being internal German solutions only that were not entitled to be incorporated into the Europol Convention.

Out of these and similar statements came a set of basic principles which said the following:

1) The direct exchange of information between the Landeskriminalamt and the German Europol liaison officers is permitted in order to assist in preliminary investigations and transmit supplementary information for analysis, where it is necessary to expedite matters or no national coordination requirement can be established for the applicant department;

2) The BKA must at all times be kept informed of any direct contacts;

3) The German liaison officers at Europol are to be recruited from national and Land officers in an appropriate ratio. Land officers appointed as Europol liaison officers will in principle be seconded to the BKA and sent from there as ELOs, making the Federation responsible for the costs incurred, since the Land officers would in effect be working, via the BKA, on behalf of the Federation.

4) Communication between the ELOS and the higher authorities in the Member States (Land) would be mainly via e-mail, as this system would have the advantage that the BKA (as the technical contact point) can be kept informed through the automated copying of the material. However this does not preclude the use of conventional channels of communication such as telephone, fax or
telex, as long as the usual provisions for notifying the BKA apply.

The provision that allows direct contact by the LKA with the EDU has been sanctioned by the Ministry of the Interior, and has become known as 'special treatment'. It has had the net effect of causing each LKA to be considered as a national unit in its own right. Furthermore, inasmuch as Germany in effect has seventeen national units, input of information by one LKA to Europol becomes binding on all other LKA, in the sense that not only is it directly accessible, but each LKA becomes responsible for the use and protection of the information.

However the participation rights of the Lander have not been confined to the issue of direct liaison with the EDU. In a letter to Mr Kanther, the Federal Minister of the Interior, the chairman of the Standing Conference of Interior Ministers and Senators for the Lander, Mr Alwin Ziel, made the case, based on the constitutional guarantee of Land sovereignty over internal security matters, for participation rights for the Lander in the organisational structure of Europol, with particular reference to the Board of Administrators. Mr Ziel's argument was based not only on the amendment to the Basic Law allowing incorporation of the Maastricht Treaty into German law, which allowed participation of the Federal Parliament and the Lander in European Union affairs, but also a supplementary agreement between the Federal Government and the Governments of the Lander that further solidified the Lander's cooperation prerogatives in EU affairs.
In his reply dated 7 November 1994, Mr Kanther agreed with this line of argument that Lander participation rights were both valid and necessary. However, the main hindrance lay in the fact that the composition of the Board of Administration allowed for only one representative from each member state. However, taking into account the fact that each member of the Board was also to be represented by a deputy, a number of alternatives were considered:

1) The Board could be composed of two voting representatives from each of the member countries, in which case the Federation and the Lander could each appoint a representative. Since at the moment however, Article 24 of the Europol Convention allows for only one representative per member country, either the provision or the Article would need to be amended accordingly.

2) As Article 25 no.3 allows members of the Board to be represented by deputies, the Federation and the Lander could alternate as member and deputy.

3) The member of the Board could be regularly appointed by the Federation and a Land representative could act as deputy.

It was decided that taking into account the importance of the Lander participating in the Board's meeting, the last option would be the most appropriate. A way round the requirement for each state to only have one representative on the Board could be circumvented by allowing the Land representative to accompany the representative as an expert, a provision allowed for under Article 25 no. 5 of the Europol Convention. In this way therefore direct Land participation with Europol has been extended from information exchange to include representative functions such as:
- participation in the extension of Europol's objectives;
- participation in amendments to the agreement;
- participation in the enactment of data file regulations etc.

6.2.4: DIRECT ACCESS FOR JUDICIAL AUTHORITIES:

In addition to direct access for the LKA, at an early stage in the negotiations of the Europol Convention, the majority of the judicial authorities of the Lander, in some Lander by agreement with the department of the interior, requested direct access to the Europol database for the Public Prosecutors' Offices. This request was made by the Ministries/Senators of the Interior of the Lander, as part of the general request for direct LKA access to the Europol information system.

The Federal Prosecutor also took the view that such a link was necessary. It was argued that, since crime, and in particular organised crime, was becoming increasingly international, the rapid transmission of relevant information was increasingly important for the Public Prosecutor's Office. For that reason it did not appear sufficient for only the BKA and the LKA to be authorised to retrieve information from Europol. Ultimately the Public Prosecutor's authority to control criminal proceedings would be undermined to an unacceptable extent if access was denied.

Since it had been established in the Brussels negotiations that it would only be practicable for the Europol Convention to provide for on-line access to Europol data for one national department in each Member State, the federal government offered
the LKA an INPOL contact point via the BKA at the request of the Lander.

The judicial authorities in the Lander agreed to this arrangement if it could also be used by the Public Prosecutor's Offices. The BKA would not be assigned a supervisory role in any existing preliminary investigations, in so far as it had to decide on its own initiative which information was to be passed on and handed over. In existing preliminary investigations only the competent Public Prosecutor's Offices would be authorised to take charge of the preliminary investigation.

The judicial authorities explained that the request for access by the Public Prosecutors' Offices to the data stored at Europol, related only to pending preliminary investigations and therefore the data could only be retrieved or passed on by the Public Prosecutors' Offices if they were considered locally to be of use in furthering the investigation.

At its 678th meeting on 16.12.94 the Federal Council passed the following resolution on the Council's draft legal instrument for the preparation of the agreement to set up a European Police Office (Europol), Council doc. 8074/1/94 - Doc. 909/94, with regard to access by the judicial authorities of the Lander to Europol information:

"The national department must also be required to pass on requests from central police and judicial authorities in the Lander to forward information and requests, and the information supplied by Europol for those authorities, immediately and without amendment".
This in effect reiterated the view that the judicial authorities already had access to Europol via the BKA. While the Federal Ministry of Justice endorsed the request by the judicial authorities of the Lander, the Minister of the Interior, in a letter dated 7.11.94, to the chairman of the standing conference of Ministers/Senators of the Interior of the Lander, stated that he was unable to comply with the request for on-line access to the Europol information system. He went on to express the view that permission for on-line access to police information systems by Public Prosecutors' Offices had always been refused unanimously by the Federal and Land internal affairs departments because the information system contained prevention as well as prosecution data. The authority of the Public Prosecutors' Offices to take charge of specific investigations could not imply an entitlement to have access to police systems in general, and it was precisely for this reason that the Public Prosecutors' Offices did not have direct access to the INPOL system. The general principles would therefore remain intact in that the competent judicial authorities would retain access to the Europol information system data through the LKA or the national department for prosecution purposes. In keeping with Article 3 para. 1 no.3 of the Europol Convention Europol is likewise required to notify the competent authorities in the member states (including the judicial authorities) of any information relating to them and any connections between offences that come to light without delay, via the national departments specified in Article 4. This together with the provisions of the BKA Law, ensures
that information of relevance to the judicial authorities in the Lander is passed on via the national department.

6.3: RESULTS OF ABOVE DATA:

This research has been based around two basic premises:

a) that Europol has been based on a centralised mode of information exchange, which for an intelligence lead approach, is the most viable option.

b) that tactical interests increasingly impinge on strategic considerations.

In the first instance, it is possible to theorise that the centralised system of information/intelligence exchange instituted by the Justice and Home Affairs in the form of the Europol Drugs Unit, was and is fundamentally incompatible with the German federal system. While this centralisation is on the one hand necessary for the central unit to obtain all the information necessary to the development of strategic analysis packages, on the other, in the context of international cooperation in fighting serious crime, the fast and comprehensive transmission of relevant data is also vital. The imposition of a monopoly on the national unit's right of contact with a supranational body, on a federal system in which the constituent states have a constitutionally protected autonomy in policing matters creates the prospect of tension between Federal necessity and state rights. This therefore leads to an incompatibility that applies not only to the German brand of federalism, but also to
any other political system in which the federal rights of regions or states are constitutionally protected.

Consequently, the Länder were successfully able to petition and gain the right to not only have direct contact with the EDU, but also the right to be considered on an equal level to the national unit, to the extent that Germany is now considered as having seventeen national units as opposed to just one. What has emerged in a very short space of time, is the replacement of the centralised mode by a qualified centralised mode, in which the BKA still has a monopoly in terms of international liaison, but the Länder also have a qualified right of international liaison as well, within specified parameters.

These parameters chiefly revolve around the requirement upon the LKA to keep the BKA abreast of all information flows, contacts, intelligence exchanges, investigations, operations etc that are being conducted or negotiated directly with the EDU. In this way, the BKA can maintain its strategic overview, while the LKA can pursue its tactical goals. The wheels of this process are continuously smoothed by the decentralised nature of the INPOL system, which allows access by officers at all levels.

The emergence of the qualified centralised model suggests that within the context of a vertical system of police cooperation/integration as encapsulated by Europol, it is impractical to concentrate on strategic matters at the expense of tactical considerations. Länder participation demands were based, not on behalf of the BKA's remit, but in the interests of furthering its own regional and local tactical priorities. The initial iteration of the inevitable encroachment of the tactical
upon the strategic is in evidence here. Further evidence can be surmised from the criteria uncovered which contributed to or hindered the exchange of information/intelligence. The main criteria discovered are as follows:

a) legislation
b) quasi formal cooperation agreements
c) familiarity
d) speed
e) relevance
f) language
g) resource variance
e) fear of losing control

In most of these criteria, the over-riding concern is that of tactical utility. Inasmuch as it is axiomatic of the police to take the most direct route to solving crimes and prosecuting offenders, the governing principle in the exchange of information from the local and regional perspective is one of reciprocity. What do police officers at these levels benefit from sharing information with the EDU, in terms of their own policing priorities? Most of the criteria listed have some bearing on the emphasis on self-interest. Speed of response, relevance, the ability to converse in one's own language, which itself increases speed, the fear of the LKA, BKA or EDU taking over and enjoying the acclaim for a successfully completed operation, all can have a drastic impact on the viability of a centralised, hierarchical intelligence oriented system.

Within the context of the area of information flows, it can be seen where the original iteration has fairly rapidly evolved into
another permutation that can be termed a qualified centralised mode of information exchange. However, only the area of information flows has been considered up to this point. It is therefore necessary to compare other elements of the case against this revision, to see what effects they have on it.

6.4: DATA PROTECTION

6.4.1: INTERNATIONAL - NATIONAL LEVELS:

The BKA is allowed to communicate personal data to international databases on the proviso that the recipient state has ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data or that similar protection is guaranteed, and a supervisory authority exists for the independent monitoring of data protection. Personal data therefore may not be transmitted if there is reason to believe that this transmission would contravene the purpose of German law. It may also not be transmitted if it would be prejudicial to the interests of the party to be protected, particularly if appropriate data protection standards are not guaranteed in the recipient country.

Data protection restrictions such as this, have been one of the main causes for the delay in getting Europol proper up and running. The ability to hold personal data at a supranational level would require adequate data protection regulations that would have to take national DP laws into account. The inability to hold personal data, pending the ratification of the Europol
Convention has meant that the organisation has been labouring under a significant handicap in attempting to fulfil its remit in terms of producing strategic analysis packages. In the interim, the EDU as the forerunner of Europol proper, has been exchanging information on a bi-lateral basis with national laws applying in each instance. However, taking into account the fact that two EU states have had no DP laws for much of the EDU's existence, German ELOs have been exchanging data with ELOs from these states on the fairly nebulous grounds that the only prohibition lies in not being able to transmit data from the German computer system to the computer system of the state with no DP regulations. However the passing of information directly from ELO to ELO by means other than computer to computer transfer is perfectly admissible.

Despite the means used to circumvent transmission restrictions, German data protection law affects the exchange of information by proscribing the exchange of data, from computer to computer, at the supranational/national level. This differs significantly from the Schengen Information System, which allows greater freedom of input horizontally between participating states. Even within the vertical exchange of information in Germany, significant flexibility is permissible via the INPOL system, which allows input and access by officers at all levels. German ELOs therefore can access/input information via the INPOL system from/to all policing levels in Germany, and also from/to different states in Europe via the SIS. However they are restricted in making direct terminal to terminal transfers of
data by the dictates of German national data protection legislation.

The German Data Protector has also, in the past, displayed his ability to affect the transmission of information to the EDU. Following a visit to the EDU, he laid down instructions that all non-terminal exchanges (i.e. fax, telephone etc) must be encrypted, or conducted via closed systems. He periodically visits the BKA every two years, inspects all relevant aspects concerning data storage and transmission, such as reports, new data installations, the APOK system, all project based data etc, and makes a subsequent report outlining his findings and any applicable recommendations. For example, on one occasion, in relation to an INPOL flag on a prominent travelling gypsy criminal, the Data Protector ruled that the designation of the term 'gypsy' on the INPOL system was illegal and accordingly instructed that this designation be removed, which it was.

Other DP related factors which affect the exchange of information include the use to which information will be put. The police are allowed to transmit data to policing authorities for use in the fighting of crime. However, this information is not allowed to be used by the judicial authorities of the receiving states such as state prosecutors, or as evidence in court. This distinction reflects the division of competencies in some European states between the Ministry of the Interior's policing functions, and the Ministry of Justice's judicial functions. In instances such as these, other channels of judicial cooperation such as letters of request and Commission Rogatoires must be used. The German Constitutional Court has also afforded the
German citizen the right to decide, in certain circumstances, if personal data about him/her should be passed on. While there are exceptions and exemptions for some state institutions such as the police, in general, the German police are often still obliged to at least inform subjects of data transmissions that information about them has been passed on.

Finally, the BKA is responsible for the admissibility of all its data transmissions. It must record the transmission and its grounds, and all recipients of personal data must be informed that the data may only be used for the purpose for which it was provided. They must also be informed of the deletion date specified for the data at the BKA.

The data protection criteria therefore which governs the exchange of information between the supranational and national levels may be summarised as follows:

a) The remit of the BKA. Inasmuch as the BKA is only tasked with dealing with certain types of serious criminal activity, it can only hold data as pertains to its remit. This in effect limits the types of data that the BKA is allowed to hold, and by extension to pass on to other states;

b) The existence of data protection legislation in the receiving state, although this stipulation only applies to the transmission of data from one computer to another;

c) The use being made of the information. Data may be used for policing activities, not judicial;

d) The physical security of the data;

e) The inappropriate use of physical characteristics such as race.
The last two points also hold equal relevance at the regional and local levels.

6.4.2: NATIONAL -REGIONAL LEVELS:

Every Land has its own data protection law, as well as its own Data Protector, so that in effect Germany has 17 data protection laws and 17 Data Protectors. In the transmission of information from one Land to another, or from one Land to the BKA or to Europol, the law of the transmitting department is the law applicable. While at one level, data that is passed on to Europol by the BKA is done so under federal law in keeping with the BKA's headquarters function, within the context of Germany's internal relationship, data protection responsibility is divided between the Federation and the Land.

Therefore the data protection responsibility for the data passed to Europol, or later stored in the Europol information system, lies with the department inputting the data; in particular it is responsible for ensuring that the data has been lawfully obtained, that its input is admissible, that it is accurate or current, and also for determining and checking the storage periods and deleting the data. In addition it is responsible for the application of the reservations on use and the restrictions on disclosure to third parties. Only the department which inputs data is entitled to amend, correct or delete it, and the decision by the competent department on input into the Europol information system is binding on other departments of the Federation and Land.
The national federal department is tasked with checking the technical accuracy by means of mechanical assessments of plausibility and justification, although the LKA may if necessary make appropriate checks also. If the national federal department considers that other personal data stored by the Lander in INPOL or other data files should be input or passed on to Europol, it asks the inputting department in the Land to check, and the competent Land department then checks, having regard to the legal conditions.

The same data protection conditions apply for the transmission of other Europol data files, such as personal data/documents for analysis etc. The competent departments in the Lander are again responsible for data protection, accuracy, admissibility etc, and the national department for its part, must immediately notify the competent Land department concerned re any request from Europol for the transmission of data/documents for analysis and also of the results of any evaluations and analysis. Where it is intended to pass on data held by the Lander from data files by data line or data copy, this must be agreed with the relevant Land departments. Personal data is not allowed to be communicated if there is reason to assume that it would jeopardise the purpose of obtaining the data, in particular the success of current enquiries or the safety of a person. Theoretically, all restrictions on use must be complied with. Also, the inputting department is responsible, where necessary, for informing persons concerned or data subjects, of the storage of data.
6.4.3: DIRECT LANDER PARTICIPATION IN SUPERVISORY BODIES

Article 22 of the Europol Convention stipulates that an independent joint supervisory body is to be set up (at the European level), which will be tasked with reviewing the activities of Europol with respect to the use and processing of personal data, among other things, to ascertain whether data protection rules are being contravened. Article 21, in like manner states that each member state is required to designate an independent national supervisory body which, subject to national law, assesses the admissibility of the input and retrieval of data to and from Europol, as well as the compliance of national liaison officers with national data protection regulations. This national supervisory body also acts as the national contact point for enquiries by persons concerned.

At their 48th meeting on 26/27.9.94 the data protection officers for the Federal government and the Lander took the following decision on the data protection responsibility of the Lander:

"...the agreement must be in line with the constitutional allocation of responsibilities for the police in the Federation and Lander. The practical responsibility for data processing must, in so far as the data is obtained from authorities in the Lander, remain with the Lander. This does not detract from the BKA's jurisdiction and powers as the national authority for the exchange of information with Europol.

...The data protection officers expect the German side to clarify the responsibility of the Lander, for instance by a declaration in the form of a protocol to the Europol Convention."
In connection with this decision, Land DP officers argued, that since the DP responsibility of the Land was affected, regulations should be devised which were appropriately binding on the data protection officers for the Lander in the joint and national supervisory bodies under Articles 21 and 22 of the Europol Convention.

In response to this the Federal government took the decision that a representative of the DP officers of the Lander will be allowed to participate in the joint supervisory body, although without prejudice to the Federal government's voting rights. The DP officers of the Lander have therefore been allowed to participate in the monitoring of the data processed at Europol. They may assess the admissibility of the input and retrieval of data into/from the Europol information system in the Lander and the transmission of data and documents from the Lander for storage at Europol. They may also inspect the relevant INPOL link applications. A representative of the DP officers for the Lander may participate in the meetings and activities of the joint supervisory body, and if the activities or decisions of the JSB affect the interests of the Lander, the opinion of the representative must be sought at an early stage and taken into account.

6.4.4: CONTRIBUTIONS OF THESE FINDINGS TO REFORMULATION

The results of these findings reveal another ambiguity of the centralised mode as it applies to data protection. At one level the BKA communicates data to Europol under federal law, and as such, the federal data protection officer is responsible for data
protection monitoring of the BKA. To that extent, there is theoretically no scope for the direct participation of Lander data protection officers in either the joint (i.e. Europol) or the national supervisory bodies. However at another level, every Lander has its own data protection laws, which in effect means that there are seventeen DP laws and Data Protectors operating in Germany. The constitutionally guaranteed autonomy of the states means that these grounds alone are arguably sufficient to warrant Lander participation in Europol's joint supervisory body. However when added to the facts that the LKA have already been granted the right of direct access to Europol, and the decentralised nature of the INPOL system that facilitates police officers at all levels having the ability to input and retrieve information directly to/from Europol, these add up to a qualified negation of the centralised data protection provisions laid out in the Europol Convention.

The application of the qualified centralised model to data protection can therefore be considered as being concomitant to its application to the area of information flows. It is inevitable that if greater flexibility is allowed in communicating information/intelligence to/with Europol, that these provisions must be backed up by equally flexible data protection participation rights. In the application of the qualified centralised model to data protection, the rights of the federal DP officer to monitor the BKA, and to sit on the Europol joint supervisory body remains intact. The primacy of the Federal government's voting rights are also maintained. However the Lander are given the right to have a representative on the JSB
as well, and their DP officers are empowered to participate in the monitoring of the data processed at Europol. In one sense the centralised DP functions of the Federal Data Protector will remain, but the state DP officers will have a qualified right to circumvent the central authorities.

6.5: OPERATIONAL CONSIDERATIONS: STRATEGIC/TACTICAL

6.5.1: INTERNATIONAL - NATIONAL OPERATIONAL CONSIDERATIONS

Throughout the course of the German aspect of the research, the same problems about the lack of any executive/operational powers for Europol were voiced. It was frequently commented that Germany does not need a non-operational Europol, as there are other channels which already perform Europol's current functions. There was also a sense of labouring under a political imperative to make the organisation work, rather than there being a true sense of conviction. One remark about having to pass information to Europol so that the organisation would not starve, was particularly revealing.

There was also a belief, however, that Europol may be surreptitiously positioning itself for a possible future incremental increase in its operational capacity. This, it was claimed, is increasingly evident, in its quasi-operational role in the coordination of controlled deliveries and cross border investigations across Europe. In its own defence, the EDU states
quite categorically, that it never takes over an operation, but simply provides the forum through which coordination can take place. It operates at all times at the behest of member states, and only becomes involved to the extent necessary to add value to national operations. However, at least one influential source within the BKA voiced his belief that the EOU has already gone past the purely intelligence related mandate laid down in the Ministerial Agreement and the Europol Convention.

The controlled delivery of drug consignments across national borders appears to be the principal form of quasi-operation conducted by the EDU. An ELO at the EDU gave a description of how a typical controlled delivery might be organised. Intelligence on or the discovery of a consignment entering Germany from Poland, and bound for the Netherlands or the UK could conceivably pass through four or five countries en route to its final destination. To acquire the necessary surveillance assistance and cooperation, the state organising the operation, in this case Germany, would firstly contact and brief its ELOs in the EDU, who would in turn liaise with and brief the other relevant ELOs of the potential states involved. Each ELO would then arrange for the necessary police cooperation in his state, in the form of surveillance teams, tracking equipment etc, as well as the necessary consent of the public prosecutors, for a drug consignment to pass through the area of his authority unmolested.

The EDU claims to be able to organise an operation such as this within one hour. However, from a German perspective this speed and flexibility does not appear to be sufficient justification for Europol's existence in its current form. The point was made
several times during the research that the ability to organise and coordinate controlled deliveries is nothing new, and has been done by the Drug Liaison Officer system for years prior to Europol. The surprising claim was also made, that despite the EDU's ability to coordinate everything under one roof, controlled deliveries via the DLO system is easier. This claim was based on the fact that DLOs have had much more experience in the past of dealing with these types of operations. Also the point was emphasised that many types of transnational crimes such as trafficking in stolen vehicles does not stop at the borders of the European Union. Fighting these types of offences requires liaison officers in Kiev, Moscow, etc, and as such Europol channels could not be used as the ELO system only covers the EU.

Other complaints made with respect to Europol's contribution to operational considerations were that the general quality of the jobs undertaken was not particularly high, and that there were invariably problems of duplication and channel crossover. Despite initiatives such as the Interpol special committee called the Regionalisation and Coordination of European Law Enforcement Initiatives, which generates proposals on how to avoid duplication between Interpol and the EDU, as well as the growing practice of each organisation having observer status at the others working group meetings, there is still considerable evidence of duplication of efforts. This does not just apply to Interpol and the EDU but includes the DLO network, and in some instances bi-lateral arrangements as well.

In this respect Germany suffers from not having the equivalent of NCIS's International Division which decides where to channel
information, requests, operations etc. The problem is exacerbated by channel crossover in that a case can cross over between different agencies. Germany identifies four main channels for international police cooperation. These are: Interpol; Schengen; Europol, and the DLO network. Of these, the BKA uses Interpol for well over 90% of its international enquiries such as information exchange, the dissemination of wanted notices and the exchange of evidence. The Schengen Information System is routinely used by German police officers, particularly the Federal Border Police, for such areas as missing persons, stolen/wanted property, aliens, persons subject to arrest and extradition warrants etc, and the DLO network is the preferred agency for the acquisition of intelligence and the coordination of cross border operations such as controlled deliveries.

As these channels cover virtually the entire range of international police cooperation, the question arises as to what gap Europol will be able to fill from the perspective of German operational policing requirements. In the absence of operational/executive powers, respondents in the research identified Europol's main role as the construction of intelligence projects. The idea of pro-active project based work is one that has wide currency in some northern European states such as Germany and the Netherlands. Under the leadership of Jurgen Storbeck the EDU has wasted little time in pursuing this goal. Despite official denials, the EDU has created a system of specialised cluster groupings, whereby ELOs from different states
form groups that work on specific projects. Some of these clusters are as follows:

- South American routes and Colombian cartels (cocaine)
- The Balkan drug route
- Turkish groups
- Money laundering
- Hells Angels
- Undercover operations
- Witness protection
- Precursors/essential chemicals

The members of these clusters specialise in their respective areas, and aim to develop analysis packages that can be disseminated to member states for tactical resolution. While respondents in Germany admitted that to date the majority of analysis packages have been from the BKA to the EDU, instead of the other way round, it is clear that the German view of the long-term usefulness of EDU project based work is the future incremental implementation of an operational arm that will complement the intelligence clusters.

The closeness between the strategic and the tactical here is clear. The view expressed many times during the research was that Europol as an auxiliary intelligence arm that strove to add value to centralised national units was not sufficient on its own. One source in the BKA made the point that, inasmuch as it can be shown that there is a threat of transnational criminality facing Europe that requires a national response, logic would dictate that a European response should be even more vital. However this source went on to state, "political sense does not always equate
with common sense". The concept of adding value in this case entails contributing something to the problem that is not already being provided by another agency, and from a German perspective that would mean the ability to provide an executive response at the European level.

6.5.2: NATIONAL - REGIONAL OPERATIONAL CONSIDERATIONS

As with the area of information flows, a dichotomy exists between federal authority and state autonomy in the field of the BKA's centralised operational capacity. The BKA has the power to exercise the police functions in the field of criminal prosecution if:

a) it is requested to do so by a competent Land authority;
b) ordered to do so by the Federal Minister of the Interior on serious grounds or;
c) requested or instructed to do so by the Federal Public Prosecutor.

BKA enforcement officers are responsible only for the prosecution of the offences which are specifically referred to in the BKAG (BKA Law), or which it has been ordered to prosecute by the Federal Minister of the Interior or requested to prosecute by the Federal Public Prosecutor. In all other cases BKA officers have no material jurisdiction as regards subject matter and no local jurisdiction without a request from the competent authorities. This means that there are certain circumstances when a BKA officer is not a police officer in terms of being able to intervene in a situation which does not fall within the BKA's
terms of reference. Therefore, a BKA officer who witnesses a
crime that does not fall within the BKA's remit cannot intervene,
but must simply report it to the local police, as long as the
seriousness of the offence does not seem to necessitate invoking
national law as an exception. In such a situation, the
application of emergency assistance rights could also be adopted.

The decision as to whether a case is one of those specified in
the BKA Law is taken by the BKA. If it is, the BKA must take over
the case, unless it waives that requirement in less serious cases
and refers the case back to the local police by arrangement with
the Public Prosecutors Office. It also falls to the BKA to
decide, having considered the basic facts, whether a case is less
serious.

The Federal Minister must provide compelling reasons for
transferring jurisdiction to the BKA. Compelling reasons might
include the exceptional activity of the criminals involved or the
effect on the public. The right to prosecute is transferred to
the BKA by order, request and instruction. If a request is made
by a Land authority the competence of the police in that Land to
prosecute is suspended. In the exercise of the responsibilities
assigned to it, the BKA is empowered to give instructions to the
local LKA, and the LKA may not refuse the cooperation requested
unless the BKA is contravening the general rules on official
assistance. The BKA also has the right to second personnel from
the LKA.

In addition, the BKA has the right to coordinate action in
certain cases. The criterion governing this right of coordination
is that the offence concerned involves several Lander or
indicates links with other offences in other Lander. An offence concerns several Lander not only when perpetrators commit or have committed crimes in more than one Land, but also when the offence has been planned, prepared, executed or aided in more than one Land, for example if the proceeds of a robbery in Land A were later concealed or disposed of in Land B or if the perpetrators live in a different Land from the one in which the crime was committed. An offence is also deemed to concern more than one Land when several participants are permanently resident in more than one Land.

Connections with crimes in other Lander, however, occur mainly with travelling lawbreakers and these crimes can often only be dealt with successfully if one police department is in charge of the prosecution of all offences in collaboration with one Public Prosecutor’s Office. When the prosecution is fragmented and parallel investigations are conducted, this not only weakens the case but also results in legally unsatisfactory penalties by the courts.

The area of the BKA’s coordination role is one that will be explored in later chapters, as the experience of coordinating investigations and operations within a federal state will have important implications for the execution of the German dream of an operational Europol one day. Suffice it to say at present that the criteria governing the operational competence of the BKA, as with the area of information flows, is based on a combination of legislation and requests/orders. Other factors that come into play include: the trans-regional nature of offences; the
resources of specific Lander, as poorer states are more likely to hand over competence for lengthy or expensive cases than wealthier ones; and the fear of losing operational control.

6.5.3: SPECIAL TREATMENT

As with the area of information flows, the research uncovered the fact that the LKA, and even in some instances local forces, are allowed special treatment in operational liaison with the EDU. The most prominent form of input is via the meetings of the Heads of the National Units at the EDU. These meetings prioritize project choice decisions for the EDU, with each member state suggesting one project. The LKA have the right to petition the BKA to propose a project that is of interest to it. This right of initiation, apart from allowing decentralised input into the EDU's project choice decisions, also ensures that the LKA are kept abreast of the specific information/intelligence that the EDU requires. From a German perspective, this helps to prevent the EDU from being bombarded with information that it does not need, while ensuring it is targeted with the relevant information necessary for the fulfilment of its remit.

This however is not the only way in which operational special treatment works. Examples were given during the research of numerous occasions in which the German ELOs worked with LKA, and even local forces on small scale analysis projects so as to facilitate rapid tactical solutions. German ELOs have also been contacted directly for their assistance in setting up and coordinating operations and investigations. This process has been
greatly encouraged by the Coordinator of Europol, who in addresses to German police officers, has invited the use of operational special treatment.

In the absence of operational powers, there is an acceptance at the highest policing levels in Germany, that for Europol to be accepted at, and acquire the information it needs from, the regional and local levels, it will have to prove that it is of some practical tactical relevance to these levels. Apart from constitutional requirements, it is therefore within this context that the concept of special treatment has been introduced. The emphasis at the regional and local levels however, has not been on Europol's capacity to provide overall strategic views of transnational crime in Europe, but its usefulness in adding value to local tactical concerns. In the absence of its own field intelligence operatives, if Europol wishes to increase the quality and number of the jobs it deals with annually, it will have to accept that the price may well be a growing encroachment of the tactical over the strategic.

6.5.4: CONCLUSION

From the data presented in this case study, it is possible to make two observations. The first is that the changes highlighted in the case study have been quite obviously a function of the German decentralised federal system. The participatory concessions that have been gained by the LKA and to a lesser extent the local police in the areas of information flows, data
protection and operational considerations, have been greatly facilitated by the constitutionally guaranteed autonomy of the Länder. However despite this fact, if it wanted to, it would not have been impossible for the Federal government to have amended the constitution so as to uphold the Europol Convention's stipulation that all contacts must be funnelled through the centralised national unit. What instead tipped the Minister of the Interior in favour of granting special treatment, was the realisation of the limitations of a purely centralised mode of coordination between the EDU and the BKA.

Europol cannot fulfil its remit without the cooperation of all layers of policing, not just the national level. Police officers who are traditionally reluctant to share information anyway, may very well be suspicious of passing information into a perceived supranational 'black hole' if there are no tangible reciprocal benefits. For this reason the initial centralised mode of information exchange, as envisaged in the Ministerial Agreement and the Convention, very quickly evolved into a qualified centralised mode, in which the national unit had formal rights of contact, which were supplemented by a qualified right of the LKA to circumvent the national unit, within specified parameters. The facilitation of special treatment was made all the easier by the constitutional autonomy of the Länder.

Despite the federal characteristics of the German system, which helped facilitate the rapid changeover from centralised to qualified centralised modes, the tactical imperatives of police cooperation are such as to theorise that the same process will repeat itself in any policing system, irrespective of the
political structure of the state. In the following case studies this proposition will be explored, and the findings will be compared with the findings of this initial study, so as to verify the following analytic iteration that:

'In terms of the vertical (supranational) exchange of information/intelligence, the centralised mode will evolve into a qualified centralised mode. In such a scenario, an intermediate form emerges in which communication is theoretically controlled by a central body but with independent communication being allowed within specified parameters. This mode presupposes a departure from a purely strategic, intelligence lead approach, towards a system that mixes tactical with strategic considerations'.

The next case study (the UK) will form a direct contrast with Germany particularly as Britain is a unitary as opposed to a federal state, but also because of the diametrically opposed view of the future of the European Union as a free trading confederation of independent nation states instead of a federal entity of some description. In one respect however this case study will be similar to Germany. Like Germany, Britain has a highly decentralised system of policing, although not within the same framework of constitutionally separated powers. It will therefore be interesting to discover whether or not the juxtaposition of a flexible decentralised policing system, within the confines of a highly centralised government structure, will yield the same results as the German model.
7.1: BACKGROUND

7.1.1: THE POLICE AND JUDICIAL SYSTEM

Despite the centralisation of Britain's parliamentary democracy, it does not possess a unitary police service as one would expect, but rather a decentralised system whereby there are 52 forces in the United Kingdom, of which 43 are in England and Wales. Each force is headed by a Chief Constable, or in the case of the Metropolitan Police, a Commissioner, and the head of each force is accountable to a local police authority which generally consists of magistrates and local councillors.

The Home Office is the governmental body in overall charge of the police, and in this respect differs from some other European states which have separate Ministries of the Interior and Justice. The Home Secretary, while being directly responsible for the Metropolitan Police in terms of overall policy, is only partially responsible for the other police forces in England and Wales. In sharing responsibility for these other 42 forces with the local police authorities, the Home Secretary is responsible for ensuring the efficient running of each force and the provision of half of the running costs to be met from central government funds. The police authorities for their parts are responsible for maintaining an adequate and efficient police force, as well as meeting the other half of the running costs from local taxation.
The English criminal justice system is unitary in nature in that there is a single body of laws that is applicable across the country and to all police forces. The system is adversarial as opposed to the inquisitorial system common among continental European states. The police have historically had the power to decide on prosecutions, until the Prosecutions of Offences Act 1985, which saw the introduction of the Crown Prosecutions Service, under the control of a Director of Public Prosecutions, the role of which was to take over the initiation and conduct of prosecutions from the police. The Director of Public Prosecutions is in turn directly accountable to the Attorney General.

Van den Wyngaert outlines the basic principles of the adversarial system by stating: "The criminal process (in England and Wales) is overwhelmingly adversarial in character, so that the trial is not so much a search for the truth as a test of the evidence that is presented before the court by the parties. It is an essential principle that a person is innocent until he is proven guilty, and that the burden of proving that guilt is upon the prosecution, beyond reasonable doubt. It follows from the presumption of innocence that a person who is accused of criminal misconduct should generally be permitted his liberty on bail. The English system also subscribes to the principle that nobody should be tried twice for the same offence, through the operation of the defences (really procedural bars) of autrefois acquit or autrefois convict." (van den Wyngaert 1993: 82)

Finally within the context of this research it should be noted that historically the UK has not had a national police force. The policing system has been decentralised, with the Chief Constable
of each force having a fair degree of autonomy within his area of responsibility. Areas of serious long term criminality were handled by a series of Regional Crime Squads across the country, which dealt with crimes of a supraregional, national or international nature. This however changed in April 1998 with the introduction of a National Crime Squad (NCS). The new NCS is on a statutory footing and incorporates the various Regional Crime Squads (RCSs), under the control of a Director General. The implications of this development will be explored during the course of this case study.

7.1.2: THE NATIONAL CRIMINAL INTELLIGENCE SERVICE (NCIS)

The United Kingdom prides itself, within the context of the requirement of the Europol Convention for each state to create a national unit, as being the only EU member state to have specifically created a new national criminal intelligence facility to meet this criterion. The impetus for NCIS came through a series of reports since the mid 1970s, such as the Baumber Report of 1975, the Pearce Report of 1978, and the Ratcliffe Report of 1986, which all highlighted the UK's need for a criminal intelligence facility at the national level. Following a report by ACPO in 1990, the Home Secretary announced plans for such a facility, and set up a Steering Group under his chairmanship which included representations from the ACPO, HM
Inspectorate of Constabulary, Customs, the Home Office, and the local Police Authorities.

NCIS eventually came into being in 1992. Its objectives are as follows:

1) To be the national focal point to gather, collate, evaluate, analyse and develop relevant information and intelligence about serious crime and major criminals of a regional, national and international nature;

2) To disseminate information and intelligence to appropriate law enforcement agencies;

3) To provide intelligence and analytical support for the appropriate operational and intelligence arms of law enforcement services;

4) To assist in the coordination of operational activity by identifying major criminals and the incidence of serious crime which are of interest to more than one operational unit;

5) To help the law enforcement effort by coordinating and identifying links between individuals or organisations involved in major crime;

6) To provide strategic intelligence to assist and promote the efficient and effective use of operational resources and to enable the development of law enforcement strategies;

7) To identify new trends and crime patterns and disseminate intelligence on these to the appropriate law enforcement agencies;

8) To facilitate and monitor the enforcement of requests for assistance relating to the proceeds of drugs and other serious
crimes, made under bilateral and multilateral confiscation agreements;

9) i) To provide a central point for the receipt of all disclosures made under the Drug Trafficking Offences, Criminal Justice and Prevention of Terrorism Acts;

ii) To develop such disclosures through the intelligence process and disseminate to the appropriate agency of the police service or HM Customs and Excise for further action and where appropriate to provide feedback to the disclosing body;

10) To identify and develop sources from which relevant information concerning major criminals and serious crimes can be obtained;

11) To provide a nucleus of specialist intelligence personnel who are able to advise and assist investigating officers concerning operational priorities and deployment of resources;

12) To establish channels of communication with domestic and overseas law enforcement agencies and to provide a national focal point for the promotion and exchange of information and intelligence about serious crime and major criminals. (NCIS Briefing Document, October 1992)

In addition to its main offices which are based in London, NCIS also has 5 regional offices in London (NCIS SE Region), Bristol (NCIS SW Region), Birmingham (NCIS Midlands Region), Manchester (NCIS NW Region), and Wakefield (NCIS NE Region). Together these regional offices, along with a new NCIS office for Scotland comprise the UK Division of NCIS. The other two main divisions are the Headquarters Division and the International Division.
The Headquarters Division is responsible for the provision of strategic and tactical intelligence on a wide range of serious criminal activity. It includes among others the Organised Crime Unit, the Drugs Unit, the Economic Crimes Unit, the Fraud and Financial Crimes Section, the Football Unit and the Organised Vehicle Crime Section. In addition this division also contains an Intelligence Coordination Unit (ICU) which is responsible for coordination and development of policy and research, and ensuring that the processes for developing and producing intelligence provide value for money and meet the needs of NCIS's main customers (predominantly the various forces), and an Operational Support Unit (OSU) which is responsible for the receipt and processing of requests from police forces in England and Wales for warrants relating to serious crime under the Interception of Communications Act 1985 (NCIS HQ Division Briefing Document, 1995).

Finally the International Division is the main liaison point for cooperation with external police agencies. Its objectives include its acting as a focal point for the international exchange of information/intelligence, and the provision of strategic and tactical intelligence from an international perspective. It includes the UK National Central Bureau (NCB) of Interpol, the Europol Liaison Desk Officer, the International Projects Unit, and the Drugs Liaison Officer network.

From the perspective of this research, the International Division is the most relevant department of NCIS. The organisation is attempting to develop the International Division as a "one stop shop" for all enquiries, information etc with
respect to international police cooperation. The reason for this is twofold. Firstly, the development and provision of strategic intelligence mandates that the centre is kept abreast of all relevant developments. Secondly, a totally decentralised system whereby everyone had freedom to contact whoever they wished would ultimately be inefficient, as substantial duplication of effort would ensue. Finally the development of the International Division as a one stop shop fits in with the requirement of the Europol Convention that each state's national unit should be the only body that liaises with Europol. Therefore the testing of this research's basic question about the viability of the centralised mode of information exchange with respect to the UK will be greatly influenced by the International Division's success in developing its monopoly as a one stop shop.

7.1.3: COMPUTER SYSTEMS

Except for the PNC2, which holds information on stolen vehicles, vehicle records, and persons who are missing, wanted or convicted (as well as appropriate warning flags), the UK does not have a central information system such as INPOL in Germany to which all forces have access. Each force has its own computer system which is often incompatible with the systems of other forces. NCIS's main information system is called ALERT, and became operational in 1995. NCIS describes ALERT as "forming the backbone of its computer systems and includes features which
include: specialised free text; structured data; and analytical facilities. In addition, ALERT provides access to other databases and up-to-date office systems. It concentrates on turning information into intelligence rather than the usual storage and retrieval of information and allows the result to be effectively presented" (NCIS Press Release 11/94, 25 August 1994). Mainly as a security precaution, the ALERT system is purely for the use of NCIS officers.

NCIS also makes use of a system called INFS (Intelligence Network Forcewide System Computer) which is a free text system based on a well tried and flexible data retrieval software package. One of INFS's prime advantages and uses is in the flagging of targets. This allows NCIS personnel to ascertain when more than one officer or unit is targeting a specific person, organisation etc. INFS is therefore a tool by which duplication can be avoided.

The computer system used by the Regional Crime Squads is called CLUE (Computer Language User Easy). An NCIS Computer Support Briefing Paper describes CLUE as an adaptable IBM computer base package developed specially for the needs of the RCS and which is easily modified for other applications. It is also capable of holding indexes of varying kinds such as nominal, addresses, vehicles, telephone numbers etc. Providing that the relevant data is entered, it can be sorted in such a way as to produce a sequence of events log which will be useful in analysing operational data. (NCIS Computer Support Briefing Document, October 1992) NCIS for its part, while having an interface with
CLUE, which allows personnel to access information from the system, has no ability to input data into the system.

During the course of the research, the question was put to NCIS personnel, 'should the UK have a decentralised intelligence database to which officers at all levels should have access?' The response was that, with an adequate budget, it would be highly desirable to have a national database with access by all levels, with those areas that were particularly sensitive, or which applied to specific cases, restricted by password. Such a system would enable the UK to develop a central repository of criminal intelligence for use by all levels of policing, with adequate safeguards built in that would protect the security of cases being dealt with by the RCS or NCIS.

In keeping with this belief, NCIS, under the direction of the Criminal Intelligence Steering Group, is in the process of putting forward a recommendation for the implementation of a national system. Part of these recommendations include the development of a series of 'data warehouses' to which officers at all levels will have rights of access and input. It is believed that a prime advantage of such a system will be that all the data will not be located on one system at one location. This initiative is being complemented by others such as the National Standard for Police Information Systems (NSPIS), which represents a common format for information systems that has been signed up for by ACPO. It aims to implement 'common data models' in several areas of policing, and is currently having its first trial in Greater Manchester, via a common data model that
attempts to standardize the way that cases are prepared for the
Crown Prosecution System.

The effect however of the current system is that the UK's
approach to computerised intelligence systems is highly
fragmented, with each force having its own systems and software
which is often incompatible with that of other forces. This can
mean that officers in different parts of the country often are
unable to grasp the bigger picture. Such fragmentation lends
itself towards keeping information to oneself, and quite often
duplication of effort, despite the coordinating function of NCIS.
An ACPO Report on International, National and Inter Force Crime
of 1996, commented quite heavily on a perceived void in the
police service's ability to gather intelligence at the inter­
force/regional level, particularly with respect to those
criminals who fall outside of NCIS's definition or remit. This
is in part a function of the fragmented and often parochial
approach to computer systems, and can in turn have an effect on
the desire of force intelligence bureaus to pass on information
to the 'information blackhole' that is NCIS. This point will be
developed further, later in this case study.

7.2: INFORMATION FLOWS

7.2.1: INTERNATIONAL TO NATIONAL INFORMATION FLOWS

As with the other states targeted in this research, the main
criterion governing the exchange of information with the Europol
Drugs Unit, is the Europol Convention. The mandate for all
communications with Europol to go through the national unit of each state, is perfectly in keeping with NCIS's attempts to make its International Division a one stop shop for all international communications, which will decide on a case by case scenario, which is the best channel for use. NCIS claims that its officers in this division will be in the best position to decide when information, an enquiry etc should go to Interpol, Europol or the DLO network.

In terms of exchanging information with other states generally, one of the main factors affecting this process that emerged during the course of the research was the requirement for confidentiality within the receiving state's criminal justice and jurisdictional process. While the UK generally has few problems with accepting tactical intelligence from abroad, especially under the new Criminal Procedures and Information Act (CPIA), it is usually obliged to attach a lien to all information shared externally to the effect that the information shared is not disclosable unless and until the UK gives its authority to do so.

The rationale for this prohibition is based on the requirement of some justice systems for the source of the information/intelligence to be disclosed. For security reasons, it is often ill advised that these sources be revealed, particularly where information was gained covertly via telephone intercepts, bugging etc. This problem is currently being addressed by the P8 Group in an effort to find ways of protecting the integrity of tactical intelligence within the confines of countries' disclosure laws. This however was one of the main
areas emphasised that affects the exchange of information internationally.

Other factors identified that encourages the exchange of information with Europol is the convenience of having the ELOs of all 15 states under one roof, which in turn has a knock on effect on speed. Taking into account the UK's emphasis on security, Europol's status as a virtually closed intelligence system is an added bonus. Security was cited as a prime reason why Europol was born in the face of Interpol. Inasmuch as Interpol's charter requires it to exchange information freely with any and all its members, the UK has shied away from passing on any tactical or operational intelligence. While there are little or no concerns about passing on strategic information/intelligence on strategic threats or post case analyses, the UK would not want to pass on tactical intelligence on terrorist threats to an organisation where the Libyans, Iranians etc could have access to it.

Interpol therefore is seen as an instrument, second to none, for the routine procedure of international police communications and the processing of requests for information and assistance. Europol however, while as a political construct is assured of survival, will depend for its ultimate success on its ability to be operationally useful through the processing of tactical intelligence.

This emphasis on Europol's tactical usefulness is of particular relevance to the basic parameters of this research. If Europol is to be exclusively concerned with the provision of a strategic overview of serious crime in Europe, the centralised mode of
information exchange will be the most obvious route to achieving this as it will be necessary for the centre to be in possession of all the relevant information at all times. If, on the other hand, Europol is equally expected to be of tactical relevance, in terms of the coordination of operations, investigations etc, it will be extremely difficult to achieve this by funnelling all contacts through the Europol Desk Officer at the International Division. Police officers who traditionally take the quickest route to the operational success of their own priorities, are increasingly likely to bypass NCIS, and deal directly with Europol, particularly where there is only interest in one's own parochial problem as opposed to the larger picture.

Another factor that impacts heavily on the channel of cooperation used, is the status of ELOS as opposed to DLOs. UK DLOs are attached to UK embassies in the countries to which they are posted and are accorded the status of First Secretary (as are the DLOs of all other European states). Therefore, a DLO in approaching a foreign Chief of Police with tactical intelligence that requires the allocation of resources, has the prerogative of presenting the UK Ambassador's compliments when requesting these resources. Should the request be refused, there is the leverage of the UK Ambassador presenting a protest to the Foreign Secretary of the state concerned. This authority means that a DLO stands a very good chance of having his requests acceded to.

ELOs on the other hand, are generally middle ranking officers of the rank of superintendent or the equivalent. Without a comparable status to their DLO counterparts, they do not have the same authority, and consequently their requests do not carry as
much weight. This can therefore affect the decision as to when to use a DLO as opposed to an ELO, and may partly account for the reason why officers interviewed at the BKA in Germany admitted that some cross border operations such as controlled deliveries were easier through the DLO network than Europol. It is not necessarily a reflection on the viability of one organisation against the next but rather a reflection on the imbalance in status between the two.

Paradoxically, several EU states are now in the process of running down their DLO network in favour of ELOs. This may be partly due to the fact that criticism about duplication of effort between DLOs and ELOs has lead to a reduction of one in the interest of efficiency. Inasmuch as Europol is a political creation, and there is a strong impetus for it to succeed, if rationalisation has to take place, the DLO network may be considered the easier target. The UK, for its part, with its emphasis on national priorities is against a diminution of the DLO network. Nevertheless its relationship with Europol, though described as patchy to begin with, is now improving. This relationship is likely to continue improving, especially if Europol can significantly show itself to be tactically useful in combatting serious international crime.
7.2.2: NATIONAL - REGIONAL/FORCE CONSIDERATIONS

The criteria which governs the passing of information by the various Force Intelligence Bureaus, or the RCS to NCIS are as follows:

1) Service Level Agreements: A service level agreement (SLA) is an official agreement which sets out what both parties agree to do for the other. It differs from other agreements such as:
   a) a Memorandum of Understanding, which is a lesser document, and is sometimes agreed on a case by case basis, or on a generality as when one country agrees in an MOU to be understanding to the needs of another country, or
   b) an operational protocol, which generally deals at a tactical level with specific operations.

Prior to the adoption of service level agreements, forces operated via clear but informal understandings about what was expected from other forces or agencies. If these conditions were not met, commanding officers would have an informal chat with their opposite number and try to resolve the situation. Under the current system however, the service to be provided by each party is clearly delineated. In its proper form, an SLA should also include a complaints and arbitration procedure to be adopted in the event of one party breaking its side of the agreement, and a system of penalties, usually financial, that should be imposed on the guilty party. An example that was given related to the SLA governing the provision of air support by the Metropolitan Police's aerial surveillance unit to the RCS. The SLA lays down
the service that the aerial unit agrees to provide, and the cost per hour, as well as the number of hours per month that the RCS agrees to use the unit.

NCIS has a plethora of SLAs which governs its relationships with a range of bodies, including Customs, the Benefits Agencies and the Security Services. NCIS also has an SLA with ACPO which governs its exchange of information with the 43 police forces of England and Wales, as well as the RCSs. The gist of this SLA is mirrored in NCIS's Mission Statement and Statement of Purpose which is:

a) To provide a quality service in the gathering, collation, evaluation, analysis and development of relevant information and intelligence about serious crime (excluding terrorism) and major criminals of regional, national and international interest;

b) To disseminate that information and intelligence to the appropriate law enforcement agencies, so as to facilitate the bringing to justice of offenders;

c) To coordinate other nominated intelligence functions.

2) Core nominal system: The core nominal system consists of a database containing a core of 366 major criminals who are involved with serious criminal activity on a regional, national or international basis. This database was originally created through forces, HMCE and the RCSs, at the request of NCIS, submitting the names of their top criminals. These names were then sifted according to certain criteria such as previous
convictions, associations etc, until the final figure of 366 was arrived at.

The core nominal system is further complemented by a system of current nominals, which according to NCIS are also top criminals of international, national or regional significance who do not qualify for the status of core nominals but nevertheless are actively engaged in the commission of serious crime. (NCIS Annual Report 1994) The number of current nominals currently stands at 3378.

Within the context of the criteria for passing on information to NCIS re core nominals therefore, the salient points are the quality of the offender, the quality of the crime they are involved with, and the prospects for the disruption to their organisation. This last point has become of increasing importance to NCIS's approach to combatting serious crime. NCIS's intelligence system tends to be target rather than product oriented. Towards this end, the core nominal system is aimed at the "kingpin players", who control serious crime, and yet manage to keep their hands clean, thereby becoming virtually untouchable. While the main emphasis remains the prosecution of these persons, equal time is also rendered towards the disruption of their organisations. A carefully planned and executed operation that takes out some key personnel of such an organisation, while relieving it of a large share of its financial resources, through the confiscation of assets, can set the organisation back as much as 10 years. Where certain types of criminal organisations are concerned, sufficient damage will lead to their place in the market being taken by someone else.
Recovery of trust and influence could take years to achieve again (an example of this type of operation is given on pages 220 - 221). This in turn can have an effect on the type of information that NCIS requires from forces and the RCS.

Part of the evolutionary thinking towards the core nominal system is the plan to create more flexibility in the system, whereby every core nominal will be owned by a particular agency, be it Customs, RCS etc. Under this system every core nominal will be actively concentrated on by someone, even when he or she is in prison. Such a system should be sufficiently flexible to allow a current nominal target who rises in significance in the criminal world to be elevated to core nominal status, thereby in the process raising the core nominal ceiling to accommodate him.

One significant drawback of this system of targeting was identified by the ACPO Report on International, National and Inter Force Crime of 1996. This report identified a void in intelligence coordination at the inter force level particularly in the sense that when NCIS disseminates intelligence on core nominals to the forces, it is not telling the forces anything it does not already know, in light of the fact that the initial information on core nominals came originally from the forces themselves. This however can only be significant where forces receive information back on their own nominals, as they would not necessarily have information or intelligence on nominals from other forces. The report goes on to state:

"What is apparent from the above is that the Service is not best served by its intelligence gathering capabilities at the inter-force/regional level. There is no focal point - no 'one
stop shop' using popular parlance. For their part NCIS are only likely to enter the equation when the crime or criminal meets their criteria for selection, which in the main is far too restrictive to encompass the type of criminal and the nature of criminality that forces are dealing with on a daily basis. The consequence of this is, that whilst the police service has the capability to gather intelligence at a local level (for all forces have criminal intelligence offices, and NCIS continues to address criminality at a higher level) an obvious void is created in the capacity to gather criminal intelligence at the inter-force/regional levels. This is the level at which over 262,906 crimes or 5% of the nation's crime is committed." (ACPO Report on International, National and Inter-Force Crime, February 1996: 33) This drawback could well have repercussions in terms of the central question of this research, and will be addressed in the next section.

Finally the criterion used for grading information/intelligence passed up to NCIS is called the 4*4 system. The purpose of this system is for vetting information passed up to NCIS with reference to its accuracy, motives (of informants), how the information was acquired etc. The range of validity can run from A to D, with levels of corroboration running from 1 to 4. Therefore intelligence that is graded between A1 to A4 will be of the very highest calibre, while those rated between D1 to D4 will be of the lowest level of reliability, needing substantial further corroboration and authentication before being further refined by NCIS. The process of grading is generally performed by desk officers, before the incoming information is refined into
actionable intelligence. In this way, NCIS ensures that the information it deals with is of the highest quality, and in keeping with its core nominal priorities.

Other factors identified during the course of the research that affects the exchange of information between the national - force/regional levels are as follows:

1) Poor feedback: In terms of sharing information with NCIS, the organisation is sometimes seen as an information blackhole, in that it has acquired a bad reputation for debriefing or giving feedbacks to force intelligence bureaus (FIBs) about the outcome of information/intelligence that has been passed up to it. One respondent claimed that NCIS was even bad at saying thank you for information received. This naturally has the effect of alienating FIBs, which manifests itself in a reluctance to pass on information the next time. The problem is further exacerbated by the fact that there is often a lack of interest at force level about NCIS's needs as the level of crime that NCIS deals with does not always affect the forces. The point was made however that this problem is endemic throughout the police service, and is not just confined to NCIS.

2) Keeping control of information: This has already been identified as a perennial problem of police officers everywhere, in that they are generally interested in their own local policing problems, often to the exclusion of all else. This inevitably leads to duplication. Part of the problem identified during the research is that police officers are often not trained in the
value of intelligence, and are often not aware that their intelligence may be only one part of a much larger picture. Dealing with this problem therefore mandates that officers at all levels are educated in the usefulness of their information/intelligence to others. This would involve higher levels such as NCIS being more forthcoming in their responses and feedback, which as highlighted in the previous section, it has not been very successful at to date.

7.3: DIRECT CONTACTS

In attempting to promote its International Division as a 'one stop shop', NCIS advertises itself as the gateway to the rest of Europe. This is necessary, both for developing strategic intelligence and for maintaining quality control, particularly as in theory, NCIS has expert knowledge in the quickest route for all enquiries.

However, despite these efforts, there has been a history of officers at the force, and particularly the RCS level, circumventing NCIS, and having direct contacts with the UK ELOs at Europol. One respondent at NCIS commented on this practice by stating: "Policemen being policemen will bypass anything if they get a response." This position was confirmed by one of the UK ELOs interviewed. He stated that the two UK ELOs get direct requests for information and assistance all the time, to which they never say no. The one proviso on these direct contacts
however is that the answers are generally either channelled back through NCIS, or where an answer is given directly, NCIS is briefed on the response. The point was reiterated however, that officially the correct process should be that all contacts are made via NCIS. However, unofficially, the ELOs are prepared to deal directly with officers at various levels of policing in the UK, in the interests of operational expediency, and developing a good working relationship with the various policing and customs agencies.

There is not however in the UK, the same quasi official blessing to this practice as in Germany, where it has become officially sanctioned. While there was the admission that this practice takes place, and that it will in all likelihood increase in the future, there is still the belief that it needs to be restricted as much as possible. There is little objection to officers, especially from the RCS making what are described as 'what if enquiries,' or passing routine information directly to the UK's ELOs, once NCIS is kept informed. However there is the feeling that anything more involved, particularly in respect to putting together operations directly, should be discouraged. In keeping with the development of NCIS as a 'one stop shop,' it is important to be able to show a direct line of communication that goes through the proper channels (i.e. the International Division) so that other interested parties such as the DLOs are kept informed.

Finally, during the course of research, the point was made that the Police and Customs Operational Protocol recognizes that there is nothing wrong with officers contacting their opposite numbers
in other countries directly as a preliminary manoeuvre. If this is permissible, it follows that there can be little wrong with contacting a UK liaison officer directly either, albeit that this liaison officer is based at Europol. In respect of information flows therefore, NCIS, like the BKA, has found it virtually impossible to preserve its Convention based monopoly of liaison with Europol.

7.4: DATA PROTECTION CONSIDERATIONS

Data protection in the UK is governed by the Data Protection Act of 1984. This act is primarily concerned with regulating the use of data rather than with human rights considerations. One police respondent attributed this to public apathy stemming from the UK not having been occupied during the Second World War. The higher sense of data protection awareness of some continental states as the Netherlands can be seen as a function of the misuse of official documents by the Germans that inevitably had catastrophic consequences.

During the research, the only areas highlighted in which data protection affects the exchange of information/intelligence was in the requirements that sources of information be protected, and that information exchanged was only used for the purposes for which it was originally exchanged. To this end, a caveat is usually attached to all information or tactical intelligence exchanged that it is not to be used without the authority of the
UK officer/agency transmitting the information. Even under these conditions, care is still usually taken over the contents of transmissions. As a rule the UK does not identify to its foreign counterparts the source of intelligence shared, and this often means maintaining a tight balance, as the judicial procedures of some European states require the disclosure of the source of intelligence that leads to a prosecution.

One example was given of a prosecution resulting from a joint UK and Dutch operation. During the preliminary proceedings, the UK officer was asked how the operation originated, and was unable to give a reply, because the operation was initiated as a result of a telephone intercept, and Section 9 of the Interception of Communications Act forbids the public disclosure by the police of the source of intercepted information. Consequently the British officer's evidence was discounted. The result was described as "a legal minefield."

Another example revolved around intelligence passed to another state about the imminent arrival of a boat carrying a consignment of drugs at a particular port at a specific data and time. The originating officer also unwisely gave the current latitude and longitude of the vessel, which indicated that there was a Global Positioning System aboard the boat that had been planted by the police. As the receiving state did not have a disclosure exemption, it was obliged to give in evidence that the source of the intelligence was a tracking beacon on the vessel. This lead to further questions being raised about police activities with respect to the planting of the tracking device, questions which
the UK police were not prepared to give any further details on. Consequently the case was thrown out of court.

Despite these setbacks however, the general opinion from respondents was that data protection legislation does not seriously hamper the UK's ability to exchange tactical intelligence. The point was made, particularly with reference to the last example given, that if the UK had intelligence about the imminent arrival of a consignment of drugs or arms, or an assassination attempt in another country, it would be dilatory of the UK if it did not pass on this intelligence (the implication being, in spite of data protection restrictions).

In response however to the question of whether the UK's data protection laws prohibits the UK from exchanging information with states that do not have data protection legislation, responses to this were invariably vague. One officer's reply to this question was: "Whether a strict interpretation of UK Data Protection Law does or does not, we have not been inhibited in passing intelligence to counterparts where we have been satisfied of their bona fides that this intelligence will remain confidential."

This statement indicates, particularly in respect to sharing information among member states of Europol that have had no DP regulations in the past such as Italy and Greece, that what is of greater relevance is the trust that exists between police officers than a strict adherence to formal DP legislation. Within what is at present a fairly closed Europol system, which has few exchanges of information with third countries or agencies, the trust that is developing between officers at force or RCS level
and the UK ELOs, either via NCIS or directly, is what appears to be driving the exchange of information rather than what is formally allowed under the DP law. While this can be also said to apply to the DLO network, it cannot be applied to Interpol for the same reason. Because Interpol is an open system, intelligence shared with Interpol could end up anywhere.

As in other areas, this will change when the Europol Convention is completely ratified, and Europol proper comes into existence. Then the organisation will have its own database and data protection regulations and governing bodies. This however is now not likely until the year 2000. At present, national DP laws govern the exchange of information, and from the UK's perspective have less importance than trust and expediency.

7.5: OPERATIONAL FACTORS

7.5.1: INTERNATIONAL - NATIONAL CONSIDERATIONS

As with the section on information flows, the main criterion that governs the decision to take operations or tactical intelligence to Europol is its utility as a facilitator of domestic operations that have an international dimension and therefore require coordination. While Interpol has been described as: "an information and trends communicator, who by its charter has to share things with all its members," Europol is seen as being more operationally focused and relevant.

During the course of the research at NCIS, one problem area identified was the development of the organisation as a gateway to the rest of Europe and the world. This gateway function is seen as necessary both for the prevention of duplication and for
keeping the centre updated. It is also necessary however so as to promote trust in officers at all levels, in the knowledge that any information that is required re dealing with other states is readily available at NCIS. The problem however with this gateway function is that it is not NCIS's primary function. The organisation's primary function is intelligence, and yet, it is increasingly obliged to divert resources to other duties such as this as well as tactical operations. This results in a substantial imbalance between tactical and strategic in favour of the former.

The same reasoning can likewise be applied to Europol. Police officers tend overwhelmingly to be concerned exclusively with their own tactical priorities. In accepting tactical intelligence from national units or police agencies at other levels, Europol is trying to build a good relationship with these units. In the process however, it is contributing to the increasing imbalance between tactical and the strategic that is also evident at the national and other levels of policing. Yet it cannot afford to ignore the tactical priorities of officers at the regional or force level as it invariably depends on these officers to furnish it, via the national units, with the information/intelligence it needs to fulfil its prime strategic remit. Hence the reason why one of the main criteria for UK police officers, particularly in the RCSs, dealing with Europol, was its tactical operational utility.

One of the main types of operation that Europol gets involved with is controlled deliveries. An example given by one of the UK's ELOs is as follows:
An operation arose (in 1995) as a result of an exchange of requests for information between the Irish and Spanish police. The Irish police had identified 2 Irish drug traffickers who they understood were going to collect a fairly sizable consignment of cannabis from Spain, and transport it through Europe to Ireland. The problem for the Irish police though was that they did not know exactly where the 2 targets were collecting the consignment from, except that it would be somewhere near the Spanish/French border. When the 2 targets finally took a flight to France, the Irish police contacted Europol to request the coordination of a controlled delivery, beginning with a surveillance on the 2 targets once they landed at Charles De Gaulle Airport.

Under the coordination of Europol, the French police agreed to keep the 2 targets under constant surveillance, and consequently they were followed from the French airport to the Spanish border. As the targets crossed the border into Spain, the Spanish ELO at Europol arranged for the Spanish police to take over the surveillance operation. The targets met a lorry in northern Spain, and then travelled back through Spain, France, then Belgium, before returning to France, and then taking a ferry across to the UK, for the final leg of the journey back to Ireland. Europol coordinated the handover of surveillance from police force to police force each time the lorry entered a new country or policing authority. Ultimately, when the lorry reached its destination in Ireland, the traffickers and those receiving it were arrested and prosecuted.

Controlled deliveries however, do not always consist of surveillance of lorries or containers. It may also take the form
of postal deliveries, air courier deliveries, air passengers suspected or identified as carrying drugs etc. Another similar type of operation can consist of the controlled delivery of consignments of illegal immigrants. These however have proved more difficult to coordinate due to a reluctance of some states to cooperate in these operations. One example was given of an attempted controlled delivery of illegal immigrants bound for the UK. While cooperation was forthcoming from the authorities in the Netherlands, it was not from France and Belgium together. Permission was gained from these two states separately under certain conditions, but not together, particularly as the requests being made were not legally possible in France, and consequently the operation had to be abandoned. The reasons for these problems can vary from a lack of sympathy by one state for the laws of another to, as in this case, the sensitive nature of the particular offence involved (immigration).

During the research carried out at the Bundeskriminalamt the conviction was expressed that controlled deliveries were easier with the DLO network than with Europol. When this question was raised during the fieldwork at NCIS it elicited a different response. Firstly, from NCIS's view, there is a difference between controlled deliveries that are the product of undercover operations, and those that are non planned and that arise in isolation. One such scenario would be where Spanish authorities discover a consignment of drugs in a lorry bound for Denmark via France and the Netherlands. Such an operation that arises on the spot, and not as a result of protracted undercover surveillance, requires a quick response, and is ideally suited for Europol to
coordinate, as opposed to DLOs who are country specific. DLOs on the other hand are more effective in a specific tactical operation in the country where they are based. In such circumstances, they can draw upon their relationships with the local policing agencies, and be of greater utility than ELOs.

Another reason for the disparity in view between the BKA and NCIS lies in the differing national positions on the future viability of an operational Europol. The German view that controlled deliveries are easier via the DLO network can be understood in terms of their vision of an operational Europol. If it can be shown that in light of the existence of Interpol and the DLOs, there is no need for another intelligence exchange organisation, it may lend greater credibility to their claims that Europol's true calling should be in filling the gap in operational policing at the supranational level. The British view on the other hand is that the current situation in which there are varying judicial and policing systems and procedures, precludes any possibility in the foreseeable future of such a supranational policing facility. What is therefore required is greater efficiency in mutual legal assistance treaties, and cooperation generally.

Another criterion which governs the decision to pass actionable intelligence to the DLO network as opposed to Europol is the differential in status between the DLOs and the ELOs (as emphasised in the section on information flows). Again another example was given of a British operation concerning the imminent arrival of a shipment of cocaine in Holland. When this intelligence was taken to the Dutch authorities, they were unable
to allocate the appropriate resources to it as the shipment was due to arrive on a Saturday, and the force in question did not have sufficient overtime resources to deal with this operation.

Because of the importance of this case to the UK, the DLO attached to the UK embassy in Holland was able to go to the Chief Commissioner of Amsterdam, present the Ambassador's compliments, and seek that adequate resources be provided for this operation. As the DLO had the authority of First Secretary status, the Chief Commissioner was obliged to provide the necessary resources for the operation to take place, especially as to refuse would have culminated in the lodging of a protest by the UK Ambassador to the Dutch Foreign Secretary. In relating this example, the point was made that had this operation been conducted via an ELO, who would have been of the rank of superintendent or thereabouts, he would not have had the clout with which to gain compliance for his requests. Hence the reason that one operational reason for deciding to use a DLO as opposed to an ELO is the status differential between the two.

From NCIS's perspective therefore, the allocation of responsibility between the 3 main channels of operational cooperation are as follows:

a) Interpol: The exchange of routine low level information and evidence;

b) Europol: The coordination of multinational operations and investigations; unplanned controlled deliveries; a facilitator of tactical intelligence.
c) The DLO network: For use in specific countries where local knowledge is required; for use in situations where extra diplomatic authority is required.

7.5.2: NATIONAL - REGIONAL FACTORS

Arguably one of the most important factors in considering the passing of operational competence from the regional to the national level in the UK is the introduction of a National Crime Squad which is planned for April 1998. Since 1965 operations that have been regional (i.e. above force level, or involving more than one force) or international in nature have been handled by the Regional Crime Squads (RCS). The concept of the travelling criminal, therefore, whose activities cover more than one force area, was one of the main reasons why the regional crime squads were initially instituted.

While the original terms of reference of the RCS were: "To identify and arrest those responsible for offences which transcend Force and Regional boundaries, and at the request of chief officers, to assist in the investigation of very serious crime," its current terms of reference are as follows: "To identify and arrest persons responsible for serious criminal offences within that region, (the region in which the squad is based) nationally and internationally; At the request of the chief officer, to assist in the investigation of a serious crime by undertaking, normally for a
limited period, specific tasks as agreed with the regional coordinator;
To cooperate with the National Criminal Intelligence Service, Force Intelligence Bureaux and where appropriate Her Majesty's Customs and Excises, in the gathering and development of intelligence on persons responsible for serious criminal offences and to provide an operational response in appropriate cases."

In terms of dealing with serious (organised) crime, the RCS has 3 main targets, which are:

a) Arrest and convict offenders;
b) Seize and confiscate assets;
c) Cause maximum disruption to the organisation, and where possible dismantle at least part of it.

Although when targeting an organisation, the prime aim remains the arrest and prosecution of all offenders, in reality the RCS will settle for disruption or partial dismantling, especially through the large scale confiscation of assets. This strategy is based on the belief that where sufficient evidence cannot be gained to convict all offenders, it is preferable to cause maximum disruption, as this can set an organisation back several years.

During the research an example was given of an operation against a family involved in drug trafficking in the UK. Due to intelligence, a major drugs shipment was seized, and although the members of this family were not prosecuted as a result, the financial disruption caused by the confiscation of this
consignment was sufficient to cause a reversion to armed robberies as a means of recouping some of the money lost. Subsequently, an attempt to rob a post office in Surrey was foiled by the police, leading to arrests and prosecutions. This was considered a good example of how the financial disruption of an organisation was sufficient to cause reversion to another form of criminality that was easier to detect and prosecute.

The rules which govern the RCS taking over an operation revolve around a specific scoring mechanism. Such mechanisms are widely used by the various force intelligence bureaux around the country in deciding when an operation should be passed up to force level from division. The usual criteria for a force deciding to pass an operation up to the RCS are:

a) serious criminality
b) operations involving more than one force;
c) operations that are national or international in nature;
d) operations that are likely to be either time or resource intensive.

Once an operation has been passed up to the RCS, the relevant Branch Commander uses a specific scoring formula for deciding whether or not to accept it. If the operation does not reach a stated minimum it is rejected and delegated to another operational team at a lower level. A further scoring mechanism is used, once the RCS takes on a case that allows the National Coordinator of the RCS to monitor the effectiveness of the RCS's progress. Again the scoring formula include the following:
222)

a) quality of criminal; eg, significant member of criminal organisation, or existing current nominal; head of criminal organisation or core nominal;

b) geographic impact, i.e. whether national, international, inter-force, within force, requiring RCS capabilities for best resolution;

c) type of offence targeted;

d) average points scored per operation; allows the Coordinator to ascertain whether a particular squad is coping adequately, in light of the time and/or resource intensiveness of the operations being handled.

This procedure ensures a measure of accountability, and allows for the measuring of the RCS's national performance indicators, expressed as numbers of arrests per 100 officers.

ACPO, via the Police Research Group (PRG) has been able to ascertain that 45% of RCS time is spent on operations of an international nature, and 33% on operations of a national nature. Of these operations, on average 47% of the offences dealt with are drug trafficking offences. (ACPO Report on International National and Inter-Force Crime, February 1996: 29-30) These figures help to explain why, as with information flows, the RCS frequently takes operations directly to Europol, bypassing NCIS in the process. This practice is being facilitated by Europol's increasing skill in providing a venue where transnational operations and investigations can be put together and coordinated.

From an official perspective there appears to be some ambiguity towards this practice. While in practical tactical terms the
utility of being able to take an operation directly to Europol in terms of speed and efficiency is acknowledged, there are the countervailing legal requirements of the Europol Convention, as well as the desire to develop NCIS's capacity as a one stop shop. Allied to this is NCIS's desire to be all things to all people; a gateway to the rest of Europe, an intelligence organisation, and a facilitator of tactical operations. Inasmuch as NCIS's prime function must be as a strategic intelligence agency, what is increasingly being acknowledged is the practice of direct operational contacts between the RCS, as well as force agencies such as drug squads, vehicle trafficking squads etc, and Europol, with the proviso that the ELOs keep NCIS abreast of all developments.

It is envisaged that the advent of the National Crime Squad in April 1998 will streamline this process. The NCS will be a new police force under a new service authority, into which the RCS will be incorporated. The proposed method of deciding when a case will be passed up to it are:

a) where a case/offence involves more than one force;
b) where the crime/s involved is/are of a sufficiently serious nature;
c) at the request of a Chief Constable.

At the moment, the most that the National Coordinator of Regional Crime Squads can do is to advise fellow coordinators that all operational contacts should take place via the International Division of NCIS. It is believed however, that as a new police body, with its own Director General, who has day to day directional control over all his officers, it will be easier
to direct all NCS officers to follow a specific policy with respect to taking all international operations involving Europol through NCIS's International Division.

However it can be argued that if there was no success in preventing RCS officers from taking tactical intelligence directly to Europol, there is no evidence to suggest that there will be any difference with the NCS, despite its central direction. As a matter of fact it may very well be that as a national unit in its own right, the NCS may one day argue that it has as much right to directly access Europol as NCIS. This position finds justification in the experience of other EU states such as Italy which has several national policing agencies such as the Direzione Investigativa Anti-Mafia (DIA), and the Direzione Centrale per i Servizi Antidroga. In such instances the various agencies have just as much right as the official national unit for directly accessing Europol.

Any future central direction and control of the NCS also does not stop the force intelligence bureaux, drug squads and stolen vehicle squads of the 43 forces in England and Wales from taking operations and tactical intelligence directly to Europol, particularly as there is a void between the cases and targets that are of interest to NCIS, and those that are of relevance to the forces.
7.6: CONCLUSION

In conclusion therefore it can be seen that, as with Germany, the central hypothesis of the research holds true, albeit for slightly different reasons. Whereas in Germany, the development of 'special treatment' has been a function of the federal autonomy that allows the various LKA to legitimately claim the status of being national units on the same footing as the BKA, in the UK, similar developments are a result of the imbalance between the priorities of NCIS and the forces. NCIS's remit is predominantly national and international in character, while much of the work conducted by the RCS is likewise national and international. The use of a core nominal system results in a void at the inter-force level. This was confirmed by the ACPO report into International, National and Inter-Force Crime which states: "... whilst the UK has a national strategy for gathering intelligence about criminals (as evidenced by NCIS), no similar strategy or commonly accepted procedures exist between the 43 forces in regards to those criminals who fall outside of the NCIS definition. The working group therefore recommend that ACPO take account of this void in the Service's capacity to gather intelligence at the inter-force/regional level during the course of its current study into criminal intelligence matters." (ACPO Report on International National and Inter-Force Crime, February 1996: 32)

In operational terms, this report also identified problems in the ability of force central squads in conducting inter-force cross border investigations. These were listed as:
a) Senior managers are reluctant to commit resources to investigate crime which occurred outside their own area;
b) Officers often find it difficult to make contact with the right person in a force with which they had no previous dealings;
c) Officers feel that there was a lack of relevant intelligence about cross border crime because NCIS focuses only on those it perceives to be serious criminals;
d) Although officers are generally satisfied with the cooperation they receive from other forces they do mention the difficulties that are caused by incompatible equipment. (ACPO Report on International National and Inter-Force Crime, February 1996: 26)

This lack of coordination at the force level gives one indication why force central squads are increasingly likely to take tactical intelligence and operations of a European nature to Europol. The preoccupation of the RCS with investigations of an international and national nature are another reason. The implementation of the NCS could also exacerbate this problem. When questioned about this, the National Coordinator of Regional Crime Squads stated his view that he did not believe the NCS would result in everything gravitating to London. In support of this position he stated that while part of the success of large scale criminals was based on the anonymity that large cities such as London provided, a sizable proportion of their money was still made in the regions. Also there will be no diminution of attention in the regions because London is not the only centre
of criminal excellence in the country. The North East region of England is a prominent area for drug trafficking, particularly via the UK/Amsterdam (Crayfish) drug connection. The North West is the site of the Colombia/Venezuela connection (re cocaine trafficking), and the Midlands is a centre for drug trafficking with the Indian sub-continent.

Finally the example was given of the British Transport Police, which does not lose anything by being commanded centrally from London, inasmuch as its jurisdiction stretches as far as the north of Scotland. However despite these assurances, there is no guarantee that the NCS will be any more successful in addressing the areas of interest to the forces than NCIS, or even the RCS (taking into account the high percentage of its time spent on international and national as opposed to force level investigations). The results of the research into the UK's relationship with NCIS shows therefore, that as with Germany, the official process of centralizing the exchange of information and intelligence, has also very quickly evolved into a qualified centralized process whereby, due to tactical exigencies, officers at the regional and force level are bypassing NCIS and dealing directly with Europol, on the proviso that NCIS is kept informed by the ELOS.

The following case study on the Dutch national unit was included in the research because the Dutch view on police cooperation issues lies somewhere between the extreme views of Germany and the United Kingdom. While the Netherlands is generally enthusiastic about European political union, it has shown surprising reluctance to endorse any executive policing
powers at the European level. The juxtaposition of these two views provides an interesting point of comparison, lying as it does, somewhere between the Euro-federal enthusiasm of Germany, and the nation-state centred position of the United Kingdom.
CHAPTER 8: DUTCH CASE STUDY

8.1: BACKGROUND

8.1.1: The Dutch Political System

The Dutch political system has evolved from and is a function of the social and religious cleavages that are a basic historical characteristic of the country. The religious divisions are between the Catholic and Protestant faith which is itself subdivided into the Dutch Reformed Church and the Rereformed Church or Gereformeerde churches, while social cleavages revolve around more classic stratifications between the working and the middle classes. The effects of these cleavages have been to fragment the Dutch political system to the extent that no political party has ever succeeded in winning an electoral majority (Andeweg and Irwin 1993: 23) as the society and by extension the electorate consists of a number of minorities.

Out of this political fragmentation into minorities has ensued a number of political and social concepts and developments that are unique/specific to the Netherlands such as the concepts of pillarisation and consociational democracy. Pillarisation refers to the propensity for the various minorities to remain rigidly segmented within their particular sub-culture in virtually all facets of life. For example, Catholics could be expected to associate almost exclusively with Catholic communities and institutions from birth till death. Therefore pillarisation often extended to every area of social life, encompassing hospitals, trade unions, schools, marriage, sporting and recreational activities etc. Examples of pillars identified in Dutch society
are: the Catholics; the Gereformeerden; the Social Democrats; the Dutch Reformed Church and the Liberals.

This form of social segregation was considered to be an impediment to stable government, and has been balanced by the concept of cross pressures, whereby, according to Andeweg, "Social cleavages are to be rendered harmless by their cross-cutting each other: (i.e, social groups that are homogeneous with respect to one social cleavage are heterogeneous with respect to another)." (Andeweg and Irwin 1993: 33) This in theory has a moderating influence in that social groups may be divided on one issue yet united on another. Overseeing these arrangements are an impartial government within which the elites of each pillar are represented, and which maintains stability through a series of ordered compromises. Thus the deep divisions at the mass level are compensated for by overarching cooperation and pragmatism at the national level. (Jones 1995: 15)

Despite a process of depillarisation which began in the 1960s, by which the rigidly segregated pillars have lost some of their importance, the Netherlands remains a country of minorities in which political parties are unable to command sufficient support with which to form parliamentary majorities. The political system is headed by a monarchy, which in the absence of parties gaining electoral majorities, plays an important role in forming a government, often based around a coalition cabinet. The legislature is bicameral, consisting of two chambers. The First Chamber is a 75 seat senate elected by provincial legislatures with limited powers of revision, while the Second Chamber is a
150 seat elected chamber. Together they comprise the States General or parliament. (Jones 1995: 25)

8.1.2: THE DUTCH JUDICIAL AND POLICING SYSTEM

The Dutch judicial system is heavily influenced by the incorporation of the country into the French empire between 1810 and 1813. The first Dutch code of criminal procedure dates from 1838, but was in many respects virtually identical to the French code that it replaced. The current code of criminal procedure came into effect in 1926, and even though it exhibits specifically Dutch national characteristics, the original influence of the French system can still be identified.

The judicial system is inquisitorial in nature and revolves around the Public Prosecutor who has the powers of investigation, prosecution and execution of court decisions as well as the exclusive discretionary right to caution offenders. Each district and sub-district has its own public prosecutor although with respect to the authorisation of detention and searches, senior Dutch officers above the rank of inspector are empowered to act as Assistant Public Prosecutors (within carefully defined limits). The Minister of Justice heads the judicial system although the Public Prosecutors go to great effort to emphasize their independence. The Dutch judicial system operates on an "opportunity principle," whereby the Prosecution Service has flexibility in deciding whether or not to prosecute a case. This principle will be examined in Chapter 10 with respect to the effect it has on cross border police cooperation with states such
as Germany that does not have such flexibility in prosecution decisions.

The Dutch policing system was originally divided into 148 municipal forces, which were funded by and came under the direct control of the Ministry of Home Affairs, as well as the nationwide State Police which came under the jurisdiction of the Ministry of Justice. This separation of competencies between the Ministries of Justice and Home Affairs is seen by the Dutch as vital in ensuring that the powers of coercion are not concentrated in the hands of one governmental department. However in practical terms it has lead to problems in terms of establishing the correct line of accountability, as well as duplication resulting from one Ministry not knowing what the other is doing.

Since 1994 the Dutch police service has been reorganised into 26 forces consisting of 25 regional forces and 1 national police agency. Each regional force is overseen by the burgomaster of the largest municipality in the region (or of the municipality which is the administrative centre), who acts as force manager, as well as the chief public prosecutor of the district. The chief of the force is in charge of the day to day running of the organisation. The regional forces come under the control of the Ministry of the Interior, (which is the Dutch equivalent of the UK's Ministry of Home Affairs) which controls the budget although in certain circumstances as with the allocation of staffing levels, decisions are reached in consultation with the Ministry of Justice.
The National Police Service or KLPD comes under the authority of the Ministry of Justice and is responsible for supporting the work of the regional forces as well as specific functions that require a more centralised approach. Towards this end it consists of the following five divisions:

a) Mobility: which includes the traffic and water police as well as the Aviation Investigation Unit;
b) Royal and Diplomatic Security;
c) Support: this division includes a number of disparate agencies such as the Information Technology Service, the Horse and Dog Unit and the Aviation Unit;
d) Logistics: this division is responsible for the administration of stores, vehicles, equipment etc;
e) The National Criminal Intelligence Service

8.1.3: THE CENTRALE RECHERCHE INFORMATIEDIENST - CRI

The CRI is a criminal intelligence unit, based in the Hague, which is tasked with the collection, analysis and dissemination of information/intelligence. It has no executive powers, and is primarily concerned with supporting the regional forces. It has a monopoly on international contacts and incorporates both the Interpol NCB as well as the Europol contact point. The CRI maintains a number of databases with information on crimes, methods of operation, fingerprints, informants etc. It also possesses 5 regional intelligence branch offices.

Throughout the research carried out at the CRI, officers that were interviewed placed significant emphasis on the fact that the hub of policing emphasis revolves around the regional forces, and
the CRI's primary goal was to add value and where necessary coordinate, without usurping the competence or authority of the regions. The remit of the CRI is based on the use of organised crime as an umbrella that encompasses all other forms of serious crime. This is based on the European usage of the term 'organised crime' as any offence which requires a degree of organisation to commit. Such an approach acknowledges the fact that it is increasingly difficult to separate serious transnational crimes like terrorism, drug trafficking and trafficking in stolen vehicles into neat compartments. There is generally therefore an interrelatedness between these offences that has prompted the overarching use of 'organised crime' as an umbrella encompassing all other serious forms of cross border crime. Therefore while the CRI may have specific departments dealing with such offences as: drugs crime; environmental crime; fraud and forgery; and assault and theft, they all come under the overall banner of organised crime.

8.2: INFORMATION FLOWS

8.2.1: INTERNATIONAL - NATIONAL INFORMATION FLOWS

Dutch law stipulates that the CRI is the only body allowed to undertake international contacts and liaison. As a signatory of the Europol Convention, the CRI is obliged to supply Europol with all necessary and relevant information, as well as to respond to all requests for information from the organisation. It also has the responsibility for keeping information up to date, and for analysing data, where applicable, before disseminating it to
Europol. The main criteria, as laid down in the Convention for passing information up to Europol, are that it is within the bounds of the organisation's remit, and that it involves or affects two or more member states of the EU in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned (Art.2.1 Europol Convention). Therefore, as with Germany, the criteria for the supranational transmission of information between the Dutch national unit and Europol are based on the Europol Convention from the top down, and national legislation from the bottom up.

In keeping with its statutory monopoly on international liaison and transmission of information, it is also the responsibility of the CRI to decide which is the appropriate channel for any given case. Whereas the UK has designated a specific department of its NCIS, the International Division, to deal with the process of allocation, the CRI is in the course of developing an alternative method for dealing with this area. It admits that there have been problems with duplication in the past in that officers were often unable to ascertain that a particular person or case was being dealt with by other officers in other forces. The CRI however has rejected the idea of designating a physical department for this function in favour of a system whereby the officer dealing with the case is the one responsible for deciding which is the appropriate international channel. In this process he will be aided by improved computer systems that will identify when a case is being dealt with by someone else thereby cutting down or eliminating duplication.
Other factors identified which influence the exchange of information between the national and supranational levels are as follows:

1) Core Nominals: In keeping with its stated objective of being fed only so much information as is required to perform its functions, the CRI has a system that is similar to the core nominal system in the UK whereby regional CID and intelligence officers create lists of targets that are considered suitable for CRI attention. These are invariably persons involved with serious organised crime, which either is of national/international importance or would benefit from centralised attention at the national level. Unlike the UK however where a top down approach operates, with NCIS deciding upon its core nominal base, in the Netherlands the process is reversed with the regional forces deciding on the targets that are passed up to the CRI. This in turn influences what information the CRI can share with Europol, as it will be based more on what the regional forces consider to be important than what the CRI considers to be significant. This is in keeping with the emphasis on the CRI as being there to serve the regions and not the other way around.

2) Familiarity: While familiarity was one aspect that influenced the flow of information between Europol and Germany, it is of even greater relevance taking into account the size of the Netherlands, as well as the location of Europol. The total number of police officers in the country numbers approximately 39 thousand. This means that there is a greater likelihood that CID and intelligence officers will be known personally by ELOs at Europol. This is further amplified by the emphasis in the
Netherlands on bringing the higher echelons of policing as close to the pivotal regional forces as possible. Therefore the development of informal bonds between CID and intelligence officers at the regional levels and ELOs is positively encouraged.

Access to liaison officers from other EU states via personal contacts with Dutch ELOs was another area that enhanced communication with Europol. As with Germany, Dutch police officers asserted when asked that the operational successes that there have been involving Europol, did not occur specifically because of Europol. These operations such as controlled deliveries have been described as routine policing which were possible before the advent of Europol via the drug liaison officer network. What Europol has facilitated however, has been access to EU states which do not have a liaison officer network, such as Greece. Prior to Europol, operations involving these states were invariably problematic due to difficulties in contacting the correct person at any given point in time. Now access to the competent authority is readily available via all the ELOs being under one roof in the Hague.

3) Embargo information: The Dutch police employs a highly secretive system of undercover officers that are involved with the infiltration of large organised crime outfits. These officers are termed embargo officers and the information they transmit is called embargo information. Allied to this is the use of a mathematical coding system for identifying particular types of offences, areas of the country or types of information. For example all drugs codes begin with the number 2.0, with 2.1.
referring to cocaine exports and 2.20 referring to cocaine imports. The code 5.1 refers to fraud, and the code 1700 refers to the south of Holland.

In terms of CID work, the code 11 applies to information that can be used by all operationally and can therefore be shared. However the code 00 refers specifically to embargo information, and cannot be shared under any circumstances. Usually the only two people privy to the contents of embargo information will be an embargo team member, i.e. an undercover operative, and his informant or infiltrator. An interim classification is 01 which applies to information that can only be shared with the express permission of the officer who owns or has acquired the information, and then only for stated purposes.

The net effect of this system is that the only information that can be freely passed to an agency such as Europol is information that is classified 11. Embargo information 00 as well as 01 cannot be passed to external agencies such as Europol. Therefore, despite the fact that part of Europol's remit is to collate and analyse information relating to serious organised crime, such information that is acquired in the Netherlands through certain undercover procedures cannot be shared. The claim by one officer within the NCID that as much as 80-90% of information was coded as 01 means that the amount of relevant information that can actually be shared with Europol must be very significantly constrained. This claim was verified by one Dutch ELO at Europol, who while declining to give a percentage, indicated that a significant amount of intelligence is routinely reclassified.
While most of the information that is passed among CID officers is coded 01, it is often the case that information that can be classified as 11, is sometimes coded as 01 instead so that officers can maintain their personal control over it. This of course is a very common policing problem. However with the current coding system in the Netherlands, police officers can cloak their reluctance to share information by using the 01 category.

The use of embargo teams has lead to one of the largest policing scandals in the history of policing in the Netherlands. The implications of this will be considered later in this chapter with respect to the effect of operational considerations on the applicability of the centralised mode of information exchange to Europol. However within the context of this section, the use of embargo teams and information has a substantial effect on the exchange of information between the national and the supranational levels.

4) The Netherlands as host state: As with the experience of Interpol and France, the siting of Europol on Dutch soil means that the country has a vested interest in making the organisation a success. This has lead to the posting at Europol of a special Dutch representative whose job it is to liaise between Europol and various Dutch ministries such as the Ministries of Foreign Affairs, Finance, Justice and the Interior, as well as assist in negotiating the signing of Memoranda of Understanding between the Dutch state and the other 14 EU states with respect to the status of all ELOs. The Dutch government and police have also taken steps to encourage the use of Europol by Dutch police officers,
particularly in light of its emphasis on bringing the services of such agencies as close to officers at the regional and local level as possible.

5) Speed: Again as with Germany, a prime factor in the decision of Dutch police officers to use Europol as opposed to any other agency is its speed. During the course of a research interview, while the Dutch representative to Europol reiterated the fact that Europol will not encroach upon the territory of either Interpol or the DLOs, he confirmed that an advantage in Europol's favour was the speed with which it could answer requests. While admitting that many of the requests dealt with to date were low level requests, Europol could expedite these in 2 hours as opposed to 2 weeks by Interpol. Coupled to the 24 hour availability of ELOs, the reputation and consequent use of Europol was likely to dramatically increase in the future, particularly in relation to the quality of cases handled.

5) Language: As with other states, the current bilateral nature of the Europol Drugs Unit means that police officers in the Netherlands can liaise with fellow Dutch officers in their own language. This convenience is another major factor that encourages the use of Europol. However the Convention designates the organisation's working languages as English, German and French, and this stipulation will take effect upon the full ratification of the Convention, when Europol proper will come into existence.

In the case of Interpol, it would have been unthinkable for French to have been excluded as a working language, both in terms of French national pride, but also in practical terms. It is
conceivable that the exclusion of Dutch as a Europol working language, can have a negative impact, particularly in light of Dutch efforts at bringing the organisation as close as possible to police officers at all levels.

8.2.2: NATIONAL - REGIONAL INFORMATION FLOWS

The areas which influence the transmission of information from the regional to the national levels in the Netherlands are as follows.

1) Filter criteria: This criterion is based around the European concept of organised crime, which states that this category of offences consists of any crime which requires an element of organisation to commit. In the Netherlands this usage has been further refined in that the term organised crime is used, not as a phenomenon in its own right, but rather as an umbrella definition covering or encompassing all other forms of serious criminality. This in turn is based on the reasoning that all forms of serious crime such as drug trafficking, trafficking in stolen vehicles, fraud, illegal immigration networks etc, requires varying degrees of organisation to successfully commit.

As a system, filter criteria are in the process of being developed and implemented in the Netherlands. Its aim is to filter out all extraneous information that is passed to the CRI, but to ensure that what information is passed is what is necessary for the organisation to fulfil its remit. In keeping with regional force autonomy, the regional force does the filtering, and not the CRI. Time and again during the course of
the research interviews the point was stressed that the CRI requires as little information as possible, but only what is relevant to provide coordination at the supraregional, national and international levels.

Under the current process, regional CID and intelligence divisions and units compile lists of persons they believe to be involved in serious organised crime. These lists are then passed up to the CRI, who feed it into their system and try to ascertain whether these targets have been reported as being active in other parts of the country. The information passed up however is generally very sparse consisting primarily of basic details as well as classification codes. When the CRI wants to know the contents of a particular target's dossier, they still have to request this information from the regional forces.

At present the system is not as yet automatic. However in the very near future it will have progressed to the point where all regional forces and technical investigation units will be able to input information into a national system. Information that can be input includes, the purpose of the investigation, the target/s, the goals of the investigation, start and projected termination dates etc. While the CRI will conduct supraregional, national and international coordination, the officers in the regional forces will have on-line access to the national system. This system will be similar to the INPOL system in Germany which allows decentralised access, but different to the situation in the United Kingdom where regional forces do not have access to NCIS's information systems.
The criterion for the type of crime that is dealt with by the CRI is serious organised crime. However within the context of the filter criteria process, the filter emphasis is on the word 'organised' as opposed to 'serious'. The point was made during the course of the research that a robbery in which 10 people are killed would not be a case for the CRI as the 'organised' criterion had not been fulfilled. However a series of 10 small robberies with elements of organisation would be of relevance to the CRI, and therefore information on them would be passed up.

The system of filter criteria is a function of the devolved autonomy of the regional police forces in the Netherlands. The CRI performs a functional supportive role only. It has no power to task the regional forces or to demand action or information. The system of information exchange is not governed by law as in Germany or by service level agreements as in the United Kingdom. Instead the exchange process is based on an informal request basis that keeps autonomy devolved to the regional level. The regional forces are the ones that decide what information, or which core nominals to pass up to the CRI. Where the CRI requests information, the forces are under no compulsion to respond. In this way an environment is created in which the CRI can have an overview without being directly involved. And even in the area of coordination, the regional forces are always the ones to request coordination.

Finally the devolved nature of the filter criteria process often results in an uneven balance of information passed up to the CRI as different forces have different types of offences and different policing priorities. Also some forces such as Amsterdam
have organised themselves in such a way that they can carry an investigation further without any external assistance from the CRI, whereas other forces lacking expertise in certain areas will call in the CRI earlier. This fragmentation can make the CRI's role of providing both supraregional coordination and developing a strategic overview more difficult.

2) Strategic Intelligence Research: Another relatively unique criterion for deciding when to pass information up to the CRI is the innovative and proactive system known as Strategic Intelligence Research or SIR. The people involved in this system are not just police officers but consist of criminologists, academics, psychologists, historians and social scientists. Their work includes not just assessing the current situation as regards to serious organised crime, but also all possible future threats. The concept is based on three interrelated phases which are as follows:

a) Society or Environment Scan: This consists of compiling a list of all the potential areas for the involvement of organised crime throughout Dutch society. For example all possible information and assistance will be acquired from the financial institutions in the country in analysing the potential weak points re money laundering. Likewise weak points in drug trafficking routes will also be highlighted by acquiring as much information in such areas as the haulage industries, the ports etc.

b) Sector Scan: This phase concentrates on a specific sector of society usually a business sector so as to identify any weak spots that would make it particularly liable to infiltration by organised crime. The ACPO Report on International National and
Inter-Force Crime of 1996 outlines how this phase operates: "This data would mostly be gathered from public or half open systems of public bodies. If during this phase signs surface which suggest that something is wrong, then a draft 'risk model' is drawn up, by means of which a specific inventory can be made of possible wrongdoing enterprises and groups. In this context a draft risk model describes what the impact is of sector characteristics and social processes on the vulnerability of a certain sector to penetration by organised crime groups. An example was given of this in the waste processing sector. The working group were told that with the strict environment protection regulations drawn up by the Netherlands central government in recent years, legally processing all sorts of waste has become much more expensive. As a consequence it has become more lucrative to process waste by observing all the rules on paper but in reality to have waste disappear in all sorts of illegal ways. It stands to reason that the more sorts of waste are processed by a company, the easier it will become to mix waste flows. With this, a risk factor was identified which possibly furthers illegal practices and which therefore gives a direction to strategic intelligence research." (ACPO Report on International, National and Inter-Force Crime, February 1996: 41)

c) Organisation Scan: Information gleaned from a sector scan can yield sufficient data to warrant the concentration on a particular business or organisation. Apart from information available from open sources, this phase often relies upon the local knowledge and intelligence files of local and regional CID officers. If sufficient data is collected, an organisation scan
can lead to the mounting of tactical operations that can result in arrests and prosecutions. Sometimes the process can work in reverse in that an organisation scan can lead to a sector scan. Again an example of this was given in the ACPO Report of 1996 which highlighted the case of the use of money exchange offices in Amsterdam by an Israeli criminal group to launder money. This lead to a general sector scan of all money exchange offices in Amsterdam, which culminated in operational success and the statutory control of these offices.

The SIR system has now expanded to include a series of Memoranda of Understanding with groups such as trade unions, the financial sector, banking staff, the chemical industry etc. There have also been the establishment of codes of conduct with such groups as solicitors, restaurants, bars, cafes etc. While being expensive, resource intensive and requiring patience for results, it represents an innovative approach to the strategic proactive combatting of organised crime. By concentrating on mainly non police personnel it has also gone some way towards correcting the tendency for the tactical to drive out the strategic in the areas of police cooperation and intelligence.

Inasmuch as it is usually the case that police officers are more interested in operational successes and the prosecution of offenders than the long term view of strategic oversight, which seldom gives an immediate return on resources employed, the strategic is therefore usually sacrificed in the pursuit of the tactical. With the employment by the CRI of dedicated civilian strategic analysts however, the pressure for short term
operational gains is usually not a factor. This allows for a more balanced approach between the strategic and the tactical.

The Strategic Intelligence Research project is primarily about analysing and intervening in the encroachment of organised crime from the underworld into the upper world. It therefore stands in contrast to the stated goals of filter criteria which mandates that as little information as possible be passed to the CRI. To the contrary the success of SIR is dependant on the quantity of information that the strategic analysts at the CRI receives. This however is a function of the CRI's role in providing added value to the regional forces which maintain their autonomy, as opposed to its other function in providing a strategic national and international overview of serious organised crime in the Netherlands.

8.2.3: DIRECT CONTACTS WITH THE EDU

In keeping with the autonomy of regional police forces in the Netherlands, great emphasis is placed on bringing support and coordination from other levels as close as possible to the regional forces. An example was given during the course of the research by the then Europol Project Leader at the CRI with reference to the Europol chain of communication. Usually in the past, if a Dutch officer wished to acquire or pass on information from/to Europol, he would have to pass the request or information to CID, who would pass it to one of the five regional CRI offices. From there it would be passed up to the national CRI
offices in the Hague for onward transmission to Europol. Initiatives have now been implemented however to eradicate these tortuous transmission routes.

In the interests of providing a fast and high quality service devoid of unnecessary middlemen, the CRI has instituted a dedicated liaison desk based at Europol itself. Forces are now equipped with direct lines to this liaison desk, and this is being complemented by the posting of CRI officers to regional CID offices. The effect of this initiative has been that officers at all levels can now bypass the national CRI and contact a Dutch liaison officer directly in the Hague. The problem of the CRI being kept informed of these communications has been overcome by the inputting of all relevant information into the national database by the liaison officer in the Hague.

However a further consequence of this flexibility has been an increased tendency of police officers to contact their ELOs directly, bypassing the CRI and the liaison desk altogether. This is facilitated by the fact that Europol is based on Dutch territory, so that there is still the sense that one is contacting Dutch officers on Dutch soil as opposed to Europol officers. Also the size of the country means that there is greater personal knowledge by Dutch ELOs of police officers in different parts of the country, which further facilitates direct contacts.

It should be noted however that direct contacts are not formalized in the Netherlands as in Germany, to the extent of regional forces being considered as national units, or having the right to petition for representation on Europol's Management
Board. Nevertheless, inasmuch as the function of the CRI, and by extension Europol is to support and provide added value to the regional forces, Dutch officers have the right and are encouraged to contact Europol directly. The impetus for this is further increased by the fact that two of Europol's analysts are Dutch. While this may be in contravention of both the Europol Convention and Dutch law which states that all international contacts must go through the CRI, the tactical imperatives for faster and more effective cooperation and coordination has resulted in the equivalent German practice of special treatment being duplicated in the Netherlands.

8.3: DATA PROTECTION CONSIDERATIONS

The Police Records Act was given the royal assent by Queen Beatrix of the Netherlands in 1991. The Act laid down the guidelines governing the police's ability to exchange information particularly with foreign bodies and police forces. The main definitions of the Act are as follows:
a) criminal intelligence: this refers to records set up with the aim of preventing or investigating offences which, in view of their seriousness or frequency, or the organised group by which they are committed, have a serious effect on public order;
b) CID subject: refers to a person concerned as a subject or who might reasonably be concerned as a subject in the offences in respect of which the CID records were set up;

c) grey field records: records set up in order to establish whether the person registered can be regarded as a CID subject in relation to other data.

The Act lays down the stricture that no data can be disclosed from police records for purposes other than those for which the records were set up, except in the following cases:
a) disclosure is for the purpose of investigating an offence representing a serious public order contravention;
b) disclosure is for the purpose of inclusion in CID records or "grey field" records;
c) the data itself leads to a reasonable suspicion that a specific person has committed a punishable act.

In terms of the ability of the police to transmit data to the police of a foreign state, this is permissible where:
a) it is necessary for the proper exercise of the police function in the Netherlands or the execution of instructions deriving from the reporting of persons by authorities of the Netherlands;
b) to prevent a serious and imminent danger or for the investigation of a crime that has the potential to seriously undermine public order in that state;
c) for the proper exercise of the police function in that state, on the basis of a request relating to a specific person or specific case.

The Act also stipulates that due account must be taken of the data protection provisions in existence in the state to which data from the Netherlands is being transmitted. This applies not only to the proper use of data but also the protection of personal privacy. This requirement means, that to date, in relation to the ability of Dutch ELOs to share information with EU states such as Italy and Greece, which have not had data protection provisions in the past, to do so would have been in contravention of this Act.

This has been a problem for each EU state with data protection legislation. Of course once the Europol Convention has been ratified by all 15 EU states, and Europol proper comes into existence, this problem should be rectified. Articles 14-18 of the Europol Convention state that the standard of data protection to be given at the national level of each member state should at least correspond to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981. Articles 23 and 24 also require each member state to designate a national supervisory body (Data Protection Authority) to monitor the information put in by that state. (Statewatch, The Europol Convention 1995: 7-8)

Unfortunately Europol proper will have a similar problem, when the Convention is ratified, to that experienced by ELOs currently who disseminate information to states with no or inadequate national data protection legislation. As an organisation it is
merely obliged to receive an undertaking from the non EU receiving state that the data transmitted to it will be used for the purpose for which it was communicated. Without at the very least the requirement for compliance with the standards laid down by the Council of Europe Recommendations, coupled with a lack of enforcement rights of the Joint Supervisory Body, the citizens of the EU will have little protection with respect to misuse of data supplied by Europol to third party states or organisations.

Finally the Act decrees that all disclosures of data must take place through the CRI. The only exception to this is when there is an agreement with foreign police authorities allowing direct disclosure, on the proviso that any such agreement is approved by the Minister of Justice or the Minister of the Interior, within specified parameters. In effect this stipulation suggests that the practice of Dutch police officers outside the CRI communicating with Europol directly is in contravention of the Police Records Act.

In the course of the research, officers interviewed emphasised the individualistic nature of the Dutch people that has resulted in a high priority being placed both in peoples' minds and in the political arena upon data protection. The Dutch police tend to see themselves as being virtually "strangled" by the strict rules and regulations in terms of what can and cannot be done with personal data. In addition to the Police Records Act, officers mentioned the Persons Registration Act, and the Police Registration Act, along with a plethora of smaller regulations that all govern the exchange of information. Areas of restriction include such stipulations as:
a) restrictions on exchanging information in terms of the source of that information. For example, the information being exchanged should not be the product of an entrapment exercise; 

b) restrictions relating to the use to which information exchanged will be put. For example that the information will not be leaked to the press (a stipulation that is usually difficult to ensure or enforce); 

c) in relation to a state requesting information, whether the information is to be used for investigative purposes, as evidence etc. 

The area of data protection therefore has a substantial formal impact on the ability of Dutch police officers to exchange information between different policing levels. The point was repeatedly emphasised that in terms of information exchange, everything was possible, but within specific parameters. Couched within these reassurances lurks the implied suspicion that as always police officers find ways of circumventing onerous administrative restrictions. However in terms of how Dutch police officers would like to see police cooperation progress in the future, there was little or no interest in the development of a supranational policing facility, but rather a desire for a freer environment in which cooperation generally and information exchange specifically could take place.
8.4: OPERATIONAL FACTORS

8.4.1: INTERNATIONAL - NATIONAL CONSIDERATIONS

The research carried out at the CRI did not reveal the conviction expressed by German police officers that a non-operational Europol was unnecessary as there were other perfectly adequate forms of cooperation involving information exchange. The three aspects that were emphasised were, intelligence, good cooperation and the fast exchange of information.

In relation to operational successes involving Europol, these were modest in number but increasing, as trust in Europol was developed. Examples of operational Europol successes given by Dutch ELOs are as follows:

1) "An investigation team in the south of the country (the Netherlands) was investigating the organised thefts of cars, which were being stolen in south Belgium, Holland and Germany, and then exported by criminals in parts to Greece, to a certain area; Thessaloniki. The local police (in the Netherlands) tried to come in contact there (in Thessaloniki) for a long time via Interpol channels, and it didn't work, because they needed a house search on a scrap yard in Thessaloniki. It was very complicated to organize. They lost a transmitter which they had put on one of the trucks (transporting parts to Greece), which the police follow by satellite. So there was really the need to do an in-depth investigation in Thessaloniki. We organised the contact with the Greek desk, and we organised a small meeting, and we put quite some pressure on the case. Within one week a
house search took place in Thessaloniki and they found a lot of stolen cars from the Netherlands and parts etc. There were arrests made in Thessaloniki, and it also lead to arrests in the Netherlands as well as the disclosure of evidence."

2) "A courier/trafficker arrested on his way to Spain with 2 kilos of heroin had a hotel bill in his possession from a hotel in Amsterdam. The police rapidly wanted to know what telephone numbers he contacted while he stayed there as there was the suspicion that he contacted the person who he had to deliver the heroin to. By making direct contact with colleagues in Amsterdam from our personal network, the same evening, an organised search of the hotel was made. They came up with several very interesting Spanish telephone numbers where the guy was on his way to. They are small successes but they highlight the use of Europol."

In connection with these successes, there was often the conviction expressed that Europol could not be given unreserved credit for successful operations such as controlled deliveries, as these types of operation have been just as easily carried out by the DLO network in the past. This sense however that controlled deliveries and the coordination of transnational operations would be possible were Europol not to exist, was tempered by the observation that it is nevertheless useful in terms of organising or coordinating transnational operations with states such as Greece that does not have a DLO network. Again the
housing of ELOs from all 15 EU states under one roof was seen as a significant advantage, particularly in terms of accessibility and speed.

8.4.2: NATIONAL - REGIONAL CONSIDERATIONS

The Netherlands has recently had a National Criminal Investigation Department (NCID) instituted within its national police force. The national force is not considered as being above the 25 regional forces, but rather as a 26th force that gives support to the other 25. The remit of the new NCID consists of difficult financial investigations, with the term 'financial' being limited to money laundering activities, and the processing of international requests from other states such as the UK and Germany.

In operational terms, the use of the NCID has echoes of the principle of subsidiarity in that all coordination should normally be devolved to the lowest level, this being the regional forces. Only if a case cannot be effectively handled by the regional forces can it be passed up to the next layer of coordination, this being the 7 supra regional crime squads that are paid for by the 25 regional forces. Once again, a case is only then passed up to the NCID if it cannot be effectively dealt with by the supra regional level. The criteria for deciding when a case moves up from one level to the next are as follows:
a) operations that are too expensive;
b) operations that require specialisation (in the case of the NCID, complex financial investigations);
c) operations that are time intensive.

As with Germany and Europol, a system of project based work has also been incorporated into the 7 supra regional crime squads. Therefore one squad deals exclusively with Turkish criminals while another deals with South American drug trafficking or environmental crime. Multi regional operations are coordinated by the CRI via a system called Meldingrechercheonderzoek or MRO. MRO is a database in which the basic details of major organised crime operations are kept and collated on behalf of the chief officers heading these operations. Therefore a team embarking on such an operation would first forward to the CRI details as to the target, goals, projected time span of the operation, methods to be employed such as infiltration, observation, telephone tapping etc.

Upon receipt of this information the CRI checks the MRO database to ensure that there are no other teams in the country working on the same case or target. The purpose of the MRO system therefore is strictly coordination so as to avoid duplication. The CRI does not become involved in the operational coordination of an investigation and as such is not given tactical operational intelligence.

The net effect of this is that, as with the exchange of information, there is evidence that Dutch officers sometimes bypass the CRI, and go directly to Europol when the coordination of a transnational operation is required. Again as with
information exchange the CRI tries to ensure that it is at least kept abreast of developments, but where there is not the immediate need to avoid internal duplication, the practice of the CRI being given only as much information as it needs, is often incompatible with the contradictory wish to be kept informed of tactical operations.

The autonomy and concomitant secrecy that finds expression in such areas as the use of embargo teams has resulted in one of the greatest scandals to beset the Dutch police. What has become known as the IRT affair (Interregional Recherche Team), consisted of secret operations that were aimed at infiltrating the organisations of top organised crime and drug trafficking syndicates. The IRT operations attempted to place an informant within these organisations. To establish the credibility of these infiltrators, the IRTs arranged for the large scale importation of cannabis, as well as hard drugs such as cocaine and heroin, from outside states such as Colombia. Every aspect of these consignments, from the purchase, transport, warehousing, to the distribution, were paid for by Dutch undercover police teams.

In the process the sovereignty and trust of several states, including Britain and Belgium were abused, through a deliberate failure to inform them of these activities which were having the effect of increasing the importation of drugs into their respective states.

In 1995, a parliamentary enquiry under Dutch MP Maarten van Traa was initiated. The resulting report catalogued a long list of errors including the following listed in 'The European':
a) Between 1991 and 1995 chief of Haarlem CID Klaas Langedoen and assistant Joost van Vondel helped themselves to confiscated cash to fund their undercover activities. They were unable to account for Nfl 5 million ($2.9m);
b) The CID (Haarlem) was involved in importing 47 containers carrying 230,000 kg of cannabis. Detectives allowed 10,000 kg of cocaine to flood the market from 1991; 70 kg of cocaine in their charge disappeared;
c) More than 400 tonnes of cannabis a year were allowed into the Netherlands. Since Holland's annual consumption is 300 tonnes, over half of it home grown, much of the imports must have been shipped to neighbouring countries;
d) At least 1.45 million Ecstasy pills, 1,840 kg of cannabis and 200 kg of amphetamines were exported to Britain. On one cross Channel consignment, British customs intercepted a lorry containing thousands of Ecstasy tablets - and a Dutch undercover CID agent;
d) An estimated Nfl 40m of public money was "invested" in Haarlem CID's war against drugs. (The European: Catalogue of Errors, 23-29 May 1996)

The report went on to make a raft of recommendations, the majority of which were accepted and adopted by the Dutch cabinet and a significant majority of the parliament. The civil rights monitoring publication Statewatch has outlined some of the decisions which include the following:
a) the termination of the "closed route" system, which was a secret phase in criminal investigations. Courts will now be entitled to full knowledge and disclosure of all police activities related to criminal investigations on which it is required to pass sentence, and only the judge will decide on whether extremely sensitive information, such as the identity of an informant, can be withheld from the defence;
b) the public prosecutors office is charged and empowered with the task of exercising greater oversight of sensitive operations;
c) the shipment of clandestine goods such as drugs and weapons with the intent to identify receiving criminal networks and build an informer's credibility will only be allowed in the most exceptional cases with the explicit personal consent of the minister of justice;
d) the CRI is to be reorganised with the intent to give it a more effective role in the information sharing network, with new "crime desks" to service the regional and foreign police services. It has also been given the mandate to permanently monitor the top 100 major criminals in the country;
e) the CID departments where most of the covert policing took place in the past are to be reorganised under the general criminal detective branches. (Statewatch Vol 6 No 3 1996: 13)

The net effect of these changes has been the overhaul of the Dutch criminal justice system in an attempt to salvage public trust in it, and to ensure that the concept of regional policing autonomy cannot in the future be taken to the extreme where police officers can break the law under the guise of covert operational necessity.
8.5: CONCLUSION

Within the context of this research, the relevance of the aforementioned IRT affair lies in its ability to once again illustrate the importance of regional autonomy, which in turn has a direct bearing on the central research question. Inasmuch as the devolution of responsibility can give rise to a scenario where police officers can conduct operations that are in violation of the law, unbeknownst to anyone else, it also allows for officers to likewise circumvent, when necessary, the national unit. As with Germany therefore, the imposition of a centralised mode of information exchange and coordination, can be at variance to a decentralised system of policing.

In delineating some of the factors outlined in this chapter, that constrain the exchange of information, such as: the Europol Convention; the CRI's statutory monopoly on international contacts; the emphasis on regional forces; embargo information; data protection regulations; filter criteria and the principle of subsidiarity, Dutch officers interviewed still made the assertion that police officers will always find ways around legal or bureaucratic obstacles. Hence the reason why, despite the many constraints, Dutch officers still contact the EDU directly.

Therefore, while in formal terms the centralised mode of information exchange is in operation between Europol and the CRI, in informal practical terms, as with Germany and the UK, a system of qualified centralised information exchange has quickly evolved. While the former allows the transference of information that is vital for the formulation of a strategic overview, the latter is necessary from a tactical perspective.
The CRI for its part has been caught in a paradox whereby, on the one hand, it continuously emphasises the fact that it only requires as little information as necessary with which to fulfil its remit, so as not to unduly impinge upon regional policing autonomy. Yet on the other hand it is also obliged to ensure that lower levels of policing are accountable to it from the standpoint of keeping it constantly abreast of major tactical operations, particularly with reference to external agencies such as Europol. The basic premise of the research can therefore be shown to apply to policing in the Netherlands as well, whereby the centralised mode of information exchange has in practice been augmented or replaced by a qualified centralised mode in which international coordination and information exchange officially takes place solely via the CRI, whereas in practice, police officers at the regional and supraregional levels bypass the CRI, with the stricture that the national unit is kept informed. This in turn, as will be examined in chapter 10, will have dramatic repercussions for the future of Europol.
CHAPTER 9: SWEDISH CASE STUDY

9.1: BACKGROUND

9.1.1: THE SWEDISH POLITICAL SYSTEM

Sweden is a constitutional monarchy, and its political character is unitary in nature, which means that its national and local governmental institutions are constitutionally subordinate to parliament. It is the largest of the Scandinavian countries with a mainly homogenous population of approximately 8.69 million people. Sweden is governed by a modern Constitution that came into effect in 1975. Its parliament and principal law making body is called the Riksdag, and the country's twenty four provinces serve as regional constituencies for the election of the Riksdag's 349 deputies. Most of the seats (310) are allocated among the constituencies on the basis of the number of eligible voters and the relative strength of the parties competing for support in each of them. The remaining 39 seats are distributed among the parties according to their aggregate percentage of votes within the country as a whole.

The powers of the Riksdag include:

a) the election of the prime minister (statsminister) after every general election, or in the event of the resignation of a prime minister;

b) the exclusive right of taxation and appropriation;

c) principal law maker;

d) the proposal of constitutional amendments (a power it shares with the cabinet).
The monarch, as head of state, is limited to purely ceremonial functions such as the opening of parliament. The prime minister on the other hand, is primarily responsible for the following:

a) the selection of the cabinet, which is responsible for the formulation of policy;
b) the determination of the broad outlines of government policy;
c) being the chief spokesperson for government policy both to the Riksdag specifically, and the country generally.

Today, Sweden is well known both for its stability that is seen as a consequence of its social homogeneity, and the high standard of living it has achieved which is complemented by a generous welfare system. This however has sometimes been tempered by criticisms of the centralisation of political and economic power into the hands of a small governing class.

9.1.2: JUDICIAL AND POLICE SYSTEMS

The Swedish judicial system is divided into the following:

a) The Tingsratt: These are district courts of which there are 97. They are also the courts of first instance;
b) The Hovratt: Courts of Appeal of which there are 6;
c) The Hogsta domstolen: The Supreme Court. (Benyon 1994: 54)
The Swedish police is governed by the Police Act of 1992, and its organisation at the regional level is based around the 24 counties. Benyon highlights the recent reorganisation of the Swedish police by stating "The aim (of the reorganisation) is rationalisation by forming larger administrative units, while the responsibility for actual police work is to lie with the lowest possible level. In six counties the authorities of the local police districts have formed one county police authority, for example Stockholm County Police Authority. The six counties are Stockholm, Goteborgs och Bohus, Malmohus, Halland, Gavleborg and Orebro." (Benyon 1994: 57) The other counties followed suit in 1995.

The defining and monitoring of regulations concerning such areas as police powers, duties, basic organisation and the administrative structure of the police is the responsibility of the National Police Board. Headed by the National Police Commissioner, the board has overall responsibility for the National Police College, the Swedish Security Service (SAPO), Police Methods Department, Technical Support, Logistics, the National Criminal Intelligence Service (Rikskriminalpolisen or RKP) and the National Financial Intelligence Service.
9.1.3: THE RIKSKRIMINALPOLISSEN (RKP)

The RKP is responsible for dealing with offences which are of a national or international nature such as drug trafficking and financial crime. It is divided into the following sections:

a) The Criminal Intelligence Service
   i) Drugs
   ii) Illegal Immigration
   iii) Special Objects
   iv) Economic Crime
   v) The National Liaison Office which contains the following units: the Interpol National Central Bureau (NCB), the Schengen Sirene (SIS), the DLO desk, the Europol National Unit, the Baltic Sea Group and the Customs Liaison Officer;
   vi) The Analysis Department

b) The Security Section
   i) Aviation Unit
   ii) Communication Centre
   iii) Airport Security
   iv) UN Service, Nuclear Power, Violence in sport etc

c) Investigations and Surveillance
   i) Investigations
   ii) Surveillance
   iii) Identification
9.2: INFORMATION FLOWS

9.2.1: INTERNATIONAL - NATIONAL

The factors influencing the exchange of information in Sweden between the international and national levels are as follows.

a) Europol's mandate: The Swedish ELO interviewed during the course of the research pointed out that during the couple years of the EDU's existence, many of the ELOs were very strict in their interpretation of Europol's mandate as laid out in the Convention in terms of what requests they would and would not accept. The wording in requests for information or action had to be just right, and well within the boundaries of what was allowed under the Convention. Of particular relevance was the type of crime that applied to each request. For example most requests had to involve some type of organised criminality, before it would be accepted. However as there was no official European definition of what organised crime comprised, this requirement was often difficult to comply with.

This situation has now changed somewhat as there is more flexibility in what will be accepted. This is in part due to the trust that is building up between the ELOs and the national units of the various states. The ELOs now have a better appreciation of each other's national problems. They socialise and even play football together, and as such much of the original formality of information exchange has dissipated. This however raises the intriguing question of whether as a result of this growing comraderie, Europol is now informally exchanging information in
areas that are not at present within its mandate.

There can also even be problems in areas that are within the organisation's competence. For example, while the smuggling of nuclear substances is within Europol's mandate, in Sweden this offence is handled by the Security Services. Because of the special legislation that governs the disclosure of information by the Security Services, they would be unable to supply via Europol, information on this offence requested by any member state. In such an instance the request would have to be made formally via a Commission Rogatoire.

The term Commission Rogatoire or Com Rog derives from the Latin Rogare: to ask, and Commission: to action, carry out the investigation on behalf of another. As such a com rog is a formal letter from a magistrate or other judicial authority requesting that enquiries are carried out in another state. In the UK, com rogs are also known as Letters of Request.

b) Flexibility: The above mentioned area of Commission Rogatoires is another that affects the decision to use Europol. Despite the existence of other channels such as Interpol, and bilateral agreements, it has often been the case that com rogs have been the only means of acquiring certain types of information from other states. The advent of Europol has meant that certain categories of information can be expedited much more easily and quickly via the ELO system than the formal and time consuming com rog procedure.

However there are limits to the types of information that can be passed via Europol. These constraints are governed by the
provisions of the Confidentiality Act which will be elaborated upon further in section 9.4. Sweden will not pass certain types of personal information on targets, suspects etc such as health histories, whether or not a person has previously been a victim of or suspect for a crime etc. For such types of information a com rog is required. Other types of requests, not necessarily specific to Sweden that require com rogs are: requests for the interviewing of witnesses, suspects and prisoners, requests for house searches and the seizure of property, requests for the freezing and confiscation of criminal assets and requests for the acquisition of evidence.

Finally, it has been the case in the past that some states continue to demand com rogs for situations that have become routine for Europol. A prime example of this has been Belgium's refusal in the past to expedite requests for controlled deliveries because Europol was unable to handle com rogs. While this situation has now been rectified, it is a function of a greater need for increased judicial cooperation which will be examined in the section on operational considerations.

c) Hard v Soft Information: Another factor which, from a Swedish perspective, encourages the use of Europol is its ability to facilitate the exchange of soft as opposed to hard information/intelligence. Hard information has been described as basic information such as names, addresses, vehicle registration numbers etc. These are readily available through standard channels of information exchange such as Interpol. Soft information on the other hand is usually the product of covert
operations such as bugging, telephone and mail intercepts, surveillance etc. It can also be the product of analysis techniques. Because of its sensitive nature, soft information/intelligence is not usually shared with agencies such as Interpol, and is therefore not always readily available to police officers in other states. However because of the closed and confidential nature of Europol's information exchange process, ELOs are usually quite willing to share soft information and intelligence with their counterparts. This often therefore represents an important criterion for deciding to use Europol as opposed to any other channel of cooperation.

d) Thematic priorities: For the most part there is a convergence of crime priorities among the 15 EU states. These priorities tend to revolve around drug trafficking, organised crime, illegal immigration networks, and associated money laundering activities. However in some circumstances some states have fairly specific crime priorities that may differ from the norm. Such a case can be found in Sweden and the other Scandinavian countries who are plagued by what is described as a war between rival motor cycle gangs. The 2 main gangs are the Hells Angels and the Bandidos, and while they are both engaged in drug trafficking, the main focus of their conflict is in establishing primacy between the 2 groups. Both gangs are heavily armed, with their arsenals including grenades and rocket launchers. They have been responsible for several murders in Sweden as well as other notorious criminal activities such as the bombing of an airport with a rocket launcher.
Inasmuch as this type of criminality ranks alongside drug trafficking as the most serious form of national and transnational crime affecting Sweden, it has a substantial impact on the type of information or requests for information that is passed up to Europol.

e) Special Projects: Allied to the above point is the use of special project clusters in Europol as a main strategic intelligence tool. As highlighted in Chapter 5 on Europol, these clusters consist of groups of ELOs from different states with an interest or expertise in different forms of transnational criminality. The members of these clusters bring together as much information and intelligence from their own states as well as other member states, so as to develop a strategic profile of their particular project, which can then be refined into an operationally actionable analysis package.

The Swedish ELO interviewed during the research, in addition to being a member of a special project dealing with outlaw motor cycle gangs in Europe, is also part of the following clusters:

i) An Albanian project concentrating on Albanians from the area of Macedonia and the former Yugoslavia who are involved in drug trafficking. This group operates as a network encompassing the Scandinavian states, Austria and Switzerland. The purpose of the project is to identify the different groups, their modus operandi, their trafficking routes, with the eventual aim of turning the strategic intelligence gathered into viable operations;
ii) The heroin project group, which is linked to the one above, and which looks at, among other things, the use of controlled deliveries, and the development of special techniques used for cross border observations;

iii) A non operational project group on the development of the Europol computer system.

Membership of these special project groups therefore has a significant effect on the type of information that a state passes to its ELOs at Europol. It is unlikely that information on Albanian criminals will be routinely passed up to the UK's ELOs unless specifically requested, as it is not (as yet anyway) a type of crime that affects the UK.

f) Success In The Past: Trust was identified as another key factor that heavily influenced the decision in Sweden as to when to use Europol. As Europol has become better known in Sweden, so has the number of times it has been used increased. As police officers have come to realize the benefits of using Europol, in terms of speed and confidentiality, so has their trust in the organisation grown, as well as their propensity for returning to it with subsequent enquiries. This point was emphasised by the Swedish ELO who stated that police officers will always return to the channel in which they have been successful in the past.

g) Vetting Systems: While Sweden does not as yet officially employ a vetting system for filtering the information it passes up to Europol, or that is received by its ELOs, unofficially, the
ELOs use the UK's 4*4 system. This means that information and intelligence being passed up to Europol is graded to ascertain validity, accuracy, corroboration etc. The grading sequence runs from A1 - A4 for the best quality information, to D1 - D4 for the most unreliable type of information. Having this system in operation means that only information and intelligence of a certain quality is accepted by the Swedish ELOs.

Finally, one of the main problems identified from a Swedish context with the current system of information exchange, was the volume of information contained in replies which resulted in a time consuming process of translation. This surprisingly was not an issue raised in any of the other case studies. However it remains a valid problem that is often overlooked, and is strongly tied in with Europol's role, and can be viewed as one intrinsic to any multi-language organisation.

While it in the interest of the organisation to build up its clientele in the member states by being anxious to facilitate any requests it might have, it does not want, in the process to become another Interpol. Europol's role is primarily meant to be strategic, and as this thesis shows, it is becoming increasingly active in the operational facilitation of tactical intelligence. What it does not want to do however is to become bogged down with a plethora of low level enquiries that can best be dealt with by other channels such as Interpol or bilateral contacts. Inasmuch as the responses to tactical operational enquiries have to be translated from Swedish into English, French or another EU language, the ELOs cannot afford to also be spending their time translating responses to low level enquiries as well.
274)

In response to the juxtaposition of the strategic and tactical considerations, the Swedish ELO interviewed estimated that one third of the Swedish ELOs' time generally was taken up with tactical intelligence and operations and two thirds with strategic intelligence. This he considered as too little time being spent on tactical intelligence, and emphasises the finding of this research on the growing incursion of tactical matters upon the strategic as far as Europol is concerned. This point will be further explored in the section on operational considerations.

9.2.2: NATIONAL - REGIONAL

As with other EU states, the RKP is the focal point for all international contacts, as well as crimes, cases etc of a national nature. In terms of information flows to the RKP therefore, the main criterion revolves around information that is either of national or international relevance. However there are no formal agreements that compel regional forces, or that even lay down guidelines as to when to pass up information to the RKP. The receipt of information from the regional forces was described by one member of the RKP as being based on persuasion and reciprocity. This is in keeping with the relative autonomy of the regional forces.

During the course of the research, intelligence officers from four regions of Sweden were interviewed. These regions were: Gothenburg; Uppsala; Norrkoping; and Karlstad. Together with data acquired from the RKP itself, the other criteria that governs
information flows between the regional force and the RKP are as follows:

a) Special Objects: Special Objects is a person based system that is similar to the Dutch position on treating organised crime as an overarching umbrella that encompasses all other types of serious crime such as drug trafficking, illegal immigration networks and trafficking in stolen vehicles. Information on persons and offences that fall into the category of special objects is therefore routinely passed up to the RKP. However this still tends to be at the discretion of the regional forces.

b) The CBS System: The Criminal Behaviour System or CBS is a special computerized national file which specifically analyses the modus operandi of criminals. It particularly deals with analysis and pattern matching of serial crimes. While the inputting of information into this file was once conducted centrally by the RKP, a process that required all relevant information to be passed to it, the procedure has now been decentralised to the extent that these functions are now performed by the regions. Despite this however, the CBS remains a national file, and as such is a factor in determining when specific types of information are passed to the RKP.

c) Personal Discretion: In each of the interviews held with intelligence officers in the 4 regions targeted, the response to the question "How does your department decide when to pass on information/intelligence to the RKP?" was the same. In the
absence of formal agreements delineating when information should be passed up to the RKP, the decision was at the discretion of the intelligence officer/department concerned. One respondent stated, "I decide when we shall pass information to the RKP. I know most of the policemen there, so it is no problem." Another respondent stated, "We decide from one case to another what the RKP can be interested in. There are no formal agreements that outline when the RKP must be used."

Similar responses were forthcoming in answer to the question, "How do you decide when to pass on information/intelligence to other police agencies such as other forces, regional crime squads etc?" Again the response was generally at the discretion of the officer concerned if in his opinion the information affected another force or if the crime in question was cross border in nature. One respondent stated, "As soon as information has been collated and found more useful in another force, we pass it on to them."

When interviewed, the head of the RKP's Intelligence Coordination Unit admitted that the devolution of responsibility to the regional forces can sometimes cause problems in terms of the RKP acquiring the information they need, as opposed to waiting to be passed what was deemed necessary by the regions. This however only has a limited impact as information of a national and international character must be passed to the RKP anyway, and where applicable, it has the power to take over a case with these characteristics. However the ubiquitous problem of police officers wanting to hold on to their information is as
evident in Sweden as anywhere else, and was cited as one impediment to information being freely shared with the RKP.

In terms of a return on information shared with the RKP, the responses from the 4 regions targeted was evenly split between those who thought that they received an adequate return from the RKP and those who disagreed. This is broadly similar to sentiments expressed in the other 3 case studies whereby the national units are often viewed by the regional and local levels as black holes into which information disappeared without ever being seen or heard of again.

Finally, the question was asked as to what percentage of time was spent on tactical operations as opposed to strategic intelligence. Three of the four regions responded that tactical operations outweighed strategic intelligence, despite the fact that their units were all predominantly strategic intelligence units. The fourth region declined to comment on this question. One respondent claimed, "This first year of this division (Gothenburg) has included education. This education has taught us mostly about tactical intelligence. I think that 80% of our time has been used for producing tactical intelligence."

Again this response has been in line with the general findings in all this research's case studies. It is a general rule that police officers are always under pressure to show operational results for resources allocated. Concentrating on tactical intelligence provides these rapid results as opposed to strategic intelligence which can take a long time before any tangible benefits are forthcoming. While this problem has been reduced at the national level by the hiring of civilian analysts whose jobs
are exclusively the production of strategic intelligence, at the regional level the problem remains. Hence the reason why officers at the regional and local levels are increasingly likely to carry tactical intelligence to their ELOs at Europol. In doing this however, they are not actually providing the ELOs with the type of material needed to generate the proactive strategic intelligence that Europol's mandate requires.

9.3: DIRECT CONTACTS

Interview data from both the RKP and the Swedish ELO at Europol both confirms, that as with the other 3 case studies, Swedish police officers all have the right to exchange information with Europol directly. This is partly based on the small size of the Swedish police force generally which means that the Swedish ELOs often know personally the intelligence officers in the regions. Direct contacts however are also a function of the relative autonomy of the regional forces, which allow them to generally demand and be granted the right of direct access.

In considering the widespread practice of direct contacts, the implication was given that unlike Interpol, which will only entertain requests via the national central bureaux, the evolving flexibility of Europol which allows direct contacts was a beneficial development. The point was also made that officers also routinely make direct contacts with Sweden's DLOs as well. This information was unsolicited, and not the result of a specific question asked by the researcher. While it was also not
asked of the other national units, the fact that direct contacts take place with Europol, indicates that it may be safe to infer that the same practice of direct contacts with DLOs takes place in the UK, Germany and the Netherlands as well.

As with the other national units targeted, the RKP makes the stipulation that they should be kept informed about all direct exchanges of information. Therefore the basic premise of this research holds true with Sweden as with the other states. While officially the exchange of information with Europol is based upon a centralised mode, in practice, the system has quickly evolved into a qualified centralised mode that takes account of regional autonomy, and the tactical requirements of officers to whose work, Europol is intended to add value.

9.4: DATA PROTECTION CONSIDERATIONS

In response to the question of how Swedish Data Protection laws affect the exchange of information in Sweden, particularly in respect to the ELOs, the Swedish ELO interviewed stated that it did not affect their work at all as far as the routing of requests and replies were concerned. This is because Swedish DP law has less to do with the transmission of data as the storing of that data. Where it does affect the work of the ELOs is in the fact that they are not allowed to store any personal data (at Europol) without the permission of the DP authorities. In the current situation therefore the ELOs must use the information stored at the national unit, which in turn creates an incentive
to keep the national unit informed, especially where direct contacts are concerned, so that the national databases can be kept updated.

However the exchange of information is affected by the Confidentiality Act. The purpose of this act is the protection of Swedish citizens, and it prohibits the passing of personal data. Within the context of this act, personal data does not mean names, addresses, dates of birth etc. Instead it refers to confidential data such as a person's health history, whether or not they have been a victim or a suspect of a criminal act etc. Information such as this that is governed by the Confidentiality Act can only be obtained officially via a Com Rog. It cannot be routed through Europol.

Finally in response to the question of whether or not Swedish DP laws prohibited the sharing of information with states that do not have DP laws of their own, the point was again reiterated that it is Sweden's Confidentiality Act rather than its DP laws that affects the exchange of information. In answer to the question the point was made that inasmuch as information is routinely passed to Interpol which has a membership of well in excess of 170 states, most of whom do not possess any DP legislation, it is therefore not a problem as far as Europol is concerned. This of course has been a common means of sidestepping what is clearly a difficult and grey area to address. For example, when the same question was put to a British officer, his response was that irrespective of the restrictions of the UK's DP law everything in terms of information exchange and cooperation was possible. A German officer questioned on this
point however gave an answer that was nearer the truth by stating that if police officers observed the letter of the various national DP laws, it would be impossible to share information with anyone.

It is therefore possible to see that Swedish law does affect the type of information that can be shared with an organisation like Europol. However it does not interfere with the ability of officers at whatever level to exchange information with Europol directly as long as the information shared does not impinge on the areas prohibited by the Confidentiality Act. Where Sweden's DP law does affect the basic premise of the research is that in preventing the ELOs from holding personal data at Europol, it has ensured that while information can be exchanged directly, the national unit must be kept informed, thereby fulfilling the tenets of the qualified centralised mode.
9.5: OPERATIONAL CONSIDERATIONS

9.5.1: INTERNATIONAL - NATIONAL

In operational terms, the main criterion that influences decisions to take tactical intelligence to Europol is its growing ability to coordinate operations and investigations, anywhere in the European Union under one roof. While it was admitted that the many Swedish operational successes involving Europol would have been possible with other channels such as the DLOs, had Europol not existed, the convenience and consequent speed of having operations coordinated 'in house' was stressed quite strongly.

One example of this was given in regard to an operation concerning Albanian groups from the former Yugoslavia. During the course of surveillance and analysis, it was noticed that the same telephone numbers and addresses etc were coming up in Scandinavia and the rest of Europe. A routine request was made to all ELOs at Europol for the tracing of these numbers, addresses etc. Europol was able, not only to provide a quicker response than other channels such as Interpol, but it was also able to provide soft information such as intelligence from wiretaps, observations, bugging etc, whereas all that would have been forthcoming from Interpol would have been hard information.

As a result of the intelligence gathered via Europol, it was possible to ascertain that 6 states had the same contact points, not only in the EU, but also in the Czech Republic and Turkey. Within a short space of time, it was therefore possible to arrange a meeting at Europol of the various operational teams of all the countries involved, and to plan a system of coordinating investigations. Consequently the result was that much more
disruption was caused to the criminal network across a much larger area than would have ordinarily been possible.

In another case, the French police opportunistically seized a consignment of cannabis at the border with Spain. As a result of a routine enquiry with Europol, it emerged that the details of the French operation were similar to an operation in progress between Sweden, the Netherlands and Spain. As the details of the connection became clearer, the French police, via Europol, were provided with information on the suspects in Sweden and Spain and vice versa. The resulting operational success covered a much larger area than would otherwise have been possible, had the French operation taken place in isolation. For a start it prevented duplication of effort, as without Europol, different groups of police in different parts of the Union would have unknowingly been working on the same case. The Swedish officer providing this example was also keen to highlight the fact that while some operations such as controlled deliveries could be expedited just as easily had Europol not existed, operations such as this would have been difficult to coordinate without an agency that housed all the relevant liaison officers under the same roof.

Another important factor in deciding when to take operations to Europol is its emerging status as a centre of expertise. This view is partly based on Sweden's location on Europe's periphery, and is also bound up with its vision of how Europol should develop in the future. Europol's Business Plan's prime objectives include the development of the agency as a centre of excellence for law enforcement practices (Valls Russell 1995). From Sweden's
perspective, Europol is becoming invaluable to peripheral states such as Sweden, Portugal, Greece etc in terms of dealing with unusual cases that have a transnational dimension to them. For example such states when faced with an exceptionally large drug seizure, of say a ton of cocaine on a ship, may not know how to proceed within the wider framework of drug trafficking routes that the seizure was a part of.

Another example may include the uncovering of a network dealing in the smuggling of nuclear substances. While this may be a part of Europol's remit, not all states have the expertise for dealing with such relatively unusual offences on a large scale. Of even greater relevance is the many other types of crimes listed in the Convention that could one day be incorporated into the organisation's remit. At the Dublin summit in December 1996, Europol's remit was extended to include international prostitution, particularly the trafficking in women, and paedophile rings. Furthermore, the annexe to the Convention lists the various crimes that could one day be added to Europol's competencies. These include, environmental crime, illicit trafficking in hormonal substances and other growth promoters, endangered animal and plant species, the illicit trade in human organs and tissues and computer crime. As these unusual forms of transnational criminality are gradually added to Europol's remit, it will become of increasing importance to all states, but particularly those on the periphery for providing expertise on how to deal with these types of offences on a large scale. At present for states such as Sweden, it is already a significant
factor in determining when to take certain types of operations to Europol.

Another operational advantage of Europol, listed by the Swedish ELO interviewed, is the organisation's ability to deal with large organised crime syndicates with tentacles in several states. These networks are invariably ethnic groups such as Chinese, Iranian, Turkish, Nigerian etc which have interconnected cells in several European states. The problem with mounting operations against such groups in the past has involved questions such as who will pay for the necessary equipment, where to find the space for coordinating the investigations etc. This can now ideally be handled by Europol. The vision is of an evolutionary transformation to the use of quasi operational Task Forces as an advance on the current project groups, which would consist, on a case by case basis, of officers from the countries concerned, with Europol providing coordinating, technical and computer facilities and expertise. This is viewed not as a federal police force with executive powers anywhere in the Union, but a practical progression for dealing with the increasing mosaic of transnational organised crime networks in Europe.

Yet another criterion identified that encourages the use of Europol is its increasing role in facilitating practical judicial cooperation. While there are now advanced forms of cooperation for police and customs in Europe, no similar systems exist for judges, magistrates and public prosecutors, who generally have little or no knowledge of other national systems and their problems. Successful transnational operations such as controlled
deliveries invariably involves public prosecutors giving their official sanction for the transit of drugs through their territory, and as such Europol is increasingly organising forums in which judicial authorities from across the Union can meet their counterparts and discuss their own problems and needs while gaining an appreciation for the problems of other judicial systems.

To illustrate the type of problem routinely faced, an example was given in which a Swedish DLO received a phone call from a regional force informing him that they were dealing with a covert case involving persons in the Netherlands, Belgium and the UK. Having acquired certain intelligence, the regional force now required assistance, especially as certain targets were believed to be about to visit the Netherlands with a large quantity of cash with which to purchase drugs. As an official request via a Com Rog was required by the Dutch authorities, the relevant Swedish prosecutor was approached for this. The prosecutor however did not have the requisite knowledge or experience, and therefore took the request to a judge for a Com Rog from the court, which was a more formal document.

This was duly dispatched by the DLO to the Netherlands via Interpol. Although the request was only for cross border surveillance, which could have been expedited by the less formal request from a prosecutor, because the actual request was in the form of a judicial request, the Dutch were obliged to have it dealt with by a Dutch judge. Consequently the procedure took weeks where it should have only been a matter of days.
Problems such as these are frequent and stem from the differing judicial procedures across the Union. In some instances, a public prosecutor may forward a request with a police report which is only 2 paragraphs long, which can be easily translated and dealt with by the receiving DLO. In other cases a similar request may come in the form of an official 3 page Com Rog. Unlike the former example, the DLO will be unable to translate it as it is a judicial document. It then has to be translated by an official translator, which takes time. Such differing judicial procedures and idiosyncrasies makes the work of police cooperation more onerous. The Swedish ELO interviewed asserted that what was vital for Europe generally and Europol specifically was not a common judicial system, but rather common procedures for official requests. By providing a forum in which judicial cooperation is promoted, Europol is increasing its attraction as the preferred vehicle for coordinating transnational operations and investigations.

Finally, the criteria used for channelling operational cooperation revolves around the general use of Interpol for the transmission of hard information and Com Rogs, and the DLO network for operations specific to the country where they are based. As with other targeted states such as the Netherlands, Europol was quoted as being particularly useful in relation to cooperating with states like Greece which does not have a DLO network.

The question of the differential in status between the DLOs and the ELOs, which was of concern to the UK, elicited a different response from Swedish interviewees. Whereas UK respondents
emphasised the greater authority that the DLOs' diplomatic status conferred upon them in terms of organising the allocation of resources in host states, the Swedish perspective concentrated on the differential in levels of protection available to the 2 types of liaison officer. Therefore whereas the DLO, while operating in a foreign state has full diplomatic immunity from prosecution, the ELO based at the Hague does not. While it may be argued that being operational, the DLO needs the added protection more than the ELO, there are other instances in which the ELOs need the same level of protection. The levelling of false accusations at an ELO would lead to an arrest and would be an ideal means of discrediting or disrupting an intelligence agency.

The Swedish ELO interviewed during this research was able to give an apt example of this problem, which for the purposes of explanation will be reproduced.

"I have experience in losing this status as I was a DLO in the Hague before I was an ELO. As a DLO I had full diplomatic status and full protection. I could not even be issued with a parking ticket. On one occasion while I was still a DLO, based on information from one of the Nordic countries, I made a report, translated from Scandinavian language to Dutch. While we had secretaries translating, my name was at the bottom of the report. The Dutch authorities asked afterwards if they could use some information as evidence from this report. That request was accepted. This was a sensitive operation and my report was also provided as an official document to the Dutch, and it included in some parts, information about bugging devices and a tracking
device. This concerned a ship transporting drugs from Morocco to Scandinavia, but it was a Dutch case. In examining the documents, looking for grounds for a mistrial, the defence found this paragraph in my report that vaguely alluded to the installation on the ship of a tracking device. The defence requested from the court that Dutch police officers should testify. As these officers were intelligence officers, and Dutch law prohibits intelligence officers from giving evidence in court, they did not give evidence. The court could not ask the Dutch police officers to testify. They could have asked for a Danish officer involved with this case, but he isn't obliged to give evidence in a Dutch court. However as I had signed the report and was resident in Holland as a DLO, I was called to give evidence. Fortunately at the time I was a DLO and had full diplomatic status. The Swedish Foreign Ministry via the Swedish Embassy in Holland instructed the Amsterdam Public Prosecutor via the Dutch Ministry of Justice that I was not allowed to testify. If however I was an ELO, I would have been obliged to give evidence. We have no protection. If the Dutch authorities request us to testify, or give evidence and we refuse, they could get a court order to make a house search of the liaison office."

What this statement shows is that in the areas of both information exchange and operational support, ELOs will require the same level of protection and status afforded their DLO counterparts as well as intelligence officers in some EU states. This will be particularly pertinent if as planned by the European Council Europol is to be formally given what it terms 'operative
powers' in the future. Europol's increasing role as a centre of expertise as well as facilitator of transnational operations, complemented by judicial cooperation, means that more and more it will be the preferred vehicle for international operational cooperation. This requirement is recognised, and already there are negotiations in hand to afford Europol diplomatic status of some sort, although the exact details have not as yet been made known. From a Swedish perspective these developments are needed if their view of the future of Europol as a vehicle for combatting the many tentacled organised crime groups that is one of the RKP's main priorities, is to become a reality.

9.5.2: NATIONAL - REGIONAL

As the RKP is operational, it has the power to take over a case which is national or international in character. In all other cases however, such as the coordination of cases involving more than one force, the decision is taken by the regional forces themselves. Therefore it is at the discretion of the regional force Commissioner whether in the event of a transregional case, to appoint one force to coordinate the operation, or whether to request the RKP to act as coordinator. Again, a case might be purely regional in nature, but of such a magnitude that the force in question cannot cope. In such a scenario, the RKP may also be requested to intervene and take the case over.

In keeping with the autonomy of the regional Commissioners therefore, operational control, as with information flows,
remains at the regional level, except in national or international cases. Because of this, there is sometimes a reluctance to pass operations up to the RKP because of the universal fear of losing operational control, and the glory that comes with success. It is also the case, as with information exchange, that Swedish CID and intelligence officers routinely take operations directly to Europol. Because Europol emphasises its willingness to add value, without in any way taking over a case, the use of Europol usually does not impinge on the regional forces' credit for success. Again as with information exchange, the only stipulation of the RKP, which agrees with the right of the forces to directly contact Europol, is that the requisite information is passed to them. In this way there is a central repository of information on what international investigations are taking place, in the interest of avoiding duplication.

9.6: CONCLUSION

The Swedish case study has revealed a range of areas that have not arisen with the other case studies, and has more than justified the decision to include Sweden among the countries targeted for this research. It has given a particularly Scandinavian perspective to the process of police cooperation. As with the other case studies however, the highly developed and decentralized police system of Sweden has resulted in an incompatibility between it and the centralizing tendency of the Europol Convention, which places significant authority in the hands of the national units. The hegemony that the Convention
bestows upon the RKP in allowing it sole right of liaison with Europol is at variance with the devolved authority of the Swedish regional forces. While this hegemony is vital for a purely intelligence oriented organisation, it is at odds with the tactical imperatives of police officers at a regional and local level.

Consequently, as in the other case studies, the regional forces have very quickly developed their own tactically relevant procedures for expediting investigations and exchanging information/intelligence directly with Europol. The centralized mode has been replaced by a qualified centralized one, and the evidence from this case study reveals that as with Germany, this process is more accepted as the norm in Sweden than in the Netherlands or the UK. Inasmuch as Swedish interviewees were able to confirm that direct contacts also take place in Denmark and in Finland, it is possible to state that the premise of this research holds true from a Scandinavian perspective as well.
CHAPTER 10: SYNTHESIS OF RESEARCH FINDINGS

10.1: EUROPOL AS A CENTRALISED MODEL

The Methodology chapter of this thesis outlined a list of non-equivalent dependent variables which were necessary to prove that Europol conforms to the centralised state model. This list, and the supporting data gleaned from the Europol chapter as well as the four case studies are as follows:

1) That the premise of Europol being grounded on a centralised mode of information exchange will be based on legal validity:

This is evident by both the Maastricht Treaty and the Europol Convention. Article K1 of Title VI of the Maastricht Treaty states the following as being of common interest, "police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organisation of a Union-wide system of exchanging information within a European Police Office (Europol)."

Having established the intention to initiate and develop a European Police Office, the Europol Drugs Unit, as the forerunner of Europol proper was brought into existence via the signing of a Ministerial Agreement, with the later signing of the Europol Convention giving a proper legal basis to Europol proper. While the Maastricht Treaty stipulates Europol's character as an information exchange agency, both the Ministerial Agreement and the Convention both articulate that the exchange of information
must take place exclusively through national units in each member state that are specifically designated for this purpose.

2) The national units will have their own tools for maintaining national control over the flow of information:

The four case studies showed that each national unit did in fact have rules that governed the exchange of information, both internationally, and internally. However the format and character of these rules varied from state to state. In the case of Germany, the exchange of information was firmly grounded in the federal nature of the German state. The BKA Law formally confers the sole right of jurisdiction in international cooperation. The only exception to this rule is in the case of the Federal Border Police who have restricted rights of liaison with foreign police forces, but even in this case, the Federal Border Police are still constrained to liaise with and keep the BKA informed of their activities.

Going hand in hand with this is the BKA's sole prerogative on deciding the appropriate channel to be used in international cooperation, be it Interpol, Europol, Schengen or the DLO network. This prerogative has allowed the BKA to build up a certain level of expertise in ascertaining which is the appropriate channel in any given situation. The flow of information from the national to the regional levels is also formally governed by the BKA Law. The area of the BKA's remit includes:

a) the collection and analysis of all information and documents of interest to the CID function;
b) the fighting of criminal elements who are, or may be expected to become active beyond State or national borders;

The 1973 amendment to the BKA Law also conferred specific responsibility for the following offences:

a) internationally organised trafficking in arms, ammunition, explosives and narcotics;
b) internationally organised production and/or distribution of counterfeit money;
c) offences against the life or freedom of the Federal President, members of the Federal Government, the Bundestag, the Federal Constitutional Court or of the guests of the constitutional institutions.

Therefore the BKA has specific legal means for maintaining national control over the flow of information, both internationally and nationally.

The means however by which the UK's NCIS controls the flow of information is of a less formal legalistic character than in Germany. In the UK, the flow of information internationally is governed by NCIS's main objectives which includes its function as the national focal point for the gathering, collation, evaluation, analysis and development of relevant information and intelligence about serious crime and major criminals of a regional, national and international nature. This process is due to be put on a more formal legal basis in 1998, when NCIS will be revamped on a statutory basis.

At the level of information exchange between the national and the force/regional levels, the exchange of information is governed by a system of service level agreements which are
official agreements which set out what both parties agree to do for each other. This information exchange process in the UK therefore is of a lower order of formality than in Germany where the similar process is governed by legislation.

The UK's NCIS attempts to maintain its control of information flows by developing its International Division as a 'one stop shop' which specialises in the expertise and contacts necessary for effective international police cooperation. This 'one stop shop' facility is seen as essential in maintaining NCIS's mandate as a central repository and developer of strategic intelligence. This mandate cannot be adequately fulfilled if the central institution does not routinely have possession of all relevant information. Hence the reason why NCIS has instituted the procedures for maintaining such control via the development of the 'one stop shop facility', the core nominal system and the 4*4 corroboration and reliability system.

In the Netherlands, the ability of the CRI to exclusively liaise and exchange information with foreign police agencies is again based on legislation such as the Police Records Act of 1991. In keeping with this power, it also has the authority to decide which is the most appropriate channel to use, although unlike the UK, there is not a designated department for carrying out this function. Instead the case officer concerned makes the decision as to which channel to use.

The exchange of information between the CRI and the regional forces on the other hand is based on a much looser process known as filter criteria. This system is a function of the inherent autonomy of the regional police forces in the Netherlands. The
CRI therefore does not have the same level of dominance as its counterparts in Germany and the UK. Instead it is very much at the mercy of the regional forces. The process is based on an understanding of the phenomenon of organised crime as being any offence which includes a measure of organisation. Organised crime therefore acts as an umbrella which covers other serious forms of transnational criminality such as drug trafficking, illegal immigration networks etc, and the criterion for deciding when to pass information up to the CRI is the term "organised". If an offence contains an element of organisation, then information on it is passed up to the CRI. In this way, the CRI, despite the autonomy of the regional forces, also has the means whereby it can control the flow of information both internationally and internally from the national to the regional levels.

Finally in Sweden the exchange of information/intelligence between the Rikskriminalpolisen (RKP) and international police agencies such as Europol is again based upon legislation. However unlike the other three states targeted, the exchange of information between the RKP and the regional forces is not based on formal agreements of any sort. During the course of the research, the basis of information exchange was described as depending upon persuasion and reciprocity. While this regional autonomy was in one sense described as sometimes being an impediment, in another sense it did not pose a significant problem to the RKP fulfilling its mandate, as regional forces were obliged to pass information/intelligence of a national or international character to the RKP anyway, and the RKP also has the fallback power of taking over a case with these
characteristics. This tension between regional and national authority is therefore one in which the devolution of responsibility at the regional level is balanced by control, within certain parameters, at the national level. Even without the benefits of formal agreements or legislative powers, the RKP still has the ability to maintain a control over the national and/or international flow of information/intelligence.

3) The central body will take steps to avoid duplication and a lack of coordination. Towards this end, initiatives will be set up to ensure the compatibility of computer systems across varying levels.

Undoubtedly the most advanced computer system encountered during the course of the research is the INPOL system in Germany, and its many sub-systems such as PIOS, APOK, APIS and APR. While the BKA acts as the central office, the INPOL system is run jointly between the BKA and the LKA. Input, retrieval and updating is done decentrally at the State level, and all officers, irrespective of where in the country they are based, have access to the system. This decentralization ensures that duplication is cut to a minimum, especially as information that is input into the system is instantly accessible anywhere in the country.

This system is particularly necessary, taking into account the constitutional autonomy of the Lander, which often leads to mistrust of the BKA. In the absence of an INPOL system in Germany, policing would quickly degenerate into a parochial system with each Lander seeking to maintain personal control over operations, and intelligence. The INPOL system however allows
vital information to be disseminated freely, avoids duplication, and allows for tactical intelligence and operations to be effectively and efficiently coordinated between the BKA and the various Lander.

Apart from the PNC, the UK does not have an equivalent decentralized system that is open to all officers. NCIS's main information system is termed ALERT, and is primarily an analytical instrument. However its use is restricted exclusively to NCIS personnel.

The main computerized tool for preventing duplication and enabling coordination is the INFOS system at NCIS, and again this is only directly accessible by NCIS personnel. While it is true that officers from anywhere in the country can call NCIS and make an INFOS check, this process does not allow the flexibility of the INPOL system.

The Regional Crime Squads have their own computer system known as CLUE, and each force also has its own computer system, which invariably are not compatible with other systems throughout the country. However these deficiencies have been noted, and are in the process of being addressed.

While the INFOS flagging system goes some way towards the elimination of duplication across the country, there is a recognition that more needs to be done. Consequently the proposals of the Criminal Intelligence Steering Group for the implementation of a national system that could involve the use of 'data warehouses' and 'common data models' are timely means of ensuring that an adequate national system of coordination and compatibility are soon put into place.
The system used in the Netherlands to avoid duplication and to aid coordination is termed Meldingrechercheonderzoek or MRO, and consists of a database which holds the basic details of major organised crime operations. This allows the CRI to ensure that 2 or more teams in the Netherlands are not both/all working on the same operation or targets.

The Netherlands also has a standardized system called HKS which is used specifically for hard information (i.e. not analytical intelligence) such as persons arrested etc. Every area has its own HKS, although the system is interconnected. Like the INPOL system in Germany, the HKS is also tied into the Schengen Information System, so that an officer who consults the SIS for information on an individual, will be directed via a regional mathematical code to an HKS terminal in the relevant part of the country. Despite this system, police databases are still partially fragmented in certain parts of the Netherlands. For example organised crime units in areas such as Rotterdam have their own computer system which may not be compatible with systems in other districts. However this situation is being addressed in the interests of developing a complete continuity of accessibility to all systems throughout the country.

Finally the Swedish police also possesses national systems such as the Criminal Behaviour System (CBS) which deals with modus operandi, the Central Vehicle Register (CVR) which is the Swedish equivalent to the PNC in the UK, and the ASP system which deals with general information such as observations, sightings, associates of known criminals, movements of known criminals etc. Many of these systems can be accessed by regional officers who
can also input information into the system. However at the time of the field research in Sweden, the country did not as yet possess a national intelligence system although one was about to be instituted. The RKP also performs a coordinating function although it does not have a monopoly in this area, as a regional force can coordinate a multi-force operation on behalf of others.

Lastly the RKP have instituted a procedure whereby all significant criminal or intelligence investigations are forwarded, at its inception, to the RKP for checking so as to ensure that no other unit is currently working on the same target/s. Therefore, although less developed than the other states in this study, Sweden is actively attempting to catch up with its northern European counterparts. There is already a system in operation to prevent duplication, and the RKP has the ability when asked to provide national coordination of multi-force operations. In the CBS, CVR and ASP systems, it has gone some way to ensure the compatibility of computer systems throughout the country, and it is expected that these systems will shortly be complemented by an integrated national intelligence system sometime in the near future.

4) Officers will be discouraged from creating or developing individual means of communication based on personal contacts.

In each of the four states studied, the national units have instituted measures for maintaining their monopoly of international contacts, while discouraging a process of occupational deviancy which results in officers developing their own network of direct contacts.
In chapter 4, the use of both formal and informal bilateral contacts as tools of international police cooperation were discussed. The chapter showed where both formal and informal bilateral contacts were useful for dealing with specific local or regional concerns, especially in terms of speed and the development of trust. However both types of contacts suffered from very specific disadvantages. They are both of little or no use in developing strategic intelligence with which to combat transnational crime, and they both are prone to suffering from a lack of dissemination to other interested parties within the police that can lead to inefficiency and duplication. Finally the information and intelligence that is built up over many years via bilateral contacts is often lost with the death, retirement, transfer or resignation of one or both parties of the bilateral contact.

However the existence of bilateral, multilateral and other forms of contacts within the police shows that at one level there is scope for police officers to contact and deal with their counterparts in other states. Nevertheless within the context of the development of strategic intelligence at the European level, and especially with regards to Europol, the national units of the four targeted states have all attempted to institute procedures for maintaining either control of information that goes out to Europol, or at the very least, ensure that the national unit is kept informed and up to date.

Towards this end, the national units of all four states have a legal monopoly of international contacts. This is based on the fact that the ability to develop strategic intelligence depends
on the necessity of having all the available information and intelligence. Some states like the UK have built on the legal foundations and begun marketing the national unit as a one stop shop for all enquiries and details pertaining to international police cooperation. By portraying the national unit as a repository of expertise on international police cooperation it is hoped that police officers will be dissuaded from acting independently, but will instead act within the boundaries of a tightly integrated system with the national unit at the apex.

Therefore from within the context of the list of non-equivalent variables listed in chapter 3 which are necessary to prove that the Europol system is based on the centralised model, it can be shown where each of the 4 points have been proved. This proof however is not just limited to the 4 states in question. Appendix A lists (see Appendix A) the national unit structures of each of the 15 member states. While most have incorporated the Europol liaison function into existing national criminal intelligence or policing agencies, in each case, the Europol liaison desk or bureau has been integrated into an international police cooperation department that amalgamates the Interpol National Central Bureau, the Schengen Sirene and the DLO liaison point. It is therefore possible to see that each state in the European Union is attempting to achieve the same as the 4 targeted states of this research, a national central agency which has an integrated and compatible computerized intelligence system, and which is able to control the flow of information both internally and externally. Therefore while within each state there is clearly, from a tactical perspective, a partially decentralised
mode in operation, whereby officers from each level can contact officers from other levels, the exchange of information or intelligence with Europol is clearly based on the centralised mode in that a single national body officially controls all information flows.

10.2: PROOF OF BASIC ITERATION

The basic iteration outlined at the beginning of this research is as follows. Because of the interrelatedness between strategic and tactical considerations in combatting transnational crime, a centralised mode of information exchange for Europol, that indicates a purely intelligence lead approach, will prove to be inadequate. In looking at what the data of the 4 case studies says about this iteration, 3 main areas will be examined. These are: the criteria used for exchanging information/intelligence between various policing levels; the proportion of time taken up by ELOs at Europol between tactical as opposed to strategic intelligence; and the prevalence of direct contacts between officers in the 4 targeted states and Europol.
10.2.1: INTELLIGENCE EXCHANGE CRITERIA

In terms of information and intelligence exchange, the most common factors encouraging such exchanges, apart from formal agreements and legislation, were the speed of response afforded by the EDU, and the facility of having liaison officers from all 15 EU states under one roof. All 4 national units cited these aspects as being among the most important advantages of Europol. Other factors that were heavily accentuated, particularly by Germany and the Netherlands were the familiarity of ELOs with police and intelligence in their respective states and the facility of being able to communicate with the EDU in one's own language. Taken as a whole, the importance of these factors is their role in facilitating tactical investigations and operations.

For example, one of the most common complaints about Interpol is the time it generally takes to receive a response to an enquiry. In operational terms, such a delay can mean the difference between success and failure. The ability to access representatives from any EU state coupled with the facility of being able to communicate with a liaison officer who has become known and trusted, and in one's own language, makes the initiation, planning and coordination of large, possibly transnational operations much easier and smoother than it would ordinarily have been otherwise. While many states admitted that the same operations could be effected via other channels, such as the DLO network, Europol has had a beneficial effect on the efficiency of such large scale operations.
Other factors listed included the following:

1) Hard v soft information/intelligence. The ability to access not just hard information such as names, addresses, dates of birth etc, but soft information such as the product of surveillance, wiretapping, telephone and mail intercepts, analysis etc, was a prime advantage of using Europol that was emphasised by both Sweden and the Netherlands. Prior to the advent of Europol such intelligence could usually only be accessed via the time consuming process of commission rogatoires. The ability to access this type of information has added an extra fillip to the mounting of operations between 2 or more states.

2) Security and confidentiality. The problem of security was one of the main weaknesses of Interpol that lead to the creation of Europol as an independent agency, and not just an organ of Interpol. Its guiding concept of reciprocity resulted in Interpol being obliged to freely share information with all its members. This proved, for most Western European police agencies to be an unacceptable security risk, especially in terms of the propensity for intelligence to fall into the hands of states which sponsor terrorism or that are actively involved in certain types of crime such as drug trafficking. For these reasons, most European states now only exchange hard information with Interpol, and not the more tactically sensitive soft information.

Therefore the security of Europol as a currently closed system of information exchange was quoted by UK authorities as one of the main incentives for using Europol as opposed to any other channel, particularly in light of the requirements of the
Criminal Procedures and Information Act (CPIA), which requires that a lien be attached to all information shared externally, which prohibits that information from being disclosed to a third party without the express authority of the relevant UK authority.

3) Flexibility. This point was raised by both Sweden and the Netherlands, and is connected to the aforementioned ability of Europol as a conduit for exchanging soft intelligence. This facility gives greater flexibility to the facilitation of transnational operations, especially when taken together with other factors as having all liaison officers under one roof, and having access to European states such as Greece that has no DLO network.

4) Core nominals and quality control. Three of the states examined have in operation a core nominal system of some description. These are the UK, the Netherlands and Sweden. The use of core nominals has an impact on the information that the national units will be able to pass on to Europol in that only criminals or organisations of a certain quality will be included within the system. Of these 3 states, the UK and Sweden both make use of the 4*4 system for vetting the quality, accuracy and reliability of information received from other levels of policing. Together these 2 factors heavily influence the type of information passed to Europol, although in some cases, particularly in the UK, the core nominal priorities of the national unit do not always coincide with those of the regional forces.
5) Thematic priorities and special projects. The data revealed that some states may have special thematic priorities that are peculiar to that country, but not necessarily to the rest of the EU. The most obvious case of this was the preponderance of motor cycle gang warfare and criminality in Sweden and the other Scandinavian states. Because of the national seriousness of this type of crime, tactical and strategic intelligence on this phenomenon is regularly disseminated to Europol personnel via the Swedish ELOs, and there is now a Europol special project dealing with this type of crime.

The use of project based work, whereby special groups target specific types of offences and organisations is widespread in all 4 targeted states. Europol has also adopted the practice of using project clusters for the building up of strategic intelligence on specific offences and organisations. Surprisingly all the ELOs interviewed for this research were part of project clusters except the Germans despite the heavy emphasis within the BKA on project work. Unlike virtually all other ELOs interviewed, the German ELOs spend all their time facilitating tactical intelligence. The reason given for this was in keeping with the general German view that Europol should be an operational European policing facility rather than an information and intelligence exchange agency. Also because of the German federal structure and the constitutional autonomy of the Lander, the German ELOs, many of whom are LKA officers themselves, are usually heavily called upon by LKA and other officers to deal with requests, operations and investigations.
Conversely the main areas listed which discourage the use of Europol, and the states to which they pertain, are as follows:

1) Lack of an operational status for Europol: Germany;

2) Duplication with other agencies such as Interpol and the DLO network: Germany and the UK (ACPO Report on International, National and Inter-Force Crime, February 1996);

3) Lower status of ELOs as opposed to DLOs: The UK;

4) Embargo information: The Netherlands;

5) Strict adherence to the EDU's mandate in the past: Sweden.

With the exception of the core nominal system, special project groups and embargo information, most of the factors outlined by the various ELOs and national units which have a bearing on the passing of information and intelligence to Europol, are specifically related to tactical needs and requirements. Despite Europol's primary role as a strategic intelligence agency, the various national units, as the only formal conduit between Europol and their various regional forces, have been obliged to reflect the tactical needs of their clients which are invariably regional police forces. Therefore such advantages that have been afforded by speed, familiarity, having all ELOs under one roof, confidentiality etc, are all a function of operational requirements rather than strategic needs.

In the area of the exchange of information between the national
and regional levels, the main areas uncovered in the research that encouraged such exchanges apart from formal agreements and legislation are as follows:

1) The acquisition of extra resources. This point was particularly stressed in Germany, where the advantages of gaining the extra resources for an operation or investigation from the BKA, often outweighed the disadvantage of losing overall control. The distinction was drawn between rich states like Bavaria which needed the intervention of the BKA less than poor areas such as Hamburg which when faced with a time consuming operation was likely to seek federal intervention at a much earlier stage. The issue of resource variance was also raised in the Netherlands as a reason for passing an operation or tactical intelligence up to the national level.

2) Core nominal system and quality control. As in the previous section, the use of core nominals in the Netherlands, the UK and Sweden represents an important criterion for passing information to the national unit. Once again, going hand in hand with the core nominal system is the 4*4 quality control measures for ensuring the accuracy and reliability of information being disseminated.

3) Strategic Intelligence Research (SIR). This is a unique proactive strategic intelligence system that is specific to the Netherlands.
4) Filter criteria. This system is likewise unique to the Netherlands, and consists of an approach to filtering information to the CRI that hinges on the term 'organised.' Any offence that requires an element of organisation to commit is filtered up to the CRI.

5) Special Objects. The Swedish system of special objects is fairly similar to the abovementioned system of filter criteria. Special objects encompasses all other types of serious crime such as drug trafficking and illegal immigration networks, and all information that falls within this category is routinely passed up to the RKP.

6) Computerised system requirements. One factor that affects the decision to pass information to the national unit, is where that unit is responsible for updating specific computerised systems, such as the Criminal Behaviour System (CBS) in Sweden which specifically analyses the modus operandi of criminals.

7) Personal discretion. While the concept of officers exercising personal discretion in deciding when to share information with their national units, was to some degree obvious in all 4 case studies, it was most pronounced in Sweden. This was clearly as a result of the lack of formal agreements between the RKP and the regional forces, as well as the devolved autonomy of the regional forces. Consequently while the decision to pass on information to the RKP was often based on the national or international nature of the information, it was often also based on the
tactical self interest of the respective officer rather than the strategic requirements of the RKP.

Conversely the areas that tended to discourage the sharing of information with the national units are as follows:
1) Fear of losing control. This is a universal policing problem, as police officers instinctively wish to maintain control of information, and by extension, the glory that comes from operational successes. This factor came up in each of the 4 case studies, but one of the most prominent examples was Dutch officers who purposely reclassify the number coding of operations and information from codes that can be freely shared to those that are classified, so as to artificially maintain possession and control of the information.

2) Poor feedback. This point was raised in the UK with reference to the NCIS's perceived poor record on providing feedback, or even conveying thanks to officers who have shared information with it. Officers interviewed drew the analogy of NCIS being a 'black hole' into which information disappeared and was never heard of again. The result of this practice has been that officers become increasingly sceptical and reluctant to share information with NCIS the next time around.

As with the exchange of information between the national units and Europol, several of the factors elaborated upon in the above section pertain specifically to the tactical concerns of operational officers in the regional forces. The areas that
discourage the sharing of information with the national units are of particular importance. As was noted by one interviewee in the UK, the interests of national units are often remote to regional and local officers and therefore usually of little interest. Most officers in their day to day duties have little contact with the world of serious criminality such as drug trafficking, organised crime and money laundering. What is of interest therefore is the issues that are relevant at the local or regional levels. The time and effort it takes to forward information to the national unit may be viewed as a waste of time, especially where there is no feedback which clarifies to the originating officer the usefulness of the information shared.

What becomes obvious therefore is that for the national units, there must be a mix of the tactical and the strategic. It is of little use being so strategically minded as to be of no tactical relevance. As one interviewee noted, it is of no use at all producing vast quantities of strategic analyses if at the end of the day it cannot be translated into successful operations. This equation is further compounded by the universal reluctance of police officers to share information, and has had to be counter-balanced in several states by the promotion of the autonomy of the interests of the local and regional forces, and the concept of the national units as being there to add value to the work carried out by other policing levels. Only by tactical reciprocity therefore can national units acquire the legitimacy and trust that translates into a flow of information for strategic use.
10.2.2: THE USAGE OF ELO'S TIME

The proportion of time spent by the ELOs of the targeted states on strategic as opposed to tactical matters is as follows:

1) Germany: German ELOs interviewed claimed that one hundred percent of their time is spent on facilitating tactical, operational and investigative matters. They are not members of any of Europol's project groups, and they are uniformly happy to leave all strategic matters in the hands of Europol's specialist in-house analysts. A major reason for this position is that the BKA is itself an operational unit and is more geared towards being operationally active rather than just passively exchanging intelligence. Also some of Germany's ELOs come from the LKA rather than the BKA, and again their prime interest is facilitating the operational requirements of their respective states.

2) The UK: When questioned on this matter, the 2 UK ELOs stated that circumstances had altered for them significantly in this respect. Now the percentage of time spent on tactical matters is one hundred percent for one of the ELOs and eighty percent for the other, which represented a change from a previously more strategically oriented approach.

3) The Netherlands: The Dutch ELOs asserted that between eighty and ninety percent of their time is now spent with information exchange pertaining to tactical operational matters. This was
attributed to the fact that Europol is situated in the Netherlands, and consequently attracts more requests than other countries.

4) Sweden: In the case of Sweden, approximately one third of the ELOs' time is taken up with tactical matters. This was described as being too little time, and the point was made that there is a need for much more of their time to be spent on operational concerns. However the Swedish ELOs are being constrained in this by their representation on some of Europol's project groups, and other administrative work currently being conducted in preparation for Europol proper.

In addition to the main case studies, interviews were conducted with the ELOs of 3 southern European states. The responses of these were as follows:

1) Italy: The Italian ELO interviewed stated that most of their work is tactical and that they prefer to leave strategic intelligence to the EDU's analysis department.

2) Spain: In the case of Spain, approximately half of their work is tactical.

3) Portugal: When interviewed, the Portuguese ELO stated that he deals mainly with tactical intelligence and operational matters which takes up approximately 80% of his time, with strategic and analytical work accounting for only 20% of his time.
What these responses show is that irrespective of the fact that Europol was originally conceived as a (strategic) intelligence agency, tactical considerations have been increasingly impinging on the ELOs' time to the extent where in some cases it encompasses virtually all of their time. Europol now is increasingly operating on two distinct levels: the strategic that is being conducted primarily by the in-house analysts and to a lesser extent the project groups; and the tactical that is being conducted by the ELOs.

The fact that Europol is increasingly being used by police forces across Europe is obviously exerting an influence on this situation. This has been a function of the organisation, in conjunction with the national units, marketing itself and its services, as well as its growing reputation. While Europol often manages and coordinates major transnational operations, its involvement is also sometimes quite small. It is often the case that its involvement might be limited to accessing information on telephone numbers, vehicle registrations etc, which might be a small but vital component of the entire picture. What the organisation is struggling to prevent however, is it becoming another Interpol. While it is keen to increase its utility to police forces across Europe, what it wants to avoid is being inundated with low level requests that should rightly go to Interpol. It is therefore attempting to strike the right balance between utility and quality, but in the process it has become a two tiered organisation that deals with both the strategic and the tactical.
10.2.3: DIRECT CONTACTS

The practice of police officers directly dealing with Europol in contravention of both national legislation and the Europol Convention was noted across the 4 case studies. In the case of Germany the process was semi-institutionalised, based on the successful attempts of the various Länder to have their LKA categorized as national units in their own rights. Therefore Germany in effect has 17 national units who all have a special dispensation for directly dealing with Europol termed 'special treatment.'

However despite not having the same level of official blessing as in Germany, the practice was noted as being common in all the other states visited. An interview with one of the Spanish ELOs also revealed that direct contacts takes place in Spain as well, although it tends to be limited to urgent cases. Although the limits of this research does not show to what extent this practice is common among other southern European states, it is possible to extrapolate, from the information given during the interview with the Spanish ELO, that the practice of direct contacts may be easier to implement among decentralised northern European states than centralised southern European states.

Nevertheless, within the context of this research it is known that the practice of direct contacts takes place in: Germany; the UK; the Netherlands; Portugal; Sweden; Denmark; Finland and Spain. The relevance of this practice is that it is a function of tactical requirements, and has little if anything to do with Europol's principal aim of developing strategic intelligence. If
direct contacts are viewed as a form of organisational deviance whereby officers develop their own contact route which circumvents the national units, it becomes obvious, as with the above two sections, that the prime concern of police officers on the ground is their own operational cases, and as such, interest in Europol will be largely based on what the organisation can do for these officers. Within this context the principle of adding value moves away from primarily adding value to the analytical work of the national unit, but also encompasses the idea of adding value to the operational work of regional and local police officers as well.

It is therefore possible to see in the three categories dealt with above: intelligence exchange criteria; the encroachment of tactical considerations on the time of the ELOs and the practice of direct contacts, that the basic hypothesis has been proved. There is a close relationship between tactical and strategic matters, and consequently in the implementation of Europol, it has been impossible to shield the organisation from tactical matters. As such the centralised mode of information and intelligence exchange was the incorrect format for Europol, particularly as it has proven to be incompatible with the decentralised policing systems in many (particularly northern) European states.

What has therefore rapidly evolved, even in the first year of Europol's existence, is a qualified decentralised mode of information exchange. Under this intermediate system,
communication is theoretically controlled solely by the national unit. However independent communication is allowed by regional and local officers within specified parameters. These parameters chiefly revolve around the requirements that the national units be kept informed of all ongoing requests, operations, investigations etc, and in some instances, that copies of all replies by the ELOs be forwarded to the national units. Such a system represents a departure from a purely strategic intelligence lead approach, to one that creates a mix of the tactical and the strategic.

10.3: CONSEQUENCES OF RESEARCH FINDINGS

10.3.1: MACRO LEVEL DEVELOPMENTS

In one sense, most of the developments outlined in the research have been either of a micro or meso nature, in that it has revolved primarily around structures for police cooperation (principally Europol), and the development of cross national communication systems for the purpose of facilitating the exchange of information and intelligence, and the cultivation of direct contacts between police officers in different countries via the exchange of liaison officers. From the micro level perspective, the research has dealt with the emphasis at the regional and local levels of the investigations of specific offences.

However these developments have had knock on consequences upon developments at the intergovernmental level, that impact on such
areas as constitutional and international legal agreements, harmonisation of laws etc. The areas where meso and micro level developments in Europol have affected the macro level are as follows:

1) Operative Powers For Europol:

The encroachment of Europol into the coordination of controlled deliveries, cross border surveillance and transnational operations and investigations has blurred the distinction between intelligence and operations. This development has been the main thrust of this research to the effect that it has proved to be extremely difficult for Europol to remain a purely strategic intelligence agency. While the organisation has no officers or personnel with executive powers that are applicable anywhere in the European Union, it has become ever more involved in tactical operations being conducted across the EU, to the extent that many of the ELOS now find their time almost exclusively taken up with operational matters.

Paradoxically, with the exception of Germany, there has been little political or policing enthusiasm for the institution of an operational Europol. At best most states concur that there may be a need at an unspecified future date for such a development but not at the present, and certainly not until the current Europol had been firmly established. Yet despite this, it was decided at the Dublin Summit of 13-14 December 1996 that Europol should be given 'operative powers' working in conjunction with the national authorities to this end. A subsequent report by a "high level group" of justice and home affairs officials set out
the details of what these new operative powers would entail:

a) Europol should be enabled to facilitate and support the preparation, coordination and carrying out of specific investigations... including operational actions of joint teams (with Member States) comprising representatives of Europol in a support capacity;

b) Europol should be allowed to ask Member States to conduct investigations in specific cases;

c) Europol should develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised cross border crime. (Action Plan to combat organised crime, report from High Level Group to the European Council, JAI, Rev4, Limite, 6276/4/97, 9.4.97)

These developments are already being interpreted as a stepping stone on the road to a fully operational Europol. In connection with these initiatives, the civil liberties monitoring group Statewatch asserts:

"Whatever form it takes the extension of Europol's powers into the operational field would mean giving its officers powers of arrest or, in a "joint" operation with national police forces, letting "national" officers make arrests based on intelligence and surveillance provided by Europol. This latter road would obviate the need to create an EU Prosecutors Office and an EU Police Complaints system." (Statewatch Vol 6 No 6 1996: 16)
The concept of a "Europol Task Force" whereby officers seconded to Europol, are allowed to be operational in their home state, under Europol's control, has also been mooted by the Europol Coordinator and Deputy Coordinator, as another means of circumventing the need for a harmonised judicial system to complement an operational Europol. While many of these plans would require the amending of the Europol Convention or a new Convention altogether, the groundwork is already being laid at the macro intergovernmental level.

These developments represent one example of how the events at the meso and micro levels, in this case the incursion of operational considerations into Europol's activities, have driven events at the macro level. It is an example of governments being spurred into action, virtually against their political instincts, by operational imperatives at the policing level, and within the context of the push/pull factors elaborated on in chapter 2, represents an example of meso level policing imperatives pushing policing competence towards the European level, rather than a desire for supranational competence at the European level, pulling policing competence towards it.

2) Judicial Cooperation:

The incursion of Europol into operational matters has in turn had a spillover effect on the area of judicial cooperation. The coordination and implementation of transnational operations and investigations are virtually impossible without the assistance of judicial authorities on the continent. A prime example of this is in the effecting of controlled deliveries. The procedure for
this type of operation includes the permission of each public prosecutor concerned for the drug consignment being followed, to pass through his area of competence unmolested. This in turn involves the ability of public prosecutors to appreciate the larger picture in terms of attacking organised criminal networks, as opposed to just apprehending a solitary drug consignment.

The efficient handling of transnational operations therefore involves public prosecutors across the EU appreciating and understanding the peculiar problems faced by their counterparts in other states. A classic example of this problem was given in the Dutch case study in the tensions that exist between the Dutch opportunity principle and the German legality principle. Under the former, the power to prosecute an offence is at the discretion of the public prosecutor. In the case of the latter, no such discretion exists. Prosecution of an offence is mandatory. The Dutch opportunity principle affords a greater amount of flexibility in fighting crimes such as drug trafficking, in that prosecution can be withheld in the interests of accumulating more intelligence, and thereby effecting a better operational result later on. In terms of cross border cooperation between the Netherlands and Germany however, the differences between the two principles means that Dutch police officers will often not share vital intelligence with their German counterparts, because they know that the German police will be constrained to act immediately on the information.

Another example given during the course of the research involved a large scale joint EDU/Italian operation termed 'Operation Cocktail' in the early months of 1997. The operation
culminated in 80 arrests across 7 countries. However at a preparatory meeting held at the EDU and attended by an Italian judge, it was arranged that 3 persons in the Netherlands were to be arrested, 2 Italians and a Dutchman, who were all to be extradited to Italy for trial. However in the absence at this meeting of a Dutch prosecutor, it was not realized that Italy does not recognize the law that allows one state to take over the custodial punishment of another state. While the maximum penalty in the Netherlands for hashish export is 4 years, in Italy the maximum term is 8 years. Therefore while it was possible for the Dutch suspect to be extradited, tried and prosecuted in Italy, he would have had to be returned to the Netherlands for imprisonment, the maximum sentence of which would be 4 years. As the Italian authorities resisted a situation where one convicted person could theoretically serve half the sentence as another for the same offence, it meant that the Dutch suspect could not be arrested and extradited to Italy.

To address these and other similar problems of judicial incongruence, Europol has been acting as an unofficial ad hoc facilitator of judicial cooperation by bringing together judges, magistrates and public prosecutors from across the EU, so as to discuss problems and differences, and by so doing, to arrive at a common or approximate working practice based on an understanding of each others constraints. This process has been put on a constitutional footing by the Treaty of Amsterdam. Article K.2.2 states that Europol will be responsible for promoting liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime.
These powers are further enhanced by Article K.3 which adds that common action on judicial cooperation in criminal matters shall include.... facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions. In light of these developments, one Europol official interviewed voiced the expectation that one day in the near future it will be necessary for public prosecutors to be based at Europol, working alongside the ELOs.

As with operational powers for Europol, these meso level initiatives are now being mirrored at the macro level. The Justice and Home Affairs Council of the European Union has recently passed a number of measures aimed at increasing judicial cooperation. These measures include:

a) GROTIUS: a programme for promoting the exchange of legal practices;

b) OISIN: a Joint Action providing a common programme for the exchange and training of, and cooperation between law enforcement authorities.

In an Action Plan presented to the European Council by a High Level Group of justice and home affairs officials, a proposal was made for the setting up of a "Network" for judicial cooperation, which would act as a clearing house, problem solver and contact maker between judicial authorities at the national level. The report goes on to recommend an in depth study to examine:

"The role of judicial authorities in their relations with Europol, in step with the enlargement of Europol's
competencies... [and examine] whether it should in the long term be transformed into a more permanent structure, which could become an important interlocutor of Europol."

The civil rights monitoring organisation Statewatch rightly interprets this as a first step in creating an EU prosecution service to work in tandem with a Europol with "operative powers." (Statewatch Vol 7 No 2 1997: 2) The impetus for these initiatives have clearly been tactical push factors that have resulted in Europol being increasingly involved in tactical operations. In the process these developments have spilt over into adjacent sectors, one of which has been judicial cooperation. As with the case of operational powers for Europol, these plans have not arisen from a desire at the national or European levels for greater integration in justice and home affairs, but rather from push pressures created at the meso and micro levels. In these instances therefore, macro level actions are reactive rather than proactive.

3) Common European Crime Definitions:

At the Council of Justice and Home Affairs meeting on 19-20 March 1996, European Interior Ministers agreed a Joint Action to combat racism and xenophobia. The measure seeks to make it a criminal offence to commit anywhere in the European Union:

a) A public incitement of discrimination, violence or racial hatred;

b) Public condoning for a racist or xenophobic purpose, of crimes against humanity and human rights violations;
c) Public dissemination of material containing expressions of racism and xenophobia.

These offences represent only some of a raft of European offences connected with racism and xenophobia, which were agreed at this summit. This process was furthered at the Luxembourg meeting of Justice and Home Affairs Ministers when a European definition of organised crime was agreed for ratification at the Intergovernmental Conference in June 1997. The subsequent report of this meeting recommended that, in connection with this new definition of organised crime, Europol with the assistance of the European Commission, the Council and the Member States, should set up a joint "Contact and Support Network." The purpose of this network would be to collect and analyse data on the "organised crime situation," make it more accessible for "investigations and prosecutions at the national level" and ensure that it can be actively "exchanged with other Member States" and the academic and scientific world. (Statewatch Vol 7 No 2 1997: 2)

This report very clearly makes a connection between the new European definition of organised crime and Europol. Taken together with the initiatives on racism and xenophobia, these new definitions can be construed as the first steps in the development of a body of specifically European crimes. This development however should come as no surprise, as the response of police officers throughout this research, when asked if Europol should have operational powers has been that such a development would entail the need for such a body of Euro crimes, as well as a European judicial system.
As with the other areas listed above, the determination of a European definition of certain crimes, has not occurred in isolation. They are instead a function of activities taking place at the meso level of coordination. One of the prime functions of Europol has been the institution of project based work, that seeks to attack the various organised crime networks operating in Europe. Some of these networks that have been described as having tentacles in several states include Turkish, Albanian, Russian and Eastern European Crime gangs and motor cycle gangs such as the Hells Angels and the Bandidos. However the coordination of simultaneous transnational operations in several states is often hampered by the fact that each state may have a slightly different interpretation of what constitutes an act of organised criminality. The same is usually true of racism and xenophobia, with different states taking differing views on incitement, disseminating racist material, condoning acts of violence etc.

Consequently the more operationally involved that Europol has become, the more the need has grown for a European operational framework of reference in the form of European crime definitions. Also this process can only grow in the future as Europol becomes more involved in terrorism and international prostitution and paedophilia offences. Once again, these macro level advances are not occurring as the result of any perceived desire for greater integration in justice and home affairs, but rather as a response to pressures and developments at the meso and micro levels.
4) Subsuming the third pillar into the first:

Proposals were tabled at the European Council Summit in Turin in March 1996 to subsume the intergovernmental third pillar of the Maastricht Treaty on justice and home affairs issues into the first pillar of the European Union. These proposals were only partially adopted at the Intergovernmental Summit in June 1997, with immigration and asylum issues alone being transferred to the first pillar. However the greater involvement of the supranational institutions of the EU into justice and home affairs issues since the signing of the Amsterdam Treaty means the partial dilution of a purely intergovernmental approach to these issues. The supranational institutions of the European Union, such as the European Commission, the European Parliament and the European Court of Justice now have a small but incrementally significant increase in jurisdiction over internal security matters.

One of the prime reasons for these moves has been the inadequacy of the current intergovernmental decision making process. In the absence of qualified majority voting, there has been drift and stagnation in agreeing and signing an entire raft of agreements, the most notable of which has been the Europol Convention. The signing of this Convention was held up for almost 2 years because 1 state out of 15 refused to agree to the European Court of Justice having jurisdiction over the Europol Convention. Eventually an unsatisfactory compromise had to be reached which allowed the ECJ to have jurisdiction over the Convention as it applied to 14 states but not the 1 dissenting state. This agreement had the effect of allowing the dissenting
state to have an input in cases arising in other states that went before the ECJ, without it being itself subject to ECJ jurisdiction. (Statewatch Vol 6 No 4 1996: 21-22)

Again these moves are in part necessary to maintain a measure of supranational control over Europol as it evolves into a quasi supranational operational agency. Within the context of this research, it was relatively simple to maintain intergovernmental control over Europol as a purely intelligence agency, operating under a centralised mode of information exchange. However the early moves towards a qualified centralised model, that increasingly mixed tactical and strategic matters has made the intergovernmental format unworkable, for the reasons stated in points 1 to 3 above.

5) Third Country Liaison Capacity:

The issue of Europol being able to liaise and share information with countries and agencies outside the European Union has, on one level not been finalised for the following reasons:

a) The Europol computer system will probably not be on-line until mid 1999;

b) The Convention with its data protection provisions, has not as yet been ratified by the majority of the EU states. These provisions include the institution of a Joint Supervisory Body to oversee and regulate the data protection legislation.
However despite these setbacks on one level, on another, moves are in progress to significantly expand Europol's current ability to cooperate with non EU states and agencies. One of the most far reaching initiatives is a joint plan drawn up by the FBI and the Council of the European Union for the introduction of a global system for surveillance of telecommunications such as telephone calls, faxes and e-mails. These plans go hand in hand with the signing of the Joint EU-US Action Plan by President Clinton and Felipe Gonzalez on behalf of the European Union at the EU-US Summit in Madrid on 3 December 1995. In terms of joint cooperation with Europol, the plan states:

"We are determined to take new steps in our common battle against the scourges of international crime, drug trafficking and terrorism. We commit ourselves to active, practical cooperation between the US and the future European Police Office, EUROPOL."

(Statewatch Vol 6 No 1 1996: 21)

Other initiatives and agreements that commit Europol to liaison with external states and agencies are as follows:

a) The Barcelona Declaration of the Euro-Med Summit of 27-28 November 1995 which commits the European Union via the K4 Committee to closer cooperation with the Maghreb states of North Africa, and other Mediterranean states, to jointly combat drug trafficking, terrorism and illegal immigration;
b) The Interregional Cooperation Agreement (Mercusor) of 15 December 1995, between the EU and Latin America, which among other things includes cooperation provisions for combating drug trafficking;

c) Proposals that have been put forward for the introduction of new legal instruments that will allow Europol to liaise and cooperate with external agencies such as the World Customs Organisation (WCO) and Interpol.

Once again these developments are not geared simply towards increasing Europol's ability to exchange information and provide a tactical overview. Instead they are also being driven by operational pressures from the meso level. For example much of this research has revealed the importance of soft intelligence, in the form of mail intercepts, telephone bugging, wiretapping, interception of e-mails and faxes etc, to the facilitation of transnational operations. Initiatives therefore such as the EU-US global surveillance system and others can be interpreted in precisely this light. It provides the tools for not only acquiring information for processing into strategic but also tactical intelligence. As one ELO interviewee stated, ultimately Europol's success depends not on how many strategic situation reports that are generated each year, but rather how many top grade criminals have been arrested and how many major organised crime networks have been smashed or seriously disrupted every
6) Upgrading of ELO Status:

In conjunction with the signing of a Headquarters Agreement between Europol and the host state the Netherlands, there are currently measures being discussed to equalize the status of ELOs and the DLO network. As stated during the research, DLOs are generally based at their respective embassies in the state in which they are posted. As such they carry First Secretary diplomatic status, which gives them exceptional authority when making requests in the host state such as the allocation of resources.

During the course of the research, only the UK mentioned the disparity in status between the ELOs and the DLOs as a criterion for using one as opposed to the other. When questioned about this, the other states interpreted this question in terms of diplomatic protection of ELOs while based within the Netherlands from prosecution etc, instead of the UK's view of diplomatic status as a means of facilitating tactical operations. However the consequence of the increased use of ELOs coupled with moves to upgrade their status, has been that several EU states have begun cutting back on the number of DLOs they deploy.

The ACPO Report on International, National and Inter-Force Crime of 1996 noted the extensive evidence of duplication and lack of coordination between the work of the DLOs, which tends to be nationally focused, and the ELOs. The current moves to upgrade the status of the ELOs therefore needs to be complemented by greater cooperation and coordination between the DLOs and the ELOs.
A recent report from a High Level Group of the Justice and Home Affairs Council recommended that:

"The central national contact points (National Criminal Intelligence Services) set out in the Europol Convention should be the contact points on behalf of all law enforcement authorities in the Member States. It is advisable that existing contact points, such as the Interpol NCB (national central bureaux), Sirene bureau (Schengen) etc should be brought together in this central contact point." (Statewatch Vol 7 No 2 1997: 2)

These recommendations can equally apply to the DLO network, especially as the DLO liaison desks are all based at the different national units anyway. Such proposals could include a system whereby the DLOs are more closely tied in with Europol, and thereby work with the organisation instead of independent of it. The DLOs can therefore become a means of Europol acquiring 'on the ground' information and intelligence, instead of the current system where this information goes to the national unit and may not necessarily be transmitted to Europol.

What many of the aforementioned initiatives show is that there are currently efforts to integrate the many facets of police cooperation, with Europol playing a central coordinating role. The importance of DLOS and at a later date the Counter Terrorism Liaison Officers (CTLOs) are such, that it is becoming vital that there is a much closer linkage between these agencies and Europol.
6) The Incorporation of Schengen:

Finally proposals were laid before the Intergovernmental Conference in June 1997 for the incorporation of the Schengen Agreement into the Treaty on European Union. Initial suggestions included the transference of the Schengen Secretariat to the EU Secretariat, and the co-opting of Schengen decision-making powers, which do not require national ratification, into the EU's third pillar. These proposals were all accepted.

At present only the UK and Ireland have refused to commit themselves to the Schengen Agreement, which seeks to abolish internal frontier checks, while intensifying controls at the external borders of the EU, thereby facilitating freedom of movement within the EU. However the incorporation of Schengen into the EU structure may involve the removal of the UK's ability to maintain its border checks via the back door. Once again part of the rationale for this incorporation was listed as to ensure that:

"Access by Europol may be sought to the Schengen Information System or its European successor." (Recommendation 25e, Action Plan to combat organised crime, report from the High Level Group to the European Council, JAI 7, Rev 4, Limite, 6276/4/97, 9.4.97.)

Such a development would ensure that in addition to a vertical intelligence system in the form of the Europol Information System, the organisation would also have access to a horizontal one in the form of the SIS or its successor. Again the
implications of this move goes far in excess of the original intentions for Europol. Far from an information exchange agency, the incorporation of Schengen represents another cog in the wheel of a supranational European policing facility that will have serious implications for the future sovereignty of the nation state in Europe as it applies to a monopoly of the powers of coercion and control.

10.4: CONCLUSION

In terms therefore of the main theoretical developments in the field of police cooperation, the results of this research has a serious bearing on the question of sovereignty. The original centralised mode of information and intelligence exchange upon which Europol was predicated, presupposed a system in which national authority would reign supreme to the exclusion of any supranational interference. This was obvious from the fact that apart from Germany, no other European state advocated an operational capacity for Europol.

However the exigencies of policing had unforeseen repercussions. The areas of policing and police cooperation are ones in which the principle of subsidiarity is naturally present in that, irrespective of what goes on at other levels, the area that remains of greatest importance is the lowest level of 'on the ground' policing. Consequently the work of other levels, be it regional, national or international must be of relevance to the micro level of policing, and the authority/legitimacy transfer of competence from one level of policing to the other, must also be directly relevant to the micro level. Despite the
involvement of senior police officers in the early deliberations on the formation of Europol, there is little indication that anyone foresaw the likelihood of tactical matters impinging on Europol's work as it has. It was always felt that Europol would be solely involved with the production of strategic intelligence only.

This however was precisely what was revealed throughout the research, as despite the existence of formal legislation and agreements, the criteria that governed the decision to pass information or operational competence from one level to the next was invariably based on tactical micro level rather than strategic considerations. In addition, the interrelatedness of the micro, meso and macro levels were also governed by push as opposed to pull factors, in that what is currently driving forward integration measures in the field of justice and home affairs, is not an ideological belief in the need for a supranational European policing facility that is pulling greater authority to the European level, but rather the tactical imperatives of the need to combat serious transnational crime, that appears to be pushing integration from below. This is true both at the policing as well as the political levels.

Finally current third pillar developments that revolve around Europol can be construed as an incremental evolution into what van Reenen terms vertical integration. The vast mosaic of police cooperation networks in Europe first gave rise to Schengen which represents a form of horizontal integration. According to van Reenen, horizontal integration occurs when the police of one state obtain the authority to operate within the territory of
another state. This authority is horizontal in that it remains at the level of the nation state but extends horizontally across state boundaries. In this respect therefore, the Schengen Agreement with its provisions for hot pursuit and cross border surveillance, represents an early and experimental form of horizontal integration.

The current developments within third pillar issues generally, and Europol specifically however suggests a progression away from purely horizontal integration. The developments listed in this chapter that are all tied in with this study's research findings, suggests the beginnings of a form of vertical integration whereby policing competence is vested in bodies and agencies that act above the level of the nation-state. It is unlikely that this form of vertical integration will be federal in the general understanding of the term. The European Community/Union has shown itself to be a unique form of political association that does not neatly fall into any traditional political categories or groupings. While in some areas it is confederal, in that the constituent states holds legislative and policy-making power via the Council of Ministers, in others it is also federal. This is evident by the supranational nature of some institutions such as the Commission and the Court of Justice, as well as the supremacy of European Law over national law in certain defined areas.

As with the Union generally therefore, it can be logically predicted that vertical integration in the area of justice and home affairs will also consist of a juxtaposition of national and supranational competencies. While legislative and policy-making
competence will remain within the purview of the Justice and Home Affairs Council, the initiation of legislation and the dissemination of directives, regulations etc pursuant to the correct functioning of the Europol Convention will be the responsibility of the Commission, while the ECJ will be responsible for the judicial interpretation of the same Convention.

With the advent of the Treaty of Amsterdam 1997, this process is clearly in a transitory state. The confusing mix of decision making instruments are unwieldy and unlikely to last indefinitely. For example, while police and judicial cooperation in criminal matters remains intergovernmental, with the usual unanimous decision procedures, the old Steering Group I areas of free movement, immigration and asylum issues are now under the gambit of the first pillar. This means that the Commission will have the right of initiative over these, but for the first five years, the Council will be obliged to adopt any Commission proposals by unanimity rather than by qualified majority voting. The European Parliament will only have the right to be consulted as opposed to the power of co-decision.

Consequently the JHA Council will be dealing with immigration and asylum issues under one pillar and police and judicial cooperation under another. The incorporation of Schengen into the EU architecture also adds another dimension of complexity including a system of options that allow certain states to opt in and out of the decision making process under varying circumstances. It is therefore with little wonder that the
monitoring group Statewatch opines that, "the complexity of this decision making structure will be a nightmare to the Member State participants, and it will create havoc for any concept of scrutiny by national parliaments and the European Parliament (Statewatch Vol 7 No 3 1997: 16 - 17).

However these developments represent a typically European example of compromising incrementalism which is often a stepping stone to another phase of integration. What this will mean for the concept of state sovereignty is left to be seen. However as in other matters, further integration in the area of policing and justice can be construed either as a loss of sovereignty that leaves the nation state with less power, or a pooling of sovereignty that makes the power left to the nation state more effective.

Whereas to date the area of attention in European affairs has centred upon the single currency, and to a lesser extent the moves towards the creation of a common foreign and defence policy, the evolution of a form of vertical integration in the field of police cooperation has as much relevance to the continued sovereignty of the nation state in Europe as any other factor. While the European project may still at present be a journey to an unknown destination, the evolutionary nature of police cooperation must at the very least be construed as a sign post indicating where that eventual destination may be.
This appendix contains diagrammatic representations of the national units of each European Union member state.
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PAGES MISSING IN ORIGINAL
Structure Europol National Unit - Denmark

Police General Directorate

Dept E Aliens

Dept G Police Intelligence

Dept A HENU

Co-ordination

NCB Interpol Vehicles

Drugs Intelligence

Financial Crime

Communications Centre

Danish Police Field Units

10-05-StructureOfEuropolNationalUnits.doc 18 November, 1996
Structure of the Europol National Unit - Germany

Bundeskriminalamt
President

Main Division 1

Division OA
Organised & General
Crime

Sub-division OA 1
Analysis:
Organised Crime

Section OA 11
OC related co-ordination/
Situation reports/ Liaison

Sub-division OA 2
Analysis:
Drug Related Crime

Section OA 21
Drug related co-ordination

Main Division 2

Division KT
Forensic Science

Sub-division ZD 3 HENU
International co-operation
Interpol NCB

Section ZD 31
General international
co-operation

Main Division 3

Division ZD
Central CID Services
identifications

Sub-division ZD 4

Section ZD 34
Watch section
(24 hr duty service)

Off-hours urgent work

Off-hours urgent work

Case related work

Non case related work

Case related work

Customs units
Regional Police Forces
Local Field Units

0-05-StructureOfEuropolNationalUnits.doc
18 November, 1996
Structure of Europol National Unit - Hellas

- Ministry of Public Order
  - Chief of Police
    - Security & Police Branch
      - Anti-drug Co-ordinative Body (Unit) (President is the Head of the Police Public Security Division)
        - Desk officers
          - Ports Police
          - Customs

- International Police Co-operation Division
  - International Relations (NCB Interpol) Sub-division
  - European Co-operation Sub-division (SCHENGEN/EUROPOL)

No official ENU
HENU represented by the Heads of the Anti-drug Co-ordinative Body and the European Co-operation Sub-division
No Hellenic DLOs (except in Cyprus)
Desk officers available 24 hrs a day
Structure of Europol National Unit - Spain

- Director General Police
- Deputy Director - Operational
- Sirene
- International Co-operation and Co-ordination Unit

- Division Special Branch
- Division Aliens & Immigration
- Division Judicial Police
- Division Forensic Police
- Division Public Order

- Interpol NCB
- Judicial Police Central Unit
- Drugs Central Unit
- HENU/ Europol National Unit

- Operational Co-ordination Section
- Co-ordination and Analysis Section
- Study & Planning Section
Structure Europol National Unit - Finland

Chief of National Bureau of Investigation (NBI)

Deputy Chief of NBI (Acting HENU)

- Crime Laboratory
- Criminal Intelligence Division
- Administration
- Economic Crime Prevention
- EDP Division
- Areas: South, East, West, North

Gathering of Criminal Intelligence
Processing of Criminal Intelligence
Analyzing of Criminal Intelligence
Seizing of Assets

International Police Co-op
Liaison Officers
Translation services
Telecommunications
Police Bulletin
Police Files

Crimes against persons
Crimes against property
Narcotic crimes
Illegal immigration
Eastern crime
Motorcycle gangs

Board of Customs

18 November, 1996
Structure of Europol National Unit - France

Directorate General of the National Gendarmerie

Directorate General of the National Police
Central Directorate of the Judicial Police
HENU

National and Regional Operational Services

International Relations Division

N.C.B. Interpol

Information Systems
SCHENGEN + SIRENE

EUROPOL National Unit
(Judicial Police & Customs)

Liaison Department between the Gendarmerie and Judicial Police

Directorate General of Customs and Excise

National Directorate of Customs Intelligence and Investigations

18 November, 1996
Structure of Europol National Unit - Ireland

National Police/ Crime Branch
Assistant Commissioner
HENU

International Liaison Office
Chief Superintendent

International Liaison Office
Superintendent

Interpol N.C.B.
EUROPOL
National Office (Unit)
2 police desk officers

Chief Superintendents in charge of Investigation Divisions

18 November, 1998
Structure of Europol National Unit - Italy

Headquarters of the Guardia di Finanza (G.F.)
Headquarters of the Arma dei Carabinieri (C.C.)
Central Directorate of the Anti-drugs Services (D.C.S.A.)
Central Operational Service of the State Police (S.C.O.)
Anti-mafia Investigation Directorate (D.I.A.)

EUROPOL National Unit (State Police, Carabinieri, Guardia di Finanza)
1 director, 3 officers, 6 police personnel, 1 assistant

Interior Ministry
General Directorate of Public Security
Deputy Chief of Police
General Director
Criminal Police

Money laundering
Nuclear crime
Drug trafficking
Illegal Immigration + Stolen Cars
Organised Crime

18 November, 1996
Structure of Europol National Unit - Luxembourg

Gendarmerie / HENU

Judicial Police

- Directorate/Secretariat
  - NCB Interpol
- General Crime
- Organised Crime
- Foreigner Police
- Technical Police
- Drugs Section
- Economic/Financial
- Youth Protection
- Crime Analysis

Gendarmerie

- UNRD (National Drugs Intelligence Unit)
  - Including Europol contact point
  - 9 gendarmes / 1 police officer
  - / 1 secretary

Administration

- Police
- Customs

24 hour control
Structure of Europol National Unit - The Netherlands

Corps National Police Services

Central Investigation Information Division (CRI)

Investigation Intelligence Unit
- National Co-ordination
- Liaisons Support
  - Dutch DLOs abroad
  - Foreign LOs in NL
- Regional Information Centres (33 by 1997)
- Customs/FIOD

Expertise Unit
- Theft & Violence
- Narcotics
- National Co-ordination
- Scientific Advice
- Fraud
- Support of International Police Co-operation
- Computer Crime
- Forensic Accountancy
- Financial Invest. Support

(Inter)National Requests & Mediation Unit

Staff Units (personnel/organisation etc.)
- Fingerprints
- Sirene
- Interpol

Temporary situation during re-organisation (4 July, 1996)
Structure of Europol National Unit - Portugal

General Director
Criminal Police

Terrorism Department
Drugs Department /HENU
Economic Crime Department
Interpol
Regional Branches

Investigation Teams
Section for International Relations
National Drugs Intelligence Unit
Europol National Unit
3 police officers
- 24 hr availability

18 November, 1996
Structure of Europol National Unit - Sweden

National Criminal Investigations Department

- Secretariat
- Investigations & Surveillance Service
- INTERPOL NCB
- Criminal Intelligence Service/ HENU
- Security Section
- Co-ordination
  - DLOs
  - EUROPOL National Unit
  - Analytical Unit

Off hours: duty office within Security Section
Field units call either the ENU or the ELOs
Reorganisation planned (see following page)
Structure of Europol National Unit - United Kingdom

Director General NCIS/ HENU

Director Intelligence

Director International Division

HQ Division

Director UK Division

Director Resources Division

Interpol NCB

Operational police

customs

immigration teams

International Intelligence Branch

International Liaison Unit

Europol Desk

1 police, 1 customs
1 assistant
24 hour availability

DLO Desks Europe

mixture of police
and customs
24 hour availability

Immigration Liaison Officer

Overseas Liaison Officers
Liaison Officers posted to the UK by other countries

DLOs Europe
Austria (1 police), Belgium (2 police), France (1 police/1 customs), Germany (1 police/1 customs), Italy (1 police), Netherlands (2 police/2 customs), Portugal (1 customs), Spain (1 police/1 customs)
APPENDIX B

LIST OF QUESTIONS USED DURING THE COURSE OF THIS RESEARCH

1) What is/are the function/s of the national unit?

2) Does the national unit possess operational/executive powers?

3) How do you define intelligence within the context of the work you do?

4) Who is the national unit accountable to, and what is the accountability process?

5) Has the ratification process of the Europol Convention begun in your state, and if so, what stage is it at? (if not, is your state one of the countries refusing to begin ratification until the issue of ECJ jurisdiction has been finalised?)

6) What would be the parliamentary procedure for ratification in your state?

7) Why does your state favour the ECJ having jurisdiction re the Europol Convention?

8) When are regional police forces obliged to pass information/intelligence to the national unit?
9) Is this system governed by specific rules, such as service level agreements as in the UK, or the filter criteria system in the Netherlands?

10) When would the national unit (where such a power exists) become involved in an investigation or an operation? (is it on a request basis?)

11) Are there certain instances when forces are obliged to pass on certain types of information such as drug seizures over a certain weight?

12) Are the national unit's computer systems compatible with those of other regional forces?

13) Is there also horizontal compatibility of computer systems among regional/local forces?

14) Does the national unit have a specific department that looks at all information/intelligence that comes in and decides which channel to use (eg: Interpol, bilateral contacts, the DLO network, Europol etc)?

15) Does the national unit hold an informants database?

16) Does the national unit have any pro active intelligence systems?
17) Is there a system (data collection) which allows you to identify the incidence of cross border crime?

18) Is there a system for coordinating major criminal investigations (between forces, agencies etc), especially at a national/international level?

19) Are your criminal intelligence analysts civilian and/or police officers?

20) Is there a flagging system in the national unit that allows a police officer investigating someone to know that this person/group/organisation etc is already being investigated, so as to avoid duplication?

21) Has the national unit a single point of reference or index of the skills developed by officers in forces, regional squads etc, to which other officers can ask, when involved in investigating cross border offences, for advice or assistance in actually undertaking the investigation (ie, a central repository of the experience of good practice)?

22) Is there a void in your capacity to gather criminal intelligence at the inter force/regional level, and if not, is there a focal point at which criminal intelligence is gathered at this level?

23) Is there a nationally recognised training program for staff/officers engaged in criminal intelligence duties?
24) What are the criteria for the type of crime/criminal that the national unit deals with? Is it in your opinion too restrictive to encompass the type of crime/criminal that forces are dealing with on a daily basis? (i.e. how relevant is the national unit's remit to the policing priorities of the lower levels of policing?)

25) Does the national unit have a system of core nominal criminals on which they concentrate?

26) Do you find there is a general reluctance of senior police managers to commit resources to investigate crime which occurs outside their own areas? (i.e., in terms of strategic planning, cross border cooperation internally, crimes committed elsewhere by persons living on their patch etc)

27) Does the national unit have an index of good practice?

28) What operational successes has the national unit/EDU had jointly, if any?

29) What is your country's parliamentary position on controlled deliveries?

30) Should the EDU/Europol one day have operational powers, and if so what powers?

31) Does the national unit see Europol's main aim as to add value?
32) What data protection provisions exist in your state?

33) Are there any formal (data protection) provisions in your country's laws re passing information about one of your citizens, or crimes on your territory, to another state or international organisation, and if there are, how does it fit in with passing information to Interpol, Europol etc?

34) What restrictions does your data protection law place on police officers sharing information?

35) What agency is the national supervisory body, which monitors the permissibility of input and retrieval of data/personal data to/from Europol, and whether this violates the right of the data subject?

36) How long has the national unit been in existence?

37) What are the tasks, objectives, mission statements, output indicators etc of the national unit?

38) Is there any customs or immigration input in the national unit?

39) What is the structure of the national unit?

40) How/by whom is the national unit financed?
41) What are the main areas of transnational/cross border crime affecting your country?

42) What has been the national unit's relationship with Interpol?

43) What, in terms of your country's/national unit's policing priorities, would you like to see Europol accomplish?

44) How useful are borders in fighting transnational/cross border crime?

45) How does the national unit define in which cases Europol can/must be used, as opposed to Interpol, or the DLO network?

46) Does your state have a DLO network?

47) Is there a danger that Europol will only be concerned with the upper levels of crime, and will therefore be of little use to police officers at the lower levels of policing?

48) Should the European Parliament have greater influence in third pillar issues, particularly where the Europol Convention is concerned?

49) What provisions are there in your country for fighting money laundering (such as the requirement in the UK for companies to report any abnormally large or unusual transactions)?
50) How do large multinational companies know who to pass information (e.g., on money laundering, abnormally large deposits/transactions etc) re transnational crime to?

51) In your experience/opinion, is there in your country's police forces generally, and the national unit specifically, a balance between tactical and strategic considerations, or does one outweigh the other?

52) Have there been any analysis packages from the EDU?

53) Is the time factor of any relevance when deciding who should deal with an investigation: e.g., in the UK, operations that require a long time commitment in terms of investigation, surveillance etc, are usually handled by the RCS.

54) What police cooperation procedures and agreements exist between the national unit and other countries?

55) How does this cooperation work in practice, and what areas does it cover (e.g.: hot pursuit, cross border observations and surveillance etc)?

56) Does your criminal justice system place any restrictions, or have any substantial impact on the passing of information to organisations such as Europol?
57) Does your data protection law, or the criminal justice system affect the passing of information/intelligence (via the EDU), to states that do not have data protection legislation?

58) What rules govern the passing of information/intelligence from local police forces to regional forces?

59) What other issues in your state, (both police related or political) affect the exchange of information with international bodies such as Europol?

60) Is there at present a duplication of work between the EDU, Interpol, the DLO network, and even Schengen?

61) What prospects do you see for the future creation of a harmonised legal space in Europe?
For ease of reference, this bibliography is presented in alphabetical order. It includes a variety of publications from different types of sources, specifically articles in learned journals, journalistic publications, official correspondences and minutes of official meetings.

ACPO: Rules of Association, July 1993

ACPO (Meeting of the International Affairs Advisory Committee (IAAC)): ACPO Position on the Concept of a Unified Border Service, 16 September 1993 (Item 10)

ACPO Meeting of the IAAC: The Role of ACPO in Advising Central Government and others on International Matters, 16 September 1993 (Item 16)

ACPO: Report of Meeting of the IAAC held at the Forest of Arden Hotel, Coventry, 23 November 1993.


ACPO - IAAC (undated): International Affairs; An ACPO Strategy.


BKA Viewed Statistically; The Bundeskriminalamt, Germany, 1991.


Europe 2000 (1994) Opening Address by H.E. Dr E.M.H. Hirsch Ballin, Minister of Justice, the Netherlands.


Europol Drugs Unit Fact Sheet, 26 February 1996.


German Criminal Procedure Code (1965); The American Series of Foreign Penal Codes, London and New Jersey, Sweet and Maxwell Ltd.


Hebenton, B. and Thomas, T. (undated) Illicit Drugs and the UK/European Policing Agenda.


Home Office F3 Division (1995) Correspondence to the International Affairs Advisory Committee (Sir Ronald Hadfield Chief Constable West Midlands Police) 9 November 1995.


Home Office Briefing 382/96, UK First to Ratify Europol Convention.

Home Office Briefing 154/97, New Status for Police Information Technology Organisation.


Interpol (undated) Communication with Police Forces Abroad.


Kent County Constabulary (undated) European Liaison Unit Briefing Document.


Terrorism, Espionage, Drugs and Arms Trafficking, London, Sage Publications.


Ministerial Agreement on the Establishment of the Europol Drugs Unit.


NCIS Mission Statement, 10 April 1994.


Statewatch: The Europol Convention.


