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# LEARNING IN POLICE RECRUIT TRAINING: FINDINGS FROM THE FINNISH POLICE RECRUIT TRAINING EVALUATION PROJECT<sup>1</sup>



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**Keywords:** *learning, teaching, policing, skills, evaluation, effectiveness, problem-based learning*

## INTRODUCTION

*Traditional classroom learning and problem-based learning (PBL)* are often depicted as polar opposite forms of knowledge acquisition. However, they do share certain weaknesses, really that can be avoided by means of other kinds of teaching arrangements. This is the simple point that we will drive home in this paper.

The insight at the heart of this paper originates from our project on the *Evaluation of the Effectiveness of Police Recruit Training in Finland* (EEPRT). It was unanticipated in the sense that the grounds for the insight were provided by the police officer respondents in their answers to one of the open-ended questions in our survey. They were asked about the strengths and weaknesses of the program, mainly in view of the *contents* of police training, but they gave their opinion on the best practices of learning and teaching within the program, mainly in view of the *methods of instruction*. In this paper, we will briefly introduce the EEPRT project

(its aims, data and methodology), but we will concentrate on the focal pedagogical finding mentioned above.

We assume that the readers are familiar with traditional classroom learning (see, for example, Birzer & Tannehill, 2001, 234-238), but a word or two on PBL is probably in order. We follow Barrows and Tamblyn (1980), Barrows (2002), and Cleveland and Saville (2007) in defining PBL. According to the compact presentation of PBL by Barrows (2002, 119-120), problem-based learning takes *real-world, unresolved, ill-structured problems* as its starting point. With PBL, learners have to assume *responsibility for their own learning*. Teachers *facilitate* learning, but the emphasis is on the growth and independence of the learners. *Problems* in PBL should be such that the learners encounter tasks of the sort in their *real lives*. (Barrows, 2002, 119-120.) Cleveland and Saville (2007) add two additional features to this list. They refer to *modified cohort learning groups* (including students, but also other people, community members, etc.)

(<sup>1</sup>) This paper is based on the "Evaluation of the Effectiveness of Police Recruit Training in Finland" project, which was carried out at the Police College of Finland during 2009–2011. Vuorensyrjä, M. (2011), Poliisin perustutkintokoulutuksen vaikuttavuus. (In Finnish: *Evaluation of the Effectiveness of Police Recruit Training*.) Poliisiammattikorkeakoulun raportteja 96. Tampere: Poliisiammattikorkeakoulu.



as well as the idea that teachers need to take *emotional intelligence* and *multiple intelligences* into account (Cleveland & Saville, 2007, 12-16; cf. Birzer, 2003; Birzer & Tannehill, 2001; Werth, 2009; 2011; Shipton, 2009).

PBL has been also criticized in the research literature. According to Kirschner et al. (2006), the empirical evidence does not support the claims of PBL. Students need structured guidance in trying to learn complex new skills and competencies.<sup>2</sup>

Our findings agree with the propositions by Kirschner et al. Students are in need of a logically consistent framework that gives coherence to judicially, technically, and tactically skilled law enforcement. The police officer respondents of our survey, when reflecting upon their own training and work experience, were very clear about this need.

However, the logically consistent framework that is valued by the police cadets and the newly graduated police officers is often found in practice, not in print. Instead of classroom PowerPoint drilling (well-structured conceptual representations), the police cadets are in need of practical training periods with experienced mentors (off campus) and well-organized learning experiences, such as scenario training (well-structured practical experience), when attending contact education (on campus). On the basis of our qualitative research results, this is what the newly graduated police officers have come to appreciate in police training, while criticizing, at the same time, classroom teaching (if unrelated to practice) and PBL (if ill-structured).

## AIMS, DATA, AND METHODS

It takes about two and a half years to complete the basic police recruit training in Finland, *The Diploma in Police Studies Programme*. Police officers with the diploma are eligible for the posts of Senior Constable, Senior Detective Constable and Detective in the Finnish police force.

The structure of the program combines contact teaching periods (periods 1–6 and periods 8 and 10, which are six weeks each) with two practical training periods in real policing contexts (periods 7 and 9). The police cadets work in one of the 24 police departments with a senior constable as a mentor in the patrol.<sup>3</sup> Taken together, the two practical training periods cover approximately 14 months, which is about half of the entire program. There is also a PBL component to the program. However, PBL has no exclusive status, but is implemented along with traditional contact education. It is a hybrid model combining pure PBL with well-structured scenario training.

The *Evaluation of the Effectiveness of Police Recruit Training in Finland* project aimed to evaluate two, long-term target benefits of the program: 1) the *employment* rate of the recently graduated police officers, and 2) the *skills and competencies* of the police officers when compared to the actual requirements of the occupation.

The data come from two surveys conducted in February and March 2011: a survey of the police officers who graduated during the latter part of 2009 (n/N = 105/165 police officers, response rate 63.6%) and a survey of the supervisors of these police officers (n/N = 88/165 supervisors, response rate 53.3%). The representativeness of the survey data was found to be good.

## RESULTS

The key finding that we are reporting in this paper was actually unanticipated. We came across this finding when analyzing answers by the police officer respondents to one of the open-ended questions of the survey.

They were asked to give their proposals for how best to develop the program:

“If you consider the different skills and competencies taught in the program, which

(<sup>2</sup>) The question of an ill-structured vs. well-structured approach to learning is subtle, and the discussion could go much deeper than this. Barrows and Tamblyn (1980, ix) begin their classic work on PBL by making the claim that PBL itself is a “rigorous, structured approach to learning ...”, regardless of whether or not the problems assigned to students are well-structured. See, however, *ibid.*, p. 12 and p. 18.

(<sup>3</sup>) In Finland both the structure of the police organization and also the structure of police training will change in the beginning of 2014.



were the parts of the program that left you insufficiently prepared for the occupation of a police officer? Which parts of the program in your opinion are most in need of improvement?"

The single most important category of proposals for how best to develop the program was associated with practical training, especially with the perceived benefits of practical training and the exercises within the program (for example, "More practical training, the only way of learning is by doing"; EEPRT, 2011). But there was another, more subtle aspect to the answers. The police officer respondents seemed to have a clear idea of the type of practical training that had been the most valuable to them during their training period.

The general idea was that the meaning of the different component parts of the curriculum should be made clear and concrete from the point of view of the occupation of a police officer. None of the topics included in the program should be detached from the occupational procedures, but should rather support these procedures and the occupation as a whole in an intelligible manner. *Comprehensive Integrated Case Exercises (CICE)* were considered to be the best way to accomplish this. With CICEs, several different skills and competencies are used and applied to situations that resemble ordinary patrol and field realities. In this sense, these exercises resemble problem-based learning rather than subject-based learning (Barrows & Tamblyn, 1980, 11-15). The case exercise is particularly beneficial if it covers the whole procedure from beginning to end and if it deals with a case that is ordinary (common) in alarm or patrol missions, in traffic enforcement, or in criminal investigations (domestic violence, traffic accident, crime scene investigation). The judicial, technical, and tactical details are best understood in the comprehensive context of occupational procedures, "the full span of an assignment."

This was considered to be the best approach to training by the police officer respondents. However, they also noticed that some of the component parts of the program lacked this kind of coherence:

"The whole. How it all goes from the patrol in the field to crime investigation to district court sessions, etc. Too often, the core subjects were treated as isolated topics, so that you couldn't get the idea from the perspective of the whole process."

"Coherent entities, for example, registration, the check-up of a vehicle + driver, etc. The subjects were covered in distinct chunks to there's a need for exercises that are performed from the beginning to the end."

"The full span of an assignment — taking care of an alarm mission from the beginning to the end — I didn't really get it until I was already at work."

"All practical functions to more practical exercises; for example, patrol xx takes assignment 34, takes the load on, and tips it when back at the department. Takes care of things with the help of a radio and other equipment, as in real situations. Basic assignments of the sort."

"Encounters with difficult clients. The assessment of the situation, measures of use of force, taking into custody, and clearing the case, as one single exercise. Nowadays, all too often, these functions are treated as if they were isolated tasks." (EEPRT, 2011.)

The mental image of the "whole" or "coherent entity" denotes a logically consistent framework for action, a coherent occupational procedure. In essence, the respondents wanted clear guidance and to gain experience in perfectly ordinary occupational problems and not be presented with ill-structured, "unsettled and puzzling" problems (Barrows & Tamblyn, 1980, 18). Yet, in accordance with PBL, the framework that gives logical consistency and coherence to solving the problems is something the police officers say they find in practice (in the accumulation of experience), not in print. This is why they appreciate practical training periods with experienced mentors (off campus) and CICEs (on campus).

The categories in table 1 point out the weaknesses shared by both *traditional classroom learning* and *problem-based learning*. They lack well-structured, perfectly ordinary problems of the occupation that could be combined with intelligible practical solutions in real or realistic environments. These solutions are based on experience and embedded in practice. Teaching arrangements that provide the students with an opportunity for such an experience are feasible. Indeed, for the newly graduated police officers, they constitute the most valued part of the program.

The research literature is well aware of the existence of the domain of logically consistent



practical knowledge. It is probably best reflected in theories of *cognitive constructivism* (Neisser, 1976), *experiential learning* (Kolb, 1984), and *tacit knowledge* (Polanyi, 1964/1969; 1966). In an important article on learning, Lundin and Nuldén (2007) refer to *communities of practice* in law enforcement contexts.

Following Polanyi (1964/1969; 1966), we could say that knowledge – the skills and competencies – required for the occupation of a police officer consist of both explicit and tacit component parts. By this, we mean that while certain parts of knowledge can be expressed

in words and numbers, and written down in standard procedure documents, there are skills and competencies contributing to successful law enforcement that cannot be thus expressed. They are embodied in individual police officers (*bodily skills and habits, personal knowledge*) and embedded in unique patterns of interaction between police officers (*skills and competencies shared in action, cultures of knowledge*). Tacit knowledge may not be expressed in words and numbers, but it is a well-organized part of reality, which is supported by bodily skills and habits and by established patterns of interaction between individual police officers.

**Table 1. Problems, solutions, and learning in police training**

	Well-structured problems and assignments	Ill-structured problems and assignments
Solutions from a real or realistic environment, knowledge based on experience and embedded in practice	Practical training period with experienced senior constable as a mentor; Comprehensive integrated case exercises; Scenario training	Problem-based learning
Solutions from a classroom or laboratory environment, knowledge based on conceptual representations	Traditional classroom learning	Learning by applying classroom learning, written examinations, essays

## CONCLUSION

Police work consists of day-to-day practical diagnostics: Analyzing the type of the situation at hand, making decisions about the best available course of action, and actual implementation. Understanding the nature of the situation, mapping and evaluating the alternative courses of action, and skillfully implementing them in action all require extensive information and knowledge about similar or very nearly similar situations. Skilled law enforcement presupposes experience, because the schemata of different kinds of situations accumulate with experience.

From the point of view of learning, this means that a wannabe swimmer must swim.

Fortunately, from the point of view of teaching, it does *not* mean: “Just throw them into the pool!” There are several different ways of simulating the real-life situations of policing and of providing students with a glimpse of skilled law enforcement, from scenario training, CICEs, and practical training periods with experienced mentors to all kinds of combinations of these teaching arrangements.

We do not suggest that traditional classroom learning and PBL should be abandoned: quite the contrary. Teaching arrangements are complementary rather than contradictory in police recruit training. We will also need both classroom teaching and PBL in the future.



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# MEN, WOMEN, AND CAREERS IN THE GERMAN POLICE<sup>1</sup>

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## INTRODUCTION

Police organizations across Europe are still male dominated. In Germany, starting in the 1960s, criminal investigation departments employed female police officers. However, until the end of the 1970s, women were only allowed to work in newly created female criminal investigation departments (“Weibliche Kriminalpolizei”) and not allowed to change to “male” police departments. Hence, their career perspectives were rather limited. Starting in the 1980s, women could apply to all kinds of police departments. They were not restricted anymore to the “Weibliche Kriminalpolizei” or the criminal police itself, so they could work out on the streets alongside their male colleagues. Since then, the percentage of women police officers is increasing constantly, up to almost 50% at entry level right now. Accordingly, police is successfully striving to reach gender equality at the entry level. However, at (top) management positions the picture seems not so bright. A steadily growing number of women is reaching (top) management positions, but the number of women actual obtaining these positions is still smaller than the number of women with the potential to. Thus women are still underrepresented at (top) management positions in the police.

## PROJECT GOALS AND METHODS

The project “Women in Leading Positions” aimed at comparing how external (e.g., organizational resources, leadership support) and internal (e.g., career motivation, human capital) factors drive careers of men and women in the police. The project was funded by the German Federal Ministry of Education and Research and the European Social Funds (01.01.2010-30.06.2013) and was composed of two sub-projects: Organizational resources and barriers were identified using a socio-scientific approach, lead by the Department of Industrial Sociology at the Technical University Dortmund. The present report is about parts of the results of the other sub-project lead by the Department of Social, Work, and Organizational Psychology at the German Police University. We used work and organizational psychology theory to test a model explaining career success (e.g. salary rise). We expected career success to be determined by three factors: First by personal (“can do”), second by motivational (“want to”), and third by organizational factors (“allowed to”). We assessed personal (e.g., education: vocational training vs. university graduate and performance), motivational (e.g., career motivation and leadership role perceptions), organizational factors (e.g., leadership career support), socio-demographic variables (e.g., age, tenure), and career success (e.g., salary growth). We collected data within five federal and one national German police forces and

(<sup>1</sup>) This project was funded by grants from the German Federal Ministry of Education and Research and the European Social Funds (01.01.2010-30.06.2013)



used multivariate regression analyses to test the impact of personal, motivational, organizational factors and gender on career success ( $N = 3303$  police officers; age in years  $M = 43$ ,  $SD = 9$ ; 25% women, 75% men).

## PROJECT KEY FINDINGS

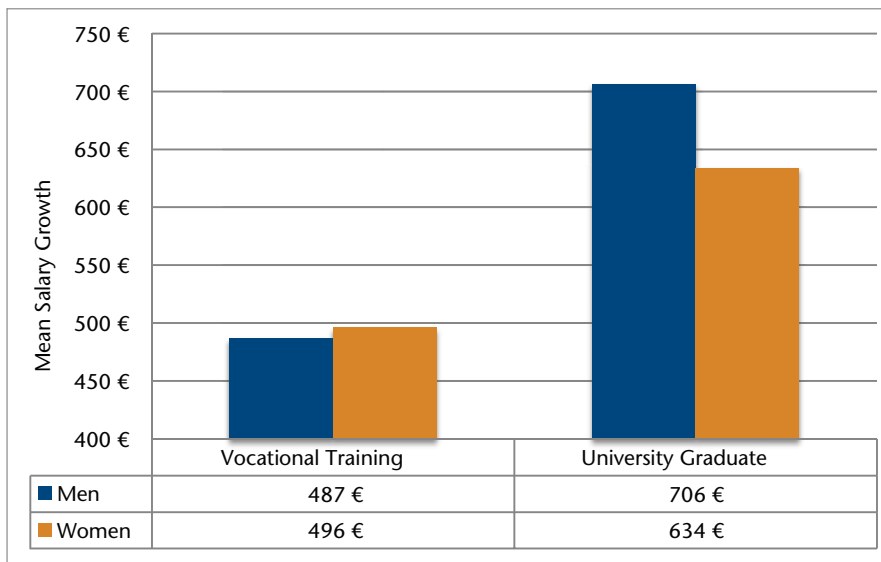
The results show that men and women in the police do not differ with respect to personal and motivational factors. Women “can do”, and they also “want to” do as much career as men. Rather, the cause of women’s underrepresentation in (top) management positions probably lays in organizational/contextual boundary conditions. Women are “not allowed to” make careers in the same manner as men and men profit more strongly from certain boundary conditions. Overall, age and tenure have the strongest positive impact on career success. Surprisingly, performance and career motivation, usually strong predictors of careers success in non-police organizational contexts, do not relate to career success within the police. Besides age and tenure, career success is then determined by educational level, leadership role perceptions, and leadership career support, whereat we find that (s. Fig. 1):

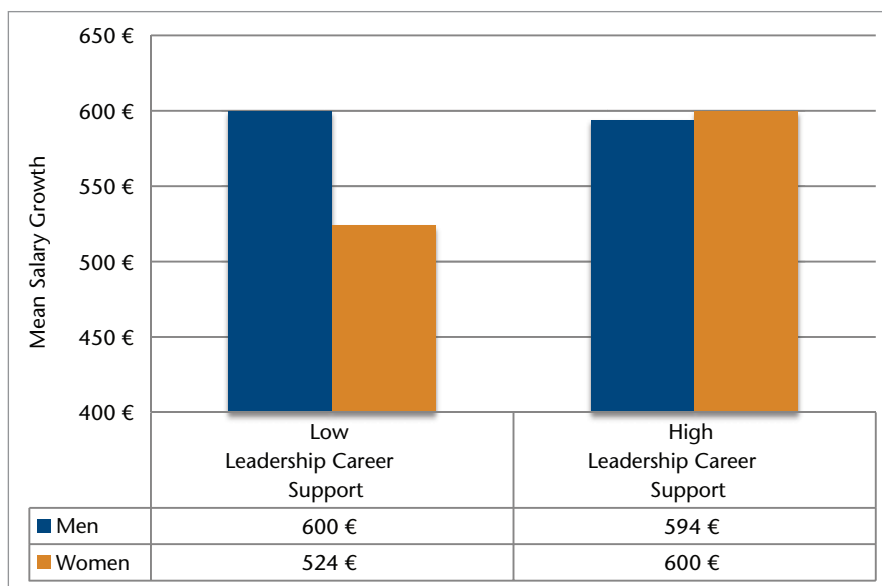
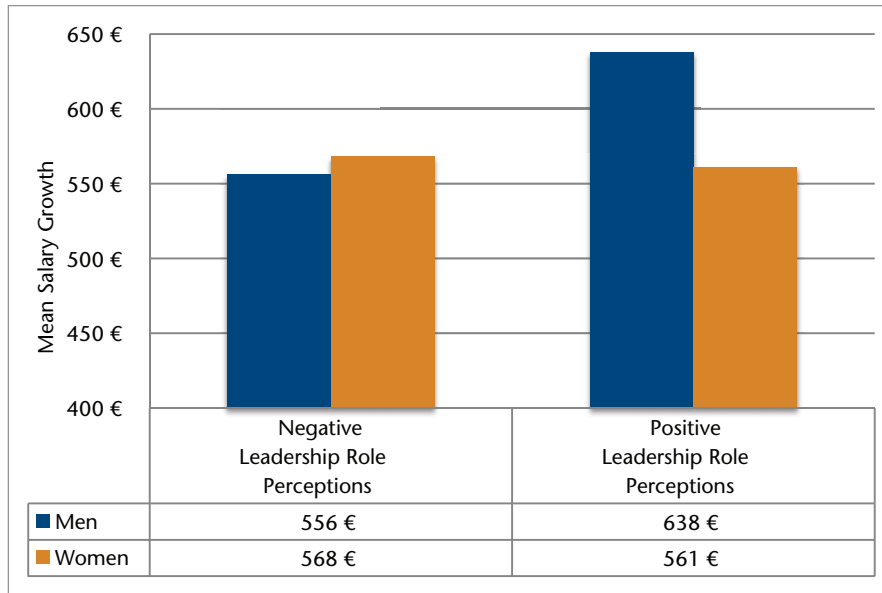
1. Men benefit stronger from education.
2. Men benefit especially from positive leadership role perceptions.
3. Men make their careers, regardless of leadership career support.

First, male and female police officers with a vocational training have the same mean salary growth over their careers, whereas men holding a university degree can realize on average a higher rise in salary than women. Second, leadership role perceptions are perceptions on how much one can stay oneself being a leader (sample items: “Becoming a leader in this organization, you have to basically become a new person”, “... you have to hide your true feelings”). Here, men benefit from having positive perceptions about the leadership role, i.e. thinking oneself has not to change very much becoming a leader. In contrast, whether women have positive or negative leadership role perceptions does not impact their careers. Third, low leadership support poses a threat for women’s careers. Men make their careers, regardless of low or high leadership career support.

The results show the importance of special career assistance measures for women. Especially careers of women are determined by leadership career support. The importance of specific mentoring programs for women has already been acknowledged by some police forces in Germany. As expected, in another study concerning mentoring and career success (Müller, 2012), we find that women benefit from mentoring programs, i.e. they receive more promotions and higher salary growth than women without mentoring.

Further, age and tenure are still the strongest predictors for career success. This shows that a traditional career model is still dominating in the police. In traditional careers, employees make careers by constantly following the well-defined career paths, while discontinuities or reorientations





outside the usual career paths (e.g. due to parental leave) slow careers down. Police organizations will benefit from implementing contemporary career models (Maniero & Sullivan, 2005; O’Neil, Hopkins & Bilimoria, 2008), which do not define careers as following rigid organizational career paths. Rather, contemporary career models take into account that different life stages require different career paths. At the beginning of a career, mentoring and challenging tasks play a central role. Later, for instance when you become a parent, a good work-family balance gains importance. With more flexible work designs (e.g. part-time leadership) and organizational support (e.g. childcare) people can still pursue their careers without being left behind. Specifically, women need more flexible career models, which

take work- and family-related requirements into account. Consequently, contemporary career models together with good organizational boundary conditions supporting work-family balance should support women in obtaining (top) management positions. Organizations can implement for example the following measures to create better career conditions for women and men (Maniero & Sullivan, 2005; O’Neil et al., 2008):

- First, long-term career planning, already considering times of leave or part-time work from the beginning.
- Second, changes in work design, like leadership in part-time.





- Third, provision of professional childcare at work.
- Fourth, when employees are on leave, holding the contact through trainings/workshops.

By this means, employees will keep up with changes and new developments at their work, and re-entry gets easier. Altogether, organizational culture should encourage and reward the use of individual career paths, rather than penalizing employees, which have to leave traditional career paths for some time.

## CONCLUSION AND PRACTICAL IMPLICATIONS

In the project “Women in Leading Positions” we asked how external (e.g., organizational resources, leadership support) and internal (e.g., career motivation, human capital) factors drive careers of men and women in the police. We thereby aimed at identifying barriers, which hinder women’s careers and we expected career success to be determined by personal (can do), motivational (want to), and organizational (allowed to) factors. Therefore, we asked:

1. **Can women less than men?** Do women have deficiencies in skills, knowledge, and abilities compared to men?
2. **Do women want less than men?** Do women have deficiencies in career motivation compared to men?
3. **Are women allowed less than men?** Do women have deficiencies in organizational support for their careers compared to men?

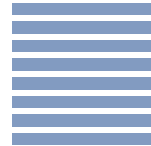
Our results show no differences in “can do” and “want to” factors between men and women. And, surprisingly, these personal and motivational factors had no impact on career success within the police, both for men and women. In fact, sociodemographic variables like age and organizational tenure determine career success. We find that differences in women’s and men’s careers can be explained by organizational (allowed to) factors. Women have to deal with worse boundary conditions (e.g. work-family-conflicts) compared to men, which hampers

women’s career success. And men benefit more strongly from several boundary conditions than women. First, men benefit more from education; second, men benefit more from positive leadership role perceptions; and third, men make their careers regardless of leadership career support.

In a nutshell, the identified barriers for women’s careers within the police can be termed as lack-of-fit barriers. The first lack-of-fit barrier is due to the fact that men who can identify themselves with the role model of successful leaders and do not feel impelled to “pretend” and “bend” themselves during career development to be successful, are more likely to realize careers than women with high role clarity and men and women with low role clarity. Again, the “fit” is advantageous for the career development of men, while women do not profit from this. Possibly, women do not benefit from role clarity as they shall fulfill contradictory norms and expectations as a women and as a leader resulting in role ambiguity where a “pretending” must inevitably appear. The second lack-of-fit barrier could be due to the fact than women without career support are less likely to realize careers. Possibly, women gain specific socialization experiences by the support of (in general male) supervisors that their male colleagues do not require in this way to realize careers. Potentially, also a critical socialization effect exists here in that women learn the male dominated rules of career development (and are “made to fit” in this sense). Finally, the third lack-of-fit barrier is the dominating career model where performance and career motivation could not be identified as drivers for career success. Here, men belonging to the police organization in full time and without longer absences (e.g., for the education of children) have again a better fit than women striving to realize a career in the police with part-time work and longer absences.

In order to get more women in top positions those lack-of-fit barriers in the police must be resolved. Therefore, basically two strategies are available: the adaptation of potential women to the expectations and norms of the leader role (e.g., by extending the career-related support by supervisors) and the adaptation of the organization to potential women (e.g., by basing personnel selection for leading roles more strongly on motivation and competence of female and male candidates and by considering compatibility of job and family more strongly within career support).





In times of demographic challenge, the police must pay attention to a sustainable and stable human resources management. Therefore, the police should:

1. invest in the compatibility of job and family as women and men in the organization will profit from this measure,
2. design career success in a way, that it is a logical consequence of competence, performance and personal commitment and that it considers specific job-biographical demands of different points of time in life of women and men (absences, part-time work),
3. invest in trainings for development of management competence of women in which role understanding, role stress and role conflicts are picked out as a central frame,
4. altogether not forget the caring responsibility for persons in top positions, as it also applies for them that work (as for all employees in the organization) must be designed constitutional and that sufficient resources must be available in order to be able to accomplish the required tasks.

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# IDENTIFYING BENEFICIAL OWNERS FOR FIGHTING AGAINST MONEY LAUNDERING: THE RESULTS OF EU PROJECT BOWNET



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**Keywords:** *Money Laundering, Financial Crime, White Collar Crime, Beneficial Owner, Chinese Boxes, Financial Investigations*

## Abstract

This paper presents the main results of Project BOWNET ([www.bownet.eu](http://www.bownet.eu)), funded by the EU Commission, DG Home Affairs, and carried out by an international consortium coordinated by Transcrime/Università Cattolica Sacro Cuore ([www.transcrime.it](http://www.transcrime.it)).

Focus of Project BOWNET is on the identification of the beneficial owners (BO) of those corporate entities (e.g. companies, trusts, and foundations) used by criminals for money laundering or other financial crime purposes.

In particular the project has analyzed the main problems of EU competent authorities and intermediaries in BO identification and suggested solutions for improving the related investigations.

The Project has produced a range of deliverables, all available on the project website ([www.bownet.eu](http://www.bownet.eu)) including a Final Report (Riccardi and Savona 2013)<sup>1</sup> and a series of figures, charts and lists of business registers.

## RESULTS

### 1. INTRODUCTION: THE IMPORTANCE OF IDENTIFYING BENEFICIAL OWNERS

Criminals and criminal organizations often make use of companies and other corporate entities (e.g. foundations, trusts, associations, 'Chinese boxes', etc) to hide their identity, conceal illicit flows of money, launder illicit proceeds, finance

terrorist organizations, evade taxes, create and hide slash funds, commit bribery, corruption, accounting frauds and other financial crimes (WEF 2012; World Bank and UNODC 2011; Transcrime 2007; FATF 2006; OECD 2002).

For this reason, identification of the beneficial owners hiding behind suspicious corporate entities has become crucial in the fight against money laundering and terrorist financing. At EU level the Third EU AML (Anti-Money Laundering) Directive (Directive 2005/60/EC)

(<sup>1</sup>) Available at [http://www.bownet.eu/materials/BOWNET\\_Final\\_report.pdf](http://www.bownet.eu/materials/BOWNET_Final_report.pdf)



requires intermediaries such as banks, auditors, accountants, lawyers and notaries to identify, as part of a Customer Due Diligence (CDD) activity, the beneficial owners of their clients and to take *“risk-based and adequate measures to understand the ownership and control structure of the customer”* (Directive 2005/60/EC, article 8, par. 1, letter b). The Fourth EU AML, whose preliminary draft has been issued in February 2013, confirms this approach and these provisions.

However, despite the wide attention paid to this issue, a number of questions remain unanswered:

- What are the practices adopted by EU competent authorities and intermediaries for identifying the BOs of suspicious corporate entities?
- What information do they use?
- Where is this information stored? Who provides it? What are the gaps in the dissemination of this information?
- How to address the existing gaps? How to improve the access to information and hence the identification of BOs?

Project BOWNET exactly addressed these issues. After a two-years study, the project has been able to identify the main criticalities in BO identification in Europe, and to suggest recommendations to EU policy makers to better tackle this issue.

## 2. WHAT ARE THE CURRENT PRACTICES FOR IDENTIFYING BENEFICIAL OWNERS? WHAT ARE THE PROBLEMS?

After a review of the main international and EU standards in terms of BO identification (Riccardi and Savona 2013, Chapter 1), the study analysed the findings of two surveys: on EU Law Enforcement Agencies (LEAs), Financial Intelligence Units (FIUs), Asset Recovery Offices (AROs) and on EU financial and non-financial intermediaries (DNFBPs). The surveys highlighted that **data on shareholders and directors** still represent the information most frequently used for BO identification purposes by both the categories, and that **business registers** (BRs) constitute the data source most frequently accessed.

However the analysis found that significant problems exist regarding **access** to business registers, especially **foreign ones**: it is difficult

not only to access and download information in different languages, but sometimes even to identify what register should in fact be accessed.

Additional concerns refer to the **timeliness** of the information provided by BRs (both in terms of updateness and access to historical records) and to their **accuracy and reliability**, since it is not easy to understand if data provided by registers and other data providers are verified, and by whom. According to both EU competent authorities and intermediaries, if new tools are to be helpful and effective, they should perform the **direct collection** of data from BRs and **collate them** so as to reconstruct the ownership structure especially of cross-border corporate schemes.

The project also evidenced that most of the software on the market has been designed to perform **KYC and CDD tasks** (e.g. check of watchlists, PEPs, blocked persons and companies, etc.) but not to cope with shareholders and ownership data.

## 3. WHAT IS THE LEVEL OF AVAILABILITY OF THE INFORMATION USED IN BENEFICIAL OWNERS INVESTIGATIONS?

Project BOWNET has carried also an analysis of EU business registers and of other public and commercial business information providers (Riccardi and Savona 2013, Chapter 3). The review highlighted that there is a **lack of interconnections** among EU registers: more than 80% of the 150 data providers analysed in fact cover only one country at a time, so that it is difficult to perform cross-border queries, which are the most effective in tackling transnational ML networks.

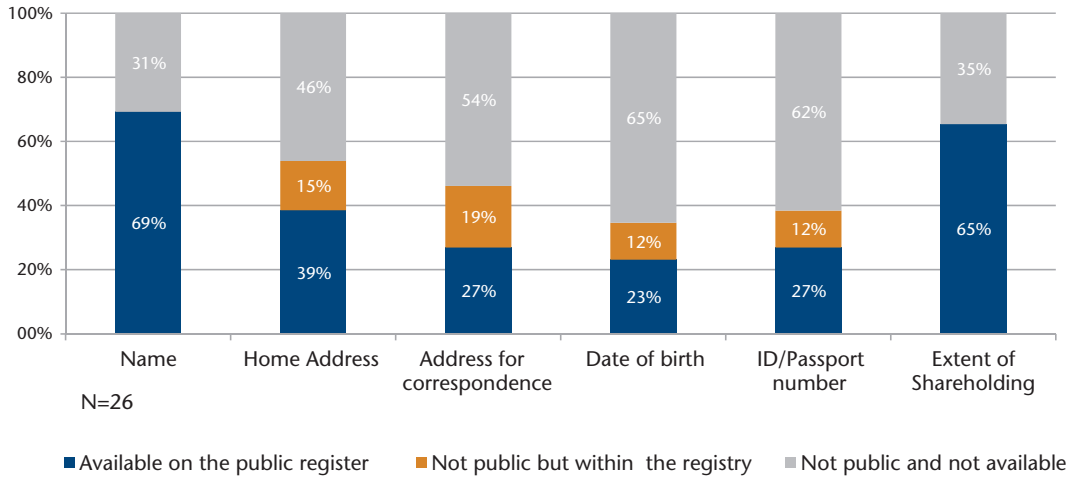
The analysis also showed that **data on beneficial owners** are provided by only four EU BRs out of 27. Much more widely available is **information on directors and shareholders**: whilst 92% of the BRs analysed make the names of directors available, only two-thirds of EU BRs provide the names of shareholders (Figure 1). Much less publicly available is additional information such as the dates of birth, addresses, ID/Passport numbers of directors and shareholders, which would be of great help in cases of homonymy. However, to be noted is that these data are often stored within BRs and, although not public, could be obtained by competent authorities upon request.







**Figure 1. Information on shareholders available on EU Business Registers**

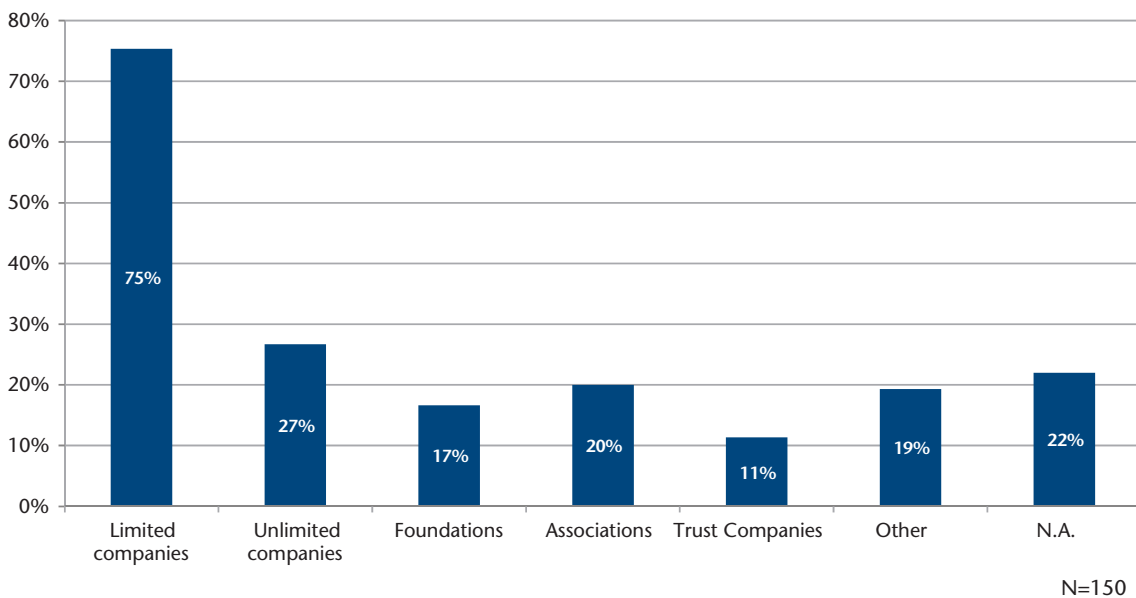


Source: Riccardi and Savona 2013 ([www.bownet.eu](http://www.bownet.eu))

The analysis of business information providers also highlighted a lack of **standardization in terms of data formats** (with PDF being the most common format, although not always OCR-readable) and a lack of **ownership and control information** as regards unlimited companies, associations and foundations (whilst limited companies are well covered).

To be pointed out in this regard is that **commercial data providers** often guarantee a wider geographical coverage, but they are often too expensive for EU competent authorities' needs.

**Figure 2. Types of corporate entities covered by 150 EU business information providers (including EU Business Registers)**



Source: Riccardi and Savona 2013 ([www.bownet.eu](http://www.bownet.eu))







#### 4. HOW TO IMPROVE THE IDENTIFICATION OF BO BY EU COMPETENT AUTHORITIES AND INTERMEDIARIES?

The access and the dissemination of ownership and control information should be strengthened through **policy or regulatory initiatives to be taken at EU level** (Riccardi and Savona 2013, Chapter 4). It was suggested to identify a set of **minimum basic company information** to be held at BR premises (relative to companies' shareholders and directors) and to strengthen the **interconnection of EU BRs** by implementing in full Directive 2012/17/EU.

**New support systems** should also be developed to make a better and more effective use of the available information. In particular, a range of tools were suggested (Riccardi and Savona, Chapter 5). They should primarily **facilitate the access to BRs**, especially foreign ones, and retrieve data from registers based in different countries, so that investigators could **perform cross-border investigations** on the ownership and control of EU corporate entities.

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#### CONCLUSIONS

While a proposal for a Fourth EU Anti Money Laundering Directive is being adopted by the EU Commission, lack of data on the ownership structure and on the beneficial owners of EU companies still represents a serious obstacle for the fight against the misuse of corporate entities by money launderers.

In order to address this problem, the Project BOWNET ([www.bownet.eu](http://www.bownet.eu)), funded by EU Commission, DG Home Affairs, has shed light on what are the main problems in the identification of beneficial owners, what is the availability of these data and what could be done for improving their access by relevant agencies.

The final report of the project (Riccardi and Savona 2013) has left a range of data, charts, information, suggestions and recommendations to the European Commission that could improve the investigations of EU competent authorities in the field of anti-money laundering.





# VIETNAMESE CRIME STRUCTURES AND CRIMINAL ACTIVITIES IN THE CZECH REPUBLIC



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## Abstract

In 2007–2012, a special research realised at the Institute of International Relations (IIR) Prague sought to analyse the structure and activities of Vietnamese crime networks in the Czech Republic. The Vietnamese criminality has been representing dynamically developing phenomena in the country, penetrating not only the local Vietnamese emigrant community but the state apparatus as well. Actually, the Vietnamese criminal underground lives in a specific symbiosis with the local Asian emigrant community, where legal and illegal activities are frequently merged together.

**Keywords:** Vietnamese, crime networks, Czech Republic

## INTRODUCTION

In the last few decades, the numbers of Vietnamese in the European countries have steadily increased. The Czech Republic, with approximately 65 000 Vietnamese residents, is not an exception. Most of the Vietnamese emigrants have been looking for an opportunity to improve their lives and to ensure a better future for their children. However, waves of Vietnamese emigration brought a new type of crime to the host countries as well. The Vietnamese criminal activities include mainly economic crime, smuggling of people, trade in people, counterfeiting activities, violent crime, and drug trafficking. Because many Vietnamese communities abroad have tendency to keep aloof from the social and administrative systems in their new countries of residence, it is very difficult to investigate criminal offences and introduce efficient legislative and preventive measures against their criminal activities.

In the Vietnamese communities, the “legal” and “illegal” spheres live in a dialectical unity and it is often difficult to find the line between them. To identify the both spheres was the main goal of the IIR research.

## RESEARCH METHODS AND INFORMATION SOURCES

The IIR research was based mainly on primary sources: unpublished reports and documents, interviews with members of security forces and foreign services, and interviews with members of the Vietnamese community in the Czech Republic and Vietnamese citizens living in Vietnam.

To penetrate more deeply into the Vietnamese community, the ethnographic methods of structured interviews and participant observation were employed. For this purpose, six field project





assistants were engaged in various stages of the project. All of them were of Vietnamese origin and fluent in both the Czech and the Vietnamese language. They collected information on the Vietnamese communities and realised a series of interviews with its members. The interviews were strictly confidential. They contributed mainly to forming a general understanding of the structures and functions of Vietnamese communities and the role of crime networks in them.

More concrete pieces of information about the Vietnamese crime were collected with the help of the members of the Czech security forces (mainly the Organised Crime Unit of the Police of the Czech Republic, the Anti-Drug Headquarters of the Police of the Czech Republic, and the Ministry of Interior), foreign service (mainly the Embassy of the Czech Republic in Hanoi, and the Asian Department of the Ministry of Foreign Affairs of the Czech Republic) and customs (the General Directorate of Customs of the Ministry of Finance of the Czech Republic).

## RESULTS

The functions and co-existence of the civilian and criminal branches are the result of the transfer of the Vietnamese traditional mentality to the Western cultural space. On the base of the research, the following social model was identified:

### THE CIVILIAN BRANCH

Although the Vietnamese emigrant communities abroad appear to be homogenous at first sight, it is far from the truth. As a result of historical and social developments, different social groups of Vietnamese residents were established in the Czech Republic:

A street dealer of goods, a cook or waiter in a Vietnamese or Chinese restaurant, or a worker in a legal/illegal manufacturing workshop is a man on the bottom of the Vietnamese immigrant hierarchy.

A new emigrant needs a substantial amount of money for the transfer to the Czech Republic, whether through legal or illegal channels, and to establish himself in the country. The prices range

between 6–15 000 USD for the whole process of immigration.

Basically, a new emigrant has three possibilities to cover the expenses: to collect money independently with the help of his family members, to collect the sufficient sum as an illegal worker, and/or to start doing business “on debt” with money and goods borrowed from Vietnamese businessmen. The conditions of these loans and contracts are usually tough, as they often involve working in slave-like conditions. The contracts last several years. If the sellers are not able to provide their payments regularly, the bosses seize their goods. If this is not enough, other types of pressure follow – beating, rapes of women, kidnaps of children. Under such pressures, often in an effort to merely cover their debts, a lot of Vietnamese emigrants turn to more lucrative activities beyond the limits of legality – trafficking in drugs, weapons, or cigarettes or performing other services for criminal groups.

The independent sellers and businessmen – independent emigrants and emigrants with covered debts – form the middle class of the Vietnamese community in the Czech Republic. They achieve an average level of comfort and a more or less independent status. They have tendency to move from streets and market halls to permanent shops and companies. Sometimes, they are becoming wealthy men – owners of markets, export-import companies, and restaurants, and, in several cases, “respectable men”.

### THE VIETNAMESE BOSS

The Indochinese village mentality pattern is based on the superstitious belief that the community's internal mechanisms are able to bring solutions of problems more quickly and efficiently than communication with state security forces. This superstition was exported abroad.

The mechanism of finding a solution to a problem is usually as following: a man whose interests were damaged turns to a “respectable man” with a request for help. The “respectable man” can be an influential businessman to whom the man requesting help has economic or social bonds or some other important person. He would help him in exchange for “gratitude” which would be expressed financially, in services or, in many cases, morally, with the expectation of a possible favor done in return.





Becoming a “respectable man” in the Vietnamese community is not just a question of wealth. It is a question of real power as well. The power is ensured through a network of assistants. The network includes a circle of close confidantes (usually long-term collaborators and family members), administrators of market halls and companies, guardians, people with connections to the state administration (i.e. its corrupt employees), lawyers, and business partners. As a “respectable man”, the boss must have sufficient power to enforce his authority in cases of quarrels, arbitrages, and small violent struggles – or in any problems connected to the life of the Vietnamese community in the Czech Republic. This is why he is in a frequent contact with the criminal underground. He has characteristics of a man honored in the Vietnamese community and characteristics of a criminal boss at the same time.

#### BO DOI AND CRIMINAL GANGS

The criminal delinquents stand at the bottom of the Vietnamese criminal hierarchy. They are usually involved in such independent criminal activities as robberies, extortion, burglaries, etc. together with special work as *bo doi* “soldiers”, respectively enforcers for Vietnamese criminal bosses.

A respectable man does not necessarily employ *bo doi* on long-lasting contracts. In most cases, his only regular employees of this sort are his personal bodyguards but thanks to his contacts, he is usually able to hire them for specific special assignments as guardians of market places, enforcers, and even contract killers. Instead of a regular job and salary, they are repaid with favors and / or single payments for specific acts. For example, a *bo doi* could be rewarded for his services with a profitable place on the market in combination with monetary payments for only

his specific actions.

*Bo doi* operate independently or with the assistance of several “colleagues”. The structures and activities of these groups vary. They range from temporary groups created only for single acts of violence to stable groups permanently engaged in criminal business activities. Vietnamese gangs in the Czech Republic are generally less organized but highly violent and involved in a wide range of criminal activities – extortion, theft, contract killing, smuggling of people, drugs. They are often identified as responsible for the whole of Vietnamese organized crime, which is not really the case. They are merely a part of it.

#### CONCLUSION

The Vietnamese crime networks are not restricted to one country, but operate internationally. A closer international security co-operation among the involved countries is needed in this situation.

The rise of criminal offences in the Vietnamese community indicates that the problem will grow in importance. Vietnamese crime networks will focus mainly on economic and financial operations that will merge legal and illegal activities together in the future.

The investigation of these offences is still ineffective because of the difficulty involved in trying to penetrate the Vietnamese diaspora’s community. It is evident that the national strategies of fighting the Vietnamese crime should include not only efficient legal, administrative and security measures, but also strategies for “opening” the Vietnamese diasporas to communication with broader societies of the host countries.

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## RECENT POLICE RESEARCH IN DENMARK



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In Denmark the field of police research and science is in progress. Here are some examples of recent research projects – ongoing as well as projects completed:

1. ***Ongoing PhD project: Targeting Policing in Organized Crime: Developing Crime Analysis in Support of Proactive Investigations into Prolific and Priority Offenders.***

Nadja Kirchhoff Hestehave is a criminologist and employed as senior consultant at the Danish National Police.

2. ***Ongoing PhD study: How innovations are enabled and disabled in everyday organizational life of police in Denmark.***

In October 2011 the Danish National police initiated a three-year PhD study in cooperation with Copenhagen Business School focusing on 'innovation' – a concept that is often mentioned in Danish governmental strategies, including the police. But what does innovation actually mean in the context of policing and to everyday police work? Based on one and a half years of participation in everyday life of the Danish police and 50 in-depth interviews with cops and managers, the study explores how processes of innovating police practices are negotiated, enabled or disabled within the police culture and organization.

Ph.D. student **Mia Hartmann** has a Msc. in psychology and is presently a visiting scholar at the Isenberg School of Management at the University of Massachusetts, USA.

3. ***Ongoing PhD study: A study of criminal investigation as knowledge-making.***

The dissertation describes the processes surrounding the production of investigative knowledge within the Danish Police based on in-depth analyses of how investigators seek out, discover, and produce knowledge that can assist in the production of evidence for identification and prosecution.

The central question informing the dissertation is the question of how knowledge comes about, and how such processes of knowledge can be studied anthropologically. The dissertation develops a theoretical frame for the study of knowledge, which addresses the becoming of knowledge as the effect of the interaction of heterogeneous 'parts' producing knowledge as a complex 'whole'. This is done by investigating how tacit and embodied forms of knowledge (experience or 'craft knowledge') as well as more abstract forms and 'fields' (e.g., natural, medical or forensic sciences, or legal and technical procedures) contribute to and impact the creation of knowledge of a particular crime. The central point of argumentation of the dissertation is that the becoming of knowledge cannot be ascribed to one 'part'. Knowledge creation must be analyzed and theorized as a result of the complex interaction between investigator, environment, objects, technology, theory, procedure, etc. and the 'structures of possibility' individual 'parts' contribute to the workings of the 'whole'. It is this interaction and the space which arises from it that this dissertation seeks to investigate, analyze, and theorize.



**Camilla Hald** received a M.Sc. in Anthropology from the University of Copenhagen in 2002 and a Ph.D. in Anthropology and Ethnography from the University of Aarhus in 2011. She is employed as chief advisor and head of research, innovation, and partnerships at the Danish Police Knowledge and Research Centre.

**4. Ongoing PhD study: The Danish Security and Intelligence Service (PET)**

The thesis deals with two general problems regarding PET, first the legal framework of PET's activities and second the possibilities to oversee these activities. The activities of the Danish Security and Intelligence Service are in general not regulated by law, which raises the questions: what rules or standards do then apply? Can PET's activities be subject to a legal oversight? Is the current oversight system sufficient? And how can an efficient oversight with PET's activities be established? The thesis tries to answer these questions through an analysis of the legal framework of PET's activities and the legal framework of the oversight system. The purpose of this analysis is to uncover the underlying legal as well as political principles and ideas. Through a deeper understanding of underlying principles and ideas one can better answer the outlined questions.

**Emil Bock Greve** is a PhD student at the Department of Law, Aarhus University

**5. Ongoing PhD project: Denmark and Europol – between globalism, sovereignty and cybercrime (Danish: Danmark og Europol: mellem globalisering, suverænitæt og cyberkriminalitet)**

The thesis describes the development of European Police Cooperation from the signing of the Maastricht Treaty in 1992, where Europol was enshrined in the Treaty, up to the establishment of EC3, the European Cyber Crime Center as part of Europol. How the fight against terrorism and organized crime has developed to also include cybercrime as part of Europe's internal security strategy. Sexual crimes against children on the internet is a high priority within the area of cybercrime. The thesis presents a concrete operation in this field ("Operation Icarus"). Proactive investigation plays a larger and larger role when investigating sexual crimes against children on the internet. However legislation (undercover investigation) in this field differs from country to country. Finally the thesis

asks whether Denmark's legal reservation and eventual exclusion from Europol due to the new Europol regulation will affect daily police work on a practical level. The study is conducted in cooperation with the Danish National Police.

**Trine Thygesen Vendius** holds a MA in Law and a MSc in Political Science from the University of Copenhagen. She is a PhD student at the Faculty of Law, University of Copenhagen.

**6. PhD thesis: Risking Liberty – Preventive Arrest (Danish: Risiko og Frihedsberøvelse)**

The PhD thesis is written in Danish and examines the provisions of preventive administrative arrest which have the purpose of averting a danger/risk of disturbing public order through proactive policing. The provisions are also applicable during public assemblies and other crowds. The thesis answers three research questions: By use of which indicators is a danger assessed before initiating an administrative arrest? What is the actual difference between arrest according to criminal procedure and administrative arrest? To what extent do the provisions on administrative arrest fulfill the criteria set by ECHR Article 5 and 11? In relation to questions 1 and 3, the thesis considers whether preventive provisions entail a risk discourse and if so, whether such a discourse has influenced assessments of the interventions' legality performed by the Danish courts and the European Court of Human Rights. This is done using Norman Fairclough's methods of textual discourse analysis and Ulrich Beck's theories on 'The Risk Society', especially Ericson and Haggerty's interpretations in 'Policing the Risk Society'.

**Caroline Sophia Tarrow** has an LLB and LLM from the Faculty of Law, University of Copenhagen and her PhD thesis is now under assessment. Tarrow has also done research on policing in Greenland and the Faroe Islands and on the Danish regulation of police powers, i.e. use of fire arms, pepper spray, gas etc. She is at the moment embarking on a new project on Police Liability and Privatization.

**7. Ongoing PhD project: The Principle of Non-refoulement in Operational Cooperation at the EU's External Borders**

The present doctoral thesis is concerned with the principle of non-refoulement in an EU-context. The objective of the present thesis





is to investigate to what extent the EU and its Member States respect the principle of non-refoulement when operational border control is performed under the coordination of the European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter FRONTEX). In the context of the operations under Frontex's auspices violations of the principle of non-refoulement may engage the international responsibility of the European Union as an international organization as well as its Member States.

**Roberta Mungianu** is PhD Candidate at the Faculty of Law, University of Copenhagen. Roberta graduated at the Facolta' di Giurisprudenza, Universita' degli Studi di Cagliari (Italy) and received a LLM in European Law at the Law School, University of Edinburgh (United Kingdom). Roberta was a visiting student at the European University Institute, Florence (Italy) from January 2012 to June 2012.

**8. Ongoing Postdoctoral study: The Police of Copenhagen 1682-1814**

The aim of the project is to examine the introduction of the first Danish police force in Copenhagen 1682-1814. Why was a chief of police appointed by the absolute king in 1682 and how did the new institution affect life in the Danish capital? Was the police a tool for social disciplining or did the population demand its services, as recent research in early modern policing has shown? The Danish Council for Independent Research finances the project.

**Jørgen Mührmann-Lund** has a PhD and is employed as an assistant professor at the Institute for Culture and Society at Aarhus University.

[http://www.univie.ac.at/policy-ak/pwp/pwp\\_15.pdf](http://www.univie.ac.at/policy-ak/pwp/pwp_15.pdf)

**9. Ongoing PhD project: Secret Service. The Making of the Intelligence Community in Denmark.**

British scholars has researched the roots of MI5 and demonstrated how the intelligence community was founded in the so called security revolution of 1909-11; how it expanded in the struggle with the Spies of the German Kaiser, and how it transformed itself in order to counter the new threat of World Revolution and communist spies. The question is how that development

took place in Denmark. We actually do not know the roots of The Danish Security and Intelligence Service (PET) prior to World War II. With a granted access to the oldest documents in the Security Service Archives, it is now possible to investigate the making of the intelligence community and political surveillance in Denmark.

**Kristian Bruhn** is historian, archivist at The Danish National Archives and PhD student at The Faculty of Law, University of Copenhagen.

**10. From the eternal police to the projective police**

PhD Mikkel Jarle Christensen (MJC) has contributed with a historical sociology of the battles to define Danish policing from end of absolutism in the mid nineteenth century to the latest police reform of 2007. Building on extensive archival material as well as on interviews MJC situates the concrete battles between different actors in and around the Danish police in a much wider international context showing how the contest to define the scope and content of policing is in fact tied to significant transformations such as the slow establishment of democracy, industrialization and globalization.

**Mikkel Jarle Christensen** is assistant professor at the Faculty of Law, University of Copenhagen from where he also holds a PhD. He has recently begun a sociological research project that will study the genesis of international prosecution as a new legal figure and institution in international criminal law with a focus on its simultaneously emergence in international criminal tribunals, the EU and the national states from the middle of the 1990s.

**11. Lars Holmberg (2013): Politiets brug af peberspray – en skandinavisk sammenligning med fokus på Danmark [Police use of pepper spray – a Scandinavian comparison with a focus on Denmark], Nordisk Tidsskrift for Kriminalvidenskab, vol 100 (1).**

This paper discusses the use of pepper spray (OC-spray) in the Scandinavian police forces with a special emphasis on Denmark. Since the spray's introduction in Denmark in 2008, the spray has been used about 1450 times annually. The use of the spray does not seem to have caused any substantial reduction in the use of other kinds of force by police, as was predicted in the trial preceding its introduction into



the force. A limited comparison with Norway suggests that the Danish police use the spray much more frequently than do the Norwegian police, possibly due to the fact that the Danish rules regarding its use are more lenient than the Norwegian.

**12. Flemming Balvig, Lars Holmberg and Maria Pi Højlund Nielsen (2011):** Verdens bedste politi. Politireform i Danmark 2007-2010. [The best police in the world – Police reform in Denmark 2007-2010] Jurist- og Økonomforbundets Forlag, Copenhagen.

The book describes the outcome of the Danish police reform of 2007, in which 54 districts were reduced to 12. Results are based on 4 waves of citizen surveys, three rounds of partner interviews, and comprehensive fieldwork in two of the twelve new districts. Main results: the reform, described as a decentralization, can also be seen as a centralization, in that local police stations were closed, and personnel and command were moved to new district headquarters. The result was, that although overall citizen satisfaction with the police was, in 2010, on the same level as before the reform in 2006, satisfaction with local police work remained at a significantly lower level after the reform. Police partners complain that the police have lost their contact with

(and knowledge about) local communities and citizens, thus reducing opportunities for crime prevention.

**Flemming Balvig** dr.jur., is Professor of Criminology at the Faculty of Law, University of Copenhagen. His research interests include juvenile delinquency and police reform.

**Lars Holmberg**, PhD., is Associate Professor of Criminology at the Faculty of Law, University of Copenhagen. His research interests include police reform, police use of force, and the question of police discretion.

**13. Ongoing PhD study: *Neighborhoods of Violent Crime: A Challenge to the Legitimacy of the State***

In August 2012, a three-year PhD study at the Department of Political Science, University of Southern Denmark started, focusing on structures of authority and legitimacy in disadvantages neighborhoods. By using matching cases comparisons, the study tries to map to the mechanisms through which authority and legitimacy is (re)produced in areas characterized by high level crime.

Ph.D. student **Jon Lund Elbek** has a Msc. in Political Science







## NEW LAW ENFORCEMENT ACADEMIC RESEARCH GROUP IN HUNGARY



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We Hungarians mention repeatedly with proud that Hungarian language is rich because we can express things, phenomenon, ideas with different words. That is why a researcher has difficulties when he or she tries to translate the most important expressions. The core of the mistranslation is that Hungarians have two similar expression for 'law enforcement', and the question related to that problem is still under debate: which one is the proper expression and which one should be used in regulations and literature?

It is still under professional debate which branch of law should regulate law enforcement. Does it belong to the civil service or does it have more relation to the criminal sciences? In my opinion as a jurisprudent of civil administration it should be considered as a part of the civil administration, but many opposite argument could be advanced. The sciences of law enforcement have significant tradition in Hungary. During the second part of the 19<sup>th</sup> century and the first part of the 20<sup>th</sup> one research on law enforcement were conducted on European level. During this period law enforcement was without doubt part of the civil service because this acknowledged theory stated that law enforcement itself is the first operational mechanism of civil service and all other branches could be derived from it. Many aspects of the 100 years old Hungarian law enforcement statements are still relevant, and we think that those statements and the thought of our great ancestors should be revised and taken into consideration.

However the four decades of socialist leadership had its toll on the number of Hungarian law enforcement researches. The Hungarian Constitution, drawn up according to the Soviet model, did not regulate the national armed forces for 4 decades, from 1949 till the change of regime in 1989. The national armed forces were regulated by lower level legislations.<sup>1</sup>

So the most interesting issue of the shift in the governmental system was probably the question whether we could overcome the difficulties and change the system of the dictatorial model of our law enforcement. The speciality of this system was the fact, that the basis of the organizational method were centralization, militant modality and hierarchy. There were reassuring signs and lots of opportunities for a change but the organizational model still follows the original 'state police' model. Furthermore the regulation of the police and other law enforcement agencies in the 90's were shaped by the regulations of the army.

It was a proud event when the Hungarian Academy of Sciences have finally acknowledged the science of law enforcement in 2007 and since then there has been a Subcommittee of Law Enforcement under the jurisdiction of the 9<sup>th</sup> Department, namely the Legal Science Department.

Recently there has been a significant change in the system of law enforcement higher education. At the beginning of 2012 the National University

(<sup>1</sup>) László, C. (2012), „Law Enforcement (Chapter XIV)”, in: *Basic Law of Hungary – A First Commentary*, Editors: Csink, L., Schanda, B. & Varga, A., Clarus Press, 235-242.



for Public Service was established that comprises the training of the officers of the military and the law enforcement services. Hopefully the Doctoral School of Law Enforcement can start operation at the Faculty of Law Enforcement which has a responsibility to support and initiate researches in the topic of law enforcement. The establishment of the Law Enforcement Academic Research Group (LEARG) can also be considered to be a significant initiative. It was founded in March, 2013.

The mission statement of the LEARG is conducting researches in the field of law enforcement, hereby raising its popularity. Each term we organize professional workshops at least three times related to the most current issues of law

enforcement. Since the establishment of LEARG there have been two major programmes: the first topic was the challenges of communication related to the law enforcement services in the 19<sup>th</sup> century (Policing 2.0), at the second occasion the discussion was about the perspectives of the mobile monitoring in the law enforcement. In the near future we want to start a homepage to create a virtual place where researchers can meet and it could provide a platform for publications as well. Making contact with international organizations and similar academic organizations, taking part in international researches are among the aims of the LEARG.

Thus we welcome and appreciate advice and contact from international experts.



# RESEARCH ON THE ROLE THE CATHOLIC CHURCH UNDERTAKES IN HUNGARIAN POLICE FORCES



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## Abstract

This research aims to analyse action mechanisms influencing the emotional and moral identity of policemen serving in the Hungarian police forces and develop the professional methodology for processing those based on religious and pastoral grounds. The research highlights risk factors in personal and work life arising from the legal relation of professional policemen and entailing special emotional and moral pressure on the individual. In the following phases of the research it will be demonstrated that the significance of religious life and, consequently, the role of the Catholic Church, as well as the necessity of pastoral care will play an essential role in the future organizational structure of the Hungarian police.

## PRESENTATION OF THE RESEARCH

People working in the police force, when implementing measures, as well as in the development of their social and personal relationships, are facing emotional and moral problems with personality-forming effects influencing the behavior of the individual. A sufficient degree of processing these problems of emotional and moral origin in the organisational unit's structure is not provided. The experience of the past few years has shown that not only soldiers, but also police officers live and work in particular circumstances, which justify that emerging problems of emotional origin be addressed accordingly.

The research conducted so far has revealed the significance and importance of religion and pastoral care and the possibility of their future integration in the law enforcement structure.<sup>1</sup>

The Hungarian state requires unwavering fidelity and courageous standing from the professional staff of the bodies whose task is to protect the independence and legal order of Hungary as well as private and state property.<sup>2</sup> A professional service relationship involves a high degree of sacrifice on the part of police employees in performance of their duties. Practical experiences of the last decades have shown that the justification for existence, and the significance, of pastoral care have been present in the organizational structure of the Hungarian Defence Forces as an indispensable helper alternative. The primary purpose of the military chaplaincy is providing

(1) Szabo, C. (2012), "The role of religion in the formation of a single law enforcement structure in Hungary", *Felderítő Szemle (Intelligence Review)*, 2, 231-243.

(2) Act XLIII. of 1996 on the service of the professional members of the armed forces. ([http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99600043.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99600043.TV) download time: 03.04.2013)



the spiritual and moral support and care of soldiers. The Hungarian Police professionals take part in the implementation of peacekeeping and crisis management tasks of various purposes, kinds and time length.<sup>3</sup> Those crises that require military or police intervention conducted on the basis of international cooperation to ensure peace enforcement and peace maintenance, depending on the changed local and international conditions, are increasingly becoming of policing nature. Therefore, the activities and tasks of the military chaplaincy service are also changing with changes in the personnel of the units participating in peacekeeping operations.

II. *Pope John Paul II 1986. IV. 21: The Apostolic Constitution *Spirituali Militum Curae* has arranged the matter of military chaplaincy adopting new rules to align with the new situation in the world, in which the great task is to build and maintain peace. Those performing military service should be seen as servants of the people's freedom and security because if they properly perform their service they can also really contribute to the stability of peace.<sup>4</sup> In terms of their role, military chaplains take part in the Church's overall mission, evangelizing the world and disseminating information about the God's role, in the military world. Military chaplains mould the conscience of members of the military profession to enable them live their Christian vocation.<sup>5</sup>*

*Government of Hungary and the historic churches, but especially the Roman Catholic Church, shall establish a service based on a common practical cooperation to assist police workers, care their emotional lives, alleviate bitterness caused by conflicts and restore the lost balance.*

## PHASES OF THE RESEARCH

Phase 1: To show that members of the police personnel not always can process emotional and moral problems arising from the special circumstances of their work. These problems affect the systems of workplace, family and social relationships, and the professional performance,

in the course of which a change occurs in the value orientation of helping behavior forms.

Phase 2: To show that the Catholic religion and pastoral care service, in collaboration with the science of psychology, are capable of creating an alternative methodology to help the police service performers.

Phase 3: It was demonstrated and proved through domain specific historical events of the 19th century and research papers that the central governing body of the Hungarian police was purposefully seeking to establish connections with the churches in the areas of moral standards, religion and religious life. This effort was primarily directed to issuing publications aimed at moral education and ensuring organised participation in the worships.

Phase 4: A representative questionnaire research was carried out in respect of personnel of the Hungarian police, in the evaluation of which we received a picture about the religiosity of the personnel, the need for pastoral care and formation of methodological structures.

Phase 5: It was demonstrated that the role undertaken by the Catholic Church in the pastoral care does not create a risk to national security at the police. Special attention should be paid to the preparation, training and national security background checks of clergy and police personnel undertaking service in the pastoral care of police forces.

## FINDINGS OF THE RESEARCH

- The primary goal is to achieve that Hungary and the Holy See agree in the form of a bilateral agreement (*Modus Vivendi*) and, this way, arrange the provision of pastoral care at the Hungarian Police, on a permanent basis.
- Establishment of police pastoral care covering the entire territory of Hungary and accessible to all personnel of the Hungarian Police.

<sup>(3)</sup> Benicsak, P. (2008), "Logistical support for police peacekeeping and crisis management missions", *Hadtudomány (Military Science)*, 3-4, p. 122.

<sup>(4)</sup> Magyar Katolikus Lexikon, Tabori Ordinariatus. (Hungarian Catholic Encyclopedia, Military Ordinariate). (<http://lexikon.katolikus.hu/T/t%C3%A1bori%20ordinari%C3%A1tus.html> download time: 04.04.2013).

<sup>(5)</sup> Conference of Army Chaplains at the Vatican (<http://www.taborilelkesz.hu/rovatok/hirek/katonai-lelkeszek-konferenciaja-a-vatikanban/?print> download time: 07.04.2013).





- On the basis of Modus Vivendi, development of organizational structure of pastoral care service. (Priests, permanent deacons, dual-status persons).
- Development of a system of tasks for pastoral care service.
- Communication with international partner organizations (the police, the Catholic Church) and institutions engaged in research on similar subjects, to analyze and share research findings.
- Delivering lectures at conferences both nationally and internationally and continuing research and publication activities in order to determine the structural conditions of the methodology.
- The methodology developed for the police may be successfully used to manage emotional and moral problems of the European Union's law enforcement officers performing service missions.
- Emergence of religious values in a new field will create a possibility for increasing professional efficiency and communication effectiveness of the police, which in turn will lead to the reduction in the number of human tragedies resulting from inability to process emotional problems.

need of pastoral care. The pastoral care together with, and not in opposition to, the science of psychology provides an assisting alternative for the individual person.

In order to preserve and strengthen moral values of individuals serving in the professional staff of law enforcement agencies, the appropriate formation of family, workplace and social relations should be pursued. In these efforts and in preservation of a stable emotional and moral state, the pastoral care can provide inevitably outstanding support.

Peacekeeping operations developed in response to international crises are increasingly becoming of policing nature. Military combat units are increasingly being replaced by law enforcement agencies, as due to the specifics of the areas of crises, order maintenance, crime prevention, traffic safety, investigation and communication activities are coming to the forefront. These changes should be addressed because persons involved in police work require different pastoral care as opposed to soldiers involved in combat activities. At the same time with changes in challenges and risks to security policy, the law enforcement agencies of the European Union shall become prepared for attacks by extreme (religious) groups focused to the interior of the Union. The pastoral care can provide help to the police, for the police experts to recognize the identity of persons engaged in extreme (religious) groups, and, this way, prevent the break-up of the democratic social structure.

## CONCLUSION

The studies and research carried out so far have confirmed that the Hungarian Police has been in

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# EXPOSITION OF EU LAW ENFORCEMENT AND TRANSNATIONAL SERIAL CRIME

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## Abstract

With diverse investigative information streams between European Union (EU) states, the author of this article comments on the absence of a unified statistical based system across member states to analyse undetected linked violent crimes and unidentified transient serial offenders. With the free movement of persons being a guaranteed fundamental right granted to EU citizens by the Treaties, it brings into consideration the movement of serial offenders across member states, the continuation of their offending behaviour and investigative strategy.

The article takes a general overview of pan-European law enforcement and investigative strategy towards serial crime investigation, focusing on the software used by a number of EU members and the issues encountered with such systems from a judicial and academic standpoint. Critical reviews have effectively called for data mining principles to be incorporated into linkage process; this is discussed further.

## BACKGROUND

Data mining emerged from within the terminology of data analysis in 1990<sup>1</sup> and is the ability to search large volumes of data, making discoveries from within the data and identifying relationships that exist in the real world. It creates a process that allows for knowledge driven decisions or conclusions to be made. The concepts comprise of the ability to measure similarity and dissimilarity between data and the elimination of result's bias through data quality assurances, thus forming results that can be presented in a confident and quantifiable manner. These concepts are viewed as important qualities when presenting such findings in a forensic setting. It is in the main, a commercial tool but the principles and foundations of data mining can be applied to the evidential analysis of live and historic crime data, looking for relationships and links between individual cases.

## DISCUSSION

Comparable to developments in data analysis have been those in law enforcement circles with the conception of the modern day policing technique, *crime linkage*, a process that examines individual crime scene data to discover and identify links between crimes. The Federal Bureau of Investigation (FBI) and the Royal Canadian Mounted Police respectively devised systems called Violent Criminal Apprehension Program (ViCAP) in 1985 and Violent Crime Linkage Analysis System (ViCLAS) in 1991, with both systems remaining active in their respective jurisdictions. The ViCAP system operates through the identification of similarities between individual cases, analysing offender behaviour and crime scene characteristics through subgroups of modus operandi, victimology, offender description and behaviour exhibited at all stages

(<sup>1</sup>) Hand, D., Mannila, H., & Smyth, P. (2001), *Principles of data mining*. London: MIT Press; Han, J., Kamber, M., & Pei, J. (2012), *Data mining: Concepts and techniques*. Waltham, MA: Morgan Kaufmann.





of the offence.<sup>2</sup> The ViCLAS system also identifies similarities between individual offences utilising behavioural principles utilised offender profiling / criminal investigative analysis.<sup>3</sup> Both systems deconstruct criminal offences into a list of crime scene behaviours with the aim of identifying and recognising similarities and dissimilarities across individual offences. The aim of the process is the identification of links between individual offences that have been committed by the same offender but have not been linked to that offender.

Integral to both systems is the respective questionnaire booklets that are based on the variables that form part of the analytical process and have been standardised to collate crime scene variables to identify similarities in offender behaviour. Both ViCAP and ViCLAS booklets have been described as an investigator's guide, measuring the completeness of an investigation if all questions have been answered.<sup>4</sup> The questionnaire's format focuses on the collection of data pertinent to the analysis of serial violent crime. Evidence gathered during investigations not considered under the context of serial crime would ordinarily consist of information used to establish the points to prove for the offence and motive to assist establish the offender's intent. Such data would be for a separate purpose to data mining *per se* and considered secondary data. The concentrated data gathering of the system questionnaires exceeds the limits of ordinary investigative parameters, with the supplementary information considered primary data, collected for the prime purpose of analysis and suited to the concepts of data mining.

A comparability analysis of the questionnaire booklets (excluding administrative questions) compared the booklets against each other for

similarities. The ViCAP booklet (FD 676. Rev 7-23-04) contained 116 questions over 13 sections and ViCLAS booklet (Version 4.0), 141 questions over six sections. Each booklet differed in terms of variable structure for offence and crime scene behaviours, but contained similarities in the collection of victim and offender descriptive data. There was exact replication in the structure of specific questions capturing data on sexual acts, restraints and speech. Against the ViCAP sections, there was agreement ranging from 60%-100%, with an overall agreement of 93.74%. The ViCLAS sections showed agreement ranging from 76.32%-100%, with an overall agreement of 86.98%. The agreement values indicated a high level of similarity between the booklets. The history of the ViCLAS system showed it to have evolved from ViCAP, with the similarities and plagiarism of specific questions evident between the booklets, highlighting the influence and evolution from the earlier system.

Since the creation of ViCAP, its integration into the law enforcement framework has extended to 3,800 federal, state and local law enforcement agencies across the United States. The ViCLAS program has comparable law enforcement integration across Canada and on a broader international scale to include EU countries. Whilst the current 27 EU member states represent nearly 500 million citizens,<sup>5</sup> only 12 states (*Austria, Belgium, Czech Republic, Denmark, France, Germany, Ireland, Netherlands, Poland, Portugal, Sweden and United Kingdom*)<sup>6</sup> utilise the ViCLAS program to record and analyse serious crimes. Despite this widespread union with law enforcement, academic reviews of such systems have drawn divergent comments as to the structure, reliability and ultimately, impact upon live investigations and subsequent court hearings.

- (<sup>2</sup>) Federal Bureau of Investigation. (2004), *Violent crime apprehension program: Crime analysis report*. Quantico, VA: Federal Bureau of Investigation; Savino, J. O., & Turvey, B. E. (2004), *Rape investigation handbook*. London: Academic Press.
- (<sup>3</sup>) Collins, P. I., Johnson, G. F., Choy, A., Davidson, K. T., & MacKay, R. E. (1998), "Advances in violent crime analysis and law enforcement: The Canadian violent crime linkage analysis system", *Journal of Government Information*, 25, 277-284; McCabe, M. P., & Wauchope, M. (2005), "Behavioural characteristics of rapists", *Journal of Sexual Aggression*, 11, 235-247.
- (<sup>4</sup>) Royal Canadian Mounted Police. (2012), *Violent crime linkage analysis system (ViCLAS)*. Retrieved February 1, 2012, from <http://www.rcmp-grc.gc.ca/tops-opst/bs-sc/viclas-salvac-eng.htm>; Bennell, C., Snook, B., Macdonald, S., House, J.C., & Taylor, P.J. (2012), "Computerized crime linkage systems: A critical review and research agenda", *Criminal Justice and Behavior*, 39, 620-634.
- (<sup>5</sup>) European Union. (2012), *European Union: Countries*. Retrieved February 1, 2012, from [http://europa.eu/about-eu/countries/index\\_en.htm](http://europa.eu/about-eu/countries/index_en.htm).
- (<sup>6</sup>) Royal Canadian Mounted Police, *supra nota* 4; Snook, B., Luther, K., House, J. C., Bennell, C., & Taylor, P. J. (2012), "The violent crime linkage analysis system: A test of interrater reliability", *Criminal Justice and Behavior*, 39, 607-619; Newton, M., & French, J. L. (2008), *The Encyclopaedia of Crime Scene Investigation*. New York: Facts on File.







The ViCAP system does not form part of any UK prosecution so judicial opinion cannot be considered, however the presentation of ViCAP analytics within the United States legal system has led to adversarial opinion presented, undermining the value of such analysis. The United States Supreme Court ruled in the case of *New Jersey v Steven Fortin* (A-112-2005), the linkage analysis process was not reliable enough to be used as part of a capital murder case. Further comments from retired Supervisory Special Agent (FBI) Roy Hazelwood on the process inferred investigative experience was used to identify such behavioural elements, rather than any statistical analysis of the crime data, stating "... *the linking of crimes is based on training, education, and experience, not any quantified set of rules*". The ViCAP system process has been criticised by the judiciary and academia regarding FBI methodology. Yet ViCLAS operates on a similar basis, but has been labelled as the 'gold standard' and defined as the best crime linkage system.<sup>7</sup> It operates through a ViCLAS specialist, a law enforcement officer with specific experience who utilises their own knowledge and expertise to examine elements of the offence for indications of links between examined cases.<sup>8</sup> Academics however, have concluded there is little research in support of trained ViCLAS analysts accurately making crime linkage decisions.<sup>9</sup>

In both crime linkage systems, it is apparent that the system operator defines and selects the approach. Hazelwood's comments in respect of *New Jersey v Stephen Fortin* reflect the opinion of Jiawei Han and colleagues,<sup>10</sup> in that important decisions are often made on the decision maker's intuition, simply because they do not have the tools to extract the knowledge embedded within the data. Dr Kim Rossmo<sup>11</sup> questioned the role of the analyst in such determinations stating that most computer-based case linkage systems were only designed to manage and search through large volumes of information, with the analyst forming the case linkage determination. He opined that as database volumes increase, the need for "*expert system support becomes more*

*crucial*". Such comments support Dr Maurice Godwin's<sup>12</sup> assertions in *New Jersey v Steven Fortin*, that if ViCAP was a statistical linking system, it would result in less biased conclusions.

## CONCLUSION

Critical reviews of both linkage systems by judiciary and academia call for such crime linkage systems to effectively embrace the principles of data mining; law enforcement agencies have not done so. Such a framework would be necessary to manage and analyse a vast database of EU interpersonal crimes that could be in excess of 60,000 offences per annum. Exploring large volumes of data is data mining's *raison d'être*, to identify relationships between data in records and highlight links that exist in the real world.

Data mining analysis processes the distinct, differential variables into a result that is non-biased, tangible, quantifiable and scientific. For the linkage process to gain any future credibility within academia and judiciary, a shift is required to show the process is based on an established scientific and forensic approach moving forward from the intuition of experience investigators. Evidential data mining is the exact requirement of a crime linkage system, a process producing tangible and quantifiable results from an inductive perspective with discoveries made from within the data. This is not to dismiss the role of experienced investigators but to develop the process and subsequent results in a quantifiable format. A pan-European law enforcement approach to the analysis of transnational serial crime will require a unified strategy with a high degree of collaboration and information exchange. The effect would be investigative harmonization and cohesion towards serial crime, and the apprehension and prosecution of transient serial offenders. The alternative, an uncoordinated strategy could result in linkage blindness issues, delays in any joint investigative approach or a failure to apprehend such dangerous offenders.

(7) Collins, *et al*, *supra nota* 3.

(8) Royal Canadian Mounted Police, *supra nota* 4; Snook, *et al*, *supra nota* 6.

(9) Bennel, *et al*, *supra nota* 4.

(10) Han, Kamber & Pei, *supra nota* 1.

(11) Rossmo, D. K. (2009), "Geographic profiling in serial rape investigations", in R. R. Hazelwood & A. W. Burgess (Eds.), *Practical aspects of rape investigation: A multidisciplinary approach* (pp. 139-169). Boca Raton, FL: CRC Press.

(12) Godwin, M. (2010), *Assessment of the FBI's Violent Crime Apprehension Program (ViCAP)*. Retrieved September 26, 2012, from <http://www.investigativepsych.com/Fortin%20Report%20-%20Dr.%20Godwin%20ViCAP.pdf>.







# THE EUROPEAN ARREST WARRANT AS A FORM OF INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS IN TERMS OF AMENDMENTS TO THE ROMANIAN LEGISLATION

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**Keywords:** *European arrest warrant; legislative harmonization; legislative unification; criminal judicial cooperation; legislative modifications*

## Abstract

During the post-accession period, in its quality of member of the European Union, Romania continues its process of harmonization of the national legislation with that of the other member countries, including the penal and criminal-procedure matters. Although, in principle, the penal and criminal-procedure matters cannot be the object of a legislative unification at a European level, there should be an approximation of the national penal and criminal-procedure dispositions, in order to effectively prevent and combat the criminal phenomenon. The field in which there is an obvious necessity though for a European legislative unification is that of judicial cooperation in criminal matters. Romania has taken important steps towards this, by adopting Law 302/2004, with the modifications and completions brought by Law 224/2006 and by Law 222/2008. Also, by adopting the new Romanian Code of Criminal Procedure (Law 135/2010) the intention was to ensure a regulatory framework regarding the international judicial cooperation that would meet those imperatives.

## INTRODUCTION

In the context of globalization and European integration, the prevention and the fight against crime, both internationally and at the level of the Member States of the European Union, require the increase of the judicial collaboration between states, criminal matters included.

In its quality of newly accepted member of the European Union, in the post-accession

period, Romania must continue the process of harmonization of the national legislation with the one of the Member States, including in penal and criminal-procedure matters.<sup>1</sup>

Each project of legislative unification may encounter obstacles of economic, cultural or political nature.<sup>2</sup> About the necessity of a legislative unification at European level, we can discuss though in the field of judicial cooperation in criminal matters. Romania took important steps in this direction, by adopting Law 302/2004,<sup>3</sup>

(<sup>1</sup>) Antoniu, G. (2007), "The penal normative activity of the European Union", *Revista de Drept Penal*, 1, p.10.

(<sup>2</sup>) Kahn Freund, O. (1974), "On uses and misuses of comparative law", *The Modern Law Review* 1(37), pp. 3-4.

(<sup>3</sup>) Law 302/2004, republished in the Official Monitor of Romania no. 377/311 May 2011.



with the modifications and completions brought by Law 224/2006<sup>4</sup> and by Law 222/2008,<sup>5</sup> but also by adopting the new Code of Criminal Procedure.<sup>6</sup>

According to the current regulation, the concept of international judicial cooperation is approximated to the broad sense of the notion of international legal assistance in criminal matters, and the international judicial assistance is considered to be just one of the forms of international judicial cooperation.

Also, in the new Romanian Code of Criminal Procedure (Law 135/2010), the provisions about the procedure regarding the international judicial cooperation and the putting in application of the international treaties in criminal matters are regulated in Title IV (Special procedures) from the Special part.

In the new Code of Criminal Procedure, as opposed to the current regulation, there is an express reference to the concept of "international judicial cooperation".

## THE EUROPEAN ARREST WARRANT AS A FORM OF INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

Therefore, the EU instruments on which basis the judicial cooperation in criminal matters within the EU is developed, are more and more often based on the principle of reciprocal recognition.<sup>7</sup>

The most spectacular result of applying the principle of the reciprocal recognition is the elaboration of the European arrest warrant, a true revolution in matter of criminal cooperation between states.<sup>8</sup>

Some of the most important legislative modifications intervened in the past years within the Romanian legislation regarding the forms of judicial cooperation in criminal matters, are those referring to the European arrest warrant.

Thus, the procedure of turning in a person on the basis of a European arrest warrant is regulated in Title III of Law 302/2004 – "Provisions regarding the cooperation with the Member States of the EU in applying the Framework-decision no.2002/584/JAI of the EU Council from 13 June 2002 regarding the European arrest warrant and the surrender procedures between the Member States".

Starting from the experience of the EU Member States in applying the Framework-decision regarding the European arrest warrant, through Law 224/2006 were brought several modifications and completions also to the Title III of Law 302/2004 (title referring to the European arrest warrant):

- Express regulations were issued for the procedural rights and guarantees of which the person sought through a European arrest warrant enjoys (for instance: the right of being informed about the content of the European arrest warrant);
- The procedure of issuing of an European arrest warrant by the Romanian competent authorities was regulated, this regulation having been absent from the initial text of Law 302/2004.

In view of perfecting the legislative framework of the European arrest warrant, considering the propositions and observations of the practitioners after the first months of applying the provisions of the Law 302/2004, were brought several modifications and completions through Law 222/2008.

(<sup>4</sup>) Law 224/2006, published in the Official Monitor of Romania no. 534/21 June 2006.

(<sup>5</sup>) Law 222/2008, published in the Official Monitor of Romania no. 758/10 November 2008.

(<sup>6</sup>) Law 135/2010 regarding the Code of Criminal Procedure, published in the Official Monitor of Romania no. 486/15 July 2010.

(<sup>7</sup>) The principle of the reciprocal recognition assumes the fact that that which is a product, a service or a legal decision coming from a state legal order has to be recognized too by the other Member States of the EU.

(<sup>8</sup>) Antoniu, G., (2008), "The Romanian Criminal Law in the post-accession conditions", *Revista de Drept Penal (Penal Law Review)*, 2, p. 15.



Firstly, to remove certain vagueness existing in the prior text of the law,<sup>9</sup> the European arrest warrant was redefined as “a judicial decision through which a competent judicial authority of a EU Member State requests the arrest and surrender of a person by another Member State, with the purpose of prosecution, trial or execution of a punishment or of a freedom-depriving safeguards measure”.

In principal, through the modifications brought by Law 222/2008 the intention was to solve certain aspects that generated the non-unitary practice of the Courts of Law or that raised other practical problems:<sup>10</sup>

- The prosecutors of the Courts of Appeal were designated as competent judicial authorities for receiving the European arrest warrants issued by other EU Member States (the courts of appeal being, further, the competent authorities for executing the European arrest warrants);
- With regard to the issuing procedure, is given an answer to a question that had previously risen in the judicial practice – whether it is necessary to have a closing in order to order the issuing of a European arrest warrant. According to the current regulation: “the competent judge verifies the fulfillment of the conditions foreseen in the law and acts accordingly:
  - a) issues a European arrest warrant;
  - b) decides, in a motivated conclusion, that the conditions stipulated by law to issue a European arrest warrant are not fulfilled”.

Therefore, the issuing of a European arrest warrant doesn't presume the compilation of a closing, this one not being a jurisdictional procedure.

With regard to the execution procedure of the European arrest warrant, for easing this procedure, new provisions that regulate a series of existing procedures were introduced; these existing procedures emphasize the prosecutor's role in the procedure of execution of the European arrest warrant, especially for avoiding the situations in which the Courts of Appeal, as executing judicial authorities, being notified directly by foreign judicial authorities issuing a European arrest warrant, ascertained (after compiling the file and establishing a trial term) that the sought person was no longer on the territory of Romania;

- It was expressly provided the necessity of issuing an internal arrest warrant when the arrest based on a European warrant is disposed; this provision is based on the fact that a European arrest warrant is a judicial decision that replaces the classic request for extradition and that, despite its name, does not have the legal nature of an arrest warrant (in the sense that it is not an act of execution, but an act of disposition);<sup>11</sup>
- There were also clarified certain aspects related to the institution that ensures the surrender of the sought person, mentioning that within the General Inspectorate of Romanian Police the competent service is the Center for International Police Cooperation;<sup>12</sup>

## CONCLUSIONS

In conclusion, by adopting Law 302/2004, with the modifications and completions brought by Law 224/2006 and by Law 222/2008, Romania has taken important steps towards this, for a European legislative unification on the field of judicial cooperation in criminal matters.

<sup>(9)</sup> The initial text of the law defined the European arrest warrant as a „judicial decision issued by the relevant judicial authority of a EU member state for another state to arrest and hand over a person requested, for criminal investigation or trial purposes, or for the purpose of carrying out a punishment or a measure that involves deprivation of freedom”.

<sup>(10)</sup> *Legislative information guide*, Ministry of Justice, International Law and Treaties Department, Information no. 121650 from 11 November 2008, www.just.ro.

<sup>(11)</sup> In certain states, for instance in Hungary, the European arrest warrant is equivalent with an intern warrant, but for that there are express procedural dispositions in the internal legislation.

<sup>(12)</sup> By the Law 201/2010 (amending and supplementing Ordinance 103/2006 on measures to facilitate international police cooperation), published in the Official Monitor of Romania no. 718/28 October 2010, the phrase “International Police Cooperation Centre of the Ministry of Interior” was replaced by “International Police Cooperation Centre of the General Inspectorate of the Romanian Police.”





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# SETTING UP AND OPERATING JOINT INVESTIGATION TEAMS

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**Keywords:** *International Cooperation on Criminal Matters, Criminal investigations, Europe*

## Abstract

The term 'joint investigation team' (JIT) is used worldwide in respect of various forms of law enforcement investigative cooperation and this paper will focus on such teams at EU level. The EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters on the 29<sup>th</sup> of May 2000 (2000 MLA Convention). The potential establishment of joint investigation teams is provided for in Article 13 of the Convention, although, owing to the delay in ratifying the 2000 MLA Convention, the Council adopted a Framework Decision on JITs on 13 June 2002. For the moment both the Convention and Framework Decision are in force as legal bases for creating JITs. This paper will highlight the special dual legal regulation for JITs and also analyse the valid legal provisions. The author will finally detail some practical problems in the field of the admissibility of evidence.

## REQUEST TO SET UP A JIT

2000 MLA Convention Article 13 (2) provides that the establishment of a JIT will be preceded by a request by one of the Member States. Although it does not directly refer to a request for mutual assistance, the provision refers to Article 14 of the 1959 MLA Convention. This deals with the obligatory content of the MLA request (such as the authority making the request, the object of and the reason for the request, where possible, the identity and the nationality of the person concerned and, where necessary, the name and address of the person to be served). Therefore, the term 'request' in the cited provision must be considered as a formal MLA request and the general requirements from the 1959 MLA Convention for making such a request must be met.

## LEADERSHIP OF THE JIT

Every JIT needs a team leader or leaders. Under MLA Convention Article 13 (3) (a) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates.

One interpretation of this is that the JIT is under one permanent leadership, based on the JIT's main seat of operations. Another interpretation is that the leader should come from the Member State in which the team happens to be whenever carrying out its operations. Experiences so far suggest that Member States prefer the option of having more than one team leader rather than opting for one with overall responsibility.<sup>1</sup> Naturally a clear leadership structure is essential for members of the JIT.

(1) Joint Investigation Team Manual, Council of the European Union, 15790/1/11 REV 1, 4.11.2011, p. 9-10.



Because JITs are mainly initiated in more complex cases in which more countries are involved, it is not clear from the outset from which country the team leader must be chosen when more states are involved. It is likely that more team leaders will be nominated and that each of them takes the lead for those operations taking place in their own country and that the coordination is done by the team leaders together. When, during the existence of the team, the focus of the investigations moves from one state to another, it must be possible to move the team to the other state and to nominate a team leader from that Member State.<sup>2</sup>

Let us examine a case where a JIT was set up with the assistance of Eurojust. The case was opened at Eurojust for 'VAT carousel' fraud and there were ongoing parallel investigations conducted in three Member States. Three persons were designated as team leaders from the Member States involved (two prosecutors and one police officer). This example supports the practice that Member States are more willing to assign a leader from each participant State rather than only one with an overall responsibility.

## SUBDIVISION OF JIT MEMBERS

According to Article 13 (4)-(6) and (12) of the 2000 MLA Convention JIT members could be subdivided into three groups: members, seconded members and so-called 'visiting' members.

### MEMBERS

These law enforcement or judicial practitioners are from Member States where the team operates. They have full authorisation in the JIT and there is no further need to define their status.

### SECONDED MEMBERS

Possibly the most exciting question related to the JIT is the procedural position of the JIT member who operates in another Member State. According to Article 13 (4) of the 2000 MLA Convention,

members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being 'seconded' to the team. This means that these members operate within a criminal justice system that is not their own; they may have little or no knowledge of the local language and the criminal justice system of this state.

The first distinction is that, according to the first sentence of Article 13 (3) (b) of the 2000 MLA Convention the team shall carry out its operations in accordance with the law of the Member State in which it operates. This provision is supported by subparagraph 10 of the Preamble of the Framework Decision. Under this subparagraph a joint investigation team should operate in the territory of a Member State in conformity with the law applicable to that Member State. These provisions are based on the general principle articulated in Article 3 (1) of 1959 MLA Convention, which Convention serves as a legal basis for the 2000 MLA Convention. As a result of this requirement, a seconded member needs to be aware of both substantive and procedural law of the host country.

The other delicate question in connection with the status of the seconded member that should be resolved is organisational. The seconded member is under the authority of the team leader. This person can entrust the seconded member as well as excluding him from carrying out certain investigative measures. At the same time the seconded member remains part of the hierarchy in his home country. In this respect he has two superiors: the JIT leader as well as his superior in the country of origin. The seconded member might receive instruction from both sides. In cases where these instructions differ or even contradict one another, the seconded member will face a dilemma. The 'collective leadership' requires that the JIT leader stays in close contact with the superiors of the seconded members of his team in order to coordinate the strategy of the investigation and to avoid contradicting instructions. If this coordination is not carefully realised, the outcome of a JIT can be seriously affected.<sup>3</sup>

(<sup>2</sup>) Rijken, C. & Vermeiden, G. (2006), „The legal and practical implementation of JIITs: The bumpy road from EU to Member State level”, in: Rijken, C. & Vermeiden, G. (eds.), *Joint Investigation Teams in the European Union*. TMC ASSER PRESS, The Hague, p. 15.

(<sup>3</sup>) Mayer, M. (2006), “Sociological aspects regarding the set up and management of a joint investigation team”, in: Rijken, C. & Vermeiden, G. (eds.), *Joint Investigation Teams in the European Union*. TMC ASSER PRESS, The Hague, p. 212-213.



The second substantial distinction stems from Article 13 (5) of 2000 MLA Convention. In accordance with this provision seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation.

### VISITING MEMBERS

We have to mention the third group of non-members (the so-called visiting members) coming from Third States or from organisations inside the EU (e.g. Eurojust, Europol and OLAF). The rights conferred upon members and seconded members do not apply to non-members unless the agreement setting up a team provides otherwise [Article 13 (12) of 2000 MLA Convention].

## DISPENSING WITH THE ISSUING OF LETTERS ROGATORY: THE HEART OF THE MATTER OF THE LEGAL INSTRUMENT

The substance of the JIT instrument is inherent in Articles (7) and (9) of the 2000 MLA Convention. According to these provisions where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. The purpose of these provisions is to avoid the need for an MLA request, even when the investigative measure requires the exercise of a coercive power, such as the execution of a search warrant. This is one of the main benefits of a JIT. The consequence of these provisions is that information from such a measure will be directly available for the JIT and be used in further investigations by that team irrespective of the country where the investigation took place. The fact that, in this case, information can be shared without any formalities is based on the principle of mutual trust between the members of the JIT.

## ADMISSIBILITY OF EVIDENCE

Under Article 13 (10) (a) of the 2000 MLA Convention, information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the purposes for which the team has been set up. This provision necessitates dealing with the admissibility of evidence.

As mentioned above, a joint investigation team should operate in the territory of a Member State in conformity with the law applicable to that Member State. Therefore the information could be regarded as lawfully obtained only in the case when evidence-gathering process was in accordance with the procedural rules of the given Member State where the investigative action was carried out. The problem is that the rules in the Member States related to gathering and admissibility of evidence may differ significantly.

One delicate topic should be mentioned in this context. The admissibility of evidence gained from the interception of telecommunications could be judged in a very different way in various Member States. There are some Member States where the admissibility of these data is permitted by the examining or investigative judge. This is the situation in Hungary for example, where the prosecutor applies to the investigating judge to obtain permission,<sup>4</sup> although it is known that in the UK, for example, such information is inadmissible.

## CONCLUSIONS

Joint investigation teams are a welcome enrichment of the traditional instrumentation available in the field of international mutual assistance in criminal matters. To a certain extent, this novelty is a response of law enforcement to the challenges of modern, increasingly sophisticated and cross-border criminality. Joint investigation teams will be an added value in fighting transnational crime, even though one should not overestimate the role they can play.<sup>5</sup>

(<sup>4</sup>) Act XIX of 1998 on Criminal Proceedings Article 206/A.

(<sup>5</sup>) Kapplinghaus, J. (2006), „Joint investigation teams: basic ideas, relevant legal instruments and first experiences in Europe”, in: *134th International training course visiting experts' papers*, Tokyo, p. 33.





At the same time JITs are tools involving the building of mutual trust between Member States. To make this tool functional and effective, not only are states required to create the necessary legal framework, both

at international and domestic levels, but also the right atmosphere is indispensable. The latter element entails the trust between law enforcement authorities and their members across borders.





## HOW TO COMBAT THE 'MONEY MULE' PHENOMENON



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### TARGETED PROBLEM/ PHENOMENON

In recent years a relatively sophisticated type of criminality has been keeping the financial crime investigating service of the Hungarian National Tax and Customs Administration gradually occupied. An increasing number of internet scams appear to violate the trust invested in the transparent operation of financial service providers as well as exploiting the weaknesses of bank security mechanisms and the relatively slow reaction of national law enforcement agencies. The damage caused by these scams is escalating year after year.

Several commercial banks providing online banking services suffered 'phishing attacks' in the last couple of years. 'Phishers' forge web pages used by customers for online banking and customers are deceived via these scam sites in order to provide their personal financial information (usernames, passwords etc.). Later, the customer's information is abused for unlawful and unauthorized transfers.

Frequently linked with the above mentioned fraudulent activity the 'money mule' phenomenon is spreading rapidly, taking up various forms. For instance intermediary-agent jobs are advertised online. Money mules are mostly individuals who are recruited by

fraudsters to help transferring fraudulently obtained money (most of the time online banking scams). After being recruited by the fraudsters (usually by using electronic means of communication), money mules typically receive funds into their accounts. Then they are asked to send it further to a third party; minus a certain commission payment. The 'straw men' are usually honored with 5-10% intermediary commission for sending the amounts transferred to their bank accounts to Eastern and Northern European (typically Baltic, Russian, Ukrainian, etc) addresses via money transfer using money transfer services (e.g. Western Union, MoneyGram, etc.). They ensure that the money shall be provided to the addressees after personality verification (by means of passport) by a money transfer agent.

The diversified appearance of internet scams is inexhaustible, but this type of criminality has one thing in common. The fraudulently obtained money is usually 'chopped up' and sent to a countless number of previously hired money mules in order to blur the trail of money. Money eventually ends up in the hands of 'money collectors' (usually members of organised crime groups) who re-group the funds and invest (launder) them according to their needs.



## LEGISLATIVE BACKGROUND/ RULES SETTING OUT THE CONDITIONS OF IMPLEMENTING THE SPECIFIC PRACTICE

It should be noted that domestic implementation of the international legislation listed below could differ in Member States in practice:

- Council Decision of 17 October 2000 (2000/642/JHA) concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information and Directive 2005/60/EC of European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (3<sup>rd</sup> AML Directive);
- Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union – implemented in Hungary;
- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime;
- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Warsaw, 16.V.2005.
- Criminal Code, other relevant domestic legislation that criminalizes money laundering and the internet fraud as an underlying predicate offence.

## METHOD/ BEST PRACTICE DESCRIPTION

The only realistic chance to restrain such proceeds of crime in these cases is when the money is still in the banking sector, to be more precise when it is credited to the 'mule's' account.

In most of these types of cases the victim residing in one MS tries to recall the money usually transferred to the bank account of the money mule in another MS, and when it turns out that the money has already been credited to another account of a foreign beneficiary the originator bank sends a SWIFT message to the beneficiary bank and simultaneously the victim turns to the national law enforcement/investigating authority. If the money had not been withdrawn before the foreign bank sends its SWIFT-warning explaining that the transfer is a result of criminal activity, then the financial service provider can freeze the transaction, since in the event of noticing any information, fact or circumstance indicating money laundering the financial service provider has the authority to suspend the execution of a transaction order for a certain period of time as defined in the relevant country's national AML/CFT legislation. When the service provider considers the immediate action of the authority operating as the financial intelligence unit (FIU) to be necessary for checking the data, fact or circumstance indicating money laundering, it is required to file a Suspicious Transaction/Activity Report (STR/SAR) without delay to the FIU in order to investigate the cogency of the report. The bigger the time period of the suspension the better the chance in preventing. This timeframe could be extended when applying Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Warsaw, 16.V.2005. *(Article 14 of the Convention regulating the postponement of domestic suspicious transactions states, that Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyze the transaction and confirm the suspicion. Each party may restrict such a measure to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to*





*a transaction shall be subject to any relevant provisions in national law.)*

Within the above mentioned time period the FIU – by using its effective and fast communication channels (especially ESW, or the FIU.NET) – can very easily get in contact with the FIU of the victim's country and request information on the fraudulent activity (predicate offence), persons, bank accounts and the amount of money involved. It is even better if the starting bank provides extra information on whether the victim reported the crime to competent LEA (case No. and name of the investigating authority) or not.

In such cases there should be a mechanism in place which ensures that the FIU immediately discloses this information to the national Asset Recovery Offices (AROs) since it is an expectation that AROs should be able to cooperate effectively with Financial Intelligence Units and judicial authorities. AROs should exchange information rapidly, possibly within the time limits foreseen in Framework Decision 2006/960/JHA. This time limit, in line with the national time limit for suspending a suspicious transaction on the basis of the national AML/CFT requirements (in accordance with the 3rd AML/CFT directive, and Council decision 2000/642/JHA) should be kept in mind when taking the next step, which would be the application of Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

The least time consuming solution would be if – in accordance with national law – the ARO would take up the role of providing the essential data/information for the preparation of the freezing order and the Certificate (e.g. name and data of the authority competent for the enforcement of the freezing order, etc.) to the competent foreign judicial authorities via the ARO of the originator country since it knows its national system best. Of course a proactive FIU could also be a part of such procedure but based on Council Decision

2007/845 JHA (Article 1) AROs might be more easily accepted for this purpose. Besides AROs are expected to be invested with powers to provisionally freeze assets on their own (e.g. for at least 72 hours) in order to prevent dissipation of the proceeds of crime between the moment when assets are identified and the execution of a freezing or confiscation court order. They should also be able to conduct joint investigations with other authorities. These characteristics – which basically are characteristics of law enforcement authorities (LEAs) - make AROs more effective mediators in such cases to obtain the necessary documents from the judicial authorities in order to secure the assets for the duration of the criminal investigation.

## CRUCIAL SUCCESS FACTORS/ CONCLUSION

It is vital that the whole process should be carried out within the time frame of the suspension of the suspicious transaction which differs from country to country, therefore it is essential that the competent authorities are aware of the relevant national provisions existing in different MSs setting out the rules for suspending unusual/suspicious transactions that may relate to ML or TF (presumably regulated in the domestic AML/CFT legislations).

Raising awareness among financial service providers, FIUs, AROs, LEAs and judicial authorities is inevitable. Since these types of criminal actions constitute ML in the country where the transaction arrives and on the grounds of the 40 FATF Recommendations they are integrant part of the AML/CFT mechanism, therefore must be included in the ML typologies.

The above detailed formalized procedure could be a very well working mechanism when dealing with fraudulent criminality using internet (internet fraud).







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