Police, policing and organised crime: lessons from organised crime research

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1. Introduction: research on organised crime and organised crime policies

Over the last three decades organised crime has been assigned a top priority on the European Union's crime policy agenda. This parallels international concerns for organised and transnational crime which is also expressed in the 'Transnational Crime Convention 2000' providing a normative framework for (global) anti-organised crime policies. Anti-organised crime policies have been devised on national, European and international levels. A dense network of conventions not only deals with organised crime per se but also with single elements like corruption, money laundering, human trafficking and the trade in illicit drugs. Investigation of organised crime is entrusted to specialised police units - within the European Union Europol has been given the task of supporting member countries' police forces in investigating organised (and cross-border) crime.

Lessons from organised crime research, which can be drawn for the purposes of policing, require first of all a summary of what is known about organised crime (UNODC, 2010). Research on organised crime evolves around various phenomena of transaction crime, social control of organised crime, performance of police in containing organised crime, cross-border police cooperation and interactions between organised crime as well as organised crime policies and control practices (Fijnaut and Paoli, 2004). Research is encouraged by a growing interest in intelligence-led police and policing. However, what can be observed is an extremely skewed distribution of research on organised crime. Organised crime research in Europe is skewed along countries, types of crime, research methods, leading research questions and interests. Most organised crime research originates from a small number of European countries where criminological research is well developed.

The bulk of research on organised crime is based on police measures and statistical accounts drawn from official sources. Most research is also initiated by police. There are few ethnographic and field studies on organised crime; research is focused on selected phenomenon of organised crime, among them drug trafficking ([1]) and more recently human trafficking (UNODC, 2009). Policing organised crime is under-researched. Police cooperation, cross-border policing, Joint Investigation Teams (JITs) have found but little research interest ([2]) (see Rijken and Vermeulen, 2006; Maguer, 2004). As regards performance of police in the investigation of organised crime and evaluation of organised crime policies, extremely little academic research can be found (Kinzig, 2004).

Organised crime remains a controversial issue. This is due to problems of definition, the politically mobilising nature of the concept of organised crime, unresolved

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([1]) The establishment of the European Monitoring Centre on Drugs (EMCDDA) is an expression of the European Union interest in systematic data collection as regards all aspects of illicit drugs.

([2]) So far only one empirical study has been carried out on JITs.

conflicts with regard to the issue of jurisdiction and the question of which instruments should be adopted in tackling it. Conflicts emerge around the question of whether the concept of organised crime should play a role in designing normative and organisational frameworks of policing, law enforcement and cross-border cooperation. The view that the concept of organised crime is too restrictive and excludes a significant and relevant share of cases in need of cross-border cooperation is gaining support. Instead of the concept of organised crime, a harm-based approach is suggested — through adopting the concept of serious crime. Serious crime is considered to be better suited to identify crime and concrete situations where European (and international) police and judicial cooperation is warranted (Dorn, 2009). In fact, with serious crime, various forms of economic crime, environmental offences, terrorism, serial murder and serial rape, distribution of child pornography may fall under the mandate of Europol (House of Lords, 2008b, p. 18). The spread of undercover policing and other measures of secret investigation, as well as far-reaching financial sanctions responding to organised crime, trigger conflicts with fundamental rights and basic principles of procedural fairness. Security becomes a leading goal in organised crime policies generating tensions as regards freedom and privacy. Moreover, conflicts arise around European institution building.

2. What does research tell us about organised crime and how can organised crime be measured?

The emergence and the course of transnational organised crime are closely associated with basic changes in modern societies. These changes affect labour markets, the economy and basic mechanisms of social integration. Transnational crime is also linked to migration and immigration and those processes which have led to multicultural or multi-ethnic societies in both Europe and North America, and with that towards a trend to a horizontal social order. Changes concern not only the emergence of transnational enterprises and a globalised economy but also the emergence of transnational communities which bridge borders and cultures. Transnational crimes, that is crimes affecting more than one country or nation at a time, as well as crimes characterised by their cross-border nature

certainly are not new. Transnational crimes have always been part of the crime phenomenon. What has changed is the quantity and quality, as well as the structures, of transnational crime which today are determined by market and political economy, organisation and networks, rational choice and migration.

The concept of organised crime can be traced to two theoretical approaches. The first views organised crime as linked with the traditional subcultures of the modern metropolis. These subcultures are also dependent on shadow economies which on the one hand provide for the economic basis for what once was called the professional criminal (in particular the professional thief) (Sutherland, 1937) and on the other hand provide an environment for a network of professional criminals on the basis of deviant norms and values (see Fijnaut, 1990, p. 54). In fact, what is described in much of contemporary literature on these subcultures of organised crime is the underworld, which sometimes is even conceived as a competitor to conventional society. However, as we observe in many societies there exists a multitude of arrangements between these underworlds and conventional society, which are functional insofar as the underworld and the shadow economies operating within provide the supply which is demanded in conventional society. The demand for drugs, prostitution or gambling emerges outside shadow economies and keeps these economies alive. The arrangements vary and also include various types of corruptive relationships (Williams, 1995, p. 5).

The second theoretical approach necessary to understand organised crime refers to crime as a rational enterprise. It is obvious that the enterprise-related characteristics of organised crime prevail today and that subculture-based characteristics are on the retreat. Organised crime thus comes in the forms and with the structures of ordinary and conventional economic behaviour. Visible differences have faded away and organised crime becomes indistinguishable from other types of economic behaviour. This can be demonstrated for example for various forms of economic crime, in particular money laundering where nothing in the offender or in the act itself lends itself to a clear identification of the act as criminal or deviant. The offender and the acts do not carry any signs of crime or deviance that we are used to relying upon with respect to conventional crime. The significant

difference between organised and conventional crime today therefore essentially concerns the emergence of new problems in criminal investigations, which are the consequence of adjustments and changes in rational, organised and enterprise-like crime. Adjustments consist of getting closer to conventional society and abolishing subculture-related and therefore visible differences. Organised crime creates problems of law enforcement because the forms and procedures of conventional society are used (which make identification of criminal acts and suspects a difficult task). What contributes to these law enforcement problems certainly is new types of criminal legislation which — like for example money-laundering statutes — as a point of departure take perfectly legitimate behaviour (handling assets or money) with illegality invoked only by the criminal origins of assets.

Knowledge about organised crime stems mainly from police accounts which are published on a regular basis by police forces in some European Union member countries (Savona et al. 2005). While in the past such accounts were based on case-counting practices similar to regular police statistics, more recently the focus is placed on Organised Crime Threat Assessments. Since 2006 Europol publishes such threat assessments as a result of The Hague Programme (Presidency Conclusions, 2004) and the implementation of The Hague Programme (Commission Communication to the Council and the European Parliament, 2005). Advantages of threat assessments are seen as providing a tool which is not restricted to a retrospective view of organised crime cases but allows for an assessment of trends and emerging dangers. However, published organised crime threat assessments do not go beyond simple descriptions of where centres of organised crime are assumed to be located ('organised crime hubs') and which do not provide for substantive information on how various criminal markets will develop and which organised crime groups will participate in such markets. Moreover, European organised crime threat assessments are faced with the general problem of comparative crime and justice data in Europe.

Despite the obvious lack of empirical research on organised crime (see Kleemans, 2008, p. 5; van Duyne and Vander Beken, 2009) policy-makers continue to make statements on an increase of organised crime activities and in particular on the increasing threat coming with such activities. In the EU Strategy on Organized Crime 2000 it was stated that „the level of organised crime in the EU is increasing'(Official Journal of the European Communities 2000/C 124/01, p. 3). The United Nations Office for Drug Control and Crime Prevention declared in 1999 that „organized crime groups have expanded their dimension and activities worldwide and are currently a global threat posing a concrete danger to the international community' (Centre for International Crime Prevention, 1999, p. 4). The European Parliament — just months away from the credit crunch and the collapse of financial markets as a consequence of licit banking activities — insisted that „organised criminal groups are becoming increasingly complex and structured business organisations capable of penetrating economic and financial markets and of distorting them" (European Parliament recommendation to the Council, 2007). Europol warns that „the OC environment in the EU is evolving and dynamic'(Europol, 2008, p. 18) The most recent global transnational organised crime threat assessment presented by UNODC reiterates the assumption that 'organised crime has diversified, gone global and reached macroeconomic proportions'(UNODC, 2010, p. ii).

Official assessments of organised and transnational crime thus still convey a picture of organised crime that is not different from the picture which at the beginning of the 1990s served to create the impression that exceptional crime threats need to be responded to by exceptional (substantive and procedural penal) measures. This picture of organised crime conveys messages of threats to social, economic and political stability, assumes doubtful causalities and presents doubtful solutions. The 2010 UNDOC report on global organised crime lists six consequences of the analysis (consequences which were stressed already in the 1990s): (1) purely national responses are inadequate; (2) states have to look beyond borders to protect their sovereignty; (3) since transnational organised crime is driven by market forces, countermeasures must disrupt those markets, and not just the criminal groups that exploit them; (4) since traffickers follow the paths of least resistance — characterised by corruption instability and underdevelopment — it is essential to strengthen security and the rule of law; (5) since criminals are motivated by profit, the key is to go after their money; (6) since the wide-open window of trade

is letting criminals in, it is essential to install filters (filters evidently shall replace borders and — going beyond that — control the flow of information through the internet) (UNODC, 2010, pp. ii-iii).

Organised crime assessments and policies derived from such assessments detach themselves from those policies that have emerged in the areas or markets which are closely linked to organised crime activities. However, the analysis of policing organised crime is dependent on and part of the analysis of the markets where criminal groups and networks operate. The field of policing illicit drugs provides a good example. There is consensus that drug policies have to be evaluated as regards implementation and outcomes and that drug policies should be based on evidence (Bennett and Holloway, 2010) which provide learning opportunities and adjustments. It is also fair to say that process and outcome evaluation are considered to be a cornerstone of a rational drug policy. However, the question arises of what indicators are suited to measure the success or failure of drug policies and at what cut-off point should drug policies be regarded as a success or a failure and therefore be subject to changes (see in this respect for example the Report on Global Illicit Drugs Markets 1998-2007 (Reuter and Trautmann, 2009)). The debates on the policy of the United Nations which pursued the vision of a drug free world to be achieved over a certain period of time may serve as an example for far-reaching goals which create great expectations but evidently cannot be achieved (as a crime-free or a violence-free world cannot be achieved).

Indicators used in evaluation research and research on the implementation of drug policies concern drug-related death, admissions to treatment, treatment success, prices of illicit drugs, drug-use rates (in particular among young people) and rates of problem drug users etc. (Reuter and Trautmann, 2009). However, what has been neglected so far concerns indicators related to drug markets. Supply reduction, although a main goal of the law enforcement part of national and European drug policies (and in fact a main goal in policing organised crime), evidently is difficult to achieve (and of course also difficult to measure). However, if policing organised crime shall be subject to evaluation, then more detailed data on various aspects of interdiction and law enforcement are needed (see Beau Kilmer and Hoorens, 2010, outlining the need for systematic and

detailed data collection on drug seizures, the amount of drugs and the context of seizures in terms of particular investigative practices). A main problem which is rarely addressed in debates on how to police drug markets (and only rarely in general crime policy) concerns the continuing replacement of small-scale and large-scale traffickers as well as street retailers, a characteristic of most transaction crime. Where a drug-trafficking operation is dismantled and traffickers are imprisoned there is obviously no shortage of individuals and groups to replace those who have been taken out of the market. The consequence of successful law enforcement operations is rather an increase in violence because of conflicts coming with the re-ordering of drug markets (see Moeller, 2009, pp. 337-345 [3]; Reuter, 2009). Policing drug markets (and organised crime groups operating in these markets) evidently results in various side effects and has — during the last 40 years of increasing efforts to contain the flow of illicit drugs over borders — not resulted in significant reductions of supply nor in an increase in the price of drugs (Reuter and Trautmann, 2009). Control and policing illicit drugs and drug trafficking today then are placed within broader agendas which focus on markets of violence (Karstedt, 2002), the systemic use of violence in drug markets (Friman, 2009), the role profits from drug trafficking play for insurgencies and terrorist groups (Wennmann, 2005, p. 486) and the relationship between organised drug trafficking and terrorism (Shelley and Picarelli, 2002; Oehme III, 2008). Illicit drugs represent 'conflict resources' which receive more international attention since the 1990s (Elwert et al., 1999; Security Council Resolution 1625/2009 which recognises the relevance of natural resources for 'new' wars and crimes against humanity). Heroin fuels the war economy in Afghanistan as is cocaine driving violence in Columbia, Mexico and other Latin American countries (Reuter, 2009). The 2008 report of the EMCCDA mentions among the costs of illicit drugs also the destabilising effects of drugs on countries of production and transit (EMCCDA, 2009, p. 5) and points to the role of drug policies in international relationships and foreign policies.

Organised crime is first of all related to red-light districts, shadow economies and black markets which

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[3] An example is provided by Moeller describing how effective police interventions in Christiana and the retail markets for cannabis has resulted in structural changes of the drug markets that brought also more violence.

are structured along varying conditions established through more or less strict prohibition and regulation of services and commodities. Organised crime thus refers to a category of crime that is shaped by the political economy and decisions on which dangers or threats in a society should receive priority. Drug markets, markets in stolen goods, human trafficking etc. point to transaction crime. Transaction crime poses particular challenges for law enforcement due to the lack of victims and information provided by victims. Immigration and migration play a certain role in discourses on organised crime.

Another discourse emerging around organised crime refers to its transnational and cross-border character. In Europe, the opening of borders has fuelled debates on security challenges provoked by criminals capable of roaming freely across Europe (Faure Atger, 2008).

Concerns about limits to local law enforcement are raised. Global networks through which drug and human trafficking is organised, cyber criminals and international terrorism are contrasted with criminal law and law enforcement confined to a state's territory and not capable to pursue effective containment policies (Kinzig, 2004, p. 77).

Rationalisation evidently is a core element of organised crime. The view on crime as a profit-generating activity is linked to the persistent involvement in illicit markets. Particulars of illicit markets concern operation without and against the state. This in turn explains why illicit markets operate in different ways than licit markets. Market orientation is expressed in the minimisation of specific transaction costs (risks associated with law enforcement). Such transaction costs concern detection and the loss of drugs or other commodities and criminal conviction and a criminal sentence. Transaction costs may be reduced through reducing the number of customers and employees (perpetrators), through incorporating transactions into kinship and friendship networks or reducing the probability of complaints. The latter may be achieved by threats and violence, making victims accomplices or by bribing enforcement staff.

Research on organised crime reflects a basic change in concepts. Organised crime today is understood as operating through networks (and not through

hierarchical organisations with physical infrastructures and large investments). Networks provide criminals with diversity, flexibility, low visibility and durability (in particular through redundancy). While network cores are characterised through strong bonds and trust which stem from shared experiences and common narratives (prison and youth gangs), common ethnicity, clan/family ties or shared values (religion), the peripheries of networks display less dense patterns of interaction and weaker relationships than the network´s core. These characteristics play a critical role in networks, exhibiting and exploiting 'the strength of weak ties' (Granovetter, 1973). The periphery allows the network to operate at a geographical and social distance. This facilitates more extensive operations, more diverse activities and the capacity to carry out effective intelligence collection. It is most probably through these peripheries that contacts are facilitated, common interests are identified and illicit market operations are prepared. Hawala-based financial transactions demonstrate the effectiveness of such networks. In particular ethnographic research would be needed to understand the functioning of criminal networks.

Summarising the change, it can be stated that the understanding of organised crime moved away from organised crime 'Sicilian style' towards an understanding of organised crime which is less organised, less hierarchical, smaller than imagined, less profitable than imagined, more diverse and more complicated, embedded in local environments through markets and local policing. Moreover, there are no signs of influence on administration or politics through corruption (with some known exceptions). However, the phenomenon of transnational organised crime itself is part of a trend towards the integration and convergence of social, cultural and economic systems, it is in particular subcultural systems which display symptoms of globalisation and integration, with transnational terrorism being insofar an exception as it aims at disintegration. The process of integration is based upon well-known general trends such as mobility and globalisation of economy. Smuggling and trafficking in goods, services and humans represent the 'underside' of the (global) legitimate trade, these activities are driven by laws (defining the scope and content of trafficking and smuggling, or the goods and services that are provided) as well as by demand (which emerges from conventional society and for example

from the established sex markets) (Andreas, 1999, p. 86-87; Kelly and Regan, 2000, p. 1).

Transnational organised crime thus also concerns sensitive topics as it raises ideological questions in terms of responsibility and explanation (Le Breton and Fichter, 2001) and it is linked to human right issues (in particular when it comes to secret investigations and profiling) (Senior Coordinator for International Women's Issues, 1998). The attachment of global public bads and threats (corruption, money laundering, infiltration of the licit economy and the political system) to organised crime magnifies the threats seen in organised crime itself. Discourses on global bads point to an increase in heterogeneity of European societies, the weakening of social bonds, the weakening of informal social control and the growth of mistrust in the state and state institutions. The concerns for global bads have also resulted in defining common (global) interests in disrupting continuing criminal enterprises that feed on illicit markets of drugs and human trafficking, in protecting the licit economy against threats resulting from criminal groups investing dirty money likely to result in distorted competition and corruptive effects, preventing infiltration of financial institutions through organised crime groups, protecting the social fabric against economic and political influence of criminal organisations, protecting the integrity of the financial system and reducing the impact of markets of violence (blood diamonds, conflict resources) and contributing to the rebuilding of failed or weak states.

3. A two-pronged approach of policing organised crime: intelligence and cross-border cooperation

The emphasis in organised crime policies is placed on repression. The main pillars of repression consist of following the money trail with dense control of money laundering and asset forfeiture, new investigative techniques which are based on secrecy and internationalisation of control. A new architecture of security for Europe is emerging which brings with it institution-building and networking with a particular focus on the collection of intelligence and cross-border cooperation. A wide range of working groups today is dealing with issues related to organised crime and policing organised crime within the framework of the European Union. The complexity of the networks increases when looking beyond Europe at the international level. In the European Union, a contact network of police was established through the European Police Chiefs Task Force (EPCTF) which has adopted operational and strategic tasks. The Police Cooperation Group (PCWP) is responsible for general and technical matters of cooperation. The Terrorism Working Group (TWG) deals with issues concerning counter-terrorism through exchange of information and the analysis of threats. A Multidisciplinary Group on Organised Crime (MDG) is entrusted with the task of developing guidelines on how to coordinate control of organised crime. The Horizontal Narcotics Group (HNG) coordinates police cooperation with third countries and works on measures aiming at reducing supply and demand for illicit drugs. The Europol Working Group has been established to negotiate regulations applicable to Europol. The implementation of the Action Plan on Organised Crime is monitored by a Multidisciplinary Group on Organized Crime (which today goes by the name 'Working Party on General Matters, including Evaluation' and brings together police, prosecutors and policy-makers). COSI (Standing Committee on operational cooperation on internal security) adds to the density of networking as do further working parties and groups which deal with border and immigration issues, data exchange, the Schengen Information System etc.

Most important in European Union approaches to controlling organised crime is a focus on information and intelligence as well as the exchange of intelligence between police forces. According to 'The Future Group Report 2008'an 'information tsunami' has occurred which has to be exploited effectively in order to improve law enforcement. The conviction that 'information is the key to protecting the public and in an increasingly connected world in which public security organisations will have access to almost limitless amounts of potentially useful information' (The Future Group Report, 2008, p. 43) is guiding the development of policing organised crime. Automated data exchange, the elaboration of a European Criminal Intelligence Model (ECIM) and a focus on intelligence-led policing are the key elements of crime-control strategies. However, numerous problems are encountered in the implementation of the second-generation Schengen Information System (SIS II). Besides technical problems,

there seems to be some obstacles in information exchange and information sharing. Member States of the European Union are accused of not being prepared to share information in all cases (Hojbjerg, 2004, p. 53), a practice certainly explained by the differences in legal frameworks and cultural determinants of the relationship between intelligence on the one hand and law enforcement on the other hand (Hojbjerg, 2004, p. 53). Therefore it is demanded to make Europol a centre of information collection both from law enforcement and intelligence sources in order to be able to generate a 'full and comprehensive picture'(Hojbjerg, 2004, p. 56). The question which then arises, however, concerns whether such full and comprehensive pictures will be helpful to understanding organised crime (and other forms of serious crime) and to respond effectively.

Control of organised crime adopts a significant role in the process of establishing an area of freedom, security and justice. The promise of a European model which convincingly balances mobility, security and privacy, however, seems to be difficult to achieve as the goal of establishing a high level of security evidently dominates and moves security to the centre of policy-making. Security is related to risk, dangers and trust. Security refers to a basic human need and to a complex idea. Essentially, security follows from trust (or confidence) that risks will not turn into damage and that the consequences of risks can be coped with by society and individuals. The core of security concerns normative structures which define which extent of security can be expected, how security is achieved and how failure of security is dealt with. Concepts of security in the context of policing have changed over the last decades (Krauß, 2008). A move away from a comprehensive concept of social security (which is the very basis of personal freedom) to a concept of public security and from there to the assessment and response to threats can be observed. This includes a move away from the prevention of concrete dangers and investigation of concrete suspicion to the prevention of risks and precursors of dangers. The move towards risks and threats comes with an emphasis on collecting intelligence and exploiting the 'information tsunami'.

Assigning security a high priority in European Union policies has consequences for police and policing. The demand for security is (in principle) unlimited and will never be satisfied (Hassemer, 2006). Evidently a paradox

becomes visible as with security increasing, the demand for security increases, too. The United States Presidents Commission 1967 stated that there would always be too much crime (Report by the President's Commission on Law Enforcement and Administration of Justice, 1967, p. 22); the same applies to security as there will be never enough security (or there will be always too much insecurity).

Police and policing are assigned a crucial role in the achievement of security through the control and containment of organised (or serious) crime. Policing organised crime can in principle be evaluated along different lines. However, the most important question to be put forward concerns: How do those illicit markets develop which are subject to various forms of policing and law enforcement (and what are the effects of successful investigations and prosecutions of organised crime cases)? Other questions are related to specific policies implemented to counter organised crime. Besides the use of secret investigative measures, forfeiture instruments and ways to improve European and international police cooperation, it is of course also of interest to know how cases defined as organised crime are investigated and prosecuted and what outcomes can be observed.

An in-depth study on investigating, prosecuting and adjudicating cases defined by police as organised crime was carried out in Germany (Kinzig, 2004). The analysis shows that the core elements of the (police) concept of organised crime (division of labour, commercial structures, threat or the use of violence, corruption) were only present in a small share of the cases (Kinzig, 2004, 714-715). Interviews with offenders adjudicated and sentenced in organised crime cases underline what was outlined earlier, loose networks and the ad hoc formation of groups on the basis of needs and interests. Although a large share of organised crime cases are international and cross-border, crime investigation problems due to cooperation with foreign law-enforcement agencies are not significant (Kinzig, 2004, 381); more problems arise out of attempts to actively generate information and the implementation of secret and undercover operations (Kinzig, 2004, p. 792).

Policing organised crime concerns in large parts policing shadow economies and international trafficking. Performance therefore should be measured

primarily by the development of key indicators in such markets. While drug markets in this respect have been studied in various aspects extensively during the last 40 years, much less research is available for other markets (illicit forms of pornography, labour trafficking, sex, stolen goods etc.). Even for drug markets, however, a lack of reliable data is deplored which results in rough estimates on various indicators of supply and demand with large error margins. Recently, an in-depth study of the drug market and the effects of drug policies was carried out for the European Commission (Reuter and Trautmann, 2009). The study summarises the evidence on the wholesale and retail markets of heroin, cocaine, cannabis and amphetamine-related substances and how various policies influence these markets. The data demonstrate clearly that interdiction efforts and law enforcement neither affected the prices of heroin, cocaine, cannabis and amphetamines, nor did they affect the availability of these drugs (Reuter and Trautmann, 2009 15-21). Interestingly enough, despite a significant increase in the rate of cocaine and heroin seizures (cocaine seizures up from 23 % in 1998 to 42 % in 2007; heroin seizures from 13 % in 1996 to 23 % in 2006 (from the estimated global output of heroin and cocaine) (Reuter and Trautmann, 2009, p. 18)) a long-term decline in drug prices can be observed (Reuter and Trautmann, 2009, p. 20). The study also concludes that the overwhelming majority of those involved in drug markets only make modest incomes (Reuter and Trautmann, 2009, p. 15) (which in turn sheds some light on the role that forfeiture and confiscation policies will play). Policing and prosecution have effects though. These effects, however, concern the modalities of drug trafficking and drug distribution. Trafficking routes and trafficking methods are changing constantly, interacting with law enforcement operations.

Investigation and prosecution of organised crime cases rely heavily on secret investigative measures, in particular the interception of communication. This is plausible as much of organised crime concerns transactions which are based on communication. Wire-taps, telecommunication transaction data and their retention, data mining, informants and undercover police are among the investigative techniques that have been added to the catalogues of police powers since the 1970s (Marx, 1988, 4-5). When putting forward the question of 'how are new investigative measures implemented and with what consequences?', there is not much in terms of socio-legal research on the use and results of new investigative techniques, despite their use being justified as a last resort, falling under the principle of proportionality and representing an effective instrument in containing organised crime.

The European Union has in several resolutions and documents highlighted that monitoring telecommunication is particularly helpful in investigating organised crime cases (Council Resolution OJ 4/9/1996; Council Conclusions of 19 December 2002). The Council of Europe has voiced similar conclusions (Conseil de l'Europe, 1996). However, the salience of monitoring telecommunication and the benefits drawn from such controls for law enforcement follow from the covert and secret penetration of citizen's privacy and therefore from the infringement of fundamental rights (Bacigalupo, 2001, p. 132) that are protected by national constitutions, the European Convention on Human Rights and International Human Rights instruments. Hence, wire-tapping and eavesdropping have to be balanced against rights that are enshrined in Article 8 I, II of the European Convention on Human Rights (and that are also mentioned in Articles 7, 8 of the European Union's Human Rights Charter, in Article 12 of the General Declaration of Human Rights as well as Article 17 of the International Covenant on Civil and Political Rights) (OECD Council, 1993; Council of Europe, 1981). Various decisions of the European Court on Human Rights have dealt with legal requirements of telecommunication control. According to these decisions first of all a statutory basis must be made available by parliaments (ECHR, 1984) which is seen to be legitimate only if the necessity to infringe on privacy by way of wire-taps or eavesdropping can be established in a democratic society. Then, the European Court on Human Rights confirms that Article 8 of the European Convention on Human Rights (ECHR) may be restricted only with the goal of pursuing national and public security, the economic well-being of the nation, prevention of crime and social unrest, protection of public health as well as the basic rights of others (Kopp. vs. Switzerland, 25.3.1988; Valenzuela Contreras vs. Spain, 30.7.1998). These principles are also underlined in Directive 2002/58/EC of the European Parliament and the Council which says in Article 15 I that the fundamental rights of privacy and data protection may be restricted only if such restrictions amount in a democratic society to necessary, adequate

and proportional measures to protect national and internal security and to prevent and to repress crime.

Surveillance of telecommunication and retention of telecommunication data points also to the request of balancing security and privacy in creating the envisaged area of security, freedom and justice. In particular Directive 2006/24 EC obliging Member States to introduce retention of telecommunication data for a minimum of 6 months and a maximum of 24 months has resulted in an ongoing debate on how much personal information may be collected legitimately and whether control of organised crime (and other serious criminal offences) justifies retention of personal data without prior suspicion of having committed a criminal offence (see Albrecht, Grafe & Kilchling, 2008).

In general, there is not much known about the use and the results of secret surveillance technologies in organised crime cases. Few studies have been carried out which demonstrate that surveillance of telecommunication is focused on drug trafficking, that significant variation exists as regards its deployment in crime investigation (Albrecht, Dorsch & Krüpe, 2003; Dorsch, 2005; Krüpe-Gescher, 2005; Meyer-Wieck, 2005) and that illicit markets adjust to secret investigations.

When turning to the question of what can be expected from specific strategies that aim at money laundering control, forfeiture and specific offence statute that target either conspiracy or membership in a criminal association, we find also that evaluation research is rare and that not much is known about police performance in implementing such policies.

Evaluation of the effects of money laundering and forfeiture policies is difficult as outcomes will be dependent on the size of drug trafficking proceeds which cannot be identified without accepting large error margins. However, internationally, estimates on the rate of confiscated proceeds do not amount to more than marginal taxes on illicit goods and services (which indeed are modest compared with ordinary taxing). (Reuter and Truman, 2004; Yeandle, Mainelli, Berendt, Healy 2005)

While collection and analysis of intelligence as well as cross-border exchange of intelligence are seen to be key elements in successful approaches to organised crime (Block, 2008), it is also evident that implementation of related policies come with various problems. It was stated that the vast majority of information exchanges between police forces occur outside the formal systems and outside Europol which provokes the question of whether Europol in fact may play a convincing role of serving as a centre of collection and exchange of information (House of Lords, 2008a, p. 12). It is then reported that up to 80 % of bilateral engagement occurs informally and outside Europol. Lack of 'confidence and trust' in handling and protecting the data is evidently a crucial obstacle to establishing formal information channels.

Information on how and to what effect cooperation is implemented in the form of Joint Investigation Teams or other ways is scarce; in particular systematic evaluation research is not available (Block, 2008, p. 74). Knowledge in general comes from case studies as well as national reports which summarise information from various sources.

4. What lessons should be learned?

The concept of organised crime is not used as an element in criminal law and criminal procedure. Its value for police and policing seems to be small at best. It should be replaced by either a general reference to serious crime or crime catalogues which can be brought in line with those crime catalogues that authorise secret investigations.

Policing organised crime essentially means policing markets and sometimes marginal, minority and elite groups. Research and policies need to address illicit markets.

Policing organised crime is linked to demand emerging in conventional society. Repression alone is therefore insufficient. Administrative preventive responses have to be included and alternatives to penal prohibition have to be considered as well.

There is need for information on police cooperation, practices and legal as well as practical problems arising from cooperation. This also includes the need for

information on causes of problems, in particular the role of trust (Royal Canadian Mounted Police, 2003).

Performance of police in dealing with organised crime policies has to be measured through various indicators, among them indicators related to enforcement (arrests and convictions) but also indicators related to illicit market related (prices, availability).

(Organised) crime therefore is always local. Local police most often do not recognise their crime problems in national, European or global accounts. Local experiences and local knowledge therefore should be given greater attention.

Threat assessments are inherently normative. Threat assessments cannot be reduced to a data-based analysis.

There is an urgent need for independent evaluation research and a research programme which focuses on the key elements of collection of intelligence, exchange of data, operational cooperation, organised crime case investigation and processing as well as its outcome and those police powers which have been introduced specifically for the containment of organised crime.

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