

# EFL Memo

Cross-border cooperation in the fight against organized crime:

## Lessons based on research and on the practical experience of the Euregional Field Lab

October 2020

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Memo for the purposes of the Euregional Field Lab (2018-2019), commissioned by the Bureau for Euregional Cooperation (BES) of the Public Prosecution Service

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Cross-border cooperation in the fight against organized crime:

## Lessons based on research and on the practical experience of the Euregional Field Lab

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*This memorandum addresses cross-border cooperation in the fight against organized crime. We look at the lessons that can be learnt as regards the different forms of cooperation, particularly also those beyond the customary cooperation on criminal matters, and the factors and conditions for success. We have used existing crime studies and research into the public administration domain, which we have partly conducted ourselves, as the basis for this memorandum. We have also used the information we have gathered via the Euregional Field Lab in the period 2018-2020.*

### 1. Nature and modus operandi of criminal networks

How the cross-border cooperation between the various authorities is given shape, and whether they might do that differently or better, differs depending on the field of crime concerned. It is therefore important that we start by looking at the nature and modus operandi of the criminal networks. In general, **four forms of cross-border crime** can be distinguished: smuggling networks with a European or global reach, mobile banditry, criminal networks in border regions, and cross-border organized and corporate crime. These forms can also partly overlap.

Let's start with **smuggling networks** with a European or global reach. Examples are groups which, for example, bring in cocaine from Colombia, through the ports of Antwerp or Rotterdam. Or re-export the drugs to other countries in the EU, e.g. Spain or Italy. Or export Ecstasy to Australia. In this context cooperation is usually via requests for mutual assistance, with a police liaison often being involved in their handling (see below). In principle, the countries concerned conduct their own investigations. A joint investigation team is often not a very obvious option.

A second problem which often presents itself, especially in border regions such as the Meuse-Rhine Euregion, is **mobile banditry**. Groups from Eastern Europe or South East Europe benefit from the border region, for example by finding temporary accommodation in one country and using this as the base from which they commit thefts and burglaries in the other countries. The speed of information exchange is essential here, but in practice this is often leaves much to be desired. Actually, such groups can also consist of Dutch residents who steal cars, motorbikes or cargo in Belgium and Germany. Belgium has a stronger tradition of robbery ('grand banditry') where banks and money transports are robbed, but these gangs tend to operate fairly incidentally in the Netherlands.

And thirdly, there are what can be referred to as '**border-regional**' **criminal networks** in the border regions. They are the most interesting from the EFL point of view. They are networks whose members live in several countries and whose criminal process is also spread over several countries. This may also concern money laundering, investing in companies and real estate on the other side of the border, and so on. This also includes outlaw motorcycle gangs whose members live in the border region but whose clubhouse is across the border or who organize activities such as meetings and ride outs.

In other words, they are criminal groups composed of a network of people living in the border region in question. These are predominantly Dutch criminals who moved to Belgium or Germany or who still live in the Netherlands and are working together with Belgian and German criminals in the border region. Dealing with such groups requires a much more intensive form of cooperation, if only because the members are constantly crossing borders. This more intensive cooperation is required both whilst collecting intelligence and during the actual investigation. Joint investigation teams are particularly useful for this. This includes the joint investigation teams that have been set up for the purpose of the EFL (or in several other forms, see below).

And fourthly, **cross-border organized and corporate crime** is form of crime that is worth attention as well. An example is environmental crime, such as companies that have branches in several countries getting around the laws on contaminated soil, manure and waste by abusing differences in legislation and standards. For example, clean soil in Germany is not the same thing as clean soil in the Netherlands, but there are no restrictions on importing and exporting clean soil. An extra complicating factor is that, although these are economic offences, first-line enforcement is usually left to administrative enforcement bodies, leading to specific problems as concerns cooperation and information exchange, specifically if criminal law authorities are involved as well (see below). And moreover, sentences for environmental offences are sometimes lower in Belgium and Germany, due to which, for example, special investigative powers cannot be used (the norm being at least 4 years imprisonment).

## **2. Forms of cooperation and information exchange**

When discussing cooperation for the purpose of fighting crime, it is most important that the forms of cooperation which exist in general when fighting more serious forms of crime are clearly defined in advance. First of all there is the – well-known - police and judicial cooperation. This concerns both operational and non-operational forms of cooperation. And finally there is monodisciplinary and multidisciplinary (or integral) cooperation. Information exchange is a practical aspect of all these forms.

### *Police and judicial cooperation*

Firstly, the distinction between **police** (or police-to-police, also referred to as ESLI in the Netherlands, named after the system in which these requests are recorded) and **judicial** cooperation is important. Police cooperation concerns information which is already available with the police. For instance, if a foreign authority submits a request to have a mobile phone number identified, the police records can be checked to see if this number is already recorded in them, e.g. because the owner stated it after a traffic accident. In that case, such information can be made available without any issues. If information is to be requested from a provider, a judicial request for mutual assistance is required (see below).

Although the treaties and conventions are not very explicit about this, most countries have restricted 'police-to-police' to written information. In principle, the Dutch police is allowed to exchange information with other EU countries without involving a public prosecutor. Outside the EU, permission has to be asked for this. In the Netherlands, the request for such permission should be filed with the AIRS (the department for international mutual assistance in criminal matters) of the Ministry of Justice and Security. Other schemes or regulations may apply abroad. A request is needed (formally a request for mutual assistance), but this can be concise and it does not need to contain any details. Police departments can also send each other unsolicited information, e.g. if a suspect in a German investigation has stated that they bought the drugs from a Dutch national living at a certain address. Based on this, the Netherlands can decide for itself whether to conduct a further investigation (not doing so can actually cause a lot of annoyance, although there is no obligation).

In principle, information can be exchanged directly among police personnel in the EU, but it can also be exchanged via the centres for international mutual assistance (IRC) in the Netherlands (every police unit has an IRC, and there is a national IRC, the LIRC), or via police liaisons stationed in a country from abroad (Foreign Liaison Officers, FLOs), or liaisons stationed elsewhere by a country (LOs), or liaisons with Europol. In this context, and for the case of the Meuse-Rhine Euroregion, the communal police station (EPICC) in Heerlen and the Bureau for Euregional Cooperation (BES) stationed at the Public Prosecution Office in Maastricht shall be mentioned as they facilitate strategic and operational consultations between the public prosecution services in Belgium, the Netherlands and Germany. Interpol is another channel that can still be used (in practice this is limited to countries outside the EU where EU Member States do not have any form of liaison).

There are also several information systems which are used throughout the EU. There is a scheme enabling police forces to consult the vehicle registers of other countries. Whether this is also possible for police officers on the ground depends on the question as to whether this has been made technically possible in the country in question and who has been granted access. The Schengen Information System for stolen vehicles and for wanted and/or missing persons is also important. And to conclude, the Prüm database is important for DNA traces and fingerprints. This system is managed on a national level in the Netherlands and Belgium, and it matches any traces that have been entered against any information available in other countries.

**Judicial cooperation** concerns two activities. On the one hand, collecting evidence that is not yet available (involving information being requested, houses searched, telephone taps put in place, etc). In principle, the police are still the executive party in this, but a public prosecutor – or an examining magistrate – has to give permission for this. In the Netherlands, this is also referred to as 'minor' mutual assistance. However, this is a confusing term since it concerns the majority of all judicial requests (over 90 percent) and it can concern major criminal investigations. On the other hand, judicial cooperation concerns extradition (outside the EU), the surrender of people (within the EU), and the transfer of prosecution and the enforcement of sentences (Dutch nationals who are allowed to serve their sentences in the Netherlands). This is also referred to as 'major' mutual assistance.

In principle, judicial cooperation is based on a judicial request for mutual assistance. Such a request is more extensive and contains a summary of the ongoing investigation, it identifies who the suspects are if known, which investigative actions are requested, which punishable acts are being investigated, etcetera. In principle, within the EU, it is allowed that such

requests are sent directly to a public prosecutor in another country. In practice, in the Netherlands, this almost always goes via an IRC or by some form of liaison. Requests to countries outside the EU are always sent via the AIRS, which is part of the Ministry of Justice and Security. It has been explained above that information can be exchanged freely between various police organizations in the EU. However, if such information is used in a criminal case, judicial permission will have to be obtained for this (i.e. by means of a judicial request for mutual assistance, but that will mostly be a 'bulk matter': 'request for permission to use all information exchanged via the police-to-police channel in the criminal case').

Judicial cooperation, and actually police cooperation as well, has been meticulously regulated in various bilateral and multilateral treaties and conventions, EU treaties and conventions, and EU directives. However, a common misunderstanding is that if something has not been arranged by means of a treaty or convention, it is not possible. Separate arrangements can always be made, provided that no fundamental human rights are violated. An example is the situation where a Dutch national was driving to Germany. His wife's dead body was in the boot. He was apprehended in Germany upon which the Netherlands requested for the entire car (including her mortal remains) to be transferred to our country for further investigation. Of course, this is not provided for in any treaty or convention.

#### *Operational and non-operational cooperation*

A second major difference in (police and judicial) cooperation is the difference between operational and non-operational cooperation. **Operational cooperation** can be defined as cooperation in concrete criminal investigations where activities are carried out pursuant to requests for mutual assistance (see below) or other frameworks based on treaties or conventions. This concerns exchanging available information in the context of an ongoing criminal investigation; collecting new evidence pursuant to the request of a foreign partner and *vice versa*; participating in a joint investigation team; extradition or surrender of suspects, transfer of prosecution, etcetera. Although this is a bit of a grey area, there are some consultative structures that might qualify as operational if concrete cases ('specific personal details') and specific investigation options are discussed.

**Non-operational cooperation** concerns joint training, education courses, giving advice, symposiums and network meetings, as well as matters that relate to the technical infrastructure, such as arranging for the police to be able to communicate with colleagues on the other side of the border and through all kinds of policy consultation structures. Although technical facilities serve the goal of operational information exchange, the implementation of technical facilities such as the Schengen Information System is considered to be infrastructure and therefore non-operational. Of course, the information which is exchanged as a consequence is operational. What is important to note is that non-operational cooperation is not covered by the scope of the various treaties on mutual assistance, which means that official requests are not needed for this. In principle, if the Belgian and Dutch police forces want to exercise together, they can just agree to do so in mutual consultation.

The difference between operational and non-operational is also important where new EU regulations are concerned because Member States can veto operational cooperation, whereas non-operational cooperation depends on the majority decision. The EU's strategy in recent years has been to prioritize non-operational cooperation (convergence principle) based on the idea that if police officers throughout Europe have had the same education, follow the same operational procedures, their weapons and technical equipment are compatible, etc., a next step can be taken in the operational area. This is a similar approach as the one taken in



other areas where national sovereignty continues to prevail, such as defence (and the organisations set up for this purpose such as NATO, from which the convergence principle was actually copied).

### *Monodisciplinary and multidisciplinary (a.k.a. 'integral') cooperation*

'**Integral cooperation**' has gained importance in the Netherlands in recent years. This involves the coordinated taking of measures for the purpose of criminal law, as well as for the purpose of administrative and tax law measures. Information exchanged between the various authorities is mainly within the context of the RIEC. Belgium is taking over this method, e.g. in the ARIECs, but there are still many legal bottlenecks when it comes to integral cooperation (information exchange) and the administrative approach. Exchanging data with the tax authorities is virtually impossible in Belgium. Thresholds are also high in Germany where integral approaches are concerned. One reason for this is that, during the Nazi regime, the boundaries between politics and administration on the one hand and the legal system on the other were lost. This led to a strict separation ('*Trennungsgebot*') after the Second World War. Here again, in spite of bottlenecks and thresholds, cross-border integral cooperation is definitely possible (see below).

Few or no formal arrangements have been made for cross-border cooperation between the administrative enforcement bodies. They can exchange their own data, but they will have to continue to comply with principles of good governance. There are also schemes for exchanging tax and customs information (such as the Naples II Convention), but this also concerns **horizontal exchange**.

Things get much more complicated when we come to the subject of **diagonal exchange**, i.e. information being exchanged between different types of authorities. The main problem is when criminal investigation information is shared with a foreign administrative or tax authority. There are fewer restrictions on sharing administrative information with criminal investigation authorities abroad. Furthermore, all countries have some scheme dictating that any officials who learn of a punishable act should report this to the public prosecutor who can then share it with a foreign counterpart (this is more complicated for tax offences).

In principle, any information available to the police can be made available to a foreign administrative authority if approved by the public prosecutor. Different public prosecutors can follow different lines of reasoning, leading to different decisions. The Netherlands long held the opinion that sharing information in such events was not possible at all. An exception is the Benelux where a formal arrangement has now been introduced as part of the latest amendment of the Benelux treaty concerning cross-border policing (the Senningen Treaty). The updated treaty has been signed, but it has not taken effect yet.

### **3. Challenges to cooperation on criminal matters and how they are handled**

Before addressing the – evolving – practice of integral cooperation, we will discuss some challenges to cooperation on criminal matters and then specifically as regards cooperation between the Netherlands and Belgium. Actually, similar challenges also exist as regards cooperation with Germany.

The first major difference is the **German principle of legality** which requires that knowledge of an offence must always lead to a criminal investigation. In practice, this principle is flexible:

if a dead body is found by the side of the road it will be obvious that an offence has been committed, but what if an informant whose reliability cannot be fully established says that someone else is involved in the drug trade? Germans are often inclined to use the principle of legality as an argument for not wanting to consent with agreements with the Netherlands about priorities or choices as to which criminal groups to investigate, but, as can be gathered from the above, this is not always justified. However, the consequence of this principle is that Germany has more police detectives than the Netherlands and Belgium.

A second important point to note is that the **German police has a much stronger investigative autonomy**. In the Netherlands, the public prosecutor who has been assigned a case is in daily charge of the investigating police team. In principle, the judiciary does not come into play in Germany until special investigative means need to be employed, which will have to be authorized by the public prosecutor, or if requests for mutual assistance are received or sent. For the rest, the general attitude tends to be 'I'll find the file on my desk when it's all ready.' This can lead to some difficulties in consultations about criminal investigations, although the Dutch-German treaty on police cooperation does include agreements that a Dutch public prosecutor is allowed to consult and make agreements with German police team leaders (actually, that is also referred to as diagonal, but this something different from what has been described above).

As stated, the rest of this text will mainly focus on the cooperation between the Netherlands and Belgium for criminal law purposes. Customs and administrative enforcement cooperation tends to be confined to information exchange. Besides this, police and judicial cooperation depends much more on manpower and resources being employed and is, to a great extent, defined by legal frameworks. No wonder then that this comes with considerable challenges. We will be looking at the allocation of manpower and resources, as well as authorizing decision and support 'from above', and the actual implementation of criminal investigations.

### *Allocating manpower and resources, and authorizing decisions*

Prior studies have shown, as confirmed by the experiences of the EFL teams in general, that the problems in the cooperation on criminal matters between the Netherlands and Belgium mainly occur in the **phase before a criminal investigation is actually started**. Once it has been decided that the necessary manpower and resources will be made available, and sufficient or the proper mandate has been arranged, any problems that might occur will usually be able to be solved. Good personal relationships and the commitment of individual officials who can understand and are open to each other's organisational and cultural peculiarities are essential for this.

Simply put, the work of any criminal investigation body is based on 'catching criminals.' There is little debate between countries as to this common goal. (Things become more complicated if people start to argue about this, e.g. because a municipality's or tax authority's work is not based on this, but we will go into that later.) Several factors play a role in the answer to the question of how best to achieve this. They include **historical developments**, the **crime problems** encountered, and more **topical policy choices**. Both prosecutors and police officials are used to a major degree of autonomy, in spite of the hierarchical character that defines the public prosecution services and the police organizations in the two countries. We can find quite a few strong-willed characters in these organizations, especially in the higher echelons. In an even broader context, we might also consider general **differences in culture** between

‘the Belgian’ and ‘the Dutchman’, although one should be careful not to project any assumed group characteristics onto individuals, if such characteristics actually exist. This is also true for the Germans: they have plenty of police and judicial personnel who do not conform to the cliché of orderliness and ‘*tüchtigkeit*’.

Both the Belgian and Dutch police suffer from structural scarcity of investigative capacity. The Gaia EFL Team has written the following about this: “We are both struggling with priority and capacity... There was no difference in that regard.” An important difference is **how this scarcity is handled**. In the Netherlands, this scarcity has been translated into a highly plan-based approach to investigating the more serious forms of crime, partly influenced by Anglo-Saxon ideas such as intelligence-led policing. This has led to choices concerning criminal investigations being determined to a great extent by previously established priorities, as well as by the perceived ‘gravity’ of the activities of a specific partnership for cooperation in criminal matters.

Once the choice to investigate has been made, project plans are made and lead times established to carry out the investigation. A consequence of this is that usually little or no manpower and resources are left to deal with forms of crime that have not been identified as having a high priority. This also applies to criminal groups who are not assigned a high priority, for example because they are only involved in soft drugs, or because they do not visibly use violence. Furthermore, planning personnel as efficiently as possible leaves little room for responding directly to any unexpected events. If they occur, any response possible will, in principle, be at the expense of other ongoing activities. Logically, this means that anything unexpected should be serious enough to justify such a change of course. In practice, this means that this will only be possible for offences where someone has died or crimes of a similar degree of seriousness.

This is something that should be considered very carefully and naturally this takes time and effort. In the Netherlands, such decisions are the responsibility of **steering and weighing teams** (*‘stuur- en weegploegen’* in Dutch). Using the information available, they decide which investigations will be initiated. Such investigations are assigned to a permanent criminal investigation team or one that is assembled specifically for the case in question. The first step then is to convert the ‘pre-weighting document’ (*‘preweegdocument’*), based on which the steering and weighing team has decided, into a project plan formulating the strategy and objectives, the maximum duration of the investigation, and the personnel and resources required.

Progress is evaluated at the end of the period. Depending on this, the outcome can be that a new term is set for the investigation, but it may also be discontinued. Proposals for investigations which have not led to a project are returned to the parties which have submitted them and will be stored pending any new information. Sometimes individual police officers will further investigate the matter, but since they have to do this along their regular work these small-scale investigations are not expected to yield results within the short term and not all superiors appreciate these initiatives (as we also noted in the EFL).

The Dutch system has its advantages and disadvantages. In principle, it envisages the most efficient utilisation of manpower and resources for the most ‘meaningful’ cases. Since most criminal networks branch out far and wide and are connected to other criminal networks, a clear demarcation is required to prevent criminal investigations from fanning out and dragging on for ever. However, it is often difficult to manage criminal investigations along strict predefined lines. Coincidence also plays an important role. Sometimes criminals mess up and

make mistakes within the first week after the crime, so that the evidence can be wrapped almost directly, whereas in other cases it can take six months for example for any results to be achieved. It is possible that, during that period, promising information regarding another criminal group will have to be left to be dealt with later.

It is clear that this system of weighing the various options and managing the investigation process on this basis will turn against itself if requests for mutual assistance from another country call for more than just some incidental effort (such as, for example, a 'quick' search), but actually require a substantial investigation involving the availability of a complete criminal investigation team instead. This is mainly relevant in the event of unexpected requests for mutual assistance. But even if they have been announced well in advance, and there have been preliminary consultations, their immediate execution is not evident. Sometimes the requests fit in with an ongoing criminal investigation, e.g. suspects in the two countries have been in contact with each other. It will then be easy to combine the execution of the request with the work of a team that is already on the case. If this is not the case, the request for mutual assistance will inevitably end up in the 'weighing and steering' lottery.

The consequence of this is that it will take several weeks for a decision to be made and which will often be negative. If the decision is positive, it will still take some time for a criminal investigation team to be made available to carry out the project. And if such a team is made available, there is a probability that the work will be stopped after the fixed lead time, usually limited to a couple of months, if no results have been achieved by then. Of course, the interests of the foreign partners are taken into account in this process, but that does not mean that they will be given 'preferential treatment' as this would be 'unfair' to other teams and ongoing criminal investigations.

Virtually all foreign partners find it very difficult to get to grips with this Dutch way of working. It is also not exactly in the spirit of international cooperation where, in principle, it is assumed that a request for mutual assistance that complies with the legal requirements should always be executed as quickly as possible. Of course, it is this latter aspect that the Netherlands use to justify their actions: it was simply impossible to do it more quickly. But often, by the time the Dutch come to execute the request it's no longer relevant...

The Dutch way of managing criminal investigations not only has consequences for how individual requests for mutual assistance are handled, but also for more operational consultative structures where it is difficult to make firm agreements, since there are many moments downstream in the decision chain and where these agreements might be overruled by a weighing and steering team, or by various 'managers.' Even if the chief of police commits to something, this does not actually mean that the commitment will be honoured. The consequence is that there is a risk that people will think of consultative structures as not leading to anything or as just 'empty shells.' And that does not do much good to their **reliability**.

The IRCs, who liaise with the foreign applicants, are also concerned about this structure because they have to relay the message. This is why they also advocated being given their own, limited capacity to investigate, which can be used flexibly. This might actually be a solution to lots of minor requests, such as hearing the suspects of minor traffic offences or issuing a summons, which are left unhandled for too long as well now, adding to the frustration of, in particular, the Belgian public prosecution service. However, in the case of more serious requests, the same problems of having to make a choice would be run into immediately.

A possible way out would be to **approach capacity differently**, i.e. by making more intelligent use of the available capacity rather than just assigning more capacity. This means not only utilizing the capacity offered by partners such as administrative or tax authorities, but actually also utilizing the – sometimes more informal – investigation capacity offered by private parties or society. Other parties may be in a better position to help fight crime, e.g. because they have some unique expertise or experience, or they can access information and networks. Actually making a contribution can also lead to greater involvement and more commitment from other parties.

Compared to the Netherlands, Belgium works to a more **phenomenon-based approach**. In practice, this means that sometimes dozens of separate cases are kept open all the time and a more reactive way of working is applied where time is invested in the case that offers the best promise of progress at a given moment. If new information is unexpectedly received in a particular case, action will immediately be taken on the basis of this information. ‘When something lands on our desk which is very clear, we are going to action it. This is a decision that we’ll make ourselves. I don’t have to go and ask the public prosecution office whether I can do it. I don’t have to ask my boss either, or the judicial director. I have some kind of responsibility and autonomy. However, I have to be mindful not to bite off more than I can chew, to make sure things can still be handled,’ said a federal police official who was interviewed. The Gaia EFL team wrote this: “In the Netherlands, the government gives the impression of being over-organized and many layers have to be overcome in order to be able to reach an integral result. It looked like people could take action and achieve results much more quickly in Belgium.”

What is also true in Belgium is that, due to staff shortages, progress in one case generally means that another case will be put on hold. As a result of the phenomenon-based approach, no formal time period or closely defined goal is attached to cases, which means that they can remain open for years without sufficient evidence being gathered to bring suspects to justice.

The above shows that the Belgian and Dutch approaches have their own strengths and weaknesses. It is also evident that they can easily lead to **clashes** if the two countries have to work together. The Belgians are frustrated by Dutch inertia and rigidity due to which opportunities to achieve results quickly, regardless of whether such opportunities occur unexpectedly, are not capitalized on. The Dutch are extremely annoyed by the Belgian way of ‘running around like headless chickens’ and prefer quality over quantity. They prefer to handle fewer cases but handle them well. Of course, this is an exaggerated picture and both parties acknowledge that there are many logical and good elements in both the Belgian and the Dutch approaches.

Belgian interviewees acknowledged that a more scheduled approach would offer all kinds of benefits. ‘Coordinated collaboration with choices, with certain guidelines and clear agreements. That’s what’s needed [in Belgium]’, said one of them. ‘People are always under pressure here and [their] working conditions [are] hard. You feel like you’re constantly spinning plates in the air and you have to keep them all spinning. (...) It’s different in the Netherlands. There it’s just ‘no’,’ said a Belgian public prosecutor. There is also admiration for the fact that it may well take longer for a decision to be made in the Netherlands, but once it has been made resources are made available to be able to achieve results, and that there is a better probability that results will actually be achieved (Colman et al., 2018).

On the other hand, the Dutch are also beginning to realize that the desire to rigidly plan criminal investigations has gone too far and does not have enough bearing on how criminals actually act. This was the reason why, for example, the Zeeland-West-Brabant unit decided to switch over to '**programme control**' for the themes of cannabis, synthetic drugs, and outlaw motorcycle gangs. As part of this, priority is given to an 'enneptych', the nine parts of which are: 1) suppliers of cuttings, 2) builders of cannabis plantations and 3) grow shops (cannabis cultivation); 4) importing of chemicals, 5) laboratory workers and 6) transporters (synthetic drugs); 7) leaders of the organizations, 8) locations and 9) new recruits (OMGs). The key element of programme control is that, for every individual intervention or request for mutual assistance, it is no longer decided whether to carry it out or execute it, enabling much faster and more flexible action, and a more efficient response to any unexpected opportunities.

Therefore, this new way of working puts the Netherlands more in line with how choices are made in Belgium. However, it should be noted in this context that programme control is not yet used in all other units along the national border (or elsewhere in the Netherlands) and that it does not ally to all forms of organized crime (i.e. to the forms that are not covered by the 'enneptych' sketched above).

### *Conducting investigations*

If it has been decided that a request for mutual assistance will be complied with and an investigation will be conducted, this does not automatically mean that the further process will be automatically free of any problems. **Personal relationships** can actually play a considerable role in this. Sometimes frustrations about a request yet again being refused or not being heard by the Dutch authorities can become so bad that this lead to a general disinclination to working together. This can also be the consequence of minor offences that are not being handled.

For example, Belgian authorities take offence at how the Dutch deal with traffic offences. In Belgium they are criminal offences and this can require suspects to be heard in the Netherlands. In the Netherlands, light traffic offences are handled administratively, which means that hearing Dutch nationals who were caught by a speed camera or were given a parking ticket in Belgium has zero priority. Since the period of limitation for minor traffic offences is only a matter of months, many Dutch citizens thus get away with these offences without any penalty. Of course, if the Netherlands wants something, such matters can also have consequences for more serious cases.

Vice versa, some Dutch people may confuse blatant rudeness with the inherent directness that we are renowned for. Because of the language barrier, it is less easy for authorities in the Walloon part of the country to work together with the Netherlands than for authorities in the Flemish part. They will then try to appeal to the Belgian Federal Prosecutor's Office which can play a facilitating and coordinating role.

It is obvious that both sides can achieve more with people who have a certain sense for each other's cultural peculiarities and know how to deal with them. A rule of thumb is that the more frequent the cooperation in criminal investigations, the better the mutual understanding and the smoother the cooperation will be. This is confirmed by the experience gathered and lessons learnt by the EFL teams.

Another factor that plays a role is the singularity that requests for mutual assistance shall in principle be carried out in the manner requested by the requesting party. But such party often

has no idea of the possibilities and impossibilities facing the requested country. For example, it can be quite common for houses to be searched on the basis of very vague indications in the requesting country, whereas the requested country is very reluctant to do so. This might easily be met with a lack of understanding if the request is not carried out immediately and the requested party keeps 'nagging' for additional substantiation. It is also possible that the police department which has to perform the requested action might - regardless of whether this is justified - see little or no use in what is being requested when compared to the effort required.

The Netherlands once asked the Belgian police for a large number of files for further analysis on a cash-in-transit robbery case. The Belgian police officials were afraid that this would be a lot of work for them and actually thought that going through the old files would not yield any new or useful information. Instead of saying this outright, i.e. 'the Dutch way', they kept their criticism to themselves and did not answer phone calls or emails. The Dutch police personnel who then came to Brussels were told that - alas - the people with whom they had an appointment 'were absent and couldn't be found', or had suddenly decided to take a holiday, leaving them no option but to return to the Netherlands none the wiser.

This problem was caused by a difference of opinion as to what was the **best investigation method**. The Belgians mainly focussed on predicting where the next robbery would take place and then wanted to catch the perpetrators in the act. The Dutch, who actually have less experience with this type of crime, wanted to look for patterns in similar cases. Both of these approaches had something to be said for them and eventually this approach led to a robbery that happened in the Netherlands in the past being solved as well.

Of course, these difficulties can be overcome by consulting each other in advance, before submitting a request for mutual assistance. But then people will still have to be willing and inclined to cooperate and compromise, otherwise machismo might still throw a spanner in the works.

Belgian police officers consider the Dutch to be very procedure-focussed. This also has to do with the role of the public prosecutor handling the case ('*zaakofficier van justitie*') and who, in the Netherlands, leads the investigation and attends all meetings. This prosecutor constantly guards the limits of the criminal investigation and will sometimes introduce additional requirements. The Belgian authorities have to prepare a request for mutual assistance for every investigative action they would like the Dutch authorities to perform on their behalf. The Belgians see this as a waste of valuable time. The Dutch on the other hand are used to having to account for all investigative actions in writing, as a result of the infamous IRT affair of the early 1990s. Furthermore, people in Belgium are under the impression that Dutch privacy legislation is much stricter than its Belgian counterpart due to which certain information cannot be exchanged at all. Since there is uniform European legislation in this area, these differences might be expected to become less significant, but we also know that this legislation is still open to a wide range of interpretations in practice, due to which the differences continue to exist.

#### **4. Towards smart cross-border cooperation**

A lot of studies have been done into cooperation in Belgian-Dutch border region in general and particularly in the field of justice and security. Frequently mentioned impeding factors are: language and cultural differences and different knowledge and information positions, and

legal, administrative and institutional differences, as well as differences in economic position, the lack of the proper infrastructure, and psychological or mental factors.

At the same time, it should be noted that the similarities between Belgium and the Netherlands exceed the differences by far, and that the differences that do exist create some obstacles, but that these obstacles can definitely be overcome. Based on this, cross-border cooperation might be expected to have reached a high level, but time and time again it is concluded that this is not the case. We therefore cannot help feeling that the differences are also often used as an excuse to not have to cooperate. This is because cooperation often places considerable demands on individuals and organisations.

An important finding that comes in many studies, and one that has been confirmed by the EFL experiences, is that the quality of the cooperation is determined to a great extent by the **committed efforts and enthusiasm** of a few professionals in the police forces and the judiciary, and by the **personal relationships** between these professionals on both sides of the border. In a general sense, it has repeatedly been emphasized that this helps make the cooperation go much more smoothly – the ‘short lines’ – compared to when things have to be arranged via the official channels. This was also one of the ideas behind bringing professionals from the police and the judiciary, and other professionals from both sides, together in a single EFL team.

Research has shown that the existing differences in legal, administrative, institutional and cultural backgrounds, which have also been experienced by the EFL teams, can be – and actually are – bridged by **‘bottom up’ cross-border cooperation**. The importance that individual professionals attach to this cooperation because they experience mutual dependencies, as well as the potential ‘gains’ that they recognize as a result of cross-border relations and building and/or reinforcing such relations, is crucial in this regard. This is something we also recognize from other areas. Solutions for dealing with differences arise during the cooperation process, causing this process to get an experimental and pragmatic character. Individual professionals get to understand each other and their organizations better over time. Cooperation with other, new partners helps to further broaden their perspectives. Approaching cooperation from the perspective of ‘the government’ or ‘the state’ as a whole is counterproductive. A much better option is to focus on concrete issues and develop an area-specific, region-specific approach for them.

At the same time, cooperation is not a mere matter of weighing the costs against the benefits, something which might be carried out automatically by professionals on both sides of the border. The **interdependencies** and the **advantages of cooperation** as they are actually **experienced** are the essence here and that is something that can be influenced by ‘champions’ of cross-border cooperation, the national government (such as the Departments of the Interior and of Justice and Security), and by important internal and external events (the current COVID-19 pandemic is a good example of this). **Trust** also plays an important role here. Successful cooperation is only possible if the professionals in the police forces and the judiciary and other professionals are convinced that their colleagues on the other side of the border are truly willing to work together, and only if they are convinced of their commitment to deliver when it counts. With the EFL teams we saw that – especially initially – the cooperation was frustrated by previous experiences of the Netherlands or Belgium failing to deliver in the end.

However, cooperation primarily based on personal contacts is also vulnerable. For instance, it is possible that there have been complaints about individual officials being prepared to



cooperate instantaneously at one moment, especially if they stand to gain something from this themselves, who will suddenly react much more slowly or not at all if the 'extra work' from the other country happens to be less convenient for them at the moment the request is made. Furthermore, there have been major and minor adjustments of the investigation organizations in both country in recent decades, placing people in other positions as a result of which cross-border contacts had to be re-built. The cooperation for the purpose of the EFL teams has demonstrated this as well: if commitment and enthusiasm falter, so will the cooperation.

Particularly on the Dutch side of the border, it is quite common for police and public prosecution personnel to be given different positions quite frequently, sometimes every couple of years. More in general, the Dutch police strongly advocates the general use of investigative staff. As a consequence, the possibilities to develop specialist knowledge are much more limited than in Belgium, due to which it is not always easy to quickly find contacts who can answer questions about a specific issue.

For decades now, Belgium and the Netherlands have been trying hard to make their cooperation more structural and more durable, and less reliant on specific people. We are listing **some developments concerning structural cooperation** below, in chronological order. There are specific organisational facilities in the border region, such as the BES referred to above.

Secondly, **joint teams** are used. A first example of this are the Joint Hit Teams which carried out checks on drug runners and drug premises. This started out as a joint team of the Netherlands and France. Belgium did not participate until 2005 and even then it contributed very few staff. The Netherlands ordered the two JHTs to be discontinued in 2017, actually without informing the other countries in advance or asking them how they felt about this.

Joint Investigation Teams have incidentally handled individual investigations in the border region for several years. In the late 1990s, teams were already formed based on framework requests for mutual assistance, which would now qualify as Joint Investigation Teams (JIT). Experience has also been gained with JITs, but this form of cooperation has been found to be hard to bring about in practice. Police managers consider entering into a JIT agreement as surrendering control of their people, since arrangements as to the deployment of their personnel are formalized in those JIT agreements. Working from a single location is not perceived as being practical either. A '**JIT light**' is preferred then which consists of the team members continuing to work from their own stations and using the agreement to be able to freely exchange information. This was actually the arrangement chosen for the purpose of the EFL.

A comparable arrangement is the '**mirror investigation**' where teams of investigators conduct their own investigations in two countries and meet up at regular intervals to discuss and coordinate activities. Such an investigation might, for example, concern a group of suppliers of chemicals in Belgium and producers of synthetic drugs in the Netherlands who do business with each other. As the relationship between the criminal investigations increases, there is still a possibility to opt for a framework request for mutual assistance rather than working with a JIT and arranging the exchange of personnel or equipment through such a framework request.

Given the constant 'supply' of cross-border crime in the border region, we suggested setting up a joint investigation team that would be working together for a longer period before

(Spapens en Fijnaut, 2005). However this turned out to be difficult process. The Euregional Investigation Team (EOT) was actually established in the Maas-Rhine Euregion as early as in 2004, but this consisted entirely of Dutch people. Belgium and Germany refused to make personnel available. An important reason was that they felt that the Netherlands itself caused the most cross-border crime, and specifically drug-related crime, and was also the source of property crime such as cargo and vehicle theft, and was taking far too little action against this. The other countries mainly saw the EOT as an attempt to inappropriately get Belgian (and German) personnel solve a 'Dutch' problem.

### *Challenges in cooperation processes*

This has brought us to one of the major challenges in cooperation processes involving diverse parties: arriving at a **problem definition that is acceptable to all parties**, which will form the basis for the cooperation, and in respect of which goals will be formulated and effects measured.

It has almost become a cliché to assume that complex social problems, such as organized crime, can no longer be solved by a single government body. They require the collective efforts of multiple public and private organizations, at various administrative levels, ranging from the local to the global level. In order to achieve goals for society at large or create value that serves the public interest, government bodies should cooperate with other authorities. Although still being autonomous, these cooperative efforts cause them to become dependent on other organizations which have their own interests and ideas.

Many publications have been written about the various forms in which such collective efforts can be given substance///shape such as 'collaborative governance', interactive governance, network management, co-production and public-private partnerships. Much has been written also about the possible advantages of cross-border cooperation, including achieving positive 'border effects'.

In practice, the advantages of cooperation are often not achieved since working as partners leads to new administrative challenges. In previous publications, we identified the **three main categories of challenges** regarding cooperation. This was based on the literature on public administration and governance: challenges in the areas of problem solving, cooperation processes, and accountability. The first category of challenges includes the technically and politically hard work of defining the problem to be handled by the cooperating partners, developing a joint response, and designing measures of success. The second category concerns reconciling different perspectives and interests and building trust. The last category of challenges consists of tensions between new channels of accountability, also in respect of other organisations and society at large, and old channels of accountability.

Some empirical research - but not a lot - has been conducted into how these collaborative governance challenges manifest in practice as regards multidisciplinary teams. For example, how do team members navigate the tensions that come with participating in a cooperation between several authorities (or countries), whilst also representing the interests and perspectives of their 'own' organizations (or even countries), and still managing to keep one foot in their familiar bureaucratic way of working? How do they handle seemingly conflicting obligations and how do they develop effective practices that may prevent collaborative paralysis?

### *Elements of effective multidisciplinary cooperation*

The Field Lab teams we studied in previous publications, as well as the EFL teams, varied in their responses to the challenges described above. But a clear pattern did emerge: much more progress was achieved if participants were able to assume an ‘and / and’ attitude (instead of an ‘or / or’) attitude. They did not get stuck in the analysis, but instead chose an intervention point and moved forward. It is not entirely clear why some of the collaborations managed to change their way of thinking whereas others were bogged down. This willingness to dive in at the deep end seemed to be facilitated by certain elements in the cooperation process. Something was inherently different in how the team process in some of these cooperation efforts was shaped.

Literature distinguishes between ‘teams’ and ‘teaming’. The first term refers to structures, borders, boundaries and routines that hold certain people together and that are the most appropriate for long policy life cycles and a lot of routine work that people understand well. These structures have usually been developed carefully and will last for some time. The latter term, teaming, refers to working together ‘on the fly’ by means of several fluid, flexible configurations, in line with today's complex social problems.

Organizations that work well together gain an advantage from this cooperation; they make effective use of their members’ powers to solve problems in order to develop, design and test innovative solutions. This advantage can be further enhanced through cross-border cooperation. In this regard, the Gaia EFL team has referred to copying each other's best practices. ‘Our major success in this regard is the hotline which was set up in Belgium where people can anonymously report any suspicious drug-related activities. This was copied from the Dutch ‘Meldpunt M’ (formerly ‘Meld Misdaad Anoniem’).’

More specifically, the teaming process comprises two elements: the ‘hardware’ and the ‘software’. The hardware of teaming includes selecting a challenge (a challenge as regards learning, performing should not be a challenge), dividing tasks based on interdependencies and lightly structuring temporary ‘boundaries’. The software of teaming includes, without being exhaustive, defining what is at stake for the team (an urgent goal), building psychological safety (e.g. in order to speak up) and adopting a mindset of problem solving, experimenting, and trial and error. The EFL teams confirmed the importance of having an urgent goal, e.g. fighting drug dumping, which is shared on both sides of the border.

So, teaming includes basic skills, such as building trust, frequently asking questions and listening carefully, and remedying conflicts at an early stage. However, often there is not enough time to get to know each other and practice working together, and this is specifically also true where cross-border cooperation is concerned. The EFL teams also recognize that an important team skill is the ability to quickly become acquainted with each other's perspectives and ideas in order to be able to effectively act, reflect, analyse, learn and work together.

Effective cross-border cooperation is not easy; it not only requires people to learn new skills, but they should also have the right mindset to be able to flexibly respond to changing circumstances. A short survey presented to participants in the EFL 2018-2019 asked them what their expectations were regarding cross-border cooperation (see Appendix 1). Most participants replied that they initially *thought* that this would be harder than cooperation within their own country, but that in practice they *found out* it was not harder, and sometimes

it was even found to be easier. **Some success factors** mentioned, which are in line with what has been described in this memorandum, were:

- Short regional lines, in spite of the national borders
- Shared motivation to catch criminals, in the Netherlands and Belgium
- The professional headaches regarding certain problems associated with organized crime
- The perceived need to avoid 'waterbed' effects
- The greater diversity of partners
- The – related - greater wealth of problem definitions and possible solutions
- Better understanding of each other's interests and perspectives

More research, and particularly more empirical research into the preconditions for effective cross-border cooperation should be done. Such research might cover the EFL both as a research method and a management practice. This might focus on the extent to which interventions as part of a FL can help the participating teams to part with the 'of-of' line of thought and one-dimensional solutions, and on how social cross-border effects can be achieved.

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## Appendix 1: Survey data

Verwachtingen rondom grensoverschrijdende samenwerking in de Euregio	Welke obstakels voor grensoverschrijdende samenwerking in de Euregio?	Welke succesfactoren voor grensoverschrijdende samenwerking in de Euregio?	Ervaringen met grensoverschrijdende samenwerking in de Euregio	Belangrijkste persoonlijke les tav grensoverschrijdende samenwerking
Moeilijker dan binnen eigen landsgrenzen		Onderling overleg	Nog niet goed te zeggen	Zoek elkaars meerwaarde
	Andere wetgeving. Andere cultuur	Enthousiasme	Nog niet goed te zeggen	Cultuurverrijking
	Wetgeving, Meldsysteem. Notarspraktijk.		Nog niet goed te zeggen	Persoonlijke samenwerking belangrijkste.
Moeilijker dan binnen eigen landsgrenzen	Verschillende culturen, organisaties, wetgeving, enz.	Hoger leervermogen	Moeilijker dan binnen eigen landsgrenzen	Ook in eigen werk eerder over grens kijken
Moeilijker dan binnen eigen landsgrenzen	Geen capaciteit	grensoverschrijdende samenwerking biedt meer mogelijkheden	Niet moeilijker/niet gemakkelijker	Openheid
Moeilijker dan binnen eigen landsgrenzen	afwijkende wet- en regelgeving	gezamenlijk belang	Niet moeilijker/niet gemakkelijker	het zijn net gewone mensen
Moeilijker dan binnen eigen landsgrenzen	Wetgeving, taal, bevoegdheden, structuur	Nieuwe partners, gemotiveerde mensen samen aan tafel	Niet moeilijker/niet gemakkelijker	Luisteren naar andere ideeën en opvattingen
Moeilijker dan binnen eigen landsgrenzen	Wetgeving	Dezelfde problematiek	Moeilijker dan binnen eigen landsgrenzen	Ander perspectief
	Andere wetgeving cq regelgeving	Korte lijnen door samenkomen	Niet moeilijker/niet gemakkelijker	Wie je kent meer dan wat je kent
	Capaciteitsgebrek	Meer kansen tot diversiteit aan interventies	Nog niet goed te zeggen	Gewoon doen!
	Verschil in wetgeving	Breder perspectief		Overwinnersmentaliteit
Moeilijker dan binnen eigen landsgrenzen	2 verschillende organisaties, overheden, politiek. Dubbel werk	Gemeenschappelijk probleem	Niet moeilijker/niet gemakkelijker	Zelfde problemen
Moeilijker dan binnen eigen landsgrenzen	Andere instrumentaria beschikbaar	Een netwerk krijgen en beter begrip voor het systeem van de ander	Niet moeilijker/niet gemakkelijker	Persoonlijk contact van belang
Moeilijker dan binnen eigen landsgrenzen	Wetgeving cultuur andere prioriteiten	Bereidwilligheid openheid in de hulpstand	Niet moeilijker/niet gemakkelijker	Luisteren naar de andere is geheim van succes
Moeilijker dan binnen eigen landsgrenzen	Wetgeving / Lange communicatielijnen	Korte communicatielijnen	Nog niet goed te zeggen	Durf!
Geen specifieke verwachting	Verschillende wet- en regelgeving	Diverse invalshoeken	Moeilijker dan binnen eigen landsgrenzen	Enthousiasme om problematiek gezamenlijk aan te pakken
Moeilijker dan binnen eigen landsgrenzen		Beslag criminele vermogens ook buiten eigen land	Moeilijker dan binnen eigen landsgrenzen	
Moeilijker dan binnen eigen landsgrenzen	Verschillen in regelgeving	Collegiale samenwerking	Niet moeilijker/niet gemakkelijker	
	Andere regelgeving	Andere regelgeving	Niet moeilijker/niet gemakkelijker	
Moeilijker dan binnen eigen landsgrenzen	wetgeving, andere aanpak	uitwisselen ervaring	Niet moeilijker/niet gemakkelijker	
Moeilijker dan binnen eigen landsgrenzen	Wetgeving - andere prioriteiten - andere beroepsorganisaties	Contacten gelegd - inzicht in hun werkingsmethode		
Moeilijker dan binnen eigen landsgrenzen	Verschillend juridisch kader			

