

Study to support the preparation of an impact assessment on EU policy initiatives facilitating cross-border law enforcement cooperation

Final Report

Annex VI

Analysis of the Open Public Consultation

October 2021

This report has been prepared by EY and RAND Europe for the European Commission, Directorate-General for Migration and Home Affairs.

This study was carried out on behalf of the European Commission by



Main authors of the study

EY

- Katarina Bartz
- Nicoletta Colombo
- Ilia Gaglio
- Alana Gyzas
- Florian Linz

RAND Europe

- Michaela Bruckmayer
- Emma Disley

European Commission

Directorate-General for Migration and Home Affairs

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1 INTRODUCTION

This Annex presents the analysis of the Open Public Consultation (OPC) in the context of the *Study to support the preparation of an impact assessment on the European Union (EU) policy initiatives facilitating cross-border law enforcement cooperation* carried out by EY and RAND Europe.

A glossary and list of abbreviations is provided at the start of the main body of the report.

In the context of the Study, an OPC in all EU official languages concerning current problems and the future of cross-border law enforcement cooperation was carried out via the Commission's tool EUSurvey. The OPC ran between 19 April and 14 June 2021. Overall, 20 responses were received from stakeholders in 12 countries, including 10 Member States (AT, BE, CZ, DE, EL, ES, HU, IT, LU and PT), one Schengen Associate Country (CH) and one third country (US).

2 BACKGROUND INFORMATION

Regarding the **profile of the respondents**, nine answered the survey as individuals (eight EU citizens and one non-EU citizen), while the remaining 11 respondents answered on behalf of an organisation (two public authorities, one business association, one trade union, two NGOs, one academic/research institution, and four "other"). The size of the concerned organisations was the following: five large (250 or more employees), three medium (50 to 249 employees), two small (10 to 49 employees) and one micro (1 to 9 employees) organisation. Of these organisations, five are included in the Transparency Register.¹

3 PART I - QUESTIONS CONCERNING CURRENT PROBLEMS

3.1 The threat landscape

Considering the evolution of the **crime situation** in Europe, the majority of respondents agreed that the number of crimes increased in the last 5-10 years in all the main crime areas,² with the highest rates for cybercrime, drugs and trafficking in human beings. Similarly, the number is expected to further increase in the next 5-10 years (apart from trade of illicit tobacco).³ Moreover, all these crime areas are considered to have a cross-border dimension and require EU-wide cooperation of law enforcement authorities to be properly addressed,⁴ especially cybercrime, drugs, terrorism, financial crimes and trafficking in human beings.

From the point of view of **public order and safety**, respondents to the public consultation stated that the situation in the past-5-10 years did not deteriorate.⁵ Nevertheless, similar to the

¹ The transparency register has been set up to answer core questions, such as what interests are being pursued, by whom and with what budgets. The system is operated jointly by the European Parliament and the European Commission. Available at: [link](#).

² Percentage of respondents stating that the number of crimes has slightly or significantly increased: cybercrime 93% (n=13), drugs 93% (n=13), trafficking in human beings 85% (n=11), organised property crime 75% (n=9), environmental crimes 62% (n=8), trafficking of firearms 62% (n=8), illicit tobacco trade 58% (n=7), financial crimes 54% (n=7) and terrorism 54% (n=7).

³ Percentage of respondents stating that the number of crimes will slightly or significantly increase: cybercrime 93% (n=14), financial crimes 71% (n=10), trafficking of firearms 71% (n=10), drugs 67% (n=10), terrorism 67% (n=10), organised property crime 65% (n=9), trafficking in human beings 64% (n=9), environmental crimes 57% (n=8) and illicit tobacco trade 43% (n=6).

⁴ Percentage of respondents stating that the following crime areas have a cross-border dimension to a high or very high extent: cybercrime 100% (n=15), drugs 100% (n=15), terrorism 100% (n=15), financial crimes 93% (n=14), trafficking in human beings 93% (n=14), trafficking of firearms 79% (n=11) organised property crime 77% (n=10), illicit tobacco trade 67% (n=10) and environmental crimes 53% (n=8).

⁵ Percentage of respondents stating that the security situation in the following areas did not deteriorate or did it to a small or to a moderate extent: cross-border commuting 85% (n=11), international sport/music/cultural events 69% (n=9), and tourism 57% (n=8).

responses for the crime areas above, most respondents agreed that all the key areas under investigation require EU-wide law enforcement cooperation.⁶

3.2 Cross-border law enforcement cooperation to fight transnational crimes

Around half of the respondents to the consultation considered themselves to have an extensive or even in-depth knowledge of the EU framework for cross-border law enforcement cooperation (56%, n=9). The position of the respondents on the effectiveness of the current **cross-border law enforcement cooperation mechanisms between EU Member States** to fight transnational crimes overall is fairly positive, as 43% (n=6), consider it high, 43% (n=6) moderate and 14% (n=2) small. Similarly, taking into consideration the situation in the individual crime areas, cooperation mechanisms are considered effective in most areas to a moderate extent,⁷ with the exception of cybercrime, for which respondents are divided (36%, n=5 small extent, 21%, n=3 moderate, 29%, n=4 high, and 14%, n=2 very high) and drugs (50%, n=7 responding high or very high extent).

3.3 Cross-border law enforcement cooperation to ensure public order

Regarding **public order**, half of the respondents deems cooperation mechanisms overall effective to a high or very high extent in protecting the mobility of EU citizens and safeguarding public order (50%, n=7). More specifically, a high level of effectiveness was noted in particular for international sport/music/cultural events, with 57% (n=8) of the respondents indicating that it is effective to a high or very high extent. An overall relatively high proportion of the respondents were also of the view that cooperation is rather effective in relation to cross-border commuting, with 50% (n=7) stating that this is achieved to a moderate extent and 43% (n=6) to a high extent. The opinion is more mixed for natural disasters, pandemics and tourism.⁸

3.4 Barriers to cross-border law enforcement cooperation

According to the respondents, the **main issues affecting cross-border law enforcement cooperation** include that the relevant EU legal framework is not consolidated (i.e. it is spread across several legislative instruments), and that it is not consistently implemented across the Member States (i.e. the Member States implement it differently), with 67% (n=10) and 64% (n=9) of respondents respectively stating that these issues are problematic to a high or very high extent. Considering the safeguards to protect fundamental rights of persons subject to measures of cross-border cooperation, half of the respondents deems them sufficient to a high or very high extent (50%, n=8), while the other 50% (n=8) stated that they are sufficient only to a small or to a moderate extent.

3.5 Investigative tools to tackle cross-border crimes

Available **investigative tools** are considered to be effective in tackling and combating cross-border crimes,⁹ in particular Joint Police Offices and the interception of communication, although more trust between the Member States was stated to be needed to a high or very high extent by 67% (n=10) of the respondents and higher technical and financial resources at the national

⁶ Percentage of respondents stating that the following areas require cross-border law enforcement cooperation to a high or very high extent: pandemics 87% (n=13), natural disasters 80% (n=12), cross-border commuting 67% (n=10), tourism 67% (n=10), safeguard of national public order and safety 53% (n=8) and international sport/music/cultural events 47% (n=7).

⁷ Percentage of respondents stating that cooperation mechanisms are effective to a moderate extent: financial crimes 64% (n=9), trafficking of firearms 57% (n=8), organised property crime 50% (n=7), environmental crimes 46% (n=6), illicit tobacco trade 46% (n=6), terrorism 46% (n=6) and trafficking in human beings 42% (n=6).

⁸ Natural disasters: 8% (n=1) not at all, 31% (n=4) small extent, 31% (n=4) moderate extent and 31% (n=4) high extent; pandemics: 8% (n=1) not at all, 27% (n=4) small extent, 38% (n=5) moderate extent and 23% (n=3) high extent; tourism: 29% (n=4) small extent, 29% (n=4) moderate extent and 43% (n=6) high extent.

⁹ Percentage of respondents stating the tools are effective to a high or very high extent: Joint Police Offices 71% (n=10), interception of communication 69% (n=9), Special Investigation Units 64% (n=9), covert investigations 62% (n=8), Joint Patrols 57% (n=8), controlled deliveries 54% (n=7), informants 54% (n=7), hot pursuit 50% (n=7), witness protection 50% (n=7) and cross-border surveillance 46% (n=6).

level to a high or very high extent by 64% (n=9), and are thus perceived to have the potential to enhance their use and overall effectiveness.

3.6 Investigative tools to tackle serious and organised crime at the national level

At **the national level**, **investigative tools** are considered to be less effective or even not effective at all,¹⁰ with the exception of the interception of communication. Thus, the large majority of respondents sees the need for new tools to investigate organised crime groups in light of recent technological advancements/new technologies and the ability of criminals to exploit them (82%, n=9).

4 PART II - NEED FOR EU ACTION AND POSSIBLE POLICY OPTIONS

According to the majority of respondents, there is a **need for EU intervention** to improve cross-border law enforcement cooperation through the adoption of legislative and/or non-legislative measures in the fight against serious and organised crime (86%; n=12), terrorism (79%, n=10) and other transnational crimes (71%, n=11), while such need is not perceived to be as strong for ensuring public order against less serious offences (31%, n=4).

Among those considering EU intervention to be necessary, the focus of such intervention should be the revision and update of existing legislative measures according to 16 respondents, and also on non-legislative measures (e.g. guidelines, recommendations, good practices), as noted by 11 respondents.

The answers to the more specific questions concerning **possible measures likely to enhance intra-EU law enforcement cooperation** show a similar picture. Those measures which are considered to have the potential to contribute to improving cross-border cooperation to a larger (high or very high) extent are the modernisation of the EU legal framework for law enforcement cooperation to cope with new challenges posed by criminals (67%, n=10), the setting up of new operational initiatives for law enforcement cooperation (64%, n=7) and the simplification and streamlining of the EU legal framework for law enforcement cooperation (53%, n=8). Comparatively less relevant would be the creation of a single set of rules for all law enforcement authorities (police, customs, etc.) (47%, n=7), the definition of EU common rules for the use of investigative tools to combat serious and organised crime/terrorism (43%, n=6) or the design of non-binding documents (new recommendations, guidelines and good practices) for law enforcement cooperation (33%, n=5). The position of the respondents on the extent to which the adoption of measures granting additional powers to law enforcement authorities would require additional safeguards to protect individuals' fundamental rights is mixed.¹¹

¹⁰ Percentage of respondents stating the tools are not effective at all or to a small or moderate extent: informants 71% (n=10), controlled deliveries 69% (n=9), hot pursuit 69% (n=9), witness protection 64% (n=9), covert investigations 54% (n=7), surveillance 50% (n=7) and interception of communication 42% (n=6).

¹¹ 13% (n=2) respondents stating to a very high extent, 20% (n=3) to a high extent, 20% (n=3) to a moderate extent, 33% (n=5) to a small extent, and 13% (n=2) not at all.

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