

# International Criminal Cooperation in the Shadow of the Coronavirus Pandemic<sup>1</sup>

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*European cooperation in criminal matters is a priority in all EU Member States, whether in the detection, investigation or judicial fields. In recent years, I have been carrying out research in the field of organised crime, during which I have realised that in investigations involving two or more Member States, it is almost impossible to achieve the desired objective without criminal cooperation. Then, in the spring of 2020, investigative authorities had to deal with a variable such as the coronavirus pandemic, one of the consequences of which was that personal contact was minimised. However, one of the most important factors for successful and effective police cooperation are personal contacts, which can be achieved through training, meetings or even personal exchanges of views during the course of a criminal case.*

*However, the activity of organised crime groups is ongoing, although it is fair to say that they favour cyberspace, but they have not given much thought to overcoming the obstacles that arose during the coronavirus pandemic. They have emerged in e-commerce, online marketplaces, but at the same time, they have expanded their existing network of recruiters and started to think globally. Their distribution activities and logistics have also changed. Typically, the online space can be observed for criminal activities such as drug trafficking, arms trafficking or fraud.*

*The pandemic has also reduced the effectiveness of international cooperation on crime. In the research for this study, I am looking for answers to the question: what tools and methods of cooperation were available to the investigating authorities in the period before the pandemic and could they be further expanded? I will then contrast this period with the escalated situation during the pandemic. My research questions will include how and to what extent the coronavirus pandemic affected international criminal cooperation, in particular the use of Joint Investigation Teams. I also shed light on the question: what are the opportunities and obstacles to the use of available tools for criminal cooperation in the case of crimes committed in the online space?*

*The threat is growing, it has more and more international aspects, so I think there is a need for deeper cooperation, not only between law enforcement agencies,*

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*but also involving the private sector and civil society. It is important to make the citizens of all countries aware of the threats they face.*

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## Introduction

In the context of international cooperation on crime, countries have realised that one of the essential elements in the fight against organised crime is to work together in a cooperative way. This has led to the creation of European Union agencies, such as Europol, which bring together the Member States of the European Union. All this was preceded by the emergence of the issue of globalisation at the end of the 20<sup>th</sup> century, as János Sallai points out in one of his studies, “the Earth has shrunk into a global village”.<sup>3</sup> This period was followed by the idea of a Europe without borders in 1985. Border controls were physically abolished with the accession to the Schengen area, creating an area without internal border controls.<sup>4</sup> Not only did this allow the free movement of capital and labour, but it also allowed the free movement of people, one of the consequences of which was that crime was transformed, no longer physically borderless. In short, these factors, among others, have led to the need for more effective joint action by the countries involved in organised crime.

In my research into the field of organised crime, I have realised that there are several factors that influence its development and that it has several consequences. International cooperation in criminal matters includes instruments that can make it possible to bring all members of a criminal organisation to justice. I approach my research from the crime detection and law enforcement side, from the perspective of investigative authorities, i.e. international police cooperation, and prosecution, i.e. international judicial cooperation, with a specific focus on European criminal cooperation. However, police cooperation and judicial cooperation are not the same thing, there are similarities and differences, but they both fall under the concept of international criminal cooperation. Both areas of cooperation will be touched upon in this study.

The paper will synthesise the international criminal cooperation tools used by investigating authorities and prosecutors, in the period before and during the pandemic, and will examine whether these tools can be further expanded. The research question is whether and to what extent has the coronavirus pandemic influenced international police and judicial cooperation and, if so, how? I will limit my research to the Joint Investigation Team as an available tool that offers an excellent opportunity for cooperation between several European Union Member States.

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<sup>3</sup> SALLAI 2015: 135.

<sup>4</sup> European Commission s. a.: 4.

I will also examine whether the pandemic has had an observable impact on the work of the Joint Investigation Team. Since the impact of the coronavirus has shifted crime to the online space, I have also asked the research question on cybercrime: what tools are available for detection that enable international criminal cooperation and are there any obstacles to cooperation? The study was helped by the spontaneous interviews conducted during the research (looking at both prosecutors and police officers perspectives), through which I plan to conduct more in-depth research on the topic in the future. In order to understand the basics of international cooperation in criminal matters, I believe it is necessary to take a historical perspective, including the distant past of international cooperation in the fight against crime.

## Review of international cooperation in criminal matters

Throughout history, organised crime networks have adapted to the times, and police and judicial authorities of all ages have responded. There has been much research, both at home and abroad, into the roots of international criminal cooperation, but for the purposes of this paper I think it is important to look back to the early days.

The first signs of international crime can be traced back to the industrial revolution, when the creation of industrial plants and the need to earn a better living led to people moving to cities. The first law enforcement journal of 1869 reported the arrest in Vienna of a Romanian man who had seduced several young girls to satisfy his lusts, which already shows the rise of international crime in Europe at that time.<sup>5</sup> With the emergence of trafficking in girls, several bilateral agreements were concluded between neighbouring countries in the late 19<sup>th</sup> century and early 20<sup>th</sup> century, followed by an international agreement signed by several countries in Europe, including Hungary.<sup>6</sup> It was recognised that closer work and coordination between countries would help in the fight against crime. In 1911, the journal *Közbiztonság* [Public Security], a journal of police theory, published the term internationally organised crime, which was the most modern type of international criminal. “The public danger of this international organization is manifested not merely in the large extent of its area of operation, but chiefly in the fact that the perpetrator and victim are mostly from different countries. This is what makes the success of the investigation so difficult.”<sup>7</sup> Subsequently, in 1911, at the German Police Conference in 1912, principles were laid down for seeking an international convention to allow police authorities to communicate directly with each other for apprehending individuals suspected of important police matters and other serious crimes. The first International Criminal Police Congress took place in Monaco in April 1914, and was attended by delegates from Hungary. One of the issues discussed at the Congress was the establishment of an international bureau for the registration of criminals.<sup>8</sup> It was at this congress, that the idea of the future Interpol

<sup>5</sup> *Közbiztonság*, 22 August 1869. 1.

<sup>6</sup> SALLAI-BORSZÉKI 2022: 985.

<sup>7</sup> *Közbiztonság*, 23 April 1911. no. 17. 222.

<sup>8</sup> DORNING 1937.

was born, with 300 advisers from 24 countries attending. However, the First World War put an end to further action.<sup>9</sup>

The 19<sup>th</sup> century also saw the emergence of extradition, mutual legal assistance and the transfer of criminal proceedings, but it was not until after the Second World War that we can speak of real international cooperation in criminal matters. Bilateral treaties continued to be in force and then efforts were made to institutionalise criminal cooperation. It is interesting to note that criminal cooperation is the youngest area in the history of European integration. One of the results of this institutionalisation was the Trevi Group, which was set up in 1976 to combat terrorism, to promote closer police cooperation and to combat drug trafficking.

Also relevant to this study are the Schengen Agreement of 1985 and the Convention Implementing the Schengen Agreement, which entered into force in 1995. It will be explained later that cross-border operations are still being carried out under the Schengen Agreement, so that the provisions on police cooperation contained therein are still in force today. The landmark date following the Schengen Agreement was the entry into force of the Maastricht Treaty on 1 November 1993, which led to the creation of the European Union. Within the European Union, the Treaty of Amsterdam, which amended the Maastricht Treaty, and the Treaty of Lisbon, which entered into force on 1 December 2009, extended the role of national parliaments and the European Parliament. It has become necessary to harmonise the laws of the countries within the European Union and to unify national legal systems. Finally, institutions were created at European Union level to facilitate, among other things, cooperation in criminal matters. Noteworthy are the creation of OLAF (European Anti-Fraud Office) and Eurojust.

In Hungary's case, the possibility of criminal cooperation was for a long time limited to extradition, but this changed with the country's accession to the European Union.<sup>10</sup>

## **Forms of international criminal cooperation and law enforcement agencies**

The study presents possible platforms that can be used to fight serious and organised crime. In particular, the cooperation tools used by investigating authorities in the detection phase will be presented. In order to understand the forms of international cooperation in criminal matters, it is essential to understand the legal basis and the legal background, and to note that currently international cooperation in criminal matters is characterised by horizontal cooperation, which means that states assist each other in proceedings that involve an international element.

One of the classic forms of criminal cooperation is extradition, which is still relevant today in relation to third countries. The principle of mutual recognition has also been transposed into criminal cooperation, the idea of which was first mooted in 1998, based on the recognition by the countries of the European Union of the enforceability and

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<sup>9</sup> SALLAI-BORSZÉKI 2022: 988.

<sup>10</sup> PÁHI 2019: 59–60.

validity of each other's acts.<sup>11</sup> This is also linked to the Tampere (1999–2004), The Hague (2004–2009) and Stockholm (2010–2014) Programmes, which also focused on the fight against organised crime and terrorism within the European Union. EMPACT (European Multidisciplinary Platform against Criminal Threats) is linked to international cooperation in criminal matters and has become a centralised process of cooperation as defined by the above programmes. The EMPACT policy cycle develops pro-active actions to achieve pre-defined objectives, coordinates action against serious and organised crime, takes into account the involvement of third countries in crime developments, and thus cooperates with bodies outside the European Union.<sup>12</sup> For example, in the 2014–2017 policy cycle, priority crimes included reducing heroin and cocaine trafficking, reducing cybercrime, combating trafficking in human beings.<sup>13</sup> The police and judicial authorities of the Member States also have an important role to play in the fight against serious and organised crime and in achieving the objectives set, which common police and judicial cooperation between Member States can make even more effective.

As regards the legal instruments involving international cooperation in criminal matters, there are the instruments of non-judicial cooperation, the rules on the validity of foreign convictions and international mutual legal assistance in criminal matters. The legal instruments of non-judicial assistance type cooperation can be found in Act LIV of 2002 on the International Cooperation of Law Enforcement Agencies.<sup>14</sup> Accordingly, the forms of cooperation may include:

- direct exchange of information
- exchange of information with a law enforcement body of a Member State of the European Union
- the establishment of a Joint Investigation Team
- the use of a person cooperating with a law enforcement agency
- the use of an undercover agent
- cross-border surveillance
- hot pursuit
- the use of a liaison officer
- covert intelligence gathering on the basis of international cooperation
- cooperation with the special intervention unit of a Member State of the European Union<sup>15</sup>

The rules on the validity of foreign convictions are not relevant to the research, but international mutual legal assistance is of particular importance for organised crime, even when the aim is to reach law enforcement authorities in third countries. In response to inter-state needs, a uniform legal framework for international mutual legal assistance in criminal matters has been developed at the legislative level, which is enshrined in Act XXXVIII of 1996 on International Mutual Legal Assistance in Criminal Matters.

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<sup>11</sup> CSÁKÓ 2016.

<sup>12</sup> KOLOZSI 2022: 283.

<sup>13</sup> HEGYALIAI 2014: 128.

<sup>14</sup> PÁHI 2019: 61.

<sup>15</sup> Act LIV of 2002 on the International Cooperation of Law Enforcement Agencies 8. § (1).

International mutual assistance in criminal matters is carried out by judicial authorities through requests between themselves. The forms of international mutual legal assistance in criminal matters are as follows:

- a) extradition,
- b) transfer of criminal proceedings,
- c) acceptance and surrender of the enforcement of sentences of imprisonment and measures involving deprivation of liberty,
- d) acceptance and surrender of the enforcement of confiscation or forfeiture, or of a penalty or measure having equivalent effect (henceforth: confiscation or forfeiture),
- e) acceptance and surrender of the enforcement of irreversibly rendering electronic data inaccessible, or of a penalty or measure having equivalent effect (henceforth: irreversibly rendering electronic data inaccessible)
- f) procedural legal assistance,
- g) laying of information before a foreign state.”<sup>16</sup>

In the framework of criminal judicial cooperation, the aim was to establish a single system for taking evidence, which would help to create a single investigation system in the European Union. Therefore, the issue of the European Investigation Order is also closely related to this topic, the domestic legislative background is contained in Act CLXXX of 2012 on Cooperation with the Member States of the European Union in Criminal Matters.<sup>17</sup> It was set up to enable the lawful acquisition of evidence in cases of cross-border crime, thus speeding up investigations. This will allow evidence to be obtained in the course of the investigation of criminal organisations, even with covert means, as it is possible to use covert means within the framework of a European Investigation Order.

In the context of the European Investigation Order, I would mention controlled delivery (because controlled delivery can be requested) as a diagonal cooperation of international criminal cooperation, which requires close cooperation between police and judicial authorities. During the spontaneous interviews, police officers stated that controlled transport is frequently used. Controlled transport is not specifically mentioned in Act XC of 2017 on the Hungarian Prosecution Code, but the prosecution’s position is that it may fall within the scope of covert surveillance and that requests for it from another Member State are also made in the context of judicial cooperation and thus serve the purpose of evidence. I note here that if a Member State concerned does not cooperate in a controlled transfer, the whole thing may fail, despite the approval of the other Member States.

Among the forms of international cooperation in criminal matters, I would also mention the implementation of cross-border covert surveillance, which can be an important form of cooperation in dismantling criminal organisations. The Rapid Response and Special Police Services are authorised to carry out this task, as are the staff of the National Tax and Customs Administration. They are used when the border of Hungary is likely to be

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<sup>16</sup> European Judicial Network s. a.

<sup>17</sup> Based on the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

crossed or when the act under surveillance does not constitute a crime in itself, based on Article 40 of the Convention Implementing the Schengen Agreement. If, on the other hand, it is foreseeable that the act itself will constitute a criminal offence, but covert surveillance is used in the meantime, covert surveillance must be carried out because of the legal framework for international mutual legal assistance in criminal matters for controlled deliveries.<sup>18</sup>

The following is a brief description of the law enforcement agencies that can be linked to the international criminal cooperation instruments used in practice.

### ***Interpol***

The idea of the creation of Interpol (International Criminal Police Organization) has already been mentioned above, in the context of the first International Criminal Police Congress in 1914. Hungary was also a founding member in 1923 in Vienna, when the international organisation known as Interpol was established. Interpol has 195 members around the world, all of which aim to work together to make the world a safer place. As a global organisation, it can provide platforms for cooperation. In Hungary, the National Police Headquarters, International Law Enforcement Cooperation Centre, Interpol's National Central Bureau is currently designated as a cooperation channel to Interpol, so Hungary has direct access to various Interpol databases, such as the DNA database, the child sexual exploitation image database, the personal database.<sup>19</sup>

### ***Europol***

Europol (Central European Criminal Investigation Office) is a fully-funded EU agency, which started operations on 1 July 1999 in The Hague, the Netherlands, and is one of the most important institutions for police cooperation. Europol's tasks and objectives are to support law enforcement authorities within the European Union, to facilitate criminal cooperation, to make cooperation smooth and to ensure that information and criminal intelligence flow as quickly and safely as possible between Member States. A number of platforms are provided by Europol to facilitate these objectives and can be used by law enforcement agencies of the Member States. For example, the EIS (Europol Information System), which is a criminal database available in the official languages of the Member States and can identify possible overlaps between investigations. In addition, the SIENA (Secure Information Exchange Network Application) system ensures the flow of information and rapid communication, i.e. criminal intelligence. For these systems, endpoints have been set up in the Member States, there are several endpoints within a given country, but in Hungary, for example, it is also possible to contact the Member States through

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<sup>18</sup> NYESTE 2020: 833.

<sup>19</sup> NYESTE 2020: 843–844.

the National Police Headquarters, International Law Enforcement Cooperation Centre to obtain information.<sup>20</sup>

## ***Eurojust***

Since its creation, one of the main objectives of the European Union Agency has been to coordinate investigations carried out by the Member States within the European Union. Its tasks include facilitating the fight against serious and organised cross-border crime and linking the law enforcement authorities and prosecutors of the Member States. It coordinates the judicial response of the prosecution services or investigating authorities of the Member States. Eurojust's activities focus primarily on organised crime groups. However, it can also provide operational assistance for cross-border operations, as it operates 24 hours a day, 7 days a week. It also provides support in official translations and manages parallel investigations. It can set up and fund a Joint Investigation Team or organise a Joint Action Day. Of particular importance for organised crime is the possibility to seize the assets of members of a criminal organisation. It also provides links to more than 50 jurisdictions and manages cooperation with third countries.<sup>21</sup>

## ***SELEC***

The SELEC (Southeast European Law Enforcement Center) is an important international organisation, especially from Hungary's point of view, as non-EU member states are also members of the SELEC, with whom cooperation is essential due to their geographical proximity, as the SELEC also has 11 member states and 25 partner countries in Southeastern Europe. The aim of the SELEC member countries is to combat cross-border organised crime through police and customs. It provides law enforcement authorities in Southeast Europe with, for example, a venue for operational meetings, regional operations and a platform for information exchange. Like Europol, the SELEC has liaison officers who are delegates from each Member State. Under SELEC, the Southeast European Prosecutors Advisory Group (SEEPAG) promotes judicial cooperation and operates in a way that prosecutors can exchange information in the investigation of cross-border crimes.<sup>22</sup>

## ***International Law Enforcement Cooperation Centre***

A brief introduction to the International Law Enforcement Cooperation Centre is important, as it is the only body that institutionalises international criminal cooperation in Hungary and has jurisdiction throughout the country. It functions as a kind of information channel

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<sup>20</sup> NYESTE 2020: 834–835.

<sup>21</sup> Eurojust s. a.

<sup>22</sup> Southeast European Law Enforcement Center s. a.



between the investigative authorities within the country and the authorities abroad, whether in the European Union or in third countries. It was established on 1 February 2000 under the aegis of the National Police Headquarters. It cooperates with Europol and Interpol. In connection with the International Law Enforcement Cooperation Centre, I should also mention the Europol Hungarian Liaison Office, to which the Hungarian law enforcement agencies delegate a member, so that they can represent Hungary directly, in person, at the Europol headquarters in The Hague, and this personal presence will allow for an even faster flow of information.

## **The pandemic and international cooperation on crime**

During the pandemic, organised crime groups responded to the situation shortly after the outbreak in spring 2020. They sought to map the market as soon as possible, identifying the segments that may or may not have been affected by the pandemic. However, there was uncertainty on the part of the investigative authorities, for example, in the domestic context, a large proportion of criminal investigation staff were assigned to quarantine and other tasks related to the pandemic, thus criminal work was sidelined. During this period, the most common crimes in Europe included cyberattacks, grandchild fraud, other frauds, phishing, the looting of health institutions and pharmacies.<sup>23</sup> Organised crime groups also realised that many citizens had lost their jobs and therefore had no income, so they took advantage of this to start recruiting people into criminal organisations. These criminal organisations also became increasingly violent. This is why we can say that the impact of Covid-19 was quickly felt by law enforcement agencies and required a swift response from law enforcement.

A report published by Europol in 2020 already provides data on how certain areas of crime have been shaped by the epidemic. In case of cybercrime, for example, perpetrators have been at the forefront of how to take advantage of the situation. We have seen first-hand how staying at home and working from home made people vulnerable at first. Individuals may have experienced symptoms of anxiety. The perpetrators also exploited fears about the epidemic and relied on people's insecurity.<sup>24</sup> Something else to note here is that victims in the real space immediately feel the effects of the attacks on them, but in the online space they do not feel that a crime has been committed against them.<sup>25</sup>

As the internet became the platform through which communication took place and goods and food were purchased, the threat became even greater and cyberattacks and online fraud were seen to increase. To give an example, there have also been changes in the drug trade, shipments have not stopped, they have continued to arrive at distribution points in Europe, onward movement from distribution points may have been a barrier due to physical border controls. Exports of chemical substances and precursors from China have decreased, so the production of drugs has not been assured. However, it can be seen

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<sup>23</sup> European Council s. a.

<sup>24</sup> DORNFIELD 2020: 193–204.

<sup>25</sup> Z. NAGY 2021.

that whatever the criminal organisations were up to, the aim was always to make a profit, or even the highest possible profit, even during the pandemic.<sup>26</sup>

It is the literature reviewed and the spontaneous interviews conducted by the investigating authority and the prosecution prior to the study that form the practical basis of the research. It is not by chance that the issue of the pandemic arose at the beginning of the research, as it has had an impact on crime itself, and I thought it worthwhile to address whether there were any barriers to international criminal cooperation. From the answers I received, it became clear that international criminal cooperation was also influenced by the coronavirus, for example the quarantine of postal parcels. According to the answers given by the investigative and prosecutorial staff, the pandemic initially had a major impact on criminal cooperation, which led to a sudden halt. It became less influential after a few months. It is interesting to note, however, that while one might think that the impact was negative, the interviewees also found that the pandemic had positive benefits in addition to the negative ones, but this will be discussed later.

It was emphasised during the interviews, both from a police and prosecutorial point of view, that the lack of personal relationships became a negative factor. Suddenly rules were imposed on everyone, so that, for example, attending an operational meeting or even face-to-face meetings within a given country were difficult to implement. Nor was face-to-face presence possible during the implementation of international criminal legal assistance. Since face-to-face meetings had to be minimised for both prosecutors and investigating authorities, meetings and exchanges of information obtained were also moved to the online space. Solutions such as Zoom, Microsoft Teams or Skype meetings were developed to enable communication in both police cooperation and judicial cooperation. Nevertheless, there have also been examples of cooperation partners travelling despite restrictions because a particular case warranted it.

In the period before the pandemic and in the period after spring 2020, the potential platforms for international criminal cooperation did not change according to the research results, but the use of the above-mentioned communication channels should be highlighted, meaning that before spring 2020, online communication channels were less used as potential platforms for criminal cooperation.

## **The use of the Joint Investigation Team**

One of the aims of international criminal cooperation is to ensure that the information obtained can be used as evidence as the investigation progresses, during the prosecution and trial phases. There are also instruments which in themselves guarantee this, such as the Joint Investigation Team, which is the best example of cooperation between police and judicial authorities.

The reason why it is the Joint Investigation Team (JIT) that I am referring to in particular is that it is a complex form of procedure in the detection of criminal organisations in which all the necessary elements are combined, for example, international criminal

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<sup>26</sup> Europol 2020: 7–9.

cooperation in criminal proceedings takes place, on the one hand between the Member States participating in the JIT, and on the other hand between the prosecution and the investigating authorities. But let us look at some statistics: after 2010, the number of JITs started to increase, with hundreds of cases reported annually. Hungary participated in JITs for the first time in 2011, and in 2017 there were twelve JITs.

In more detail, the aim of establishing JITs is to centralise those criminal cases that require complex investigative and prosecutorial work, which is costly for the Member State concerned.<sup>27</sup> Act CLXXX of 2012 on Cooperation with the Member States of the European Union in Criminal Matters regulates the conditions for the establishment of a JIT in Hungary. Among other things, it specifies in which cases it can be established and when the crime is considered to involve several Member States.

Europol and Eurojust assist the JIT. With Europol's support, an operational meeting should take place, with the provision of a location, before the Member States agree to set up a JIT. Europol's role is important because information is exchanged through it before and during the setting up of the JIT. Eurojust is involved in the organisation and, if necessary, financial support of the JIT.

Another argument in favour of Member States often working within a JIT to dismantle a criminal organisation is that direct communication is ensured, exchange of experience is possible, face-to-face meetings are easier to organise and evidence is obtained through legal channels and under supervision. Related to Article 70/C § (4): "In the course of the operation of the Joint Investigation Team, in accordance with the agreement, the means of evidence or procedural steps taken by a member of the Joint Investigation Team, whether Hungarian or a member state, in Hungary or a member state, shall be deemed to have been taken as if they had been taken within the framework of the procedural assistance for the purpose of obtaining or providing the means of evidence or taking the procedural steps."<sup>28</sup> Within the JIT, covert means may be used or information obtained by covert means may be transmitted via the SIENA channel, as may the unauthorised sending of scanned copies of interrogation reports.

The use of JITs has been deeply affected by the pandemic. On the prosecution side, it was reported that in 2020, there were spectacularly fewer JITs initiated by investigating authorities, and that those that were in progress were extended. There was also a lack of face-to-face meetings within JITs and delegated members were not able to be present at procedural actions carried out by other cooperating Member States, but other means of information exchange were used, such as online meetings, communication through the SIENA channel. Following the sudden stop and the lifting of the restrictions, more and more JITs were formed, Member States tried to carry out procedural acts within the country until then, and then agreements were concluded with the Member States also involved in the same offence.

During interviews with members of the investigating authorities, it was mentioned that, in addition to the SIENA channel, another communication platform for the rapid

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<sup>27</sup> SZIJÁRTÓ 2019.

<sup>28</sup> Act CLXXX of 2012 on Cooperation with the Member States of the European Union in Criminal Matters 70/C. § (4).

flow of information has also been developed by Europol called VCP (Virtual Command Post), which is a downloadable application for phones, similar to Viber or WhatsApp, and is called “WhatsApp for Law Enforcement Officers”. It is secured by a username and password and the exchange of data is encrypted, which requires only a mobile phone, thus allowing real-time exchange of information. In my literature search, I read about another useful criminal cooperation tool that was developed for post-terrorist attacks and the response to them, Quick Response for Operational Centers (QROC), a platform that also provides real-time information exchange. In addition, another solution developed by Europol in 2016 is the Operational Real-Time Collaboration Solution (ORTICoS), which allows information to flow quickly and securely during joint operations via mobile phone.<sup>29</sup> These applications are well adapted in practice, with developments showing that while SIENA is only available to different teams and networks, they can be accessed via their own mobile phone with a username and password. They can also be used within JITs and, in fact, at the time of the Covid-19, applications via the phone were a particularly popular communication channel.

The prosecutors mentioned a network within the JIT to help find solutions to technical difficulties in cooperation. One such difficulty is the secure exchange of large amounts of data files. The European Commission has proposed the creation of this specific platform, which would further aim to enable participants to communicate easily and securely with each other and to coordinate the day-to-day activities of the JIT between the participating countries. An additional advantage of the platform is that shared evidence can be better tracked and, if a third country requests information, the participants can be immediately aware of the sharing with that country.<sup>30</sup> A so-called JIT exchange platform has been developed, which can even include video conferencing, chat facilities, file uploading and downloading. The uploaded files can be seen by the other parties in the same way, so if they need them, they can just download them from there, like a Google Drive folder, which can be accessed by whoever has access to it and can download the files they need.

JIT therefore has many advantages from a judicial and police cooperation perspective. To summarise, the advantage is that the parties conducting parallel investigations can quickly share the operational information generated and evidence is already exchanged, which is important from a forensic point of view. This means that if it is foreseeable that several requests for mutual legal assistance or European investigation orders would be issued, it is more appropriate to set up a JIT. There are more things to consider, if it is already foreseeable that it will be necessary to question witnesses or suspects abroad, it is also easier to carry out investigative acts through a JIT. However, there can be obstacles to JIT, such as lack of language skills, costs, administration, but these obstacles can be avoided if they are identified early and are already included in the JIT agreement.

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<sup>29</sup> MONROY 2020.

<sup>30</sup> European Commission 2021b.

## **Criminal cooperation tools for crimes committed in the online space**

People's lives have become easier since the Internet came into being, our daily lives have become faster and the flow of information has become more complete. Criminals have noticed this and the investigating authorities have had to react.<sup>31</sup>

Investigations in cyberspace also face a number of challenges. Invisibility, latency, sophisticated procedures all make the job more difficult. It is interesting to note that in case of crimes committed in the online space, organised crime in the classical sense is not always present, but one-man offenders can also make large profits by exploiting the vulnerable and gullible nature of others. As already mentioned, cyberspace has become a growing crime scene because of the coronavirus. This was the compelling reason why in this paper I will also discuss in a few sentences the other possibilities for criminal cooperation when talking about cybercrime. It should be noted that, at an organisational level, there are also many efforts within the European Union to support investigations in cyberspace by various means, and there are a number of conventions governing cooperation between Member States. All the international bodies discussed above contribute to providing some support.

During the interviews with the prosecutors, I received the answer that all available cooperation tools can be used, but beyond that there is one possibility based on a convention that is more than twenty years old, but the reference to this in practice, is not very common. This is the Council of Europe's Convention on Cybercrime (Budapest Convention, opened for signature in Budapest, in November 2001), which was promulgated in Hungary by Act LXXIX of 2004. After the interview, while studying the Budapest Convention, I discovered that already in 2001 new trends and new ways of committing computer crimes appeared. We can also read in it that the Member States are trying to combat the new phenomena with as much effort as possible, but that the efforts to be effective and efficient vary from one Member State to another. One important element of the Budapest Convention was data retention, for which practical and legal solutions had to be found. At that time, there was an increase in various forms of sexual abuse of children, which is why investigating authorities were forced to obtain evidence through some form of cooperation. One of the aims of data retention is that the Member State concerned by the request should ensure that the data are stored and possibly backed up for the requesting party. During the interview, I was also made aware that the Second Additional Protocol to the Budapest Convention has been drafted, which countries can sign from 12 May 2022. As cybercrimes are on the rise, so is the electronic data generated in the online space, so it would be justified to use digital data as evidence. It is the Second Additional Protocol that tries to fix them in the framework of international criminal cooperation. It includes, as an innovation, "procedures to strengthen direct cooperation with service providers and entities in the territory of the Member States, such as requests for information on domain name registration (Article 6), the transfer of subscriber data (Article 7) or the enforcement of requests for the rapid

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<sup>31</sup> I. NAGY 2021: 109.

production of subscriber and traffic data (Article 8)".<sup>32</sup> According to the addendum, the accelerated disclosure of stored computer data in an emergency, the accelerated transfer of stored personal data and the knowledge and transfer of digital content are also covered. In this context, it was suggested during the interview with the prosecutor that, if possible, the Budapest Convention and its Second Additional Protocol should be "promoted" among investigating authorities, as more should be done to ensure the use of digital data as evidence.<sup>33</sup> It was noted that the United States of America is also included in the Budapest Convention, which is important because most service providers are based in the United States of America, so it would be important to have smooth cooperation, but requests from Facebook and other service providers also occasionally run into obstacles.<sup>34</sup>

Another important cooperation possibility that was mentioned during the interview with the prosecutors, which specifically promotes judicial cooperation, is the European Judicial Cybercrime Network (EJCN), which was established in 2016. It aims to assist investigations that focus on crimes committed in cyberspace. It also aims to improve the efficiency of prosecution and ensure a wide range of evidence. In addition, it acts as a communication channel, if a face-to-face meeting is to take place, Eurojust hosts the meeting. Major conferences are organised as an opportunity for countries to exchange experiences, learn from each other's legal systems and examine case studies. The EJCN is working to establish a legal framework that can regulate cybercrime at international level. At the prosecutorial level, there are also major obstacles to accessing data stored in cloud storage, and cooperation with service providers does not work smoothly in their case.<sup>35</sup> During the interview with the prosecutors, it was also discussed that each member state has a specialist (prosecutor) who communicates with other member states through the EJCN when international contact is needed in the investigation of a cybercrime, whether it is police or judicial cooperation. It is therefore important that investigating authorities communicate and seek assistance from prosecutors, as such a cooperation tool may be the key to fully investigate a cybercrime.

## Summary

In conclusion, it can be concluded from the answers given during the interviews, for both parties, that there is no need to further expand the available cooperation tools and methods, there is no reason to expand them, the technical, technological and legal tools are available, but if all investigating authorities and prosecutors' offices would also be brave enough to use the tools they have less experience with, they would also help in the fight against organised crime. It is important to note that around 95% of cooperation takes place within the European Union, but organised crime, especially cybercrime, often requires cooperation with other third countries (see the United States of America).

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<sup>32</sup> SZOMORA 2022.

<sup>33</sup> European Commission 2021a.

<sup>34</sup> European Council 2019.

<sup>35</sup> European Union Agency for Criminal Justice Cooperation s. a.

In terms of the basis for international cooperation in criminal matters, both from the police and the judiciary, it is clear that a great deal of emphasis is placed on personal contacts built up over the years, but in the case of our country this network of contacts seems to be increasingly lost due to turnover in the police forces, making it more difficult for foreign counterparts to engage in a more direct, personal relationship. When asked what the obstacles to cooperation are in some cases, it was told that the person himself is the biggest obstacle to international criminal cooperation, and that paper-based administration within a country, but also with other countries, takes more time, but that the positive effect of the Covid-19 is emphasised in this respect.

I have noted above that the coronavirus has not only had negative consequences. According to interviewees, online consultations, which initially seemed cumbersome, made communication and information exchange much more flexible and faster. The digitisation and rapid access to documents was also a positive outcome, for example in the case of sealed instruments with a prosecutor's or judge's authorisation. Although, in the domestic context, paper-based licensing is still the current practice. There were also examples of those who previously would not accept documents on paper only now having to accept them via email in response to the virus.

According to most interviewees, the future goal should be to continue to exploit online, digital platforms in international criminal cooperation and to promote further digitisation. It would be feasible if all agencies with organised crime at least had the means to conduct a video conference on or near their own computers. Another suggestion from the prosecution side was that it is up to the perception of the managers of the investigating authorities to be able to take effective action against organised crime, i.e. to organise the staff appropriately for the task. In a case where there is an international link to the criminal organisation, but the rapporteur does not have a deep knowledge of the possibilities of cooperation platforms, he should be assisted by someone who is experienced in this field, for example, who has attended a Europol hospitality, i.e. it is a question of work organisation. But to be self-critical, the same applies to the prosecutors' offices, because not all prosecutors are excellent when it comes to organised crime.

Finally, I would like to mention one innovative thing that was mentioned in the interview with the prosecutors and that could make the fight against organised crime even more efficient and effective in the near future. This is the digitisation of the European Investigation Order, an exchange platform that is already being piloted but is not yet official. The platform consists of an online interface (which will be available to all Member States) where a Member State that intends to issue a European Investigation Order fills in a form indicating the target country, which is immediately translated into the language of the target country. This will put an end to the paper-based procedure and will even ban the sending of the European Investigation Order.

I believe that through the literature and the spontaneous interviews conducted, we have gained an insight into current situations in practice, and through them, we have been able to see the impact of Covid-19 on international cooperation instruments in criminal matters, as well as plans for the near future. One thing is certain: the multifaceted support of international organisations is essential for both police and judicial cooperation.



Finally, I will conclude my paper with the thoughts of Deputy Commissioner General Henrik Dorning, who formulated the foundations of international cooperation in criminal matters almost 100 years ago. “International cooperation is important for the police of every country. Here are the roots of common threads running from all sides and this has made necessary and possible the need to build the basis for international relations.”<sup>36</sup>

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<sup>36</sup> DORNING 1942: 167–170.



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