



(The Daily Beast, 2017)

Drug Trafficking Cybermarkets and EncroChat:

An Examination of the Legality of Cross-judicial Evidence Sharing

Table of Contents

- EncroChat
- Drug Trafficking and Cybermarkets
- Policing in the UK
- *R v A, B, D & C [2021]*

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- EncroChat
- Drug Trafficking and Cybermarkets
- Policing in the UK
- *R v A, B, D & C [2021]*
- Legal Debate
 - Forum Shopping
 - Public Opinion
- Conclusions

EncroChat (Zagaris, 2020)

- Offering anonymity



(CLSA, n.d)

EncroChat (Zagaris, 2020)

- **Offering anonymity**
 - No device or SIM card connection to customer



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 - Permanent data deletion
 - 24/7 contact support



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EncroChat (Zagaris, 2020)

- 2020



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- 2020
 - Most popular telecommunication encryption service



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- **2020**
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 - French Gendarmerie and Dutch law enforcement joint investigation
 - Encryption defeat & device monitoring



(CLSA, n.d)

EncroChat (Zagaris, 2020)

- 2 July 2020



(CLSA, n.d)

EncroChat (Zagaris, 2020)

- **2 July 2020**
 - Europol, Eurojust, French, and Dutch authorities execute operation
 - EncroChat dismantled
 - Evidence seized
 - Thousands arrested across the EU & UK



(CLSA, n.d)

DISTRIBUTION

ard drugs are especially popular in the USA, Europe, and Asia.
crossing all borders, consumers are supplied with these illegal products
y truck, ship, or small plane. Opium originates primarily in Afghanistan
r Myanmar, while cocaine comes mostly from Colombia, Peru, or Bolivia.

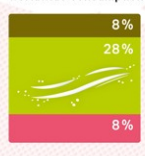
NORTH AMERICA

Consumption Worldwide largest cocaine consumption, ATS use increasing.

Trade Mexican mafias are increasingly involved in smuggling drugs across the U.S. border or via the Pacific.

Production ATS are produced for the home market.

Percentage of worldwide consumption



EASTERN AND SOUTH-EASTERN EUROPE

Consumption Greater consumption of opiates due to proximity to the trade routes.

Trade Delivery of opiates to Western Europe; cocaine is smuggled in from Africa to Central Europe via this region.

Percentage of worldwide consumption



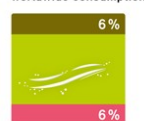
WESTERN AND CENTRAL EUROPE

Consumption Cocaine consumption remains at a high level, consumption of opiates and ATS on the rise.

Trade Destination for thousands of tonnes of drugs; extensive inner-European smuggling; significant points of control in Amsterdam, Madrid, and along the German borders.

Production Large market for amphetamines; methamphetamines are mostly produced in small laboratories in the Czech Republic and less frequently in Slovakia and Germany.

Percentage of worldwide consumption



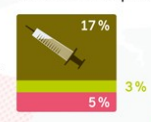
NEAR AND MIDDLE EAST

Consumption High consumption of opiates due to proximity to source, consumption of ATS on the rise.

Trade Main trade route for opium and heroin, cartels from almost 20 countries are involved.

Production Opium production primarily in Afghanistan; heroin is manufactured in almost all countries to meet European demand.

Percentage of worldwide consumption



Percentage of worldwide production (2009/2010)

Cultivation:	Afghanistan 63%	Pakistan 1%
Production:	Afghanistan 74%	Pakistan 1%

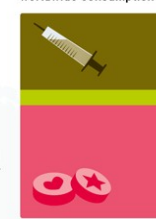
ASIA (excluding the Near and Middle East)

Consumption Largest worldwide consumption of ATS and opium.

Trade Large internal ATS market; some opiates from Myanmar and Laos are shipped over the Pacific.

Production ATS are produced almost everywhere, Myanmar is the world's second-largest producer of opiates.

Percentage of worldwide consumption



Percentage of worldwide production (2009/2010)

Cultivation:	Myanmar 20%	Laos 2%
Production:	Myanmar 12%	

Drug Trafficking

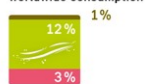
SOUTH AMERICA

Consumption Increasing amounts of cocaine and ATS.

Trade In almost all the countries in the region; Venezuela and Brazil are stopovers before delivery on to Africa or Europe.

Production Almost all of the world's cocaine comes from Colombia, Peru, and Bolivia.

Percentage of worldwide consumption



Percentage of worldwide production

Cultivation:	Colombia 40%	Peru 40%	Bolivia 20%
Production:	Colombia 52%		

CENTRAL AMERICA/ MEXICO/ CARIBBEAN

Consumption Tendency on the rise.

Trade One of the axes of the South American cocaine trade supplying Europe; small planes, couriers, and cargo ships transport the products.

Percentage of worldwide consumption



Percentage of worldwide production

Cultivation:	Mexico 10%
Production:	Mexico 9%

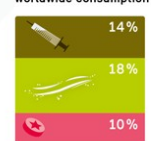
AFRICA (excluding southern Africa)

Consumption Increasing consumption of ATS.

Trade Transport route to Europe, becoming however less relevant due to strengthened controls; powerful cartels in Nigeria regulate sale in the region and further trade to Europe.

Production Insignificant.

Percentage of worldwide consumption



SOUTHERN AFRICA

Consumption Increasing consumption of ATS.

Trade Routes to North Africa

Percentage of worldwide consumption



OCEANIA

Consumption Increasing consumption of ATS.

Trade Insignificant.

Production ATS production

Percentage of worldwide consumption



(The Journal, 2015)

Drug Trafficking (Gori & Kabra, 2023; Engeler & Bailetti, 2021; Munksgaard et al, 2016; Baretta et al., 2019)

- **Traditional Trade**

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 - Distribution scope
 - Law enforcement

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Policing Cybercrime in the UK (COE, 2001; Davies, 2020; Graham, 2021; Holt et al., 2022; Stoykova, 2023)



(Wikipedia, 2022)

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- There are several modes of investigation open to police:



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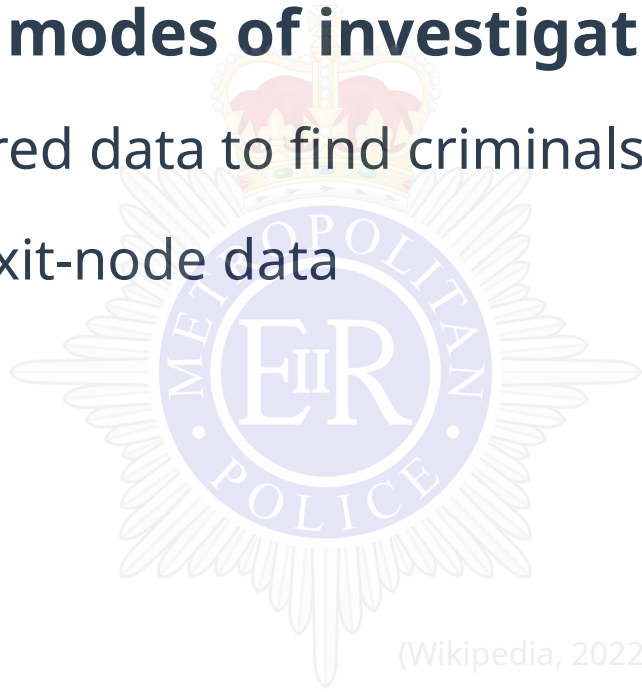
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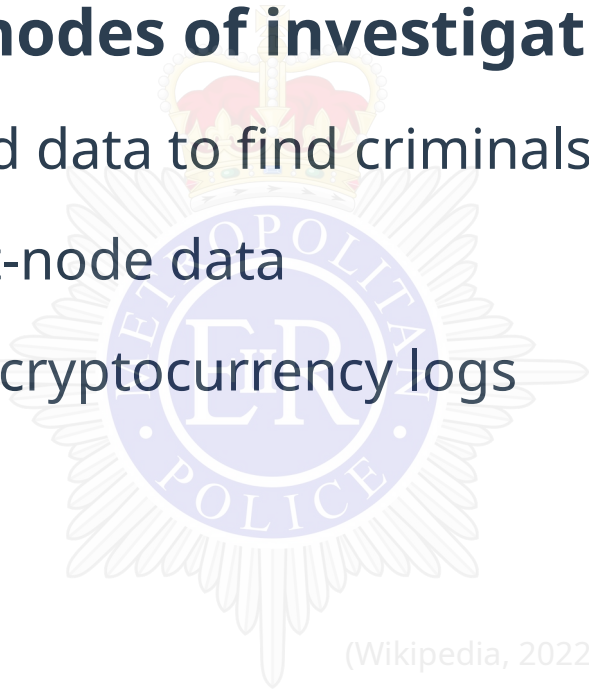
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- “1) The EncroChat communications were intercepted whilst being stored, not when being transmitted, thereby making them admissible.
- 2) In the alternative, no offence was committed under s.3 Investigatory Powers Act 2016 (IPA) as the interception was not done in the UK so could not be excluded by s.56 of the Act.
- 3) The prohibition on requesting mutual assistance under s.10 IPA did not apply, because the European Investigation Order (EIO) made no request that fell under s.10. In the alternative, the request was in exercise of a statutory power, making it permissible under s.10 (2A).
- 4) The prohibition under s.9 on an overseas authority carrying out interception without a Part 2 warrant did not apply because the activities of the French and Dutch authorities were not pursuant to a request by the UK authorities” (Jefferson & Giffords, 2020: 272)

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 - Offence of unlawful interception
 - "A person commits an offence if—
 - (a) the person intentionally intercepts a communication in the course of its transmission by means of—
 - i. a public telecommunication system,
 - ii. a private telecommunication system, or
 - iii. a public postal service,
 - (b) the interception is carried out in the United Kingdom, and
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- “[T]he decision on Ground 1 rendered consideration of Ground 2 unnecessary” (272)

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R v A, B, D & C [2003] 1 AC 1

Legal Debate

Forum Shopping

(Galli, 2016; Gori & Kabra, 2023; Griffiths & Jackson, 2022; IPA, 2016a; PACE, 1984; Stoykova, 2013)

R v A, B, D & C [2] Legal Debate

Forum Shopping

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Legal Debate

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• Admissibility

• Fairness of Trial

(Galli, 2016; Gori & Kabra, 2023; Griffiths & Jackson, 2022; IPA, 2016a; PACE, 1984; Stoykova, 2013)

R v A, B, D & C [2] Legal Debate

- PACE s.78
 - “Exclusion of unfair evidence.
 - (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.
 - (2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.” (1984)

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1) Admissibility

- 2) UK and French evidence sharing
- 3) Volatile RAM storage
- 4) Forensic reporting requirements
- Mass surveillance

Fairness of Trial

- Methodology and documentation
- Scope
- Expert witnesses
- Burden of proof

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R v A, B, D & C [2017] Legal Debate

Public Opinion

Jellied Eel

Friday 12th May 2023 09:26 GMT

Report abuse

With great power comes great responsibility.

I've always been in two minds about this kind of stuff.

The tribunal said it didn't reach a determination about whether the NCA illegally intercepted communications while they were being transmitted, and decided to "defer further consideration of this chapter of the case" until after the Crown Court's criminal proceedings in a related EncroChat case have wrapped.

Sure, we should have a right to privacy, but that also needs to be balanced with a need for security and preventing serious crime. In a law enforcement sense, the EncroChat operation has been hugely successful, and arguably demonstrates why there can be a good reason for lawful intercepts. But we still seem to be struggling to legislate when that's reasonable and proportionate. Previously, surveillance powers in the UK had arguably bloated too far, eg councils using intrusive surveillance to make sure people were using their recycling bins properly. That got reigned in to fewer agencies to investigate serious criminality. But the danger is always politics, ie redefining what and when intrusive surveillance can be used against. Especially with the rise of 'hate crimes' and 'disinformation', where those 'crimes' are often just a difference of opinion.

8 2

Reply

Anonymous Coward

Friday 12th May 2023 09:40 GMT

Report abuse

Re: With great power comes great responsibility.

>But we still seem to be struggling to legislate when that's reasonable and proportionate.

Genuinely, and I don't mean for this to sound like a politician-bashing statement, it is because this is a very technical area with many subtle differences between words and the legislators simply do not have enough understanding of it yet (have to) vote on it anyway.

Sure, you could apply my statement to many areas, but the key thing with modern comms (and thus also encompassing internet access, encryption, E2EE, etc) is that it underpins "everything" and thus changes have a very far and wide reaching effect.

5 1

Reply

Jellied Eel, 2023)

BI

bigbellyfc · SEPTEMBER 30, 2023

Must be unbelievable amounts of cocaine getting snorted every week in the uk

REPLY 4 0

LI

listenandstaycalm · SEPTEMBER 30, 2023

Inform the police on all drug dealing activities, keep the rats off the streets.

REPLY 1 REPLY 3 0

1

SHOW OLDER REPLIES

1

Add your reply

P3

Panther 324 · SEPTEMBER 30, 2023

Come on enchro chat keep giving these 🏠 houses up good riddance

REPLY 2 0

Panther324, 2023)

Conclusions

- **Cybercrime has proliferated**
- **Policing efficacy is restricted by jurisdiction**
- **Unlikely EncroChat data has met the threshold for evidence inclusion under s.99(6) IPA (2016) s.78 PACE (1984)**
- **Evidentiary hearings should be required**

References

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