

# **Combating International Crime in an Enlarging European Union: What is the Role of Europol?**

**Lecture in the International Seminar for Experts**

**“Combating Terrorism and International Organised Crime in the European Union – The Hague Programme and the Role of Europol and Eurojust”,**

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On behalf of Mr Simancas, the Head of Serious Crime Department of Europol, I would like to thank you for this invitation and for giving Europol the opportunity to present some thoughts on its role in the fight against organised crime in the European Union.

My name is Antonio SACCONI, I am a police officer and I have been in charge of the Crime Analysis Unit at Europol since 2003.

My intervention will cover the following main aspects:

- the implications of combating International Crime in an Enlarging Europe
- the role of Europol in Combating International Crime in the EU
- the current developments involving Europol’s role.

Let me start by providing a few details about some aspects of international crime in the European Union.

Organised Crime is, together with Terrorism, a major threat to our society. In contrary to terrorism, criminals have no interest in acting publicly. That makes it more difficult to fight and prevent crime.

A series of factors such as:

- the international dimension,
- the sophisticated and flexible group structures,
- the use of legitimate business,
- the degree of specialisation,
- the attempt to influence decision makers, various layers of society, the economy, the judicial and law enforcement,
- the use of violence and the counter measures applied by organised crime groups

all indicate the strength of the crime activities of well organised criminal groups.

The crime areas that seem to be more appealing to OC groups across most member states of the EU are:

- drug trafficking, especially the production and trafficking of synthetic drugs,
- the exploitation of human beings and illegal migration,
- fraud,
- Euro counterfeiting,
- commodity counterfeiting and
- money laundering.

The scale and the typology of the crime phenomena vary within the European Union, according to the country and the region. Therefore it is necessary to take into account these variations at a regional and international level, when establishing a coordinated response both for preventive and repressive actions.

A clear trend in the overall picture of organised crime in the European Union is that the criminal groups that prosper are those who are capable of meeting supply and demand requirements for profit. In other terms those who are able to develop

international or better trans-national criminal operations, being able to exploit the demand for illicit goods or services in the countries of the EU by liaising with crime groups in third countries that are placed at the origin or along the transit route to the destination markets. Organised crime, like terrorism, is becoming more and more trans-national. The increasing transnational nature of criminal groups has an effect on their structures and networking, but we must not forget that they act against the law and handle military operations.

There are clear indications of the integration of criminal markets. Many criminal groups deal with a wide array of crime activities. Investigations on drug trafficking reveal the so-called poli-drug trafficking.

Many important criminal groups with a trans-national dimension are able to extend the criminal markets by identifying and exploiting new potential customers, suppliers and creating efficient distribution networks.

Many criminal groups have shown the ability to use intimidation, violence and corruption in order to commit crimes, infiltrate the legal business and exert influence to protect their business and their profit from the action of decision makers, the law enforcement and the judiciary.

Some criminal groups acting in the European Union maintain their leadership and their main assets safe in third countries where they are protected by their ability to influence the local authorities and by the obstacle of jurisdiction.

The internet is not only a place where people freely express their opinion, exchange information or do business. It is also a borderless space which attracts criminals. As the internet has no borders and easily allows acting globally, it provides unique opportunities to use faked identities, to carry out fraud, to improve communication amongst criminals and to target new types of victims.

What is the overall impact of the enlargement process of the EU on the criminal scenario? How does the disappearance of internal borders within the EU member states and the new external borders of the EU affect the security of the citizens?

This is a difficult question to answer, also due to the fact that the question itself contains an element of fear of the unknown and maybe some degree of prejudice.

Besides the political, economic, social and legislative aspects of the enlargement process, undoubtedly the abolition of the filter of border control to the movement of goods, services, capital and people creates new opportunities for criminals, as it allows them, once in the territory of one member state of the EU, to move freely from origin to destination criminal markets.

In addition the European Union, as a strong and more homogeneous economic area, is an extraordinary catalyst for illegal immigrants who aim for better living conditions. This will increase the pressure on some parts of the external border and present a threat that reverberates not only to the countries of entry but also to all other countries of the European Union.

However, it has to be stressed that in the years prior to the biggest scale enlargement phase held during 2004, the national borders have not been a real problem for transnational criminal groups in relation to the transiting of illegal goods, due to a set of countermeasures. Such countermeasures include the use of forged documents, the corruption of public officials or the exploitation of high volume of transit of people and commodities across check points, or ports and airports. This is apparent with drug trafficking or the smuggling of alcohol and tobacco. Criminal groups have tried to set up distribution networks and logistical points to exploit the European Union market long before the accession took place. As a result of that the intensity of trafficking has not worsened in a significant way during the last three years in the EU.

It can be argued that this depends on the fact that the free movement of people and goods from the countries who more recently joined the EU has not taken full effect, for example in relation to the fact that they are still out of the Schengen or the Euro area. However, I rather believe that the most important effects from a criminal point of view happened before the end of 2004 and that the future developments will take quite a long time to become significant.

Therefore we are in phase where we still have a good chance to prevent a future negative expansion of the impact of criminal groups in the EU.

A specific threat to the effectiveness and efficiency of law enforcement in the fight against transnational crime is rather related to administrative borders than to physical borders.

Law enforcement agencies and the judiciary in the European Union have still largely to rely on a set of measures for international cooperation that were created in a period where the international dimension of organised crime and the scale of transnational illegal trafficking were very limited. The response of the state authorities which are competent to fight crime becomes inadequate and too slow when inevitably confronted with the international dimension and they cannot act directly in another jurisdiction.

This is the reason for the development of a wide set of new tools in the fight against transnational crime during the 90ies in the European Union, and such development has intensified further during the last five years. The accession of accessing countries to this new set of tools is a clear opportunity to expand the efficiency and effectiveness of the response to crime to a wider area and reduce the impact of crime on society. This opportunity is not only limited to providing better equipment, financial aid and training programmes but also uses a common tool box specifically designed to work better together in tackling organised crime and terrorism.

This whole set of new tools and the direction in which the European Union is moving will to be comprehensively presented and debated during this seminar. Therefore I will focus only on Europol and its role.

Europol is in fact the first amongst the European Union law enforcement bodies created as a result of the Maastricht Treaty in order to tackle international organised crime. The process that led to its creation and the main issues Europol was facing from the start have been well explained in the lecture given by Dr. Willy BRUGGEMAN - at that time Deputy Director Europol - in the Cicero Foundation

Great Debate seminar "Justice and Home Affairs - How to Implement the Amsterdam Treaty?" in Paris on 13 - 14 April 2000.<sup>1</sup>

The Idea of the European Police Office that prevailed, out of the different possible models, was the most pragmatic even though not the most ambitious.

The Europol Convention signed in 1995 creates an agency without direct executive powers, aimed at improving the effectiveness and co-operation of the competent authorities in the Member States with the exchange of criminal information, the analysis of crime intelligence and information, the creation and maintenance of computerised systems and the provision of expertise.

The European Police Office entered into force on 1 July 1999 and was set up in The Hague where there are specialised experts, analysts and Liaison Officers from all 25 EU Member States and from several non-EU Member States.

At present there are around 540 people working at Europol, coming from different law enforcement backgrounds such as police, border guards, customs and intelligence services.. This multi-lingual and multi-cultural approach guarantees a swift and efficient bi- and multilateral information exchange between Member States and Europol and vice versa.

Let 's look at these four points mentioned previously in a bit more detail.

- Europol hosts an institutional, permanent and structured network of liaison officers linked to a network of national units in all member states in contact with the competent authorities in the fight against organised crime and terrorism. This network consists of nearly 100 Liaison Officers performing the linking function between their national authorities and Europol and allows a fast exchange of information at European level, focussing on trans-national investigations for a limited typology of crimes of serious nature. The network is enriched by the presence of liaison officers from 9 countries that have signed on agreement for the exchange of personal data with Europol such as

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<sup>1</sup> **EUROPOL - A EUROPEAN FBI IN THE MAKING?** Lecture in Cicero Foundation Great Debate seminar "Justice and Home Affairs - How to Implement the Amsterdam Treaty?", PARIS, 13 - 14 April 2000 (available at [www.cicerofoundation.org](http://www.cicerofoundation.org))

Norway, Switzerland and the US. The liaison officer's network allows bilateral and multilateral cooperation and is the only channel for the provision of data to Europol's projects.

- Europol has a strong analysis function able to receive, store, process and give meaning to personal data and intelligence forwarded by law enforcement agencies in the member states, providing both strategy assessments and operational support to ongoing investigations. The strategic assessments are directed to the Council, the PCTF and law enforcement decision makers in the member states. Operational analysis is aimed at improving the understanding of the composition, structure, modus operandi and networking of crime groups. In addition it helps the investigation teams in the Member States to achieve better coordination, to identify new lines of investigation and to collect essential material for the dismantling and further prevention of international criminal networks. Europol can count on a number of 100 crime analysts recruited from law enforcement in the Member states and operating under a strict legal framework and methodology, representing a unique tool within the European Union law enforcement bodies.
- A third service offered by Europol is the maintenance of three computerised systems. The information system is aimed at being a reference check of suspects in investigations on serious crime and terrorism in the EU. The system only stores the information strictly necessary for the cross-checking of targets, crime events and the authorities that are investigating in order to identify the need for coordination and develop a common approach to targets. It represents the largest database on organised crime groups available to law enforcement agencies in the EU. A second system is the analysis system whose purpose is the reception, storage, processing and analysis of all kind of information and intelligence gathered during criminal investigations. The system has a limited access, provides an exhaustive audit log for the data protection authority and is used for the so called analysis work files (AWFs) which I will describe later. The index system is aimed at querying the presence of entities stored in the analysis system. It is accessible to Europol staff and liaison officers and gives a "hit or no-hit" result. The personal data provided to Europol has to be stored in a specific data base within the analysis system

related to the project for which the contribution has been forwarded. I have to stress that the provision of personal data to Europol has been strictly regulated according to the standards of the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted by the Council of Europe on 28 January 1981 and Recommendation No R(87)15 - Committee of Ministers of the Council of Europe of 17 September 1987 - regulating the use of personal data in the police sector. Furthermore all Europol computerised systems are subjects to the close monitoring of an independent EU data protection body, the Joint Supervisory Body (JSB).

- In addition, Europol has been asked to deliver expertise and technical support. For example, Europol has developed a unique expertise for the detection, dismantling and analysis of illicit laboratories for the production of synthetic drugs.

Europol's services are complemented by a legal tool, which still represents an innovative and unique legal framework in the international cooperation: the analysis work files (AWF). Thanks to the AWFs, Member States can use Europol as a platform for a safe and well regulated sharing of criminal information and intelligence on ongoing cases for the purpose of analysis.

The data is provided for a specific project created on request of the Member States or as a result of analysis carried out at Europol. The feasibility of the project and the legality of its aim and objectives is subject to the opinion of the JSB and the authorisation of the Management Board of Europol.

The provision of data must follow the principles of adequacy, legality and proportionality. The Law enforcement agencies providing information indicate the purpose of the provision of data and indicate how data have to be used and the conditions of dissemination. The access to data is limited only to a restricted number of Europol staff under the principle of *need to know* and *right to know*. The provider of the information is able to steer the development of the project organising and participating in operational meetings and tasking Europol with the provision of reports and services.



During the first years the AWF framework suffered from lack of awareness, inexperience and an obvious sense of scepticism and mistrust deriving from the fact that it was an untested tool. However, nowadays Europol AWFs are fully functional and represent one of the ways in which concrete and practical help is given to criminal investigations of law enforcement in the member states. Europol is currently supporting 16 AWFs against serious crime groups and 2 against international forms of terrorism.

Another important task given to Europol consists of the provision of the strategic knowledge to high level decision matters, such as the JHA ministers of the EU on the threat of OC and terrorism from an EU perspective. “The Hague programme” signed in November 2004 gave Europol the responsibility to prepare an annual threat assessment on OC within the EU (OCTA) starting from the year 2006. This task is coherent with the creation of the European crime intelligence model (ECIM) and the intelligence-led law enforcement approach in the EU. The purpose of the OCTA is the development of a forward looking document identifying current and future threats but also intelligence gaps in the EU’s collective knowledge on the threat of organised crime. The Ministers in the Council will then use the OCTA to set future priorities which will be used by national law enforcement agencies to plan cross-border operations. The PCTF and Europol will support these operations through the COSPOL and the AWF framework. In the course of these operations information and criminal intelligence would be passed to Europol. The setting up of Joint Investigative Teams to tackle specific crime groups identified by the intelligence cycle would ensure that targeted action was taken.

The Comprehensive Operational Strategic Planning for the Police also known by the acronym COSPOL, is a multilateral law enforcement instrument created under the guidance, support and direction of the PCTF with the aim of achieving tangible operational results in terms of arrests of top level criminals while making sure that the competent authorities in the member states make use of Europol’s analytical support related to AWFs. The PCTF through the COSPOL framework makes sure that the priorities identified by Europol in the OCTA and accepted by the Council will be addressed and translated into coordinated multilateral criminal investigations.

This develops a process of synergy involving Europol and the PCTF and operationalising the strategic findings of the OCTA through the AWF and JIT framework, creating for the first time the conditions for a real co-ordinated and multilateral approach against organised crime and terrorism, according to the principle of intelligence-led policing.

Europol has been tasked to produce a similar strategic assessment for the Council and the PCTF in the field of terrorism, the so-called TESAT, as a result of the Council Decision on terrorism issued after the Madrid bombing.

Europol is progressing in the establishment of partnership with third parties and organisations. Currently Europol's network includes:

- 3 Accession states
- 16 Non-EU states
- 9 International organizations.

Europol cooperates with other European Union organizations such as Eurojust, OLAF, SITCEN, CEPOL, the Commission, EMCDDA, ECB and FRONTEX as well as with international organizations such as Interpol, SECI, the WCO and the UNODC.

The cooperation between Europol and Eurojust is of particular importance and is developing well on the operational level, due to the complementary nature of the support that the two organizations can provide to ongoing criminal investigations. Eurojust has cooperated in 8 different AWFs, providing an added value in terms of faster acquisition and exchange of evidential material and the coordination of the activities of prosecuting officers during the planning and execution of dismantling actions.

Europol has already cooperated with SitCen for the production of joint assessments for the Council. The cooperation with CEPOL is increasing as CEPOL is requiring Europol to support training programmes for law enforcement officers of the EU in fields where Europol holds a high level of expertise.

The establishment of agreements follows a process coordinated by the Council and the Management Board, which establish the priority list and the acceptance criteria,

making sure that issues such as security, data protection and the respect of human rights are in place and will not result in any damage to the citizens or judicial proceedings in the member states.

There are several developments that will impact on Europol's role in the near future. Some of them are the result of international agreements achieved in the past and pending ratification by the member states while others are currently in a developing stage.

Three protocols signed in the past and pending ratification in some member states are expected to be fully implemented at the beginning of 2007, amending the Europol Convention in a way that will overcome some of the problems that have been experienced by Europol in the past.

The so-called three protocols are:

- Money laundering protocol. This protocol will make it possible for Europol to deal with money laundering as such, with no need to identify at a previous stage the predicate offence to which it is related. The implementation of this protocol will remove the legal restriction in several member states in the provision of intelligence related to suspicious transactions reported to the Financial Intelligence Units and will give Europol the possibility to cross-match the intelligence on those suspicious transactions at the EU level that have resulted in law enforcement investigations.
- Joint Investigation teams protocol will allow the member states to cooperate in an innovative and more efficient way in international investigations. Europol will be in a position to assist the investigations as the joint investigation teams will include Europol officials in a support capacity. This does not mean that Europol representatives may use any coercive power but that they can support with crime analysis, expertise, his services and products.
- Danish Protocol on AWFs, improving the functioning of the AWF legal framework based on the lessons learned during the first years of implementation and making Europol an easier tool and more *user friendly* organization to work with for the law enforcement agencies interested in sharing intelligence on crime groups.

A debate is currently being held on the future of Europol.

It has been recognized that Europol has become increasingly effective in fighting organized crime and terrorism. This is proven by its solid and well regulated legal framework, by the growth of the demand of member states law enforcement agencies to participate in AWFs, by the increase of cases involving information exchange and controlled deliveries handled by Europol Liaison Officers, by the entrance into use of the Information System with its huge potential in terms of coordination of ongoing cases and finally by the role of Europol as a crucial player in strategic analysis at EU level.

Europol has shown to be a quick learner and despite its young age is the organization that has the longest experience amongst the EU law enforcement organizations within the third pillar. However, the fact that the Europol Convention was prepared in 1995 has shown some limitations in respect of the recent developments and scenarios in international law enforcement cooperation.

Therefore there is an ongoing reflection on whether Europol's mandate should be changed for example to become able to support the combating of forms of serious crime only in one state and its tasks changed foreseeing the possibility to provide analytical support to operational projects under the responsibility and the data protection legislations of member states.

Another possible development could be the possibility for Europol to second Europol experts in specific regions to assist law enforcement initiatives run by different member states.

In addition, the role of Europol should be clearly defined in relation to the other EU law enforcement and intelligence agencies, in order to avoid duplication of efforts and potential for competition. This should be part of a structured reflection on the overall architecture of the security approach in the European Union, with a clear definition of tasks and function of each EU agency, the description of the interaction amongst the various agencies and the technical, legislative and procedural conditions that need to be put in place to achieve the interoperability of the various computerized systems.

This includes co-operation among agencies such as Eurojust, the new Border Management Agency (FRONTEX), the Joint Situation Centre (SitCen), OLAF and Europol.

Until now, the roles and responsibilities including the services and products of the respective authorities at EU level have only been described vertically in relation to the remit of the respective agencies themselves.

“The Hague Programme” has strongly addressed the need to realise the full potential of Europol and Eurojust in the fight against organised crime and terrorism while guaranteeing their accountability towards the rights of citizens and the scrutiny of their activities by both the European and national parliaments.

Innovative developments in the field of international cooperation deriving from “The Hague Programme”, such as the principle of availability will also have an impact on Europol’s role in the fight against organized crime and terrorism, not only by allowing direct access to member states databases but also creating a reflection on the issue of whether Europol should develop a central forensic function at a European Union level, for example in the area of DNA and biometrics.

The Commission has recently drafted a proposal that is currently on the table of the Council on changing the Europol Convention into a Council Decision. This solution would bring various benefits, for example, the funding by the Community budget, the adoption of the same staff regulation regime of the first pillar and more agility and flexibility in designing and implementing future improvements in the legal framework. This issue will be subject to a thorough examination by the member states and its feasibility will be assessed during the following months.

The future development of Europol’s role and tasks will largely depend on the process of integration of the European Union. The structure of the three pillars and the intergovernmental nature of the third pillar make any progress and adaptation to change very slow and time consuming. For example, the three protocols on Money Laundering, Joint Investigation Teams and the Improvement of the regime on Analysis Work Files required a long discussion before consensus was achieved at a political level and further more than 5 years passed before the agreements could be

introduced in the national legislation of each member state. This has resulted in the fact that the new tools aimed at improving the efficiency and effectiveness of law enforcement in the fight against organized crime had to wait such a long time before they could start functioning.

Therefore the progress in the field of the Constitutional structure of the European Union will be crucial to assess the possibilities that the international law enforcement cooperation in the field of justice and security have to move ahead.

However one thing is sure. Europol will not be given coercive powers to make it similar to a European Union FBI in the near future. Such a radical change of role may not happen without a close harmonization or approximation of the criminal and procedural laws in the member states. Even if this step was achieved, the granting of coercive powers to Europol officials would imply an interference with the sovereignty of the member states and this intrusion may be resisted by those countries who tend to prefer an intergovernmental approach in the field of justice and policing.

Despite that, Europol has already started to make a difference in the fight against organised crime at an international level and I am sure that Europol's added value will improve more and more in the future, when the organisation will have gained more experience, its acceptance will have grown in the member states, an overall coordination of all European law enforcement agencies will be achieved and a good level of interoperability between national and international law enforcement databases will be realised.

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