

EUROPOL AND COUNTER TERRORISM INTELLIGENCE SHARING

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Rezumat: În calitate de agenție de aplicare a legii Uniunii Europene, Europol sprijină statele membre în prevenirea și combaterea tuturor formelor grave de criminalitate internațională și a terorismului, prin schimbul și analiza de informații privind criminalitatea. Pentru Uniunea Europeană și Europol, lupta împotriva terorismului rămâne prioritară; în această arie, Europol oferă statelor membre sprijin în efectuarea anchetelor, furnizând analiză și produse analitice precum rapoarte sau evaluări ale amenințărilor; schimburi de informații, acces la bazele de date ale agenției și la platforme de experți; expertiză asigurată de biroul mobil Europol; alte produse relevante precum “First Response Network” (Rețeaua de primă reacție), “European Explosive Ordnance Disposal Network” (Rețeaua europeană de eliminare a dispozitivelor explozive), “EU Bomb Data System” (Sistemul UE de date privind bombele) și altele. Acest articol își propune să sublinieze două aspecte principale privind schimbul de informații de către statele membre în cadrul acestei structuri. În primul rând, se poate observa o discrepanță frapantă între intențiile de a coopera exprimate de către state și rezultatele acestui demers. În al doilea rând, barierele birocratice constituie un impediment important în realizarea unui schimb eficient de informații și analiză între serviciile naționale de informații și securitate ale statelor membre. Pentru a susține această ipoteză, cercetarea de față se concentrează asupra schimbului de informații realizat de statele membre în cadrul Europolului în domeniul măsurilor împotriva terorismului.

Cuvinte cheie: Europol, schimb de informații, Uniunea Europeană, măsuri împotriva terorismului, bariere birocratice, SitCen.

Abstract: As the European Union’s law enforcement agency, the European Police Office (Europol) supports its Member States in preventing and fighting against all forms of serious international crime and terrorism, through the exchange and analysis of criminal intelligence. At present, terrorism continues to remain a top priority for Europol and the European Union; Europol assists Member States in conducting investigations in this field by providing analysis and analytical products such as reports and threat assessments; information exchange and access to Europol’s databases and expert platforms; expertise ensured by Europol’s mobile office; other relevant products and services including the “First Response Network”, the “European Explosive Ordnance Disposal Network”, the “EU Bomb Data System” and other. This paper’s purpose is to argue two main points. First, a deep fracture can be observed between the reiterated intentions to cooperate and the outcomes of this endeavour. Second, this gap was generated to a large extent by the national security and intelligence service’s failure to share information and intelligence due to various barriers, including bureaucracy-related ones which can provide a valuable insight into Europol’s case. In order to support these assumptions, this study focuses on the European counter terrorism intelligence cooperation within Europol.

Key Words: Europol, intelligence sharing, European Union, counter terrorism measures, bureaucratic obstacles, SitCen.

1. INTRODUCTION

Europol was established in 1992 by the Maastricht Treaty and commenced limited operations in 1994 in the form of the Europol Drugs Unit (EDU) which was mandated to assist national police forces in criminal investigations. Provided initially with a small staff and one or two liaison officers from each Member State, the EDU progressively expanded its mandate to other areas of transnational crime, including terrorism (Europol 2009, 12). Europol became fully operational on 1 July 1999 and during the following years focused on promoting a comprehensive approach to international crime prevention and on its consolidation as an organisation. Nevertheless, it was not until 2009 that Europol managed to strengthen its role due to a new legal status, Lisbon Treaty's entry into force and the adoption of the Stockholm Programme.

In the context of an increasingly sophisticated criminal activity to which the European Union remains exposed, it soon became clear that national endeavours to address international terrorism alone can only achieve modest results (Europol 2012, 32). Thus, the strong, outspoken government support for enhanced intelligence cooperation on counter terrorism is understandable. Yet, despite this political impetus, Europol's role in the field remained rather modest for over a decade.

This paper's approach is mainly analytical: starting from a critical evaluation of the official EU documents and of the "events timeline", it opposes the goals and the results of intelligence cooperation between Member States and it attempts to explain the roots of failure. This research is also applied, qualitative and finally, conceptual, as it strongly relates to existing theory.

I have based the research efforts for this paper on two general categories of material: primary sources (comprising official documents issued by the EU institutions on Europol or more generally, on EU's fight against the terrorist threat) and secondary sources, which in turn, can be divided in two sub-categories: literature reviewing the case of Europol and intelligence cooperation between Member States within its structures; and literature covering more extensively security and intelligence issues.

The structure of the present paper unfolds as follows. Part 1 contrasts the goals and the actual outcomes in counter terrorism intelligence sharing in Europol in three key moments: in the aftermath of 9/11; in response to the terrorist attacks in Madrid and London; and finally, after 2009 when several important

political changes led to an improved position of Europol within the EU. Part 2 reviews the main barriers to counter terrorism intelligence sharing at the level of Europol and draws attention on the less explored bureaucratic obstacles.

2. EUROPOL AND COUNTER TERRORISM INTELLIGENCE SHARING: GOALS AND OUTCOMES

At the Extraordinary European Council Meeting on 21 September 2001 the heads of states and governments urged their national intelligence agencies to send more intelligence from national capitals to Europol and reaffirmed the need for a stepped up level of intelligence cooperation between Europol and other EU-bodies. Although these goals were reiterated several times in the following years, the struggle to meet them often proved unsuccessful.

Europol in the Aftermath of 9/11

By the time of the 9/11 attacks, information and practices were shared between the intelligence agencies of Europe through several forums both within and outside the EU: the security services met in the so-called “Club of Bern”; the law enforcement agencies within the recently operational Europol; the military intelligence agencies had begun their cooperation in the Intelligence Division of the EU Military Staff; while at the same time, external intelligence services, such as the Joint Situation Centre in Brussels, were involved in the EU (Fägersten 2010, 506).

Furthermore, at that moment the EU had no single coherent counterterrorism policy as terrorist threats were not ranked as a high priority on the common EU agenda (Zimmermann 2006: 126). Out of the above mentioned organizations, only the “Club of Bern” and Europol –which continued to lack a politically agreed definition of terrorism – had included terrorism on their agenda (Kaunert 2010, 652). Despite intense terrorist activities conducted both at a domestic and international level, the EU initiatives against terrorism were few in number and favoured bi- or multi-lateral cooperation between Member States on a case-by-case basis until 2001 (Howell & Co 2007, 20).

After 9/11, Europol was attributed a more expanded counterterrorist mandate. The Europol director Jürgen Storbeck publicly urged Member States to “provide us with what we need for our work: information” (Occhipinti 2003, 149). His call was answered at the Council Meeting on 20 September when the Justice and Home Affairs ministers reiterated the importance of the national intelligence services quickly passing on relevant information on terrorism (Council of the European Union 2001, art. 9). The central role of security and intelligence services in preventing terrorism through the disclosure of possible terrorist threats and intentions at early stages was repeatedly emphasised. Finally, following the Council’s decision, in November 2001 a first Counter Terrorist Task Force (CTTF) became operational. The Task Force was composed of national liaison officers from police and intelligence services and its tasks consisted in collecting in a timely manner relevant counterterrorist information and intelligence; carrying out operational and strategic analysis; and at last, drafting a threat assessment on the information received. Moreover, this unit was requested to collaborate directly with its U.S. counterparts.

The urge to strengthen cooperation between Europol and the intelligence services was further restated in the Extraordinary European Council: “Member States will share with Europol, systematically and without delay, all useful data regarding terrorism” (European Council 2001). Thus, it was expected that Europol would only strengthen as a result of increased intelligence cooperation and support from the Member States. This cooperation was not only deepened but also broadened in scope as the newly created Task Force was mandated also to collect, instead of just receiving intelligence; nonetheless in practice the CTTF failed to live up to the expectations. Repeated critics related to short-comings in its handling of real-time data eventually led to the CTTF being dissolved while several of its functions were absorbed by Europol. Over this period, Europol’s functions remained largely confined to a coordination role rather than an operational headquarters, mostly because its members had failed to agree on its functions and scope. For instance, Germany and other members pledged for an independent role of Europol in conducting investigations and envisaged Europol progressively evolving into an FBI-like organization. Conversely, other members, among which the United Kingdom, favoured a monopoly of Member States on investigative authority while Europol’s role restricted to coordination (Bensahel 2003, 40). It soon became

clear “the intelligence community was not eager to work with Europol” (De Kerchove 2008).

Europol’s Response to the Madrid Bombings and the London Attacks

After the terrorist attacks in Madrid on 11 March 2004 the European governments reaffirmed their commitment to direct more intelligence to Europol in order to strengthen its counter terrorism capacities (European Council 2004). Accordingly, a “revised” CTF was reactivated. Yet, in practice the declaratory statements of policy-makers had little impact. To cite but one example, the Spanish police officials refused to inform their French counterparts about the explosives used in the Madrid attacks (Fägersten 2010, 509). In a Note to the Council, Europol openly expressed its dissatisfaction with the weak support of the security and intelligence services in the Member States, which hampered its envisaged role of a key node of counter terrorism (Europol 2005). The intelligence services proved reluctant to provide Europol with relevant data, despite continuous calls for increased intelligence cooperation within and through Europol.

In many ways, 2005 can be considered a key year for Europol; a new Director was appointed and the accession of ten new Member States to the EU on 1 May 2004 brought several areas of organised crime which had previously been beyond the borders of the EU within them; moreover, Europol gained access to a new pool of expertise and skill from the new Member States (Europol 2009, 44).

In the aftermath of the London attacks in June 2005, the Council of the EU urged for an intensified exchange of information and a more significant support from the Member States’ security and intelligence services, objectives which were later on included in the European Union’s Counter Terrorism Strategy (Council of the European Union 2005). The European Commission’s initiative for a mandatory transmission of counter terrorism intelligence to Europol did not manage to gain the support of Member States and was eventually withdrawn: states either failed to comply with the decision, or submitted to Europol information of limited value, which to a large extent, was available from open sources (Fägersten 2010, 511).

In 2007 the CTF was transferred to the First Response Network, developed by Europol to assist investigations in Member States in case of a terrorist attack; thus, if the Task Force was initially designed for collection, analysis and generating threat assessments, at this point its purpose was limited to reactive police work (Fägersten 2010, 512). Settling with a more modest role in counter terrorism could have been a valid option for Europol, considering its “rather marginal implication in a number of events” (Bures 2008, 504).

Europol – a full-fledged European Union Agency

In 2009, the Council decided to establish a new legal basis for Europol: from January 2010, Europol became a fully-fledged European Union agency (Council of the European Union 2009). A provision which could prove relevant for the intelligence cooperation and counter terrorism area is the legalization of the practice of information exchange between national liaison officers on issues beyond Europol’s mandate (Council of the European Union 2009, article 9.3.d.). Also, it is stated that Europol will cover serious, not necessarily organized crime area (Council of the European Union 2009, article 3). Yet, concerns have been raised regarding the recruitment of skilful analysts since Europol would be submitted to the EU employment procedures (Fägersten 2010, 513).

Secondly, the coming into force of the Lisbon Treaty impacted Europol from the perspective of a greater number of decisions taken by majority voting in the area of Justice and Home Affairs, including police cooperation and decisions about the collection, storage, processing, analysis and exchange of relevant information.

Thirdly, the Stockholm multiannual Programme - which set out the EU’s priorities for the area of justice, freedom and security for 2010-14 - was adopted the same year. The Programme states that Europol and other European agencies “have reached operational maturity” (2010, Foreword) and that Member States should make “full use [...] of Europol, SitCen and Eurojust in the fight against terrorism” (2010, art. 4.5). In contrast with the ambitious projects envisaged in the past, the Stockholm Programme appeared to establish a more modest role for Europol in counterterrorism as a result of

lower expectations of both practitioners and political figures (Fägersten 2010, 514).

In the IKEA stores incidents in September 2011 Europol played a more forceful role, supporting counter terrorism cooperation with the involved Member States and using the EU Bomb Data System (EBDS) to secure and timely exchange information on this case. More recently, following the July 2011 car bomb and shootings in Norway, Europol intervened through its First Response Network which supported the investigation and provided information and initial assessments on the incident (Europol2012, 100). Consequently, one could argue its functions remained restricted to more “traditional” post-crime police investigations instead of focusing on “pooling and sharing” intelligence. Nonetheless, Europol’s efforts to accomplish its tasks to collect, store, process, analyze and exchange information and intelligence should not be overlooked. For instance, the Modus Operandi Monitor which continuously assesses terrorist events and investigations provides real-time expertise and intelligence to the relevant agencies in the Member States; or, the EBDS shares timely and relevant information and intelligence on incidents involving explosives, incendiary and explosive devices, as well as chemical, biological, radiological and nuclear materials (CBRN). Also, according to a 2011 satisfaction survey conducted by Europol, its strategic analysis products (TE-SAT included) are highly appreciated by the lead investigators whose operations had been supported by the agency (EU Terrorism Situation & Trend Report 2011, 38). In addition, Europol provides analysis training both for analysts and specialists within Europol, as well as for potential trainers in the Member States, covering operational, strategic and social network analysis (SNA). It is interesting to observe that Europol has started to disseminate materials, methods and exercises which were later on used by Member States to develop their own operational analysis.

Europol’s activity is also closely connected to SitCen, especially after the Lisbon Treaty when the latter gained a more prominent role. The EU’s Joint Situation Centre (SitCen) was established in 2002 and is tasked to “monitor and assess events and situations world-wide on a 24-hour basis with a focus on potential crisis regions, terrorism and WMD proliferation” (Mai`a K. Davis Cross, 2). Formally, SitCen is not mandated to undertake tasks of intelligence gathering per se, but instead operates to a great extent on the intelligence voluntarily provided by member states; its primary focus is on counter-

terrorism: it monitors potential terrorist threats, the proliferation of WMDs and the most conflict-prone regions of the world, with the capacity of responding immediately in crisis situations. Although not all member states participate in SitCen, they all receive its reports and assessments through their ambassadors in the Political and Security Committee; however, sensitive information continues to be shared through informal channels, generally between small groups of states with a high level of trust in each other and having a long history of information sharing (Idem).

Dissimilar to Europol, SitCen elaborates intelligence analyses for EU decision-makers especially - including the High Representative, the Counter-Terrorism Coordinator, Coreper II, the Working Party on Terrorism, the Policy Unit, decision-makers in the area of police and judicial cooperation and other - , rather than for national authorities (Müller-Wille, 59). Relocating SitCen from the Council Secretariat to the EEAS has significantly improved its capacity of intelligence gathering and analysis. If previously SitCen was not able to resort to the EU's 136 Commission delegations around the world for gathering information, under its current position it can task the EU delegation of the EEAS to do that; additionally, under High Representative Ashton, SitCen's role is more coherent, which further increases its usefulness, particularly in situations requiring an immediate response. The High Representative has the mission of taking the lead in the EU's CFSP and a more general role of ensuring the consistency of the Union's external action. This position incorporates the formerly known 'Troika' as the High Representative simultaneously chairs the Foreign Affairs Council while also being one of the Vice-Presidents of the Commission. Appointing a High Representative aimed to address the previously perceived incoherence and ineffectiveness of the EU which, with a fragmented representation in international relations, lacked a 'common voice'. The 'triple hat' of the High Representative was meant to ensure a higher degree of cohesiveness by bringing together in one person the European and the Member States' major interests. Although initially SitCen examined solely external threats, in response to the Madrid attack in March 2004, it also began to receive information from Europol on internal security issues, a distinction which is however increasingly blurring in a globalized security environment. When it comes to internal intelligence, SitCen analyses can serve as a departing point for policy recommendations and can facilitate the prevention of radicalization and recruitment.

3. BARRIERS TO COUNTER TERRORISM INTELLIGENCE SHARING WITHIN EUROPOL

The failure to cooperate in the area of counterterrorism can be explained in many ways. For instance, disparities in the political, administrative and judicial frameworks of EU Member States are likely to obstruct effective information sharing and coordination (Bures2008, 504). Secondly, in some Member States police agencies deal with terrorism, while in others intelligence agencies are responsible for this area. Cooperation between intelligence and police agencies is difficult as they often have mismatched interests in information. While police agencies might be particularly interested in specific information with prosecutorial purposes, intelligence agencies might seek more general information (Deflem 2006, 351). Intelligence services were reluctant to share real-time intelligence on terrorism as either they perceived their authority and autonomy infringed (Bensahel 2003, 40); lacked a sense of mutual trust; or, they preferred a bilateral cooperation and non-EU cooperation structures (Bures 2008, 507-8). To a great extent, literature on international intelligence cooperation assumes states are sole, unitary actors rationally deciding on cooperation. Nevertheless, this state-centric perspective does not seem to fit the case of intelligence cooperation on counter terrorism within Europol: despite strong political pressures from the Member States towards cooperation, the expected outcomes failed to materialize.

Christopher Grey observes that the study of intelligence has been overlooked by organizational literature and argues that agencies relating to intelligence, counter terrorism, warfare, defence procurement or policing can be understood as organizational apparatuses and thus, studied in a similar way (Grey 2009, 311). Consistent with this view is Fägersten's opinion (2010, 500-1). The author interestingly points out that intelligence cooperation within Europol was hindered by bureaucratic barriers under two forms: bureaucratic interests and bureaucratic culture.

The bureaucratic interests are related to the so-called "asset specificity". Briefly, social, material or knowledge-based investments in an institution cannot effectively be reallocated. This theoretical framework could better explain, for instance, why intelligence cooperation continued within the Club of Bern. The members of the Club sought to preserve the existing investments

in personal relations, networks and trust building; thus, any change was considered unattractive.

Since the '70s, the Club of Bern has served as a key informal forum for the Heads of EU Member States security and intelligence services who have met on a regular basis to discuss intelligence and security matters. In 2001 a Counter Terrorist Group (CTG) was created. Based on the intelligence ensured by Member States, this group provides threat assessments to EU policymakers and supports cooperation on the terrorist threat. Consequently, it can be argued that due to the high level of specific assets, Member States had a difficult task in establishing effective intelligence sharing arrangements within the EU (Fägersten 2010, 507). Yet, I argue this situation could gradually change as other "specific assets" connected to Europol are being created. To cite but one example, through its training programs, Europol has the chance to create a large pool of intelligence talent from which Member States would benefit and which would prove less resistant to cooperation. Also, participating in Europol's educational and training programs leads to the dissemination of similar methods and instruments which further strengthens cooperation.

Within the particular bureaucratic or organizational culture of intelligence agencies, the acquired set of loyalties and attitudes often prevent their members from sharing intelligence. In the case of intelligence agencies, the reduced mobility of the staff, the limited contacts with other organizations and the secrecy of their work contribute to the emergence of a strong organizational culture (Fägersten 2010, 510). Moreover, important cultural differences can be found across different agencies operating in the field of counter terrorism. For instance, in the case of intelligence and police agencies, the dissemblance between their esprit de corps can lead to mutual disregard (Müller-Wille 2008, 57); within the EU, these discrepancies are further enhanced by the cultural and linguistic diversity. Europol faced the challenge of recruiting, selecting and training qualified personnel from the very beginning of the young organisation. In 1999, the Europol Director Jürgen Storbeck argued in the Special Report of that year that "originating from different cultures and working environments, they had to be integrated into a common institutional and legal framework" (Europol 1999, Foreword). As its instruments and methods are expensive, difficult and dangerous to employ, "intelligence constitutes a kind of national product that reflects the sovereign right of a state"; as such, it is difficult to share with others and most often, "it is

preserved with jealousy” (Körsal 2010, 5). After all, “secrecy does make intelligence unique.” (Lowenthal 2009, 4-5). In this context, the national character of the professional culture is likely to hamper effective communication across similar bodies in different states – as opposed to other professional cultures which are transnational in their nature (Herman 1996, 209).

Yet, as transnational threats such as terrorism cannot be effectively addressed singularly, intelligence sharing can prove vital for the national interest. Europol attempted to diminish the Member State’s distrust to cooperate by developing tools which enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence, such as the Secure Information Exchange Network Application (SIENA).

4. CONCLUDING REMARKS

Since its beginnings in the more modest form of the Europol Drugs Unit, ambitious plans have been envisaged for Europol. As terrorism - in tandem with other transnational threats – raised particular challenges for national intelligence agencies, the incentives for cooperation grew stronger (Fishbein and Treverton 2004).

However, the political impetus for cooperation was not followed by the envisaged outcomes (Bures2011, 63); taking into account the marginal role of Europol after the 9/11, Madrid and London attacks, the gap between the national preferences and the results becomes clear. As I have previously indicated, the reluctance to share intelligence led to a rather poor performance of Europol in key-moments. Europol emerged as a more significant actor within EU after 2009, partly due to the Lisbon Treaty, its new legal status and its own strategy and improved capabilities designed to enhance intelligence sharing between Member States.

The national intelligence agencies’ unwillingness to share intelligence is to a certain extent understandable. Opposed to a logic of openness which promotes exchange and trust, it should be taken into account that “possession of intelligence reinforces the image of the possessor as elite, knowledgeable, and advantaged. [...] To ensure these privileges, the production, dissemination, and

revelation of intelligence must be tightly policed” (Bean 2011, 61). Nevertheless, a tight cooperation between the national intelligence agencies is vital as terrorism has long become an internal problem of EU.

Explaining the multiple dimensions of national security intelligence, Loch Johnson noted that intelligence can be equally understood as secret information, set of missions, process, and organization, adding that: “since intelligence activities are carried out by people in secretive government agencies, a closer look at intelligence as an organization is in order” (Johnson 2012, 15). This often overlooked view in the literature can provide a relevant explanation for the reluctance to cooperate in the field of counter terrorism intelligence within Europol. Most importantly, I have argued these bureaucracy-related obstacles can be progressively surpassed by employing instruments such as the training programs already developed by Europol, which have the potential to disseminate common or similar methods and procedures as well as to shape mind sets.

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