

THE FUTURE OF EUROPOL – A PRACTITIONER’S NORTH STAR OR A POLITICIAN’S AIR BUBBLE?

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INTRODUCTION

When talking about the future it is always a good idea to go back to the beginning. Being privileged to have been involved in the very first steps of the process of creating Europol, I always kept in mind that the initiative to create Europol was not triggered by practitioner’s needs. It was a politically pushed initiative to effectively deal with an ever increasing trafficking in drugs and terrorist activities on the European level.

Looking at the situation today, nothing has changed. During this speech it will become clear that Europol is still a politically driven organisation. To partly paraphrase the Director of Europol ‘s speech before the informal JHA Council mid January: changes are needed, and changes are needed soon in order *to be in line with the expectations of the European law enforcement services.*

THE POLITICAL STEERING OF EUROPOL: RIGID THIRD PILLAR CO-OPERATION AND THE GAP BETWEEN POLICY MAKING AND IMPLEMENTATION

For everyone being courageous enough to take a look at the extensive list of Council decisions since the creation of Europol, it will be crystal clear that Europol has never been deprived of sufficient political steering.

During its (still short) existence, the successive presidencies of the European Union – each driven by the need to score politically – have pushed Europol to take on new assignments, new responsibilities and new demands with regard to efficient co-operation.

Consequently, Europol had to function without a clear overall strategic vision concerning its role and never had the time to grasp its breath and to get organised internally.

The Ministers stated several times that it is utterly important to have an efficient information flow between the Member States in order to combat effectively organised crime and terrorism. In this respect much was accepted from the realisation of Europol’s Information System. Let’s take a look at the actual implementation of this objective.

I remember well that the first tests for the IS were organised during the last few weeks of the Belgian Presidency in 2001. As everybody knows the final decision concerning the technical component of the Europol Information System has been taken only one

year ago, thus concluding long and sometimes difficult negotiations. Now the time has come to start thinking about the functional requirements of the IS and the exact information to be loaded by the Member States into the system. And believe me when I tell you that such an exercise will prove to be not as easy as one might imagine. Luckily, at Henu's level one has anticipated the difficulties as the working group has finished its work and will shortly start working together with the ICT Programme Board.

For a long time, the AWF's did not give the results we had hoped for. One of the reasons was that the AWF's were used to stock information and were being used as an alternative for a lacking IS. This resulted in the participation of almost all Member States in almost all AWF's, which was contrary to the philosophy of the Convention and the Rules on AWF's to open an AWF.. The last few years, significant improvement has been made also with regard to the AWF's (smoother opening procedure, ...).

The functioning of the IS and AWF's is showing only now some real potential for added value. But even now there are still some very relevant questions that remain unanswered.

(Examples of such questions:

- *Although the Convention is clear on what kind of data to send, in practice it's slightly more complicated. As we can see already right now, there is great difference in what kind of information is sent to the IS (some MS send information about 1 or 2 criminal phenomena, other countries use a more horizontal approach).*
- *Will there be a cross-checking possibility between the AWF's and the IS?)*

But yet again a new development came up when the The Hague Programme and its Action Plan were agreed upon. Everybody is familiar with the principle of availability and the improved interoperability of the information exchange systems. However, is anybody here familiar with the role of Europol within these new concepts? Oh yes, Europol has developed its views and stated there is a need for an integrated holistic approach. According to me, perhaps too little and certainly too late.

Last December the framework decision on the simplification of information exchange was politically agreed upon. It will become "easier" for law enforcement services to exchange information on a bilateral level.

I'm taking note of these initiatives while one specific question comes to my mind: what will be the role of Europol within all this? Don't we face the risk that the IS – at least partially - will be deprived of information because of these initiatives facilitating the bilateral exchange of information?

At the one hand, Europol has become an outlet for European politicians when thinking about possible measures to react against certain politically sensitive phenomena. At the other hand, the same politicians restrict the functioning of Europol by not foreseeing clear national implementation measures, the absence of ratification or the adoption of national legislation".

Europol is indeed situated within the third pillar, characterised by national sovereignty. To say it with the words of Klaus Hänsch (chairman of the EP during the nineties): "...toutefois, coopération intergouvernementale et efficacité ne sont pas synonymes".

The mere fact that the last informal JHA meeting still felt the need to insist on the speedy ratification by all member states of the 3 additional protocols to the Europol Convention, proves not only the inefficiency of this kind of co-operation, but shows equally the enormous gap between political policy making and practical implementation.

INTERACTION WITH THE PRACTITIONERS: A MATTER OF CLEAR COMMUNICATION AND ENHANCING A RELATIONSHIP OF TRUST

Ministers are not the not only ones directing Europol. Also the Management Board and the Task Force Chiefs of Police have their role to play. Each of the national delegates within those forums has to take up her or his responsibility in making sure that the decisions are implemented and that the necessary directions to the basis are given to start the implementation. Therefore those delegates must be in the position to do so. The right delegate should be at the right forum. It also means that clear communication mechanisms must be available within each member state. Unfortunately, these prerequisites are not always fulfilled.

The past experience has shown that (political) steering is less determining for effective co-operation than creating an atmosphere of trust between Europol and the law enforcement community itself. Until now such an atmosphere does not exist at all because of several reasons: Europol is considered to be a politician's organisation, national police services tend to stick with the "old boys culture" of "my information and my investigation", ...

But, Europol can only show results if it receives the necessary information. Analysis is only possible when (the right) information is available and expertise in analysis is only built up through many experiences. The whole process is of course a vicious circle.

Is it possible to break this vicious circle? I think it is.

During the past years there have been some important operational successes (operation Twins (child pornography) and the AWF Islamic terrorism), which have proven to be an important instigator for the involved national services. The success of Europol stands or falls with the national decision to make use of Europol.

During the referenda with regard to the new European Constitution a much-heard criticism was that "factory Europe" was turning without direct input of the European citizens. The same remark could be made with regard to Europol. It is of utmost importance that Europol is "brought" to the practitioners in the field. They have a need for direct and close contact. This is contrary to the obligated central contact point that is currently being used. In this regard it is up the member states to make the

best use of the new article 4 of the Europol Convention that will make it possible for national services to have direct contact with Europol.

THE CREATION OF A EUROPEAN CRIMINALITY PICTURE: A FIRST ATTEMPT FOR AN OVERALL STRATEGIC VISION?

For the moment Europol's mandate covers a wide range of criminal phenomena. It's impossible for Europol to address all those phenomena. Until this moment Europol's work has been prioritised on the basis of an Organised Crime Situation Report (OCSR). This report has always been mainly a "cut and paste" version of the member states' contributions that are often politically cleaned versions (honesty compiles me to say that for the moment there is less reluctance to show the real situation within a country) and was not at all future-orientated. Already during the Belgian presidency it was agreed that this report had to evolve to a threat analysis.

Now Europol is in the final phase of completing the first Organised Crime Threat Assessment (OCTA). This future orientated threat assessment could together with the ILP concept introduced during the past British presidency constitute a major breakthrough for Europol.

It all depends on the willingness of the member states. The introduction of OCTA, ILP, ECIM, ... implies not only the acceptance of a new policing methodology, but also a drastic change in the way countries look upon the problems of criminality. When there is a cross border aspect about a certain criminal phenomenon, most member states until now have always perceived this phenomenon to be a national problem and not a European problem. If co-operation with other countries is needed, it is for the moment mostly done via bilateral co-operation.

Using the above-mentioned methodology means the acceptance of a European criminality picture and the acceptance that there are criminal phenomena that can only be tackled efficiently through a European co-operation. And above all it means that countries must be willing to really invest in capacity to deal with the problems that are not primarily defined as a national problem.

Once the results of the OCTA will be known, priorities on a strategic level (by the Council) and operational action plans can be decided upon. Because my time is limited, I cannot go into detail about my vision on the internal security architecture of the European Union and on how to reinforce the operational co-operation and horizontal coordination within the European Union.

Nevertheless, before beginning my next point about the proliferation of organisations, I would like to say the following:

There will be a need to establish a coherent policy and operational cycle with the following elements: OCTA – European Safety Plan – Operational phenomenon orientated plans (COSPOL projects – TFCP) – AWF's (target groups) and JIT's. I seriously doubt if such a coherent cycle can be achieved through the actual internal security architecture and the organisation of a meeting between the chairmen of CATS and SCIFA and the representatives of Europol, FRONTEX, ... My pleading

for a swift installation of a COSI (-like organ) has already been distributed as a document of the Belgian delegation during 2005 (doc. 7344/05 JAI 92)

THE NEW INTERNAL SECURITY STRATEGY: DIVERGENCE BY PROLIFERATION

In the current state of play it is impossible to restrict the discussion on the future of Europol to Europol itself. The discussion has to be broadened to the internal security architecture of the European Union. The The Hague Programme has – in anticipation of the new European Constitution -attempted to restructure and reinforce the European police and judicial cooperation landscape.

Europol is not the only player (anymore) when it comes to the internal and external security of the European Union. Previously I have mentioned that European policy makers often show a lot of ambition in granting Europol additional assignments or competences. But with equal ease other – existing or newly created - organisations are burdened with overlapping assignments.

The The Hague Programme aims at reinforcing the position and role of Europol within the new internal security strategy and at the same time tries to anchor Europol within the co-operation structures existing within the European Union.

It's always good to have a clear picture of the situation. That's why I tried to make the following flowchart.

This flowchart shows the information flows from the national level towards the European level and the actual and future cooperation agreements between the different European bodies.

Europol seems to be at the centre of the European cooperation in the field of internal security.

Should we be surprised to observe that in reality cooperation doesn't go as smoothly as we would like it to, taking into account that:

- At the national level, we can see that the relevant administrations have to cooperate and share their information with several EU bodies, belonging to different EU-pillars. Different pillars means different working methods and different decision making processes.
- On a European level co-operation structures are created which don't even exist within all Member States (or have no reason to exist)?

The creation of new structures doesn't lead to synergy. In fact, I'm saying that proliferation by creating new institutions leads to divergence. There is a lack of coherence as the relations between those organisations/institutions are not sufficiently clear. In reality we will see discussions about the competences and responsibilities of these organisations.

Isn't there an incoherence when Europe, at the one hand, is asking its member states to bring together at the national level all relevant intelligence of police -, intelligence

and security services to be able to come up with the best threat assessment, while, on the other hand, on a European level the position of SITCEN (situated within the Council's secretariat!) is strengthened with separate assignments such as the drafting of a European threat assessment. Wasn't the CTTF conceived to gather the intelligence of police services and intelligence services?

Furthermore, this proliferation has consequences with regard to the development of expertise within the organisations, because fragmentation of tasks usually means fragmentation of expertise.

EUROPOL AS AN UMBRELLA FOR COMMON INTERESTS: MULTI-AGENCY APPROACH ?

Taking into account the central role of Europol within the European internal security landscape, would it be a good idea to look upon Europol – as a long-term objective – as a (broadened) multi-agency organisation?

According to the Convention, Europol already has a multi-agency dimension, as customs and police services are already capable of working together under the umbrella of Europol. However, in reality, it can be doubted if customs are sufficiently present at Europol for the moment.

Previously, I mentioned the incoherence with regard to the CTTF attached to Europol regarded strictly as a law enforcement organisation (detached experts do not work under the authority of Europol). Wouldn't it be more coherent for the intelligence services to work under the broadened concept of Europol?

This multi-agency approach for Europol would of course have its consequences. It would become imaginable for Europol to have a Director coming from intelligence services. It would also imply that some organisations have to disappear. I am aware that in the current stage of development it seems quite inconceivable, but I wanted to draw the attention at the possibility anyway if not only to pin point a lost possibility. It's up to the politician's to decide whether they want to push Europol towards an organisation with a real multi-agency character, or whether they wish to continue to foster a diverged responsibility between different organisations.

EUROPOL'S PARTNERSHIP: CREATING REAL OPERATIONAL INSTRUMENTS

Going back to the flowchart from before, it also showed the actual and future co-operation agreements of Europol. Of course, it is easier to draw an arrow in Power Point, than to make players in the field cooperate effectively.

If the multi-agency approach would prove to be unrealistic, an integrated internal security can only be guaranteed through the development of operational co-operation agreements with the European Union institutions and organisations, and the concept of making Europol the privileged contact for the exchange of information with third countries for the as "European" identified criminal phenomena.

The development of real operational instruments is really crucial to me. At this moment, the evaluation of the existing co-operation agreements has started within the Management Board. I already have been very critical with regard to the co-operation agreement with Eurojust. I will remain to be very critical when the other co-operation agreements (with Interpol for instance) are evaluated or when the Management Board is asked to agree to the signing of the future agreements with FRONTEX and OLAF.

EUROPOL'S OPERATIONAL COMPETENCES

Before reaching my conclusion I would like to shortly share my views with regard to the possible operational powers of Europol in the near and distant future.

In the near future, Europol can be invited to be a part of the Joint Investigation Teams. I strongly hope that the legal and practical (too costly, unwillingness of the member states to invite Europol) constraints will prove to be of a very temporary nature.

On a middle long term I believe that Europol should be granted more operational competences for the criminal phenomena that have an outspoken European nature. I'm especially thinking about the forgery of the euro. However, I agree with most people that such extended operational powers are linked to the development of a European public prosecutor in line with the proposal of a Corpus Iuris submitted already several years ago.

In the more distant future it's self evident that an even further extension of operational powers (power to arrest, ...) is linked to the existence of a complete European penal and judicial area.

CONCLUSION

I still believe that Europol has an enormous potential. It is clear now that for some time Europol will have to find its place within a co-operation structure where each country will keep it's national sovereignty. The success of Europol stands or falls with the attitude of the member states and the creativity of Europol to survive in such an environment.

It will be a challenge for Europol to offer services that are tailored to the needs of its member states. In order to have a bright future, it is my belief that the following principles should constitute the guidelines in the development of Europol:

- The stability of the organisation needs to be guaranteed (focus on a certain number of main objectives)
- It should be avoided that other institutions or bodies provide the same service as Europol.
- Europol should produce added value for areas where such an added value can not be guaranteed by other bodies.
- The right balance between stimulating common approaches for the whole European Union and offering support to regional initiatives will have to be found.

These criteria regard the ‘horizontal’ activities of Europol (analysis, exchange of information, expertise, ...) as well as the ‘vertical’ activities (terrorism, drugs, Euro, ...).

I personally see four important tasks to be fulfilled by Europol.

First and for all, Europol should evolve to be a key player with regard to the *exchange of information*. Taking into account the current developments on the principle of availability, Europol should ensure it’s usefulness by promoting the effective use of AWF’s and to show the potential added value of the IS.

Secondly Europol is in a perfect position to play a *coordinating and facilitating role* for transnational investigations within the European Union. Europol can bring together the different players involved in ensuring an internally secure European Union.

Thirdly, Europol can also be considered as a *communication platform* to support specific police units in the different member states who feel the need to communicate more easily in order to cooperate more closely.

This is, for example, already the case for police officers competent for the seizure of criminal assets. They asked Europol to facilitate a server and a network and the CARIN-network was created. Another example is the Atlas project of which aims to establish a closer and more efficient cooperation between Special Intervention Units.

And the last task I see for Europol is *to represent the European Union vis-à-vis Third Countries* concerning the as “European” identified criminal phenomena.

As a final conclusion I would like to make the following statement. If we really want Europol to effectively offer an added value and operational support to the Member States, the latter should no longer oppose to ceding a part of their national sovereignty to the benefit of Europol. There is a clear common goal and it is more than time that everyone takes on his responsibility. We spent enough time discussing the subject, now it is time to act.