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An Unequal Fight

Strengthening Europol's Counter-terrorism Mandate

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AT A GLANCE

– Although Europol has evolved as a complex coun-ter-terrorist entity, its role is confined to information sharing, and it is far from being a truly operational counter-terrorism centre. Europol has no operational powers and remains dependent on national agencies for information gathering and operational support.

– Europol does not hold all the supranational powers that could be delegated to it under the terms of the current EU treaties. It lacks the executive power of ar-rest and remains dependent on national agencies for terrorism-related intelligence gathering and analysis. Europol usually acts as a post-attack handler tackling repercussions of violence already perpetrated, not an effective preventive actor.

– All stakeholders and member states should think about upgrading Europol's counter-terrorist role. Without granting Europol intelligence-gathering rights and operational powers, it will be impossible to en-hance its counter-terrorist role.

– Politicians and representatives of member states should start working to expand Europol's mandate in order to increase its efficacy in fighting terrorism. This expansion should also include Europol's budget and other resources (human, technical and material).

FINDINGS ON EUROPOL'S CURRENT ROLE

– Europol has become more effective in countering terrorism.

– Europol has become more visible to national law en-forcement personnel.

– Europol has become more operational in its approach.

– Europol provides added value to Member States through its unique and distinctive services.

– Europol is better aligned to the priorities of EU institu-tions and Member States.

– Improving information sharing by Member States re-mains an important objective.

– Europol should make maximum use of its ability to re-quest that Member States initiate an investigation in cases where two or more Member States are involved.

– Europol needs greater resources to fund operational activities in Member States.

– Cooperation with other European agencies is beneficial to achieving Europol's objectives. This is particularly no-table in the cooperation between Frontex and Europol.

– Europol needs to build its relationship with Eurojust, and, over time, with the European Public Prosecutor.

More cooperation is needed with the European External Action Service.

– Cooperation with third countries is very beneficial to the attainment of Europol's objectives.

– Multi-parliamentary supervision of Europol by the European Parliament and national parliaments is ben-eficial for all involved. This should be used to persuade stakeholders of Europol's value added, and to cre-ate avenues to persuade Member States to increase Europol's operational powers and budget.

– National parliaments should be significantly involved in Europol's activities and their supervision. The evi-dence shows that, on the whole, this role is taken very seriously. This should be continued, and used to push Member State governments to provide Europol with all the necessary powers and resources.

– The United Kingdom is an important member of Europol. It is vital that this significant relationship is maintained post-Brexit in the form of the closest pos-sible association, or even membership (in the scope of reforms including other non-EU states such as Norway).

– Europol plays a key role in the European Agenda for Security 2015–2020, which included the estab-lishment of a European Counter-Terrorism Centre, a European Cybercrime Centre, and increased cross-border investigations.

– Joint Investigation Teams have been a successful tool for Europol and their use should be stepped up.

– Europol also plays a key role in the European Agenda on Migration (2015), including an active role in the fight against irregular migration. Europol should sig-nificantly increase its involvement in the creation of a European Migrant Smuggling Centre. It is significantly involved in the European Hotspots Approach, which can also be used for counter-terrorism purposes.

– Europol's access to EU databases needs to be up-graded, notably VIS, Eurodac, and future systems such as the Entry-Exit System, as well as SIS II.

Recommendations for Europol's future role:

– *Recommendation 1*: Europol should enhance its inde-pendent intelligence gathering capabilities.

– *Recommendation 2*: Europol should be granted in-creased operational powers.

– *Recommendation 3*: Member States should be obliged to provide information to Europol.

– *Recommendation 4*: Europol's budget needs to be in-creased significantly to allow it to exercise the afore-mentioned powers.

INTRODUCTION

The European Police Office (Europol) is an international police entity established in 1999 to promote cooperation among law-enforcement agencies in the EU (Bures 2008; Deflem 2006; Kaunert 2010; Mounier 2009). Terrorism was one of the acute issues that immediately fell under its mandate (O'Neill 2008). Article 2.1 of the Europol Convention stated that addressing and preventing terrorism would be one of Europol's primary objectives within two years (O'Neill 2008; The Europol Convention 1995). However, it is pertinent to note that Europol's emergence as a counter-terrorist entity can be divided into two periods – *pre* and *post*-9/11: in the former period Europol's mandate was limited and it was largely considered a law-enforcement tool, while in the aftermath of 9/11 its counter-terrorism mandate was expanded and it started operating more like a counter-terrorist actor (Bures 2008; Deflem 2006; Kaunert 2010).

This study evaluates the current role of Europol in coping with terrorism, both traditional and non-traditional forms, and describes the measures, strategies and means that are required to further enhance its counter-terrorist role.

HOW DID EUROPOL EVOLVE AS A COUNTER-TERRORIST ENTITY?

To understand the emergence of Europol's counter-terrorist role, we must start with the origins of European Union counter-terrorism policy, which laid the groundwork and created a legal and political framework for Europol to assume a counter-terrorism role. Europe has a long history of coping with terrorism, particularly in the domain of international police cooperation (Bures 2008; Kaunert 2010). The roots of the EU's counter-terrorism policy go back to the second half of the twentieth century, when the member states of the then European Communities (EC) had become dissatisfied with existing counter-terrorism policies and regulations and came to the conclusion that regional (European) cooperation would be much more effective than international cooperation (Bures 2008; Deflem 2006; Wilkinson 1986). This conclusion pushed the EC towards developing a counter-terrorism policy at the 'operational level' in addition to the already existing intergovernmental European Political Cooperation (EPC) Framework that brought together member states' diplomatic and legal efforts to tackle state-sponsored terrorism. It gradually dawned on the member states that various legal, political, economic and societal/cultural factors meant that international cooperation on terrorism involved long and difficult procedures that made it less fruitful. They decided that regional cooperation was more effective and feasible.

The Terrorism, Radicalism, Extremism, and Political Violence (TREVI) Group formed in 1975 in Rome by European police officials can be considered the first real fruit of this common European counter-terrorism effort. The main aim of the TREVI Group was information-sharing and reciprocal assistance on terrorism and related international crimes between the police institutions of the EC member states (Bures 2008; Peek 1994). According to Bures and Lodge, although TREVI's legal basis and its relationship to other EC Institutions remained blurred, by the early 1990s a majority of EC member states believed that TREVI was a much more effective forum than Interpol in terms of information sharing on terrorism and international organised crime (Lodge 1989; Bures 2008). It became obvious to the EC member states that "the internal market cannot be completed unless the issues currently being addressed by TREVI are discussed with the EC" (Lodge 1989). In other words, while freedom of movement, capital, goods, services and labour were a central goal that member states were working hard to achieve, they could not tolerate free movement of criminals and terrorists, who would undoubtedly benefit from the environment created by the common market. When the Maastricht Treaty was signed in 1992, the EC member states therefore decided to bring together the informal EPC and TREVI frameworks under the new legal and structural framework of the EU and establish the basis of the Justice and Home Affairs (JHA) pillar (Bures 2008). The Maastricht Treaty designated terrorism as an internal security issue for the newly formed Union and it marked the beginning of a new era in which terrorism would be dealt as a shared problem of the member states (Chalk 2000)

Designating terrorism as a serious form of crime, the Maastricht Treaty specified three central elements of common action by the EU member states: (a) closer cooperation between police forces, customs authorities, and other competent authorities, including Europol; (b) closer cooperation among judicial and other competent authorities of the member states; (c) harmonisation, where necessary, of rules on criminal matters.

However, countering terrorism by combining all necessary efforts and strengths of member states only materialised after 9/11. In other words, despite member states agreeing that effective action against terrorism required common efforts, practical implementation was too slow (Bures 2008; Kaunert 2010) and in some cases even unfeasible. Some member states were reluctant and skeptical of the efficacy of common actions, asserting that terrorism was better dealt with at national level. It can be contended that at the time of the 9/11 terrorist attacks the EU had neither a common counter-terrorism policy nor a coherent strategy, and the threat posed by terrorism did not figure high on the EU's agenda (Bures 2008; Kaunert 2010; Zimmermann 2006).

The Europol Convention was formally drawn up in Brussels in July 1995, but Europol was unable to commence full activities until July 1999, after the Convention had been ratified by all EU member states (Deflem 2006; Kaunert 2010). Due to its legal status as an international organization established under international law, national ratifications are required for all amendments to the Convention. The legal mandate included: (a) improving effective cooperation among police authorities of the member states to prevent and combat serious international organized crime; (b) investigating crimes such as drug trafficking and terrorism.

From the very beginning, the plans for Europol were very significant and ambitious. During the 1980s and 1990s German Chancellor Helmut Kohl repeatedly suggested arguments in favour of a "European FBI". In the course of its EU Council Presidency in the second half of 1994, Germany pushed ambitious plans for such a European policing agency and published documents indicating its hope that the responsibilities would eventually be broadened to cover at least twenty-two types of organized crime (Occhipinti 2003). Irish Prime Minister John Bruton supported the creation of an FBI-type agency for the EU. In response to this political pressure, the debate about Europol's operational powers flowed into the Amsterdam Treaty negotiations. This Treaty – signed in 1997 and in force by 1999 – created a strong institutional impetus for the "Area of Freedom, Justice and Security" (AFSJ) more generally. Regarding the use of legal instruments, the Treaty brought about the most significant change to date, except for the Lisbon Treaty. Yet the fight against terrorism was initially highly controversial among EU member states. Spain pushed for terrorism to be included in Europol's responsibilities from the beginning of negotiations on the Europol Convention, but it found itself isolated at the time. While the Spanish wanted more European support in their fight against ETA, this put them at odds with the French and Belgian governments. Much of the controversy derived from the lack of political agreement on the definition of "terrorism" in the pre-9/11 period. Although it was agreed in September 1994 that terrorism would not be included in the Europol Convention, in March 1995 France and Spain found on a compromise: terrorism would be included in Europol's remit, but only two years after the Europol Convention entered into force. After delays in ratifying the convention, Spain achieved agreement to make terrorism a Europol competence by 1 January 1999.

Europol's early counter-terrorism role was thus replete with political and legal complications due to a lack of agreement among member states. This had a negative impact on Europol's counter-terrorism role, since its mandate only started significantly expanding after the 9/11 terrorist attacks when leading EU politicians suddenly felt vulnerable and unprotected. The Madrid bombings of 2004 and the London bombings of 2005 upped the pressure on EU decision makers to create new legal and political frameworks for improving EU counter-terrorism policies. These efforts reinforced Europol's counter-terrorism role and expanded its mandate in this area. However, despite the serious threat posed by religion-based terrorism, member states abstained from granting Europol truly supranational functions. Europol has evolved as a security actor whose counter-terrorism role is confined to information sharing, but fails to function as a truly operational counter-terrorism centre. Like its counterpart Interpol, Europol has failed to become the EU's FBI, since it lacks operational powers and remains dependent on national agencies for information gathering and operational support.

WHAT ROLE DOES EUROPOL PLAY IN THE FIGHT AGAINST TERRORISM?

Although it does not have actual operational powers,[1] Europol's counter-terrorism role was reinforced in the aftermath of 9/11; since then, it has been actively fighting against terrorism, particularly religion-based terrorism. Religion-based (i. e., Islamist) terrorism remains an immediate threat to the EU, and currently represents the focus of Europol's counter-terrorist efforts. Other forms of terrorism and radicalisation (for example right-wing extremism and ethno-nationalist terrorism) are also considered imminent threats to member states. In order to improve the efficacy of Europol's counter-terrorist efforts, the European Counter Terrorism Centre (ECTC) was created within Europol in January 2016. According to the Europol website and serving officers, the ECTC is an operations centre and hub of expertise that addresses the growing need for the EU to strengthen its response to terrorism. The ECTC focuses on: (a) tackling "foreign fighters"; (b) sharing intelligence and expertise on terrorism financing between member states (through the Terrorist Finance Tracking Programme and the Financial Intelligence Unit); (c) monitoring and developing preventive measures against online terrorist propaganda and extremism (through the EU Internet Referral Unit); (d) combating illegal arms trafficking; and (e) international cooperation among counter-terrorism agencies.

The ECTC is supported by the Emergency Response Team (EMRT); live investigation and incident response and coordination; senior counter-terrorism investigators and analysts with language expertise relevant for counter-terrorism. The ECTC utilises established counter-terrorism networks and services at the EU level through the Europol National Contact Points for the Dumas counter-terrorism working group, the EU Bomb Data System (ENDS), the European Explosive Ordnance Disposal Network (EEODN), and the First Response Network. In their present form Europol and its ECTC represent a complex law-enforcement agency that crafts, organises and implements multifaceted counter-terrorism activities. Europol's counter-terrorist role thus comprises: (a) analysing gathered information from strategic, tactical and operational perspectives; (b) undertaking threat and risk assessments, and, based on their results, crafting and implementing awareness activities; (c) on request, supporting operational investigations in the Member States; (d) monitoring, tracking and preventing all forms of illicit trafficking of nuclear material, strong radioactive sources, arms, ammunition, explosives and WMDs; (e) establishing regular contacts and sound relationships with counter-terrorism experts counter-proliferation entities and agencies within the Member States as well as in third countries and international bodies. In organising and executing these activities Europol acts as a complex security entity operating at both international (i.e., the EU) and national (i.e. member state) levels. Europol's activities, particularly those relating to terrorism, have enormous and direct political/policy implications for the EU. Specifically, as a security entity Europol actively shapes the security environment

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1   In fact, Europol's lack of operational powers is its main shortcoming, substantially reducing its efficacy compared to national agencies.

through assessment conducted for multiple audiences (including the EU, Member States and liaising agencies), as well as actively participating in policy implementation.

Analysis of Europol's activities between January and September 2017 reveals that it supported 127 counter-terrorism operations, not only within the EU but also internationally (Europol 2017). This is a sharp increase (50 percent) compared to 2015, when there were 86 investigations related in one form or another to countering terrorism (Europol 2017). The *European Terrorism Situation and Trend Report 2017* shows that Europol's most extensive involvement was through Task Force Fraternité, where key information was shared with and through Europol (including targets, associates, phone and other data). The total amount of information available amounts to 19 terabytes, including: 2,500 SIENA (Secure Information Exchange Network Application) message exchanges, 1,247 leads from the Terrorist Finance Tracking Programme (TFTP), 2274 other financial messaging leads, and 60 Passenger Name Record (PNR) requests.

Europol's counter-terrorism centre currently identifies the following key trends: jihadist terrorism (i.e. religion-based Islamist), right-wing extremism, and ethno-nationalist terrorism (Europol 2017). However, the ECTC's main attention and resources are directed towards jihadist or religion-based (Islamist) terrorism as this is considered as an immediate threat to the EU due to the rise of the "Islamic State" or ISIS, a resurgent Al-Qaeda and affiliated organisations, all seeking to perpetrate large-scale terrorist attacks in the West.

While acknowledging its counter-terrorism role, both Deflem and Kaunert argue that Europol – unlike other international police organizations – is unusual in that it was not created bottom-up by police professionals but instituted through a top-down decision by the institutions of the European Union. Europol's activities are therefore more distinctly legally framed and tied to specific well-defined areas of investigation (Deflem 2006; Kaunert 2010). Although its operations are also supervised by the political representatives of the EU, Europol is nonetheless characterized by a degree of autonomy in determining the specific means and objectives of its policing and counter-terrorist programmes. Primarily geared towards efficient information sharing among police forces, Europol conceives its counter-terrorist mission on the basis of professional policing standards shared among the participating agencies. Moreover, Europol has become a complex security agency that performs well in fighting against terrorism (Deflem 2006; Europol 2017; Kaunert 2010).

WHY IS EUROPOL SO IMPORTANT FOR THE FIGHT AGAINST TERRORISM?

As mentioned above, Europol is an information sharing hub and an operations centre at the EU level, providing strategic intelligence to assist with and promote the efficient and effective use of resources available at the national level for operational activities in countering terrorism (The Europol Convention 1995). Europol is unique in the way it operates within both the EU and individual member states. For instance, Europol has national units in the Member States and liaison officers in The Hague. Europol functions through a network of liaison officers, where each member state maintains a Europol National Unit (ENU) from which at least one member is sent or seconded to Europol headquarters in The Hague. These ENUs provide a link between Europol and national police authorities (Kaunert 2010), enabling Europol to operate at national as well as international levels. Moreover, the establishment of the ECTC within Europol enables the EU and the member states to safely share highly sensitive and secret information relating to terrorism. Thanks to this sophisticated system, all member states are now connected to the dedicated counter-terrorism space and third parties are also being connected to the counter-terrorism centre (Council of the EU 2016).

The member states and the EU as a whole also benefit from Europol's other information sharing system – Focal Point (FP) Travellers – in combating terrorism. In 2016, the following data was gathered and shared via FP Travellers: 21,700 person entities overall (six times more than in 2016); 5,353 verified foreign travelling fighters (from the overall number of person entities), which includes 2.956 fighters reported individually by member states; and, lastly, the quality of the contributed information also improved (contextual information concerning foreign fighters and their support networks especially).[2]

Furthermore, Europol has a first line investigative tool known as Europol Information System (EIS) which stores constantly updated information on foreign travelling fighters and militants. For instance, in 2016, the EIS received information about 4.044 foreign travelling fighters (including associates) from 27 contributing parties (of which 1.615 have been contributed by MS). An overall increase of terrorism-related content in the EIS: 20 % increase in Q1 2016, compared to the status as recorded at the end of 2015.[3] The range of contributing entities is rapidly expanding, for example the British MI5 and the Federal Bureau of Investigation (FBI) have started to share data through the EIS (Council of the EU 2016). Therefore, it can be asserted that Europol is a key counter-terrorism agency that brings member states' counter-terrorism efforts together and provides overall coordination for the EU's counter-terrorism activities.

HOW DID EUROPOL PROGRESS OVER THE PAST FIVE YEARS?

The biggest achievement of Europol in coping with terrorism in the past five years is its emergence as a complex security agency operating both at international (EU) and national (member state) levels. Currently, Europol's ECTC

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[2]   For overview see Europol, Enhancing Europol's counter-terrorism capabilities: European Counter-Terrorism Centre (ECTC) at Europol, EDOC# 831655v2, May 11, 2016, page 5, http://statewatch.org/news/2016/may/eu-europol-ct-centre-report-8881-16.pdf.

[3]   For overview see Enhancing Europol's counter-terrorism capabilities, EDOC# 831655v2, May 11, 2016, pages 5–6, http://statewatch.org/news/2016/may/eu-europol-ct-centre-report-8881-16.pdf.

of has thirty-nine staff members and five seconded national experts through whom Europol carries out information sharing and operational activities relating to terrorism in the EU and member states. Close analysis of the TE-SAT Reports produced by Europol between 2012 and 2017 indicates notable progress in Europol's counter-terrorism activities. For instance, until July 2015 there was no designated entity at the EU level to counter online radicalisation and recruitment by terrorists. The EU Internet Referral Unit (IRU) was established in July 2015 as part of the ECTC, and has since then expanded its activities to countering online radicalization and recruitment by terrorists, providing a core internet investigation support capability, and expanding partnerships (with the support of the European Commission) with online service companies (to promote »self-regulation« activities). Information processing has continuously expanded; internet investigative support was provided in 24 operational cases (including 52 operational reports); 25 EU IRU national contact points have been established, 7,364 pieces of online content were assessed by the IRU, triggering 6,399 referral requests (with a success rate of 95 percent concerning subsequent removal); and 629 new terrorist media files were uploaded to the Check-the-Web (CTW) portal (Europol 2012; 2013; 2014; 2015; 2016a; 2017).

Following the 2016 Brussels attacks, on 24 March 2016 the Joint Liaison Teams (JLT) were formed to analyse the wider European and international dimensions of the current terrorist threat, by identifying new lines of investigation, including flows of terrorist financing and illegal firearms, as well as making use of the EU IRU with respect to social media implications. Currently, seven member states are present in the Liaison Bureaux that support JLTs, four additional member states and three third parties have signalled their support of the JLT. Overall, it is expected to have a team of ten to twelve full time counter-terrorism expert staff drawn from the member states most affected by terrorist threats (for the other member states, it is envisaged that a dedicated counter terrorism expert in the respective Liaison Bureau supports the JLTs as required) (ECTC 2016).[4]

Additionally, Europol has bilateral operational agreements with Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, Former Yugoslav Republic of Macedonia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland, Ukraine, and the United States. These bilateral agreements include cooperation on countering terrorism and enable Europol to share information on terrorist activities with third countries. Such an agreement was also signed with Frontex in 2016, to help tackle migrant smuggling networks more effectively, and regular communication was established with the EU Counter Terrorism Coordinator.

Europol activated the Emergency Response Team (EMRT) immediately after the 13 November 2015 Paris attacks, to support the investigations on a 24/7 basis. Europol counter terrorism (CT) experts, analysts and French and Belgian colleagues worked around the clock to assist from

Europol offices in The Hague and on the spot, and analysed an enormous amount of data generated by the investigations in both countries. Altogether, five mobile offices with staff members were deployed in Belgium, Paris and Lyon (Interpol) to assist French and Belgian investigators. This included expert Arabic language support from Europol's Internet Referral Unit. Europol was able to demonstrate its ability to respond quickly and effectively to support counter-terrorism and criminal investigations in response to a major terrorist incident requiring investigations to have transnational or international scope. However, Europol still remains a counter-terrorism agency that only acts on request and requires member states' approval to carry out operational activities (which are exclusively supportive) on the territory of member states. According to Article 7 of the Europol Council Decision, Europol can also request the competent authorities of the member states to launch investigations.

SHORTCOMINGS AND PROBLEMS OF EUROPOL

Critical scrutiny of Europol's annual reports (TE-SAT), Emergency Reports after the Terrorist Incidents in the Member States, EU's security related reports and policy documents indicates that despite the fact that Europol is emerging as a complex counter-terrorist entity with growing resources (human, financial, technical), expanding mandates and intelligence/security capabilities, it largely remains an information sharing hub and operational centre that is dependent on national agencies and services. Moreover, Europol's terrorism-related intelligence gathering and analysis function is also limited and dependent on national agencies in the member states. There are a number of reasons for this, one of which is that Europol has no operational powers. The national agencies have operational powers which put them in an advantageous position in terms of effectively fighting terrorism.

Prominent experts, practitioners and scholars of security, policing, terrorism and counter-terrorism have also noted – as has the EU – that despite its expanded counterterrorist mandate, Europol is generally still a weak counterterrorism actor. The main reasons cited for this are, firstly, the lack of supranational powers under the current EU treaties, and, secondly, a lack of trust toward Europol on the part of EU member states and their national agencies more broadly. However, to some extent, this is the famous "chicken and egg question". In the absence of delegated supranational powers, Europol will continue to lack crucial functions in the fight against terrorism. In the absence of these crucial functions, member states will continue to mistrust Europol, and will therefore be less likely to provide Europol with the necessary supranational delegated functions. Moreover, the lack of trust on the part of national authorities working on counterterrorism provides another difficulty for Europol in playing a significant role as a counterterrorist entity. This lack of trust is caused by a number of factors: (a) the political, judicial, and administrative framework on

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counterterrorism varies strongly from one member state to another; (b) some EU member states delegate counterterrorism to police agencies, whereas others delegate competence to intelligence agencies; (c) some national police and intelligence agencies resist a centralisation of efforts in Brussels. Consequently, the lack of trust involves several problems for Europol in relation to intelligence sharing across member states: (a) intelligence sharing between member states and Brussels is de facto a voluntary process; (b) police agencies can be reluctant to share specific information even when they are willing to share information generally; (c) Europol's data is therefore limited; (d) as a consequence, member states have a general preference for bilateral information sharing and maintain informal bilateral and multilateral networks outside the EU framework; (e) the United States is a de facto intelligence hub to which member states are connected, and therefore, indirectly, leaves little room for EU intelligence sharing, especially on counterterrorism.

Taking into account the above-stated arguments it is difficult to present Europol as more successful or effective than national agencies in coping with terrorism. In the end, Europol does not have the operational power which would enable it to implement policies or legal orders in the way national agencies do. However, it can be asserted that Europol is much more effective than its counterpart – Interpol – in tackling terrorism. Moreover, Europol has one advantage over national agencies (being an information sharing hub and an operational centre) that may be perceived as off-setting other weaknesses. But countering terrorism requires a complex approach that undoubtedly goes beyond information sharing and running an operational centre. Furthermore, Europol cannot currently go beyond these activities due to political and legal limitations imposed by the EU and its member states (Kaunert 2010). Bearing in mind these caveats, it can be asserted that Europol's main shortcomings are: 1). It is utterly dependent on national agencies and services, and, 2). It has no operational powers.

HOW CAN EUROPOL BECOME MORE EFFICIENT IN FIGHTING AGAINST TERRORISM?

As has already been discussed above, the main weakness of Europol is its lack of operational powers and its dependence on national agencies for information and intelligence gathering. Moreover, it still lacks supranational powers. Europol also serves as a useful political instrument for protecting the existing bilateral and multilateral law-enforcement relationships between member states and with third countries. Moreover, it has the potential to help harmonise the national policies of EU member states on counter-terrorism and security overall. However, its budget is still too small (roughly 96 million euros) and Europol itself remains rather marginal in terms of preventing radicalisation and terrorism.

Critical scrutiny of Europol's counter-terrorism activities over the past five years indicates that it usually acts as a post–terrorist attack handler tackling only the repercussions of violence already perpetrated, not an effective preventive actor (Europol 2012; 2013; 2014; 2015; 2016a;

2017). In other words, due to its dependence on national agencies in intelligence sharing, a poor first-hand intelligence gathering and analysis capacity, and lack of operational powers, Europol mainly deals with the consequences of terrorist attacks. Moreover, it is pertinent to assert here that Europol's mandate in coping with terrorism is usually expanded after terrorist attack[s] perpetrated within the EU and its member states. It is pertinent to acknowledge here that – despite its expanding mandate and its presence in member states – *Europol continues to be more of a coordination centre than an operational agency.* For instance, Europol's Annual Report (Terrorism Situation and Trend Report 2017; TE-SAT) reveals that 142 people died in terrorist attacks in member states, 379 people were wounded, and 142 thwarted, failed or completed attacks were reported in 2016. Europol only acts as a coordination office, not an operational headquarters. The same trend can be observed in Europol's counter-terrorism activities over the past five years. *Even though Europol is acting more as a counter-terrorism coordination centre, this task comprises many challenges because the political, administrative and judicial framework varies from one member state to another and adds further impediments to effective coordination.*

Bearing in mind these caveats, all participants and member states should consider improving Europol's counter-terrorist role through palpable and genuine measures. *It is pertinent to stress here that without granting Europol independent intelligence gathering rights and operational powers, it is impossible to enhance its counter-terrorist role.* Therefore, this report suggests the following recommendations:

– *Recommendation 1*: Europol should enhance its independent intelligence gathering capabilities.

– *Recommendation 2*: Europol should be granted increased operational powers. The full extent of Lisbon Treaty powers on EU policing cooperation should be used.

– *Recommendation 3*: Europol's budget needs to be increased significantly to fund the aforementioned powers.

Another challenge to Europol's counter-terrorism role is the fact that in some member states, terrorism is dealt with by intelligence or security services (e. g., the UK's MI5), whereas in other member states police agencies are wholly responsible for counter-terrorism. Consequently, this represents an impeding factor for Europol's counter-terrorism role since intelligence/security services and police forces are interested in different types of information (Bures 2008; Kaunert 2010). In other words, "police institutions tend to be interested in specific information about suspects in order to make an arrest, whereas intelligence services are very broadly interested in general information without prosecutorial purposes" (Deflem 2006). Moreover, intelligence/security agencies may temporarily collude with or even mentor certain radical and terrorist groups for their own national strategic, foreign policy and political objectives, whereas police agencies, including Europol, do not have such intricate motivations (Yakubov 2017). Bearing in mind

these findings, it can be argued that in order to be an effective counter-terrorist entity, Europol first needs to win political support for the creation of its own intelligence gathering unit, and, secondly, acquire operational powers. Otherwise, regardless of the expansion of its mandate, Europol will remain an information sharing hub and an entity dealing with the consequences of terrorist attacks, not an effective preventive counter-terrorism actor. Therefore, *it would be sensible for politicians and representatives of member states to commence considering the expansion of Europol's mandate in order to increase its effectiveness in fighting terrorism. The first step towards making Europol an effective counter-terrorism actor could be to grant it executive power of arrest, which would enable it to better perform its counter-terrorism role. Its dependence on national agencies for terrorism related information and intelligence gathering and sharing should also be reduced, and professional analysts and experts from various backgrounds should be hired to analyse and disseminate timely intelligence on terrorism.*

WHAT TOOLS, STRATEGIES AND METHODS DOES EUROPOL USE IN THE FIGHT AGAINST TERRORISM?

As an integral part of the EU security architecture, Europol is an information sharing hub and operational support centre for member states in coping with terrorism. According to the Europol's new strategy, in the next five years, its core purpose and focus will remain unchanged; it will continue to support law enforcement authorities in their fight against serious and organised crime and terrorism, but the strategic emphasis will progressively shift from laying the foundation of increased capability to on full-scale delivery of operational services and impact. In its strategy for 2016–2020, Europol focuses on consolidating all its capabilities and expertise to deliver the most effective support to member states' investigations; Europol's work will therefore prioritise two fundamental issues: (a) making a significant contribution to crime information management in the EU; (b) delivering maximum operational impact in its operational support to member states (Europol 2016b).

The current structure of Europol reflects how it has managed to evolve as a complex bureaucratic machinery comprising units performing dedicated functions. Europol has three main departments: Operations Department, Governance Department and Capabilities Department. The Operations Department (also known as Department O) has four sub-departments which carry out designated operational activities: Information Hub, Serious Organised Crime, European Cyber Crime Centre, and Counter-terrorism and Financial Intelligence. Department G (Governance) comprises Cabinet, Corporate Services, Procurement, and Security sub-departments and is responsible for internal governance and management. Department C (Capabilities) provides all necessary support (ICT, engineering etc.) for the other departments.

As already outlined above, Europol employs sophisticated data collection and information sharing techniques

in coping with terrorism. The EIS, SIENA, Automated Data Exchange Platform (ADEP), and TE-SAT[5] are used as information sharing methods in fighting terrorism, while the ECTC, IRU, Terrorist Finance Tracking Programme (TFTP) and First Response Network (FRN) are utilised by Europol to provide operational support for member states to investigate terrorism and other serious and organised crimes. These support techniques and services can be considered congruent to the current mission of Europol as an information sharing hub and coordination centre. However, given that terrorism is a multifaceted phenomenon which always evolves beyond the frameworks and measures applied, Europol should consider adopting enhanced techniques and methods. Eventually, EU policy makers must accept that policing is not enough in coping with terrorism, as this complex phenomenon requires a more sophisticated approach. One such tools could be to form an Intelligence Unit within Europol or the ECTC solely dedicated to gathering, processing, analysing and disseminating terrorism-related intelligence. Finally, the Europol budget of should be increased and a significant amount of it should be spent on improving the ECTC.

HOW CAN COLLABORATION BETWEEN EUROPOL AND NATIONAL AGENCIES BE OPTIMIZED?

Undoubtedly, national (police) agencies are becoming more cooperative than they once were due to the threat posed by terrorism, particularly religion-based terrorism. Current collaboration between Europol and national police organisations is far better than it was ten years ago. For instance, almost all member states provide information about numbers of terrorist attacks perpetrated, thwarted or failed, how many victims were wounded or died, arrests, court proceedings and verdicts, movements of terrorist suspects within the EU, and terrorism financing. TE-SAT 2017 reveals that France reported twenty-three attacks, Italy seventeen, Spain ten, Greece six, Germany five, Belgium four and the Netherlands one. Nearly all reported fatalities and most of the casualties were the result of jihadist terrorist attacks (Europol 2012; 2013; 2014; 2015; 2016a; 2017). Analysis of Europol's counter-terrorist activities between 2012 and 2017 indicates an upward trend in collaboration between Europol and member states in coping with terrorism. However, the same trend is not seen in cooperation between Europol and national intelligence/security agencies. It could be the case that intelligence/security agencies do not wish their collaboration with Europol to be disclosed to the public. Alternatively, national intelligence/security agencies may be reluctant to share intelligence with Europol. Intelligence/security officers often attempt to hide data and knowledge even within their own agencies.

Although Europol reveals that it works closely not only with police institutions, but also intelligence/security agencies, it does not provide details of such cooperation.

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5   Europol uses its Annual Reports to share information with the public and the media.

Europol's TE-SAT Reports 2015 and 2016 state that America's FBI and Britain's security service MI5 commenced sharing information with Europol on terrorist activities. But the content and volume of information sharing is not revealed by Europol. Despite Europol has enhanced its data protection capabilities, it is highly unlikely that there would be consistent intelligence sharing between Europol and national intelligence/security services. If such activity occurs, it will be either ad hoc or part of a short-term collaboration.

DATA PROTECTION AT EUROPOL AND COUNTERING TERRORISM

Europol became an information hub through which member states exchange highly sensitive information on organised crime and terrorism. This requires Europol to implement sophisticated and up-to-date data protection compliant with data protection and freedom of information regulations, which safeguard democracy in the EU. In order to understand the scale of data (including personal and private) gathered, processed, analysed and stored at Europol, its mandate has to be scrutinised. As already outlined, Europol's mandate includes the following: '(a) obtain, collate and analyse information and intelligence; (b) facilitate the exchange of information between Member States; (c) assist national investigations; (d) help coordinate cooperative operations; (e) prepare threat assessments, strategic analyses and general situation reports' (Europol Data Protection Office 2012; 2013; 2014; 2015; 2016a and 2017).

Conceding the importance of precise legislation in the area of data protection, the EU has implemented a robust legal framework tailored to protecting the fundamental rights of its citizens. An important data protection tool within this framework is Directive 95/46/EC (8) that provides essential rules on the processing and movement of personal data.[6] However, just as the general importance of employing sound data protection safeguards goes without question, there can be no doubt that effective police work requires high-grade intelligence. The legislative challenge in the area of law enforcement is therefore to create a framework which balances the fundamental interests of freedom and security. In the case of Europol, it was clear from the beginning that a tailor-made set of rules would have to be created which could effectively take into account both the operational needs of Europol and the individual's right to effective data protection (Europol Data Protection Office 2012). According to Europol Data Protection Office (EDO), 'in response to this challenge, comprehensive specialised data protection legislation has been established: Europol has one of the strongest, most robust data protection frameworks in the world of law enforcement.' […] 'To stress this point, the legislator emphasised that 'specific provisions

on the protection of personal data' were essential 'because of the particular nature, functions and competences of Europol' (Europol Data Protection Office n.d.).

Furthermore, Europol Data Protection Office unveils that in order to meet requirements of the established laws and regulations on freedom of information and protection of personal/private information: (1) only data that is necessary for the performance of Europol's task may be used. Data in the EIS must relate to suspects, convicted criminals or persons on whom there are factual indications or reasonable grounds to believe that they will commit crimes that fall within Europol's mandate; (2) organisational and technological safeguards ensure that only data that comply with Europol's mandate are transmitted. This selective data loading is an example of 'privacy by design', in order to guarantee the high level of data protection in place at Europol; (3) data processed in the EIS cannot be kept indefinitely; Europol may only store data for well-defined periods of time. In general, information shall only be held for as long as is necessary and must be reviewed no later than three years after insertion.[7]

CONCLUSION

Europol has come a very long way as a counter-terrorism actor and its commitment to cope with terrorism has waxed and waned with political and legal changes occurred in the EU. Initially established to promote cooperation among law-enforcement agencies, fighting terrorism has become an important dimension of its work. Europol has significantly built up capacity, and, on the whole, has established itself as an important actor within the field of counter-terrorism activities. Two periods – pre and post-9/11 – distinguish Europol's counter-terrorism role. While its initial mandate was limited (largely a law-enforcement tool), after 9/11 Europol significantly expanded its counter-terrorism activities. Nonetheless, it is clear that Europol has not reached its full potential in the area of counter-terrorism. Several points hamper its development: (1) lack of operational powers of arrest; (2) small budget in comparison to other counter-terrorism actors; (3) strong dependence on national agencies and lack of own resources; and (4) lack of own intelligence capabilities. If it is to play a much stronger part in counter-terrorism, Europol needs to develop stronger independent intelligence capabilities that enable it to conduct its own independent investigations – drawing on national information but not relying solely upon it. At the heart of the obstacles to Europol's development lies in the member states' lack of trust. However, several years after its creation, it may be argued that Europol's has proven its value to member states. This could be a good moment to actively place more trust in Europol by providing it with increased operational powers, increased independent resources and intelligence capabilities to play a

6 For overview see Jana Valant, In depth analysis on Consumer Protection in the EU: Policy overview, European Parliament, September 2015, http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf.

7 For overview see Valant, In depth analysis on Consumer Protection in the EU, http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf.

stronger role in countering the terrorist threat. Member states need a stronger pan-European security actor that can complement national counter-terrorism efforts.

Thus, in conclusion, this report suggests the following recommendations:

– *Recommendation 1*: Europol should enhance its independent intelligence gathering capabilities.

– *Recommendation 2*: Europol should be granted increased operational powers. The full extent of Lisbon Treaty competences on EU policing cooperation should be used.

– *Recommendation 3*: Europol's budget needs to be increased significantly to be able to acquire the aforementioned powers.

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