

Tomasz Safjański*, *The Impact of the European Union Agency for Law Enforcement Cooperation (Europol) on Combating Cross-Border Crime – Legal and Practical Aspects*

Abstract: The article presents the role of Europol in combating cross-border crime. Europol is the main platform of EU Member States crime intelligence cooperation, which use the information potential and experience of over 300 national security agencies and police forces. The cooperation is vital for the public security of the EU area - understood as a form of multilateral international connections and channels of exchanging criminal information between national police forces, special services and other state and EU institutions responsible for public security. The role of Europol in combating cross-border crime is characterised by an enormous degree of complexity due to its specific legal status, scope of operating activities, and position in the EU institutional system.

Keywords: Europol, crime intelligence, crime analysis, operational analysis, strategic analysis, combating transborder crime, terrorism, multiagency, international cooperation.

The establishment of Europol was accepted in Art. K 1 of the Treaty of Maastricht (Treaty on European Union signed on 7 February 1992, entered into force on 1 November 1993)²². In 1998, the Europol Convention was ratified, and it entered into force in October of the same year²³. Europol received operational capacity and began official operations on 1 July 1999. The importance of the Europol's crime intelligence competences is the fact that they still have their basis in the EU treaties. Pursuant to Art. 88 paragraph. 1 of the Treaty on the Functioning of the European Union, Europol's mission is to support and strengthen actions taken by the police and other law enforcement authorities of the Member States (including special services), as well as their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime affecting a common interest covered by a EU policy²⁴. In line with the treaty, any operational actions by Europol are carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities²⁵.

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²² OJ of EU C 191 of 29 July 1992. Pursuant to this provision, the EU Member States have recognized as common interest the police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime in connection with the organization of an EU-wide system for exchanging information within Europol.

²³ OJ of EU C 316 of 27 November 1995, p 1.

²⁴ Treaty on the Functioning of the European Union (consolidated version), OJ of EU C 115 of 09.05.2008, p. 49.

²⁵ Art. 88, ibidem.

The Europol's counter-crime and counter-terrorism competences rely primarily on criminal intelligence processes, such as collection, processing (analysis, evaluation, interpretation) and the exchange of criminal information and intelligence. More than 850 staff in the Hague, provides multilingual and multinational crime intelligence expertise to law enforcement authorities across the EU and its partner countries, to support over 20 000 complex cross-border organized crime and terrorism cases every year.

The crime intelligence is one of the basic police tool used to maintain public security²⁶. Traditionally crime intelligence has been associated with national activity. Trans-border threats, especially organised crime and terrorism in the 21st century have shown that there is a need for criminal intelligence on transnational level.

The content of treaty regulations formulates basic legal conditions on Europol's crime intelligence:

- 1) it is fully legal activity implemented on the basis of international agreements;
- 2) conducting crime intelligence operations by Europol is dependent on the fulfilment of certain legal conditions, it is therefore not possible to use the operational potential of Europol in every case;
- 3) Europol representatives do not have the basic rights of classic national crime intelligence services in the scope of gathering information e.g. control of telecommunications, observation of persons or places, cooperation with informants (these powers belong only to the competent national authorities);
- 4) crime intelligence within Europol has multilateral dimension. Europol provides opportunities for direct exchange of information between all EU Member States, which stems directly from the principles of the Treaty. Each Member State shall designate national authorities competent to interact within Europol. Generally, all services empowered under national law for preventing and combating cross-border threats shall be considered competent. In practice, these authorities are: police, border protection services, customs, financial services, immigration services, military police and special services selected. Multiagency nature obviously has its influence on the Europol's crime intelligence model.
- 5) crime intelligence carried out by Europol is by nature supportive and complementary to the intelligence actions of the Member States and should serve increasing efficiency and functionality of these latter. This stems from the supposition that the main burden of the gathering of criminal information lies on national services of Member States. Thus, in cases where due to intensity, extent or nature of threats would be difficult to counteract them at national level, Europol carries out tasks related to collecting, storing, analysing and disseminating criminal information in adequate extent;
- 6) Europol's crime intelligence activities are aimed in order that counter-threats activities of national services to be well targeted and mutually consistent. In practice, the auxiliary function is applicable in situations where counter-threat operations of national services supported by Europol's crime intelligence can be more effective than when they would be implemented without such intelligence support. Europol's role is to support, not to replace the crime intelligence services of the EU MS²⁷.

Important determinants of the Europol's crime intelligence model are set out in the Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European

²⁶ Public security of the state means a status achieved as a result of state bodies' activities, aiming at ensuring its internal stability and resilience (diagnosis and response) to possible risks caused by wrongful actor caused by natural or technical disasters.

²⁷ T. Safjański, Działania operacyjne Europolu (eng. Operational activities of Europol), Szczytno 2013, p. 15-17.

Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA²⁸. Pursuant to this legal act, Europol has the following primary tasks:

- collect, store, process, analyse and exchange information, including criminal intelligence;
- notify the EU MS, via the national units (ENU), without delay of any information and connections between criminal offences concerning them;
- coordinate, organise and implement investigative and operational actions to support and strengthen actions by the competent authorities of the EU MS, that are carried out jointly with the competent authorities of the EU MS or in the context of joint investigation teams, where appropriate, in liaison with Eurojust;
- participate in joint investigation teams, as well as propose that they be set up;
- provide information and analytical support to Member States in connection with major international events;
- prepare threat assessments, strategic and operational analyses and general situation reports;
- develop, share and promote specialist knowledge of crime prevention methods, investigative procedures and technical and forensic methods, and provide advice to EU MS;
- support EU MS' cross-border information exchange activities, operations and investigations, as well as joint investigation teams, including by providing operational, technical and financial support;
- provide specialised training and assist Member States in organising training, including with the provision of financial support, within the scope of its objectives and in accordance with the staffing and budgetary resources at its disposal in coordination with the European Union Agency for Law Enforcement Training (CEPOL);
- cooperate with the Union bodies established on the basis of Title V of the TFEU and with OLAF, in particular through exchanges of information and by providing them with analytical support in the areas that fall within their competence;
- provide information and support to EU crisis management structures and missions established on the basis of the TEU, within the scope of Europol's objectives;
- develop Union centres of specialised expertise for combating certain types of crime falling within the scope of Europol's objectives, in particular the European Cybercrime Centre;
- support EU Member States' actions in preventing and combating forms of crime included within Europol's mandate (listed in Annex I to Regulation (EU) 2016/794) which are facilitated, promoted or committed using the internet, including, in cooperation with EU MS, the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions²⁹;
- provide strategic analyses and threat assessments to assist the Council and the Commission in laying down strategic and operational priorities of the EU for fighting crime and assist in the operational implementation of those priorities³⁰;

²⁸ OJ of EU L 135 of 24 May 2016, p. 53.

²⁹ Art. 4. 1, Regulation (EU) 2016/794.

³⁰ Art. 4.2, *ibidem*.

- provide strategic analyses and threat assessments to assist the efficient and effective use of the resources available at national and EU level for operational activities and the support of those activities³¹.

Combined study of the rules governing the functioning of Europol results in further assumptions for its crime intelligence model:

- 1) Europol's crime intelligence competencies are strictly defined by law (it is known exactly what action Europol is to perform, or what actions it cannot realize). Forms and methods of performing those competences arise from the already well-established practice of international policing as far as crime analysis, interpretation and exchanging of crime information are concerned;
- 2) use of information and intelligence forwarded with the participation of Europol in the framework of investigations and activities of joint investigative teams is subjected to the same regimes of data protection as if they had been collected in the receiving Member State;
- 3) crime intelligence support is generally granted at the request of a Member State (the exception is spontaneous transfer of information);
- 4) performing crime intelligence activities within the framework of Europol requires high professionalism of officers. They must not only have a thorough professional knowledge, analytical skills and be fluent in English, but also have broad general legal and cultural knowledge, and be well prepared in terms of information technology. Cooperation within the framework of Europol is always associated with the representation of the home state. The activities carried out unprofessionally usually bring a lot of damage to the image of the posting state³².

Presenting the legal model assumptions help to find out what are the basic elements of the criminal intelligence within the framework of Europol. The starting point in the process of crime intelligence is always information. Europol is continually adapting the latest advances in technology to hone its advanced analytical capabilities. Europol is continually assessing these capabilities and the technology behind them so as to ensure that its analysts are always working with state-of-the-art tools. That way, its analysts can use the latest techniques and methods, among other things, to identify links between international investigations. Therefore systems and databases managed by Europol (Information System³³, Europol Analysis System³⁴,

³¹ Art. 4.3, *ibidem*.

³² T. Safjański, Europejskie Biuro Policji Europol: geneza, główne aspekty działania, perspektywy rozwoju, Warsaw: Wolters Kluwer Polska, 2009, p. 222-227; T. Safjański, The Problem of Supervision and Control over the Activities of Europol - Selected Aspects, Internal Security no. 2/2012.

³³ The primary role of Information System (IS) is to detect links between criminal information introduced by the Member States and Europol. IS functionalities include search, visualization and linking information. The latter is based on cross-checking, which automatically detects information about the same objects (persons, means of transport, means of communication, addresses). The system allows for the determination of any common element in different cases (investigations) and to exchange them in a safe and reliable manner. For this reason, IS is used primarily for supporting investigations.

³⁴ The Europol Analysis System (EAS) is an operational information system that hosts data contributed by Europol's stakeholders. With it, information can be managed centrally, and the use of a wide range of analytical tools ensures that analytical capabilities are as effective as possible. From technical point of view EAS is based on analysis work files (AWF), which serve collecting operational and personal data for the purposes of analysis. AWF's provide a comprehensive operational information for the analysis of criminal activities. AWF can be considered in two dimensions. In terms of technical means tool the parameters of the database (in this sense the following terms are used interchangeably "analytical database", "analytical work files", "working files", "working files for analysis", "analysis files"). In terms of tactics, AWF is a basic form of Europol's operational activities in the area of criminal intelligence, implemented by application of criminal analysis and targeted exchanged of

dedicated databases e.g. Europol Bomb Database System³⁵) should be valid source of information in terms of internal security. Cooperating states obliged themselves to transfer certain information in connection with counter-threats in activities carried out under Europol mandate. Europol's task is the systematization and then subjecting the collected information to criminal analysis processes. Intelligence resulting from information processing, depending on its nature, should provide operational support to Member States in the prevention, diagnosis or detection of trans-border threats.

The overall concept of crime intelligence support is founded on the assumption that Europol on the basis of information from the Member States, thanks to criminal analysis, creates a strategic diagnosis of risks associated with trans-border threat, the so-called SOCTA (The Serious And Organised Crime Threat Assessment)³⁶, IOCTA³⁷ (The Internet Organised Crime Threat Assessment) and TE-SAT (The EU Terrorism and Situation and Trend Report)³⁸. Then, the strategic diagnoses are used to draw up the operational analytical projects with the participation of Member States³⁹. The examples of such projects are: AWF Dolphin⁴⁰ and AWF Islamic Terrorism⁴¹ aiming at exploring the identified terrorist risks at the tactical level. As a result of operational analysis, Europol achieves tactical reconnoitring related to specific features of terrorism, terrorist organizations or individual terrorists operating in certain Member States. Intelligence can be an impetus for the security services of Member States to initiate investigations or police operations. With the use of this type of material, security services of the Member States shall take measures related to direct combating of established terrorist organizations. This takes place also with the involvement of Europol's operational capacity,

information (in this sense is used the term "analysis project"). The abbreviation AWF is commonly used for all the terms.

³⁵ EBDS is a database of seized explosive devices. Data are collected in a structured manner in the form of text and multimedia (e.g. images and diagrams of electronic devices). Operation of the database is pursuant to European law enforcement, in particular in the scope of special pyrotechnic units, constant access to all data related to explosive devices, pyrotechnic materials or their components.

³⁶ SOCTA updates Europe's law enforcement community and decision-makers on such developments in serious and organised crime and the threats it poses to the EU. Informed by its analysis of the prevailing threats, the SOCTA identifies a number of high priority crime areas that the operational response in the EU should focus on. Europol's current SOCTA, published in 2017, identifies the following eight priority crime threats: cybercrime; drug production, trafficking and distribution; migrant smuggling; organised property crime; trafficking in human beings; criminal finances and money laundering; document fraud; online trade in illicit goods and services.

³⁷ IOCTA is strategic report on ongoing developments and emerging threats in cybercrime The IOCTA focuses on the crime areas that fall under EC3's mandate of Europol's EC3.

³⁸ The annual report drawn up by Europol on the basis of data transferred from the EU Member States and partner countries (among others: Russian Federation, Norway, Switzerland, Iceland, USA, Colombia, Turkey, Interpol, Eurojust). The report provides the most comprehensive, open analysis of the current level of terrorist threat to the area of the European Union.

³⁹ The analysis project (AP) is a tactical and forensic venture carried out by Europol based on the analytical work files (AWF) to provide information to ongoing operations in EU Member States. This information should lead to breakthroughs in international investigations. AP consists of the targeted use of criminal analysis and targeted exchange of information and intelligence to support investigations carried out in the Member States against the same or similar threats. AP's are based on the assumption that criminal cases or investigations conducted against international terrorist organisations in different national jurisdictions often have various types of linkages between them (subjective, objective and mixed).

⁴⁰ The project aimed at combating terrorist groups identified by the EU Council as posing a serious threat to the EU Member States (participating states: Austria, Belgium, Czech Republic, Denmark, Greece, France, Finland, Germany, Spain, Ireland, Hungary, Italy, Lithuania, Latvia, Malta, Netherlands, Portugal, Sweden, United Kingdom).

⁴¹ The project is aimed at combating crime related to the activities of Islamic extremist terrorist groups or organizations (participating states: Austria, Belgium, Czech Republic, Cyprus, Denmark, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal).

among others through further exchange of information and crime analysis expert support (e.g. mobile office).

An important element in the framework of criminal intelligence is to recognize financial aspects related to unlawful activities. In this context Europol supports EU member states actions aimed at identification and localization of the assets associated with criminal or terrorist activity. Property checks are implemented within the cooperation of the special national agencies according to the Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices for the Member States in the field of tracing and identification of proceeds of crime or other property related to crime⁴². The system of cooperation between national Asset Recovery Offices is complemented by consultations conducted under an informal Camden Assets Recovery Interagency Network (CARIN), which is supported by Europol (the agency officially exercises the functions of the secretariat of the CARIN). CARIN network members are, among others: Australia, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Hungary, Guernsey, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, United States, OLAF. With a network of CARIN work as observers, among others: Canada, Croatia, Russia, South Africa, Monaco, the United Nations, Group EGMONT, Eurojust, Interpol. CARIN helps experts to exchange information and experiences regarding the identification, freezing, seizure, confiscation of funds related to criminal or terrorist activity. It creates a system of national contact points in the field of police cooperation concerning the recognition of property located abroad⁴³.

As far as Europol's counterterrorism financial intelligence capability is concerned important are provisions of the agreement of 28 June 2010 concluded between the United States and the EU on the processing and transfer of financial data for the Terrorist Finance Tracking Programme (TFTP)⁴⁴. Europol has been entrusted with the duty to verify requests from the United States for transfer of data. In this regard Europol analyzes requests to see if they are consistent with the content of the agreement. The American side can not receive any information before Europol does not verify the application. This agreement allows Europol to receive information and guidance from the American analytical program and to generate European applications addressed to the United States. In order to meet the provisions of the EU-US agreement, Europol set up a specialized team of experienced IT experts and financial analysts.

Combating cross-border crime within Europol at the tactical level is executing the following phases:

- identification of organised crime group (criminals) or terrorist organization (terrorists) as a result of operational analysis of the collected information by Europol;
- location of organised crime group (criminals) or terrorist organization (terrorists) through the exchange of information between Member States and Europol;
- neutralization of organised crime group (criminals) or terrorist organization (terrorists) by the Member States (e.g. arrests, detentions, police searches);
- providing feedback by Member States to Europol's systems and databases.

⁴² EU OJ No. L 332 of 18 December 2007, p 103.

⁴³ T. Safjański, Europol's contribution towards detecting criminal activities – recent development, Internal Security 1/2010, Szcztyno 2010.

⁴⁴ Agreement of 28 June 2010 between the United States of America and the European Union on the processing and transfer of official messaging data from the European Union to the United States for the purpose of the Terrorist Finance Tracking Programme (<http://www.state.gov/documents/organization/148509.pdf>).

In case of combating terrorist threats at the strategic level, we can distinguish the following phases:

- identification of terrorist phenomena as a result of the strategic analysis carried out by Europol;
- location of the terrorist phenomena through the exchange of information between Member States and Europol;
- neutralization of terrorist phenomena through joint action by Member States, international organizations and Europol (for example to develop a program of international activities).

In practice the process of identification, localization and neutralization of transborder crime with use of Europol' intelligence support may cover the following activities:

- 1) exchange of information within Europol;
- 2) identification of criminal relationships with other countries (personal contacts);
- 3) initiation of analytical project (AP) by Europol (collection of further information and criminal analysis);
- 4) identification of further criminal relations with other countries (personal contacts, telephone calls, bank transfers) in the framework of AP;
- 5) exchange of intelligence between interested Member States;
- 6) verification of forensic versions by Member States;
- 7) facilitating closer cooperation between Member States' investigators (operational meetings);
- 8) facilitating the preparation of international operations (operational meetings, coordination of activities by Operational Center 24/7);
- 9) direct analytical support of activities (mobile offices, expert consultations on site);
- 10) cooperation with Eurojust (information exchange).

The presented model of detection activity, for example, may look as follows. The Spanish police in the course of the operational case receives general information about the potential place of production of amphetamine in Poland. This information is sent to the Spanish liaison officer at Europol (through a Spanish Europol National Unit), who makes direct contact with his Polish counterpart. The Polish liaison officer sends the information directly to the appropriate headquarters of the Police Headquarters. Information is verified by the Polish police through simple operational actions (interview, observation). As a result, the Polish police determines that three cars were parked on the property indicated by the Spanish police on foreign registration numbers (two British, one French). The findings are forwarded to the Polish liaison officer who is holding a working meeting with the liaison officers of Spain, UK and France, on which the findings of the Polish police are communicated. Liaison officers make contact with the relevant national services and carry out vehicle inspections. The findings show that both British vehicles are in the National Crime Agency (NCA) interest as used by persons associated with an organized crime group specializing in drug smuggling. During the same day, officers meet to discuss these findings. After the meeting, the officers relay the preliminary findings to the appropriate national police cells asking for further instructions. The Polish police in the meantime makes further arrangements regarding the property, vehicles and persons. The material collected allows for the initiation of an operational control. The Polish liaison officer is instructed to hold another meeting with liaison officers to discuss the possibility of organizing a working meeting with the police involved in the operation in Hague. The meeting is held next week. The information is exchanged and the current findings and proposals for further action are discussed. One of the proposals includes handing over the collected material to Analytical Project conducted by Europol. In this way, a complex international operation may be co-

ordinated by Europol. During its implementation, the important tasks are carried out by liaison officers, who facilitate the flow of intelligence. Europol analysts gather information and analyze huge amounts of information, may also play a key role. As a result of their activities, new criminal relationships may be identified with other countries (personal contacts, telephone calls, bank transfers, places of residence or residence, assets). As a consequence, Europol analysts may propose new directions for investigations. Verification of these directions is carried out exclusively by the competent authorities of the Member States. Europol's premises hold working meetings with all teams to coordinate police activities. Europol's final contribution to the activities is to facilitate the preparation (operational meetings, alignment on targets, places and deadlines) and coordinating the implementation of national police operations using the 24/7 operational center. During the operation, suspects are detained, searched and secured. All these activities are under the exclusive competence of the police and other law enforcement agencies of the Member States concerned. However, Europol can directly support these activities through mobile offices, expert on-site consultations and information exchange.

This is where the concept of identifying, localization and neutralizing of cross-border crime should be explained. In terms of their meaning, these terms refer to the function of forensic science, which distinguishes the following functions: reconnoitring, detecting, preventing and proofing⁴⁵. The reconnoitring is to develop methods and measures to obtain the greatest possible amount of information about places, objects, persons, strategy, current and future activities of criminals/terrorists. Reconnoitring binds the detection, which aims to disclose the crime (terrorist activity), criminals (terrorists), the mechanism responsible for certain events or changes. Hereby detecting concretizes operational knowledge obtained in the framework of reconnoitring. Preventing is implemented both by taking action to neutralize the negative pressures and prevent abstract threats predicted on the basis of experience and research or analysis. Activities undertaken within the framework of proofing are to collect forensic evidence about the qualities of the material evidence, which allows the presentation of certain motions during penal procedure⁴⁶. Thus, in case of combating trans-border threats, the following system activities can be extracted: reconnoitring, detecting, preventing and proofing⁴⁷. The identification of threat results from reconnoitring and detecting, while the neutralization of threat results from preventing or proofing.

In my opinion Europol's crime intelligence potential, despite the adoption of correct organizational assumption and latest advances technology, is far insufficient to overcome the crisis of multilateralism in combating trans-border threats of the 21st century.

It is certain, that the most important factor of effectiveness of Europol's counterterrorism activities is the number and the quality (accuracy, relevance) of the criminal information. Organisation of Europol's crime intelligence model is of secondary importance. The main providers of criminal information and the recipients of intelligence are derived from the analyses carried out by Europol are the EU Member States. Europol is not able to effectively carry out their operational tasks without the proper information from the contribution of national services. Europol operates in proportion to the commitment of the Member States. The quality and format of the operational data received from the Member States are not as good as they should be. Another problem is the lack of feedback from Member States. Without the transfer by Member States of data to analysis conducted on the basis of analytical work files, without seeking the assistance of Europol and use the right tools assigned to it, Europol will not be effective in the field of crime intelligence. The situation is partly the result of still limited

⁴⁵ T. Hanausek, *Kryminalistyka, zarys wykładu*, Krakow 2005, pp. 38-41.

⁴⁶ Cf. E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka – czyli rzecz o metodach śledczych*, Wydawnictwa Akademickie i Profesjonalne, Warsaw 2008, p. 22.

⁴⁷ Cf. S. Pikulski, *Podstawowe zagadnienia taktyki kryminalistycznej*, Białystok 1996. p. 96.

trust of practitioners in the organization, who reluctantly provide information to Europol. The situation can be compared to the “vicious circle” because without adequate information Europol has limited ability to provide the necessary support⁴⁸.

It is true that crime intelligence cooperation within Europol framework at the beginning has given a new impetus to strengthening combating trans-border threat. But the truth is also that EU Member States have slowed this impetus by starting peculiar games with each other and Europol, that have resulted in limited contributions of sensitive information to Europol. The game is being performed on two levels: legal and practical.

As to legal level examples of this game are initiatives aiming at strengthening direct cooperation among the Member States in the field of intelligence.

Direct cooperation means that information is not available for partners other than those directly exchanging information. This limits the possibilities of the use of such data by Europol in the analytical process. The principle of availability is an initiative formulated in the Hague Programme, which introduced the concept of direct access to information held in national police databases. According to this principle, law enforcement authorities should provide information to their counterparts in the Member States on the same basis as national authorities. From a practical point of view, the purpose of this concept is the introduction of systems that offer solutions that would allow police officers of the Member States to obtain information directly from the institutions involved in the fight against crime, the other Member States with access to on-line databases managed by these entities. This form of co-operation is subject to the following types of exchange of information: ballistic data, fingerprint traces, DNA, vehicle registration information, telephone numbers, and the minimum information required to identify a person. From an operational point of view, the principle of availability has two dimensions of action: creating conditions for effective search of information and intelligence in the EU and to enable their direct (rapid and seamless) exchange between the competent authorities of the Member States. One area is in the body of the subject matter of a Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the so-called Prüm Decision)⁴⁹, while the latter — Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of EU Member States (the so-called Swedish initiative)⁵⁰. Council Framework Decision 2006/960/JHA provides tools for the extension of direct cooperation between the law enforcement authorities. Expansion and simplification of the bilateral exchange of information between Member States — with the occurrence of additional circumstances — provides the opportunity to skip Europol in the exchange of information and actually detracts from its current role in the European model of information exchange.

As to practical level good example of this game is strong use of direct cooperation between liaison bureau officers, which in fact constitutes the practice of bypassing Europol’s central intelligence functions. I agree with A. James that, in this way the bulk of intelligence passing between ENU’s and Europol is managed by liaison bureau officers without finding way into IS or EAS. Without sensitive crime information Europol is not able to produce effective crime intelligence. As a result of the mechanism the quality and timeliness of data passed on the Europol by EU MS are not as good as they should be. The situation can be compared to a

⁴⁸ T. Safjański, Barriers to the Operational Effectiveness of Europol, Internal Security no. 1/2013, p. 60.

⁴⁹ Official Journal of the European Union, No. L 210 of 6 August 2008, p. 12.

⁵⁰ Official Journal of the European Union, No. L 386 of 29 December 2006, p. 89

"vicious circle" as the Europol is not able to successfully support EU MS in combating cross-border crime without relevant information from the national services⁵¹.

In conclusion, I agree with O. Bureš that Europol does not have the appropriate potential to combat the most dangerous cross-border crime such as terrorism attacks. Due to the cost of acquisition and the sensitivity of counter-terrorism intelligence, cooperation in this regard is based on a system of direct relations between the national security services of the EU MS concerned, which contradicts the general idea of multilateral cooperation in combating terrorism in EU. Experience to date with multilateral combating terrorism has shown that it is one thing for EU policymakers to make public promises to improve the fight against terrorism via better intelligence sharing across Europe, and quite another thing for them to persuade the relevant national agencies to comply⁵².

In fact, the information dependence of Europol on the Member States is to be considered as complete. Therefore, the results of counter-threat operations are dependent on the full multiagency cooperation between the Member States, which is crucial for the overall Europol intelligence activity. Without the Member States information contribution, Europol is not able to meet the expectations placed upon it by the EU Council, the European Commission and the Member States⁵³.

It is necessary to build stronger crime intelligence network using synergy potential of EU Member States. A key criterion for the construction of new crime intelligence structure or redefining the existing Europol structure should be functionality, which provides a focus on the result as far as identification, localization and neutralization of trans-border threats to public security is concerned, not the political visibility of cooperation⁵⁴.

⁵¹ A. James, *Understanding police intelligence work*. Vol. 2. Policy Press, 2016, p. 45.; T. Safjański, *Barriers to the Operational Effectiveness of Europol*, *Internal Security* no. 1/2013.

⁵² O. Bureš, *Intelligence sharing and the fight against terrorism in the EU: lessons learned from Europol*, *European View* June 2016, Volume 15, Issue 1, pp 57–66.

⁵³ Cf. T. Safjański, *Barriers to the Operational Effectiveness of Europol*, *Internal Security* no. 1/2013.

⁵⁴ Cf. F. Monaco, *Europol: the Culmination of European Union's International Police's Efforts*, *Fordham International Law Journal*, vol. 19, New York 1995; M-P. Ratzel, *The business, potential and limitations of Europol*, *The new police in Europes*, Berlin 2009; A. James, *The Path to Enlightenment: Limiting Costs and Maximizing Returns from Intelligence-Led Policy and Practice in Public Policing*. "Policing: A Journal of Policy and Practice, Oxford 2017.