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Europol cooperation¹

The European Police Office, or Europol for short, was established in the Maastricht Treaty on European Union of 7 February 1992, as a response to problems of European trans-national crime. Europol was the first attempt at establishing a transnational policing organization to handle cross-border policing. The first manifestation of the Europol project, the Europol Drugs Unit (EDU) started operation on 3 January 1994. The EDU initially focused solely on the fight against drugs within the European Union. This mandate was later extended after the Essen summit meeting in December 1994 to “prevent and combat unlawful drug trafficking in nuclear and radioactive substances, illegal money laundering, immigrant smuggling, trade in human beings and motor vehicle theft”.

Cross-border crime is nothing new. States have had to deal with cross-border crime such as smuggling, political insurgency and trade in outlawed products and drugs for centuries, and yet cross-border policing has only really taken off in the past fifteen years. Despite valuable contributions by Interpol which has been in existence since 1923, there has been, on the whole, an unwillingness on behalf of states to engage in cross-border co-operative regimes for a variety of reasons ranging from the “bothersome” concept of sovereignty, to national legal variations and a certain degree of tolerance of the inevitability of cross-border crime.

Integration within Europe has illustrated, however, that co-operation across borders can and does succeed, and co-operative regimes such as Schengen have proven this to be the case. In many ways the motivation for Europol extends from the motivations to create Schengen. The Single European Act of 1985 aimed to create four freedoms with Europe, that of freedom of movement of people, goods, services and capital. Tupman notes that to create a community in which these four freedoms could be observed it implied a removal of border controls. Allied to the removal of frontier controls were measures to create a cross-border database, the Schengen Information System (SIS), in which data could be stored and accessed by law enforcement agencies across the EEC to help combat crime. Schengen and SIS, however, had no operational powers. While Schengen certainly helped in the fight against cross-border crime, it also aided their activities in removing border controls.

There has been a great deal of speculation as to the possibility of Europol becoming a European version of the FBI. For the most part, such assertions are restricted to the periphery of the discipline, but are becoming more common. It is no longer the folly of anarchists and opponents to European integration, who often rely heavily on circumstantial evidence and conjecture without much empirical support for their claims, but now respected academics that are calling for this to happen too. Dr Willy Bruggeman, the Deputy Director of Europol, however, discounts the possibility that his organisation is somehow subject to an inevitable transformation process. He supports this view with a categorical denial of such plans, “Europol is NOT an FBI and not intended to become a comparable instrument of the EU”. Certainly, a number of obstacles would need to be overcome in order for this to take place: Europol’s present structure based on intergovernmental co-operation would have to be replaced with a supra-nationalist framework.

- Massive movement in the political and legal landscape would be required, as any move towards a FBI would require a publicly endorsed mandate or at least a greater role for the European Parliament in an oversight role.
- The powers of Europol would need to be massively expanded, to include in the first instance, powers of arrest.
- Political obstacles such as national sovereignty and Euro-scepticism would have to be overcome, both within the UK and within other Member States.
- Problems with data security and respect for civil liberties would need to have been addressed and resolved and mechanisms to ensure transparency put in place

Creation of a European FBI would be the of a European Criminal Court and a EU-wide Criminal Code in addition Equally, there are a number of advantages in creating a European FBI from Europol:

- Europol has had the necessary exposure and image to have public confidence built around it (although I hope that this would involve a new logo)
- A number of connections already exist between Europol and Member States as well as non-EU members such as the USA and Russia.

¹ Prof. Dr. W. Bruggeman munkája alapján.

- Europol has an operational base and good levels of expertise in its staff and already operates a Europe-wide database, The Europol Computer System
- Europol wants to extend its mandate to make it a larger player in the fight against trans-national crime; creation of a European FBI would serve its interests therefore.

The development of Europol has been predicated upon ideas of intergovernmentalism, and those associated with European police co-operation seem intent to retain this structure. Moreover, any move towards the formation of a European FBI would require a serious overhaul of the way in which police co-operation is undertaken in Europe as well as changes in the legal systems of the Union and of Member States. As Tupman notes, without a major event to mobilise the European peoples and politicians it seems unlikely that this could be achieved.

Whatever the merits of a European FBI it seems that Europe is unwilling to stomach its development at present. There is, however, an emerging consensus as to the need to enhance Europol's powers if it is to build upon existing police co-operation and further consolidate effort in the fight against trans-national crime. There are a number of prescriptions to strengthen Europol that can be made, that fall short of the creation of a European FBI:

- Strengthening co-operation between the various European information systems, such as the Customs Information Service (CIS) and the Schengen Information System (SIS).
- Co-operating with UCLAF, the body responsible for preventing fraud against the community budget, although this would need to overcome problems of co-operating between the First community Pillar and the Third Pillar.
- Concentration on the fight against illicit immigration networks, but not as far as the European police force to combat illegal immigration as called for by Italian Interior Minister Enzo Bianco.
- Extension of Europol's operational powers to include fully realising the prospect of operating 'Joint Investigative Teams'.
- A greater harmonisation of national legislation, especially those relating to terrorism, financial crime, organised crime and immigration.

Europol needs to become more open in order to receive more powers and duties in the New Europe. It is the opinion of this author that Europol is not likely in the short term to begin the process of transformation into a European FBI. However, as has been illustrated in the past in matters of European integration, this does not exclude the possibility that this may not happen in the future. Indeed, if one looks at Europol through a Neo-functional lens it becomes apparent that once one area of law enforcement is integrated then others around it will follow. Indeed, following co-operation in the fields of Justice and Home Affairs at the Maastricht and Amsterdam Treaties we can now observe the growing trend towards the creation of a common European public prosecutor, Eurojust, and the creation of common procedures on immigration. If Europol's powers are extended, as outline above, then it seems likely that in the future it will request further powers in order to achieve its mandates.

In the case of Europol, however, its intergovernmental character and set upper limits on its powers and duties will most likely serve to insulate it from the effects of the spillover effect at least in the immediate future. If the EU does push ahead with plans to create a European Judicial Area, then Neo-Functionalism suggests that a European Police Force may be required to police the enlarged European space. Tupman notes that this process is already taking place with plans to create a 'European Judicial Space', so that all the territory of the EU would constitute a single area for the purposes of prosecuting fraud against the Community budget". If this is the case then there will inevitably be a further intensification of the role of UCLAF and of Europol. Before any such move takes place, however, the areas of jurisdiction of these two bodies will have to be resolved, as at present both have over-lapping responsibilities in the field of fraud against the Community budget.

Indeed, rather than suggesting that a European FBI will be created through Europol, it seems far more likely that this will take place through UCLAF [7]. The arguments in favour of such a view are quite strong. As raised by Tupman and Bruggeman, Europol is subject to fifteen masters while UCLAF serves only one, the European Commission.

Europol is fast becoming established as a serious player in the fight against trans-national crime. Early adventures into international police co-operation such as TREVI in the 1970s started a process that is undeniably consistent with Neo-Functionalism's Spillover Effect. It is interesting to note that in order for police forces to tackle a single area of crime, such as the fight against drugs, a number of other areas of crime also have to be targeted. In the case of drugs, for example, the Europol Drugs Unit needed an extension of its mandate to cover organised crime and illicit immigration networks in order to effectively act against drugs. This example illustrates one of the difficulties police forces have in fighting the 'new' forms of crime in that national responses are no longer sufficient, if they ever were, to combat cross-border crime. By its very nature, cross-border crime requires a cross-

border solution. If criminals are operating between countries and across national frontiers then it seems only logical that law enforcement agencies must also follow suit.

Europol, however, is not and should never be seen as the solution to the problem of trans-national crime. While it has certainly plays an important role, it will not on its own and in its present form offer a lasting solution to a problem which it is generally accepted will get worse before it gets better. Expansion of its duties seems an appropriate remedy for some of Europol's immediate problems but is only a short term measure to tackle a long term problem. Ultimately, however, if Europol is to assume a greater role in European policing then it must become accountable to the European demoi rather than fifteen separate peoples who remain oblivious to its existence as is presently the case.

The European Union is plagued by a democratic deficit, which Europol sometimes regards itself immune to due to its intergovernmental character. It is not, however, separate from the same problems that afflict the European Commission and European Parliament, i.e. absence of international scrutiny and popular control. Europol's recent submission of two annual reports, one classified for public viewing and the other a 'limited' version with restricted readership is, for instance, one such trend that should immediately be reversed. Of course any law enforcement organisation should have the freedom to balance operational security with public accountability, but these limits should be first set by reasoned political authorities and not by the organisation itself. Expansion of Europol's powers without the same attention given to the possibility of increasing political and judicial accountability will consequently serve to make Europol just as big a part of the problem as part of the solution.

It seems likely that Europol will continue to develop from its present form and as it matures will be able to play a greater role in the fight against transnational crime. If Europol is to become the primary response of European states to the scourge of cross-border crime then the mechanisms it employs and the way in which it operates must be subject to a greater scrutiny and accountability. Greater transparency will most likely bring with it an increased public knowledge of its operations and a greater willingness on behalf of governments, police forces and the public at large to accept expansion of its operational jurisdictions and powers. What seems certain, however, is that as long as individuals, governments and organisations continue to call for the expansion of powers of Europol this debate will continue and transnational crime will exploit it.