



BULLETIN

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New Legal Framework for Europol

by Radosław Kołatek

The transformation of Europol into a new formal agency of the European Union, as of 1 January 2010, will make it easier for member states to modify that body's competences and tasks. And under the Lisbon Treaty, the agency has acquired necessary operational powers, increasing its autonomy in the field of freedom, security and justice. It is in Poland's interests that Europol's competences be broadened to include action against crime with roots outside the EU area.

The European Police Office, or Europol, was created on 1 November 1998, under an international agreement signed by EU member states (the European Convention), to coordinate their law enforcement cooperation. It was tasked with establishing a system of information exchange among member states' police forces, based on the data which they themselves made available within the Europol Computer System (TECS). The system's database collects information about convicts and suspects in cases involving serious international crime, such as terrorist activity, trafficking in drugs or radioactive substances, money laundering, people smuggling and car theft.

Europol provides national law enforcement agencies with operational analyses of cross border crime, and also with strategic analyses, forecasting crime expansion in the EU area and specifying methods to combat crime in the longer run. On request, it also provides technical support for national agencies in their investigations, as well as coordinating the investigative methods of member states' agencies taking part in a joint investigation. Europol does not replace national law enforcement agencies; rather, it supports them by supplying TECS data on a particular offence.

Weaknesses of Previous Formula. Europol's major problem was lack of operational powers for its functionaries to arrest a suspect or search people or premises in member states. That barred the agency from major operational instruments available to national police forces — largely a result of member states' penchant for monopoly in matters of domestic security and detention of citizens.

Another downside was that member states saw Europol only as a valuable source of intelligence and an analytical centre to cover organized crime in more than one European country.

Responding to these drawbacks, the member states and the Commission opted to make of the agency a more active body which, in addition to coordinating police cooperation, would also be capable of conducting its own operations throughout the EU area. Europol was vested with new powers, specifying its original objectives in greater detail and enhancing its previous competences.

Wider Field of Competences. The main modification introduced pursuant to Article 88 of TFEU is granting operational powers to Europol — even though constrained by a host of caveats. And so, the agency's independent operations must be conducted in liaison and in agreement with the police forces of the members states whose territory is concerned, with Europol enjoying no right to apply coercive measures. These restrictions must be seen as a mechanism to safeguard member states against the takeover by EU bodies of their detailed justice and home affairs competences. Another instrument to protect member states' powers in the field of police cooperation is provided by Article 12 of TEU, where national parliaments are vested with the right of political monitoring of Europol, the motive being to engage them in the creation of an EU-wide area of freedom, security and justice. Under the new legal framework, national legislators will take part in assessing the EU's draft legislative acts in terms of their compliance with the principle of subsidiarity.

Based on the Lisbon Treaty, the Council opted to transform Europol into a formal EU agency, a decision that has produced triple consequences.

First, with Council decision-making based on the majority voting mechanism, member states will find it easier to modify the agency's tasks and competences. Previously, Europol Convention amendments required re-negotiating the international agreement establishing the agency.

Second, the provisions on coordination and conduct of operational activities authorize Europol to request that a national police force initiate a specific investigation. The agency can also conduct joint investigations with the relevant national bodies or within previously formed joint investigative teams. With its powers broadened to transcend cases directly related to organized crime, Europol can now act on other major forms of criminal activity, too. And its assistance will now be available to national police forces in respect of cross-border criminal investigations with no initial signs of organized crime's involvement, whereas previously such assistance was only possible in organized crime-related cases.

And third, Europol's expenses will now be financed from the EU budget, rather than direct contributions by member states, an arrangement expected to accord greater financial autonomy to the new EU agency. Its budget will be drafted by the Europol director and submitted to the agency's management board. These changes strengthen the position of the European Parliament, receiving the power to control Europol finances, its major instrument to influence the agency's functioning. And Europol personnel will get the status of EU officials, which is expected to simplify human resources management at the agency.

Conclusions for Poland. Under the new legal framework Europol has become a full EU agency, which should help it to better coordinate cooperation between national law enforcement bodies. This cooperation is also going to cover new fields.

Europol operations are confined to the territories of EU member states, and the agency may only exercise its powers when dealing with international serious crime affecting the security of two or more member states. Problems emerge when crime sources are outside the EU area, and when the threat is only to one member state. It is in the interests of Poland, a country fighting organized crime, to broaden Europol's room for manoeuvre to include such cases as well. Especially important for a country with a long and very important section of the EU's external border is that Europol could act also when criminal activity targeting a member state has its roots outside the EU. That, however, would require a consent among member states to broaden Europol's competences to include co-operation with law enforcement agencies in countries outside the EU, and also those latter countries' readiness to establish such cooperation with Europol.