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Exposing terrorist activity by Europol – legal and practical considerations

Introduction

Europol is a platform of multilateral cooperation between law enforcement agencies, made up of police forces, border guards, customs, financial, migration, military police, and occasionally special services of the EU Member States. Established under the Maastricht Treaty. Europol started its operational activity on 3 January 1994 as the Europol Drugs Unit, “Eurodrug”. The Convention on the establishment of the European Police Office (Europol Convention) was ratified and came into force.¹ The European Police Office (Europol) became fully operational on 1 July 1999.²

Artur Gruszcak distinguishes Europol as the key element of the European intelligence community, the position of which within the community results from its close relations with the EU institutions, agencies and organs (European Border and Coast Guard Agency - Frontex, EU Intelligence Centre – UE IntCen) and law enforcement agencies of the Member States.³

Europol’s competences with regard to criminal intelligence

Europol’s competences in exposing terrorist activities result directly from the Treaty on the Functioning of the European Union (TFUE).⁴ According to Article 88.1 of the TFUE: *Europol’s mission shall be to support and strengthen action by the Member States’ police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.* According to the Treaty (...): *Any operational action by Europol must be 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 authorities.*⁵ It transpires from the above quoted treaty provisions that the procedure of exposing terrorist activities

¹ Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), signed in Brussels on 26 July 1995 (Journal of Laws 2005, no. 29, item 243, as amended).

² See more in T. Safjański, *Europejskie Biuro Policji Europol. Geneza. Główne aspekty działania. Perspektywy rozwoju*, Warszawa 2009.

³ See more in A. Gruszcak, *Europejska wspólnota wywiadowcza. Prawo – instytucje – mechanizmy*, Kraków 2014.

⁴ Consolidated version of the Treaty on European Union (OJ EU C 115 of 9 V 2008), p. 49.

⁵ Ibidem, Article 88.3.

provided for within the framework of Europol's activity is fully legitimate and proceeds pursuant to international agreements. The cooperation, however, may be initiated once certain specified prerequisites are met. Understandably so, the operational potential of Europol cannot be exploited and taken advantage of on anybody's whim.

First and foremost, Europol's representatives are not even vested in the elementary competences enjoyed by the national services, neither e.g. operational and intelligence (surveillance, wiretaps), nor investigative (detaining and arresting people, searches, interrogation, securing forensic traces) powers, or general police empowerment (id check, body and luggage search, ship or air consignments check, coercive measures or the use of weapon).

The procedure of exposing terrorist activities by Europol is a multifaceted phenomenon. Under the explicit provisions of the treaty Europol is responsible for supervising a direct cooperation between all EU Member States with regard to combating, among others, the criminal activity of terrorism. Each Member State appoints competent national bodies – all of them authorised under the national legislation to prevent and combat transborder threats to cooperate within the framework of Europol's operations. The vast spectrum of forces available, including: police forces, border guards, customs, financial, migration, military police, and occasionally special services of the EU Member States has a decisive impact on the model of actions undertaken.

The Europol's counterterrorist-related activity is aimed at supporting and complementing actions taken by the Member States, contributing thus to their increased effectiveness. It is premised on the assumption that the relevant domestic services of the Member States are primarily weighed down with the obligation to combat any manifestations of terrorist activity. Europol initiates its terrorism countering activities only when the scale, extent or the nature of such threat exceeds the counteracting capabilities available at a national level.

Europol seeks to ensure adequate direction, cohesion and consistency of the actions undertaken by individual national services. In practice, the supportive counterterrorist function of Europol comes to the force, when coordination of national services activities within Europol is more effective than realized separately by individual member countries. The role of Europol is to support rather than substitute police services of the respective Member States.

The Regulation (EU) 2016/794 of the European Parliament and the Council of 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)⁶ details the scope of the tasks under consideration. In light of the Regulation Europol is obligated to:

- collect, store, process, analyse and exchange information, including criminal intelligence/operational data;

⁶ The Regulation (EU) 2016/794 of the European Parliament and the Council of 11 May 2016 on the European 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/JHA (JL UE L 135 of 24 V 2016, p. 53).

- notify immediately the Member States, through their national units established or designated, of any information and connections between criminal offences of their interest/within their concern;
- coordinate, organise and implement investigative and operational actions to support and strengthen actions by the competent authorities of the Member States;
- 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;
- support Member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams by providing operational, technical and financial support.⁷

Dismantling and operational exposing

Dismantling is an act originating from forensic study/tactics comprising **recognition** (acquiring maximum information on the place, object, adversary and the tactics of the future and current forensic activities); **detecting** (exposing a perpetrator, their tools and the manner the offence was perpetrated by collecting, assessing and analysing the information; **preventive role** (preventing criminal activities).⁸

Operational dismantling involves tactical and forensic activities by means of which criminal activity may be exposed. It comprises a set of planned and systematically executed operational activities aimed at individuals, legal persons, body corporate, or groups of people base on the presumption or acknowledgement of preparation, attempt or commission of a specified offence, or unidentified kind of criminal activity.⁹

Europol's actions are focused on:

- disclosing and identifying the location of security threats to the EU which bear the hallmarks of a terrorist activity,
- obtaining information sufficient to make hypothesis regarding an individual or terrorist organization having causal relationship to the threat,
- establishing further data to neutralize the threat (for example making an individual arrest, dismantling terrorist organization, foiling the attack).¹⁰

Information remains a prerequisite, which triggers the process of operational exposing of criminal (terrorist) activity. Its absence or poor quality puts the legitimacy of such undertaking into question.

⁷ Ibidem, article 4.1.

⁸ See. S. Pikulski, *Podstawowe zagadnienia taktyki kryminalistycznej*, Białystok 1997, p. 96 et seq.

⁹ Parliamentary project of an act on operational actions, http://orka.sejm.gov.pl/proc6.nsf/projekty/353_p.htm, article 2 paragraph 4 [access: 24 V 2013].

¹⁰ See. T. Hanausek, *Zarys kryminalistycznej teorii wykrywania*, part 2, Warszawa 1987, p. 3 et seq.

Analytical capability

Based on the inherent *sui generis* status of Europol exposing of criminal activities takes predominantly the form of an analytical study comprising special procedure of acquiring, verifying, gathering and distribution of criminal information and intelligence data. In the tactical and forensic dimension it involves engaging criminal analysis and information and intelligence data swapping to support operational cases or investigations of the overall similar nature occurring in the Member States. Actions taken within analysis work referred to as the Analysis Project, AP concentrate on a specific subject (person, environment) or an object (place, phenomenon).

From a technical and criminology perspective the analytical work makes use of special IT tools of database parameters, *the so called* “analytical databases”, analysis work files (AWF), work files, work files for analysis, analytical files. To avoid misunderstanding, it should be pointed out that the “AWF” acronym refers in practical terms to a tactical as well as a technical aspect of the exposing procedure.

The AWF is used mostly in the cases of threats of the most difficult detection rate, with the detection and arrest of the most serious crimes (for example terrorist acts).¹¹ The underlying assumption is that the operational cases or inquiries conducted within the framework of different domestic jurisdictions are likely to reveal numerous links (whether subjective, objective or both). These links are indicative of a natural tendency displayed by terrorist organizations (international criminal groups) to get involved in cross-border criminality and the interpenetration of criminal markets. The starting point for the AWF is the identification of links between the cases run by the respective Member States. Under the preliminary data processing stage Europol’s analysts seek similarities, relaying even on the most fundamental details like overlapping identification data, the address details, the bank account number. The AWF is launched once Europol determines that cases conducted by law enforcement agencies of a few Member States are related operationally, and the interested states recognize the need to launch integrated investigation. The relevance of information is analysed for the purposes of specific analytical study and individual national inquiry.

Information and data submitted by the Member States, gathered in the operational cases or domestic investigations are used for the purpose of analytical study. At the request of Europol or on their own initiative, national police units communicate to Europol all the necessary information for the purposes of analyzing a particular case and in a specific AWF. The Member States communicate such data only where processing thereof for the purposes of preventing, analyzing or combating offences is also authorized by the national law. From the analytical point of view it requires indicating a range of data to communicate concerning criminal investigations or operational cases in every Member State.¹² The data for analysis are transferred by

¹¹ See more: T. Safjański, *Działania operacyjne Europolu*, Szczytno 2013.

¹² Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency For Law Enforcement Cooperation (Europol) and replacing and

the national units of the Europol liaison offices to Europol in the form of contribution notes. They are verified by a project manager in terms of formal requirements. Further on, the information and data are entered into an analysis work file.

Methodology of the AWF relies mostly on criminal intelligence (mainly analysis and the exchange of information), and individual activities undertaken by the Member States (joint investigation teams). Within analysis work files there are general (strategic) analyses and detailed (operational) analyses.¹³ **General analyses** are drawn up for the purpose of processing vital information on a defined, more extensive issue and enhancing initiatives launched by competent domestic organs. Detailed analyses are prepared to get specific information on criminal activities under Europol's competence. In the case of analysis of a general nature, all Member States learn about its findings in the reports developed by Europol and transmitted via liaison officers or experts.

The process of analytical study carried out by Europol involves also operational meetings. The cooperation between Europol's analysts and law enforcement officers is multifaceted. Apart from intelligence analysis Europol provides also expert support to the member states. It can be effected from the Europol headquarters or directly on site (the so-called mobile offices). The AWF, member states should ultimately create joint investigation teams directed to a particular criminal proceeding.

The goal of an analysis work file overlaps with the main goal of the detection process, i.e. it leads to gather complex intelligence data on terrorist activities and other information vital in the evidentiary proceedings. It is the analysis work file's task to indicate detection directions, loopholes in the case files and the need for information and data. The analysis work files allow to compare and check offences-related information from different sources and from scores of states. Analysts may search for information in all systems and data bases in Europol. This is how the system of information circulation and exchange is created. The system, in which information and data are exchanged between Europol preparing the analytical projects and domestic services running operational cases or investigations. The operational and analytical projects hold a central position in the system and facilitate conducting the cases or investigation by providing conditions for using information from other jurisdictions. Europol's analysis work files can be a direct basis for operational actions in the Member States. These projects enable Member States to supplement gaps in their operational recognition.

The Member States supply frequently analytical files containing solely fragmented pieces of information, which, upon merging operational analysis and the information from other Member States allow to identify international criminal structures and their dismantling. Participation in a project enables a dynamic exchange of information on groups and whole criminal structures. Information provided constitutes an analytical input providing the basis for further joint actions of the interested parties. Participants of an analytical project receive reports and evaluation of the case, which allows

repealing Council Decision 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ UE L 135 z 24 V 2016, p. 53).

¹³ Ibidem, article 10.

constant monitoring of risks in the EU. Possible links are thoroughly checked to take preventive actions or detect actions possible. The operational analysis work files enhance detecting processes in the scope of international organized crime group.¹⁴

Each **operational analysis work file** requires the establishment of analytical analysis group, consisting of:

- Europol’s analysts,
- other Europol staff designated by the Director,
- liaison officers from the Member States,
- experts from the Member States supplying the information or interested in the analysis.

Analysts are exclusively entitled to enter data to an analysis work file or make any changes therein. All participants of the analysis group may retrieve data from such file. Under the participation rules, the participants – according to their tasks – can be attributed a leading or supporting status. The leading role means collecting, processing and supplying information to the national unit, and the supporting role means the analysis of data from the police data systems in order to make the leading entity aware of the information for the purpose of analysis, as well as transferring information to Europol.

In practice an analytical group within a working file consists of Europol’s employees, one of whom is the project manager, the others being analysts (with proper specific training¹⁵) and specialists. Furthermore, non-Europol employees usually law enforcement or governmental organisations staff or agents are additionally hired to resolve the issue. The same applies to the non-Europol employees who are law enforcement or other governmental organisations workers or agents of the so called third countries, exchanging information with Europol under relevant agreements. Europol’s analysts, allocated to a particular project, cooperate directly with representatives of national operational or investigative teams. Their role is to show the need for source information necessary for the analysis and taking part in the evaluation of database contents. Europol is entitled to invite experts from the third countries to cooperate within an analytical group under the following conditions:

- there is an agreement between Europol and this particular entity or working arrangements regarding exchange of information, including personal data exchange, confidentiality of exchanged data,¹⁶

¹⁴ See. P. Chlebowicz, W. Filipkowski, *Analiza kryminalna. Aspekty kryminalistyczne i prawnodowodowe*, Warszawa 2011.

¹⁵ Such trainings are performed in accordance with certain standards to give the possibilities of further cooperation between criminal analysts from different countries. Such trainings in Poland are performed in one educational center, the Police Academy in Szczytno. To prepare a criminal analyst specialized psychological test and job interview are needed as well as four-week training according to the ANACAPA program. During the training period participants get to know analytical techniques of information visualization and handling analytical program called *Analyst Notebook*.

¹⁶ Countries covered only by a strategic agreement cannot be invited (Russia, Turkey). Danish Protocol allowed the possibility of passing data to a third country, which does not have any agreement on the operational cooperation with Europol in exceptional cases and in urgent situations on

- association of the experts from the entity is in the interest of the Member States,
- the entity is directly interested in the analytical works,
- all participants unanimously agree to include experts of the entity in the works of the analytical group.¹⁷

Analysis work files are a unique and most effective form of Europol's operational work offering many opportunities in the detection. The goal of analysis work files is to identify links between cases carried out in Member States. The procedure of analysis work files initiation is relatively complicated and embraces several stages. The most important are: proposing an initiative of opening an analysis work file, feasibility study of the analytical project, preparing documentation required to open the AWF and planning paperwork, introducing and opening the analytical project. The examples of analysis work file directed to detecting terrorist threats done by Europol for the past few years are shown in the table below.

Table. Europol's analytical work files regarding terrorist threats.

Name of the AWF	Subject of the analytical work file
Hydra	countering Islamic extremists groups or terrorist organisations. It also comprises financing terrorist groups by Islamic charity organizations, couriers with great amounts of money to finance terrorist acts, using forged credit cards, bank frauds, falsifying ID for terrorist purposes.
Dolphin	Countering terrorist groups indicated by the EU Council as posing serious threat to the EU Member States.

Source: private study.

AWF employs following tactical and criminalist modus operandi:

- criminal information gathering,
- operational criminal analysis,
- strategic criminal analysis,
- exchanging criminal information.

Gathering criminal information

The above mentioned AWFs are used for storing criminal information. They contain comprehensive intelligence gathered for criminal analysis purposes (both operational

the basis of the decision of Europol's Director.

¹⁷ The Regulation (EU) 2016/794 of the European Parliament and the Council of 11 May 2016 on the European 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/JHA (OJ UE L 135 of 24 V 2016, pp. 53–114).

and strategic). The information is supplied by the Member State police forces (materials concerning operational cases as well as investigations). Groups of persons on whom data are stored:

- the file shall include data on persons, who, in accordance with the national law of the Member State concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Europol is competent or who have been convicted of such an offence,
- persons regarding whom there are factual indications or reasonable grounds under the national law of the Member State concerned to believe that they will commit criminal offences in respect of which Europol is competent,
- persons who might be called upon to testify in investigations in connection with the offences under consideration or in subsequent criminal proceedings,
- person who have been the victims of one of the offences under consideration or with regards to whom certain facts give reason to believe that they could be the victims of such an offence,
- contacts and associates,
- persons who can provide information on the criminal offences under consideration.

The collection, storage and processing of the personal data such as racial origin, political opinions, religious beliefs and data concerning health or sex life is subject to a specific regime. Data are submitted by the Member States in their national languages or in English.

Exchange of criminal data within AWFs

It is a method of passing, making accessible collecting or receiving information by law enforcement agencies or other entitled entities. Europol is responsible for the exchange of information in accordance with the law. The provisions of the Decision on the Europol regarding exchange of information and intelligence provide framework for the action, making this exchange possible. They regulate the framework of information in Europol making analytical tasks possible by supplementing its data bases and information system. The legislation provides that Europol communicates information to relevant Member States authorities because the institution is obliged to notify the competent authorities without delay of information concerning them and of any connection identified between criminal offences. Within analysis work files there is information on criminals, offences and premises attached thereto, subjects, events, modi operandi, criminal phenomena and general threats.

The pattern of information exchange within an AWF has been worked out in cooperation with the Member States and agreed by the Heads of national units of Europol. It shall ensure that data security is complied with. This model provides for cooperation, both bilateral and multilateral. In practice the framework of information is as follow:

- Europol national unit – national liaison office – Europol,
- Competent national authority – national liaison office – Europol.

Operational criminal analysis

It shall be understood as a detecting instrument. It is used mainly in a multidimensional cases with numerous criminal leads, with complicated criminal links, vast information, the processing of which using traditional methods and techniques would be difficult or purely impossible. Operational criminal analysis is used first and foremost to gain investigative aim.

Methods which shall allow to establish modus operandi of a certain criminal activity, to identify links between different analytical objects (person, thing, place) and to establish structures of organized criminal groups are used within operational analysis. They are as follow:

- analysis of modus operandi,
- comparative analysis of crimes,
- analysis of criminal organizations,
- analysis of data stored in a file,
- financial analysis,
- analysis of methods used in a file.

The analyses generated in Europol can serve to start or support or facilitate investigations in Member States or accompany such investigations. It regards particularly proceedings which can be pursued only in accordance with provisions of the national law and by the competent national authority, which, however, have international links and international aspects that require tight cooperation via liaison officers of certain countries within Europol.¹⁸

Strategic criminal analysis

The basic role of strategic criminal analysis is supporting decision-making processes. The goal of its application is to submit to the Police decision makers more versatile material including diagnosis of potential areas of threats, their evaluated scale and the feasibility of their occurrence. Ultimately the material shall constitute a basis for coordinated and pre-emptive actions and thereby limit the number of unexpected or critical incidents. The above indicated approach is compatible with modern standards of the EU Member States law enforcement agencies, the so called *intelligence-led policing*. From the institutional perspective it is Europol that plays a leading role in strategic analysis in combating organised criminality.

Strategic analysis is focused on predicting direction and the volume of threats development, risk assessment as well as establishing priorities, mechanisms and strategy of counteracting. The substance of analysis concerns sources and resources of a criminal potential and targets of criminal activities. It also embraces some data research not connected to a particular investigation or proceeding, and therefore it does

¹⁸ See. P. Chlebowicz, J. Kamińska, *Operacyjna analiza kryminalna w służbach policyjnych*, Warszawa 2015.

not apply to personal data. Nevertheless, in practical terms, this kind of analysis – next to operational (tactical) analysis – is perceived as an integral part of criminal analysis.

Strategic analysis is also a response to the needs in the scope of security policy and combating offence. Its consequence is that decision-makers receive an exhaustive material allowing the diagnosis of potential threats, their scale and prediction of its occurrence.

As part of strategic analyses Europol develops general reports concerning threat assessment and risk assessment, prepares recommendations concerning combating organized crime, phenomenology and structural analyses on the basis of intelligence submitted by the Member States or from other sources, which allows to recognize *modi operandi*, areas and structures of the criminal activities. Europol's criminal intelligence (including criminal analysis) unravels the picture of transnational criminality in the European Union.

Levels of AWFs

As far as AWF shortcomings are concerned, national police services had been pointing out their insufficient scope or too narrow focus. Some countries opted for opening analysis work files using only regional approach. Having the above under consideration, in 2013 analytical work files were divided into 3 levels:

1. Strategic,
2. Operational,
3. Targeted.

Strategic files

Aimed at processing data and information on organised crime and terrorism at the highest possible spatial and time scope. The analytical work files on a strategic level enable Europol to notify the Member States of the scale and threats development directions and provide them with data required to take pre-emptive actions (political decisions, changes in law). At present Europol leads two analytical work files on a strategic level: AWF Serious Organized Crime and AWF Counter Terrorism.¹⁹

Operational files

Aimed at gathering information on a particular sort of organised crime and terrorist activity or on a structure of organised crime threats in a particular region of the EU. These analytical files on operational level are called Focal Points.²⁰ They can focus on a particular geographical area (Balkans, Baltic Sea region), theme (Russian-language organised crime, Alban criminal groups), the area of criminal activity (human trafficking, VAT Fraud) or any particular commodity based (drugs, Euro counterfeiting).

¹⁹ *Europol, New AWF Concept Guide for MS and Third Parties*, Haga 31.05.2012, p. 10, <http://www.statewatch.org/news/2013/jan/europol-awf-new-concept.pdf> [access: 15 II 2018]

²⁰ *Ibidem*, p. 5.

Target files

Dedicated to the detection of specific criminal organised groups or terrorist organisations, offences and their perpetrators. According to the vocabulary used by Europol, such analytical files on a target level are called Target Groups.²¹ Intelligence gathered within target files is passed to the police services of the Member States. Police services have huge detection potential, which enables specific operational actions (for example surveillance, operational control) or investigative acts (arrests, search) to be taken on further by the national police force. For instance, in 2010 within a target group Europol supported anti-terrorist unit of the British Police in Greater Manchester county in their anti-terrorist operation. The British police submitted ca. 6,000 electronic documents, mainly in Arabic, which were subsequently adequately studied to identify people who might have posed a threat to security of the UK. Verification of those electronic files in Europol's systems revealed also existing other terrorist materials, which had already been used in a court as evidence. The result of Europol's work consisted of revealing of an extremist preacher, who was a subject of interest in other investigations in the EU. Europol used the materials passed by the Greater Manchester county police to analyse and assess ideology promoted by the suspect. The results of the analysis were a report and assessment of the threat from the suspect and his followers in Europe. The documents presented information on links to investigations conducted in Member States. The main suspect was sentenced to 2 years in jail after he was found guilty for charges under section 58 of *the Terrorism Act* in conjunction with possessing materials for terrorist purposes.²²

The effectiveness of the above actions was possible as the outcome of intelligence being passed on by Europol to the Member States police services. The value of intelligence from analytical files is determined by the amount and the quality of criminal information submitted previously to Europol. It is the EU Member States which provide the information. This way there is a sui generis feedback loop between intelligence work done in the Member States and the work of Europol.

Conclusion

Based on the analysis of Europol provisions the following assumptions important for dismantling terrorist activities can be made:

- counterterrorist competences of Europol are strictly defined by the rules (it is precisely known what kind of activities Europol can take and what kind of activities cannot). Forms and methods of realizing the competences come from a solid practice of international cooperation;
- dismantling terrorist activities by Europol is mainly based on criminal intelligence, i.e. gathering, processing (analysis, assessment and interpretation), or exchange

²¹ Ibidem, p. 7.

²² *Europol's Review. Europol Annual Report 2010*, Europol, Haga 2011, p. 28.

of information and intelligence data. Using information and intelligence data submitted within the frame of investigations and joint investigation teams via Europol is subject to the same rules of data security as if it was obtained in the Member State which received the data;

- counterterrorist support shall be provided usually at the request of the Member State (with the exception of the so called spontaneous transmission of information);
- dismantling terrorist activities within Europol requires necessary professional standard of its officers. They have to have a specific professional knowledge, analytical capabilities and proficiency in English but also general, legal and cultural knowledge. Furthermore, they should have a good command of information tools. Cooperation within Europol is always associated with representing one's own country. Unprofessional actions cause damage to the image of the delegating country. They can also lead to legal accountability for the damages incurred.

To date Poland took part in a dozen of analytical work files, including AWF Islamic Terrorism (regarding terrorist activities of Islamic extremists) and AWF Hydra regarding terrorist activities of Islamic extremists). The system of processing information for the purposes of Europol's analytical work files in the Polish Police involves designating officers responsible for the coordination of passing information on each organizational level of the Police, designating officers to perform tasks within an analysis group established by Europol in support of a specific work file (national experts), development of procedures entailing processing this type of information and general AWFs functionality training. These assumptions were worked out more than 10 years ago in the Police HQ.²³

National experts' tasks are:

- providing specific work files with information from preliminary proceedings or operational and intelligence activities;
- forwarding information from the work files to the national Police units and other law enforcement agencies;
- coordinating the Police cooperation with national and international partners as regards work files;
- taking part in meetings within particular work files that results from membership of Europol;
- initiating and performing information activities to boost the knowledge on work files within the Police as well as making information on activities

²³ They are the result of works of the teams established by the Decision No. 211 of the Police HQ of 21 March 2007 on establishing a team to develop a concept of quantitative and qualitative Polish contribution to Europol's Analytical Work Files and the Decision No. 47 of the Police HQ on establishing a team to assess capabilities of enhancing Polish engagement in international initiatives on countering Eastern European organized crime (not published) and *the Decision No. 60 of the Police Commissioner of 3 March 2010 on national experts performing their tasks within Europol's analytical work files* (Official Journal of the Police 2010, no. 3, item 11).

from the concrete work files available to law enforcement and public order institutions;

- forwarding information on their activities to a national coordinator during their meetings.²⁴

National experts perform their duties in certain units of the Police HQ concerning tasks within analytical group established for the purpose of a certain AWF. They are obliged to give their support to police officers from the Police units.²⁵ National experts' tasks are as follow: obtaining relevant information and preparing contributions for AWFs, coordinating the Police cooperation with national and international partners as regards work files, taking part in meetings within particular work files that results from membership of Europol, initiating and performing information activities to boost the knowledge on work files within the Police as well as making information on activities from the concrete work files available to law enforcement and public order institutions. While performing their tasks national experts can request particular data from the Police organisational units. Upon the requests the Police units pass information concerning working files to national experts unless their passage would jeopardise the success of a current investigation or other operational and intelligence activities, or the safety of individuals involved.²⁶ National experts are seconded and supervised by the chiefs of organisation units from the criminal and investigation service of the Police HQ.²⁷ The chief of the unit competent in matters of international cooperation of the Police is responsible for coordination of national experts' activities. He organises meetings with national experts in order to give them assistance in fulfilling their tasks. He also designates a national coordinator to supervise national experts' work.²⁸

Exposing terrorist activities is one of the most difficult tasks and requires some support actions (exchange of information, criminal analysis). Europol is engaged in operational criminal analyses in cases, where there is a strong need to establish links between separate elements of events in different countries, because of some signs (perpetrator, aggrieved) or aspects (place, time, modus operandi, subject of implementation). Obtaining intelligence data which increases the likelihood of detecting terrorist threats is possible due to international exchange of information and criminal analysis (for example combined analysis of telecommunication data from several Member States). In such cases the role of Europol is to build an information advantage of the national police forces taking up operational or investigative actions. Europol offers possibilities to obtain in-depth information on organised crime and terrorist threats for the purpose of national police services. Intelligence materials passed by Europol

²⁴ *The Decision No. 60 of the Police Commissioner of 3 March 2010 on national experts...*, section 4.

²⁵ *Ibidem*, paragraph 5, item 3.

²⁶ *Ibidem*, paragraph 5, item 1 and 2.

²⁷ *Ibidem*, paragraph 6 and 8.

²⁸ *Ibidem*, paragraph 7.

to Member States often contribute to detecting offences, organisational structures of criminal groups or terrorist nets. Gathering such materials by national police services in any other way than via Europol would be much more difficult. Europol's activities often allow to find additional threads or even to indicate potential evidence sources.

Basic role of Europol in detecting threats is based on the possibility of enhancing effectiveness of investigation actions on a national level. Most activities by Europol run parallel to national investigation proceedings. As the experience shows the analytical work files of Europol were often a starting point and a focus of detecting processes in numerous cases of international character. The assessment given does not diminish the value and basic significance of activities performed by competent services in Member States in the detecting processes. Detecting result of Europol's operational actions must comply with legal rules in Member States.

The main obstacle in Europol's effectiveness is still a diminished trust of practitioners (officers) to international cooperation formula while providing information to Europol's work files unwillingly (it refers mostly to sensitive criminal information on planned terrorist attacks). As a result Europol is not capable to prepare pre-emptive intelligence (that could prevent a terrorist attack). It can only trace financial flows connected to terrorism and indicate links between terrorism suspects, sources of illegal weapon or forged documents, but after a terrorist attack takes place.²⁹

But sensitive criminal information is exchanged between liaison offices of the Member States in Europol. Copies of the information very rarely end up in work files. A direct cooperation between liaison offices is in reality a practice of avoiding central intelligence systems of Europol.³⁰

Sharing criminal information within international cooperation is usually limited and sub-optima.³¹ It results in the fact that Europol does not have sufficient capacities to dismantle terrorist activities. Because of the costs of obtaining criminal information concerning terrorist threats and their sensitivity, dismantling these threats will still be based on direct relationships between antiterrorist services of the EU Member States. Unfortunately, it is inconsistent with multilateral cooperation idea within Europol.

It is worth noticing that the interaction at the interface between antiterrorist intelligence services is a strategic situation that requires taking up decisions on whether to launch cooperation or not. From a political point of view taking up a cooperation is often contrary to operational interest of a particular intelligence service. In such a situation a conflict of interests can occur between the intelligence services. This relationship of interdependence between them can cause a situation that a conduct of one service tends to limit or make the other to act in a particular way as far as recognition, detection or prevention in countering terrorism is concerned.³²

²⁹ T. Safjański, *Barriers to the Operational Effectiveness of Europol*, „Internal Security” 2013, no. 1.

³⁰ A. James, *Understanding police intelligence work*, vol. 2. Bristol 2016, p. 45.

³¹ A. James, *Examining intelligence-led policing: developments in research, policy and practice*, Palgrave MacMillan 2013, p. 100.

³² A. James, T. Safjański, *Europol's Crime Analysis System – Practical Determinants of Its*

Abstract

The article discusses the role of Europol in dismantling terrorist activity. Dismantling is a key step in the materializing by law enforcement forensics' functions: reconnoitring, detecting and preventing. The legal power of Europol to detect terrorism threats arise directly from the Treaty on the Functioning of the European Union. From the forensics point of view, Europol dismantling potential on terrorist activity is based on special analytical databases called analysis working files (AWFs). In this model, information and intelligence are collected, processed and exchanged with respect to strictly defined threats (persons, criminal groups, terrorist organizations) to support operational cases or penal proceedings conducted by EU Member States national police authorities.

Keywords: detection, international cooperation, Europol, special analytical searches, AWF's, EU security, forensics tactic.