

Europol objectives and tasks in the construction of the European Union. Some critical opinions and proposals

Assistant professor **Bogdan BIRZU**¹

Abstract

Within the present study we have examined the provisions concerning the objectives and duties of Europol, a fundamental institution with special responsibilities for preventing and fighting crime and especially the organized crime at EU level. These provisions are set out in Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016, a relatively new legal instrument, by which there were repealed other European legal instruments regulating the Europol activity. The conducted examination includes some critical comments concerning in general the need to broaden Europol's jurisdiction regarding the enforcement of the coercive measures in cooperation with police authorities of the Member State in which operational activities are carried out. At the end of the article, it is emphasized the need to adopt a new European legal instrument regulating the organization and functioning of Europol and the need to engage more effectively in this line with each Member State, with the reservations raised by the criticisms made. The paper may be useful to practitioners in the field, and equally, to academics and the European legislator.

Keywords: *judicial cooperation in criminal matters; the European Union member states; jurisdiction; police.*

JEL Classification: K14, K33

1. Introductory considerations

According to the recent doctrine the “scientific and technical progress in the recent years and the expansion of the democratization process across several states has created the possibility of easy movement of people and goods from one State to another or from one continent to another. The unquestionable beneficial effect for the whole world has created some advantages towards the global proliferation of crime”².

Against this background, “the internal crime of all countries of the world has known increasingly skilled developments, difficult to control by judicial authorities.”³

¹ Bogdan Birzu - “Titu Maiorescu” University of Bucharest, Romania, birzu_bogdan@yahoo.com.

² Ion Rusu, Minodora-Ioana Balan-Rusu, *The European Arrest Warrant, Romanian and European Legislation, Doctrine and Jurisprudence*, LAP Lambert Academic Publishing, Danubius University, Saarbrücken, Deutschland/Germany, 2013, p. 12.

³ *Ibidem*, p. 12.

At the same time, the “intensification of the international cooperation in all fields, especially in economic, political and cultural ones, has allowed the easy movement of individuals from one country to another, this aspect facilitated the movement of criminal elements as well”⁴.

In this context extremely complex, “in many cases, for the criminal elements they take advantage of the possibilities offered under the cooperation relations in the mentioned areas, as well as some flaws in the organization and functioning system of judicial bodies with concrete powers to prevent and combat crime and they leave the Member state’s territory where they committed crimes and go in other states in order to avoid criminal liability.”⁵

On the other hand, at global level, there have been developed various forms of criminal organization, the transnational crime reaching nowadays an unprecedented growth worldwide.

As expected, the Europe and especially the European Union were not spared by these organized criminal groups, the development of crime being favored by the favorable possibilities of traveling from one corner to another of Europe (within the European Union), to criminal groups or goods subject to crime or their outcome.

Under these circumstances, one of the fundamental objectives set at EU level was an area of freedom, security and justice for its citizens.

As time passed, it has proved that achieving this goal is not possible without improving the system of judicial cooperation in criminal matters, a complex endeavor involving on one hand the improvement of legal system consistently applied by all Member States, and secondly the establishment of correspondent European institution in each Member State aimed at fighting against transnational crime and enforce these legal instruments.

We mention at the outset that the EU level, in addition to domestic institutions of law enforcement structure of each Member State, in the activity of international judicial cooperation in criminal matters there have been set up institutions with concrete tasks in this area, namely the Europol, the European Judicial network and Eurojust.

In the Lisbon Treaty⁶, the police cooperation at EU level “is provided in Chapter 5 suggestively entitled *Police Cooperation*”.⁷

Regarding the establishment of this institution, we specify that at the level of the European Union, the “Europol Convention was signed on 26 July 1995, it

⁴ *Ibidem*, p. 12.

⁵ *Ibidem*, p. 13.

⁶ The treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community was signed in Lisbon on 13 December 2007, ratified by Romania by Law no. 13/2008, published in the Official Monitor of Romania, Part I, no. 107 of 12 February 2008.

⁷ Ion Rusu in, Alexandru Boroi (coordonator), Ion Rusu, Minodora-Ioana Rusu, *Tratat de cooperare judiciară internațională în materie penală/Treaty of judicial cooperation in criminal matters*, Ed. C.H. Beck, Bucharest, 2016, p. 937.

has been ratified by all member states and entered into force on 1 October 1998”⁸ and its effective implementation of operations dates back to 1st July 1999.

After starting the activity, as time goes on, “amid the proliferation of crime and the need to achieve the objective set by the EU, to ensure an area of freedom, security and justice, it was imposed to simplify and improve the functioning of Europol, which may be achieved through measures that aim at widening the possibilities for Europol to assist and support the competent authorities for the enforcement of law in Member States without receiving executive powers”⁹.

In these circumstances, it was adopted a new European legal instrument respectively Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol).¹⁰

Amid the objective needs to improve of the Europol and thus ensuring a coherent legal framework at EU level there have been adopted the following legal instruments:

- Decision 2009/934/JHA of 30 November 2009 adopting the implementation of rules governing the Europol's relations with partners, including the exchange of personal data and classified information;¹¹
- Decision 2009/935/JHA of 30 November 2009 establishing the list of third countries and organizations with which the Europol concludes agreements;¹²
- Decision 2009/936/JHA of 30 November 2009 adopting rules implementing the work files for the Europol analysis¹³;
- Decision 2009/968/JHA of 30 November 2009 adopting rules on the confidentiality of Europol information¹⁴.

Subsequently, amid the unprecedented crime evolution, and particularly the organized crime with the most serious manifestation, terrorism, it was imposed the increase of the role of Eurojust, something which required supplementing and amending the legislative framework to which we referred above.

Against this background dominated exclusively by the developments in crime, it was adopted the Regulation (EU) 2016/794 of the European Parliament and the Council of May 11, 2016 regarding the European Union Agency for Cooperation in Law Enforcement (Europol) and replacing and repealing Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA of the Council.¹⁵

Given the importance of preventing and combating crime at European level, the complex activity that can be achieved through the activity of internal

⁸ *Ibidem*, p. 939.

⁹ *Ibidem*, p. 939.

¹⁰ Published in OJ L 121 of 15.5.2009.

¹¹ Published in OJ L 325 of 11.12.2009.

¹² Published in OJ L 325 of 11.12.2009.

¹³ Published in OJ L 325 of 11.12.2009.

¹⁴ Published in OJ L 332 of 17.12.2009

¹⁵ Published in the Official Journal of the European Union L 135 of 05.24.2016.

judicial bodies, but also some European institutions, within the present study we have aimed at generally examining the establishment and the main objectives and tasks of one of the most important European institutions in the field, namely, the European Union Agency for cooperation in law enforcement matters, the institution known as Europol.

The examination will include also some critical comments aiming the general need for broadening the competences of Europol.

2. Objectives of Europol

As stated in the provisions of art. 3, par. (1) of the Regulation, *the objective of Europol is to support and strengthen the activity of the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crimes, affecting two or more Member States, terrorism and forms of crime which affect a common interest subject to Union policy, as listing in the Annex.*

The forms of crime established in the Annex I of the Regulation which fall within the competence of Europol are:

- Terrorism;
- Organized crime;
- Trafficking in drugs;
- Money laundering;
- Crime connected with nuclear and radioactive substances;
- Placing illegal immigrants;
- Trafficking in human beings;
- Motor vehicle crime;
- Murder and grievous bodily harm;
- Illicit trafficking in human organs and tissues;
- Kidnapping, illegal restraint and hostage-taking;
- Racism and xenophobia;
- Robbery and theft;
- Illicit trafficking in cultural goods, including antiques and works of art;
- Deceit and fraud;
- Offenses against the Union's financial interests;
- The use of insider dealing and manipulation of financial markets;
- Mafia activity (racketeering) and extortion;
- Counterfeiting and piracy of products;
- Forgery of administrative documents and trafficking of falsified administrative documents;
- Forgery of money and other means of payment;
- Cybercrime;
- Corruption;
- Illicit trafficking in weapons, munitions and explosives;
- Illicit trafficking in endangered animal species;
- Illegal trafficking in endangered plant species and varieties;

- Environmental crime, including pollution from ships;
 - Illicit trafficking in hormonal substances and other growth promoters;
 - Sexual abuse and sexual exploitation, including materials containing child sexual abuse and solicitation of children for sexual purposes;
 - Genocide, crimes against humanity and war crimes.
- Equally, the Europol covers the following related offenses:
- Committed crimes in order to procure the necessary means for perpetrating acts within the sphere of competence of Europol;
 - Criminal offenses committed in order to facilitate or carry out acts within the Europol sphere of competence;
 - Criminal offenses committed in order to ensure the impunity of perpetrators that commit crimes within the competence of Europol.¹⁶

In order to avoid other interpretations that would not be consistent with the way required by the legislator, within its European legal instrument it is explained the meaning of certain phrases.

With major importance in our scientific approach, we believe that presenting these phrases contribute substantially to understanding the duties of this European institution, its place and role in the structure of the European Union. Thus, within the meaning of European legal instrument:

(A) the competent authorities of the Member States means all police authorities and other law enforcement services in the Member States which are responsible under the national law for preventing and combating crime. Also, the competent authorities shall include other public authorities in the Member States which are responsible, under the national law, for preventing and combating crime which fall within the Europol's competence;

(B) strategic analysis means all methods and techniques for collecting, storing, processing and assessment of information in order to support and elaborate a policy on crime that would contribute to efficient and effective prevention and combating crime;

(C) operational analysis means all methods and techniques for collecting, storing, processing and evaluating information in order to support criminal investigations;

(D) the bodies of the Union means institutions, bodies, missions, offices and agencies established by the TEU and TFEU or under them;

(E) international organization means an organization of public international law and their subordinate bodies, or any other body which is established by an agreement between the two or more countries or under such agreement;

(F) private parties mean entities and bodies established under the law of a Member State or third country, especially companies and firms, business associations, non-profit organizations and other legal entities that not listed in letter (e);

¹⁶ Art. 3, par. (2) of the Regulation.

(G) *private people* means all individuals;

(H) *personal data* means any information on a specific person;

(I) *specific person* means a person identified or identifiable person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, data location or online identifier or one or more factors specific to his physical, physiological, genetic, mental, economic, cultural or social identity of that person;

(J) *genetic data* means all personal data related to genetic characteristics of a person, inherited or acquired, which provide unique information on the physiology and health of the person concerned, as it is apparent in particular from an analysis of a sample of biological material collected from the person concerned;

(K) *processing* means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or making available in any way, the alignment or combination, restriction, erasure or destruction;

(L) *the consignee* shall mean the natural or legal person, public authority, agency or any other body to whom the data are disclosed, whether it is or not a third party;

(M) *transfer of personal data* means the disclosure of personal data made available actively between a limited number of identified parties, the sender allowing knowingly or intentionally for the recipient to have access to personal data;

(N) *breach of personal data* means a breach of security leading accidentally or unlawfully to the destruction, loss, alteration, unauthorized disclosure of transmitted personal data, stored or otherwise processed, or to the access unauthorized thereto;

(O) *subject's consent* means any manifestation of the free will, specific, knowingly and without unambiguousness, that the person concerned agrees, through a statement or by an affirmative unequivocal action that his personal information will be processed;

(P) *administered personal data* means all personal data processed by Europol, except for data that are processed in order to achieve the objectives provided in Article 3.

3. The tasks of Europol

Under art.4, para. (1) the European legal instrument under consideration, in order to achieve its established objectives, the Europol performs the following tasks:

a) collect, store, process, analyze and share information, including criminal intelligence information;

b) notify the Member States without delay via the national units established or designated pursuant to art. 7, par. (2) any information and any link

between the concerned crimes; we specify that in the art. 7, par. (2) of the Regulation it requires the Member States' obligation to establish or designate a national unit to be the liaison body between Europol and the competent authorities of the Member State; each Member State shall appoint an official as head of his national unit;

c) coordinate, organize and implement investigations and operational actions in order to support and strengthen the actions of the competent authorities of the Member States carried out jointly with the competent authorities of Member States or under joint investigation team, in accordance with art. 5 and, where appropriate, in cooperation with Eurojust; we mention that art. 5 shall include provisions concerning joint investigation teams;

d) participate in the joint investigation team and proposes to establish them in accordance with art. 5;

e) provide information and analytical support to Member States in connection with major international events;

f) assessments on threats, strategic and operational analysis and general reports on the situation;

g) develop, share and promote specialized knowledge regarding methods of crime prevention, investigative processes, technical and forensic methods and advises of the Member States;

h) support the information exchange activities, cross-border investigations and operations of Member States and joint investigation teams, including providing operational, technical and financial support;

i) provide specialized training and assist the Member States in organizing training, including by providing financial support, within the scope of its objectives and in accordance with budgetary resources and available staff, in coordination with the European Union Agency for training in law enforcement (CEPOL);

j) cooperate with the Union bodies established under Title V of the TFEU and OLAF, in particular by exchanging information and providing analytical support in areas within their jurisdiction;

k) provide information and support for the structures and EU crisis management missions established under the TEU within the scope of Europol's objectives set out in art. 3;

l) develop the Union centers specialized in combating certain types of crime falling within the scope of Europol's objectives, in particular the European Centre for Cybercrime;

m) support the actions in Member States to prevent and combat forms of crime listed in Annex I which are facilitated, promoted or committed through the Internet, including in cooperation with Member States, the alert of the online content that facilitates, promotes or commits these forms of crime to the concerned online service providers, for them to examine voluntarily the compatibility of the online content reported with its terms and conditions.¹⁷

¹⁷ Art. 4, par. (1) of the examined Regulation.

Besides these tasks, Europol will provide strategic analyzes and assessments on threats in order to assist the Council and the Commission in determining the strategic and operational priorities of the Union in the fight against crime. The Europol also provides assistance regarding the operational implementation of those priorities.

Meanwhile, the Europol provides strategic analyzes and assessments of threats in order to assist the efficient and effective use of the resources available at national and Union level for operational activities and to support these activities.¹⁸

We specify that in accordance with the depositions of the Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, by designating Europol as the central office for combating euro counterfeiting¹⁹, the Europol shall also serve as the central office for combating euro counterfeiting.

Europol also encourages the coordination of the implemented measures in order to combat the euro counterfeiting by the competent authorities of the Member States or in joint investigative teams, where appropriate, in cooperation with the Union bodies and authorities of third countries.²⁰

Under art. 4, par. (5) of the European legal instrument, *Europol shall not apply coercive measures in performing its task.*

4. Some critical opinions and proposals

The adoption of some legal instruments by which it was decided to establish Europol is in our view an important step of the EU in order to prevent and combat more effectively the cross-border crime and especially the organized crime, with particular emphasis on terrorism.

We emphasize that amidst the growing crime of all kinds and especially the organized crime, with direct reference to terrorism, and the growing trend of the criminal elements to hide in other states in order to avoid enforcement of criminal law sanctions, the legal rules which regulate the powers of Europol should be extended.

Thus, we consider that the provision according to which “*Europol does not apply coercive measures in performing its tasks*” should be rethought and implicitly reformulated.

This applies the insurance of the Europol’s competence, in cooperation with specialized police units in each Member State, on the territory of any Member State, to order measures of detention of sought persons or against whom restrictive measures of rights and freedoms are to be imposed.

No doubt it will not raise in any way the problem to act only by Europol, but only in cooperation with the police in the specialized structures, from each Member State.

¹⁸ Art. 4, par. (2) & (3) of the examined Regulation.

¹⁹ Published in the Official Journal of the European Union L 185 of 16.07.2005.

²⁰ Art. 4, par. (4) of the examined Regulation.

It should be noted that in such circumstances, the Europol will comply with the law of the Member State in which it applied or solicited the coercive measure.

So taking some coercive measures must be carried out in cooperation with state police in whose territory the act and the competence of Europol cannot exceed the competence of the police of the concerned State.

We believe that the adoption of a legislative framework allowing such measures on restricting rights and freedoms in the territory of any Member State will contribute to improving the work of this European body.

5. Conclusions

Establishing the Europol regarded as an organization with concrete responsibilities in preventing and combating crime within the European Union, and particularly terrorism, regarded as the most complex form of organization of criminal groups, is an absolute necessity for the European Union.

Rethinking the whole system of organization and functioning of this institution and therefore the adoption of a new legal instrument it was imposed amid the many changes occurred in the structure of the operational situation.

With the growing crime of all kinds we appreciate that the role and importance of Europol would increase, and the efficiency of the activities of this European institution will depend largely on the direct involvement of police institutions in each Member State.

Highlighting and recognizing the importance of Europol's activities by each Member States, complemented by direct involvement in ensuring the performance of these tasks of this European institution represent a guarantee of the success expected in preventing and combating crime at European Union level.

The examination has highlighted the need to ensure effective cooperation between national authorities and Europol, which should support each other, what it must insure each of these institutions.

On the other hand, it is necessary to highlight the need to widen the Europol's competencies in each Member State's territory, the competence aiming at including taking some coercive measures, in cooperation with police authorities of the Member State on the territory of which such activities take place.

As one general conclusion we appreciate the need for a new European legal instrument regulating the organization and functioning of Europol and the need to involve in this line more effectively each Member State, except the expressed critical opinions.

Bibliography

1. Ion Rusu, Minodora-Ioana Rusu Balan, *The European Warrant Arrest, Romanian and European Legislation, Doctrine and Jurisprudence*, LAP Lambert Academic Publishing, Danubius University, Saarbrücken, Deutschland/Germany, 2013;
2. Ion Rusu, Alexandru Boroi (coord.), Ion Rusu, Minodora-Ioana Rusu, *Tratat de cooperare judiciară internațională în materie penală/The Treaty of international judicial cooperation in criminal matters*, Ed. C.H. Beck, Bucharest, 2016;
3. Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, by designating Europol as the central office for combating euro counterfeiting, published in the EU Official Journal L 185 of 16.7.2005;
4. Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), published in OJ L 121 of 15 April 2009;
5. The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community signed in Lisbon on 13 December 2007, ratified by Romania by Law no. 13/2008, published in the Official Monitor of Romania, Part I, no. 107 of 12 February 2008;
6. Decision 2009/934/JHA of 30 November 2009 adopting the implementation of rules governing Europol's relations with partners, including the exchange of personal data and classified information, published in OJ L 325 of 11.12.2009;
7. Decision 2009/935/JHA of 30 November 2009 establishing the list of third countries and organizations with which Europol has concluded agreements, published in OJ L 325 of 11.12.2009;
8. Decision 2009/936/JHA of 30 November 2009 adopting rules implementing the work files for the Europol analysis, published in OJ L 325 of 11.12.2009;
9. Decision 2009/968/JHA of 30 November 2009 adopting rules on the confidentiality of Europol information, published in OJ L 332 of 17.12.2009;
10. Regulation (EU) 2016/794 of the European Parliament and of the Council of May 11, 2016, the European Union Agency for Cooperation in Law Enforcement (Europol) and replacing and repealing Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, published in the EU Official Journal L 135 of 24.05.2016.