

**COUNTER-TERRORISM INTELLIGENCE
COOPERATION IN THE EU:
THE CASE OF EUROPEAN COUNTER TERRORISM
CENTER**

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Abstract

This thesis addresses the issue of the EU counter-terrorism cooperation and intelligence sharing, which are crucial elements of the Union's internal security. The roots of such cooperation are going to the member states that previously had preferred to tackle terrorism as a domestic problem and shared intelligence with other states mostly on an occasional basis. However, since the great number of states integrated to the EU, the problem of fighting terrorism appeared on a supranational level and the national governments were asked to share the related intelligence. The existing law enforcement framework of the EU has incorporated a number of European agencies. One of these is Europol, which was declared as the main platform for the intelligence sharing. Despite numerous institutional transformations and attempts to facilitate the intelligence exchange within the mentioned organization, the member states had neglected to share sufficient amount of data that would have been crucial for Europol in its counter-terrorist activities. However, with the recent rise of transboundary terror, the EU has attempted to improve the existing cooperation and establish the European Counter Terrorist Center (ECTC) that aims to enhance the intelligence cooperation and involve all the member states in this process. Since the establishment of the ECTC there was no sufficient analysis on the changes in cooperation between the member states facilitated by the center and this research aims to explore that with the help of new institutionalist approach.

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List of Abbreviations

AWF – Analytical Work Files

CEPOL – European Police College

COSI - Standing Committee on Internal Security

CTC – Counter Terrorism Coordinator

CTG – Counter Terrorism Group

CTTF – Counter Terrorism Task Force

EC – European Communities

ECTC – European Counter Terrorist Center

EIS – Europol Information System

EP – European Parliament

ESDP – European Security and Defense Policy

EU – European Union

IRU – Internet Referral Unit

JHA – Justice and Home Affairs

JIT – Joint Investigation Team

SIENA - Secure Information Exchange Network Application

TE SAT – Terrorism Situation and Trend Report

TEU – Treaty on European Union

TFTP - Terrorist Financing Tracking Program

TREVI – Terrorism, Radicalism, Extremism and Political Violence Group

Introduction

With the official establishment of the European Union in 1992 by the Maastricht Treaty, the common security framework has got its legal and institutional status and by 2016 it has united 28 member states in their law-enforcement and intelligence activity. In hand with the formation of the Treaty on the EU there were some voices calling for the establishment of an institution which would be similar to the FBI or CIA of the United States and institutionalize security and intelligence cooperation within the format of the EU. However, some member states which already had developed intelligence services, opposed this idea. The launch of the European Police Office (Europol), the intergovernmental institution for police cooperation was the first step forward towards such cooperation.

Despite the widespread view on intelligence gathering as a feature of states' sovereignty, it is clear that the functioning of the EU policy mechanisms requires cooperation in the sphere of internal security. In the last decade the security situation within the region has changed dramatically - with the new rise of terrorist activity and attacks on the member states the EU has attempted to improve the security and intelligence cooperation by creating new institutional structures and modifying the law enforcement framework. Nowadays, the huge threat of the so-called ISIS in the Middle East and its terrorist activity in the EU member states has challenged the capabilities of the security cooperation. After the massive wave of violence in 2015, which started with the Paris attacks in January 2015, the EU policymakers attempted to reinforce counter-terrorism cooperation in order to prevent further attacks. The Paris attacks in November 2015 revealed the problem of inefficient intelligence cooperation on the obvious

level, when the later investigation showed that some of the terrorists were EU citizens and came to the place of massacre from Belgium.¹

This research is aiming to look through the policy making process in the framework of EU internal security and counter-terrorism cooperation. Europol is assigned to be the main EU counter-terrorism center as a key element of this framework and supranational institution which has no operational power and based on the cooperation between the member states and the third parties. Europol has gone through the process of reorganization in order to improve the cooperation. However, one key problem has remained as the Counter Terrorism Coordinator stressed in 2008: “The intelligence community is not very eager to work with Europol”.² Last year the EU decision-makers decided to make another improvement of the cooperation by establishing the European Counter Terrorism Center within the structure of Europol, which may create the platform for information sharing and coordination of the counter-terrorism activities between the member states. The goal of this thesis is to reveal these institutional changes and determine whether there has been any progress in counter-terrorism cooperation between the Europol and the member states since the establishment of ECTC.

Intelligence exchange between the European states is quite a debatable question among scholars. Some of them argued that the governments of the EU member states are less interested in security cooperation and keep important intel to favor their own interests. Others mention the side factors such as bureaucratic resistance which refrain the national authorities from the data exchange.³ The problem of cooperation with Europol and other EU agencies has also been

¹ “Paris Attacks: Who Were the Attackers?,” *BBC News*, April 27, 2016, <http://www.bbc.com/news/world-europe-34832512>.

² Gilles de Kerchove, “Oral Evidence”, in “Europol: Coordinating the Fight Against Serious and Organised Crime : Report with Evidence” (London: House of Lords, November 30, 2008).,154. ; Bjorn Fagersten, “Bureaucratic Resistance to International Intelligence Cooperation - The Case of Europol,” *Intelligence & National Security* 25, no. 4 (August 2010): 500.

³ Fagersten, “Bureaucratic Resistance to International Intelligence Cooperation - The Case of Europol.”

analyzed by scholars.⁴ However, due to the fact that the Europol framework was modified and the new structure of ECTC was introduced in the beginning of 2016, there has been little analysis of its activities.⁵ It is quite important to investigate the changes in cooperation within the ECTC because of its direct impact on the policy-making and effective control over security situation in the EU.

In order to explain the states' attitude towards the intelligence cooperation, scholars implied various methodological approaches. This research elaborates on the implication of the new institutionalist theory proposed by Bjorn Fagersten in order to reveal the current level of cooperation within the mentioned framework and see the possible changes.⁶ It is important to mention, that the great amount of data, which could be relevant to the research is not publically available due to the security reasons. Accordingly, the research is based on the official documents, issued by the EU institutions and comments of the Europol officials.

The first chapter of this thesis reviews the relevant literature and methodological frameworks, which are related to the analysis of counter-terrorism and intelligence cooperation within the EU. In the second chapter the most significant steps in the EU counter-terrorism cooperation are going to be revealed. The third chapter is devoted to the development of Europol as a key institution for the EU counter-terrorism cooperation and its current status. In the fourth chapter I elaborate on the issue of ECTC as a new stage in counter-terrorism cooperation between the EU member states and analyze the possible changes made by the establishment of this institution.

⁴ Monica Den Boer, "Counter-Terrorism, Security and Intelligence in the EU: Governance Challenges for Collection, Exchange and Analysis," *Intelligence & National Security* 30, no. 2/3 (April 2015): 402.

⁵ Daniel Drewer and Jan Ellermann, "May the (Well-Balanced) Force Be with Us! The Launch of the European Counter Terrorism Centre (ECTC)," *Computer Law & Security Review: The International Journal of Technology Law and Practice* 32 (April 1, 2016): 195–204, doi:10.1016/j.clsr.2016.02.003.

⁶ Bjorn Fagersten, "Multilateral Intelligence Cooperation: A Theoretical Framework," accessed May 16, 2016, <http://live.belfercenter.org/files/Fagersten%20theoretical%20framework.pdf>.

Chapter 1 – Conceptualization

This research attempts to analyze intelligence cooperation in counter-terrorism in the EU.

These two notions are closely connected because it is hardly possible to provide effective counter-terrorism action without the analysis of related intelligence. Within the EU such cooperation requires involvement on the supranational level. The new European Agenda on Security, which was published in the end of April 2016, emphasized the issue of cross-border threats that are interconnected: terrorism, organized crime and cybercrime.⁷ It was also clearly stressed that the EU collective action in this sphere “can make a real difference” and ensure the result – “an EU area of internal security”.⁸ The EU framework of internal security is the important example of intergovernmental security cooperation. Nowadays, the effectiveness of this cooperation plays crucial role in resistance to the terrorist threat. In order to explain the most important elements of this thesis, the key concepts are going to be provided.

Terrorism in its general meaning is usage of violence in order to reach (politically related) goals.⁹ Such act can be performed to show the state’s vulnerability as well as to target specific social group. The first attempt to legally define terrorism was proposed by the League of Nations in 1937 and even nowadays it is still a problem to find the universal notion, which will be widely accepted.¹⁰ Apart from that, Alex Schmid underlines that nowadays this term is one of the most politicized and could be a powerful rhetoric device, which could be used for political purposes.¹¹

According to David Rapoport, modern terrorism can be divided in four waves. There are anarchist or anti-authoritarian terrorism that appeared in the 1880s in the Russian Empire, anti-

⁷ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions. The European Agenda on Security” (European Commission, April 28, 2015), http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf.

⁸ Ibid.

⁹ Alex Peter Schmid, *Routledge Handbook of Terrorism Research* (London : Routledge, 2011., n.d.),39.

¹⁰ Ibid.

¹¹ Ibid. P.40

colonial or separatist terror, which became active from the 1920s, “New Left” or revolutionary terror that was widespread in Europe from the 1960s till the end of Cold War and the most recent fourth “religious” wave, which is active from the time of the 1979 Revolution in Iran.¹² According to the latest Situation and Trend Report, Europol classified the types as the religiously inspired terrorism, the ethno-nationalist and separatist terrorism, the left-wing and anarchist terrorism, the right-wing terrorism and the single-issue terrorism.¹³

The fourth wave is one of the the main terrorist threat to Europe so far - the Europol report stressed that the EU’s main concern is phenomenon of jihadists, religiously inspired terrorists, affiliated with such groups as Al-Qaeda and ISIS.¹⁴ In contrast with previous threats, the example of Al-Qaeda and its organized cells around the globe clearly showed that attacks can occur in any place.¹⁵ Another type is lone-wolf terrorism, which is carried out by the lone individuals, who are acting independently, without any help or external support.¹⁶ Nowadays, the organized terrorism was also supplemented by the principle that was called by the media as “leaderless jihad”. These tactics appeared in the media after the Usama Bin Laden’s statement in November 2001 and aimed to motivate Muslims around the world to weaken the Western States in different ways to “make [their] religion victorious”.¹⁷

Counter-Terrorism is the cooperation of the state structures including military and intelligence services prevent, which aims to carry out its activities in order to prevent terrorism.¹⁸ It is important to mention that such activity should be based on democratic principles, moral and

¹² Audrey Kurth Cronin and James M. Ludes, *Attacking Terrorism : Elements of a Grand Strategy* (Washington, D.C. : Georgetown University Press, c2004, n.d.). P.47

¹³ “European Union Terrorism Situation and Trend Report 2015” (The Hague, the Netherlands: Europol, 2015), <https://www.europol.europa.eu/content/european-union-terrorism-situation-and-trend-report-2015>.,3.

¹⁴ Ibid.,6.

¹⁵ Daniel Keohane, “The Absent Friend: EU Foreign Policy and Counter-Terrorism,” *Journal of Common Market Studies* 46, no. 1 (January 2008): 125–46, doi:10.1111/j.1468-5965.2007.00770.x.

¹⁶ Ramón Spaaij, “The Enigma of Lone Wolf Terrorism: An Assessment,” *Studies in Conflict & Terrorism* 33, no. 9 (August 16, 2010): 854–70, doi:10.1080/1057610X.2010.501426., 854,856.

¹⁷ Jason Burke, *The New Threat : From Islamic Militancy* (London: Bodley Head, 2015, n.d.). P.165

¹⁸ Tore Bjørge, *Root Causes of Terrorism : Myths, Reality, and Ways Forward* (London : Routledge, 2005, n.d.),261.

ethical basis. It is not enough to neutralize terrorism by using force but fight it on the ideological ground by challenging it politically.¹⁹ This was also guaranteed by the Treaty of Amsterdam, where it was stated that the EU is the “area of freedom, security and justice”, which became one of the most crucial principles in the EU documents.²⁰

Intelligence could be defined as the collection and analysis of publically available and secret information, which facilitates the decision-making process.²¹ In the context of our analysis, intelligence is one of the main subjects of counter terrorism activity that enables cooperation in this sphere. It should be emphasized that effective counter terrorist action can take place as a result of the thoroughly processed intel.²²

1.1 Hypotheses

Through the history of terrorist attacks in Europe, followed by the 9/11 attack scholars explored the institutional reaction of the EU on these events and analyzed its effectiveness. This research aims to scrutinize the counter-terrorism intelligence cooperation within the Europol and its newly established branch - European Counter Terrorism Center (ECTC). The center sets objective to “to raise trust and awareness” within the member states’ counter-terrorism services and promote the existing instruments of Europol in order to facilitate the cooperation.²³ My first hypothesis is that expected improvements in cooperation within the ECTC were overstated and there is no sufficient chances for states’ will to improve towards the abovementioned cooperation. It can be even assumed that states are rather continuing to cooperate with Europol on the occasional basis. It means that the center do not provide any significant improvement in

¹⁹ Ibid.

²⁰ Jorg Monar, “The EU’s Externalisation of Internal Security Objectives: Perspectives after Lisbon and Stockholm,” *International Spectator* 45, no. 2 (June 2010): 23.

²¹ James I. Walsh, “Intelligence-Sharing in the European Union: Institutions Are Not Enough,” *Journal of Common Market Studies* 44, no. 3 (September 2006): 625–43, 626.

²² Björn Müller-Wille, “The Effect of International Terrorism on EU Intelligence Co-Operation,” *Journal of Common Market Studies* 46, no. 1 (January 2008): 49–73, 52.

²³ Daniel Drewer and Jan Ellermann, “May the (Well-Balanced) Force Be with Us! The Launch of the European Counter Terrorism Centre (ECTC),” *Computer Law & Security Review: The International Journal of Technology Law and Practice* 32 (April 1, 2016): 195–204, doi:10.1016/j.clsr.2016.02.003., 3.

intel exchange and cooperation between the member states instead it became just another institutional element in counter terrorism framework.

My second hypothesis is that the ECTC may attempt to improve the efficiency of intelligence cooperation in counter terrorism within, which will be reflected in the number of participating member states and the improvement in the intelligence analysis made by Europol. Such situation might be a result of common will to reduce the terrorist threat, which could be a current priority of the member states.

1.2 Literature review

It should be emphasized that the interest to the studies of terrorism has increased dramatically after the 9/11 attacks and produced new debates in this sphere, especially on methodological and definitional issues.²⁴ The topic of intelligence cooperation within the EU is an object of scholars' attention as well as its development from 1992 and also had a huge influx after the 9/11 attacks. There are some recent and complex writings on the EU's counter terrorism cooperation and its problematic aspects. The study by Javier Argomaniz explores this cooperation and its challenges in details from the period of 9/11 until the Lisbon Treaty and includes the short overview of possible changes caused by this important document. This work is based on the official documents and interviews which makes this contribution very valuable.²⁵ Cian Murphy elaborates on the law aspects of EU cooperation from the events of 9/11 until the Lisbon treaty and Stockholm Program. He made the in-depth analysis of the EU law aspects as well as problematic details of its implementation and functioning. The study provides us with the analysis of contradictions between the core principles of the EU and the

²⁴ Silke, Andrew, "Contemporary Terrorism Studies: Issues in Research," in *Critical Terrorism Studies : Framing a New Research Agenda*, by Richard Jackson, Marie Smyth, and Jeroen Gunning (New York: Routledge, 2009), 34–48., 34–35.

²⁵ Javier Argomaniz, *The EU and Counter-Terrorism : Politics, Polity and Policies after 9/11*, Contemporary Terrorism Studies (Milton Park, Abingdon, Oxon ; New York : Routledge, 2011., 2011).

law on counter terrorism.²⁶ Jorg Monar contributed a broad overview of the EU as an international counter-terrorist actor not only from the institutional point of view but from the external point of view as well by taking into account the latest modifications. He argued about the EU as a global actor in this sphere despite significant limitations caused by the member states. He also discussed some perspectives of further development of the EU counter terrorism framework.²⁷ In his other writing on external security after ratification of the Lisbon Treaty and the Stockholm Program, Monar estimates the perspectives of new changes and elaborates on the notion of “externalized internal security” as its crucial vector of development.²⁸

While exploring the issue of intelligence cooperation in the EU and its problems, scholars pay a lot of attention to the Europol as one of the key institution in this framework and compare it to the others. In recent analysis of the EU intelligence cooperation, Monika Del Boer assumed that this framework is fragmented and complicated. One of the reasons for this is a great number of institutions related to the EU security. She elaborates on the examples of Europol, Frontex and IntCen as well as the attempts to reveal the institutional problems in this cooperation overall. Referring to these structures, she assumes that such problems as unclear responsibilities of the EU agencies, presence of private actors in intelligence cooperation and simply lack of the intel exchange influence the EU intelligence cooperation in a bad way.²⁹ The counter-terrorism role of Europol was analyzed by Oldrich Bures as an example of the chicken-egg dilemma. He stressed that Europol suffers from its limited powers on the supranational level from the EU institutions and the lack of trust from the member states.³⁰

²⁶ Cian Murphy, *EU Counter-Terrorism Law : Pre-Emption and the Rule of Law* / Cian C. Murphy, Modern Studies in European Law: 31 (Oxford ; Portland, Or. : Hart Pub., 2012., 2012).

²⁷ Jörg Monar, “The EU as an International Counter-Terrorism Actor: Progress and Constraints,” *Intelligence & National Security* 30, no. 2/3 (April 2015): 333.

²⁸ Monar, “The EU’s Externalisation of Internal Security Objectives.”

²⁹ Monica Den Boer, “Counter-Terrorism, Security and Intelligence in the EU: Governance Challenges for Collection, Exchange and Analysis,” *Intelligence & National Security* 30, no. 2/3 (April 2015): 402.

³⁰ Oldřich Bureš, *EU Counterterrorism Policy : A Paper Tiger?* (Farnham, Surrey : Ashgate, c2011., 2011).

Bjorn Fagersten reveals the problems of the EU Intelligence Cooperation on the example of Europol as an issue that derives from bureaucracy. In his analysis he provides the examples of such resistance to cooperation and explains why some politicians are not interested in sharing the information to Europol.³¹ Previously Mathieu Deflem examined the problematic component of bureaucracy in the process of intel sharing to the Europol. He also argues that despite the strong relation to the EU's political and legal framework, the Europol has some similarities with such independent international police structures as Interpol.³² However, there is a small amount of analysis on the newly established ECTC. The article by Daniel Drewer and Jan Ellerman who are directly related to the Europol Office, provides crucial insight for this research. The article elaborates on political decision to establish such center, the Europol framework that functions nowadays and the existing tasks for the ECTC.³³

1.3 Methodological framework

This research deals with the Europol as an institution, which participates in multilateral intelligence cooperation and the ECTC as a solution for the improvement of counter-terrorism intelligence exchange. With the development of terrorism studies overall and its European context in particular, the debates on the theoretical background of such analysis were also influenced. There is a dominant opinion among scholars that cooperation in this sphere is not widespread because intelligence considered is by the governments as a crucial component of the state security and thus strongly related to its sovereignty.³⁴ They also argued that international intelligence cooperation is complicated because the states as a rational actors are

³¹ Bjorn Fagersten, "Bureaucratic Resistance to International Intelligence Cooperation - The Case of Europol," *Intelligence & National Security* 25, no. 4 (August 2010): 500.

³² Mathieu Deflem, "Europol and the Policing of International Terrorism: Counter-Terrorism in a Global Perspective [Article]," *Justice Quarterly*, no. 3 (2006), 337.

³³ Drewer and Ellermann, "May the (Well-Balanced) Force Be with Us! The Launch of the European Counter Terrorism Centre (ECTC)."

³⁴ Bjorn Fagersten, "Multilateral Intelligence Cooperation: A Theoretical Framework," accessed May 16, 2016, <http://live.belfercenter.org/files/Fagersten%20theoretical%20framework.pdf>.

acting on its own and willing not to share this data in order to avoid any sort of security threats or leaks.³⁵

In one of his articles Bjorn Fagersten attempts to challenge the conventional view on intelligence cooperation between the states as the thing that occurs only if it is reasonable. With the help of new institutionalist theory, he explains the specifics of intelligence services from domestic point of view. He states that this approach became a serious challenge for the Rational Actor Model.³⁶ Furthermore, the author argues that the bureaucratic influence plays important or even decisive role in such cooperation and obstruct the states from gaining the benefits of such cooperation.³⁷ Bjorn Muller-Wille argues that the status of intelligence cooperation inside the EU can be explained through its ability to efficiency in combating terrorism overall. The role of national intelligent services in this efficiency is crucial because they are choosing with whom they are going to cooperate.³⁸ These thoughts apply to the assumption that the EU holds its key role in supranational decision-making while control on security and defense is first of all the national responsibility. In his opinion, creation of the new European agency on intelligence and counter terrorism is a bad idea because such institution will be unable to produce the required intelligence, which can be done on the level of the member states.³⁹

In order to test two hypotheses mentioned above, the theoretical contribution on the development of multilateral intelligence cooperation proposed by Bjorn Fagersten is going to be used for the analysis of the cooperation within the ECTC. By taking into account the new institutionalist theory and definition of institutions as a “set of formal rules and procedures or informal practices that structure relationships”, he proposed to analyze the cooperation via dimensions of scope as the amount of tasks for cooperation and depth as the level of density of

³⁵ Ibid.

³⁶ Fagersten, “Bureaucratic Resistance to International Intelligence Cooperation - The Case of Europol.”

³⁷ Ibid.

³⁸ Müller-Wille, “The Effect of International Terrorism on EU Intelligence Co-Operation.” P.50-51

³⁹ Ibid.

such cooperation.⁴⁰ He explains that the low density signalizes about the occasional cooperation between the states about their own activities. In contrast, high density may mean the “regular interaction” between the member states and “joint commitments” for cooperation.⁴¹ Another crucial point is that cooperation could be less important for the state, which consider to keep its intelligence potential as well as more important regarding the specific institutions for intelligence exchange and the parties of such cooperation.⁴² Subsequently, this theoretical framework proposed to analyze institutional intelligence cooperation not only from the point of state’s rational interests in gaining and keeping intelligence but also from the possible benefits of institutional cooperation that definitely depend on the situation.

Apart from that, the scholar emphasized that the states’ will to participate in the intelligence cooperation is defined by the balance of costs and risks. Developing it further, the state will participate in cooperation in case if it is possible to gain more benefits than costs.⁴³ Contrary, if the costs are higher than benefits, the state will refrain from cooperation.⁴⁴ If the balance between the benefits and costs is close to equal, the cooperation will depend on the additional factors such as institution where cooperation occurs or the participating states.⁴⁵

⁴⁰ Fagersten, “Multilateral Intelligence Cooperation.”

⁴¹ Ibid., 4-5.

⁴² Ibid., 11.

⁴³ Ibid., 13-14.

⁴⁴ Ibid., 14.

⁴⁵ Ibid., 14.

Chapter 2 – Counter-terrorism and intelligence cooperation development

The current condition of counter terrorism in countries of the EU derives from its previous stages of development. Before the new phase of European Integration in the 1990s, a number of states suffered from terrorist threats but such activity had quite different sources and was more related to the state in particular and less to Europe overall. However, since the implementation of Maastricht treaty in 1992, the EU has formed the complex framework for counter-terrorism cooperation and intelligence exchange, which includes institutional and legislative elements. This chapter describes the most important steps in this cooperation and challenges.

2.1 Background and establishment of cooperation

Terrorism is not a new phenomenon for European states. During the 20th century, Europe had the examples of separatist terror such as ETA in Spain or IRA in Great Britain, the left wing terror was represented by the Red Brigades in Italy or RAF in West Germany.⁴⁶ The governments of states, which were under attack, tried to find a solution on domestic level by changing legislation, or creating their own counter terrorist structures.⁴⁷ What is more, terrorism overall was seen by states as an internal security problem despite the fact that some of the groups were active on the international level and states where the terrorist attacks took place had no sufficient international cooperation in this sphere.⁴⁸ Javier Argomaniz explains this as the absence of a common source of such threat from outside, which defined the focus of European states on domestic solutions to terrorism instead of external.⁴⁹ In that period most of

⁴⁶ Javier Argomaniz, *The EU and Counter-Terrorism : Politics, Polity and Policies after 9/11*, Contemporary Terrorism Studies (Milton Park, Abingdon, Oxon ; New York : Routledge, 2011., 2011).,3

⁴⁷ Cian Murphy, *EU Counter-Terrorism Law : Pre-Emption and the Rule of Law / Cian C. Murphy*, Modern Studies in European Law: 31 (Oxford ; Portland, Or. : Hart Pub., 2012., 2012).

⁴⁸ Argomaniz, *The EU and Counter-Terrorism*. ,4

⁴⁹ Ibid.

the terrorist groups in Europe were operating in the certain country by attempting to achieve changes in political area while the governments tried to solve this problem internally.⁵⁰ Accordingly, coordination between the states in fighting terrorism was quite low. In cases when it took place, it was pragmatic and mostly bilateral, such as the cooperation of France and Spain in combating ETA.⁵¹

Nevertheless, the ideas of intelligence cooperation and exchange were promoted within the member states of European Community can be identified since 1970s.⁵² In particular, the Club of Bern was established in 1971 as a framework for informal intelligence cooperation between the security services of six European states.⁵³ In 1975, the framework of TREVI was formed between the members of EC and established the cooperation between police officials in the sphere of data exchange on terrorism and related issues.⁵⁴ It is important to mention that the first successful attempt to form a treaty on counter-terrorism in Europe the “European Convention on Suppression of Terrorism” was agreed by the Council of Europe in 1977.⁵⁵ This treaty was a crucial step for international cooperation in terrorism prosecution and law enforcement, but also highlighted the difference in attitudes of states towards the issue.⁵⁶

However, the end of the Cold War has changed the direction of integration of the states in Europe as well as the objectives for terrorism. At early 1990s, a number of scholars held a firm opinion that with the bipolar system stopped ceasing to exist, the main threat for the Western world would be caused by non-state actors and terrorism would become a new global threat to

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² James I. Walsh, “Intelligence-Sharing in the European Union: Institutions Are Not Enough,” *Journal of Common Market Studies* 44, no. 3 (September 2006): 625–43, 625-626..

⁵³ Murphy, *EU Counter-Terrorism Law*.,19.

⁵⁴ Oldřich Bureš, *EU Counterterrorism Policy : A Paper Tiger?* (Farnham, Surrey : Ashgate, c2011., 2011)., 60.

⁵⁵ Murphy, *EU Counter-Terrorism Law*.,17

⁵⁶ Ibid. ,18

security of the Western countries.⁵⁷ The turning point, the 9/11 attack in New York, partially confirmed some of these assertions. By that time, the last, “Fourth wave” of sacred or religious terror became active and still remains the most problematic issue. France was one of the first countries which experienced religious wave of terror when the Armed Islamic Group did the attacks as a reaction to the French support of the Algerian government during the 1990s.⁵⁸

The complex mechanism of EU cooperation in the area of counter-terrorism, which we can observe now, was created and modified in time of the EU’s institutionalization. However, the reason to create such framework was threat of terrorism on the global level, underlined by the 9/11 attacks. It should be mentioned that before this tragedy only six European states had specific counter terrorism legislation.⁵⁹ What is more, Bjorn Muller-Wille emphasized that the perception of intelligence services among the EU member states is still quite diverse.⁶⁰ This is clearly seen from the perspective of institutional placement of counter terrorism units in intelligence, security or police structures among the EU member states. For instance, in the UK and Germany the intelligence structures are separated from the police powers while in France and Sweden the counter terrorism units are parts of national police.⁶¹

The Treaty on European Union, signed in Maastricht, introduced the three pillars structure as well as provided cooperation in the sphere of internal security at the supranational level.⁶² First step to such cooperation was made with defining common security objectives for the whole EU along with the establishment of the security cooperation in the framework of European Security

⁵⁷ Audrey Kurth Cronin and James M. Ludes, *Attacking Terrorism : Elements of a Grand Strategy* (Washington, D.C. : Georgetown University Press, c2004, n.d.).

⁵⁸ Argomaniz, *The EU and Counter-Terrorism*. P. 3

⁵⁹ Theodor Winkler et al., *Combating Terrorism and Its Implications for the Security Sector* (DCAF, 2005)., 87.

⁶⁰ Björn Müller-Wille, “The Effect of International Terrorism on EU Intelligence Co-Operation,” *Journal of Common Market Studies* 46, no. 1 (January 2008): 49–73, doi:10.1111/j.1468-5965.2007.00767.x., 51-52.

⁶¹ Ibid.

⁶² Murphy, *EU Counter-Terrorism Law*.,20

and Defense Policy, firstly introduced in 1999.⁶³ Another important innovations in the sphere of internal security were established with the institutional framework, which consists of the EU decision-making and legislative institutions, European agencies and the third parties, which are communicating independently.⁶⁴ The second ones are having formal autonomy, but also deeply integrated into the EU law enforcement framework.⁶⁵ Referring to one of the key agencies, Europol (European Police Office) has to be named, which appeared as a result of the Europol Convention in 1995 and became the official EU institution in 2010.⁶⁶ The agency became the main EU counter-terrorism institution since it received this mandate in 1999.⁶⁷ As for Eurojust (European Judicial agency), it works on cross-border prosecution and involved in counter-terrorism activity since 2001.⁶⁸ It is important to mention, that both of the institutions are concentrated on the coordination of the member states' efforts and have no operational power.⁶⁹

Furthermore, the EU developed cooperation on intelligence exchange was within the Europol and the Club of Bern.⁷⁰ However, as James Walsh underlined, the remaining key problem in this cooperation is mistrust that creates the boundaries between the partners on intelligence sharing. Fear that the data, which was provided to the partner, could be used with a different goal refrains the parties from such cooperation.⁷¹ Subsequently, the question on how to overcome mistrust in the intelligence exchange within the EU institutions is remaining to be crucial.

⁶³ Michael Merlingen, *EU Security Policy : What It Is, How It Works, Why It Matters* (Boulder, Colo. : Lynne Rienner Publishers, 2012., 2012).

⁶⁴ Argomaniz, *The EU and Counter-Terrorism.*, 35.

⁶⁵ Ibid.

⁶⁶ Murphy, *EU Counter-Terrorism Law.*, 21.

⁶⁷ Monica Den Boer, "Counter-Terrorism, Security and Intelligence in the EU: Governance Challenges for Collection, Exchange and Analysis," *Intelligence & National Security* 30, no. 2/3 (April 2015): 402., 406.

⁶⁸ Argomaniz, *The EU and Counter-Terrorism.*, 45-46.

⁶⁹ Murphy, *EU Counter-Terrorism Law.*, 21.

⁷⁰ James I. Walsh, "Intelligence-Sharing in the European Union: Institutions Are Not Enough," *Journal of Common Market Studies* 44, no. 3 (September 2006): 625–43. ,625-626.

⁷¹ Ibid., 626.

2.2 The new wave of terror and political reaction of the EU

Nevertheless, the EU's essential cooperation and policy making in the sphere of counter terrorism were the reaction to the massive attacks of 9/11 as well as the attacks on Madrid in 2004 and London in 2005. The new influx of terror was a clear signal for European policymakers that the measures towards prevention should be implemented. The 9/11 attacks lead to the introduction of the European Arrest Warrant, which is based on the Council Framework Decision.⁷² The document unified judiciary procedures among the member states, the changes were mostly related to implementation of the extradition procedures within the EU and criminal prosecution of criminals.⁷³ Another important document, "Framework Decision on Combating Terrorism", was produced by the Council in June 2002, amended in 2009 and the latest changes were made in June 2015. This document gives a legal notion to what should be understood as an act of terrorism: the definition includes the objective elements such as murder or hostage taking and subjective ones, which explain it as an act which aims to intimidate people, destroy the state related objects in order to make the government abstain from some decisions. What is more, a terrorist group is considered to be "structured group of two or more persons". The important part of this document is the obligation by member states to modify its legislation on criminal responsibility for terrorism.⁷⁴

With further implementation of the ESDP from 1999 it became clear that the security cooperation needed broader intelligence analysis to provide accurate decision-making. In 2002, the EU Council launched the new EU Situation Center (EU SitCen), which is subordinated to the Union's High Representative and unites intelligence officers from the member states.⁷⁵

⁷² Argomaniz, *The EU and Counter-Terrorism*, 21

⁷³ "European Arrest Warrant - European Commission," accessed May 2, 2016, http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm.

⁷⁴ "Council Framework Decision of 13 June 2002 on Combating Terrorism" (Official Journal L 164, June 22, 2002), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002F0475>.

⁷⁵ "The EU Intelligence Analysis Centre - Fact Sheet," http://eeas.europa.eu/factsheets/docs/20150206_factsheet_eu_intcen_en.pdf, May 2, 2015.

After the Madrid attacks in 2004, the capacities of SitCen were significantly upgraded.⁷⁶ With the help of intel received from the member states, the SitCen provides the European Council and the High Representative with the terrorist threat assessment and contributes to internal security cooperation.⁷⁷ In 2011 as a result of changes made by the Lisbon Treaty, SitCen was reorganized, joined to EEAS and renamed as the EU Intelligence Analysis Centre (EU IntCen). In hand with functions of intelligence assessment and assistance in the EU decision-making, the center should be “a single entry point in the EU for classified information”, which is directed by the member states.⁷⁸

At the same time, some alternative frameworks for cooperation also continued functioning. As it was mentioned before, the uncoordinated exchange of intel between European States existed since the establishment of co-called Club of Berne in 1971. Despite the fact that this platform was created for the heads of security and intelligence services, it serves mostly for direct and voluntary cooperation between intelligence systems.⁷⁹ Its successor, the Counter Terrorist Group (CTG), which was established under this framework in 2001, unites nowadays all the EU member states plus Switzerland and Norway.⁸⁰ The Group functions independently of the EU structures and provides cooperation for the heads of state intelligence who may meet every six months as well as in the separate committees for the heads of units.⁸¹ The main focus of this cooperation is on Islamic Terrorism. Despite the fact that the CTG is not directly related to the EU, the cooperation is promoted via the EU IntCen, the unit of the European External Action Service launched by the Lisbon Treaty.⁸² Despite that, there were some attempts to establish

⁷⁶ Argomaniz, *The EU and Counter-Terrorism*., 25.

⁷⁷ Müller-Wille, “The Effect of International Terrorism on EU Intelligence Co-Operation.”,60.

⁷⁸ “The EU Intelligence Analysis Centre - Fact Sheet.”

⁷⁹ Andrew Rettman, “EU Commission Keen to Set up New Counter-Terrorism Office,” accessed May 11, 2016, <https://euobserver.com/institutional/32104>.

⁸⁰ Ibid.

⁸¹ Müller-Wille, “The Effect of International Terrorism on EU Intelligence Co-Operation.”P.55-56

⁸² Rettman, “EU Commission Keen to Set up New Counter-Terrorism Office.”

more in-depth intelligence cooperation. After the terrorist attacks in Madrid in 2004, Austria and Belgium initiated the launch of a European Intelligence Service, which could be viewed the EU's version of the CIA of the United States.⁸³ However, big member states lead by the UK, which have their own security services, opposed this initiative arguing that it can cause more security leaks.⁸⁴ That clearly signalized about the dominant wish of some member states to keep the sphere of intelligence under their own control.

Developing it further, just after the Madrid attacks the Council adopted the Declaration on Combating Terrorism, which called the member states for full implementation of the measures of law-enforcement and judicial cooperation as well as strengthening the collaboration with the EU institutions.⁸⁵ This document also contributed to the development of the EU governance in counter-terrorism.⁸⁶ As a result its implementation, the position of the Counter Terrorism Coordinator was introduced in 2007. Gilles de Kerchove was appointed as CTC and he is still in the office.⁸⁷ Hand in hand with coordination of counter terrorism activities between the EU member states, some other crucial tasks are to coordinate the position of Council related counter-terrorism issues, work on the implementation of the EU's counter-terrorism strategy, provide effective cooperation and information exchange between the member states, present policy recommendations according to the threat analysis and work of improvement of communication between all the parties on the international level.⁸⁸

⁸³ Daniel Keohane, "The Absent Friend: EU Foreign Policy and Counter-Terrorism," *Journal of Common Market Studies* 46, no. 1 (January 2008): 125–46, doi:10.1111/j.1468-5965.2007.00770.x.,128

⁸⁴ Ibid.

⁸⁵ Argomaniz, *The EU and Counter-Terrorism*.,24.

⁸⁶ Ibid., 25

⁸⁷ "Counter-Terrorism Coordinator - Consilium," accessed April 21, 2016, <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/counter-terrorism-coordinator/>.

⁸⁸ Ibid.

In 2005 as a reaction to the London attacks, the Council adopted “The EU Counter Terrorism Strategy” with its main focus on prevention, protection, pursuing and responding terrorism.⁸⁹ It was underlined that the member states are responsible for combating terrorism while the EU will contribute in “strengthening national capabilities”, “facilitating European cooperation”, “developing collective capability” and “promoting international partnership”.⁹⁰ Apart from that, the document states the strategic commitment “to combat terrorism globally while respecting human rights...”⁹¹ The main issue in such cooperation is coordination between the member states as well as with the partners outside the EU. This document became an important point for further cooperation in the sphere of counter-terrorism and its institutionalization.⁹² However, according to Oldrich Bures, the critics of this document mentioned that it was issued too late and appeared as a set of objectives, not as a comprehensive strategy.⁹³

As we can see, the terrorist attacks in 2001, 2004 and 2005 influenced the policy-making in the sphere of counter terrorism within the EU and institutional improvements. However, there was no sufficient progress in the establishment of intelligence cooperation within the Union – some states tried to keep this sphere under the national control.

2.3 Improvements after the Lisbon Treaty

The latest and most important changes in legal basis of the EU introduced important improvements of the law enforcement and security spheres. Here we are referring to the Lisbon Treaty, which came into force in December 2009 and still regulates the functioning of EU. This important document has changed the three-pillar structure of the EU provided by Maastricht Treaty of the EU in 1992 and provided a legal personality the Union instead, creating a new

⁸⁹ “The European Union Counter-Terrorism Strategy” (Council of European Union, November 30, 2005), <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Argomaniz, *The EU and Counter-Terrorism*, 27.

⁹³ Bureš, *EU Counterterrorism Policy*, 72-73.

political actor.⁹⁴ It could be stated, that the internal regulations provided by the Lisbon treaty, largely contributed the EU counter terrorism framework. Thomas Renald underlined its three main contributions, which are: increased role of the EU in the issues of internal security and simplified decision making process, “balance of powers” between the core institutions, characterized by greater role of the European Parliament as well as the national legislative institutions and some new capacities of the European Court of Justice to cover the issues of “liberty, security and justice” under its jurisdiction.⁹⁵ However, it was mentioned that these changes can work in both ways and, for example, slow the implementation process down.⁹⁶ Another important component of the Treaty is the new formula of the EU objectives, introduced as an “area of Freedom, Security and Justice without internal frontiers”, which is stated in the Article 2.2.⁹⁷ By taking into account previous core treaties of the EU, we can see that in Lisbon Treaty the security issue became one of the most crucial priorities, which underlines modern challenges for the EU.

Moreover, the Treaty launched certain institutional changes in order to reach improvements in cooperation within the framework of internal security. The Standing Committee on Internal Security (COSI) was established in accordance with the Article 71 of TFEU. Its main objective is to “facilitate coordination of the action of Member States’ competent authorities” in the sphere of internal security.⁹⁸ The Committee is composed of the competent national ministers assisted by the permanent representatives to the EU and the top representatives of the organizations related to this framework such as Europol, Eurojust and Frontex could be also

⁹⁴ Thomas Renard, “EU Counterterrorism Policies and Institutions After the Lisbon Treaty,” Policy Brief (Center on Global Counterterrorism Cooperation, September 2012), <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=153959>, 1.

⁹⁵ Ibid.

⁹⁶ Ibid., 1-2.

⁹⁷ “Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Signed at Lisbon, 13 December 2007” (Official Journal of the European Union, C 306, December 17, 2007), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2007:306:TOC>.

⁹⁸ Ibid.

invited to the meeting as an observers. The committee should cooperate with the Council according to the “solidarity clause”, which is reflected in Article 222 of TFEU.⁹⁹ This is one of the major principles in counter terrorism cooperation between the member states for emergency situations. According to it, in case of terrorist attack to one of the member states other member states should mobilize all the available resources in order to prevent the terrorist threat or assist the member state on its territory.¹⁰⁰

The attempts to improve institutional cooperation and productivity are also regulated with the help of political mechanisms. In the year 2010, COSI agreed on establishing a four-year policy cycle “for organized and serious international crimes” aiming to provide effective cooperation and reaching coherence in the operational activities between all the parties in this process.¹⁰¹ According to the document, the designed policy cycle has four stages: threat assessment for the EU and defining the priorities, providing the Multi-Annual Strategic Plans with strategic priorities for dealing with the existing threats, setting up the Operational Action Plans (OAP) for multilateral operational actions and evaluating the actions in order to prepare for the next policy cycle.¹⁰² The current policy cycle started in 2013 and has nine prioritized areas among which there is no terrorism.

Another key document, which facilitates the counter-terrorism cooperation is the Stockholm Program, a 5-year roadmap of the EU in spheres of justice, freedom and security.¹⁰³ It was implemented in 2010 and defined new objectives in security cooperation between the member states on protection of the EU citizens. Such cooperation should be based on the effective

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Europol, “EU Policy Cycle - EMPACT,” accessed May 31, 2016, <https://www.europol.europa.eu/content/eu-policy-cycle-empact>.

¹⁰² Ibid.

¹⁰³ “The Stockholm Programme,” December 2, 2009, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Aj10034>.

implementation of the existing instruments, improving legislation and increasing coherence between the EU internal and external components of Freedom, Justice and Security.¹⁰⁴ Such institutions as Europol, Eurojust, Frontex, CEPOL and others shape the main platform for such cooperation. The document confirms the priorities, which were settled by its predecessors, Tampere and Hague programs as well as provides new tasks in regard to the Lisbon Treaty. Among a number of crucial priorities highlighted in the document, the “Europe that Protects” aims to improve the security situation and tackle terrorism.¹⁰⁵ In April 2016, the Council adopted new European Agenda on Security, which supplemented the Stockholm program and objectives in fight against terrorism.¹⁰⁶

Both Lisbon Treaty and the Stockholm Program launched important developments to the sphere of internal security in order to provide the efficiency of such cooperation. The implications of these changes for institutional cooperation in the sphere of counter-terrorism and intelligence exchange can be seen on the example of Europol, which is revealed in the next chapter.

Since the time of Maastricht treaty, the EU has established and developed its framework on internal security, which includes counter-terrorism and based on communication between the member states and related institutions of the EU. However, it could be seen, that the major political attempts to improve cooperation in the sphere of counter terrorism on were influenced by the terrorist attacks and resulted in further institutionalization of the framework. According to the established framework, the EU plays an important role in coordinating the activities and improving the standards of cooperation while the effective prevention of terrorist threat and

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions. The European Agenda on Security” (European Commission, April 28, 2015), http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf.

law enforcement are under the member states' responsibility. Due to the fact that the institutions have no operational capacities and depend on cooperation with the member states, the EU policy makers and legislators attempted to improve the structure of the framework in the Lisbon Treaty. Nevertheless, the will of national governments to cooperate remains the most decisive issue in this cooperation.

Chapter 3 - Europol: Counter terrorism hub of the EU

As it was mentioned before, the framework of the EU counter terrorism consists of decision-making institutions such as the Council of Europe and a number of European agencies that are the main operational centers for this activity. Researchers compared these agencies to the “satellites” that are placed in the orbit around the “community method”.¹⁰⁷ Such comparison also characterizes their relations with political actors and the formality of decision-making. This chapter elaborates on the institutionalization of Europol, specific details of its functioning and role in counter-terrorism cooperation.

3.1 Roots of the Europol

One of the abovementioned institutions is the European Police Office (Europol), the EU platform for police cooperation, which became a successor of TREVI – the internal security cooperation framework between the EC members, created in 1976.¹⁰⁸ Europol was established according to the Maastricht Treaty’s Article’ K 3. It was stated that the main tasks of this cooperation are combatting terrorism, drug trafficking and other international crimes.¹⁰⁹ The initiative to formalize TREVI and establish police cooperation on a new level seems to be quite clear – with a new level of intergovernmental cooperation and integration overall there should be coordination in the sphere of law enforcement. TREVI as well as the Justice and Home Affairs Council, which has included the former organization into this framework, operate in a form of regular meetings of the ministers.¹¹⁰ In contrast, Europol aimed to be an institutional cooperation of the EU’s police forces. At the very beginning, the perception of the role of Europol was mostly political while its practical capacities were questioned.

¹⁰⁷ M Busuioc, D Curtin, and M Groenleer, “Agency Growth between Autonomy and Accountability: The European Police Office as a ‘Living Institution,’” *JOURNAL OF EUROPEAN PUBLIC POLICY* 18, no. 6 (2011)., 848-849.

¹⁰⁸ Cian Murphy, *EU Counter-Terrorism Law : Pre-Emption and the Rule of Law / Cian C. Murphy*, Modern Studies in European Law: 31 (Oxford ; Portland, Or. : Hart Pub., 2012., 2012)., 19-20.

¹⁰⁹ European Council, “The Maastricht Treaty” (Official Journal C 191, 29 July 1992, February 7, 1992), <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001>.

¹¹⁰ Florian Trauner and Ariadna Ripoll Servent, *Policy Change in the Area of Freedom, Security and Justice: How EU Institutions Matter* (Routledge, 2014)., 125-126.

Initially, Europol began its functioning since 1994 when its first department - the Europol Drug Unit - was launched and focused on the drug control activity.¹¹¹ The big formal step towards the launch Europol happened on 18 of July 1995, when the Europol Convention was signed. In the document the common objective for creation of the organization was formed as follows:

Improving police cooperation in the field of terrorism, unlawful drug trafficking and other serious forms of international crime through a constant, confidential and intensive exchange of information between Europol and Member States' national units.¹¹²

Noticeably, Europol began its functioning as an intergovernmental organization on police cooperation in 1999. Also in this year the fight against terrorism officially became one of the priorities of Europol, when Spain initiated the extension of its mandate.¹¹³ Next crucial change was the introduction of the area of Freedom, Security and Justice with the Amsterdam Treaty in 1999, which enabled the development of legal instruments and institutions in this area. It can be stated that such changes influenced Europol in a positive way.¹¹⁴ However, the role of Europol has changed after the 9/11 attacks. The organization was criticized for insufficient amount of analytical work and strategy.¹¹⁵ At the same time, the 9/11 attacks influenced the organization of Europol with the increased budget and number of employees, one third of the experts was related to the counter terrorism sector.¹¹⁶

It is important to mention that the extensions of the mandate of Europol influenced the changes within its legal ground. It was agreed that the Europol Convention was going to be transferred into The Europol Council Decision on 6 April 2009. That changed the status of Europol as an

¹¹¹ Oldřich Bureš, *EU Counterterrorism Policy : A Paper Tiger?* (Farnham, Surrey : Ashgate, c2011., 2011)., 85.

¹¹² "Convention Based on Article K.3 of the Treaty of European Union, on Establishment of a European Police Office (Europol Convention)," July 26, 1995, https://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/projects/cargo/output_3_-_special_investigative_means/Europol_Convention.pdf.

¹¹³ Monica Den Boer, "Counter-Terrorism, Security and Intelligence in the EU: Governance Challenges for Collection, Exchange and Analysis," *Intelligence & National Security* 30, no. 2/3 (April 2015): 402., 406.

¹¹⁴ Trauner and Servent, *Policy Change in the Area of Freedom, Security and Justice*.

¹¹⁵ Javier Argomaniz, *The EU and Counter-Terrorism : Politics, Polity and Policies after 9/11*, Contemporary Terrorism Studies (Milton Park, Abingdon, Oxon ; New York : Routledge, 2011., 2011)., 43-44.

¹¹⁶ Ibid. 44.

institution. According to Article 3 of the document, the main objective of Europol so far is to “support and strengthen the action by competent authorities of the member states”, which underlines the analytical and cooperation role in the law enforcement framework.¹¹⁷ Furthermore, the EU introduced more initiatives on reinforcement of the Europol capacities. Recently, the European Parliament adopted new regulation with more powers for the agency, which will allow to establish new specialized units for immediate response on terrorism threats. The document will enter into force in May 2017.¹¹⁸ In parallel, there are no illusions about the reforms due to the lack of cooperation between the member states and Europol. Accordingly, the MP Morten Helveg Petersen welcomed new initiative and called the member states for more systematic cooperation and data exchange with Europol.¹¹⁹

3.2 Internal structure

Regarding the current Europol, it can be defined as a huge supranational institution for police cooperation with its own mechanisms for collaboration. In order to understand the specific details of its functioning, structure and mechanisms of data exchange of and law enforcement cooperation are going to be revealed.

The crucial question, which definitely influences the intelligence exchange, is the balance between the Europol’s autonomy and accountability. The control on Europol’s director selection, budget sphere and cooperation with the third parties is under authority of the Council.¹²⁰ The control on non-violation of the citizens’ rights and data transmission carried out by Joint Supervisory Body. This independent organ consists of maximum two

¹¹⁷ “Council Decision 2009/371/JHA of 6 April 2009 Establishing the European Police Office (Europol)” (Official Journal of the European Union, May 15, 2009), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:jl0025>.

¹¹⁸ “European Parliament Adopts New Regulation for Europol | Europol,” accessed June 1, 2016, <https://www.europol.europa.eu/content/european-parliament-adopts-new-regulation-europol>.

¹¹⁹ “Press Release: Europol: Reinforced Mandate Welcomed - The Agency Must Be given a Genuine European Investigation Capacity in the Future,” *ALDE*, May 11, 2016, <http://www.alde.eu/nc/press/press-and-release-news/press-release/article/europol-reinforced-mandate-welcomed-the-agency-must-be-given-a-genuine-european-investigation-cap/>.

¹²⁰ “Council Decision 2009/371/JHA of 6 April 2009 Establishing the European Police Office (Europol).”

representatives for the member states and each delegation has a right to vote in decision-making on certain questions.¹²¹ The Council decision and the Lisbon Treaty also increased the role of European Parliament and European Court of Justice in Europol's accountability.¹²² Nevertheless, the researchers suggested that the increased control over the institution will provide more autonomy because of the increased level of trust in the framework and Europol's crucial role in JHA.¹²³

Furthermore, in 2010 Europol was reorganized and introduced institutional innovations in order to improve the law enforcement framework. According to the current structure scheme, Europol has three main departments on Governance (G), Operations (O) and Capabilities (C).¹²⁴ The counter terrorism cooperation is related to the sub hub of the "Counter Terrorism and Financial Intelligence" or "O4", which unites the Europol intelligence officials and national experts. The important way of internal security cooperation is the Joint Investigations Team (JIT). The aim of such cooperation is to enable the creation of investigative teams for specific types of crime, where it is impossible to carry out the investigation under the general conditions.¹²⁵ The Counterterrorism task force also unites police and intelligence representatives from the member states and the Europol officials. Together they are working on the terrorist threat assessments.¹²⁶

As it has been previously stated, Europol is dependent on the information from the member states, which plays the key role in activities of this institution and remains its biggest challenge.¹²⁷ Each member state has Europol National Unit (ENU), which plays the role of

¹²¹ Ibid.

¹²² Busuioc, Curtin, and Groenleer, "Agency Growth between Autonomy and Accountability.", 856.

¹²³ Ibid., 861.

¹²⁴ "Organisational Structure | Europol," accessed May 20, 2016, <https://www.europol.europa.eu/content/page/organisational-structure-157>.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Busuioc, Curtin, and Groenleer, "Agency Growth between Autonomy and Accountability.", 861.

direct representation between Europol and the government. The national units also has crucial role in supplying Europol with the information that is necessary for its work.¹²⁸ The direct cooperation between the member states' national units and the Europol is provided via the European Liaison officer (ELO) or with the help of official requests.¹²⁹ Despite the fact that all the decisions on personnel acceptance are done by director only, the ELO are selected by the ENU, which are remaining a subject of national law.¹³⁰

In terms of counter terrorism institutional framework of the EU, the coherent activities of Europol and other institutions are crucial for the successful functioning of the cooperation. According to the Council Decision, the partners of Europol are Eurojust, European Anti-Fraud Office (OLAF), Frontex, CEPOL and European Central Bank. The relations to these and other EU institutions can be established in accordance with the TEU.¹³¹ What is more, according to the Article 21 of the Decision, Europol is entitled to retrieve the necessary data from computerized sources in accordance to the Union's legal instruments.¹³² In case of Eurojust, in 2004 the institutions signed the cooperation agreement in order to improve the exchange of data.¹³³ However, on the first stage of this cooperation, Europol was not able to provide all the data requested by Eurojust due to the legal conditions of data exchange between Europol and the member states.¹³⁴ In order to improve the situation, institutions signed another agreement in 2009 and elaborated on the issue of confidentiality standards. In this way, Eurojust gained

¹²⁸ "Council Decision 2009/371/JHA of 6 April 2009 Establishing the European Police Office (Europol).", art.8 (1) (2) (3)

¹²⁹ James I. Walsh, "Intelligence-Sharing in the European Union: Institutions Are Not Enough," *Journal of Common Market Studies* 44, no. 3 (September 2006): 625–43, doi:10.1111/j.1468-5965.2006.00638.x., 632.

¹³⁰ Busuioc, Curtin, and Groenleer, "Agency Growth between Autonomy and Accountability.", 854.

¹³¹ "Council Decision 2009/371/JHA of 6 April 2009 Establishing the European Police Office (Europol)."

¹³² Ibid.

¹³³ Argomaniz, *The EU and Counter-Terrorism.*, 65.

¹³⁴ Ibid.

access to the AWF and taking part in the activities of JIT. The level of cooperation definitely improved due to the increased level of cases investigated by both of the organizations.¹³⁵

On the whole, the complex structure of Europol which includes the mechanisms for cooperation with the member states and the EU institutions allows to retrieve and process the necessary intelligence. However, the data exchange is possible because of the numerous systems created by Europol.

3.3 Europol capacities

Nowadays, some of the EU politicians stressed that they would like Europol to become a “European CIA”.¹³⁶ However, it is relatively hard to compare these two organizations and Europol in terms of budget, staff and operational capacities.¹³⁷ The specifics of intelligence cooperation could be understood via the words of Europol director Rob Wainwright. He mentioned that in contrast with FBI, Europol has no operational power and has quite contrasting goals.¹³⁸ In his opinion, this role could be compared to Uber, when this company “doesn’t own a single car but it is the biggest taxi company in the world”.¹³⁹ Such comparison explains how crucial it is for Europol to have a strong cooperation and data exchange with member states, which are exercising the operational capacities and providing Europol with the biggest amount of the available intelligence data.

The Council Decision on Europol regulates the types of offences and particulars, which could be included to each of the systems. The document regulates how the data should be proceeded in order to avoid any violations on the personal information and discrimination.¹⁴⁰ All the intelligence, which is received by Europol is stored at the Europol Analysis System (EAS).

¹³⁵ Ibid.,65-66.

¹³⁶ Vivienne Walt, “Europe’s Top Cop Warns More Attempted Attacks ‘Almost Certain,’” *Time*, May 16, 2016, <http://time.com/4336919/europol-terrorist-paris-brussels-rob-wainwright/>.

¹³⁷ Ibid.

¹³⁸ Sheftalovich, “Europol Needs More Staff from EU Nations to Respond to Terrorist Attacks.”

¹³⁹ Ibid.

¹⁴⁰ “Council Decision 2009/371/JHA of 6 April 2009 Establishing the European Police Office (Europol).”

This is Europol's main intel analysis hub that allows to centralize the access to all the kinds and spheres of available intel and increases the analytical capacities.¹⁴¹ One of the most crucial priorities here is work on the threat assessment in order to facilitate the decision-making process.¹⁴²

Analytical Work Files (AWF) is an information processing system which contains files on concrete crime areas. According to the Europol information, AWF is "only existing legal tool at European level to simultaneously store, process and analyze factual information ('hard' data) and in particular 'intelligence' (or 'soft' data), including personal data of a sensitive nature".¹⁴³ The system had existed for a long time, but in 2010-2011 it was upgraded and some new components were added. The Focal Point (FP) is the area within AWF which allows to focus on a certain angle and provides focused analysis.¹⁴⁴ What is more, the Target Group allows to provide a set of operational activities on the specific suspects in order to support the investigation process on the prioritized targets.¹⁴⁵ Moreover, one of the main tasks of "O4" officers on counter terrorism is to produce the AWF, which should support criminal investigations by intel provided by the member states.¹⁴⁶ Two out of eighteen AWF has its focus on terrorism: one is on Islamic Terrorism and the other is on other kinds of terrorism in Europe.¹⁴⁷ However, the situation with the member states' intelligence supply to the AWF is very illustrative. The only AWF where all the member states are taking part is the one which

¹⁴¹ "Intelligence Analysis | Europol," accessed May 20, 2016, <https://www.europol.europa.eu/content/page/intelligence-analysis-1852>.

¹⁴² Ibid.

¹⁴³ "EUROPOL New AWF Concept Guide for MS and Third Parties," accessed May 20, 2016, <http://docplayer.net/3318512-Europol-new-awf-concept-guide-for-ms-and-third-parties.html>, 4.

¹⁴⁴ Ibid., 5.

¹⁴⁵ Ibid., 7-8.

¹⁴⁶ Ibid.

¹⁴⁷ Argomaniz, *The EU and Counter-Terrorism*, 44.

is related to the Islamic Terrorism.¹⁴⁸ This situation reflects the general trend of selectiveness of the cooperation provided by the member states.

The computer analytical database, Europol Information System (EIS) plays crucial role in the intel exchange and cooperation between the member states. According to the available information, by January 2016 the system contains the data on 295 374 objects.¹⁴⁹ This huge Europol's database collects the most important information and references on the suspected and convicted persons in all the crime areas covered by Europol.¹⁵⁰ It was mentioned that the partners in cooperation can request the data on serious international crimes and terrorism.¹⁵¹ The access to this database is available for Europol officials, Liaison officers and national experts in Europol headquarters and National Units. They can submit the data to all of the users or limit the access, which depends on cases. Interestingly, the system cross-checks all the received data against the data which is already in the system and the data from AWF.¹⁵² Secure Information Exchange Network Application (SIENA) is a new tool which enables quick and secure exchange of strategic information between the Europol, member states and the third parties. System is focused on the interoperability between the databases of Europol and other organizations.¹⁵³

Recently, responding to the huge threat of online terrorism propaganda, Europol launched the Internet Referral Unit which focuses on reducing the amount and spread of jihadist content online.¹⁵⁴ The Council mandate on the establishment of this department was given on 12 March

¹⁴⁸ "Europol: Coordinating the Fight Against Serious and Organised Crime : Report with Evidence" (London: House of Lords, November 30, 2008), 36.

¹⁴⁹ "Europol Information System (EIS) | Europol," accessed May 20, 2016, <https://www.europol.europa.eu/content/page/europol-information-system-eis-1850>.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² "EUROPOL INFORMATION SYSTEM (EIS) Leaflet | Europol," accessed May 20, 2016, <https://www.europol.europa.eu/content/europol-information-system-eis-leaflet>.

¹⁵³ "SIENA | Europol," accessed May 20, 2016, <https://www.europol.europa.eu/content/page/siena-1849>.

¹⁵⁴ "Europol's Internet Referral Unit to Combat Terrorist and Violent Extremist Propaganda | Europol," accessed May 21, 2016, <https://www.europol.europa.eu/content/europol%E2%80%99s-internet-referral-unit-combat-terrorist-and-violent-extremist-propaganda>.

2015. The IRU should provide an immediate reaction on the online extremist content by referring about these cases, support the related activities of the member states.¹⁵⁵

What is more, the Europol has its crucial role in cooperation with the parties outside of the EU. Such cooperation is represented by the EU-US agreement on Terrorist Financing Tracking Program (TFTP), which was endorsed in 2011. This cooperation aims to provide the storage of financial payment information in order to prevent or investigate terrorist activity.¹⁵⁶ Europol's AWF tool was the most suitable for such cooperation, the specific O9 unit on TFTP was created in the Operations department.¹⁵⁷

Moreover, the main product of Europol's work is the analysis of the possible threats, based on the received intelligence. Every year since 9/11 Europol prepares and publishes the Terrorism Situation and Trends Report (TE-SAT) which aims to provide with an overview on terrorism dynamics in the period of a year and highlight the main threats to internal security.¹⁵⁸ The report is prepared by the group of Europol experts and based on the information provided by the member states and Europol partners.¹⁵⁹

3.4 Cooperation problems

Despite the renewed organizational structure and new network of intelligence databases, Europol has a number of problems regarding the issue of effective cooperation via the intelligence exchange. Since the establishment of the organization, researchers and policy makers have been elaborating on how to improve the cooperation in Europol and increase its efficiency.

¹⁵⁵ Ibid.

¹⁵⁶ "EU Review Endorses Europol's Implementation of TFTP Agreement | Europol," accessed May 21, 2016, <https://www.europol.europa.eu/content/press/eu-review-endorses-europol%E2%80%99s-implementation-tftp-agreement-461>.

¹⁵⁷ "Q&A: The EU-US TFTP Agreement | Europol," accessed May 21, 2016, <https://www.europol.europa.eu/content/publication/qa-eu%E2%80%93us-tftp-agreement-1685>.

¹⁵⁸ Argomaniz, *The EU and Counter-Terrorism*, 45.

¹⁵⁹ Ibid.,

As it derives from the Council Decision and the overview of Europol instruments, the organization has numerous capacities to be the EU main intelligence center and provide high quality data analysis in order to prevent and investigate the terrorism.¹⁶⁰ However, the organization has some significant boundaries in retrieving the necessary intelligence. As it was mentioned before, the Europol is not entitled to act as a counter terrorist power – all the legal capabilities are in hands of the member states who are also the main sources of intel.¹⁶¹ Accordingly, the intelligence analysis which is based on the common threat perception depends on the will of the member states to share such intelligence. Here we can identify crucial issues that have to be solved. One of the key questions is how many member states are sending the necessary data to Europol and how interested are they in this cooperation?¹⁶² While elaborating on the issue of Europol, Bjorn Fagersten mentioned that the problem of cooperation could be related to the bureaucratic resistance in the intelligence sharing process. While certain people are trying to fit the interests of certain government and keep the crucial intel, the sphere of internal security suffers from the lack of relevant data. As a result, the EU member states are also unable to benefit from the cooperation, which influences the security situation in the negative way.¹⁶³ Oldrich Bures also stressed that the difference in institutions and legal systems of the member states are influencing the data itself. The difference between the legal place of counter terrorism services in the member states and its relation either to police forces or intelligence services and its different focus makes the exchange process even more complicated.¹⁶⁴ What is more, these national institutions could be quite suspicious about

¹⁶⁰ “Council Decision 2009/371/JHA of 6 April 2009 Establishing the European Police Office (Europol).”

¹⁶¹ Oldřich Bureš, *EU Counterterrorism Policy : A Paper Tiger?* (Farnham, Surrey : Ashgate, c2011., 2011)., 85.

¹⁶² Boer, “Counter-Terrorism, Security and Intelligence in the EU.”, 407; Bjorn Fagersten, “Bureaucratic Resistance to International Intelligence Cooperation - The Case of Europol,” *Intelligence & National Security* 25, no. 4 (August 2010): 500.

¹⁶³ Fagersten, “Bureaucratic Resistance to International Intelligence Cooperation - The Case of Europol.”, 519-520

¹⁶⁴ Bureš, *EU Counterterrorism Policy*.,85.

Europol and attempts to avoid sharing the information in order to keep its exclusiveness. Here the importance of implementation of legal and institutional standards within the law enforcement services for all the member states could not be underestimated.

The problem of intelligence cooperation between the member states and Europol is too complex and it is hardly possible to imagine its solution within institutional modifications. However, Europol has a significant experience in developing the counter terrorism cooperation. The example of unsuccessful attempt to establish the counter terrorism cooperation is related to the Counter Terrorism Task Force (CTTF), which was set up as a part of Europol. Immediately launched by the decision of JHA Council as a reaction on 9/11 attacks, the group is expected to analyze the intel and provide terrorism threat assessment.¹⁶⁵ When the group was already created, the liaison officers and intelligence services who were recruited for this structure should create the mechanism of functioning and intelligence exchange. Nevertheless, due to the unclear legal status and lack of intelligence for analysis, the group was closed after the end of its mandate in 2003.¹⁶⁶ Remarkably, after the Madrid attacks in 2004, the CTTF was renewed with the tasks of collecting the relevant data, its analysis and presenting threat assessment. The unit learned from its previous mistakes and planned the cooperation before implementing it. In 2007 the unit joined the First Response Network (FRN), which became much more efficient structure.¹⁶⁷ That means that the experience and its self-assessment was quite important for improvement further intelligence cooperation.

In the lights of these facts, it can be concluded that Europol is one of the most crucial institutions in counter-terrorism cooperation and intelligence exchange for the European Union. Since its establishment, the agency has been reformed and gained more capacities in order to

¹⁶⁵ Ibid.,89.

¹⁶⁶ Ibid., 89-90

¹⁶⁷ Ibid.

improve the cooperation. However, the absence of operational powers and dependence on the data from the member states make Europol not as efficient as it was supposed to be. It is hardly possible to imagine that the attempts to reinforce the legal basis or structure of this institution will be plentiful if the member states are not supplying the relevant amount of data.

Chapter 4 - The ECTC: Europol's new counter terrorism power

Recent wave of terror in Europe influenced the decision makers to produce the political solutions to improve the counter terrorism sphere for the whole EU. Beyond any reasonable doubt, the effective intelligence exchange is a vital part of this process and the Europol as one of the key centers for such cooperation became an object for innovations. Notably, the European Counter Terrorism Center (ECTC) was established as a part of the previously mentioned institution and it is expected that this center will provide certain crucial improvements to the EU counter terrorism framework. The ECTC was defined as the pan-European intelligence center and hub for counter-terrorism information exchange which aims to increase the level of intelligence cooperation between the member states.¹⁶⁸ This chapter reveals the decision making process of ECTC, elaborates on its place and functions as the hub of Europol and analyze the possible influence of ECTC on the counter terrorism framework in general.

4.1 The political process on establishment of ECTC

There is an opinion, that the decision on the establishment of ECTC was an outcome of JHA Council on 20 November 2015, which happened just after the most violent terrorist attacks in Paris on 13 November.¹⁶⁹ In contrast, we can track this process even before this meeting. As it derives from the Europol documents, such decision was a response to conclusions provided by the Justice and Home Affairs Council of 8-9 October 2015. According to their press release from this meeting, one of the key issues regarding such decision was further implementation of the counterterrorism measures from the statement of 12 March 2015.¹⁷⁰

¹⁶⁸ "Europol Launches Pan-European Counterterrorism Center," *Deutsche Welle*, January 25, 2016, <http://www.dw.com/en/europol-launches-pan-european-counterterrorism-center/a-19002777>.

¹⁶⁹ Daniel Drewer and Jan Ellermann, "May the (Well-Balanced) Force Be with Us! The Launch of the European Counter Terrorism Centre (ECTC)," *Computer Law & Security Review: The International Journal of Technology Law and Practice* 32 (April 1, 2016): 195–204, doi:10.1016/j.clsr.2016.02.003., 3.

¹⁷⁰ "Justice and Home Affairs Council, 08-09/10/2015 - Consilium," accessed May 23, 2016, <http://www.consilium.europa.eu/en/meetings/jha/2015/10/08-09/>.

Remarkably, the first priority area was identified on the JHA Council as the “increase of information sharing and operational coordination”.¹⁷¹ In the note from 5 October 2015 directed from the presidency and CTC to the Council, another priority for improvement until December Council meeting was the enhancement of information exchange. It was stressed that the ECTC will be established “to strengthen counter-terrorism capabilities and provide a suitable information sharing environment”.¹⁷²

The impulse for such process was launched by the Riga Joint Statement – the outcome of the JHA informal meeting in the end of January as a result of the Paris Statement of 11 January 2015, which was made few days after the Paris Attacks.¹⁷³ The commitment to assure the exchange of information between the member states and, in particular, Europol and Eurojust as well as the necessity to “review and update” the EU Internal Security Strategy were emphasized.¹⁷⁴ Correspondingly, on 28 April 2015 such strategy was introduced and the document contained the following statement:

Europol has developed a growing expertise on terrorism issues and this should be taken a step further by bringing together its anti-terrorism law enforcement capabilities, pooling resources and maximizing the use of already existing structures, services and tools available to the Agency with a view to achieving economies of scale. This could be brought together as a European Counter-Terrorism Centre within Europol to step up the support provided at EU level for Member States, within a secure environment with the highest confidentiality in its communication.¹⁷⁵

It the light of these facts, it can be stated that the concept of ECTC was firstly introduced by the Internal Security Strategy. Nevertheless, the necessity of the substantially improved

¹⁷¹ “14244/15 Enhancing Counter Terrorism Capabilities at EU Level: European Counter Terrorism Centre (ECTC) at Europol and Counter Terrorism Related Information Sharing” (Europol, November 17, 2015), <http://data.consilium.europa.eu/doc/document/ST-14244-2015-INIT/en/pdf>, 3.

¹⁷² “12551/15 Fight against Terrorism: Implementation of Short-Term Actions” (Council of the European Union, October 5, 2015), <http://data.consilium.europa.eu/doc/document/ST-12551-2015-INIT/en/pdf>.

¹⁷³ “Riga Joint Statement Following the Informal Meeting of Justice and Home Affairs Ministers in Riga on 29 and 30 January,” accessed May 23, 2016, https://eu2015.lv/images/Kalendars/IeM/2015_01_29_jointstatement_JHA.pdf.

¹⁷⁴ Ibid.

¹⁷⁵ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions. The European Agenda on Security” (European Commission, April 28, 2015), http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf, art. 3.1

structure for intel exchange became even more crucial issue after the Paris attacks in November. In the JHA Council on 20 November 2015 which followed the attacks, the ministers agreed to reinforce the Europol's counter-terrorism capabilities.¹⁷⁶ The importance of this decision can be seen from the statement of Rob Wainwright, who summarized: "Today, Ministers have undertaken to provide the necessary resources for the ECTC, to second counter-terrorist officers to work together under one roof, and to share all relevant information with Europol. We will make sure that Member States see a return on that investment through our reinforced support to their investigations." ¹⁷⁷

Despite the fact that the process of establishment of the ECTC was launched after the Paris attacks in January 2015 and agreed in the Internal Security Strategy, the crucial decision to facilitate the exchange of the data on counter terrorism from the member states to ECTC was the result of the JHA Council meeting after the Paris attacks in November 2015.

4.2 Role and functions

The ECTC was created as a new element of counter terrorism cooperation framework and aims to improve the intelligence cooperation between the member states, which is crucial for successful prevention of terrorism in the whole European region. It is important to understand the place of ECTC in the structure of Europol in particular and EU counter terrorism framework overall by underlining main changes and improvements that might be reached by ECTC as well as its key goals reflected in the words of the officials.

In the official statement of Europol, the ECTC derives as the main "information hub", where member states are going to share crucial information and coordinate operational activities. The

¹⁷⁶ "Ministers Commit to Reinforcing Europol's Counter-Terrorism Capabilities | Europol," accessed May 28, 2016, <https://www.europol.europa.eu/content/ministers-commit-reinforcing-europol%E2%80%99s-counter-terrorism-capabilities>.

¹⁷⁷ Ibid.

director of Europol Rob Wainwright stressed the function of key counter-terrorist information hub as an “ambition”.¹⁷⁸ Due to the fact, that Europol has no operational capacities, the work of ECTC will be based on the data, received from the member states and third parties. That could be confirmed by the words of European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos who stressed that the activity of ECTC is a “major strategic opportunity for the EU to make our collective efforts to fight terrorism more effective”.¹⁷⁹

In terms of organization, the ECTC became an element in structure of Europol Operations (O) Department. What is more, the center “will serve to augment the organization’s capabilities as the EU’s law enforcement agency”.¹⁸⁰ The position of the head of newly established ECTC is occupied by Manuel Navarrete Paniagua, who was a head of counter terrorism unit and might be relevantly experienced in this sphere. Recently, he mentioned that the ECTC combines a number of unique tools under one roof in order to serve the EU member states in fighting terrorism.¹⁸¹ However, the interest to use these capacities and develop the cooperation within ECTC derives from the member states’ governments.

According to the statement, the key aims of ECTC are to increase the level of “trust and awareness” among the numerous counter terrorism related authorities and institutions in the EU and increase the effectiveness of cooperation as well as its “existing capabilities”.¹⁸² Respectively, ECTC aims to use Europol’s capacities to achieve its tasks. The TFTP framework is going to be used for solving the issues of foreign fighters and the Internet Referral Unit will

¹⁷⁸ “Europol’s European Counter Terrorism Centre Strengthens the EU’s Response to Terror | Europol,” accessed May 21, 2016, <https://www.europol.europa.eu/content/ectc>.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ “Committee on Civil Liberties, Justice and Home Affairs - Meeting 23/05/2016 (PM),” *European Parliament*, accessed May 29, 2016, [http://www.europarl.europa.eu/news/en/news-room/20160518IPR27853/Committee-on-Civil-Liberties-Justice-and-Home-Affairs-meeting-23052016-\(PM\)](http://www.europarl.europa.eu/news/en/news-room/20160518IPR27853/Committee-on-Civil-Liberties-Justice-and-Home-Affairs-meeting-23052016-(PM)).

¹⁸² Ibid.

target the sharing of online terrorist propaganda.¹⁸³ Furthermore, in parallel to the ECTC Europol joined the specific computer network of the member states' Financial Intelligence Unit (FIU.net), which functioned since 2002 under the European Commission.¹⁸⁴ In case of ECTC, it aims to link the financial and criminal intelligence and provide more broad investigations by being used as a tool for tracking terrorism financing and intelligence sharing. Subsequently, one of the main directions of ECTC work is tracking the "foreign fighters" and terrorist networks with the help of Europol's Focal Point Travelers.¹⁸⁵

The ECTC was established within the Europol in order to provide efficient counter terrorism intelligence assessment with the facilitation of the existing capacities. In particular, the Europol databases on tracking the firearms and explosives will be also available to ECTC. As for the Europol Information System (EIS), which contains a huge amount of data on terrorist activity, it might become a core instrument for the ECTC as well.¹⁸⁶ Referring to other intelligence exchange systems such as SIENA and EIS, it has been stated that they are going to be available not only for the member states but for the key partners of Europol such as Eurojust and Interpol. What is more, it is emphasized that Eurojust should be fully involved into the activities of the ECTC in order to coordinate investigations and prosecutions. Additionally, the ECTC is going to provide assistance in cross-border investigations by creating a collaboration of experts.¹⁸⁷

With the wide scope of intelligence systems, which contains a huge amount of data, the question of data protection is quite crucial. The Council Decision on Europol has defined limits for storing information in its databases and limits to its usage. The issue of fundamental rights is extremely important of the EU institutions and the draft of Europol Regulation was already

¹⁸³ "Europol's European Counter Terrorism Centre Strengthens the EU's Response to Terror | Europol," accessed May 21, 2016, <https://www.europol.europa.eu/content/ectc>.

¹⁸⁴ Ibid.

¹⁸⁵ "The European Agenda on Security."

¹⁸⁶ Drewer and Ellermann, "May the (Well-Balanced) Force Be with Us! The Launch of the European Counter Terrorism Centre (ECTC)."

¹⁸⁷ "Europol's European Counter Terrorism Centre Strengthens the EU's Response to Terror | Europol.", 3-4.

concerted. Accordingly, Europol is supposed to function in accordance with the balance between security and human rights.¹⁸⁸

4.3 The functioning of ECTC

As we can see, ECTC unites the most important intelligence resources in order to provide comprehensive analysis for preventing and tackling terrorism within the EU. Despite the fact that the center functions for a short period of time, the results of this cooperation can be already visible due to the fact of current threat, which is present in Europe. However, the large amount of data is not publicly available that definitely influences the scope of such observations.

One of the key documents for revealing the goals of ECTC is the Europol Work Program, which became publically available in March 2016. It was underlined that this year the notion of the effective delivery of operational support, which consists of such elements as speed of response or information exchange and relevance, has some new components including “new unique services” of Europol.¹⁸⁹ Among them the objective to establish the ECTC can be found. This report stressed the expectations to the activities of ECTC, which are the increased efficiency of intelligence exchange, targeted investigations on illegal firearms trafficking for the purpose of terrorism, tracking the terrorist propaganda on the internet, in-depth analysis of possible threats and counter-terrorism measures to them as well as operational activities against terrorist networks and “foreign fighters”.¹⁹⁰

The intelligence cooperation within the databases of Europol has some noticeable improvements. The chief of ECTC emphasized that nowadays he can observe that the states are more engaged in the whole abovementioned process. For example, the data exchange within EIS on identification of the “foreign fighters” shows some plentiful results. He stated that the

¹⁸⁸ Drewer and Ellermann, “May the (Well-Balanced) Force Be with Us! The Launch of the European Counter Terrorism Centre (ECTC).”, 9-10.

¹⁸⁹ Europol, “Europol Work Programme 2016,” March 2, 2016, <https://www.europol.europa.eu/content/europol-work-programme-2016>, 15.

¹⁹⁰ Ibid., 21.

number of identified suspects increased from the number of 18 at the end of 2014 to more than 4000 by now.¹⁹¹

In order to examine the changes in counter-terrorist engagement, we can take a look at the last terrorist attack in Brussels on 22 March 2016, the time when the ECTC was already functioning. In the statement, which was published on the same day, the Europol officials condemned the attacks and indicated that the ECTC proposed full assistance to the Belgian authorities including its intelligence capacities.¹⁹² On 1 April it was highlighted that the ECTC experts had co-organized the operational meeting with the Belgian Federal Police, Eurojust and Interpol in order to “explore the international dimensions” of the Brussels attacks and analysis of the intel for the further investigations. Remarkably, Europol with ECTC were mentioned on the list.¹⁹³ It could be seen, that in this case the key role of ECTC was to provide and analyze data for the investigations.

Developing it further, the EU officials met criticism for inability to prevent the attacks in Paris and Brussels, while the data exchange remained on quite a low level.¹⁹⁴ The key aim of the ECTC is to improve the exchange of counter-terrorism intelligence as well as other related data while the successfulness of ECTC depends on the ability of Europol to facilitate the intelligence exchange between the member states and the third parties. The chief of ECTC stated that one of the major tasks of this center is to bring the EU dimension of the threat.¹⁹⁵ However, it can be concluded that the level of cooperation between the member states varies strikingly.

¹⁹¹ “Committee on Civil Liberties, Justice and Home Affairs - Meeting 23/05/2016 (PM).”

¹⁹² Europol, “Europol Condemns Attacks in Belgium,” accessed May 28, 2016, https://www.europol.europa.eu/latest_news/europol-condemns-attacks-belgium.

¹⁹³ Europol, “Belgian Federal Police and Europol Host Joint International Operational Briefing after Terrorist Attacks in Belgium,” accessed May 28, 2016, <https://www.europol.europa.eu/content/belgian-federal-police-and-europol-host-joint-international-operational-briefing-after-terro>.

¹⁹⁴ Vivienne Walt, “Europe’s Top Cop Warns More Attempted Attacks ‘Almost Certain,’” *Time*, May 16, 2016, <http://time.com/4336919/europol-terrorist-paris-brussels-rob-wainwright/>.

¹⁹⁵ Ibid.

The main indicator of the improvement of counter-terrorist cooperation within the framework provided by the EU could be seen in the increased involvement of the member states into the ECTC activities. The head of ECTC pointed out that the engagement of member states is one of the pillars of the center's work and after the latest attacks in Paris and Brussels the level of such engagement increased dramatically.¹⁹⁶ In particular, the member states can provide the crucial intelligence with the help of Europol databases and the liaison representatives of ECTC. In January the center had 5 people of seconded personnel and 39 Europol experts.¹⁹⁷ Remarkably, by the end of March, ECTC had 35 security experts from the member states and 40 experts from the Europol team.¹⁹⁸ In his interview after the Brussels attacks, Rob Wainwright stressed that “the United Kingdom, Germany, France, Italy, Spain and Austria have already seconded staff, and Belgium will do so very soon” and he expects that after the attacks the number of the experts from member states will increase.¹⁹⁹ Recently, during his speech in the European Parliament LIBE committee, the head of ECTC added to this list the liaison staff from the Netherlands.²⁰⁰ As we can see, the assistance was mostly provided by the states, which were either influenced by the recent attacks or previously stressed their strong interest in counter-terrorism cooperation.

4.4 Changes in cooperation and ECTC

In order to define the changes in current intelligence cooperation provided by the ECTC as a new institutional development, we need to look from the perspective of member states, which are already involved in this framework. According to Bjorn Fagersten, the state's wish to change the *status quo* and take part in the intelligence exchange varies within the balance of

¹⁹⁶ “Committee on Civil Liberties, Justice and Home Affairs - Meeting 23/05/2016 (PM).”

¹⁹⁷ “Europol's European Counter Terrorism Centre Strengthens the EU's Response to Terror | Europol,” accessed May 21, 2016, <https://www.europol.europa.eu/content/ectc>.

¹⁹⁸ Ibid.

¹⁹⁹ Zoya Sheftalovich, “Europol Needs More Staff from EU Nations to Respond to Terrorist Attacks,” *POLITICO*, March 24, 2016, <http://www.politico.eu/article/europol-needs-more-staff-from-eu-nations-to-respond-to-terrorist-attacks/>.

²⁰⁰ “Committee on Civil Liberties, Justice and Home Affairs - Meeting 23/05/2016 (PM).”

costs and benefits of this cooperation.²⁰¹ The main objective for the states that are already cooperating is to “secure their home territory”.²⁰² However, it was mentioned that the level of cooperation increased after the attacks in Paris and Brussels. Moreover, the collective political reaction that is reflected in the EU decision-making, shows the influence of the attacks on the level of counter terrorism cooperation. By now, as we can see, such countries as the UK (which has had its own intelligence service and opposed the establishment of the EU center for intelligence exchange) are currently taking part in ECTC cooperation.²⁰³ At the same time, we can identify that a number of states are still in the process of launching the cooperation with ECTC or trying to refrain from it. Accordingly, the problem of internal security became crucial for some of the states and it was assumed that the intelligence cooperation would provide more benefits rather than would harm its sovereignty, which led to this decision. It is quite a challenge to measure the extend to which each of the member states participate in the information exchange within the ECTC due to the specifics of counter-terrorism cooperation. As it was mentioned before, the intelligence sharing considered by the state as a threat to its own sovereignty. The problem could be less significant if the certain level of trust existed between the parties.²⁰⁴ That is why the Europol officials put a lot of efforts in order to increase the level of trust among the member states and provide the data exchange. The level of trust to Europol counter terrorism intelligence cooperation could be identified by analyzing the number of states, which are directly taking part in the activities of ECTC.

²⁰¹ Bjorn Fagersten, “Multilateral Intelligence Cooperation: A Theoretical Framework,” accessed May 16, 2016, <http://live.belfercenter.org/files/Fagersten%20theoretical%20framework.pdf>, 13.

²⁰² Bjorn Fagersten, “Multilateral Intelligence Cooperation: A Theoretical Framework,” accessed May 16, 2016, <http://live.belfercenter.org/files/Fagersten%20theoretical%20framework.pdf>.

²⁰³ Zoya Sheftalovich, “Europol Needs More Staff from EU Nations to Respond to Terrorist Attacks,” *POLITICO*, March 24, 2016, <http://www.politico.eu/article/europol-needs-more-staff-from-eu-nations-to-respond-to-terrorist-attacks/>.

²⁰⁴ Ibid.

If we look over the situation via the categories of scope and depth of this cooperation, we can observe changes in comparison with previous Europol cooperation. The ECTC has the defined set of tasks and tools for the intelligence cooperation, which allowed the organization to gain one the key positions in the EU counter-terrorism cooperation. The new Europol regulation will increase the capacities of ECTC, which is a positive step towards increasing the scope.²⁰⁵ At the same time, the depth of this cooperation is still questionable. It could be seen that the member states are cooperating on the tasks of ECTC in different manner. More precise, the density of such cooperation varies within the spheres of functioning of the ECTC, which could be seen on the example of the ECTC liaison officers – only some countries provided this sort of cooperation. It is important to mention that generally the terrorist attacks in Paris and Brussels influenced the EU counter-terrorist cooperation in a relatively positive way and increased both the scope and the depth of this cooperation.

The establishment of ECTC as a key intelligence and analytical counter-terrorism institution, which united the intelligence and analytical capacities of Europol related to counter terrorism is an institutional attempt to solve the problem of EU counter-terrorism cooperation. Markedly, the ECTC depends on the data exchange with the member states, its efficiency is strongly related to the states' attitude towards such cooperation. The center works on the joint investigations and analysis of the terrorist threats, its prevention and planned to be a platform of counter-terrorist action provided by the member states. Nevertheless, even after the new attacks and reinforcement of cooperation, the ECTC has a challenge to involve all the member states into the cooperation and information exchange which will define the effectiveness of this institution in particular and the EU counter-terrorism cooperation overall. The counter-terrorist cooperation within Europol is negatively influenced by the absence of will of the governments

²⁰⁵ “European Parliament Adopts New Regulation for Europol | Europol,” accessed June 1, 2016, <https://www.europol.europa.eu/content/european-parliament-adopts-new-regulation-europol>.

to improve the situation in this sphere – some changes are mostly influenced by the attacks.

Without such involvement and productive cooperation the changes after the establishment of ECTC could be quite limited.

Conclusion

This thesis aimed to analyze the intelligence cooperation in counter-terrorism within the EU.

Taking into the account the specifics of European Union as the supranational institution, with the free movement regime within its borders, the roots and process of establishment of the framework were emphasized. It can be concluded that the EU definitely influenced the structure of intelligence cooperation. However, the member states were not absolutely interested in establishing such institution because of the fact, that counter-terrorism was also considered as a sphere of domestic politics as well as the fear of intelligence leaks. Nevertheless, it was clearly seen that terrorist attacks motivated the member states to implement political decisions, which could be explained by the domestic reaction on such attacks. It is important to emphasize that the EU policy implications were either legislative or institutional. Despite the fact that the member states were obliged to implement the decisions of the EU, the uncomplete process resulted in problems within the cooperation frameworks.

The main focus of this research was on Europol, as one of the key European agencies on counter-terrorism and intelligence cooperation. Despite the attempts to reform the institution in order to improve the level of cooperation, the problem remained unsolved so far. This problem derives from the status of Europol, which has no operational power and unable to retrieve the necessary data from the member states which consider the agency as an additional bonus. These weak points in the institutional status of Europol influenced the quality of analysis and coordination of the member states' operational activities.

With the recent huge influx of terror within the EU, the policy makers decided to make new improvements within Europol and establish the ECTC which aimed to reinforce the counter terrorism intelligence cooperation with the member states. The institution united the data exchange systems of Europol in order to provide the pan-European platform for intelligence

gathering and analysis. In order to reveal the possible changes in level of cooperation within the new institution, the implication of new institutionalist methodological approach was used.

It is important to mention that the scope or data for the research was limited to the publically available resources. Due to the short period of time since the ECTC was established, there is also not enough sufficient evidences for revealing the changes in counter-terrorism cooperation. Thus, it could be suggested, that the situation will change in future.

Subsequently, it was emphasized that within the period of five months only seven countries seconded their officers in order to cooperate with the ECTC. Despite the fact that this number includes some key EU member states such as the UK or Germany and countries which were directly affected by the recent attacks, such as France and Belgium, the density of this cooperation will be not enough to provide the intelligence assessment for the whole EU. However, even if the number of representatives will increase, it will not guarantee the effective data supply for the ECTC analytical tasks.

Moreover, while revealing the structure of counter-terrorism and intelligence cooperation, it became clear that the political improvement of cooperation could be found not in creating the new institutions but in changes of the legal status of the agencies, which also depends on the member states' decisions. That also means, that the question of political will among the EU governments to provide such improvements remains the most crucial here.

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