



Guest Editorial

The European Union and Enlargement: Challenge and Opportunity for Europol in the Fight Against International Crime

JÜRGEN STORBECK – DIRECTOR OF EUROPOL

In half a century of existence, the European Union has demonstrated an immense capacity for growth and today we stand on the threshold of a further expansion which will greatly increase the population, geography and influence of the European ideal. It will also greatly increase the number of legal jurisdictions and diverse approaches to law enforcement which sit within the same political alliance. In his report to the Commission, in the month prior to the signing of the Treaty of Accession, Wim Kok, former Prime Minister of the Netherlands, described enlargement as, ‘the reunification of Europe’s peoples in a constitutional framework that encourages them to work together in peace and stability’.¹ However, at least in matters of criminal justice, there has never been a unified Europe except in one basic and essential fundamental – the common desire to bring the criminal to justice.

From state to state crimes have been defined differently, criminals have been treated differently, courts have been structured differently and the different agencies of law enforcement have each developed their own idiosyncratic procedures often complicated by differing powers and mandates. International criminal justice may have been defined by its differences, but, unfortunately, criminals have never been bound by similar constraints. Indeed, they have been all too quick to exploit them. On a pragmatic, if not always political, level, law enforcement has, in pursuance of that common desire, sought out formal and informal channels for mutual cooperation and the European Police Office (Europol) may be seen as a manifestation of this need for multilateral coordination and support.

It was the Maastricht Treaty of European Union which agreed the formation of Europol on 7 February 1992, but the Europol Convention (the basic legal instrument defining the organization²) did not come into force until 1 October

¹ W. Kok, *Enlarging the European Union: Achievements and Challenges* (European University Institute, San Domenico di Fiesole, Italy, 2003), p. 2.

² For further discussion on Europol’s legal basis see N. Lavranos, ‘Europol and the Fight Against Terrorism’ (2003) 8 EFA Rev, pp. 259–275.

1998 and full activities were not commenced until 1 July 1999. These dates are important because they indicate not only the time scales required for the existing number of Member States to react to any initiative, but also show that, in many respects, Europol is still a relative newcomer.

Europol is an international organization of the European Union which deals with criminal intelligence and exists to 'improve the effectiveness and cooperation between the competent authorities of the Member States in preventing and combating . . . serious forms of international organized crime where there are factual indications that an organized criminal structure is involved'.³ It falls under Justice and Home Affairs in the third pillar of the European Union. Because of this, unanimous approval is required from every Member State for all substantive matters and organizational policies. Europol's Management Board, which provides the first level of oversight and supervision, consists of one delegate from each Member State and, although their meetings are driven by a general spirit of cooperation, it is already often difficult to reconcile various national views and to reach a consensus. Within a year, with ten more national representatives added to the 15, reaching agreement is likely to prove even more challenging. Such issues, however, are symptomatic of the challenges faced by all EU institutions and have been well rehearsed elsewhere.⁴ For this reason, it is more useful to focus on matters which relate more specifically to the activities of Europol.

Europol was created in recognition of the fact that crime does not stop at international frontiers, but legal jurisdictions do. Since its inception, Europol has sought to manage these political boundaries by fostering closer cooperation and understanding between law enforcement authorities, not only within existing Member States, but also with those third States and Organizations sanctioned by the Council.⁵ The Council's list has, logically, prioritized applicant countries. At the time of writing,⁶ all Accession States either have cooperation agreements in place with Europol or are well on the way to finalizing them. This means that information and intelligence exchange, the core business of Europol, is already well established as a principle within the greater European area. Europol's policy, of welcoming liaison officers from all cooperation countries, means that, on a practical

³ Article 2, Convention based on Article K3 of the Treaty of European Union, on the establishment of a European Police Office, OJ, C316, 27 November 1995. Article 2 continues, ' . . . and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned'.

⁴ See, for instance, A. Ott and K. Inglis (eds), *Handbook on European Enlargement: A Commentary on the Enlargement Process* (TMC Asser Press, The Hague, 2002).

⁵ Council Decision of 27 March 2000, OJ, C 106/1, 13 April 2000 and Council Decision of 13 June 2002, OJ, C 150/01 22 June 2002.

⁶ May 2003.

level, law enforcement agencies from these countries have a real and vital operational connection with the organization and, through it, with all the Member States.

This is not to underestimate the considerable challenges that will arise when the EU expands to include countries which are recognized as transit zones and/or source areas for certain types of international criminality. For instance, it remains to be seen how populations once motivated to enter the EU illegally will react once they can legitimately benefit from the free movement of persons. Whatever the reaction, their criminal facilitators will be confronted with a number of stark choices. They could decide to use their connections for other types of illegal commodity/activity or perhaps target a clientele from beyond the new borders. One thing is for certain, they will not cease trading.

In the case of drugs, the populations in the enlargement zone are becoming more attractive to traffickers. There is no doubt that drug abuse in the Accession States is on the increase⁷ and that some countries have been exposed to increased targeting. These phenomena, however, are not an aspect of enlargement per se, but, in certain countries, the result of a liberalization of the economy and border controls in the post-Soviet era. In a sense, they are simply the development of commercial realities already found within Member States.

There is, therefore, a temptation to think that, for Europol, enlargement will simply mean 'business as usual'. However, this would be to underestimate the impact of increased membership. The EU, and Europol in particular, is totally committed to the integration of the Accession States. In accordance with EU Council policy, all Accession States now enjoy observer status at the various Europol committees (where the legal rules permit). Over and above normal activity in developing external relations, Europol was quick to establish a project group tasked with scoping the organizational and other needs arising from the enlargement process. The budgetary, personnel and accommodation issues have been identified as well as the changes to future business and workload as assessed by our operational units. All these factors have had to be incorporated into the long-term planning for the organization. In addition, in the week following the signing of the Accession Treaty, Europol organized a successful seminar for the new membership on the practical ramifications of enlargement. Allied to these activities is an ongoing programme of developing professional awareness of the services that Europol provides. This includes hosting visits to The Hague by key personnel, participating in awareness seminars abroad and offering training on specialist subjects such as criminal analysis, synthetic drugs laboratories and internet crime.

⁷ *Drugs in Focus: Bimonthly Briefing of the EMCDDA*, March–April 2003, <www.emcdda.eu.int>.

The foundations upon which cooperation is built are trust and confidence in each other's systems. One cannot simply brush aside views expressed in some quarters which have raised valid concerns about the issue of corruption.⁸ Whilst EU Member States have developed their mutual systems of bilateral and multilateral cooperation over time, Accession Countries do not all have the same breadth of experience behind them. For example, in certain cases, the posting of liaison officers to Europol has meant creating the necessary procedures from zero. Though doubts may have been expressed as to the trustworthiness of the Accession State machinery,⁹ the presence and participation of these new colleagues at Europol has done much to dispel any anxieties. Moreover, as a prerequisite to cooperation with Europol, Accession Countries have been subject to the most rigorous and comprehensive assessment of their data protection regimes. In some cases, this has even required the passing of new laws in order to match EU standards on the handling of personal data.

Communication, too, is of prime importance. Police or customs officers towards the end of their careers, some of them in the highest ranks, may find it difficult to be open to the necessary changes. Their attitudes and loyalties were fixed in a different era. Perhaps they are only able to communicate in the language of their homeland and with a vocabulary derived from another philosophy of policing. For them, computers and new technology have only the vaguest significance. Under such circumstances, dialogue is not always easy. Now there is a new breed of young officials, bright, well trained and highly skilled in modern approaches to policing. They are literate both in IT and in the language of cooperation and are well placed to support enlargement.

Enlightened staffing in the Accession States has also been accompanied by new IT infrastructures which greatly assist in the communication process. Overhauling their systems has led to a new investment in technical services. They have been able to introduce hardware solutions which would be hard to justify in Member States where equipment can be old, or incompatible, but still works (after a fashion). In terms of technical systems, the Accession States are in a much better position to 'talk' to Europol than some existing Member States.

⁸ The European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs felt it necessary to 'reiterate' the 'absolute priorities of combating fraud and corruption', *Opinion on the conclusions of the negotiations on enlargement in Copenhagen*, 11 March 2003, European Parliament 2003/2014(INI) para. 21 (18).

⁹ 'There appears to be a widespread consensus that corruption in Central and European countries is a more serious problem than in other countries of the OECD including existing EU member states.' Open Society Institute, *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy* (2002) p. 31.

It should also be acknowledged that some Accession Countries do not necessarily enjoy equal confidence in their legal structures. Within existing Member States, criminal justice systems have developed over centuries and are based on national, historical and culture-centred approaches to law enforcement. They are homogeneous systems which, while broadly dealing with the same issues, have developed their own safeguards, checks and balances. This can lead to difficulties when seeking to align procedures across national boundaries or to harmonize incompatible legislation. Within many of the new Member States, such differences have been exacerbated by the legacy of bureaucracy, evolved from different cultural and legal philosophies, bequeathed by previous regimes. In the last decade Accession Countries have made great strides in developing new legal structures and in revising legislation often within a very different legal context. They have framed modern laws and regulations which reflect Council Decisions and EU policy on harmonization. In some respects they have made faster and more thorough progress towards implementing EU law than existing Member States.

Of course, no matter how convenient it may be to treat enlargement as a single process, not all Accession States are the same. Smaller countries like Cyprus, Slovenia and Malta face somewhat different challenges to a country the size of Poland and on a different scale. Some are very well advanced in their preparations for EU membership whilst others still have some way to go. The EU law enforcement community as a whole shares a responsibility for fostering the revised criminal justice systems in the new partner countries. Due consideration has to be given to the various strengths and weaknesses and any offers of support tailored accordingly. Europol, in particular, plays a key role in providing advice on current policies, procedures and laws in Member States. In this way Europol can also be a catalyst for change in the present and future Member States by identifying models for innovation. Engaging in this way leads to greater confidence and enhanced cooperation, but also helps to develop the overall capacity for combating crime migrating from East to West.

It is far too easy to overlook the fact that the new Member States will undoubtedly make significant contributions to EU law enforcement. They demonstrate a greater willingness to share information and, generally, are less entrenched in restrictive nationalist-centred thought than some of the current EU membership. Because of the radical restructuring and self-assessment they have undergone, they have been forced to challenge old ways of thinking, to reach out for new ideas and to seek innovative approaches to combating twenty-first-century crime. Europol is the natural focus for the synthesis of best practice in EU law enforcement which can benefit greatly from the participation of non-EU States. Following enlargement, Europol's central role

as a point of coordination and dissemination for such ideas is likely to be even more significant.

International organized crime cannot be effectively addressed by disorganized international policing. If law enforcement cannot offer a unified and coordinated response, the much vaunted areas of freedom, security and justice¹⁰ will never truly be realized. EU enlargement brings with it the exciting opportunity for a comprehensive approach to combating organized crime which is far more effective and inclusive. In this respect Europol is well placed to promote and service the needs of both new and old Member States and to harness the willingness for cooperation shown by our partner countries. There are challenges ahead, but, more importantly, also the potential for enormous gains in the fight against international organized crime.

¹⁰ The Treaty of Amsterdam OJ 1997 C 340/1.