



Cooperation Agreement between the European Central Bank and Europol for Combating Euro Counterfeiting. Some Critical Opinions

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Abstract: Within this paper there has been examined the agreement between the European Police Office (Europol) and the European Central Bank (ECB) for preventing and combating euro counterfeiting, focusing on certain provisions which take into account the aim and the exchange of information between the two European institutions. The novelty of this paper relates to the achieved examination, where it is highlighted the importance of European legal instrument and the critical opinions and proposals for improving the agreement. The paper can be useful to academics and practitioners who conduct their activity within this area.

Keywords: Crime; exchange of information; databases; applications for assistance

1. Preliminary Issues. Europol and its Powers

Providing a space of freedom, security and justice, an objective set by the EU is not possible without concrete and also simultaneously action in two main directions.

The first direction regards the adoption of normative acts to ensure judicial cooperation in criminal matters between Member States, and the second one involves the establishment of European institutions with concrete tasks of preventing and combating cross-border crime.

Among the European institutions with concrete tasks on preventing and combating crime, by emphasizing the specific activities of judicial cooperation in criminal matters between Members responsible in the field of European Union, we refer to

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Eurojust¹, the European Judicial Network², Europol³ and the European Police College.⁴

Given the subject of this study, and examining the Agreement between Europol and the European Central Bank to combat counterfeiting of the euro, we will proceed in introducing some comments on the European Police Office (Europol).

Thus, the establishment of a European Police Office (EUROPOL) it was decided by the European Union Treaty of 7 February 1992 and governed by the Convention under Article K3 of the Treaty on European Union establishing the European Police Office (Europol Convention).

Subsequently, the Europol Convention has undergone a number of amendments enshrined in three protocols which have entered into force after a lengthy process of ratification.

The Europol Convention signed on 26 July 1995 has been ratified by all member states and entered into force on 1 October 1998. Effectively, the Europol began to operate on 1 July 1999 (Boroi, Rusu & Rusu, 2016, p. 939).

As emphasized in the doctrine, “Subsequently, amid the proliferation of crime and the need to achieve the objective set by the EU, to ensure an area of freedom, security and justice, it has imposed the simplification and the improvement of the way of functioning the Europol, which may be achieved through measures aimed at widening the possibilities for Europol to assist and support the competent law enforcement authorities in Member States without being executive powers”. (Boroi, Rusu & Rusu, 2016, p. 939).

In these circumstances, it was adopted the Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)⁵, a legislative act which replaced the Europol Convention.

As stated in the provisions of art. 3 of the European legal instrument the “objective of Europol consists of supporting and strengthening the activity of the competent

¹ Decision 2002/187/ JHA of 28 February 2002 establishing Eurojust to strengthen the fight against serious crime, published in the Official Journal L 63 of 6.3.2002, p. 1.

² Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, published in the Official Journal L 348/130 of 24 December 2008.

³ Europol Convention, published in the Official Journal C 316 of 27.11.1995, p. 1.

⁴ Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) published in the Official Journal, L256 of 01.10.2005, p. 63.

⁵ Published in the Official Journal L 121, 15.05.2009, p. 37.

authorities of the Member States and their mutual cooperation for preventing and combating organized crime, terrorism and other serious crime affecting two or more Member States”.

We notice “that that the mentioned objective covers two or more member states, as when the criminal actions are executed in a single Member State, the exclusive authority for solving the issue belongs to that State.”

However, given that although the incriminated offense was executed within a single Member State, and some evidence may be obtained in another Member State, it will be incident within the competence of Europol.

This applies to cases where it is necessary to identify people, objects used in committing the offense, of some witnesses, etc.” (Boroi, Rusu & Rusu, 2016, pp. 939-940)

The Europol's competence includes “the organized crime, terrorism and other serious crime (as set out in the Annex), affecting two or more Member States so as to require a common approach by the Member States, as a result to the scale, importance and consequences of crime.

Also, the competence of Europol also includes the following groups of offenses considered to be related” (Boroi, Rusu & Rusu, 2016, pp. 940-941):

- “Committed crimes for the procurement of the necessary means for perpetrating acts within the sphere of competence of Europol;
- Criminal offenses committed in order to facilitate or commit acts within the sphere of Europol’s competence;
- Criminal offenses committed in order to ensure the impunity of acts within the competence of Europol” (Art. 1, 3 and 4 of the European legislative act).

Regarding the main tasks of Europol, “according to the provisions of European legislative act [art. 5 paragraph. (1)], they are:

- collecting, storing, processing, analyzing and exchanging information and intelligence;
- informing without delay the competent authorities of the Member States via the national unit referred to art. 8, information concerning them and any connections identified between criminal offenses;

- to support the investigations in the Member States, in particular by forwarding relevant information to the national units;
- requiring the competent authorities of the Member States concerned to initiate, to conduct or to coordinate investigations and to suggest in some cases setting up of joint investigation teams;
- providing intelligence and analytical support to Member States on major international events;
- preparing assessments on threats, strategic analyzes and general situation reports related to its objective, including threat assessments arising from organized crime.”

These tasks “include supporting Member States in the collection and analysis of information on the Internet to identify criminal activities facilitated by or committed using the Internet (Boroi, Rusu & Rusu, 2016, p. 941).

Europol also has the following additional tasks:

- acquiring specialized knowledge on the investigation procedures of the competent authorities of the Member States and providing advice in conducting investigations;
- providing intelligence to assist and promote the efficient and effective use of the resources available at national and Union level for operational activities and support of such activities [art. 5 paragraph. (3)] of European legal instrument).

At the same time, “according to the budgetary resources, the personnel available and within the limits set by the Management Board, Europol could assist Member States through technical support, advice and research in the following areas” (Boroi, Rusu & Rusu, 2016, p. 942):

- training of members of their competent authorities, where appropriate, in cooperation with the European Police College;
- organization and equipment of those authorities by facilitating the provision of technical support between the Member States;
- crime prevention methods;
- technical analysis and forensic methods and investigative procedures.

Considering the object of study, point out that according to art. 5, paragraph (5) of the European legislative act, Europol shall fulfil also the role of the central office for combating euro counterfeiting, in accordance with Council Decision 2005/511/JHA

of 12 July 2005 on protecting the euro against counterfeiting¹, by designating Europol as the central office for combating euro counterfeiting. Europol may also encourage the coordination of measures implemented to combat euro counterfeiting by the competent authorities of the Member States or in joint investigative teams, where appropriate in liaison with Union entities and third States' bodies. Upon request, Europol may financially support investigations of euro counterfeiting.

The European legal instrument under examination was concluded between the two institutions under the provisions mentioned above, and the Regulation (EC) No. 1338/2001 of the Council, which defines the necessary measures to protect the euro against counterfeiting, and the conclusion of the two institutions to an agreement under which Europol has access to technical and statistical data held by the ECB on counterfeit euro banknotes and coins discovered both in Member States and third countries.

2. Objective, Consultation and Exchange of Information, Contacts

The objective of the agreement is to establish a framework for effective cooperation between Europol and the European Central Bank, within the competences conferred on them by the law of both parties, in compliance with their respective rules and regulations. This cooperation between the two European institutions, aims at:

- preventing, detecting and combating measures for threats caused by illegal activities related to euro banknotes and coins, means of non-cash payment and the security payments;
- the assistance in these areas, given by the two sides of national, European and international authority, (art. 1 of European legal instrument).

The Parties shall consult regularly the policies to be adopted and implemented on matters of common interest in order to achieve goals, to coordinate activities and avoiding duplication of their efforts. The president of the ECB and Europol director (or persons designated by them) will meet at least once a year to review how the agreement is implemented.

To meet the targets set in the agreement between the two institutions, there will be information sharing, that information cannot see data on a person whose identity is

¹ Published in the Official Journal L 185 of 16.07.2005, p. 35.

indicated, or certain identifiable individuals. Between the two sides there can be conducted personnel exchanges through detachment.

The contacts from the ECB are the Director of Banknotes Directive at the ECB, in terms of cooperation counterfeiting euro banknotes and coins) and the Director General of the Directorate General Market Infrastructure and payments, concerning the cooperation on combating fraud schemes within the payment systems and counterfeiting means of non-cash payment.

The contact person within Europol is the Deputy Director of the Operations Department (art. 2 and 3 of the European legislative act).

3. Specific Rules Relating to Euro Counterfeiting

Europol and the ECB shall provide each other, promptly and regularly, information regarding counterfeiting of the euro and other currencies. In the case where the information is transmitted by Europol, they concern them to receive from national, European and international authorities of law enforcement, and in the case of the information transmitted by the ECB, it is the information obtained from national, European and international authorities.

In matters of counterfeiting of the euro, except operational information, the parties shall inform each other on public statements and external communication policy.

Europol will assist the ECB in any relationship with national, European and international organizations of law enforcement in matters of counterfeiting of the euro (art. 4 of European legislative act).

ECB will provide online access in read-only mode database CMS officials of Europol designated as contact persons for this purpose under art. 3, paragraphs (2). Access does not allow the Europol agents to enter data directly into the CMS database. The access arrangements, including arrangements relating to systems, specified subsequently by the exchange of letters between the ECB President and Director of Europol.

The ECB will promptly inform Europol on creating new common classes of counterfeiting within the CMS and of the discovery of any large quantity of counterfeit euro banknotes.

The ECB will provide the Europol specimens of genuine euro banknotes and the technical descriptions attached, and at least one sample of each counterfeit euro

banknote, that it was assigned a new class indicative CMS. This provision shall be implemented so as not to impede the use or retaining as evidence in criminal proceedings the banknotes suspected to be counterfeit (art. 5 of the European legislative act).

At the same time, the parties shall exchange any requests for supply of technical expertise or the taking of evidence within judicial proceedings relating to counterfeiting of the euro and establish appropriate procedures for coordinating their respective responses to each such request.

Also, the two institutions will cooperate to establish a clear channel of communication regarding requests for assistance in law enforcement through Europol (art. 6 of the European legislative act).

The two institutions will provide each other with the results of each technical analysis (conducted by ECB) and the technical analysis of counterfeits (achieved by Europol or the third party on its behalf).

4. Preventing Fraud and Counterfeiting the Means of Non-Cash Payment

Acting with the common purpose of preventing counterfeiting of the euro, the two institutions can exchange the following types of information:

- Reports and aggregate statistical data;
- Information on major security incidents, risk assessments and technologies;
- The findings arising from the ECB and Europol relevant activities, subject to the applied confidentiality applied.

Relevant information received from Europol can be transmitted to the ECB and other members of the ESCB, on a need to know basis, except where the Europol expressly indicates that the information concerned should not be shared with other institutions. Europol ECB may submit relevant information obtained from other members of the ESCB, under the condition that they have the relevant NCB agreement (art. 8 of the European legislative act).

ECB and Europol shall ensure that the information received from the other party meets the standards of privacy and security regarding the processing of information

and that they receive a level of protection at least equivalent to that offered by the measures applied to that information by the other party.

The party providing the information is responsible for choosing the appropriate confidentiality level for information supplied and it shall ensure that this level is clearly indicated. In accordance with the principle of proportionality, each party assigns the privacy levels to the lowest possible level and modify them accordingly whenever possible.

Both sides can demand the amendment of the chosen confidentiality level for the supplied information, including the possibility of total elimination of the confidentiality level.

Each party will process personal data received at the administrative level in accordance with data protection rules that can be applied (art. 9 of the European legislative act).

Given that a party or a person suffers a prejudice as a result of the fact that the other party, acting intentionally or negligently, incorrectly or unauthorized processing information, the latter is liable for such prejudice.

All the disputes which may arise in the interpretation or application of this Agreement shall be settled through consultations and negotiations between the representatives of the parties (art. 10 and 11 of the European legislative act).

5. Conclusions and Critical Opinions

The developments in crime in the area, highlighting the danger represented by the growing counterfeiting of the euro has prompted the European institutions to adopt a series of decisions aiming at preventing and combating more effectively this scourge.

In this respect the Commission Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, the European legal instrument that provides an general framework for the deployment of preventive and combating actions by the national and European competent authorities.

Amid the detection of dysfunctions in terms of collaboration between some institutions directly involved in complex activities of prevention and combating euro counterfeiting it has arisen the need to conclude legal instruments that ensure the achievement of the established objective.

In this context, the agreement between the European Police Office (Europol) and the European Central Bank, a tool which in its essence sets a number of tasks specific to cooperation in this field between the two European institutions.

No doubt that this agreement involves, in addition to the assumption of obligations by the two signatory institutions and the assumption of obligations also from the national authorities of the Member States.

The carried out examination revealed on the one hand specific tasks undertaken by the two institutions fundamental to the functioning of the European Union, on the other hand the necessity and importance of their joint actions.

We appreciate, however, that the tasks set out in the Agreement are too general, something which in practice will cause some failure in terms of common action of these institutions.

On the other hand, we should mention that an institution is not allowed to substituting another, each of which will perform its powers conferred by the European law.

We appreciate that this agreement can be improved by mentioning some clearer provisions that regard: informing immediately the Europol about any suspected counterfeiting of the euro; informing Europol about some persons on whom ECB holds some data that could be part of organized crime groups that have the object of counterfeiting of the euro; effective, permanent and operational exchange of information between the two institutions in connection with counterfeiting of the euro; the transmission of information required investigation or investigations, operational, without requiring the consent of national authorities, etc.

All these additions would enable more efficient business cooperation between the two European institutions, with direct implications in terms of preventing and combating the crime of this kind.

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