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### Development of the Organised Crime Threat Assessment (OCTA) and Internal Security Architecture

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Policy Department C  
Citizens' Rights and Constitutional Affairs



**DEVELOPMENT OF THE ORGANISED  
CRIME THREAT ASSESSMENT (OCTA)  
AND INTERNAL SECURITY ARCHITECTURE**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

MARCH 2009  
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**Directorate General Internal Policies  
Policy Department C  
Citizens' Rights and Constitutional Affairs**

# **DEVELOPMENT OF THE ORGANISED CRIME THREAT ASSESSMENT (OCTA) AND INTERNAL SECURITY ARCHITECTURE**

## **STUDY**

### Abstract:

This briefing paper provides an overview of the existing European Union approach to issues of security, counter-terrorism, and organised crime. In particular, it focuses on the role of the European Security Strategy (ESS) in the formation of policy and in the development of new institutions and institutional arrangements within the EU, and the influence of the Organised Crime Threat Assessment (OCTA).

The paper argues that steps should be taken to streamline and rationalise the existing structures concerned with security, counter-terrorism and organised crime, and strongly recommends that a “Committee on Internal Security” be established to act as a single point of reference and clearinghouse for the work of the various EU agencies and institutions concerned with security, counter-terrorism and organised crime.

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## **EXECUTIVE SUMMARY**

This briefing paper provides an overview of the existing European Union approach to issues of security, counter-terrorism, and organised crime. In particular, it focuses on the role of the European Security Strategy (ESS) in the formation of policy and the development of new institutions and institutional arrangements within the EU, and the influence of the Organised Crime Threat Assessment (OCTA).

Based on the evidence presented in this paper, it appears clear that the ESS has played a major role in improving awareness of the need for greater coordination between EU and national agencies as regards the promotion of security, counter-terrorism activity, and the investigation and prosecution of organised crime. Given that the EU has no formal powers to mandate how individual Member States address these issues, the ESS has proved to be an effective mechanism for promoting collaborative efforts between Member States and the EU, and has led to the strengthening of a number of existing EU institutions, including Europol. Likewise, the OCTA has led to increased awareness of the problem of organised crime in the EU, and has helped to foster information sharing and police cooperation across Member States.

Despite these successes, the EU approach to security, counter-terrorism and organised crime remains fragmented and characterised by high levels of bureaucracy, inefficiency, and institutional inertia. In part, this stems from the fact that no single agency or individual currently has responsibility for these matters. Although the introduction of the Counter-Terrorism Coordinator has led to some improvements in this area, he has struggled to provide the sort of overarching management and strategic planning required by the ESS. Furthermore, the reluctance of individual Member States to grant additional powers or commit additional resources to agencies like Europol has meant that the EU has been limited in its ability to provide the sort of central support and guidance that is clearly needed.

In light of these and other concerns, this briefing paper recommends that steps be taken to streamline and rationalise the existing structures concerned with security, counter-terrorism and organised crime. Given the number of agencies either directly or indirectly involved in the gathering of information, the production of intelligence,



and the development of policy, it is extremely difficult for the EU to develop strategies that go beyond the most general statements of intent and calls for greater cooperation between Member States. With this point in mind, this briefing paper concludes by strongly recommending the creation of a central “Committee on Internal Security”, which can act as a single point of reference and clearinghouse for the work of the various EU agencies and institutions concerned with security, as well as provide the sort of direction and policy coordination that is currently needed.

## **Introduction**

In the aftermath of the events of September 11<sup>th</sup> in the United States and subsequent terrorist attacks in Madrid and London, there has been growing recognition within the European Union of the need for Member States to work more closely on matters of security and policing. In addition, in recent years organised crime has come to be regarded by many as a key threat to the internal security of the EU, and a problem that requires a coordinated and concerted response from Member States.

This briefing paper provides an overview of institutional arrangements and policies that have been developed within the European Union to respond to the dual threats of terrorism and organised crime. In particular, this paper focuses on the relationships between the various agencies responsible for monitoring and generating intelligence on terrorism and organised crime, and suggests a number of ways in which existing intelligence sharing and operational practices might be improved.

For the sake of clarity and accessibility, this briefing paper is divided into three main sections. Section One considers the development and major aims of the European Security Strategy, and provides an overview of the key institutions and arrangements involved in its implementation. Section Two then examines the role played by Europol and other EU agencies in the fight against organised crime and the development of the Organised Crime Threat Assessment (OCTA). In addition, this section considers the role played by a range of other EU and national institutions in the promotion of security and the policing of organised crime. Finally, Section Three concludes the report by identifying some of the key challenges facing the existing security and policing framework.

## Section One: Security and Counter-Terrorism in the EU

### 1.1 The European Security Strategy (ESS)

At the heart of the European Union's approach to questions of security and the threat of terrorism is the European Security Strategy (ESS).<sup>1</sup> Drafted by the EU's High Representative for the Common Foreign and Security Policy Javier Solana, the policy was adopted by the Brussels European Council in December 2003. The product of the collective thinking and shared experiences of the Member States, the strategy establishes a common approach to questions of security and sets out three clear objectives:

- (1) to identify global challenges and key threats to the security of the EU;
- (2) to build security in the EU neighbourhood; and
- (3) to promote an international order based on effective multilateralism as regards matters of security.

In the five years since it was first adopted, the ESS has come to be regarded as a central component of the European Security and Defence Policy (ESDP), and as such it informs much of the activity that takes place within the EU under the auspices of the Common Foreign and Security Policy pillar. As has been noted by Professor François Heisbourg of the International Institute for Strategic Studies, it is important to recognise, however, that the ESS is not a strategy in the traditional sense. It does not, for example, contain a detailed list of recommendations or set out a specific programme of action. Instead, it presents what might best be described as—in the words of Professor Heisbourg—a vision for the future of European security policy:

It analyses the world and then goes on to state its vision of the manner in which the EU could present itself within that world... But it is not a strategy in

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<sup>1</sup> European Council (2003), *European Security Strategy: A Secure Europe in a Better World*, Brussels, 12 December 2003, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

the sense that it says: here are the means towards the end and this is how we are going to deploy those means towards those ends.<sup>2</sup>

Despite this fact, the ESS has become an important touchstone for those parts of the Council and Commission concerned with issues of security and organised crime.<sup>3</sup> According to a recent report on the implementation of the ESS, the strategy has provided the basis for the development of a range of measures that have made it easier to pursue investigations across borders and to coordinate criminal prosecutions.<sup>4</sup> In particular, the report notes that since the strategy was first adopted, the European Union has developed a number of other more specific programmes and strategies, including the Hague Programme in 2004 and a new Strategy for the External Dimension of Justice and Home Affairs in 2005.<sup>5</sup> In addition, there is a new EU Counter-Terrorism Strategy, which advocates a four-pronged approach to security and anti-terrorism: preventing radicalism; protecting targets; pursuing terrorists; and responding to the aftermaths of attacks.<sup>6</sup> This EU Counter-Terrorism Strategy has also led to the appointment of a Counter-Terrorism Coordinator (CTC), who is responsible

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<sup>2</sup> Heisbourg as quoted in UK House of Lords European Union Committee (2008), *Adapting the EU's Approach to Today's Security Challenges: The Review of the 2003 European Security Strategy*, 31<sup>st</sup> Report of Session 2007–08, HL Paper 190 (hereafter HL (2008) *ESS Report*), p. 9. This view was echoed by the then UK Minister for Europe, Jim Murphy MP, in his evidence to the House of Lords. According to Mr Murphy, the ESS is “a political declaration of intent about what Member States are willing to collectively enter into to support and protect their own and other populations... [I]t is not a legal document so it will always rely on political will” (p. 9).

<sup>3</sup> *Ibid*, p. 16.

<sup>4</sup> High Representative for CFSP (December 2008), *Report on the Implementation of the European Security Strategy: Providing Security in a Changing World* – Council document S407/08, endorsed at the European Council on 11-12 December 2008 (hereafter EC (2008) *ESS Report*), p. 4.

<sup>5</sup> European Council (November 2004), *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* - OJ C 53 of 3 March 2005 A Strategy on the External Dimension of the Area of Freedom, Security and Justice, COM(2005) 491.

<sup>6</sup> European Council (2005), *The European Counter-Terrorism Strategy*, Brussels, 30 November 144469/4/05.

for overseeing the European response to terrorism and makes recommendations to the European Council.<sup>7</sup>

## **1.2 Improving Coordination between Key EU Agencies**

One of the main successes of the ESS has been improving the levels of coordination between key EU agencies such as Europol and Eurojust. Although the EU does not play a direct role in counter-terrorism operations, under the auspices of the ESS it has been able to provide Member States with access to an increasingly sophisticated network of information and intelligence services. Both Europol and Eurojust have seen their roles expand since the adoption of the ESS, with the result that there is now greater operational coordination between the anti-terrorism activities of Member States and a more coherent approach to the development of domestic security policies.<sup>8</sup>

More crucially, the ESS has also led to an expansion in the role of the EU Joint Situation Centre (SitCen). Previously focused on assessing external threats to EU security, it now also receives information and intelligence from Member States on internal threats, particularly those associated with terrorism. The creation in February 2005 of a dedicated counter-terrorism division within its existing Civilian Intelligence Cell (CIC) has given SitCen the capacity to assess threats to transport and other parts of the critical infrastructure within the EU, as well as the ability to monitor trends in terrorist financing.<sup>9</sup> Since 2005, SitCen has produced a series of intelligence-based reports for both the Council and the Commission, which have helped to inform and shape the development of EU policy in relation to counter-terrorism while also

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<sup>7</sup> European Council (2008), *Discussion Paper on EU Counter-Terrorism Strategy: Report of the Counter-Terrorism Coordinator*, 19 November 2008, 15983/08 (hereafter EC (2008) *Report of the Counter-Terrorism Coordinator*).

<sup>8</sup> EC (2008) *ESS Report* (fn 4 above).

<sup>9</sup> SitCen is currently divided into three main units: the Civilian intelligence Cell (CIC), which produces political and counter-terrorism assessment; the General Operations Unit (GOU), which operational support, research and non-intelligence analysis to Member States; and the Communications Unit, which deals with communications security and is responsible for the Council's communications centre (ComCen).

providing a firm foundation for cooperative operations and intelligence sharing between Member States.

Finally, the introduction of the ESS—which explicitly recognises the threat posed to EU security by organised crime—has led to various initiatives designed to improve the ability of EU institutions and Member States to respond to the challenges of organised crime. The most notable of these has been the introduction of the annual Organised Crime Threat Assessment (OTCA), which is produced by Europol with contributions from Member States and key EU institutions such as the European Central Bank (ECB), European Monitoring Centre for Drugs and Drug Addiction (ECMDDA), Eurojust, Frontex, and the European Anti-Fraud Office (OLAF). The development of the OCTA will be discussed in the next section, alongside an overview of the key EU institutions involved in the prevention and prosecution of organised crime.

### **1.3 Successes and Challenges**

The introduction of the ESS has undoubtedly raised awareness at all levels within the EU of the need for a more coordinated and efficient approach to matters of security, counter-terrorism, and organised crime. Although it does not provide a detailed “road-map” for the development of policies per se, the vision it sets out has clearly influenced the development of policy since 2003 and led to the creation of new security institutions and the strengthening of existing agencies within the EU. Most recently, the influence of the ESS can be seen in the Justice and Home Affairs (JHA) Council’s adoption of conclusions on the principle of convergence. These conclusions, which provide guidance on operational cooperation between Member States’ law-enforcement services, were discussed by the JHA Council at a meeting on 24 October 2008 and aim to improve cooperation among Member States by promoting harmonisation of equipment and practice, joint action and legal frameworks.

There is, however, an inherent tension at the centre of this aspirational (as opposed to prescriptive) approach to EU security, terrorism, and organised crime. Although there is clearly a collective interest in improving EU security and fostering greater

cooperation between Member States when it comes to matters of terrorism and organised crime, ultimately security and law enforcement are pursued at a national level. As a consequence, while the ESS has enjoyed broad support, Member States have nonetheless maintained control over nearly all aspects of their operational responses to security and criminal threats within the EU. Furthermore, Member States have thus far been largely unwilling to grant greater powers of investigation or prosecution to agencies like Europol or to increase the level of resources they currently provide in support of EU-level security and anti-terrorism activities. Instead, they have tended to act bilaterally when it comes to cross-border investigations, sharing information and intelligence on an *ad hoc* basis or in accordance with longstanding bilateral agreements.

This fact was recently acknowledged by the Council in a report on the implementation of the ESS.<sup>10</sup> While noting that the EU has made substantial progress in the area of security and organised crime in the last five years, the report concedes that there is still much to be done and that the ESS remains a work in progress. More specifically, the report openly states that there are still substantial improvements to be made in terms of coordination, both between the agencies of the EU and between the EU and Member States:

We need to improve the way in which we bring together internal and external dimensions. Better co-ordination, transparency and flexibility are needed across different agencies, at national and European level. This was already identified in the ESS, five years ago. Progress has been slow and incomplete.<sup>11</sup>

In part, the problem of coordination stems from the fact that a wide range of institutions and agencies are involved in the development of security and anti-terrorism policy at the EU level.<sup>12</sup> Although the introduction of a Counter-Terrorism Coordinator was a positive step, the Coordinator's task has been made especially

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<sup>10</sup> EC (2008) *ESS Report* (fn 4 above).

<sup>11</sup> *Ibid*, p. 4.

<sup>12</sup> For a detailed analysis of this problem, see Keohane, Daniel (2005), "The EU and Counter-terrorism", Centre for European Reform Report, pp. 17–22.

difficult by the sheer number of bodies he is required to deal with. In addition to Europol and Eurojust, the Counter-Terrorism Coordinator is also responsible for harmonising the activities of the terrorism working group (composed of national interior ministry officials), the foreign policy ‘working group on terrorism’ (composed of national foreign ministry officials), and the Police Chiefs’ Task Force. As has been argued by the Centre for European Reform, however, this situation is far from desirable and could have been avoided had Europol been given clear leadership on matters of security and counter-terrorism within the EU.<sup>13</sup>

The challenges facing Europol and the development of a more coordinated approach to matters of security and anti-terrorism have unfortunately been exacerbated by the continuing uncertainty surrounding the future of the Lisbon Treaty. One of the expected consequences of the ratification of the Lisbon Treaty is the application of Article 88 of the Treaty on the Functioning of the European Union (TFEU), which aims to make Europol more accountable to the European Parliament and national Parliaments.<sup>14</sup> Until these proposals are implemented and the detailed regulations governing the scrutiny of Europol are introduced, the institution is unlikely to be able to make any substantial progress in terms of expanding its coordinating role.

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<sup>13</sup> As noted in 2005 report of the Centre for European Reform, however, Europol has not been able to assume this role due to the reluctance of national police forces and intelligence agencies to share information with Europol. Keohane, *ibid*, p. 20.

<sup>14</sup> According to the text of Article 88 (originally Article III-276 of the Constitution Treaty):

1. Europol’s mission shall be to support and strengthen action by the Member States’ police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol’s structure, operation, field of action and tasks. These tasks may include:
  - a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
  - b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States’ competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments.



## **Section Two: Organised Crime: The European Criminal Intelligence Model (ECIM) and the Organised Crime Threat Assessment (OCTA)**

As has already been noted, one of the products of the ESS has been the development of a more coordinated approach to the problem of organised crime in the EU. In addition to providing a basis for the development of the European Criminal Intelligence Model (ECIM), the ESS has also led to a greater leadership role for Europol in detection and prevention of organised crime and to increased recognition for the work done by Eurojust. In the following sections, the work of Europol and Eurojust will be examined, with particular attention on the development of the ECIM and more recently the Organised Crime Threat Assessment (OCTA).

### **2.1 Europol and Eurojust**

Established under the Maastricht Treaty in 1992, Europol first became fully operational in 1999 (following ratification of the Europol Convention in 1998). Within the EU, Europol is the lead institution on matters of criminal intelligence; it exists to facilitate cooperation between national law enforcement agencies and to assist Member States in combating serious organised crime and terrorism.<sup>15</sup> In practice, Europol provides a central hub for the sharing of information on organised crime and terrorism between Member States, while also producing its own intelligence briefings and analyses of crime trends.<sup>16</sup>

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<sup>15</sup> According to Article 3 of the Europol Convention (1998), Europol's principal tasks are: (1) to facilitate the exchange of information between the Member States; (2) to obtain, collate, and analyse information and intelligence; (3) to notify the competent authorities of the Member States without delay via the national units referred to in Article 4 of information concerning them and of any connections identified between criminal offences; (4) to aid investigations in the Member States by forwarding all relevant information to the national units; and (5) to maintain a computerised system of collected information containing data in accordance with Articles 8, 10 and 11 of the Convention.

<sup>16</sup> Bradley, Hugo (2008), "Europol and the European Criminal Intelligence Model: A Non-state Response to Organized Crime", *Policing* 2(1): 103–9 (hereafter Bradley (2008) *Europol and the ECIM*), p. 106. Note that Article 6 of the Europol Convention sets out a clear legal framework for the exchange and analysis of information about crime and terrorism in the EU; it requires Europol to maintain both a computerised

Europol is not a police force in the traditional sense: its officers cannot, for example, make arrests or initiate investigations. Since its inception, it has therefore largely focused on improving its analytical capacity and providing informal leadership on matters of transnational crime and terrorism within the EU. Aside from hosting regular meetings of the European Police Chief's Taskforce (PCTF)—which provides planning assistance for joint operations against organised crime networks within the EU—Europol also works closely with multi-state police teams organised under the Comprehensive Operational Strategic Planning for the Police (COSPOL) framework.

Given that Europol is almost entirely dependent on information received from Member States, it inevitably relies heavily on the support of national policing agencies in order to fulfil its core objectives. As Hugo Bradley of the Centre for European Reform has recently observed, Europol has had to work hard to prove its worth and has still to gain the trust of some Member States and their domestic law enforcement agencies.<sup>17</sup> In part, this task has not been made any easier by the bureaucratic structure within which Europol has been forced to operate. As Bradley notes:

Even minor administrative decisions of [Europol's] director need the unanimous approval of all twenty-seven EU countries represented on its management board. Moreover, under the Convention, Europol analysts and ordinary police officers can only work together via liaison officers in The Hague, themselves working through special units based in national capitals. The result can be bureaucratic standstill.<sup>18</sup>

It has been agreed that Europol will be converted into a full EU agency as of 1 January 2010, which will make amending the legislation governing its remit and

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information system (the Europol Information System [EIS]) and analysis work files (AWFs).

<sup>17</sup> Bradley, *ibid*, p. 107.

<sup>18</sup> *Ibid*, p. 108.

procedures more straightforward and less time consuming.<sup>19</sup> At their meeting in April 2008, JHA Ministers reached a political agreement for a Council Decision conferring EU agency status to Europol as of January 2010. The Council Decision, which will replace the current Europol Convention, has not adopted yet - due to some parliamentary reservations. Intergovernmental financing will be replaced with Community financing. Europol's mandate will be extended to cover all serious forms of cross-border crime.

In addition to Europol, the EU also relies on Eurojust to aid in the investigation and prosecution of serious cross-border and organised crime. An EU agency, Eurojust was established in 2002 and provides a forum for prosecutors and judicial authorities from Member States to share information and expertise, with a view to producing a more coordinated response to serious and organised crime within the EU. Eurojust also works closely with national agencies to assist in the extradition of suspects and the sharing of evidence between Member States, often helping to draft and implement bilateral agreements between Member States. In December 2008, the Council adopted a Decision on the strengthening of Eurojust - amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

Like Europol, Eurojust was originally intended to enhance cooperation and improve efficiency within the EU by providing a central point of reference for all cross-border investigations and prosecutions within the EU. Although its caseload has grown steadily since its inception, to date Eurojust appears to have suffered less from problems of bureaucracy and lack of trust than Europol.<sup>20</sup> It is almost universally regarded as an improvement on the previous system of coordinating multi-country prosecutions, which was administered under the authority of the Council of Europe.<sup>21</sup>

In simple terms, Europol and Eurojust provide the main institutional structure for the investigation and prosecution of serious and organised crime in the EU. Because they are still relatively young organisations, they are both still in the process of gaining the

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<sup>19</sup> JHA Council Press Release, Brussels, 18 April 2008, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/610&format=HTML&aged=0&language=EN&guiLanguage=fr>.

<sup>20</sup> Eurojust Annual Report, 2006, p.24.

<sup>21</sup> Bradley (2008) *Europol and the ECIM* (fn 16 above), p.106.

trust of Member States and establishing effective and efficient working arrangements with their national partners and other EU institutions. In recent years, a number of key initiatives have been developed to enhance the work done by these two institutions, most notably the European Criminal Intelligence Model (ECIM) and the Organised Crime Threat Assessment (OCTA). Both of these initiatives have their origins in decisions taken under the Hague Programme in November 2004, most notably to promote intelligence-led policing practices within Member States and to produce high-quality threat assessments that can be used to guide both EU and national policing policies and strategies. An overview and analysis of the ECIM and the OCTA are provided in the following two sections.

## **2.2 The European Criminal Intelligence Model (ECIM)**

The European Criminal Intelligence Model (ECIM) was agreed by a meeting of European Interior Ministers in 2005. It sets out a new strategy for the sharing of information between the law enforcement agencies of Member States and Europol. Drawing heavily on the ideas of intelligence-led policing (as developed in the United Kingdom and the United States), the ECIM stresses the importance of producing joint assessments of serious and organised crime, based on shared intelligence and direct input from national police forces within the EU.<sup>22</sup> According to the ECIM, threat assessment should be constructed according to the following four steps:

- (1) Police forces of Member States share information and intelligence with Europol.
- (2) Europol drafts an assessment of the overall level of threat facing the EU.
- (3) This assessment provides the basis for a Council of Ministers agreement on joint law enforcement priorities between the Member States.

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<sup>22</sup> As noted in a recent UK House of Lords report on Europol, the ECIM was directly influenced by the National Intelligence Model (NIM) used in the United Kingdom (as set out in the Code of Practice on the NIM issued in January 2005 by the UK Home Secretary). UK House of Lords European Union Committee (2008), *Europol: Coordinating the Fight against Serious and Organised Crime*, 29<sup>th</sup> Report of Session 2007–08, HL Paper 183 (hereafter HL (2008) *Europol Report*), p. 26.

(4) EU police chiefs implement joint operations in line with the Council of Ministers agreement and then relay any information and intelligence that they generate back to Europol (which can then use the information for future threat assessments).<sup>23</sup>

Although it has been suggested that some Member States and national police forces have yet to fully embrace the ECIM, there appears to be broad agreement that the model has helped to harmonise policing practices across the EU and to introduce “modern” intelligence-led strategic planning. In their evidence to a recent UK House of Lords report on Europol, representatives of the UK’s Serious and Organised Crime Organisation (SOCA) stated:

[T]he ECIM/OTCA model is ushering in a new phase in the development of Europol, establishing the agency as a central intelligence base in the EU supporting a range of sub-regional initiatives around the EU. This approach is exactly in line with our aspirations for the organisation.<sup>24</sup>

The success of the ECIM is reflected in the influence that it has had on the 2009 Europol Work Programme.<sup>25</sup> Although no specific reference is made to the ECIM in the document, the Programme repeatedly refers to decisions taken by the JHA Council in October 2005 and to the importance of intelligence-led policing. It is also important to note that the ECIM has provided the basis for another key initiative, namely the Organised Crime Threat Assessment (OCTA), which is discussed below.

### **2.3 The Organised Crime Threat Assessment (OCTA)**

Prior to 2006, there was no mechanism within the EU for the production of forward-looking assessments of the threat posed to Member States by serious and organised crime. Although Europol produced an annual Organised Crime Report (OCR), it was backward looking, largely descriptive, and based on historical statistical data. In 2004, however, the Hague Programme instructed Europol to produce the first Organised

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<sup>23</sup> Bradley (2008) *Europol and the ECIM* (fn 16 above), p. 107.

<sup>24</sup> HL (2008) *Europol Report* (fn 22 above), p. 28.

<sup>25</sup> European Council (2008), *Europol Work Programme 2009*, Document 7801/08.

Crime Threat Assessment (OCTA) as part of its effort to promote intelligence-led policing practices within the EU. Designed to complement the ECIM, the OCTA is an annual document produced on the basis of information and intelligence supplied to Europol by Member States. It aims to guide the policing priorities of Member States via the Police Chief Task Force (PCTF/COSPOL) framework and through direct distribution of the assessment document to law enforcement agencies at a national level. According to the introduction to the 2008 OCTA,

To support decision-makers in the best possible way, the OCTA provides a well-targeted, qualitative assessment of the threat from organised crime. The OCTA is based on a multi-source approach, including law enforcement and non-law enforcement contributions.<sup>26</sup>

These contributions are drawn from a wide array of EU-level and national institutions, including: the European Central Bank; the European Monitoring Centre for Drugs and Drug Addiction (ECMDDA); Eurojust; Frontex; and the European Anti-Fraud Office (OLAF). In addition, the OCTA draws on information provided by countries outside the EU and on international law enforcement organisations such as the International Criminal Police Organisation (Interpol).

At a practical level, the OCTA aims to ensure that police operations conducted by Member States are driven by strategically relevant intelligence and that the appropriate law enforcement instruments are used.<sup>27</sup> For the most part, the OCTA appears to be succeeding in this aim, although some commentators have questioned whether the information being provided via the Assessments is having the desired effect on operational practices. According to Dr Nicholas Ridley of the John Grieve Centre in London, while the OCTA is “a magnificent *tour de force* from an academic, strategic analysis point of view ... the unfortunate thing is that OCTA is not really operationally oriented.”<sup>28</sup> This is problem that has been at least partly acknowledged

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<sup>26</sup> Europol (2008), EU Organised Crime Assessment (OCTA), p. 9.

<sup>27</sup> *Ibid.*

<sup>28</sup> Evidence to the UK House of Lords. See HL (2008) *Europol Report* (fn 22 above), p. 28.

by Europol itself, with the introduction to the 2008 OCTA noting that “the OTCA itself is not detailed enough to pinpoint specific criminal investigations.”<sup>29</sup>

The development of the OTCA also appears to have been hampered by the fact that some Member States seem unwilling to provide the required information and intelligence to Europol. As Bradley has noted, while in 2006 one Member State submitted over 500 pages of criminal intelligence to the first OCTA, another contributed only “a single page”.<sup>30</sup> In addition, because the OTCA does not include any assessment of terrorist threats, it can be argued that it is only of limited use to Member States as regards the development of comprehensive law enforcement and security strategies.

## **2.4 Centralising Control or Creating Channels?**

One of the key questions that needs to be asked about the current EU approach to organised crime is whether it is designed to encourage greater centralisation or instead to lead to the dispersal of investigative and preventative functions. Put another way, there appears to be a developing tension between the desire to give Europol (and Eurojust) a more prominent role in the development and coordination of EU-wide responses to serious and organised crime on the one hand, and the stated aim of enabling Member States and national agencies to produce better informed local strategies on the other hand. This is a tension that is exacerbated by the fact that Europol is unable to gather information for itself or to generate intelligence without direct input from Member States—in reality, it is ultimately Member States and national law enforcement bodies that are responsible for investigating and prosecuting those responsible for serious and organised crime.

This problem has been recognised by Hugo Bradley of the Centre for European Reform, who has rightly counselled against greater centralisation of cross-border policing functions. According to Bradley, further efforts in this direction are likely to be hampered by intractable differences in policing and prosecutorial practices across

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<sup>29</sup> Europol (2008), *EU Organised Crime Assessment (OCTA)*, p. 9.

<sup>30</sup> Bradley (2008) *Europol and the ECIM* (fn 16 above), p. 107.

Member States and by Europol's lack of investigatory powers. Instead, Bradley argues that the EU should continue to focus on encouraging Member States to "buy into" the existing ECIM, foster informal as well as formal mechanisms of cooperation, and work towards ensuring that the EU becomes a "focal point for the emergence of a new pan-European community of police officers."<sup>31</sup>

These suggestions are particularly apposite when one considers that how little time the existing EU policing structure has had to develop. It is reasonable to think that building trust in institutions such as Europol and Eurojust will take considerable time, and as such there is a strong argument for ensuring that progress in this area should be steady and incremental.

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<sup>31</sup> *Ibid*, p. 108.



### **3. Conclusions and Recommendations**

Based on the overview provided in this briefing paper, it is possible to identify a number of key areas of concern regarding the current approach taken by the EU to matters of security, organised crime, and counter-terrorism. The following conclusions and recommendations are intended to provide guidance to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on how to address these concerns and to suggest possible areas for future research and action.

Before moving to the specific recommendations, it is important to draw attention to the lack of available evidence on the operational practices and effectiveness of the various institutions discussed in this briefing paper. Despite the fact that Europol produces an annual report and publishes the yearly OCTA, there is very little detailed information available in the public domain about its workings or its relationship with specific Member States or national law enforcement agencies. Although it is not surprising, given the sensitive nature of the work undertaken by Europol, this lack of transparency needs to be addressed if Europol (and Eurojust) are to play an enhanced role in the provision of security and policing services across the EU. Public as well as institutional confidence in such institutions is vital for their long-term success, and they should therefore endeavour to provide as much information—in easily understandable and accessible forms—to the public as possible. In addition, it is clear that there has been very little in the way of independent research into the operation of the ECIM and the development of the OCTA. Given their central importance to the overall EU security and policing strategy, this is regrettable—and a deficiency that LIBE and other relevant EU bodies should consider rectifying in the future (either by encouraging and sponsoring such research or by facilitating access to relevant institutions by independent researchers and research organisations).

#### **3.1 Recommendation One: The Need for Simplicity and Transparency**

As even this short briefing paper demonstrates, the current EU structure for the investigation and prevention of organised crime and terrorism is extremely complex. Aside from the fact that this complexity may make it more difficult for individuals and agencies within Member States to access the full range of law-enforcement and

intelligence services provided by the EU, this complex arrangement also increases the likelihood that information will not be effectively or efficiently shared between various EU institutions or between the EU and Member States. As such, there is a pressing need for a comprehensive review of the existing structures, with a view to rationalising the relationships between the various institutions responsible for security, serious crime and terrorism and making the operation of these institutions more transparent.

### **3.2 Recommendation Two: A Committee on Internal Security**

Building on Recommendation One, the European Parliament should welcome the possibility - foreseen in the Lisbon Treaty - of establishing a "Committee on Internal Security", which would have overarching responsibility for developing policy and coordinating EU efforts in relation to security, serious crime, and terrorism. Article 71 of the Treaty on the Functioning of the European Union (TFEU) states: "A standing Committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union". Establishing such a Committee would not only provide a strong basis for greater coordination of existing EU institutions (such as Europol and Eurojust) but also make the structure more readily accessible to Member States and their national law enforcement agencies.<sup>32</sup> It has already been suggested that a single European law-enforcement coordination body comprised of Europol, Eurojust, and the Police Chief's Task Force (PCTF/COSPOL) could provide the basis for such a committee,<sup>33</sup>

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<sup>32</sup> Although the primary function of this Committee would be to enhance police cooperation within the EU, ideally it would also act as a point of contact for third party, non-EU law enforcement agencies.

<sup>33</sup> *Ibid.* It is worth noting that in response to a request from the JHA Council (Document 9718/08), Europol and Eurojust have recently amended their cooperation agreement. Furthermore, in a discussion paper produced by the Counter-Terrorism Coordinator in November 2008, the CTC notes that "detailed provisions on the exchange of information have been included [in the draft agreement] with the aim to facilitate a systematic, reciprocal and timely flow of information between the two bodies and to improve Eurojust's involvement in Europol's Analysis Work Files". EC (2008) *Report of the Counter-Terrorism Coordinator* (fn 7 above), p. 4. The work of this Committee could also be considerably enhanced by ensuring that it has a formal relationship with the European Defence Agency (which would provide the basis for joint policy development and the exchange of information).

and this briefing paper strongly suggests that the European Parliament should consider the feasibility of such a merger and the potential advantages of such an approach.<sup>34</sup> In addition, the EP should also consider whether other agencies – such as the Fundamental Rights Agency (FRA) and the European Data Protection Supervisor (EDPS) – could be involved in the activities of the Committee (or at the very least oversee its work in an advisory capacity).

### **3.3 Recommendation Three: A Coordinated Approach to Data Sharing**

The final recommendation of this briefing paper is to suggest that the European Parliament should consider providing increased support to Europol and the Counter-Terrorism Coordinator as they assess the implications of the Swedish Framework Decision<sup>35</sup> and the Prüm Decision<sup>36</sup> for information sharing within the existing EU policing structures. Formally adopted into EU law in 2008, the Prüm Decision introduces a range of reforms to existing data sharing practices. Given that data sharing and the exchange of intelligence is at the heart of the ECIM and OCTA, careful thought must be given to how best to implement these provisions, with a view to ensuring that they enhance rather than impede cooperation. To this end, the European Parliament should whenever possible encourage independent research into the likely effects of the Prüm Decision on data sharing within the EU and address the specific concerns raised by the Counter-Terrorism Coordinator concerning the future governance of EU information exchange.<sup>37</sup> Furthermore, consideration should also be

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<sup>34</sup> It should be noted that the establishment of such a body may go some way towards meeting the concerns of Member States such as Austria, which has called for greater operational coordination within the EU and the establishment of an “internal security architecture”. See Resolution of the Austrian Parliament (2001), *Security and Defence Doctrine*, <http://www.bka.gv.at/DocView.axd?CobId=3604>. Ideally, this body would also include a representative from the European Defence Agency (or at least have a formal relationship with the agency which could provide the basis for joint policy development and exchange of information).

<sup>35</sup> JHA Council Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

<sup>36</sup> JHA Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

<sup>37</sup> EC (2008) *Report of the Counter-Terrorism Coordinator* (fn 7 above), p. 4.

given to the possible role that could be played by the Fundamental Rights Agency (FRA) in the development of any data sharing regulations or governance arrangements. The development of the EU's security and policing structures is still in its early stages, and by providing this support the European Parliament will be making a substantial contribution to the creation of a more effective and efficient approach to the problems of organised crime and terrorism.

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