

THE JOINT INVESTIGATION TEAMS – A EUROPEAN INSTRUMENT OF FIGHT AGAINST TERRORISM

Ina Raluca TOMESCU
Associate Professor Ph.d.
University „Constantin Brâncuși” of Târgu-Jiu
Faculty of International Relations, Law and Administrative Sciences

ABSTRACT. ONE OF THE OBJECTIVES OF THE EUROPEAN UNION IS TO GIVE CITIZENS A HIGH LEVEL OF SAFETY WITHIN AN AREA OF FREEDOM, SECURITY AND JUSTICE AND THIS SHOULD BE ACHIEVED BY PREVENTING AND COMBATING CRIME THROUGH A CLOSER COOPERATION BETWEEN POLICE FORCES, CUSTOMS AUTHORITIES AND OTHER COMPETENT AUTHORITIES OF THE MEMBER STATES, WHILE RESPECTING THE PRINCIPLES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND THE RULE OF LAW ON WHICH THE UNION IS FOUNDED, WHICH ARE COMMON TO THE MEMBER STATES.

KEYWORDS: JOINT INVESTIGATION TEAMS, SECURITY, JUSTICE, THE EUROPEAN UNION, JUDICIAL COOPERATION IN CRIMINAL MATTERS.

The tragic events of 11 September 2001 dramatically influenced the world politics in the fight against terrorism and organized crime laws requiring change in terms of security.

The European Union wishes to maintain and develop as an area of freedom, security and justice, providing the free movement of persons closely related to appropriate measures concerning external border control and the prevention and combating of crime [1].

The building of the European Space involves different areas of major importance for the functioning of our societies, as long as it aims at ensuring the free movement of persons and the protection of fundamental rights of citizens, and solving problems relating to immigration and asylum, judicial cooperation in organizing civil and criminal matters within the European Union, the fight against crime and terrorism, and management of common borders of the Union. "The European Union is an area of freedom, security and justice respecting the fundamental rights and the different legal systems and traditions of the Member States" [2].

Title VI of the Treaty on the European Union, entitled *Provisions on police cooperation and judicial cooperation in criminal matters* includes legal measures and means to combat organized crime and terrorism. Its aim is preventing and combating: racism and xenophobia, terrorism, human trafficking, drug trafficking, arms trafficking, corruption and fraud [3]. Title VI covers quite a few fields but its goals are clearly stated and include close cooperation between police forces, customs and judicial authorities, both

directly and through the European Police Office (Europol) and, where necessary, the harmonization of criminal law of the EU Member States and third countries [4].

One of the objectives of the European Union is to give citizens a high level of safety within an area of freedom, security and justice and this should be achieved by preventing and combating crime through closer cooperation between police forces, customs and other competent authorities of the Member States, while respecting the principles of human rights and fundamental freedoms and the rule of law on which the Union is founded, which are common to the Member States [5].

The European Council meeting in Tampere on 15 and 16 October 1999, asked to be established without delay the joint investigation teams stipulated in the Treaty of the European Union, in the first instance, to fight against drug trafficking and human trafficking, and also against terrorism.

Facing the terrorist threats, which are now a major risk for democratic societies, due to the increased power of transnational criminal organizations, the Council of the European Union adopted the Framework Decision 2002/465 / JHA on joint investigation teams [6].

The establishment of joint investigation teams had previously been provided for in the art. 30 of the EU Treaty and in art. 13 of the Convention on Mutual Assistance in Criminal Matters of 29 May 2000, which has not entered into force because it has not been ratified by all Member States.

The Framework Decision provides that the Member States which set up an investigation team must define its composition, purpose and duration. It is also necessary that Member States have the ability to decide the participation in activities of the team of those not representing the competent authorities of the Member States, in particular representatives of Eurojust, Europol, the European Anti-Fraud Office or representatives of authorities of third countries and, especially the representatives of law enforcement services in the US [7].

According to art. 1 of the Framework Decision, "the competent authorities of at least two Member States may by mutual agreement form a joint investigation team, with a specific purpose and for a limited period, which may be extended by mutual consent in order carry out criminal investigations in one or more Member States constituting the team" [8].

The purpose of these investigation teams are not to transform into bi-national or multinational permanent structures. They will be created on a case by case basis, in specific situations, the aim being to gather information and evidence. Offering great flexibility in use, this new tool will allow judicial authorities and specialized services to exchange operational information without the existence of a particular formalism, to conduct joint investigations throughout the investigation and to coordinate the development of a criminal investigation in the two countries.

On the 17-18 July 2008 at the seminar entitled "*Eurojust, joint investigation teams and the recognition of procedures*", which was held in Toulouse (France), European actors involved in international judicial cooperation in criminal matters have given a new impetus for teams joint investigation. It was noted the importance of Eurojust as an European unit to coordinate investigations, especially in the implementation of joint investigation teams, this body giving logistical support (financial, material resources) or judicial (participation in investigation teams preventing conflicts of jurisdiction) [9].

On the occasion of the discussion, it was proposed a set of measures of best practices embodied in the following conclusions:

- Usefulness and content patterns agreement being tackled the issue of adopting a European model;
- Selection of investigations: judicial practice has shown that joint investigation teams have worked in drug trafficking and terrorism, but their scope could be extended to other forms of transnational organized crime;
- The need to establish objectives investigation or prosecution in an early stage of investigation [10].

The 2010 Internal Security Strategy (ISS) [11] was defined to enable the European Union to respond to existing and emerging threats to the security of European society, its citizens and organisations in the EU.

The Strategy aims at identifying the challenges to the EU internal security in the context that many of today's security challenges are cross-border and cross-sectoral in nature and that no single Member State is able to respond effectively to these threats on its own. The Strategy also identifies common principles and guidelines – fully respecting fundamental rights – underpinning a European Security Model, and aimed at further developing common tools and policies by using a more integrated approach.

Fostering European internal security has taken on a new impetus in recent years, through the implementation of the ISS and targeted strategies.

The five strategic objectives under the ISS 2010-2014 are (1) disruption of international criminal networks, (2) prevention of terrorism and addressing radicalisation and recruitment, (3) raising levels of security for citizens and businesses in cyberspace, (4) strengthening security through border management and (5) increasing Europe's resilience to crises and disasters.

Since 2010, significant progress has been made under these objectives, as shown by the Commission's two ISS reports and this Report. The ISS 2010-2014 has been the backbone of EU internal security initiatives in the last years. It has contributed to further enhancing the capabilities of the EU, its Member States, and other stakeholders and to reinforcing operational cooperation among Member States. It also contributed to a more cross-sectorial approach at all levels.

The Commission Communication on "*EU Internal Security Strategy in Action*" [12] identifies five main strategic objectives to be pursued by the EU and its Member States to be more effective in preventing and fighting serious and organised crime, terrorism and cybercrime, in strengthening the management of our external borders and in building resilience to natural and man-made disasters. Specific actions were to be undertaken at EU level, as well as at national and international levels.

The Commission reported in 2011 [13] and 2013 [14] on the implementation of the ISS and adapted the actions and recommendations to new developments. The reports focus on efforts undertaken at EU level and inform on progress achieved, and current and future challenges.

According to the report of the European Commission, the funding provided by Eurojust facilitates the creation of joint investigation teams on short-term, depending on the operational needs. Until February 2013, Eurojust supported the second financing project of joint investigation teams, 87 different joint investigation teams, based on 252 financing applications. Most of the joint investigation teams focus on drug and human

trafficking, but they also targeted, money laundering, fraud, corruption and organized robbery [15].

The final Report on the ISS 2010-2014 [16] has a two-fold aim. Firstly, it assesses the actions implemented under the five ISS strategic objectives since 2010. Secondly, it identifies possible future challenges, cross-cutting objectives and emerging threats in view of a renewed Internal Security Strategy, in line with the Commission Communication on “*An Open and Secure Europe: Making it Happen*” [17], which presents proposals for the future EU agenda of HOME Affairs.

The ISS defined **three key actions**: 1) to identify and dismantle criminal networks, 2) to protect the economy against criminal infiltration, and 3) to confiscate criminal assets.

To that end much effort was undertaken to further develop intelligence led policing and to increase the cooperation between law enforcement authorities and with other authorities. The best example is the development and implementation of the EU Policy Cycle against serious and organised crime [18]. EU Member States, supported by EU institutions and agencies, determine – primarily on the basis of the Europol Serious and Organised Crime Threat Assessment (SOCTA) [19] – priorities [20], set strategic objectives in multiannual plans and develop annual operational plans, which are carried out.

JHA agencies were reinforced, leading to increased operational support by Europol [21] and Eurojust [22] in investigations including **joint investigation teams (JITs)** [23], strategic and operational analyses as well as proposals for new legal bases [24] for both agencies. Dedicated cross-border law enforcement networks were further developed and were (financially) supported, as were joint investigation teams (JITs). EU funding, in particular the financial programme "Prevention of and Fight against Crime (ISEC)", helped Member States to strengthen their cross-border cooperation.

REFERENCES

- [1]. Ina Raluca Tomescu, *European Area of Justice*, in „International Journal of Juridical Sciences”, no. 1/2009, Agora Publishing House, Oradea, p. 304.
- [2]. Article 61 paragraph 1 from the Treaty of Lisbon
- [3]. For criminological aspects related to organized crime see I.C. Rujan, *Criminology*, Academica Brâncuși **Publishing House**, Târgu-Jiu, 2009.
- [4]. Ina Raluca Tomescu, *European institutions and tools fighting against terrorism*, Annals of the „Constantin Brâncuși” University of Târgu Jiu, Letters and Social Sciences Series, Issue 2/2011, pp. 83-84.
- [5]. The preamble to the Framework Decision 2002/465 / JHA on joint investigation teams.
- [6]. Published in JOUE no. L/62/2002, p. 1-3.
- [7]. Cristian Eduard Ștefan, *Joint investigation teams, an effective instrument to fight organized crime and terrorism*, in the Journal „Law”, no. 2/2009, p. 212.
- [8]. In our national legislation, the Law no. 39/2003 on preventing and combating organized crime, Law no. 302/2004 on international judicial cooperation in criminal matters governing the establishment of joint investigation teams and their operating procedure. The text transposes into national law the Council Framework Decision, which is an important tool to fight organized crime, and the relevant provisions of the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 and of the

Second Additional Protocol of 8 November 2001 (C.E. Ștefan, L.T. Pintilie, *Judicial and police international cooperation*, Sitech Publishing House, Craiova, 2007, p. 85).

- [9]. Ina Raluca Tomescu, *EU policies on preventing and combating terrorism*, University of National Defense "Carol I", Bucharest, 2014, p. 129.
- [10]. Cristian Eduard Ștefan, *quoted*, p. 215.
- [11]. *Internal Security Strategy for the European Union: Towards a European Security Model*, 5842/2/2010.
- [12]. COM(2010) 673.
- [13]. COM(2011) 790.
- [14]. COM(2013) 179.
- [15]. *Communication from the Commission to the European Parliament and the Council. Second report on the implementation of the Internal Security Strategy of the European Union*, COM (2013) 179, Bruxelles, 2013, p. 6.
- [16]. *Communication from the Commission to the European Parliament and the Council. The final implementation report of the EU Internal Security Strategy 2010-2014*, COM (2014) 365, Brussels, 2014.
- [17]. COM(2014) 154.
- [18]. Council conclusions of 8-9.11.2010.
- [19]. Drawn up by Europol with the contributions of Member States, EU JHA agencies and key third countries.
- [20]. [Council conclusions of 6-7.6.2013](#). Summarised the EU priorities for the period of 2014 – 2017 are to tackle: 1) illegal/irregular immigration; 2) trafficking in human beings; 3) counterfeit goods violating health, safety and food regulations and sub-standard goods; 4) excise fraud and Missing Trader Intra Community (MTIC) fraud; 5) synthetic drugs production and trafficking; 6) cocaine and heroin trafficking; 7) cybercrimes (on-line and payment card fraud, online child sexual exploitation, and cyber-attacks); 8) risk of firearms to the citizen and illicit trafficking in firearms; 9) organised property crime committed by mobile organised crime groups.
- [21]. By the end of the third quarter of 2013, Europol had facilitated the exchange of over 220000 operational messages and over 13500 cases had been initiated (an increase of 15% compared to the same period in 2012). Europol provided support to Member States' EMPACT-related operations, the publication of the SOCTA 2013 and through the assistance provided by the EMPACT Support Unit (ESU).
- [22]. In 2013, Eurojust had 639 closed cases and 937 ongoing cases of which 257 related to organised crime.
- [23]. In 2013, 34 JITs in total received (financial) support from Eurojust, Europol formally participated as a member in 35 JITs and in 9 other JITs provided systematic operational support.
- [24]. COM(2013) 173, COM (2013) 535.