

# Europol and Counter-Terrorism

How does Regulation 2016/794 facilitate Europol's task of  
establishing counter-terrorist units?



Student name:	Ruben Bruil
Student number:	14034530
Class:	ES4
Supervisor:	M. van Munster
Second Marker:	P.G. Nixon
Date of Completion:	May 24 <sup>th</sup> , 2018

The Hague University of Applied Sciences  
Faculty of Management and Organisation  
European Studies

## Executive Summary

The task of the European Police Office (Europol) is to provide a support service for the national agencies of European Member States. Aside from collecting and exchanging intelligence, Europol cooperates with Member States on counter-terrorism actions by establishing National Units and Joint Investigation Teams. Its current mandate, Regulation 2016/794, is the successor of Council Decision 2009/371/JHA, which serves as Europol's legal basis. This study provides an answer to how this Regulation supports Europol in its counter-terrorism actions. The central research question of this study is: **“How does Regulation 2016/794 facilitate Europol's task of establishing counter-terrorist units?”** The research design of this study is predominantly qualitative. In terms of secondary data, EU publications, literature, policy evaluations, and reports were gathered. For primary data, three interviews were conducted with experts in the field of counter-terrorism and European Security. The results show that EU counter-terrorism policy has developed over the years due to major terrorist attacks, such as 9/11, and major attacks in European cities. As counter-terrorism policies changed, the functions of Europol have likewise developed. With the introduction of Regulation 2016/794, Europol's competences have increased with the provision of new rules on data-processing. These rules contribute to the function of Europol: it continually updates and develops new information systems that help to track terrorist activities. Moreover, the regulation gives Europol the ability, when required, to compel Member States to establish an investigation. Although it tends to be complicated and somewhat premature to measure the practical impact of this regulation, this impact can in fact be demonstrated: for example, Europol has since been involved in more terrorist attacks, in terms of prevention and analysis. On the other hand, a case-study regarding the evaluation of the 2017 Barcelona attacks indicates that, although Europol has improved, there remains the potential for improving the European Union's counter-terrorism policy, in terms of interoperability and counter-radicalization. To conclude, the findings of this study suggest that Regulation 2016/794 facilitates Europol's task of establishing counter-terrorist units as it grants Europol the ability to effectively gather and exchange information. As such, the regulation encourages further cooperation between Europol and Member States on counter-terrorism activities through Europol's acquired capability to initiate Europol National Units and Joint Investigation Teams. As Europol's functions are constantly improving, this study recommends that it should maintain its efforts to develop databases that help to detect and counter terrorist activity.

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## Preface & Acknowledgements

This dissertation has been written as part of the bachelor programme of European Studies at the Hague University of Applied Sciences. The research topic has been chosen as it suits my political interest and encouraged me during the whole process of conducting this research.

I would like to thank everyone who supported me or contributed to this research. Specially, I would like thank My supervisor, M. van Munster for his guidance in this process, Dr. Prof. C. Kaunert for his active support during my research and his clear information in the conducted interview, Dr. Prof. O. Bures and the European Security for their participation in the interview which brought me lots of new and relevant information for this research. Finally, I would like to thank my parents, brother and friends for supporting me during my research whenever it was necessary.

## Glossary of Terms

Abbreviation	Meaning
CEPS	Centre for European Policy Studies
CJCS	Chairman of the Joint Chiefs of Staff
COSI	Standing Committee on Operational Cooperation on International Security
CT	Counter-terrorism
CTG	Counter Terrorist Group
CT JLT	Counter-Terrorism Joint Liaison Team
ECTC	European Counter-Terrorism Centre
EDPS	European Data Protection Supervisor
EEC	European Economic Community
ENU	Europol National Unit
ETIAS	European Travel Information and Authorization System
EU	European Union
EU-LISA	European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice
FP7	Seventh Framework Programme for Research
GDPR	General Data Protection Regulation
HOS	Horizontal Operational Services
ICCT	International Centre for Counter-Terrorism
IRU	Internet Referral Unit
ISF	Internal Security Fund
ISGA	Institute for Security and Global Affairs
JHA	Justice Home Affairs
JIT	Joint Investigation Team
JPSG	Joint Parliamentary Scrutiny Group
MFF	Multiannual Financial Framework
MS	Member States
OLAF	European Anti-Fraud Office
SIENA	Secure Information Exchange Network Application
SIS	Schengen Information System
SMART	Specific, Measurable, Achievable, Relevant and Time-bound
TE-SAT	Terrorism Situation and Trend Report
VIS	Visa Information System

## 1. Introduction

The European Police Office (Europol) was approved in 1992, established in 1995, and has been fully operational since 1995. It was founded with the primary task of improving cooperation between national police forces in order to prevent and fight serious crime and terrorism (Rosanò, 2016). Over the two decades after the establishment of Europol, terrorism has become one of the major threats to the security of the European Union, its member states, and its citizens. Terrorist attacks—such as the London and Madrid bombings, the 2015 Paris attacks, and 9/11—have significantly changed Europe’s approach to terrorism. The European Union has since directed its policy-making efforts to the field of counter-terrorism by improving the competences of Europol. The legislative successor of Council Decision 2009/371/JHA, which provided Europol with a legal basis, is Regulation 2016/794, which was passed by the European Parliament and the Council of 11<sup>th</sup> May 2016 on the European Union Agency for Law Enforcement Cooperation (The European Parliament, 2016). This mandate provides new rules that govern Europol’s competences and how it should coordinate cooperation with Member States’ policing agencies on counter-terrorism operations and investigations.

The purpose of this study is to catalogue the aspects of Regulation 2016/794 that facilitate Europol’s task of establishing counter-terrorism units. The main research question is therefore: *“How does regulation 2016/794 facilitate Europol’s task of establishing counter-terrorist units?”* This research question is divided into three sub-questions, each of which supports and answers the main question. These sub-questions are:

- (1) *“What was Europol’s policy on counter-terrorism enforcement before the regulation came into effect?”*
- (2) *“What are the implications of Regulation 2016/794 for Europol’s competency in the area of counter-terrorism?”*
- (3) *“What have been the practical consequences of Regulation 2016/794, with regard to counter-terrorism?”*

In terms of research significance, the outcomes of this study will contribute to an improved understanding of Europol’s competences in the area of counter-terrorism. This will, in turn, increase the ability of scholars to critically evaluate Europol’s actions and developments in terms of counter-terrorism coordination and cooperation.

This structure of this research provides a clear overview of each section. The study begins with a theoretical framework chapter, which includes a review of the literature relevant to this research, whose purpose is to provide the reader with a better understanding of the topic. After this is the

methodological chapter, which provides an overview of the research methods used to answer the main question. Thirdly, findings acquired through desk- and field research are presented in the results chapter. These results are analysed in the following discussion chapter, while the conclusion of this study provides an answer to the main question.

## 2. Theoretical Framework

The purpose of this theoretical framework is to illustrate the key perceptions of this research and to provide the theoretical outline of this dissertation. In order to provide the most appropriate form of research analysis and recommendations, it is essential to define counter-terrorism from multiple perspectives. Thus, at first, the core definitions of counter-terrorism will be clarified. Following these definitions, the European Union's approach to counter-terrorism will be defined. The third aspect included in the theoretical framework is the assessment of counter-terrorism policies. Subsequently, the defined theories will followed by a conclusion.

### 2.1 Definition of Counter-terrorism

At first, the definition of terrorism will be outlined. According to the Quaker Council for European Affairs, the EU's definition of terrorism is: *"...seriously intimidating a population, or unduly compelling a Government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization"* ( Quaker Council for European Affairs, 2007). Sandler adds that violence is a necessary component of terrorism. Terrorism can vary from kidnappings and skyjackings to bombings, assassinations, and armed attacks (Sandler, 2011). Furthermore, terrorism can be divided into domestic- and transnational terrorism. Domestic terrorism consists of home-directed attacks led by terrorists from the same country, whereas transnational terrorism, according to Sandler, occurs when two or more countries are involved in the attack. For instance, when the attacker is from country A and the victims are from country B, or when the attack starts in country A and ends in country B, transnational terrorism has taken place (Sandler, 2011).

The definition of counter-terrorism, according to the Oxford Dictionary, is *"Political or military activities designed to prevent or thwart terrorism"* (Oxford University, 2018). Although this definition seems clear, it tends to be quite general insofar as it lacks depth and does not cover all the relevant aspects of counter-terrorism. The Joint Publication on counter-terrorism by the United States Chairman of the Joint Chiefs of Staff (CJCS) describes counter-terrorism activities as operations that strengthen support for the goals of counter-terrorism and help to isolate terrorists from the public (Chairman of the Joint Chiefs of Staff, 2014). Furthermore, the Joint Publication separates counter-terrorism activities into three types: advise and assist activities; overseas counter-terrorism activities; and support to civil authorities' activities. Advise and assist activities include military efforts to provide security for its citizens and services, and to prevent terrorists from using domestic territory as a safe haven. The second category of activities includes offensive-, defensive-, and stability

operations. Defence support activities aim to support the preparation, prevention, protection, and response to any terrorist attack (Chairman of the Joint Chiefs of Staff, 2014).

Rinehart also suggests that counter-terrorism is a difficult concept to define (Rinehart, 2010). His statement is complemented by Paul Wilkison, who writes that: *“There is no universally applicable counter-terrorism policy for democracies. Every conflict involving terrorism has its own unique characteristics”* (Wilkinson, 2001). According to Rinehart, counter-terrorism has developed over the previous three decades into a *“more lethal form of unconventional warfare”* (Rinehart, 2010).

In addition, Omelicheva describes the conceptualization of counter-terrorism a complicated process due to the *“variability of the empirical phenomenon it seeks to describe”* (Omelicheva, 2007). Counter-terrorism spans various policy areas, contains a variety of measurements, and has multiple actors involved in the process. Omelicheva states, in abstract terms: *“counterterrorism can be thought of as a mix of public and foreign policies designed to limit the actions of terrorist groups and individuals associated with terrorist organizations in an attempt to protect the general public from terrorist violence”* (Omelicheva, 2007). Counter-terrorism, as a policy, covers a range of actions, specific decisions, general guidelines, observable behaviours of states, and verbal pronouncements of policy makers (Omelicheva, 2007). Moreover, there are two dimensions of counter-terrorism of use to analysis: scope and brutality. Omelicheva explains that the scope dimension contains the number of counter-terrorism actions that a state undertakes in different policy areas. The brutality dimension describes the extent to which a state is willing to breach human rights in order to implement further counter-terrorism measures. These measures include extrajudicial killing, torture, unlawful detentions, and suspect disappearances (Omelicheva, 2007).

## 2.2 Counter-terrorism Approach EU

In general, there are two core varieties of counter-terrorism. Crelinsten terms these two varieties coercive and proactive counter-terrorism. Coercive counter-terrorism contains the use of state violence and power, whereas proactive counter-terrorism aims to prevent terrorism even before it has occurred (Crelinsten, 2014). The more familiar names for these two varieties of counter-terrorism are hard and soft power terrorism. As a complement to coercive counter-terrorism, hard power measures include, according to Rinehart, special forces' operations, increased policing, intelligence operations, and drone strikes (used to combat terrorism) (Rinehart, 2010). However, the execution of hard power counter-measures often creates serious questions and debates regarding the ethical and legal use of force. Regarding soft power, the soft counter-terrorism approach features a more preventative function and strives to target the root of terrorism (RMIT, N.D.). Rinehart states that soft methods may include capacity building, economic development, and, above all, counter-radicalization (Rinehart, 2010). Romaniuk and Fink describe counter-

radicalization as terrorism prevention. Terrorism prevention, they claim, aims to *“prevent non-radicalized populations from becoming radicalized. The objective is to create individual and communal resilience against cognitive and/or violent radicalization through a variety of non-coercive means”* (Peter Romaniuk, 2012).

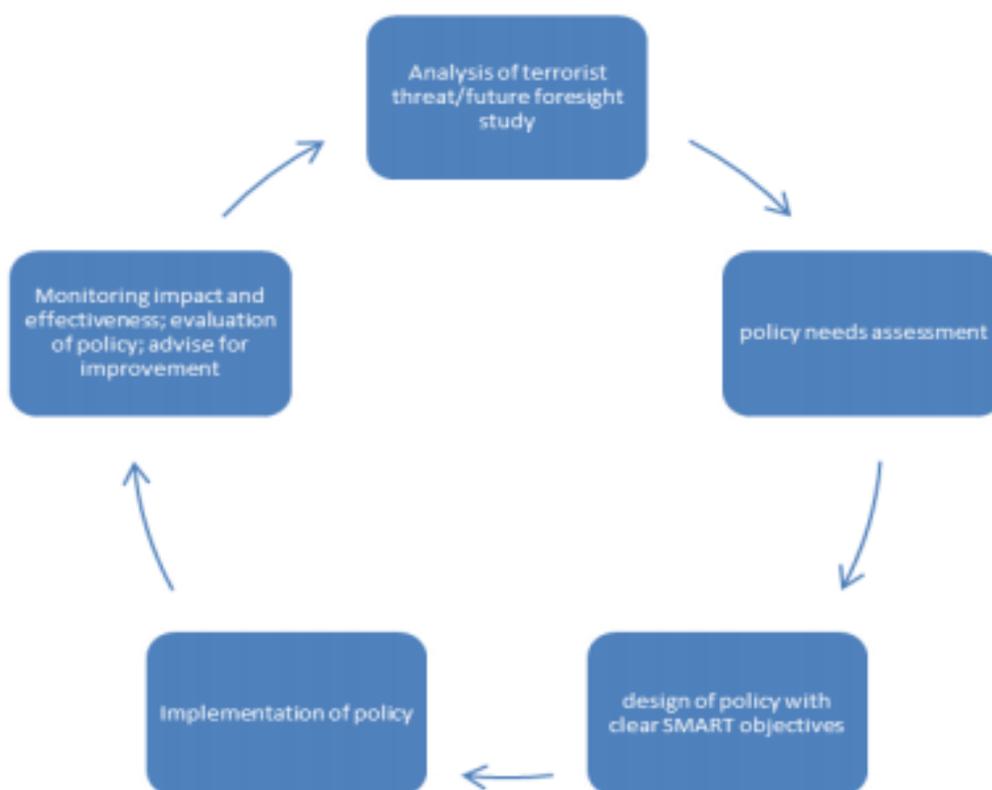
Other than hard- and soft power forms of counter-terrorism measures, Prezelj includes the phenomenon of smart counter-terrorism, explaining that the smart approach aims to reduce the motivation and capacity of terrorism. That is to say, smart counter-terrorism strives to win the hearts and minds of the population (Prezelj, 2013). According to Prezelj, smart counter-terrorism is defined as *“a process of prudent integration of a large number of governmental and non-governmental players from various levels. This approach should integrate preventive, defensive and offensive measures conducted by a large number of players into an efficient short-term and long-term approach”* (Prezelj, 2013). He explains that states that successfully associate counter-terrorism measures with the resolution of current conflicts do not have to expend resources fighting terrorism.

In order to conduct suitable research, with regard to this topic, the approach to counter-terrorism that must be outlined is the European Union’s (EU) approach. Heleen van Weers conducted an interview with Stef Wittendorp, a researcher at the International Centre for Counter-Terrorism (ICCT) and Institute for Security and Global Affairs (ISGA). According to Wittendorp, the EU’s approach to counter-terrorism is predominantly legal. Within this legalistic approach, there are mandates requiring Member States to criminalize terrorism (Weers, 2017). This legalistic approach aside, he notes that there is also an informal approach in which *“the police and intelligence authorities [...] collaborate”* (Weers, 2017). As the European Union is not supranational in the field of counter-terrorism and does not have a single military, the legalistic approach is the most appropriate in EU counter-terrorism enforcement. However, it is argued that counter-terrorism policy faces difficulties, in terms of implementation, due to lengthy procedural requirements. The global strategy page of the EU’s official websites notes that: *“The effectiveness of CT policies largely depends on coherence and coordination between internal and external EU security policies as well as on the establishment of a more comprehensive information-sharing system between Member States”* (European Union Global Strategy, N.D.).

The EU established its role as a counter-terrorism actor in a responsive manner. Major terrorist attacks in the early 2000s—including 9/11, Madrid, and London—have contributed to the EU’s developing policies and bodies to combat terrorist attacks and threats (Javier Argomaniz, 2014). One highlight of the EU’s counter-terrorism enforcement is its 2005 Counter-Terrorism Strategy, the goal of which is: *“To combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice”* (Council of the European

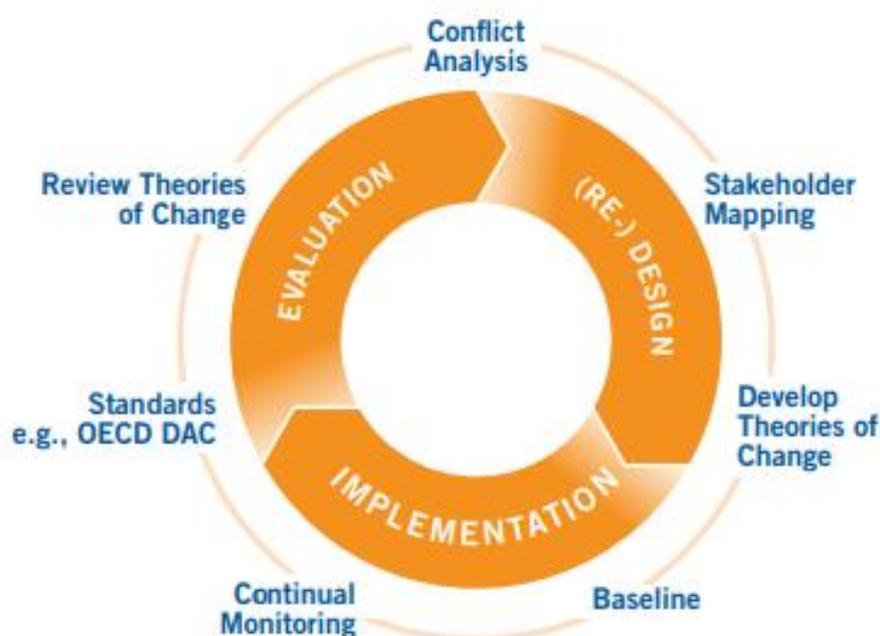
Union, 2005). The four pillars supporting this strategy are prevent, protect, pursue, and respond. The strategy can function effectively only if work on the national, EU, and international levels is delivered. Despite the limitations facing the EU in enforcing counter-terrorism policy in every Member State, it does manage to provide support, which adds value in a variety of ways. Firstly, the EU strengthens national capabilities by utilizing its knowledge and experiences. Secondly, it facilitates European cooperation by providing useful mechanisms for, and information-sharing between, EU bodies and Member States. Thirdly, the EU develops collective capability and encourages the development of suitable policy responses to terrorist threats. Fourthly, the EU promises to make optimal use of its bodies, including Europol. Lastly, the EU promotes international partnership, foremost with the United Nations and international organizations, to strengthen counter-terrorism cooperation (Council of the European Union, 2005). Each support method contributes, in turn, to the four main pillars described in the Counter-Terrorism Strategy.

### 2.3 Assessing Counter-terrorism Policy



**Figure 1** - EU Policy Cycle for counter-terrorism policy development (European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, 2017)

Policy evaluation is an important method for the EU to measure the outcomes and effectiveness of a specific policy. With counter-terrorism assessment and counter-terrorism policy assessment, the EU utilizes certain procedures to implement assessment. A study conducted by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, whose purpose was to establish the effectiveness of EU counter-terrorism policy, provides the 5-step policy cycle applicable to the development of counter-terrorism policy (see Figure 1). Firstly, a terrorist threat or trend will be examined to establish whether a counter-terrorism policy requires assessment. Once the assessment phase has been completed, the policy will be drafted with the inclusion of Specific, Measurable, Achievable, Relevant and Time-bound (SMART) objectives. The fourth step is the implementation of the counter-terrorism policy, firstly in the involved EU bodies, followed by Member States. The final step includes evaluating the effectiveness of the policy (European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, 2017).



**Figure 2 – Evaluation Cycle (Peter Romaniuk, 2012)**

The work of Romaniuk and Fink on evaluating terrorism prevention programs supports this method of evaluation. Figure 2 shows their view of the evaluation cycle applicable to the assessment of counter-terrorism policy. They argue that counter-terrorism evaluation practices are currently in their infancy because countries often begin from scratch when approaching the question of how to evaluate counter-terrorism (Peter Romaniuk, 2012). For this reason, Romaniuk and Fink claim there

are evaluation methods, including Figure 2, which can ease the work of countries that experience difficulties in evaluating counter-terrorism policy.

Furthermore, Romaniuk’s and Fink’s report describes the distinction between vertical- and horizontal evaluations. Vertical evaluations focus on specific programs from beginning to end. In this way, countries can create programs that target elements that potentially pose a threat to national security and stability. One aspect that could be evaluated vertically is the effectiveness of counter-radicalization. Horizontal evaluations, by contrast, assess the efforts of agencies and bodies to support a certain policy or strategy carried out by a government (Peter Romaniuk, 2012).

Another method of assessing counter-terrorism actions is present in research conducted by Schroden, Rosneau, and Warner. By their reasoning, asking the right questions—namely those which contain indicators as measurement tools—will help policymakers understand the terrorism theories on which their counter-terrorism actions are based. As Figure 3 demonstrates, Schroden, Rosneau, and Warner contend that: *“By providing a proof of concept assessment framework for today’s theories of terrorism/CT, we hope to empower policymakers to ask the right questions about countering terrorism—and practitioners to answer them”* (Jonathan Schroden, 2016).

terrorism

Action	Assessment Questions	Indicators
Counter-network actions (direct action and targeted killings, use of informants, repentance laws)	To what extent have group members been effectively removed by counter-network actions?	<ul style="list-style-type: none"> <li>Numbers of group members removed (captured or killed) over time, by broad “type” (e.g., senior leaders, mid-level leaders, facilitators)</li> </ul>
	To what extent have counter-network actions affected recruitment of new group members?	<ul style="list-style-type: none"> <li>Estimates of the rate of recruitment of terrorist groups (can be numerical ranges or relative changes over time)</li> </ul>
	To what extent has the group’s cohesion been impacted by counter-network actions?	<ul style="list-style-type: none"> <li>Reports or announcements of terrorist splinter groups</li> <li>Reports or announcements of changes of leadership</li> <li>Reports or announcements of infighting or “red-on-red” violent events</li> </ul>
	To what extent have counter-network actions impeded the ability of the group to effectively communicate?	<ul style="list-style-type: none"> <li>Changes in the quality, volume, or frequency of updates of terrorist group propaganda or other information products</li> </ul>

**Figure 3** - Mapping of a CT action to indicators for the group dynamics theory of terrorism (Jonathan Schroden, 2016)

Given that Regulation 2016/794 requires Member States to monitor Europol’s counter-terrorism actions politically, it was essential to establish a unit that deals with the assessment of Europol on the terms of this mandate. Therefore, the presidents of national parliaments, together with the European Parliament, have created the Joint Parliamentary Scrutiny Group (JPSG) in order to provide

parliamentary evaluation and control of Europol (Kreilinger, 2017). More precisely, Article 51 of Regulation 2016/794 announces the establishment of a JPSG that will: *“politically monitor Europol’s activities in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons”*. (The European Parliament, 2016) The Article further states that Europol must send its planning to the JPSG, which will then analyse and examine the planning. In terms of functions, the JPSG has the ability to conduct hearings to measure Europol’s activities. In addition, the JPSG is able to request from Europol additional documents required for assessing the performance of its tasks. Furthermore, it is able to draft summarized conclusions of the monitoring. These conclusions are sent to the European Parliament and national parliaments, which relay the conclusions to Europol, the European Council, and the European Commission (Kreilinger, 2017).

## 2.4 Conclusion

The definition of counter-terrorism tends to differ from simple to complex, and it has been stated that there is indeed no universal definition. The same is true for counter-terrorism approaches, which differ by country due to the various forms of terrorism which can be encountered. In order to correctly conduct this research, the EU’s definition of counter-terrorism shall be considered systematized. Counter-terrorism itself can be divided into hard power, soft power, and smart counter-terrorism. Hard counter-terrorism, which is sometimes described as coercive, makes use of state violence and military action in order to combat terrorist attacks. Soft, proactive counter-terrorism is more preventative: using soft power counter-terrorism means effortfully preventing terrorism prior to its occurrence. Smart counter-terrorism contains a hybrid approach to terrorism that targets and seeks to reduce both the motivation and capacity of terrorism. With regard to the European Union, a legalistic approach to counter-terrorism is used. This means that, by drafting policies that are applicable to all member states, in combination with extensive cooperation, terrorism controlled and prevented. The EU counter-terrorism strategy of 2005 exemplifies its legal approach to counter-terrorism. With regard to the assessment of the effectiveness of counter-terrorism policies and actions, multiple approaches are involved. For EU counter-terrorism policies, the policy cycle, as shown in Figures 1 and 2, applies to this process. The aim of this cycle is to design, implement, and evaluate a certain policy. In the evaluation process, asking the appropriate questions, combined with usage of the correct indicators (as shown in Figure 3), may contribute to the improvement of policy- writing and analysis. To assess Europol’s counter-terrorism actions, Regulation 2016/794 prescribes the establishment of a JPSG consisting of national parliaments and the European Parliament. The task of the JPSG is to politically monitor the actions Europol takes to fulfil its mission of providing security.

### 3. Methodology

#### 3.1 About the methodology

This study analyses the feasibility of the European Council and Parliament's Regulation 2016/794 for Europol in the field of counter-terrorism, and how this regulation strengthens Europol's competences. For this study, it is essential and highly appropriate to outline the research methods that contributed to its realization. This methodology has closely followed Schneider, who describes methodology as a discussion of the reasons why certain methods were used (Schneider, 2014). His explanation is complemented by Labaree, who states that methodology *"includes describing the theoretical concepts that inform the choice of methods to be applied, placing the choice of methods within the more general nature of academic work, and reviewing its relevance to examining the research problem"* (Labaree, 2018).

The methodological approach that has been applied for researching the main question can be described as predominantly qualitative, according to Labaree's definition: *"The word qualitative implies an emphasis on the qualities of entities and on processes and meanings that are not experimentally examined or measured in terms of quantity, amount, intensity, or frequency. Qualitative researchers stress the socially constructed nature of reality, the intimate relationship between the researcher and what is studied, and the situational constraints that shape inquiry"* (Labaree, 2018). This approach suits the study because an answer to the research question requires the examination and collection of primary- and secondary data. Moreover, the research question is not related to data-gathering through the use of research instruments or experiments. However, a small part of the data can be linked to the quantitative research approach as some statistics have been used to support the content of the research.

#### 3.2 Secondary Data

Secondary data, according to Surbhi, refers to information that has already been collected by any person other than the user him or herself (Surbhi, 2016). In addition, secondary data is *"the readily available form of data collected from various sources like censuses, government publications, internal records of the organization, reports, books, journal articles, websites and so on"* (Surbhi, 2016). With regard to secondary data in this research, multiple types of documents have been used in order to obtain the correct content for the research findings. First and foremost, official policies containing the EU's legislation have been processed in this study. These documents include: Regulation 2016/794; Council Decision 2009/371/JHA; and the 2005 European Counter-Terrorism Strategy. Additionally, other EU Frameworks, Directives, publications, and legislations were used. These types of documents were obtained through desk research conducted on the official website used to access EU law: eur-lex.europa.eu. The legislative documents were considered highly valuable because they

served as the foundation of both the central question and central answer of this study. It can be discerned, for instance, that this study was designed around Regulation 2016/794, which is an official EU legislative document. The content of the documents was converted into research findings by analysing and assessing the relevant articles and rules contained therein, which were then applied, in turn, to the main- and sub-questions of the research. This approach to policy analysis is justified by policy evaluation studies conducted by Disley and Carrerra into the effectiveness of certain EU counter-terrorism policies.

These aforementioned policy assessment studies have been included in this research due to their substantive utility. Disley's report evaluated the effectiveness of Council Decision 2009 in establishing the European Police Office and Europol's activities. In addition, Carrera's report assessed the EU's counter-terrorism policy in the aftermath of the terrorist attacks that occurred in Spain in 2017. The third counter-terrorism policy evaluation study that has been included was conducted by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs. This study was located through effective desk research on academic literature sites, including Lexisnexis, WorldCat, SpringerLink, Taylor & Francis, and several others. The motivation to make use of these studies is that the direction of this research was informed significantly by evaluations of the effectiveness of CT activities and policies. Carrera's evaluation study has been an essential source in supporting the results of sub-question 3. In general, the evaluation reports in this research were processed by studying the outcomes and applying the recommendations of the studies, which improved the research quality.

Furthermore, information regarding Europol has mostly been acquired through official Europol reports and reviews published on its website. For this research, Europol's publications from 2007-2017 have been processed in the findings. Europol's annual reviews contained information on all the highlights and events that it dealt with throughout the year. In addition, Europol indicated the scope of cooperation and the coordination of its activities in the forthcoming year. The other main type of publication used by Europol included in this study was its Terrorism Situation and Trend Report (TE-SAT). This report communicated statistics on terrorist attacks, arrests and activities carried out within a year, and detailed trends in terrorism recognized by Europol. Thirdly, the terrorist reports contained information on the introduction of new counter-terrorism systems developed by Europol. The official Europol publications were key to this research, as its subject concerns the functioning of Europol. In order to measure Europol's progress over the years, the reviews and terrorism reports were indispensable to this research. In this study, the foreword of the director, terrorism related statistics, and all relevant information in the Europol publications have been applied to the content of the findings in order to discover trends in Europol's activities and functions.

Other secondary data that were gathered and used in this research consist of several publications and studies related to Europol and the definition of counter-terrorism. Moreover, news articles, journals and academic literature, such as essays, have provided essential information about Europol and counter-terrorism policies. Conducting desk research and collecting secondary data were the primary methods used to conduct this study.

### 3.3 Primary Data

Primary data refers to data that originate in the researcher's own direct experiences and actions. This includes data directly obtained through the use of surveys, questionnaires, and personal interviews (Surbhi, 2016). For this research, three professionals in the field of counter-terrorism, Europol, and European Security have been interviewed:

- *Dr. Prof. Christian Kaunert.* Kaunert is Director of the International Centre for Policing and Security at the University of South Wales and was awarded a Jean Monnet Chair in EU Justice and Home Affairs Policy and EU Counter-Terrorism. Furthermore, Kaunert has multiple literary works in the field of European Counter-Terrorism to his name.
- *Dr. Prof. Oldrich Bures.* Bures is the founding director of the Centre of Security Studies and head of the department of International Relations and European Studies, both at the Metropolitan University in Prague. As a researcher, Bures is focused on peacekeeping, terrorism, and counter-terrorism. Additionally, Bures and Kaunert have worked together on multiple counter-terrorism publications.
- *Expert on European Security.* The third interviewee chooses to remain anonymous. This proposal has been accorded and signed in the attached informed consent form. The expert has been active within the field of European Security, counter-terrorism, and European policing. Furthermore, the expert has published extensively within the mentioned field of interests.

The questions asked during the interviews aimed to provide different perspectives on counter-terrorism policy in Europe and on Europol's function as a counter-terrorism actor. The information obtained from the interviews is of value to this research as it provided new and relevant information that supplements the acquired secondary data. This information has been processed in both the results and discussion sections of this research. Furthermore, it contributed to a more comprehensive understanding of the research topic.

### 3.4 Limitations

In hindsight, any other relevant findings of this study have been limited by the absence of Europol's review and terrorist report of 2018, which would have evaluated 2017 calendar year. The EU evaluation on the effectiveness of Regulation 2016/794 is expected to be implemented in 2019, according to Recital 38 (The European Parliament, 2016). Therefore, the most up-to-date findings of this research will presumably be released in the months and years to come. Likewise, insight into Europol's specific expenditure, with regard to its counter-terrorism operations, databases and units, could not be provided in this study because obtaining this information from Europol is beyond the researcher's abilities.

## 4. Results

### 4.1 Europol's counter-terrorism policy before Regulation 2016/794

Before the counter-terrorism enforcement policy described in Regulation 2016/794, Europol had established and developed rules for preventing terrorism. These rules were announced by Council decisions, frameworks and strategies that date to the late-nineties in the 20<sup>th</sup> century.

#### 4.1.1 Counter-terrorism policy in 1995-2009

Beyond the process and development of the establishment of Europol, the transnational fight against terrorism was confirmed by the signing of Europol in 1992 by the members of the European Community (Arfvén, 2017). It is worth noting that the task of combatting terrorism was stated in the early years of the concept of terrorism enforcement. However, by the time Europol was established in 1995, the term “counter-terrorism” was not included in its list of primary tasks (Boer, 2015). Therefore, it can be argued that counter-terrorism did not have priority in the initial stages of Europol. A short time later (1997), the Amsterdam Treaty mentioned Europol in relation to combatting terrorism for the first time (Arfvén, 2017). In 1998, a Council Decision recognized Europol as the institution that conducts counter-terrorism activities. As the Council declared: *“The Council of the European Union has decided, in accordance with Article 45(4) of the Europol Convention, that Europol shall have the authority to deal with crimes in the course of terrorist activities”* (Council of the European Union, 1998). On 1<sup>st</sup> January 1999, this decision came into force.

The attacks of September 11<sup>th</sup> had a strong effect on both the EU and Europol, sparking the interest of policy makers concerned with how best to assure the protection of the EU from similar events (Arfvén, 2017). Shortly thereafter, on 15<sup>th</sup> November 2001, a new specialized unit was founded. The so-called Counter-Terrorism Task Force consisted of officers and experts who gathered relevant intelligence details on terrorism threats, undertook operational analyses, and formulated threat assessments (Deflem, 2006). Within the Task Force, 15 Europol members worked on terrorism issues with the support of 10 Member State counter-terrorism experts and 22 Serious Crime Department analysts. The unit merged a year later with the Serious Crime Department, but separated immediately after the terrorist attacks that took place in Madrid in 2004 (Deflem, 2006).

On 13<sup>th</sup> June 2002, the Council introduced new rules for combatting terrorism and terrorist offences and detailed related penalties as initially established by Council Framework Decision 2002/475/JHA. Contained within the Framework Decision are suggestions as to how Member States should respond to terrorism: the decision requires each Member state to execute and evaluate the application of criminal law measures on terrorism, and to cooperate with other nations when terrorism-related events affect multiple countries (Council of the European Union, 2002).

In the same year, according to Deflem, Europol also established multiple specialized programs. For example, the 'Counter Terrorism Program' was created to monitor activities against terrorism, including threat assessments and information gathering. Other programs include: the 'Counter Proliferation Program', which aims to reduce illegal trafficking; the 'Networking Program', which focuses on creating interaction and coordination between experts of international organizations and policies of states outside the EU; and the 'Preparedness Program', which was developed to establish investigation teams in the event of certain terrorist incidents occurring in the EU (Deflem, 2006).

Alongside a study measuring the effectiveness of the EU's counter-terrorism policies, 2005 saw the Council publish a document entitled 'The European Union Counter-Terrorism Strategy' (Council of the European Union, 2005). The strategy focuses on four main pillars: Prevent, Protect, Pursue, and Respond. In the protect pillar, multiple EU bodies enforce strict rules that decrease security risks. Frontex covers EU border control and analyses risks in this area. In addition, the Visa Information System (VIS) and Schengen Information System (SIS) increase the control of documents, which helps to tackle potential terrorist threats (Council of the European Union, 2005). Although the Counter-Terrorism Strategy emphasizes the Member States' role in countering terrorism, Europol is described as the EU body that can be used to ensure cooperation and improve understanding of terrorist threats between and among Member States. This understanding results in national counter-terrorism policy created in order to respond to terrorism (Council of the European Union, 2005). All in all, 2005 meant that Europol increased its cooperation with national agencies, in terms of counter-terrorism. Deflem confirms this situation, stating that coordinated activities among National Units from EU Member States' security agencies are part of Europol's counter-terrorism dynamics. Further, he suggests that Europol's operations can be understood from within the context of the EU's and participating Member States' interests, and describes for this reason the 'Europeanization' of counter-terrorism (Deflem, 2006).

The outcome of the 2005 strategy can be observed in annual reports. 2006, the year of the strategy implementation, is the first year that was analysed in order to display information and statistics on terrorism (Europol, N.D.). This makes the EU Terrorism Situation and Trend Report 2007 (which evaluates the activities in 2006) the first of their kind (Europol, N.D.). According to the report, in 2006, a total of 498 terrorist attacks occurred and 706 suspects were arrested (Europol, 2007).

Moreover, the role of Member States expanded as the EU Council updated Framework Decision 2002/475/JHA in 'Council Framework Decision 2008/919/JHA' of 28<sup>th</sup> November 2008. The Framework Decision emphasizes that Member States also must respond and adopt measures against terrorist-related offences (Council of the European Union, 2008). The most relevant offences described by the Framework Decision include: terrorism recruitment; training associated with

terrorism; and provocation to commit a terrorist offence. The results of this Framework update that are observable in the 2008 Trend Report do not suggest significant, positive development compared to 2007. One noteworthy outcome of the Report is that there were no Islamic terrorist attacks. Although there were no attacks, Islamic counter-terrorism still remains a high priority for Europol, which shows the development of Europol and Islamic terrorism (Europol, 2009).

With the EU's battle against terrorism affirmed in 1992, the establishment of Europol was well-timed for it to assume and fulfil counter-terrorism duties by 1998. Due to multiple major terrorist attacks in the early 2000s, counter-terrorism policy developed simultaneously. The attack of September 11<sup>th</sup> led to the establishment of the Counter-Terrorism Task Force and the Counter-Terrorism Program. Additionally, Framework Decision 2002/475/JHA stimulated Member States' counter-terrorism measures. Shortly after the 2004 terrorist attack in Madrid, the European Council introduced the European Union Counter Terrorism Strategy in 2005. This increased Europol's responsibilities, emphasizing cooperation and coordination between Europol and national agencies on counter-terrorism. Since 2007, the evaluation and assessment of terrorist and counter-terrorist activities within the European Union have been officially documented under the so-called 'EU Terrorism Situation and Trend Report' published annually by Europol. A noticeable finding of the 2008 report is that there were no Islamic terrorist attacks in 2007; though Islamic counter-terrorism still remains a priority for Europol.

#### 4.1.2 Council Decision 2009/371/JHA

2009 can be seen as a promising year for the development of Europol and counter-terrorism. According to Arfvén, Council Decision 2009/371/JHA established a legal legacy in terms of Europol's competences (Arfvén, 2017). The first noticeable aspect of this council decision is the fact that Europol received a new legal basis, which affect its structure (Council of the European Union, 2009). Arfvén states that the most significant change is to allow easier amendments to Europol's future mandates, which could positively affect counter-terrorism measurements (Arfvén, 2017). In addition, Europol's competences have been expanded by Article 4 of the Council Decision, which declares that Europol's remit extends to terrorism. Aside from competences, Europol's tasks have also increased. With the dissolution of the pillar system, as proposed by the Treaty on the European Union, the internal/external divide became less apparent (Boer, 2015). With this, Europol gained decision-making influence in the area of police decisions and data-processing (Arfvén, 2017). The interpretation of Europol in Decision 2009/371/JHA is important. In the annual review, the Director of Europol, Rob Wainwright, claimed: *"As Europol moves into a new decade, the change in its legal basis will consolidate its position at the centre of the new internal security arrangements and information pathways in Europe. This will enable Europol to function even better as a pioneer of*

*change, identifying and responding to new threats, and developing new techniques”* (Europol, 2010). Although the Council Decision of 2009 created a legal basis for Europol, it has not increased Europol’s freedom. According to Prof. Dr. Kaunert, Europol’s independence from the EU bodies has reduced after becoming an instrument, in some sense, of EU Foreign Policy, rather than an autonomous policy-maker (Kaunert, 2010).

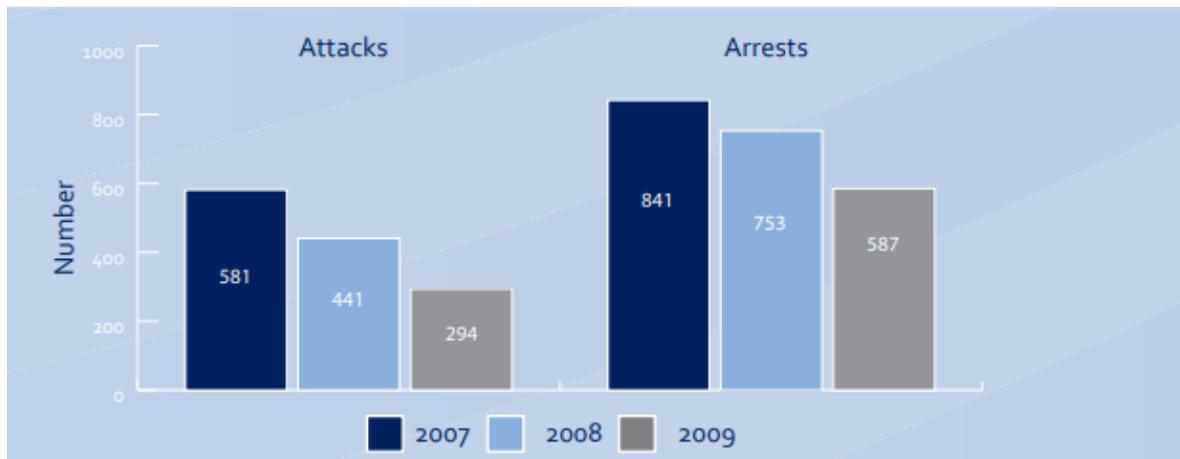
The Council Decision brings Europol to the centre of Justice Home Affairs. According to the Council, the intention of Decision 2009/371/JHA was to improve Europol’s legal framework and to make it easier to upgrade the European Parliament’s role in controlling Europol and subjecting it to the main rules and procedures appropriate to the corresponding EU bodies. Europol has become, not an intergovernmental organization, but a recognized agency. Other than extending Europol’s competences in times of serious crime and terrorism in cases when two or more states are affected, the key changes following Decision 2009/371/JHA are as follows:

- Article 5(1, e) allows Europol to support Member States at major events on an international scale;
- Through Article 10(2), Europol is able to create systems for personal data processing for its current systems;
- Article 13(1) states that National Units of Europol have access to the Europol Information System to search for persons who are a potential threat to Europol’s competences. Access was possible before Decision 2009/371/JHA, though information was only accessible through liaison officers;
- Article 15(2) gives National Units of Europol access to the Index Function.

(Council of the European Union, 2009)

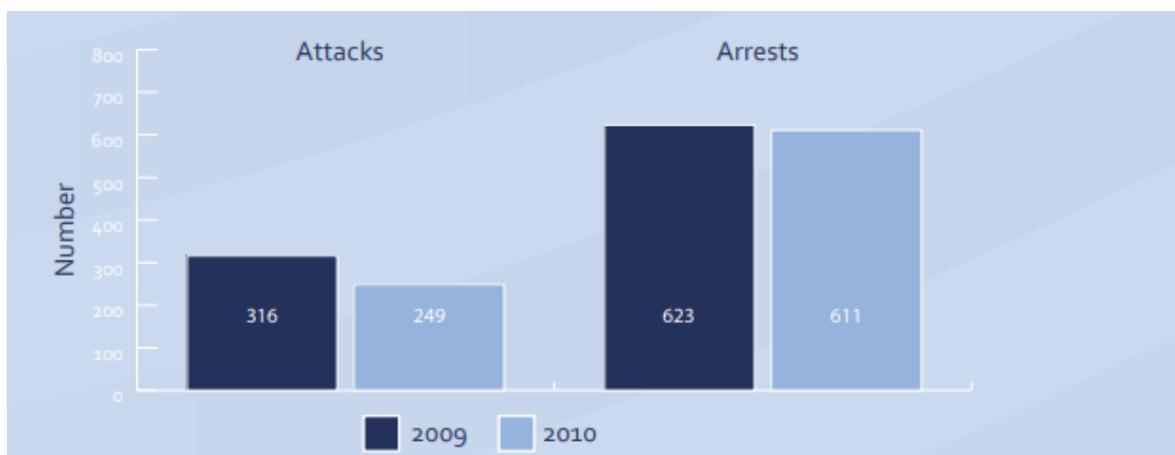
#### 4.1.3 Results of Counter Terrorism Policy in 2009-2016

In 2009, when the Council Decision was written, Europol had already achieved positive results in terms of counter-terrorism. Figure 4 below, taken from Europol’s Terrorism Situation & Trend Report, indicates that the number of terrorist attacks in 2009 was considerably lower than in 2008. In terms of percentage, this is a 33% decrease. With fewer attacks, the number of arrests has decreased by 22% compared to 2008..



**Figure 4:** The number of terrorist attacks and the number of arrests from 2007-2009 (Europol, 2010)

As Council Decision 2009/371/JHA brought promising improvements for Europol, the outcomes of the annual EU Terrorism Situation and Trend Report are expected to be positive. The Decision came into effect January 1<sup>st</sup> 2010. The first positive outcome is highlighted by Europol director Rob Wainwright, who notes that multiple Member States prevented the execution of various terrorist attacks in 2010 following improved cooperation with Europol and its information system (Europol, 2011). Figure 5 shows that progress has been made: compared to 2009, there have been fewer attacks and the Attack/Arrest ratio has marginally improved.



**Figure 5:** The number of terrorist attacks and arrests, 2009-2010 (Europol, 2011)

In terms of operational support provided by Europol to Member states, Council Decision 2009/371/JHA was effective, given that the total number of cases of operational support increased from 565 in 2009 to 803 in 2010. This support includes forensic support, technical support, operational analysis and meetings, financial support, on the spot analysis, and coordination (Emma Disley, 2012). However, many people still advocate rules that would increase Member States' obedience to information offered by Europol. It was therefore recommended that Europol should try to support investigations in which multiple Member States are involved. One resource still requiring greater involvement from Member States, according to Disley's evaluation report, is budget. If its budget were higher, Europol could have encouraged Member States to respond and act, based on the information it provided, in times of counter-terrorism and crime investigation (Emma Disley, 2012). Europol's competences in the area of counter-terrorism increased shortly after August 2010, and it was a major participant in the Terrorist Tracking Finance Program founded by the U.S. This program was created for the purposes of analysing and maintaining terrorist finances (Arfvén, 2017). Finally, Europol published a document entitled 'Europol Strategy 2010-2014', in which its renewed mission, vision, values, principles, strategy, goals and objectives were outlined (Europol, 2010).

The most significant moment for Europol, in 2011, was likely the validation of the support it gives to Member States. The First Response Network was created to support Member States in which a terrorist attack takes place, by establishing a connection between national experts and an international platform of counter-terrorism experts (Europol, 2012). This platform provides the ability to investigate a terrorist suspect database, the ability to track terrorist financing, and other measures. In 2011, this platform was successfully used by Norway to investigate its major domestic terrorist attacks (Europol, 2012). The severity of the attack in Norway, executed by nationalist Fjotolf Hansen (Anders Breivik), was recognized in Europol's 2012 Trend Report, which advises against underestimating right-wing extremism. Although the number of terrorist attacks and arrests decreased, Europol claims that terrorist-related activity still remains a threat to Member States (Europol, 2012).

In terms of numbers, there were more attacks and arrests in 2012 than in 2011, but fewer than in 2010 (Europol, 2013). On the basis of the review, Arfvén concludes that Europol developed greater knowledge and understanding of the difference between organized crime and terrorism, which could result in more specific counter-measures in both cases (Arfvén, 2017).

Additionally, a new legal basis for Europol has been introduced. On 13<sup>th</sup> December 2007, Article 88 of The Lisbon Treaty claimed:

*“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, organization and implementation of investigative and operational action carried out jointly with the Member States’ competent authorities or in the context of joint investigative teams. These regulations shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments”.* (The Lisbon Treaty, 2008)

Based on the article’s statements, the European Commission announced that a proposal for a regulation regarding Europol would be submitted in 2012 (Emma Disley, 2012). This future regulation is known today as Regulation 2016/794. The Standing Committee on Operational Cooperation on Internal Security (COSI), in an effort to reach a new Europol regulation, held two meetings on the subject of Europol’s future: the first on 17<sup>th</sup> February 2012; the second on 11<sup>th</sup> April 2012. Disley’s Evaluation report summarizes the outcomes of these meetings (see Figures 6 and 7).

Issue	Issues arising in debate
Scope	Europol’s competence should not be widened, but could be deepened Some flexibility might be useful to ensure that Europol can respond to new challenges
Tasks	Delegations did not see a need to introduce a mandatory provision to share information with Europol Attention was drawn to the Swedish Framework Decision, which also might encourage information exchange There was a need to explore how Europol can contribute further to ensure a better use of existing Europol products at national level It should be considered whether Europol could be granted access to the European Records Index System (EPRIS) Powers relating to surveillance of the internet might be necessary as Europol assumes the tasks of the European Cyber Crime Centre (EC3)
Cooperation	Creation of the Agency for management of large-scale information technology (IT) projects might lead Europol, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and Eurojust to reconsider how their IT systems are organised Improved information exchange between national units for Europol, Frontex and Eurojust was discussed

**Figure 6** – Summary of the first COSI meeting regarding Europol’s Future (Emma Disley, 2012)

At the COSI meeting on 11 April the European Commission presented a paper and underlined the importance of improving Europol's efficiency, effectiveness and accountability. The European Commission raised the following issues for discussion.

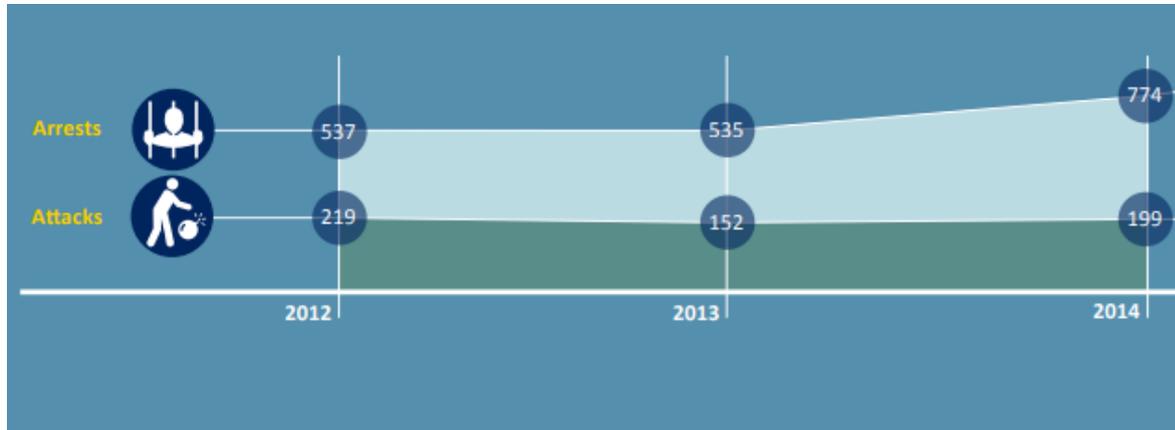
- 1. Provision of information by Member States: often the existing requirement in the ECD is not followed.**
  - Several Member States opposed obligations to share information, and had concerns about the budgetary and staff implications of any obligations to share information.
  - There was support for the provision of incentives for information sharing, and some support for peer evaluation in relation to information sharing.
- 2. Different views in Member States as to the role of the ENU.**
  - Discussion as to whether Europol could be granted 'hit/no hit' access to national databases – with Member State permission.
  - Support for continuing the central role of the ENU.
- 3. The role of private sector, also in view of the EC3.**
  - Some Member States supported greater cooperation with the private sector, while others were more reluctant, especially regarding sharing personal information.
  - Requests for clarity about the kind of information which could be shared and the framework to govern this, including checks on quality of information.
- 4. How to ensure follow-up of Europol's analysis?**
  - Discussion about ability to request an investigation, whether Eurojust should be informed of such a request, and whether there should be a deadline for Member States to respond to such a request.
- 5. Obstacles posed by the current data management concept to improving the intelligence picture.**
  - Some support for a more flexible approach.
- 6. A balanced solution needs to be found to improve the cumbersome procedure to conclude cooperation agreements.**
  - Some support for a more flexible approach.
  - The European Commission concluded that not everything Europol does with third partners needs full international agreement.
  - The European Commission is obliged to negotiate agreements under the Lisbon Treaty.
- 7. The Joint Supervisory Body**
  - In general, delegations considered the current data protection system as well-functioning.

**Figure 7** – Summary of the second COSI meeting regarding Europol's Future (Emma Disley, 2012)

There were significantly fewer attacks in 2013 compared to the previous year. However, Europol kept focusing on counter-terrorism. One trend that Europol mentions in the 2013 Terrorism Situation and Trend Report is the increasing number of EU citizens traveling to Syria to fight with terrorist groups. Europol considers these growing numbers a threat to all EU Member States, for which reason it must enact counter-measures (Europol, 2014). In addition, the Trend Report states that social media provides opportunities for terrorists as it is believed to heighten radicalization among EU-members. One counter-terrorism investigation concluded that, through Facebook and PayPal, charities were being misused to gather funds for terrorist purposes.

The issue of EU citizens' travelling to conflict zones and returning radicalized remains a priority, according to the foreword of Europol's 2014 review. The threat of this situation is that radicalized citizens are more likely to commit terrorist attacks after returning to the EU. When regard to counter-terrorism, Europol's cooperation with third-states, EU bodies, and other organizations increased in 2014 (Europol, 2014). The 2014 review does mention that support for Member States improved due to Europol's data- and information systems. Improved cooperation between Europol and Member States is indicated by Figure 8: although the number of attacks rose slightly, significantly more arrests were conducted compared to 2013. Furthermore, Europol's terrorism

report emphasizes the ‘nexus’ between organized crime and terrorism, stating that terrorism groups have established intelligent relationships with criminal groups to share knowledge and expertise, and to preserve operational security (Europol, 2015). Nevertheless, Europol treats terrorism and organized crime as separate entities (Europol, 2015).



**Figure 8:** The number of terrorist attacks and the number of arrests from 2012-2014 (Europol, 2015)

Following the Paris and Copenhagen terrorist attacks at the beginning of 2015, the priority of counter-terrorism within the EU increased. The Terrorism Report outlines the need for stronger cooperation and international response (Europol, 2015). One outcome of this request is the establishment of the EU Internet Referral Unit (EU IRU), which provides an identifying mechanism that searches for and eliminates extremist material displayed on the internet. Europol considers the establishment of this Unit another important step in furthering counter-terrorism cooperation (Europol, 2015). The annual review of Europol states that 2015 was a challenging year for Europe. This is due to the influx of illegal migrants entering Europe and the two major terrorist attacks that occurred in France. Europol made every effort to support France in counter-terrorist operations, and the number of terrorist attacks did not increase significantly. The number of arrests increased vastly from 774 in 2014 to 1077 in 2015 (Europol, 2016). On 29<sup>th</sup> January 2015, several weeks after the attack on the ‘Charlie Hebdo’ magazine, the first major terrorist attack in France, the Ministerial Council of Justice Home Affairs delivered the ‘Riga Statement’. In this statement, the Council claims that counter-terrorism efforts must be strengthened at the national and EU levels. Additionally, all terrorism-related activities are now considered a major threat to EU internal security (Europol, 2016).

In May 2015, Europol created the new Europol Strategy 2016-2020 to amend its mission, vision and strategy (Europol, 2016). The strategy states that Europol will maintain its development of counter-terrorism services by facilitating cooperation and information sharing in order to improve intelligence and operational support to Member States (Europol, 2016). Furthermore, the strategy highlights the aforementioned European Counter-Terrorism Centre (ECTC) and the EU IRU as promising tools for counter-terrorism operations (Europol, 2016).

The second major attack in France, this time at the Bataclan, together with the Riga Statement and the call for reinforcing counter-terrorism measures, ultimately led to the establishment of a key body in European counter-terrorism: the ECTC. The institution was established on 20<sup>th</sup> November by Justice and Home Affairs Ministers and came into effect on 25<sup>th</sup> January 2016. According to the Trend Report, the ECTC is designed to *“engender trust and raise awareness among national counterterrorism authorities about existing cooperation instruments at EU level, including Europol’s services and tools, thus maximizing operational cooperation and information exchange in the area of counter terrorism”* (Europol, 2016). Focus areas of the ECTC, according to the Europol website, are:

- To provide operational support for investigations requested by Member States;
- To combat foreign fighters;
- To share intelligence and expertise on terrorism financing;
- To identify online terrorist propaganda and extremism;
- To identify illegal arms trafficking;
- To execute international cooperation among counter-terrorism authorities;
- To work closely with other Europol centres, such as the European Cybercrime Centre and the European Migrant Smuggling Centre.

(Europol, N.D)

All things considered, the period 2009-2015 was efficient, important, and positive for the development of Europol. Over these years, Europol’s counter-terrorism competences expanded alongside its legal basis. Additionally, cooperation with Member States grew qualitatively and quantitatively. Following this, Europol established multiple specialist bodies to improve counter-terrorism investigations and operations. Similar to the initial years of Europol, major terrorist attacks have led to further policy amendments over the years, each giving Europol more power, trust, and responsibility. The initial years following the 2009 Council Decision brought a decrease in the number of attacks and an increase in the number of arrests, which represents effective policy implementation. After the 2009 Council Decision, Europol focused on promoting and offering support to Member States. Stimulated by multiple EU bodies, and by Europol itself, cooperation between Europol and Member States increased given that the latter could now rely on Europol’s information systems, databases, and counter-terrorism units during major terrorist attacks. With the creation of the ECTC, in 2015, Europol has assumed the role of superintendent in Europe in terms of counter-terrorism operations.

## 4.2 Regulation 2016/794 and Europol's Competences

The deal to amend the current counter-terrorism legislation was agreed by the European Parliament and Council on 26<sup>th</sup> November 2015 (Uldall, 2015). In the conducted interview, Kaunert stated that the idea of amending counter-terrorism policy had existed for several years. However, due to the major terrorist attacks that occurred between 2010 and 2015, the urgency of implementing this idea increased and its implementation therefore accelerated. (C. Kaunert, Personal Interview, April 17<sup>th</sup>, 2018) The regulation was adopted on 11<sup>th</sup> May 2016. Roughly one year later, on 1<sup>st</sup> May 2017, the Regulation took effect in every Member State (Uldall, 2015). The Director of Europol, Rob Wainwright, welcomed the new regulation by saying: *"The new powers will improve Europol's ability to support EU Member States in the fight against terrorism and organised crime at a time when Europe faces many challenging security threats"* (O'Keeffe, 2017).

In general, the regulation constructs certain rules for Europol. One of these rules includes a system whereby the EU Parliament and Member States can oversee the activities of Europol politically. Regulation 2016/794 states that Europol will strengthen the action of authorities in EU countries. In addition, Europol strives to support cooperation among EU countries in the field of counter-terrorism (Europol, 2017).

In terms of counter-terrorism, Regulation 2016/794 simplifies the process of establishing specialized units for Europol to respond to terrorist threats. Additionally, the Regulation augments the mandate of Europol to ensure optimal preparation against terrorist activities. Thirdly, the regulation upgrades Europol's ability to play a role in the EU's intelligence service in the field of counter-terrorism (Europol, 2017). According to Article 51 of Regulation 2016/794, a Joint Parliamentary Scrutiny Group (JPSG) will be established in order to monitor Europol's activities in achieving its goal politically, including measuring the impact of Europol's activities on the rights and freedom of EU citizens. Its first meeting took place on 9<sup>th</sup> and 10<sup>th</sup> October 2017, and the second meeting was scheduled for 18<sup>th</sup> and 19<sup>th</sup> March 2018 (Kreilinger, 2017).

### 4.2.1 Joint Investigation Teams and Europol National Units

Joint Investigation Teams (JITs) represent the available forms of cooperation between Member States and Europol. The setup of JITs belongs to Europol's counter-terrorism program. These teams can be established upon the request of the participating Member State. According to Europol's websites, JITs facilitate the coordination of investigations and prosecutions conducted in Member States (Europol, N.D.). In addition, Europol's support for the JITs is apparent in multiple ways: Europol liaises directly with JIT members; provides members with Europol information; and offers logistical support and technical expertise (Europol, N.D.). Wade states in her article that JITs can be regarded as an alternative to the European institutionalization of investigatory matters between EU

nations and bodies because the process of establishing JITs is faster than EU body to Member State. In addition, institutions such as Europol and Eurojust can provide the most relevant information on an ongoing situation after participating in a JIT (L.Wade, 2013). One example of a successful counter-terrorism JIT was that which was established between Belgium, their national units, and the FBI as a result of the 2016 terrorist attack in Belgium (Coninx, 2017). In 2017, a model agreement was made by the Council of the European Union for establishing JITs. The facilitating agreement functions as a contract between Europol and the participating Member States, which needs to be signed for the JIT to be established (Council of the European Union, 2017). Article 5 of the 2016 Regulation supports this setup: *“Where Europol has reason to believe that setting up a joint investigation team would add value to an investigation, it may propose this to the Member States concerned and take measures to assist them in setting up the joint investigation team”* (The European Parliament, 2016).

National Units associated with counter-terrorism have existed before Europol. The first example of transnational cooperation on counter-terrorism was the Police Working on Terrorism, established in 1979 (Deflem, 2006). This group consisted of National Units from the Netherlands, the United Kingdom, Germany, and Belgium. The counter-terrorism units from the countries of Scandinavia, and all other EEC states, joined the group in 1986. Furthermore, shortly after the September 11 attack, The Counter Terrorist Group (CTG) was created. This group included Norway, Switzerland, and many other EU Member States. As the main scope is Islamic extremist terrorism, the Counter Terrorist Group facilitates cooperation on the issue of terrorism and meets regularly with national police forces and intelligence agencies (Deflem, 2006). Regarding National Units, EU Member States are obligated to designate one of their agencies to perform the role of Europol National Unit (ENU). Subsequently, Europol relies on effective cooperation with participating member states to ensure communication flows effectively. For instance, once Europol has received information on terrorism, this must be translated into the languages of each participating Member State before it can be sent to Europol’s National Units (Deflem, 2006).

The Council Decision of 2009 updated the competences, deciding that any liaison between Europol and a Member State must take place through the National Unit. Additionally, Europol obtains the capability to process information and personal data. For this, a Europol Information System was established, to and from which National Units, among others, can submit and retrieve data (Council of the European Union, 2009). Disley’s Technical Report on the evaluation of Council Decision 2009 and Europol’s activities provided information on the actual process of Europol/ENU cooperation. The Report highlighted the fact that Europol’s work cannot be translated into action and results without follow-up from Member States, as it lacks operational powers. Consequently, Member States have failed to act upon the information provided by Europol. In some cases, National Units did not know

how to process the provided information. As Council Decision 2009 explains, all contact between Europol and the Member States goes through the ENUs, while the level of cooperation and the result of this process has turned out to be insufficient (Emma Disley, 2012).

In short, it has been said by Member States and EU bodies that Europol must demonstrate its added value and raise awareness of its competences; indeed, one could say that Europol ought to conduct better marketing of its services. On the other hand, the idea of granting Europol more powers to solve this problem was discouraged by both Europol and the Commission, as Member States were not ready for the political implications (Emma Disley, 2012). The recommendation that followed the situation described in the 2009 Report suggested, among other things, that a future Europol regulation should provide improved powers for funding counter-terrorism investigations and activities in which multiple Member States are involved, so as to encourage them to cooperate with Europol. Moreover, this future Regulation should include rules for the arrangements according to which effective practices are shared with National Units. Ultimately, the 2009 Report suggests that a future Regulation should establish a system, used by Europol to evaluate the activities of its National Units, by way of strengthening further cooperation (Emma Disley, 2012). This future regulation, known today as Regulation 2016/794, dedicates an entire article to Europol National Units. Article 7 requires Member States to assign and establish National Units that will provide close cooperation with Europol. In addition, these assigned National Units should have access to all data required for cooperating with Europol. The National Units will act as a mediating body between Europol and the Member States. The necessity of cooperation between National Units and Europol was increased by Article 7. This Article clarifies that Member States shall:

- Provide Europol with all the information necessary for the fulfilment of its objectives, including combatting terrorism;
- Ensure effective communication and cooperation with Europol;
- Raise awareness of Europol's activities.

(The European Parliament, 2016)

Furthermore, the regulation bolsters further cooperation by establishing regular meetings between the heads of National Units and by ensuring Member States' Financial Units can cooperate with Europol in order to improve research outcomes. Europol's 2016-2017 Report states that Europol launched the Horizontal Operational Services (HOS) in 2016. The HOS provides a wide range of support activities and specialist services to Member States (Europol, 2017). The report explains that, through the HOS, Europol's commitment to and cooperation with Member States increases the influence and competences of the Agency (Europol, 2017). In addition, Europol established the

Counter-Terrorism Joint Liaison Team (CT JLT) to enable more extensive cooperation during cross-border terrorism investigations (Europol, 2017).

Joint Investigation Teams (JITs) and Europol National Units (ENUs) are both important tools for Europol. In terms of cooperation, Europol, JITs, and ENUs collectively form the main platform on which counter-terrorism activities are executed in Europe. The idea of cooperation between these bodies dates back to the second-half of the 20<sup>th</sup> century. Cooperation with Member States was highly desirable for Europol following its establishment. However, a number of years passed before Member States trusted Europol enough to cooperate on counter-terrorism activities. Furthermore, European policy-making throughout the development of Europol has stimulated cooperation between Europol and Member States in the form of European National Units. The current Regulation further obligates Member States to maintain tight cooperation, which is of paramount importance to Europol in its fight against terrorism.

#### 4.2.2 Data Processing, Protection and Counter-Terrorism

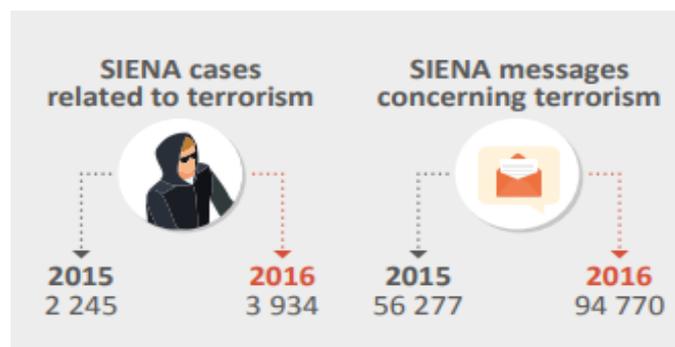
Data processing in the field of counter-terrorism tends to be of interest to Europol and other EU bodies: *“The European Union has always placed greater emphasis on data protection, in the field of counter-terrorism, than [have] other related actors”* (Personal Interview). Overall, Bures has seen progress in policy making regarding data-protection and data-processing. However, the appropriate balance—that is, between exchanging information for counter-terrorism matters and protecting the rights of people whose data is protected—has yet to be found. (O. Bures, Personal Interview, April 20<sup>th</sup>, 2018) Throughout the years, Europol and the EU have created several systems that work as tools for information exchange. These systems were designed to improve cooperation between, for instance, Joint Investigation Teams or National Units with Europol. Europol’s information systems mostly contain databases that, under the authority of EU legislation, are accessible to Member States operating investigations on crime and terrorism. Certain systems include the Schengen Information System (SIS), Visa Information System, and the Passenger Name Records system (PNR). The internet has become an important tool for terrorist activities. As mentioned, recruitment is one such activity. Besides recruitment, terrorism propaganda and financing are becoming more accessible through the internet. The European Union’s response to this situation was to establish the Internet Referral Unit (IRU), which later became a key competence of the ECTC (Ellerman, 2016). The IRU is mentioned in the Regulation as follows:

*“The transfer of personal data which are publicly available is strictly necessary for the performance of the EU IRU task and the following conditions are met:*

*(i) the transfer concerns an individual and specific case; and*

*(ii) no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transfer in the case at hand”.* (The European Parliament, 2016)

The 2009 Council Decision establishing the European Police Office mainly recited rules on the protection and security of data. From 2009 to 2016, a large number of debates led to the replacement of the Data Protection Directive from 1995. The replacement is known as the General Data Protection Regulation (GDPR), which was approved on 14<sup>th</sup> April 2016, and which will come into effect on 25<sup>th</sup> May 2018 (eugdpr, N.D.). Regulation 2016/794, however, emphasizes the processing of Europol's information. The regulation states that Europol is allowed to process information, such as personal data from public sources. This data may be collected and used for purposes regarding the investigation of persons, operational analyses, and the facilitation of information exchange between Europol, Member States, and other bodies, such as Eurojust and the European Anti-Fraud Office (OLAF) (The European Parliament, 2016). Member States are able to search and process data in the provided information services offered by Europol, though only for the purpose of combatting and preventing acts of crime and terrorism. With regard to information exchange, only Europol is allowed to transfer its data to cooperating bodies. Member States and other bodies are therefore not allowed to transfer Europol's data without Europol's permission (The European Parliament, 2016). Europol is allowed to transfer and process data from private parties, such as internet providers, on the condition that the concerned data is of high necessity in preventing and combatting acts of crime and terrorism. Aside from private parties, Europol is allowed to receive data from private persons, which must firstly go through the ENUs. The supervision of the implementation of this Regulation on data-processing will be conducted by the European Data Protection Supervisor (EDPS) and the assigned national supervisory authorities (The European Parliament, 2016). Moreover, an advisory-based Cooperation Board has been established to stimulate cooperation between the EDPS and national supervisory authorities. The processing and transferring of data between Europol and its cooperating bodies were strengthened after Regulation 2016/794 with the establishment of Europol's Operational Centre in the same year. This Operational



**Figure 9** – SIENA terrorism-related cases and messages (Europol, 2017)

Centre runs 24/7 and is the central hub for information exchange on criminal and terrorist matters between Europol, Member States, and third parties (Europol, N.D.). In addition, counter-terrorism experts routinely work with the Secure Information Exchange Network Application (SIENA), an information platform. Through SIENA, Europol and its cooperating bodies process and retrieve information (Europol, N.D.). After the Regulation, Europol provided SIENA with new tools for improving the connection between Counter-Terrorism Units in Member States and Europol. The

outcomes of 2016's updated SIENA platform, which demonstrate improvements on 2015, can be seen in Figure 9. The statistics reveal an increase in communication between Counter-Terrorism Units and Europol following the development of SIENA's capacities.

Ultimately, the number of foreign terrorist fighters whose information was acquired by Europol's Information System (EIS) has doubled after the Regulation was introduced. This number increased from 3700 terrorists in 2010 to 7800 in 2016 (Europol, 2017). Bures comments that Europol will emphasize this data increasingly over the following years due to the rise of cybercrime and terrorist activities, such as financing and recruitment on the internet. This statement could indicate improvements in TE-SAT's statistics in 2018 and better results for Europol in the upcoming years. (O. Bures, Personal Interview, April 20<sup>th</sup>, 2018) Europol's updated competences, obtained through Regulation 2016/784, will presumably be evaluated by the Commission on 1<sup>st</sup> May 2019 on account of terrorism-related activities via the internet and data processing operations. As such, Ellerman argues that this evaluation, which could potentially take place, may be positive for Europol as the EDPS will focus on data operations (Ellerman, 2016). Thus, it can be said that data-related activities have, over the years, proven to be part of Europol's and the EU's main program of combatting terrorism. The protection of data in counter-terrorism has been appointed to multiple EU or Europol bodies. While the 2009 Council established rules on data-protection competences, the 2016 Regulation improved Europol's competences, updating its policy on data-processing so that it could provide better services to cooperation partners, including Member States and third parties. With these improvements, Europol was able to develop and change new information systems that help track terrorist activity and, in turn, coordinate cooperation.

#### 4.2.3 Europol's Budget and Counter-Terrorism

The Regulation's tenth chapter explains Europol's updated financial provisions. Its budget will be balanced and part of its revenue will contribute to the EU's budget. The disbursements of Europol include salaries, expenditure on infrastructure and administration, and costs of operations (The European Parliament, 2016). Establishing the budget, according to the Regulation, follows a process which includes drafting, amending, and consenting to procedures. Finally, the Executive Director will implement the budget and forward all the relevant information regarding the budget to the European Parliament and the Council for evaluation purposes (The European Parliament, 2016). Europol's 2016-2017 review states that its budget was 102.3 million euros in 2016. This is an increase compared to 2015, when the budget was 95.4 million euros (Europol, 2017).

Gianluca Sgueo, member of the European Parliamentary Research Service (EPRS), analysed counter-terrorism funding in the EU's budget. In general, it is claimed that counter-terrorism spending has increased over the years. According to Sgueo, greater investment in counter-terrorism is a response

to imminent threats of terrorism. However, greater investment rarely correlates with fewer terrorist attacks or threats (Sguelo, 2016). In response to the major terrorist attacks of 2015 in France, the French government increased expenditure on counter-terrorism for the next four years by 3.8 billion euros. Regarding the EU, counter-terrorism expenditure increased from 5.7 million euros in 2002 to approximately 93.5 million euros. Hitherto, EU expenditure on counter-terrorism has not decreased. The Multiannual Financial Framework (MFF) provided a 140 million euro program on counter-terrorism for the period 2007-2013. In addition, the Commission provided 1.4 billion euros, for the period 2007-2013, to the Seventh Framework Programme for Research (FP7), which focused on strengthening security against terrorism (Sguelo, 2016). For 2014-2020, the MFF will manage a program that, through the Internal Security Fund (ISF), contains a budget of 3.8 billion euros (Sguelo, 2016). From this budget, the ISF spends roughly 1 billion euros on security measures, including on counter-terrorism activities. These outcomes indicate that, although Europol's own budget is not particularly high compared to other EU bodies, investments on counter-terrorism in Europe have increased significantly throughout the years. The European Security expert explains that it is important that Europol functions on the basis of scrutiny. The fact that the European Parliament has acquired the approval is beneficial for Europol because it provides the public with a more transparent mandate. Moreover, the expert is convinced that Europol also requires financial involvement from Member States' agencies for it to function. (Expert, Personal Interview, April 26<sup>th</sup>, 2018) Chris Jones' report investigates the EU's funding on security: for security funding, the EU invests in personal data exchange, surveillance systems, pre-crime identification, and the militarization of EU borders (Jones, 2017). The investments also include the establishment of various platforms and projects. Furthermore, it stated that 2.4 billion euros of the EU's 1 trillion euro budget between 2014-2020 will go to Europol and Frontex (Jones, 2017). Although this amount tends to be small in comparison to the total, there has nevertheless been a sizeable increase in counter-terrorism funding over the years.

The current budget of Europol contains 123.2 million euros. Most of its budget of 79.4 million euros is spent on staff expenditures. For operational activities, Europol spends 31 million euros (Europol, 2018). These activities include meetings, training programs, information technology maintenance, and telecommunication activities, among other things (Europol, 2018). Europol does not specify counter-terrorism-related activities in its budget, though these can be labelled operational activities. According to Kaunert, Europol's budget is context-specific to Europol's capabilities. As Europol tends to be a supporting security actor, this budget works effectively. If Europol were to possess more independent capabilities, for instance the ability to arrest citizens, it would require a significantly larger budget (C. Kaunert, Personal Interview, April 17<sup>th</sup>, 2018).

In conclusion, Regulation 2016/794 does not greatly increase the competences of Europol. As counter-terrorism policy has improved over the years, so too has its budget increased. The EU and Member States tend to spend large amounts of money on security. Compared to Europol, the budgets of Member States and the EU are much higher. The increase in Europol's budget, however, does contribute to an improvement in the execution of operational activities, including Europol's counter-terrorism activities. With its current budget, Europol can fulfil the assigned tasks within its remit. Due to its current competences, raising Europol's budget is not urgent; only if Europol were granted more supranational and independent capabilities would a larger budget be necessary, for the purpose of functioning effectively. Bures adds that, in this context, Europol is not an agency comparable to the FBI: for example, Europol lacks the power to conduct its own investigations, which is a significant challenge. Additionally, the FBI has many more employees and a larger budget than Europol (O. Bures, Personal Interview, April 20<sup>th</sup>, 2018).

### 4.3 The Impact of Regulation 2016/796 in Regards to Counter-Terrorism

#### 4.3.1 Visible Outcomes of Regulation 2016/794

Regulation 2016/794 came into effect on June 2016 and applied to EU Member States on 1<sup>st</sup> May 2017. At present, the Regulation is active for one year. As aforementioned, the first official evaluation by the European Union will be conducted on 1<sup>st</sup> May 2019. However, there have been some notable changes following the implementation of Regulation 2016/794. Kaunert states, in the conducted interview, that Europol has significantly improved, in terms information gathering and intelligence, following the introduction of the regulation. He clarifies that Europol has greater involvement in preventing or analysing terrorist attacks than it had before (C. Kaunert, Personal Interview, April 17<sup>th</sup>, 2018). While Bures agrees on the outcome at present, he mentions that is difficult to specify the precise nature of the improvement and the extent to which, for example, an increase in data-sharing correlates with the prevention of terrorist attacks (O. Bures, Personal Interview, April 20<sup>th</sup>, 2018).

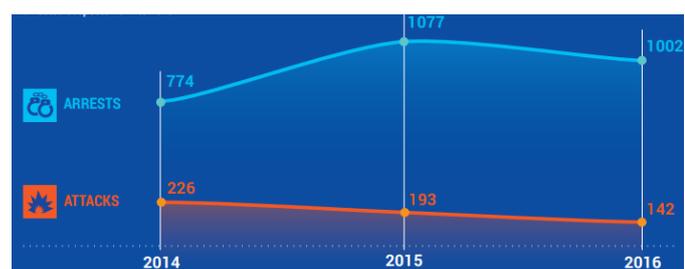
Following the adoption of Regulation 2016/794, legislators adopted Directive 2017/541 on 15<sup>th</sup> March 2017. This directive is known as the directive to combat terrorism. Its aim is to prevent attacks by criminalizing such acts as terrorism-financing, funding, recruiting, and travelling for terrorist purposes. Moreover, it contains rules on penalties and clarifies the support given to victims of terrorism. The directive applies from 20<sup>th</sup> April 2017 and must come into effect in all EU Member States by 8<sup>th</sup> September 2018 (The European Parliament and The Council of The European Union, 2017).

The first notable effect, which occurred during the drafting and implementation stage of the new mandate, was the withdrawal of Denmark from Europol. Due to a referendum on the change to

Europol's mandate, which the Danish people voted against, there was a need to find a compromise. Specifically, Denmark had been part of Europol since its founding. Europol's rules were changed with the 2016 Regulation, which included the fact that Denmark would no longer participate in Europol. It was therefore proposed to Denmark that they comply with the Justice and Home Affairs Council under the same conditions as the UK. These terms meant that Denmark had the possibility of opting in to profitable policy decisions without being forced to take part (Larsen, 2015). However, Denmark would also not be allowed to participate in decisions regarding refugee policies without creating a new referendum on that topic. In the end, the Danish people voted against the proposal because they thought that opt-outs delimited Denmark's influence in the EU (Larsen, 2015). According to the interview with Bures, this is an unprecedented event which directly affects the regulation. He suggests that it is comparable to the Brexit situation, albeit on a different level (O. Bures, Personal Interview, April 20<sup>th</sup>, 2018). The danger of this withdrawal was the fact that Denmark may be unable to share data with Europol. Subsequently, if important information were absent, this could put the security of the EU at risk (O'Keeffe, 2017). A solution came immediately after Commissioner Julian King withdrew: as Denmark remains a member of the Schengen agreement, it can still share data within the rules of the European data protection law. In this way, Denmark experiences a unique relationship with Europol, while lacking full membership (O'Keeffe, 2017).

According to its review, Europol adopted, after the Regulation was adopted, its new external strategy for 2017-2020, which aims to optimize existing partnerships. The aim of this strategy is to strengthen Europol's role as security platform for law enforcement cooperation (Europol, 2017). In addition, the review notes that customer satisfaction was higher than it has ever been, due to Europol's image and the quality of its services. These scores were obtained through user surveys conducted by Member States, EU institutions, third parties, and other organizations (Europol, 2017). The customer satisfaction score complements Kaurert's view, indicating that Member States are more willing to cooperate with, and transfer data to, Europol and that they find Europol more interesting (C. Kaurert, Personal Interview, April 17<sup>th</sup>, 2018). Furthermore, the review mentions that the Terrorist Finance Tracking Programme has contributed to a successful year, in terms of counter-terrorism investigations, due to the help it provides in locating terrorist networks and following suspected terrorists' money flows (Europol, 2017).

In terms of statistics, Figure 10 demonstrates that both the number of arrests and attacks have decreased slightly from 2015 to 2016. In addition, the number of individuals who were tried



**Figure 10** – Number of failed, foiled or completed attacks; number of arrested suspects 2014 to 2016. (Europol, 2017)

for terrorist offences has risen from 513 in 2015 to 580 in 2016, according to Europol's terrorism report of 2017 (Europol, 2017). Unfortunately, Europol has not yet published a review or terrorism report in 2018 to display the statistics of 2017.

The Joint Parliamentary Scrutiny Group on Europol has held two meetings throughout the application of Regulation 2016/794. Its first meeting on 9<sup>th</sup> and 10<sup>th</sup> October 2017 contained Implementing Article 51 of the Regulation, and the rules of the procedure were implemented (Carina Rikart, 2017). The second meeting, which was held on 18<sup>th</sup> and 19<sup>th</sup> March 2018, mainly discussed the importance of counter-terrorism measurement in the Western Balkans region. According to Europol Data, 800 citizens from the Balkan countries fought on the side of the Islamic State (IS). While monitoring Europol's functions, the Committee mentioned the importance of preventing radicalization in the Balkans (Bulgarian Presidency of the Council of the European Union, 2018).

Having mentioned multiple outcomes of Regulation 2016/794 thus far, one can see that Europol has improved, to a certain extent, given that results have been positive hitherto. In terms of data exchange, the Regulation has turned out to be beneficial for Europol, in terms of making use of databases as counter-terrorism tools. Through these tools, Europol has improved relations with Member States, who have in turn made themselves available for further cooperation. However, as the official evaluation is yet to arrive, it is difficult to confirm the precise impact of Regulation 2016/794 on the prevention of terrorism in general. As Bures mentioned, the criteria are difficult to determine. In the conducted interview, the European Security expert provided a statement on the measurement of the Regulation's impact so far: *"The regulation of course gives Europol new powers, for instance, to demand from Member States that they produce an investigation. But I think it is too early to judge whether this is effective or not. Of course, it is a responsibility for academics, as well as politicians and journalists, to really keep questioning and scrutinizing the role of Europol in counter-terrorism; how active it has been; and whether the Regulation helps the main order to strengthen Europol's efforts in counter-terrorism."* (Expert, Personal Interview, April 26<sup>th</sup>, 2018).

#### 4.3.2 Case study: The Barcelona Terrorist Attacks of 17<sup>th</sup> August 2017

In order to properly evaluate how terrorist situations have been maintained after the adoption of Regulation 2016/794, a case study outlining a recent terrorist attack has been applied. This case study is suited to the scope of this research as it focuses on the counter-terrorist actions taken by the involved actors. Furthermore, the terrorist attack is linked to the need for policy evaluation, which contributes to the content of the theoretical framework. Firstly, the case study will describe what happened during the 2017 attacks in Spain. Secondly, the attacks will be analysed in the context of the perspectives of the Spanish police forces, Europol, and an evaluation report on these attacks.

On 17<sup>th</sup> and 18<sup>th</sup> August of 2017, two major terrorist attacks in Spain were carried out, both of which were vehicular attacks. The first attack appeared on Las Ramblas in Barcelona; a terrorist drove a van along the boulevard with the intention to hit people, killing 14 and wounding 130. The second vehicular attack took place in Cambrils, near Barcelona. There were six casualties and one death (The Meir Amit Intelligence and Terrorism Information Center, 2017). Behind these attacks was a group of 12 radicalized men representing ISIS. It was reported that the network intended to execute additional attacks, though these attacks were prevented due to a so-called “work-accident”. The person who drove the vehicle during the Ramblas attack was Younes Abouyaaqoub, a radicalized, 22-year-old boy, who was shot dead on 21<sup>st</sup> August 2017. The vehicle in Cambrils contained five terrorists, who were shot dead by the Spanish Police after attempting to escape the vehicle (The Meir Amit Intelligence and Terrorism Information Center, 2017). It has been confirmed that the terrorist network was destroyed. However, there are still two attackers who have not yet been captured. In addition to Spain, other vehicular attacks have occurred in Nice, Stockholm, Berlin, and London.

Despite Europol’s new mandate, which aims to heighten cooperation, among other things, its role during the 2017 attacks in Spain was insignificant. Additionally, Europol Director Rob Wainwright mentions that improved data-exchange between Spanish agencies would have led to fewer casualties (El Nacional, 2017). Europol’s Director pleaded for further collaboration between agencies in order to prevent terrorism. Looking at the situation in Spain during the time of the attacks, it may be that domestic political issues contributed to the Catalan Police forces’ (Mossos d’Esquadra) absence of terrorist intelligence. Spain is represented in Europol by the Civil Guard, National Police, and Customs Surveillance. However, the Spanish government has restricted the Catalan Police force, which dealt with the terrorist attacks (El Nacional, 2017). The exclusion of Mossos and its information by the Spanish government is said to have had an impact on the number of casualties, and even the prevention of the attack (El Nacional, 2017). The exclusion led to outrage from the Catalan Ombudsman, who states that Spain’s National Intelligence Centre must provide clear information on the Imam of Ripoll, the mastermind behind the attacks (El Nacional, 2017). The Catalan Ombudsman agrees with the fact that the exclusion of the Mossos was a bad decision, and states that Spain should respect the counter-terrorism competences of the Catalan Police force.

On 29<sup>th</sup> August of the same year, Sergio Carrera, Elspeth Guild, and Valsamis Mitsilegas published a paper commissioned by the Centre for European Policy Studies (CEPS). In their report, the authors examined the EU’s counter-terrorism policy after the Spain attacks of 2017, and gave an answer to the question of how the EU could improve in the area of security policies. The report mentions that, firstly, although the European security agenda emphasizes combatting terrorism at its root through

counter-radicalization, the attacks in Barcelona proved that more attention should be afforded to understanding extremism and radicalization, given that the vehicular attacker turned out to be a juvenile (Sergio Carrera, 2017). Secondly, the report claims that the resolution of the European Parliament acknowledges that stereotyping across Europe leads to racism and islamophobia. This is said to be an argument used by extremists in the radicalization of young people (Sergio Carrera, 2017). Thirdly, the CEPS report states that projects and initiatives of EU counter-radicalization policy may indirectly lead to radicalization. One example of this phenomenon is the prevention strategy developed by the UK. To young Muslims, this strategy questioned their place in society and created a feeling of mistrust within several communities (Sergio Carrera, 2017).

Moreover, the report mentions that information exchange between EU bodies and national agencies is important to the field of counter-terrorism at present. More precisely, the report requests *“more ‘interoperability’ of existing EU information systems and the setting up of a ‘European search portal’ to all EU databases”* (Sergio Carrera, 2017). While some of the individuals who previously committed terrorist attacks were known to several European intelligence agencies through the EU information systems, most of those involved in the Spain attacks had no criminal record. However, the Imam mastermind behind the attacks was said to have committed a crime a few years before the attack, in 2017. Even though a criminal record on him existed, the Catalanian police force did not possess any useful information on him when requested by a Belgian police officer in 2016. The Catalanian police force subsequently asked national and EU information systems for information on him. However, due to a lack of involvement and response from the national and EU systems, the Imam was able to orchestrate the vehicular attacks in and around Barcelona (Sergio Carrera, 2017). The report therefore claims that the process of the EU and national actors requesting, exchanging, and providing data through information systems should be improved and evaluated more effectively, in order to prevent member state police forces’ lacking information about a certain individual (Sergio Carrera, 2017).

Another assumption pertaining to EU counter-terrorism policy is that the EU’s principles are typically an obstacle to proficient counter-terrorism enforcement. Regarding data-access and -protection, Carrera clarifies that *“EU principles relate to safeguarding privacy and data protection enshrined in Articles 7 and 8 of the EU Charter of Fundamental Rights (EU Charter) when countering terrorism – which are of central salience in the EU data protection legal system. A key component of EU data protection law is the principle of purpose limitation of data gathered, accessed and exchanged”* (Sergio Carrera, 2017). Further, the Court of Justice of the European Union (CJEU) also appears to be hindering counter-terrorism policy. The report states that the EU should focus on the impact

counter-terrorism policy has had on fundamental rights, in order to prevent legislative clashes. However, the mentioned impact still requires examination by monitoring bodies.

Carrera, Guild, and Mitsilegas recommend that the EU implement a detailed evaluation on current counter-terrorism policy, and its involved actors, to detect any deficiencies. The aim of this evaluation should be the efficiency and effectiveness of counter-terrorism policy. Additionally, the EU should increase its efforts in coordinating counter-terrorism cooperation. Furthermore, the implementation of current EU databases by national agencies should be encouraged by the EU. The main focus is to ensure that Member States with decentralized or regional police forces have access to these databases, as the Barcelona attacks indicate a lack of cooperation between regional and national forces. Europol's authority over Member States during counter-terrorist investigations, which includes the ability to demand relevant information, should improve the arrangement of police forces and thereby strengthen cooperation. The situation around the attacks in Spain has contributed to this recommendation. Another recommendation claims for priority towards the development of Europol's Joint Investigation Teams as JITs are affected by shortcomings on legal and procedural perspective, which should be addressed. This is important because JITs, according to Carrera, *"present an enormous opportunity to develop a professional EU culture of cooperation in countering terrorism and crime"* (Sergio Carrera, 2017).

In addition, more attention should be given to the compatibility of existing instruments and agencies, and the establishment of developed EU benchmarks. These benchmarks were created and enforced with the introduction of the 2009 Lisbon Treaty. They function as standards of counter-terrorism action that should be fulfilled by the EU and its Member States, including, for example, standards of international cooperation (Sergio Carrera, 2017).

Another recommendation explains that European cooperation in counter-terrorism should take place entirely within the remit of the EU's rule of law and constitutional scrutiny. The report comments on this recommendation that the European Parliament will establish a Committee on Terrorism that will ensure democratic accountability for the implementation of EU security policy actions, such as the interoperability of EU information-sharing databases, radicalization, and the impact of EU counter-terrorism laws on fundamental rights (Press Room of the European Parliament, 2017).

The European Union indirectly responded a week or so later, on 7<sup>th</sup> September, as the European Commission published their evaluation, entitled "10<sup>th</sup> progress report towards an effective and genuine Security Union" (European Commission, 2017). This document mostly addresses the assumptions and issues mentioned in the report by Carrara, Guild, and Mitsilegas. The Commission report notes that, given the attacks of 2017, Europe must strengthen its security policy if it aspires to

build a safer Union. It further notes that there has been progress in the field of border security enhancement. The Commission adds that information exchange is a main condition for achieving effective border security, for which reason the reinforcement of Europol is prioritized. To improve information exchange, the Commission firstly strives to maximize the benefits of the current information systems, by prescribing additional budgets and protesting against Member States that have not yet fully implemented information systems, such as the Schengen Information System (SIS) and the European Travel Information and Authorization System (ETIAS) (European Commission, 2017). Secondly, the Commission aims to render its information systems interoperable in order to make information more readily available to involved actors. Thus far, the Commission has introduced a legislative proposal that will implement technical improvements of databases through the European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice (EU-LISA) (European Commission, 2017).

Moreover, it is stated that the Commission has been organizing two workshops with Member States in an effort to improve police cooperation within the Schengen Area. The Commission report continues to state that preventing radicalization has become an important issue for the EU (European Commission, 2017). The Commission has directed its efforts towards preventing radicalization on the internet and will maintain support for counter-radicalization on the national and regional levels. Europol's role in fulfilling the Commission's efforts is to offer its databases and intelligence to Member States, which can then track terrorist activity on the internet.

Above all, and despite the horror, the Barcelona attacks of 17<sup>th</sup> and 18<sup>th</sup> August served as a checkpoint for evaluating the outcomes of Regulation 2016/794. According to the Director of Europol and the CEPS report, these attacks could be linked indirectly to the shortage of police-cooperation and counter-radicalization. The absence of these two aspects has led to the successful execution of two vehicular attacks. In terms of police-cooperation, the local forces were not given the opportunity to receive intelligence on the mastermind behind the attack, as this was excluded by the national government. This led to outrage in Catalonia, and Europol has expressed that more extensive and effective cooperation must be implemented. The attitude towards EU-National cooperation differs from country to country, as the European Security Expert explains in the conducted interview: *"Attitudes depend very much, of course, on what happens inside National Police Services and in in general cultures. I think that places such as Germany and Belgium are Pro-European, whereas the UK is not, as Brexit is currently happening"* (Expert, Personal Interview, April 26<sup>th</sup>, 2018). According to the CEPS and Commission report, cooperation on information-exchange is something that needs to be improved despite the developments of the previous years. The aim is to achieve interoperability of information systems, which will increase the pace of data-exchange. In terms of radicalization, the

CEPS report notes that more effort must be directed towards counter-measures. The attacker involved in the biggest vehicular attack in Barcelona turned out to be a 22-year old boy, who was radicalized within in a small period of time. The Commission reported in their document that counter-radicalization support is ongoing and will be maintained because it forms one of the most important aspects of counter-terrorism policy.

## 5. Discussion

The aim of this research is to provide an answer to the question of how Regulation 2016/794 facilitates Europol's task of establishing counter-terrorist units. Following desk-research, namely reading literature and conducting multiple interviews with field-related experts, the results of the research question and sub-questions were provided in the previous chapter. This analytical chapter will now interpret these findings, according to each sub-question, and frame the way they intersect with the literature outlined in the theoretical framework. Furthermore, this chapter includes the author's own argumentation on the results previously described. The information in the analysis chapter will provide an overview of the research topic and serve as a bridge leading to the study's recommendations and conclusion.

### 5.1 Europol's Counter-Terrorism Policy Before Regulation 2016/794

In the context of the aforementioned definitions and approaches to counter-terrorism, the EU supported mostly the soft approach of policy implementation in the early stages of counter-terrorism. Soft counterterrorism refers to the preventative function and aims to tackle at its roots. The legal approach suits well with the soft approach as the European Union does not have an European Military that can execute hard power measures. Furthermore, through legislation, the EU can establish investigations and programs that help to prevent terrorism. Stef Wittendorp's statement explaining the EU's legal approach is therefore appropriate. It is worth noting that Member States directed their efforts towards both hard and soft power counter-terrorism, whereas the EU provided support in the form of soft counter-terrorism. The role of Europol as a counter-terrorism actor tends to be developed by the EU within the philosophy of the policy evaluation cycles described in the theoretical framework. Given that the September 11 terrorist attack had a strong effect on both the European Union and Europol, as Arfvén argues, the phase of Conflict Analysis and (re-)designing, according to Romaniuk and Fink, must have affected Europol's competences (Arfvén, 2017). In addition, Europol's role as a counter-terrorism actor, as demonstrated by the EU counter-terrorism strategy pillars, mostly concerns "prevent[ing]" and "pursu[ing]" terrorism (Council of the European Union, 2005). Another indication that Europol's actions support soft counter-terrorism approaches, according to Rinehart, Romaniuk and Fink, is that its 2014 review states that: "*The issue of EU citizens travelling to conflict zones and returning radicalized remains priority*" (Europol, 2014).

In the author's opinion, a certain European counter-terrorism structure has been established, namely one in which the EU's approach to counter-terrorism is legalistic. It is legalistic as the EU drafts policies on counterterrorism that Member States need to adopt. Member States use both hard and soft power measures, whereas Europol, commissioned by the EU, uses information, cooperation, soft power, and functions as a database for Member States such that they can implement counter-

terrorism, which means that it relies on more of a hybrid between the soft and legal approach to counter-terrorism. One could say, then, that Europol is the manifestation of the EU's CT policy intentions.

The author's perspective coincides with Kaunert's view of Europol, according to which Europol has become, following the Council 2009 Decision, an instrument for EU foreign policy, rather than a body with autonomous policy-making abilities (Kaunert, 2010). Further, the 2009 Decision also upgraded the role of the EU Parliament in monitoring Europol and subjecting it to procedures that are appropriate to relevant EU bodies (Council of the European Union, 2009). This feature of the 2009 Decision contributes to the phase of continual monitoring in the policy cycle of counter-terrorism assessment, according to Romaniuk.

Remaining with the issue of counter-terrorism policy assessment, the creation of Europol's Terrorism Situation & Trend Reports (Te-Sat) and Disley's report serve collectively as an example of an effective method of evaluating Europol's counter-terrorism measures. For instance, the Decision evaluation report of Disley issued that the enforcement of rules was required to make Member States more obedient towards Europol when it provides relevant information (Emma Disley, 2012). One could argue that there was a need for closer cooperation between the two parties. As a result of this issue, Europol established, in 2011, a First Response Network to support Member States that have endured terrorist attacks. This network deals with the aftermath of a terrorist attack by providing for instance an international database of the potential terrorist suspects. The network was used successfully during the Norway attacks, a fact which was included in the 2011 terrorist report (Europol, 2012).

## 5.2 Regulation 2016/794 and Europol's Competences

With regard to Regulation 2016/794, there was already an ongoing plan to draft a new mandate. However, the terrorist attacks in France of 2015 have undoubtedly increased the tempo of the Regulation's implementation. One could contend, therefore, that the process detailed by the policy assessment cycle has been executed faster. Accordingly, it can still be demonstrated that EU counter-terrorism policy-making relies, at least in part, on the anticipation of major terrorist attacks.

One can also observe that Regulation 2016/794 addresses information exchange widely, and that Europol transfers data to its Member States through the setup of Europol National Units (ENUs) and Joint Investigation Teams (JITs), which are key to counter-terrorism operations.

Furthermore, in terms of information, the research reveals that the number of foreign fighters whose information is now known to Europol has increased following the introduction of the regulation (Europol, 2017). It can be said, therefore, that data has become an important aspect in counter-terrorism and that Europol currently functions effectively as an information hub. Cooperation with

Europol has typically become more attractive due to the increase of its competences in the field of data intelligence. With greater numbers of terrorist- and counter-terrorist activities present on the internet, it is advisable to be prepared to change the evaluation component of counter-

terrorism		
Action	Assessment Questions	Indicators
Counter-network actions (direct action and targeted killings, use of informants, repentance laws)	To what extent have group members been effectively removed by counter-network actions?	<ul style="list-style-type: none"> <li>Numbers of group members removed (captured or killed) over time, by broad "type" (e.g., senior leaders, mid-level leaders, facilitators)</li> </ul>
	To what extent have counter-network actions affected recruitment of new group members?	<ul style="list-style-type: none"> <li>Estimates of the rate of recruitment of terrorist groups (can be numerical ranges or relative changes over time)</li> </ul>
	To what extent has the group's cohesion been impacted by counter-network actions?	<ul style="list-style-type: none"> <li>Reports or announcements of terrorist splinter groups</li> <li>Reports or announcements of changes of leadership</li> <li>Reports or announcements of infighting or "red-on-red" violent events</li> </ul>
	To what extent have counter-network actions impeded the ability of the group to effectively communicate?	<ul style="list-style-type: none"> <li>Changes in the quality, volume, or frequency of updates of terrorist group propaganda or other information products</li> </ul>

**Figure 3** - Mapping of a CT action to indicators for the group dynamics theory of terrorism (Jonathan Schroden, 2016)

terrorism policy assessments. With Schroden's catalogue of counter-terrorism actions, as shown in Figure 3, in mind, it would be useful for EU policy evaluators to add assessment questions and indicators, with regard to terrorist internet activity, in order to make effective changes to an evaluated counter-terrorism policy. While previous terrorist attacks, such as 9/11, Madrid, and Paris, stimulated policy amendments and adjustments, in the upcoming years this may be caused by internet-related terrorist activities. The author indicates that for instance major cyberattacks with terrorist intentions could be a potential reason to amend counterterrorism policy.

The first noticeable outcome of Regulation 2016/794, in terms of the budget, is that the process by which it was established follows that outlined in the policy cycle described by Romaniuk. Firstly, the budget will be drafted, amended, and consented to. After this, Europol Direct implements the budget and sends all the relevant information regarding the budget to the European Parliament and Council for monitoring purposes (The European Parliament, 2016).

Although Europol's budget has increased, Bures states that a higher budget does not specifically and directly lead to fewer terrorist attacks. In addition, Kaunert explains that the actual budget is currently sufficient for Europol to conduct counter-terrorism actions and to remain attractive to Member States. A higher budget would only be necessary if Europol's powers would increase. Remarkably, of the EU's 1 trillion-euro budget for the years 2014-2020, 2.4 billion euros will go to Europol and Frontex (Jones, 2017). This outcome suggests that Europol does not receive a sizeable proportion of the budget. However, regardless of the relatively low budget, Europol does tend to be a rather valuable actor in the field of European counter-terrorism for Member States. The author therefore compares Europol to a football player, who is undoubtedly of importance to the team, even though he receives a salary below his worth. Moreover, the European Security expert is

convinced that Europol also relies, in part, on the financial input of Member States' agencies in order to function. If this causes Member States to lack the motivation to cooperate with Europol, then the EU must evaluate the budget in order to keep itself attractive. The author contends that this question can inspire new research.

### 5.3 The Impact of Regulation 2016/796 in Regards to Counter-Terrorism

A significant change following the implementation of Regulation 2016/794 is that Europol can now demand that Member States establish an investigation, according to the European Security Expert (Expert, Personal Interview, April 26<sup>th</sup>, 2018). On the basis of this finding, the author infers that, although Europol's role remains supportive, without question this feature improves the authority and competences of Europol when cooperating with Member States. While Europol struggled to implement effective cooperation prior to the regulation, it is now able to indirectly assert this. In terms of counter-terrorism policies, the findings show that Directive 2017/541 quickly followed the implementation of Regulation 2016/794. This is the directive that aims to prevent terrorism by criminalizing any acts of financing, funding, recruiting, or travelling related to terrorism (The European Parliament and The Council of The European Union, 2017). This finding confirms that the EU's counter-terrorism approach remains soft as the Directive has been drafted in order to prevent acts of terrorism, which suits with the definition of soft counterterrorism.

Furthermore, this research has shown that Europol's counter-terrorism activities will be monitored politically by the Joint Parliamentary Scrutiny Group (JPSG), which contributes to the assessment of counter-terrorism policy theories described in the theoretical framework.

However, the author notes that, although counter-terrorism policies have been amended and terrorism related bodies have been established over the years, the EU's 2005 counter-terrorism strategy has not been renewed thus far. As terrorism spreads to other places, such as the internet, the author is keen to stress that the EU would have updated its 2005 strategy regardless of this development as terrorist internet activities such as online recruiting, propaganda and funding have grown since 2005 until present day.

The case study on the 2017 terrorist attacks in Barcelona has interesting implications for this research. The unexpected element is that, although Regulation 2016/794 stimulated further counter-terrorism cooperation between Europol and the Member States, the Barcelona attacks were nevertheless severe. Moreover, Europol states that what happened in Barcelona could be considered a domestic fault. The Spanish government's attitude towards the Catalanian police forces led to a lack of cooperation, and it is therefore indirectly responsible for the success of the attacks in Barcelona.

The author emphasizes the responsible decision, published by the EU in their tenth progress report, to try to build an effective and genuine Security Union. In this report, the EU mentions that it held two workshops on police cooperation between Member States and that soft counter-terrorism remains important (European Commission, 2017). Furthermore, the author presumes that more support for Europol would have prevented these attacks, as this could have resulted in the capture of the imam before he planned the Barcelona attacks, or prevented the radicalization of the young attacker.

Commissioned by the Centre for European Policy Studies, Carrera, Guild, and Mitsilegas examined EU counter-terrorism policy, in response to the Barcelona attacks, and noted the presence of effective counter-terrorism policy assessment procedures aside from the JPSG. However, when referring back to the need to implement soft counter-terrorism measures, the CEPS report states that the EU must amend those measures as some counter-measures would indirectly lead to further radicalization. The author recognizes an intersection between the theoretical framework and the case study. First, a problem with cooperation is partly to blame for the outcomes of the Barcelona attacks, as acknowledged by Europol. It can be inferred from this statement that Europol has evaluated these attacks in a horizontal manner; that is, by assessing agencies and bodies on the basis of their efforts to support a certain policy or strategy carried out by a government (Peter Romaniuk, 2012).

Additionally, the EU and Europol want to direct more energy towards soft counter-terrorism measures as a result of the Barcelona attacks. However, the conclusion of the CEPS's assessment of the effectiveness of counter-radicalization programs, which Romaniuk labels vertical evaluation, was that the EU must amend its soft counter-terrorism approach by rewriting its established counter-radicalization programs if it is to successfully combat radicalization.

In hindsight, the author states that other relevant results of this study have been limited by the absence of Europol's review and terrorist report of 2018, which would have evaluated the 2017 calendar year. Likewise, insight into Europol's specific expenditure, with regard to counter-terrorism operations, databases, and its units, could not be provided in this study.

## 6. Conclusion

The purpose of this study was to provide an explanation of how Regulation 2016/794 facilitates Europol's task of establishing counter-terrorist units. In the process of providing an answer, this question was divided into three sub-questions. The conclusion to the central research question can be provided by explaining the state of Europol's policy on counter-terrorism enforcement prior to the introduction of Regulation 2016/794, the implications of this regulation on Europol's competences in the area of counter-terrorism, and its practical impact so far in the field of counter-terrorism, which will be followed by recommendations.

### 6.1 Conclusion

Europol's new mandate, Regulation 2016/794, is the result of effective EU policy-making and evaluation in response to future acts of terrorism occurring in Europe. In previous decades, the EU developed as a counter-terrorism actor in response to major attacks, including those in London, Madrid and Paris, and 9/11. By supporting Member States through narrow counter-terrorism cooperation, coordination, and investigation, the EU's approach to counter-terrorism is legalistic. Europol was the intergovernmental body established by the EU to improve the effectiveness of counter-terrorism and the cooperation of national agencies. In the scope of this study, Europol functions as a European Agency that provides systems, such as databases, to help track terrorist activities. In previous decades, the European Union drafted legislative rules on Europol in the form of frameworks, decisions, and regulations to improve its functions. With the introduction of Decision 2009, Europol became an official agency. The follow-up mandate, Decision 2009, which is known as Regulation 2016/794, upgraded Europol's competences.

The goal of this study was to indicate how this new mandate facilitates Europol's task of establishing counter-terrorism units. After having processed and analysed the findings, it can be concluded that Regulation 2016/794 allows Europol, firstly, to extend its competences to terrorist activities in the European Union. In turn, Europol is able to gather and share information regarding terrorist activities and has updated its information systems to improve its performances. In consequence, Europol has made its cooperation with member states in counter-terrorism operations more accessible following the establishment of Joint Investigation Teams or Europol National Units. Secondly, Europol gained the ability to compel Member States to establish a joint investigation team or to conduct investigations in these States when and if terrorist activities occur. It can therefore be stated that Regulation 2016/794 has made sure that Europol can create units with which to cooperate and coordinate counter-terrorism, and that Europol's operational systems are effective, which has improved Europol's function as a counter-terrorism actor.

## 6.2 Recommendations

The results outlined in this study have led to certain recommendation that can be implemented in this area of research. Firstly, the findings of this study indicate limited cooperation between Europol and Member States. For instance, the Barcelona attacks and the European Security Expert's explanation of the different attitudes towards EU-National cooperation among different countries reveal the importance of cooperation to counter-terrorism enforcement. It would therefore be interesting if further studies researched the motives underlying a state's willingness to cooperate with Europol in the field of counter-terrorism. Additionally, research into how Europol could better market itself to Member States, for the purpose of cooperating in investigations, may also be of interest to researchers. Furthermore, the feasibility and potential duration of Europol's becoming a supranational agency could be an interesting topic for future research.

As for the European Union, a recommendation would be that it should update its 2005 Counter-Terrorism Strategy, given that terrorism has changed over the years and is now active in new places. In order to have an updated strategy, based on the evaluations of counter-terrorism policies from 2005 to present day, the European Union should rewrite its strategy. For Europol, it is recommended that it maintain its efforts in establishing and developing databases and information systems which help detect and counter terrorist activity; as the findings reveal, with the exception of rising terrorist activity on the internet, Europol's mechanisms have been successfully put into practice.

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## Appendices

### Appendix 1: Interview Transcript C. Kaunert

**Ruben Bruil:** Well, hello there my name is Ruben Bruil, and I am a 4<sup>th</sup> Grade Bachelor student on the European Studies at The Hague University of applied Sciences. Today I will conduct an interview regarding my dissertation. The keywords of the dissertation are Europol and Counter-terrorism. The main research questions is “How does regulation 2016/794 enable Europol in its task to set up counter-terrorism units”? In this research, the feasibility of this regulation will be examined.

For this interview, I have got here Prof. Dr. Christian Kaunert. Director of the International Centre for Policing and Security at the University of South Wales. In addition, he has been awarded a Jean Monnet Chair in EU Justice and Home Affairs Policy and EU Counter-Terrorism. With a plethora of publications, qualifications and awards; Prof. Dr Kaunert can be seen as a true counter-terrorism expert. Christian Welcome.

**Christian Kaunert:** Thank you, thank you

**Ruben Bruil:** First of all Dr. Kaunert can you specify the need for a policy regarding counter-terrorism when Europol was established?

**Christian Kaunert:** Actually when Europol was established if you go back counter terrorism was not one of the things that were a little bit dicey because if you look back at the nineteen nineties there was not much agreement amongst member states on counter terrorism issues. For instance there was a long standing issue between Spain and France and Belgium in terms of extraditing terrorists. Though naturally, countries like Belgium and France where not all that keen on having counter terrorism as a competence while other countries such as Spain for instance or the United Kingdom were much keener on having counter terrorism as a competence for Europol.

It was not until briefly before 9/11 that they started improving it and then the whole momentum that followed 9/11 really pushed EU competences in that regard notably also with regards to Europol. I mean if we look at the whole area of EU counter terrorism we can see that there were limited competences and in the direct aftermath of 9/11 they were starting to use those limited competences but they were also discovering the limitations of those competences and then things started to really expand post 9/11 in fact.

**Ruben Bruil:** Yeah that seems pretty true. Jumping to 2016 or 2018 to be precise. Do you think there have been made any improvements on the field of counterterrorism since the entrance of regulation 2016/794?

**Christian Kaunert:** Yeah, I mean there are many improvements that have been made in fact if we go back if we go back a number of years the kind of instruments that they used to have was much more limited now we can really see. In terms of collaboration, in terms of information gathering and intelligence Europol is much significantly improved; there's no doubt about it. However there is still some limitations and the limitations notably are the reliance on member states in terms of providing intelligence.

Europol by itself does not have independent intelligence gathering capabilities so basically they are relying on member states to provide and member states have been getting better to provide information but it is still not a complete picture. That is part of the problem that Europol can ask member states to provide information and to provide data but it cannot compel member states. So at the moment there's no mechanism by which Europol can really compel member states if it suspects that they have not provided certain information to do so and that is still a slight weakness.

Now this is a big improvement since many years ago but it is still a slight issue in the sense that with independent capabilities and especially with this emphasis on compelling member states there would still be room for improvement. As you can imagine in a terrorist situation especially when we look at organizations like Al Qaeda or ISIS a number of those attacks have...across all that I mentioned there's hardly any of those attacks that do not have a cross border dimension whether that is because people are travelling like you saw for instance the cell that attacked Paris was coming in from Brussels and so on.

There is a clear cross border dimension and as a result of that if we do not have those independent capabilities at the level of Europol I think there will always be some limitation to what Europol can do. I think that is one important things that I would advocate needs to change.

**Ruben Bruil:** All right, how do you observe these outcomes in terms of terrorists which is your expert opinion on it?

**Christian Kaunert:** Well in general Europol has been involved in more and more of those attacks whether that is through preventing some of them or to kind of analyse exposed...more often it is analyse exposed. In that member states have found Europol more useful you can see a number of

kind of indicators of that. For instance the fact that member states are more willing to provide data is one of the indicators that they are quite happy now with Europol.

So this is certainly something very positive but if we look at who takes the lead, that most of the counter terrorism investigation it is very clear that national forces still take the lead and Europol is the compliment, a very useful compliment. But, in cases of this very strong cross border dimension this can be a limitation also to the overall investigation.

Let us say French authorities after the Brussels attack, you know they were very quick to blame the Belgium authority's right. They were quick to kind of say you Belgians, you are responsible and it were not the French. Later the evidence was a little bit more muted. The point here is not so much is it the fault of the French, is it the fault of the Belgians. The point is if you had a Europol that had more independent capabilities that could intervene at an earlier point, I think that's where we still need some room for improvement.

I think otherwise, the possibility with those cases of course border dimension they are too quickly escalating into a blame game where you know our police force would have liked to but your police force did not alert us and so on. In the end it is not in their nature to always share this information, that's not what the police forces do. As a result of that more independent capability would help in those situations.

However, having said all that Europol has come a very long way from where it was and is much more efficient and it is doing a great job at helping member states and member states are increasingly acknowledging that.

**Ruben Bruil:** All right and speaking of friends before one could see that the pattern of policy making of course is a result of cause and effect. The terrorists attacks in London and Madrid led to immediate policy changes on counter-terrorism for example. In what way did the 2015 terrorist attacks in France impact upon the regulation for 2016/794?

**Christian Kaunert:** When we look at 2015 actually. What we need to say is there were several attacks in fact 2015 and then also in 2016. There was Paris, there was in Brussels; Paris in fact twice then Brussels then there was Berlin there was Nice, there were Barcelona later then London and many others. So there was a certain period of time of about two years where we had a sudden spike in attacks really a very significant spike in attacks after what had been relatively quiet; at least for Europe quiet period of about almost ten years. Not quite ten years but roughly around that time period.

So we saw that sudden spike and that led to a number of initiatives. I mean at the EU level there were initiatives such as data and data analysis and so on. At the level of Europol it certainly influenced the writing of the regulation in the sense that it created this sense of urgency because what happens in situations where you have someone attack and of course you know you have a political system that needs to show that we can cope with these things otherwise the political system loses confidence of its citizens, they need to show that we are capable of dealing with these matters.

The rewriting of the regulation in this regard can be seen as one of those steps towards that. In all fairness the drafting of it happened of course before, though the drafting was influenced a lot by the kind of weaknesses that were identified already for many years. The urgency that was created, as a matter of fact, created the political environment that is more in a sense conducive to being able to push through some of those policies.

**Ruben Bruil:** All right that seems pretty fair because as the policy was being made I think that the terrorist attacks that happened in France for example like sped up the urgent need for it to be implemented.

**Christian Kaunert:** Exactly.

**Ruben Bruil:** All right, did the pace of unit-mobilization change due to the introduction of regulation 2016/794 and if so, to what extent?

**Christian Kaunert:** Sorry did the pace of what?

**Ruben Bruil:** The unit-mobilization, did the tempo of...

**Christian Kaunert:** I am not entirely sure that the mobilization was so much of an issue before so I think it certainly...yeah it helped but I think if we look at the overall picture that would not have been so much the major issue because once agreed those things are then relatively fast the problem is getting to that point. It was building on some of those things that were identified as weaknesses before so in that sense the pace increased a little bit.

**Ruben Bruil:** All right could Europol do more on the field of counter-terrorism than what they are doing at the moment because there are some slight improvements but could they do more?

**Christian Kaunert:** Yeah for sure I mean. When we look at what can be done at the moment Europol is clearly a supporting actor to national authorities. So Europol is there to provide them with a service that helps them in their counterterrorism activities. However what it does not do is be a central

actor. So Europol at the moment is not a central actor that is involved in the coordinating, that is involved in the intelligence analysis, it is mainly a supporting actor.

So if we compare this for instance to the United States we can clearly see the department of Homeland Security is really at the centre of things right. It is coordinating all activities of all agencies. So that is certainly something that Europol could be doing if one were to envisage that but it is a very ambitious idea, very ambitious idea so I am not expecting that to happen in the next ten or twenty years.

As a long term vision I guess it would be something that that would be helpful because what we currently still have is that we have a lot of investigations operating side by side. But in the end they do not know so much about one another's investigations and there is not one central body that really coordinates that they are line. Europol helps in their investigation but they do not coordinate because in order to coordinate those investigations they would need to have the mandate to intervene in their investigations and they do not have that, they would not be able to do that. So in that sense there's still room for improvement but it is a long term vision. I would not imagine that this could happen the next twenty ten to twenty years.

**Ruben Bruil:** All right so it is more of if Europol became more of a supranational kind of status if that will be achieved then it will be more feasible to intervene in the one national's business.

**Christian Kaunert:** Yes but not just not just more supranational but really with the legal authority because even if we look at history of the F.B.I. you know at the beginning of the F.B.I. The F.B.I. was also not allowed to intervene in individual states business so much simply because their mandate was restricted to national crimes that were not defined by state legislature. Which meant that there were only a certain number of cases that they even could get involved in.

Over time they shifted because there's more and more perception that now these crimes are really national crimes, they are really at a kind of higher level. I think over time we are going to see something similar in the European Union but increasingly there will become a perception that we are dealing with threats to the European Union as a whole and not just to individual countries. Terrorism is the prime example that is really one where this perception will be increasingly shared but it takes time to have national authorities and member states to see it in that particular way. It is a process, it is not just something that happens overnight.

**Ruben Bruil:** Speaking of the F.B.I. their annual budget is at the moment \$8.7 billion which is around €7 billion. What is your view on the current budget of Europol which is €123 million? Can Europol really fulfil its assigned tasks with it?

**Christian Kaunert:** I mean the budget is really an issue that needs to follow with the competences. I mean what I said it is very clearly...with the kind of role that they have at the moment which is to be a supporting actor it is a budget that works out okay but that is because the mandate is much more restricted. A mandate that would include more independent capabilities, that would maybe also include the power of arrest a little bit on all of us, to you know an F.B.I. officer who can also go out and make arrests.

One of the things Europol cannot do is they cannot go, let us say to Amsterdam and say OK we have investigated you, we are going to put you in cuff now, you are arrested. It is not possible Europol is not allowed to do that, arresting power rests only with national authorities. Now that means the authorities need to actually you know be in the driving seat of the investigation otherwise who is going to arrest.

If you change that status, if you give more independent capabilities to Europol you absolutely would need a much higher budget. I think something that is significantly higher would then be needed and if we look at other kind of agencies; look at the European Border and Coastguard Agency Frontex. They have a significantly higher budget than Europol. They are an actor that came later; was established later and they have now acquired certain investigative capabilities at the border that Europol so far does not have.

**Ruben Bruil:** Oh yeah.

**Christian Kaunert:** As soon as Europol acquires those capabilities it will be necessary also to increase the budget in line with that because of course their mandate also comes with more people that you need to have, more equipment and all of those kind of things that that you can actually fulfil that mandate.

**Ruben Bruil:** All right that seems clear of course. Speaking going back to the cooperation of member states it took Europol of course quite a few years before they were totally convinced on the support Europol wanted to offer. Do countries still face a hard time cooperating over policing with Europol? A states' unwillingness to cooperate over policing can lead of course to like relatively weak institutions.

**Christian Kaunert:** Which states did you...I could not hear that very well.

**Ruben Bruil:** Like the member states in general I mean.

**Christian Kaunert:** Yeah do they cooperate? In general we can see I mean I have seen a number of reports that show indicators of good cooperation, increasingly very good cooperation and that member states have now accepted. I mean for number of years this was a bit debated, for a number of years, it was not so clear how significant member states thought that the contribution of Europol was.

Europol has proven itself to member states and they are increasingly accepting it as shown by the amount of data that is provided to Europol as shown by...just in general. The establishment of teams which goes relatively conflict free and so on. So increasingly member states cooperate very well but within this more limited mandate.

**Ruben Bruil:** If you compare it to for example Interpol which is like the international...more the world organization how is the cooperation between them?

**Christian Kaunert:** I mean Europol is much more advanced than Interpol. I mean Interpol...legally speaking Interpol is an interesting organization in that you know Europol initially was created by a mandate of an international treaty which was the Europol convention and then later got integrated into the frame of the European Union exactly. Initially was created as an intergovernmental organization by member states.

Interpol is in operation as an organization by practice. Interpol was not created by any treaty, Interpol was not created...it does not have a clear legal basis. In fact Interpol exists because member states cooperate but they clear legal framework such as with Europol. Now what that means is they cooperate yes because cooperation is necessary between different countries but they are cooperating on a much lower level. So they are not cooperating so intensely as would be the case with Europol.

So in that sense Interpol has a wider membership because you have countries like Russia that are a part of it, you have countries like Turkey, that is precisely because of this why they are members because the level of cooperation is not as dense and intense as it is with Europol.

**Ruben Bruil:** All right, my final question is a bit philosophical of course, but should Europol have their own counter-terrorism forces, like you know of the European National Units based in each participating Member State like counter terrorism troops. Real forces that could deploy at each terrorism attack where it is happening.

**Christian Kaunert:** Yeah I mean this is kind of going back in a way what I was saying earlier about the independent capabilities I think it would make it much more efficient in terms of preventing attacks, I think there is no doubt about that. The downside is it is a significant change in its mandate and you would first need to get member states to agree that this is something that it should do. Then they would need to back it up with sufficient increases in budget as well because with their current budget they could not possibly be doing that but as a long term vision I think it is something quite interesting in fact it is something that would make it much more similar to actually like the F.B.I.

**Ruben Bruil:** All right, well these are my questions. Thank you for this interview, thank you for providing all the information.

**Christian Kaunert:** You are welcome no problem at all. Like I said feel free to contact me again if you need me.

**Ruben Bruil:** All right thank you very much.

**Christian Kaunert:** Thank you. You are welcome. take care.

## Appendix 2: Interview Transcript O. Bures

**Ruben Bruil:** Hello, my name is Ruben Bruil, fourth grade visionary student of European studies at The Hague University of applied sciences. Today, I would conduct an interview regarding dissertation. The key words of this dissertation are; Europol and counter-terrorism. The main research question is; how does regulation 2016/794 enable Europol in its task to serve counter-terrorism unit. In this research, the feasibility of this regulation would be examined. Today, I would be talking with professor Oldrich Bures, he is the founding director of the Centre of Security Studies and the head of the department of International Relations in European Studies both at the Metropolitan University in Prague. In addition, Bures has many publications and researches to his name regarding Europol counter-terrorism and its policies. Oldrich welcome

**Oldrich Bures:** Thank you

**Ruben Bruil:** My first question is; do you think that they have made any improvement in the field of counter-terrorism since the entrance of regulation 2016/794?

**Oldrich Bures:** I think it is a bigger tricky question because it ranges on what you consider to be improvement. There are different criteria to measure improvement or more largely speaking effective methods of counter-terrorism policy. On one hand yes, especially if you look at Europol's own data. For example, the peace sect reports it would show on the basic data of counter-terrorism. Study numbers of terrorist attacks or perhaps slight decrease in contrast and substantial increase in number of arrests of terrorist suspects in Europe in the last couple of years that can potentially be seen as a sign of success of Europol's counter-terrorism work.

This is something that we can discuss more in a subsequent questions but one of the heroes of Europol is sharing of information. There has been a substantial increase in the number of messages that are increased in key information exchange Europol and the SIENA history has reached one million as of last year. On this account, there is more fuse in Europol and Europol would claim it had helped in their fight against terrorism but I would not say it yet. Obviously It is always difficult to link anything something specific. So is it specific to the regulation or more numerical in Europol that we have more steady number of attacks in Europe and more arrests. Of course, that is a big question. there are other factors. If you look at the data, the global database etc. It does not necessarily indicate that the number of terrorist in Europol is steady although in the data there has been a slight increase. It depends on what data you use.

**Ruben Bruil:** What does this regulation mean for the joint investigation teams for Europe?

**Oldrich Bures:** I actually looked it up because I can admit that I have not researched Europol regulations specifically since it entered into force last May. As far as I can read the paragraphs and articles; there is not anything new I would say, Europol can still participate and cooperate with Georgia. Perhaps what is explosive here is the assistance in setting up the investigation team. I think the memory thing is not important because initially when it was approved for the investigation team since 2002.

It does not mean that much and they are various explanation why, one was that it was difficult to set it up including financing. I think this is yet another type of push to help the numbers and to work on this hesitation and complications to set up during the investigation team. So the Europol can regress in the set up with one that has a spark and with them, that has always been the case. In short, I do not see any sort of major change other than create emphasis on the existing number rates and set up for the investigations teams.

**Ruben Bruil:** I was wondering because Europol plays more of a supportive role but to what extents are the counter-terrorism activities of Europol unique and distinctive? Not duplicating what the member states are already doing in the field of counter-terrorism.

**Oldrich Bures:** In my brief research. There is a bit of duplication because Europol is as good as the information that it gets from the member states or a few third parties and it basically cannot conduct its own investigations. It is constantly relying on the member states that have created some basic analysis and open source analysis of one of the member states actually provides. The exchange of information I would say, totally relies on the member states. This is putting up the big picture of EU showing the investigation links and also the different areas in cyber security and counter-terrorism.

For that, I think it is always useful to have the big picture because the member states do not necessarily see everything. Some of the information systems exchange matrix application. That is useful I would say for the JITs investigation team because if they want to exchange information, they need to have a secure network. Their one problem has been that only recently, Europol has managed to have it cleared to the level of secret. It is still not cleared to exchange information of top secret and that has been one of the complications.

I think that Europol is also increasingly useful in terms of operational analysis and that is because European members cannot show data. For the big change after the series terrorist attacks in the fall of 2015. France suddenly done, so what they have done they asked Europol in help for investigation. Europol was able to provide inside links, probably because they could access the European system information. The research at this time is limited but I would say it involves it is facilities in member states.

**Ruben Bruil:** Speaking of the member states, how would you analyse the cooperation between member states and Europol after regulation because in the past, there have been struggles of Europol providing the services.

**Oldrich Bures:** I would say it is getting better over time. I am not sure how much we can ascribe this to the adoption of the regulation but I would say that in the long run, Europol has been at an advantage over time. Initially, one of the problems was that it was a new agency and it was also set up in the top-down measure it was a political decision. The police agencies, in 1994 when the European, which is the predecessor of Europol. It took some time before the national police agencies found out what can be the advantages. The question of trust, trust is number one in the personal dimension. Europol exists in more personal connections in The Hague but once people leave The Hague they still have the information. I think this is what. I think this is what I mentioned with France, especially after major terrorists effects, member states realized that it may be useful to get help from Europol simply because they can help with investigations. They can get help for the other crimes from counter-terrorism in member states and they find it useful. I would say that over time Europol is becoming more useful even through there is still quite a number of bilateral cooperation and exchange the similarities and competition for Europol from other information exchange networks like G5, Krakow, I think last year there was a group established; the Paris Group for exchanging information and Europol is not the only cooperation in the field. I think in the long run, Europol is becoming more useful.

**Ruben Bruil:** Of course, the Paris attacks contributed a lot of policy making of, speaking of which the regulation. But has there already been an incident where regulation 2016/794 had proven its worth?

**Oldrich Bures:** To answer the question, unfortunately, I think the only way you can find out is to ask this question at Europol itself. I cannot tell you that these provisions in the regulation would make a major difference, I would say two things; one is that this regulation has to be set in the context of the goals especially after the last set of terrorists accounts. The France terrorist, the terrorists in 2016 in Brussels. The EU should do more and Europol should do more and that is why I say we have another regulation that Europol should be more politically in-depth in some aspects specifically asked into the certain things such as establishing these specialized centres one of which was the European Counter Terrorism Centre.

The second thing I would bring up, which I think has a direct impact is the exit of Denmark from Europol, which is quite unprecedented and directed to this regulation by which Denmark's procedures in the Justice Home Affairs. Denmark is required to have a referendum on whether they will vote in or vote out, which they did. That was such a substantial complication and that is a similar

story with the UK, which they decided and now the Brexit. I think if you want anything tangible, I think these two cases are closely linked to regulation

**Ruben Bruil:** That is pretty informative. One of the things that the regulation contains is the processing of personal data and data processing seems to be truly important in this regulation. How is data processing related to counter-terrorism? How can it support the actions of Europol and its national bodies?

**Oldrich Bures:** I think it is always important to keep in mind that it is a trade-up. In counter terrorism, what are the most important values; one is security and you can single out liberty and justice. They have Protection features dominantly when it comes to the debate of peace and justice and protection of private data. In the context that US always puts emphasis on the context of counter-terrorism. They are the starter players in the world, if you compare it to the heavy-ended US approach and this coincides with the General directive protection regulation. Europol has a slightly different regulation

Overall I would say that the emphasis is similar. they have a balance on first-hand information exchange. It is crucial in the fight against terrorism but at the same time it is within its limit when it comes to protection of rights of people who are data protected potentially. I do not know if they have it also in other corrections but also, for Europol they are treated as equal parties. There are a number of agreements that Europol in the past has negotiated, which arguably are nothing in line with the new one as far as I understand it. I am not a lawyer and I am not an expert on that. Some of the older Europol agreements especially the one with the US from 2002, the supplemental one would have be re-negotiated and the commission is now given the role more than before to oversee. This new agreement is re-negotiated and Europol would be in line with the current data protection regulation at the EEM international level. Overall, it is a question of what is the most appropriate balance. Overtime, I have seen that there is more emphasis on data protection in the area of counter terrorism.

**Ruben Bruil:** Speaking of the US, when it comes to the budget. For instance, the budget of the FBI is \$8.7 billion, which is 7 billion euros. What is your view on the current budget of Europol, which is 123 million euros. Can Europol fulfil, its tasks with it?

**Oldrich Bures:** I think the first starting point is to remind ourselves that Europol is not exactly a federal investigative agency like FBI. It does not have the power to do its own investigations and that is a big challenge. That is what FBI spends its money on and that is why I think they have 35,000 while Europol is about 1,000. Obviously, that explains in a respect why FBI a higher budget and Europol has been closed to being transformed into European FBI but I do not think that is not likely to happen in

the foreseeable future. The idea of what Europol is doing, it is important to say that it is not about counter-terrorism. It is just one of its portfolios.

As far as I will argue, at least on the personal side, there has always been a shortage of people assigned to counter-terrorism. The threat of terrorism has been seen as a major threat after the recent terrorist attacks especially in the last couple of years. But as far as I understand, recently they have increased the number of people that work on the counter-terrorism issues. From my own interviews, they will argue that it is not sufficient and with the extension of Europol tasks. For example, most recently, the cooperation with FRONTEX, they had to assist with the processing and identification of migrants in the hot spots. When I was introduced last time at Europol, I think 16 months ago, they were complaining that there is almost no one doing the analysis because they do not want to work at these hot spots to assist FRONTEX, the personnel capacity was insufficient. I would say that is a long-term problem for Europol as they always had difficulties to get more positions.

**Ruben Bruil:** How do the NATO and Europol cooperate on counter-terrorism after the adoption of this regulation

**Oldrich Bures:** To be honest, either before or after this regulation, I have not seen that much on EU and even more specifically Europol and NATO cooperation. NATO would find declarations that counter-terrorism is obviously an important threat to both, but there has been some specific operations and arrangements between them when it comes to migration issues, which is always linked to counter-terrorism. NATO has patrolled the waters and the seas that are linked to Europe and I think Italy. There was obviously some coordination and cooperation. I think the same, at least the level, rhetoric, what can be said on cyber-security, NATO has taken its central effects on Italy. Europol is also a centre of cyber security, I am sure there are some few discussions and exchange of experiences but I have not really seen anything substantial. There is not that much to be covered when it comes to NATO and Europol but maybe I missed something. If you find something, I would be quite interested.

**Ruben Bruil:** Sure, I would provide the information. So far, I rest my case, I do not have questions any more. I would really like to thank you for your time and your input to this interview. It was really relevant. I hope you have a nice day and a nice weekend as well.

**Oldrich Bures:** You too. Good luck with the thesis. Once you finish, I would be interested to read it

**Ruben Bruil:** Alright, I would do so, thank you very much

**Oldrich Bures:** Thank you, take care bye

### Appendix 3: Interview Transcript European Security Expert

**Ruben Bruil:** Well, hello there. My name is Ruben Bruil, 4<sup>th</sup> Grade Bachelor Student European Studies at the Hague University of applied Sciences. Today I will conduct an interview regarding my dissertation.

Keywords of my dissertation are: Counter-terrorism, Europol and Security Policy. The main research question is “How does regulation 2016/794 enable Europol in its task to set up counter-terrorist units? In this research, the feasibility of this registration will be examined.

Today I am talking with an European Security Expert. Welcome. First of all, In what way does Regulation 2016/794 Pioneer new techniques to prevent combat terrorism?

**European Security Expert:** Well thank you for your question, I would like to observe first. Of course Europol had a mandate on counter-terrorism for a while, and of course this regulation specifies letting new investigation measures, but also a mandate for Europol that includes many other things except for terrorism. So the focus of Europol is very much in control of crime, particular organized in serious crime like; for instance money laundering issues, or drugs, man smuggling, trafficking human beings and so on. So I think you have to basically see terrorism and counter-terrorism in the context of the whole package and counter-terrorism of course is politically incredibly important, it is central I would almost say to the attention raider span of many politicians. However, in terms of work load, you look at Europol’s workload, the majority of Europol’s efforts are still primarily on let us say COS and organized crime. So I really think that we should really look at it from that prospective, and also terrorism as itself is not the new mandate for Europol, it had done that for a while already, and if you look at the track record of Europol on counter-terrorism, you will see basically kicking starts issue, for instance after the attacks in Madrid, which is already quite a while ago, 2004, Europol was given a kick start basically, was given an impulse to kind of gather it is efforts and to release starts and centre of expertise and so on. And the very important observation here is that yes, Europol is a very important hub for information gathering from information exchange, but it is totally dependent on the willingness and the preparedness of the services, the law enforcement services in the members states to share those data. And if those data are proactive or sensitive and are based on intelligence gathering, it becomes more difficult for members states to not trust each other but also to trust Europol, and trust Europol with this data. So first, what you can also see is that a lot of Member States still exchange data on terrorism amongst themselves in a bilateral way and will not specifically use Europol in that loop. And I also think that is also a main footnote to be observation basically to be place here.

And the final one perhaps is that, of course as we know, in many European newly Member States, it is not much law enforcement or police that deals with terrorism but of course security and intelligent services. And it is not completely separate, it is a rather different type of circle of agencies that is in a network kind of cooperation. A police working group on terrorism for instance and amongst themselves, they do exchange data of course we already know from the reports for instance about the AIVD and so on. So for Europol, it is quite a specific challenge really to make yourself active in the field of terrorism. I think it is really with all those introductory footnotes that we should specify the role of Europol in counter-terrorism. But I think Europol has excellent cards, to put it that way, it has of course different information sharing system, and one of them is SIENA, it is a very important one of course and for Europol. It is also very good and quite easy to be related and to be linked with other data basis for using to share other information system and so on. So it is not so much of an agency itself. Another efficiency I see in Europol is that it has dedicated Liaison officers. so it has Europol's liaison officers and they are also of course also linked up with the National agencies, Law enforcement and also sometimes intelligent agencies and I think this give them an excellent position in terms of intelligent information gathering, in a more... not too much let us say in a systematic way because we are looking at data base, we are looking at more systematic data exchange, but in a trusted environment. Trust is very important specifically when you are talking about counter-terrorism. So the regulation of course, gives Europol new powers, for instance to demand from Member States that they come up with an investigation, but I really think this is too early to judge whether this is effective or not. And of course it is a role for academics as well as politicians and journalists, to really keep questioning and keep scrutinizing the role of Europol in counter-terrorism, how active it has been and whether the regulation helps the main order to strengthen Europol's efforts in counter-terrorism.

I also think that another introductory observation is that, for the moment, it is also very good to have Europol as a central hub for information gathering and exchange in European Union, and not to have a separate agency for counter-terrorism outside the European Union because this could also be an issue. One of our former Minister of Affairs, Koenders , has argued the case that there should be a separate EU agency for counter-terrorism intelligence exchange. Now we have something like that which is called "Incen" or "Sitcen" where both military and civil intelligence are being exchanged, but not specifically and not particularly not only for counter-terrorism purposes. I do not think this will come off the ground in the end. I do not think we will have a separate agency for counter-terrorism intelligence exchange within the European Union, particularly because the Member States emphasized on sovereignty in counter-terrorism and also because there is not a network between the intelligence agencies and this has particularly been initiated and consolidated on under the

Presidency of the European Union, the Dutch Presidency of the European Union a couple of years ago.

**Ruben Bruil:** Alright, as I already wanted to ask; as we are in 2018, how do you observe these outcomes because as you mentioned, it is quite too early to already evaluate on that. Speaking of Europol being an information hub, the new regulation contains a date regarding the processing of personal data that Europol is capable of, and data processing seems to be of importance in this regulation, but how is data processing related to counter-terrorism and how can it support Europol in its counter-terrorism operations and investigations?

**European Security Expert:** Good point of course, I think that Europol has dedicated a lot of... actually I have dined with the outgoing Director of Europol just a week ago and I think he is happy to leave a consolidated strengthened agency which is very good, and I also think in terms of data processing that have really set up the whole machinery for it as well as bringing the data protection guarantees. So I think that again gives them the right cards for the future, but we will have of course, within the national... in the Member States within the European Union the implementation of the general data protection standards, so I think this will demand new quality criteria in terms of data protection criteria to be implemented by the national police agencies and also by to a certain extent, by the national intelligence and security agencies. And I think that Europol could actually try to be the agency that really not just guides the quality of the data but is also incredibly alert of the quality of its own data for processing. So it is looking very seriously at that and I even think the Europol may hang out the flag if you like in terms of this is how it should be done. How so, so what I hear from them is that they would like as a centre of best practice when it comes to good data processing. And data processing as you know does not just happen like in terms of machines or in terms of data basis and interpretability, but it also happens in terms of, let us call the fluid or mobile data and it also happens in a very informal environment as well. And I think that when data... when information is incredibly sensitive, proactive, you need a very sensitive environment to share those data. So I will say the informal data sharing will still happen despite the fact that we now have a formal sharing mechanism for it.

**Ruben Bruil:** Yes that seems quite clear. I was wondering; do some Member States still face a like hard time cooperating with Europol? Because it is hard to cooperate on policing, so do Member States face hard time or do the struggle with cooperating with Europol throughout the years?

**European Security Expert:** Well I can only answer that question in very general terms because I think if you really try to focus on specific roles and attitude of individual Member States because they are difficult. But I think it depends on a lot of different issues and conditions because countries first of all need to have an open outlook, an open appreciation also of the necessity to share information across

borders. And I think our country is very positive about international data and information sharing but at the same time very cautious. So positive and cautious means that yes there is preparedness but it does not always necessarily happen, or when it happens, it happens after a very careful and cautious consideration of whether those data should be exchanged, this has come out of a research project as well. However, I also think that there is another choice to be made by Member States and that is whether or not they view Europol as their preferred channel for international information exchange. This is not the case in all Member States, although generally it is expected that when you are a member of a Union, Europol is Europe's preferred agency and at the same time, maybe Interpol has better cards and I will say is more privileged and appreciated kind of agency. So every Member States makes its own choice, in whether or not Europol should be the channel for information exchange, Attitudes depend very much of course on what happens inside National Police Services and I think it is general cultures, and I think places like Germany and very Pro-European, countries like Belgium very Pro- European but what will happen with UK for instance when it will not participate anymore in Europol once brexit becomes final. So you have different positions that change overtime, I think this is also a point we need to take into consideration, that it depends very much also on for instance cabinets, politics whether or not there is a political preparedness to share those data internationally. But I think of course, the attacks throughout European have shown the necessity, the benefit of sharing data in the context of counter-terrorism because this is of course your focus, and politicians are really hammered on that, or necessity to have articulated the necessity but know at the same time that there is huge amount of sensitivity around that. So I think it is that politicians need to carefully draft the path between on one hand articulating necessity and on the other hand, using the existing mechanism to the full.

**Ruben Bruil:** Alright, and speaking of cooperating, can you specify how Joint Investigation Teams (JITs) are an important art of the regulation, Europol and Counter-Terrorism?

**European Security Expert:** Well yes of course. Joint Investigation Teams existed prior to the regulation so we do not necessarily meet the regulation to activate or create Joint Investigation Teams. I just thinks that with the total package of new mandates and things like that, Europol is given a new boost to set up Joint Investigation Teams and I really think this is a cultural thing and a legal thing at the same time but it is the actors inside the Member States that have to start using. I think for instance now currently as you know as well, will have an international Joint Investigation Team on the MH-17, is not on terrorism but it is on basically Inter-States violence, or violence that is potentially used by States actors against civilians. In fact we will have to assess the success of these Joint Investigation Teams by the outcome but also by the process of the Investigation Teams. I really think that Joint Investigation Teams have great benefits to offer, because they can bring together the

expertise, the specialized expert members from the States, they can focus on large issues for instance if there is just one criminal organization doing something on cigarette fraud or something like that, tobacco fraud, it may be too small. But if you bring all these things together, then you can make one big intervention that really shows that you can undermine the strength of those criminal organizations. I really think that Joint Investigation Teams have a lot to offer, but also very important I think Joint Investigation Teams offer the opportunity for data sharing in a trusted, closed environment, after which the data are validated and potentially used for the benefits of criminal procedures, like evidence in court for instance, I think this is not a great benefit of Joint Investigation Teams. So it is not just pulling in Europol, it is not just pulling in the experts from the Member States, but it is also Eurojust or other agencies that they can bring in for the benefit of the investigation.

**Ruben Bruil:** Alright, as you already know, the current budget of Europol, that the current budget is 123.2 million Euros, to what extent has this budget improved Europol's functioning?

**European Security Expert:** I think that is hard to say because I think that now... let me put it in another way I think is very important for Europol that it can work on the basis of scrutiny and scrutiny is done for instance also by the European Parliament, the European Parliament now also has the budgetary right of approval to put it that way and I think it is good because it give Europol a much more transparent mandate and the mandate can be explained to the citizens, to the tax payers, to the public at large, so we will just have to see and I think that this 123.2 million is a monthly annual budget right?

**Ruben Bruil:** Yes

**European Security Expert:** So basically we will have to see how it is spent, I also believe and I am also really absolutely convinced that we need a lot of effort and financial input from the agencies in the Member States to make it work, to police cooperation across borders work. So we can see Europol as an agency that works with all law enforcement agencies in the Member States, not on top of and it does not substitute the work of the law enforcement services in the Member State. It is basically a facilitatory type of agency that brings together all the expertise etc. So if it really shows all that effort for instance, I was sitting... I had some time to really look at some of the news and first there was news on meat fraud, fish fraud etc., and Europol made an intervention of that and I felt that was a very good demonstration of its added value mainly that can mobilize Joint law enforcement efforts, that it can synchronize them, that it can coordinate and I think it is fantastic, additional power and mandate that Europol can give additionally as I said basically to the national law enforcement agencies and potentially intelligence agencies in the Member States

**Ruben Bruil:** Alright, and do you think Europol can do more on the field of counter-terrorism instead of what they are doing at the moment?

**European Security Expert:** I think it is a really good question because there is a presumption in the question, Can it, or would it like to or should it? So in terms of normative, should it? I do not think that Europol's mandate should be expanded right now on counter-terrorism. I think, prove what you are worth, show what you are worth, demonstrate your additional benefits basically and work with national police agencies and with national intelligence security agencies, and then after a few years' time I think if it is time for politicians, parliamentarians or researchers to evaluate this and to say, "ok what had the additional benefit of Europol been? Has it really been able to offer trusted environment for sensitive data sharing? Yes or No?" And if the conclusion is that the majority of its work is primarily focused on drugs, money laundering and all the other things, I would not necessarily see the benefits or the legitimacy or the ground perhaps for expanding the mandate of Europol. So I think consolidation of the powers that they have right now on the basis of the regulation, I think that would be my preferred answer to that question.

**Ruben Bruil:** Alright, with that I have got not any questions anymore, I would like to thank you very much for the interview

**European Security Expert:** Ok, thank you so much.

## Appendix 4: Informed Consent Form C. Kaunert

**Informed Consent Form****Informed Consent Form**

- 1) How does regulation 2016/794 enable Europol in its task to set up counter-terrorist units?
- 2) This Project contains a research. This research is the final project for the European Studies on the Hague University of Applied Sciences. In this research, the feasibility of Regulation 2016/794 in regards to setting up counter-terrorist units will be examined. Regulation 2016/794 applies to Europol and is made by the European Parliament and Council.

**If you agree to take part in this study please read the following statement and sign this form.]**

**I am 16 years of age or older.**

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

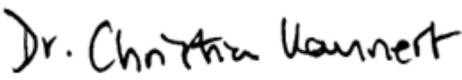
I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: 

Date: 11 April 2018

## Appendix 5: Informed Consent Form O. Bures

### Informed Consent Form

#### Informed Consent Form

- 1) How does regulation 2016/794 enable Europol in its task to set up counter-terrorist units?
- 2) This Project contains a research. This research is the final project for the European Studies on the Hague University of Applied Sciences. In this research, the feasibility of Regulation 2016/794 in regards to setting up counter-terrorist units will be examined. Regulation 2016/794 applies to Europol and is made by the European Parliament and Council.

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I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.



Signed: \_\_\_\_\_ Date: 20.4.2018

## Appendix 6: Informed Consent Form European Security Expert

**Informed Consent Form**

**Informed Consent Form**

- 1) How does regulation 2016/794 enable Europol in its task to set up counter-terrorist units?
- 2) This Project contains a research. This research is the final project for the European Studies on the Hague University of Applied Sciences. In this research, the feasibility of Regulation 2016/794 in regards to setting up counter-terrorist units will be examined. Regulation 2016/794 applies to Europol and is made by the European Parliament and Council.

**If you agree to take part in this study please read the following statement and sign this form.**

**I am 16 years of age or older.**

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

- All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.
- Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.
- I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: \_\_\_\_\_ Date: 26/4/18

Voorwaarde: ANONIEM  
RESPONDENT: "EXPERT"

## Appendix 7: Student Ethics Form

**Student Ethics Form**

**European Studies  
Student Ethics Form**

Your name: *Ruben Bruil*

Supervisor: *Dr. Maarten van Munster*

**Instructions/checklist**  
Before completing this form you should read the APA Ethics Code (<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects you should also look at the sample consent form available in the Final Project and Dissertation Guide.

a.  Read section 3 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.

b.  Complete sections 1 and, if you are using human subjects, section 2, of this form, and sign it.

c.  Ask your project supervisor to read these sections (and the draft consent form if you have one) and sign the form.

d.  Append this signed form as an appendix to your dissertation.

**Section 1. Project Outline (to be completed by student)**

(i) **Title of Project:**  
*How does Regulation 2016/794 facilitate Europol's task of establishing counter-terrorist units?*

(ii) **Aims of project:** *The aim of this project is to research Europol's counter-terrorism competences that have been updated through the entrance of Regulation 2016/794. With that further recommendations will be made on Europol's functioning.*

(iii) **Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer 'NO' to this question.)**

YES  NO

**If no: you should now sign the statement below and return the form to your supervisor. You have completed this form.**

This project is not designed to include research with human subjects. I understand that I do not have ethical clearance to interview people (formally or informally) about the topic of my research, to carry out internet research (e.g. on chat rooms or discussion boards) or in any other way to use people as subjects in my research.

Student's signature \_\_\_\_\_ - date \_\_\_\_\_

If yes: you should complete the rest of this form.

Section 2 Complete this section only if you answered YES to question (iii) above.

(i) What will the participants have to do? (v. brief outline of procedure):

The participant is requested to conduct an interview, wherein he or she should provide answers on the questions that the researcher has prepared. After the interview, the knowledge based answers will be transcribed and processed in the study.

(ii) What sort of people will the participants be and how will they be recruited?

The people will mainly be experts in the field of counterterrorism, EU law or European security. Experts can be professors, lecturers, researchers and EU-staff.

(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Questionnaires[ ]; Pictures[ ]; Sounds [ ]; Words[ / ]; Other[ ].

with words. The researcher means that he will provide question-sentences made out of words, in order to receive answers that will help to clarify the research topic and content.

(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data? Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

The participant gets the possibility to mention if he or she prefers to remain anonymous, which will be fulfilled in the informed consent form. This will be discussed before the interview.

Student's signature: ..... date: 22-5-2018.

Supervisor's signature (if satisfied with the proposed procedures): ..... date: 22-5-18