

Europol: the European FBI?



EUROPOL



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Executive Summary

The Federal Bureau of Investigation (from now on referred to as FBI) was established in 1908 by Charles J. Bonaparte to investigate federal crimes. At that time, FBI special agents investigated cases including illegal land sales and car thefts crossing state lines (*Hamilton, 2007, pp.8-9*). Faced with increased crime rates in the 1930's, the United States Congress decided that crimes such as kidnappings and bank robberies could also be investigated by the FBI (*Hamilton, 2007, p.9*). However, Congress did not want to give the FBI agents power to carry weapons or make arrests. The agents could make citizen's arrests or they had to ask the local police or U.S. Marshals to arrest suspects (*Kessler, 2002, p. 10*). This changed in 1934 with the May/June crime bills were passed ("*Timeline of FBI history*", *n.d, "1930-1939", para. 7*), after an incident where 3 FBI agents were killed (*Kessler, 2002, p. 31*).

Over the past hundred years, the FBI has developed into a world-wide known organization. Its jurisdiction and powers grew so too did its focus. During the Cold War, the FBI focused on arresting communist spies and (*Hamilton, 2007, p.10*); since the attacks of September 11, 2001 the FBI has shifted its focus to preventing terrorism ("*Today's FBI*", *2008, p. 2*).

The European Police Office (from now on referred to as Europol) was established in 1993 under the Treaty of Maastricht ("*Ten years of Europol*", *2009, p. 12*). The first reference to a European police force came from the German chancellor Helmut Kohl in order to combat the growth in illegal drug trafficking within the EU ("*Ten years of Europol*", *2009, p. 11*). However, there was no evidence to support that argument (*Cools, et al., 2010, p. 66*). He wanted the organization to be set up in a similar fashion to the FBI ("*Ten years of Europol*", *2009, p. 11*). His idea of a "European FBI" was based on the German ideal of a federal Europe (*M. den Boer, personal interview, October 8, 2009*). Europol has no executive power and therefore cannot make arrests; its main task consists of collecting, analyzing and exchanging criminal intelligence (*Schans & Buuren, 2003, p. 76*).

The purpose of this thesis is to examine if Europol is the "European FBI." The organizations have similarities and differences. One similarity between the two organizations is that the Directors are appointed: the FBI Director by the President of the United States (*Masse & Krouse, 2003, p. 2*), and the Europol Director by the Council of the European Union ("*Ten years of Europol*", *2009, p. 24*). The biggest difference would be that Europol does not have the authority to make arrests ("*Timeline of FBI history*", *n.d, "1930-1939", para. 7*).

However, this does not mean that it privilege will never be granted because FBI agents did not received that power 26 years after their establishment (*"Timeline of FBI history", n.d, "1930-1939", para. 7*). Because Europol was established restively recently, it is not as well known as the FBI and Europol has been confused with other organizations, such as Interpol (*House of Lords, 2008, p. 16*).

Europol has been called the "European FBI" several times by different authors, although not everyone agrees with that term. At this point, the cultural differences and language barriers within Europe are too big for a "European FBI". Also, there are many differences in national legislation. Because Europol has only been around for 10 years, it is too soon for Europol to have executive powers; however it would be an idea for the future.

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Preface

Because I have an interest in crime – mostly serial killers and high school shooters - it was difficult to find a relation between that and my specialization in Public Administration. But because of the many conversations with my supervisor Frank Termes I found a topic which did relate to my current studies and my interest, namely the FBI and Europol. Unfortunately he could no longer be my supervisor; therefore he was replaced with Mr. Parlevliet.

This final paper would not have the amount of information it does now, without the help of the following people: Monica den Boer - Academic Dean of the Police Academy of the Netherlands, Maria Carneiro - Second Officer at Europol, Colleen Brown - Community Outreach Specialist at the FBI in Cleveland, and Eric Ruona – FBI agent in Philadelphia. Therefore I would like to thank them for providing me with information regarding Europol and the FBI.

Introduction

The FBI was established 102 years ago and it has grown into a powerful law enforcement agency. FBI agents have the power to make arrests, carry weapons and shoot to kill. They can also tap private phone conversations, bypass airport security, and read personal mail and confidential documents (*Kessler, 2002, p. 262*). Europol was established 11 years ago and does not have executive power, e.g. making arrests. It was established to review intelligence given to them by the European Union Member States (from now on referred to as EU MS). For criminals, not having national borders within the EU are beneficial in order to escape detection and avoid prosecution. Conversely, law enforcement officers are at a disadvantage. When crossing a European border there sovereignty issues, language differences and legislative variations they must come to terms with. Europol has to make sure that the borders do not cause trouble for law enforcement officers in the fight against serious crime (*House of Lords, 2008, p. 9*).

Even though the FBI has 90 years more experience in fighting crime and has executive powers, Europol has been referred to as the “European FBI”; this term was first introduced by the German chancellor Helmut Kohl. However, Europol employees do not agree with this term because they do not have executive powers. In December 2009, the Treaty of Lisbon was ratified. Therefore this final paper will examine if this term is applicable after the ratification of the Lisbon Treaty.

A term does not say everything; therefore it will also be examined and analyzed if Europol should have the same powers as the FBI. It might also be possible that the FBI could learn from Europol, even though it has less experience. Several aspects need to be taken into consideration before giving an answer is possible. This final paper consists of four chapters; the first will look into the history of organizations, their mission and an overview of crimes that the FBI and Europol investigate.

Money laundering, illegal drug trafficking, human trafficking and cyber crimes are a few examples of crime that occur every day around the world. There are organizations that fight these crimes, such as the FBI and Europol, but how are these organizations structured? Is there one division for all crimes or does each crime has its own department? Is there one Director or is there more than one? The second chapter will answer these questions.

Organizations cannot operate without legislation; they need to know what they are allowed to do and what they are prohibited from doing. For example, the FBI received the power of arrest 26 years after its establishment because of the Kansas City Massacre. Even though Europol does not have the power to make arrests, there is a tool that allows European Union Member States to deal with offenders from other Member States, the European Arrest Warrant (from now on referred to as EAW). The third chapter reviews the most important legislation and jurisdiction of both organizations followed by a case study on how the legislation was applied. The final chapter will serve as a conclusion on whether or not Europol can rightfully be referred to as the “European FBI”.

In order to successfully complete this final paper several research methods were used, such as, desk research, consultation of existing research, legal documents and several interviews including a FBI and Europol employee. Most documents are less than five years old, although there are a few exceptions.

1 History of the FBI and Europol

1.1 Introduction

This chapter will look at the history of two crime prevention organizations, the FBI and Europol. Although both organizations fight crime, the FBI in the United States and Europol in the European Union (from now on referred to as EU), each has different origins. This section will work to compare the two by examining the types of crimes each organization investigates. Such analysis will eventually lead to a conclusion on whether or not Europol should expand investigative branches as well as the respective jurisdictions. This chapter will also give a summary of events occurring for both organizations, a more detailed timeline for both organizations can be found in appendices one and two.

The FBI is an organization that falls under the United States Department of Justice (from now on referred to as DOJ) and it is situated in Washington, D.C. (*"About us"*, *n.d.*). This means that the DOJ has power over the FBI, for example, it can conduct investigations (*Siegel, 2009, p. 208*). Jeffreys-Jones (*2007, p. 1*) believes the FBI is an unjust organization, because not many foreigners – e.g. Hispanics, African Americans, Asians, and Native Americans – work for the organization. In 2003, only 16.5% of the 11,633 special agents in the FBI were foreigners, while the U.S. population of 290 million had 33% foreigners (*Jeffrey-Jones, 2007, p. 1*). The FBI serves as a federal criminal investigative body and as an intelligence agency. This means that the FBI is not just an agency that solves crimes after they have occurred (*C. Brown, personal interview, November 3, 2009*), it also analyzes information which is then used in policy making decisions (*"Intelligence defined"*, *n.d.*). These policy decisions vary and can include decision on which techniques should be used in a particular situation (*Theoharis, Poveda, Rosenfeld, & Powers, 1999, p. 231*) or how to handle a FBI employee that is suspected of wrongdoing (*Koletar, 2006, p. 29*).

Europol is the European Law Enforcement Organization that handles criminal intelligence and is situated in The Hague, The Netherlands (*"Home"*, *n.d.*). The first concrete reference to the idea of establishing a European police force, to fight transnational crime, is attributed to the German chancellor Helmut Kohl (*"Ten years of Europol"*, *2009, p. 11*). In 1991, the German chancellor wanted a European police force that would be set up along the lines of the American FBI (*"Ten years of Europol"*, *2009, p. 11*).

Kohl justified a need for such an organization because of a growth in illegal drug trafficking within the EU after the border controls were eliminated (*Cools, et al., 2010, p. 18*). However there was no evidence to support this argument (*Cools, et al., 2010, p. 66*). His idea of a “European FBI” was based on the German ideal of a federal Europe (*M. den Boer, personal interview, October 8, 2009*). Even though Europol does not have the power to make arrests, it is an important component in the fight against organized crime (*M. den Boer, personal interview, October 8, 2009*). Their main task is to collect, analyze and exchange criminal intelligence (*Schans & Buuren, 2003, p. 76*).

1.2 History of the FBI

The U.S. Marshals Service is the oldest federal law enforcement agency, formed by the Judiciary Act of September 24, 1789 (“*Fact Sheets*”, 2010, para. 1). The Act was signed by George Washington, the first President of the United States. The Act was signed because he saw the need for a federal judiciary system. The Judiciary Act also led to the establishment of the Supreme Court of the United States and the Office of the Attorney General (*Tomlins, 2005, pp. 22-28*). Tasks of the U.S. Marshals include protection of federal court officers (judges and attorneys), transportation of prisoners, and tracking down fugitives (“*Fact Sheets*”, 2010, para. 3-6).

In 1907 Charles J. Bonaparte was appointed Attorney General by President Theodore Roosevelt. That same year, Bonaparte wrote in the Annual Report of the Attorney General to Congress that the DOJ needed its own criminal investigators (*Bumgarner, 2006, p. 52*). At that point the criminal investigator could only make citizen’s arrest, which meant that the DOJ relied on the U.S. Marshals or the local police to arrest a suspect (*Bumgarner, 2006, p. 53*). This was because Congress did not want to give the criminal investigators the power to carry weapons or make arrests (*Kessler, 2002, p. 10*). According to Bonaparte, “a Department of Justice with no force of permanent police in any form under its control is assuredly not fully equipped for its work” (*Bumgarner, 2006, p. 53*). In 1934 the May/June crime bills were enacted, allowing criminal investigators to make arrests and carry weapons (“*Timeline of FBI history*”, n.d, “1930-1939”, para. 7). In July of 1908, Bonaparte began the creation of a detective bureau within the DOJ. He transferred dozens of Justice Department employees into the new detective unit (*Bumgarner, 2006, p. 53*). This detective unit had no official name, but was referred to as the Special Agent Force (*Holden, 2005, p. 12*). Stanley Finch was chosen by Bonaparte to be the director of that unit, making him the first director of the FBI (*Bumgarner, 2006, p. 53*).

The FBI has had several names since the foundation. As mentioned in the previous paragraph, the FBI had no official name in 1908, but it was referred to as Special Agent Force (*Holden, 2005, p. 12*). However, in 1909 Attorney General George W. Wickersham gave the Bureau its first official name, Bureau of Investigation (from now on referred to as BOI) (“*Timeline of FBI history*”, *n.d.*, “1900-1909”, *para. 3*). In 1932 it was changed into U.S. Bureau of Investigation. The name changed again in 1933 into Division of Investigation (from now on referred to as DOI). In 1935 it was named the Federal Bureau of Investigation (“*Today’s FBI*”, 2008, *p. 2*) and has managed to keep this name.

1.2.1 What are the competences of the FBI?

In the 1960’s the Ku Klux Klan fell under the category domestic terrorism (“*History of the FBI: Vietnam War Era*”, *n.d.*, *para 8*). In 1993 the World Trade Center was bombed for the first time. However, it was not until after the attacks of September 11, 2001, that terrorism became a priority (*Colleen Brown, personal interview, November 3, 2009*). Because terrorism became a priority, it was added in the mission of the FBI, which currently is the following:

“to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.”
(“*Today’s FBI*”, 2008, *p. 2*).

The FBI can investigate violations of over 200 categories of federal law. These categories are grouped within three national security priorities and five criminal priorities, which can be seen below (“*What we investigate*”, *n.d.*). Because there are too many categories of federal law to name, one crime per priority will be mentioned as an example.

National Security Priorities:

1. Counterterrorism (weapons of mass destruction);
2. Counterintelligence (economic espionage);
3. Cyber Crime (online predators).

(“*What we investigate*”, *n.d.*).

Criminal Priorities:

4. Public Corruption (election fraud);
5. Civil Rights (hate crime);
6. Organized Crime (sports bribery);

7. White-Collar Crime (identity fraud);
 8. Major Thefts/Violent Crime (crimes against children).
- (“*What we investigate*”, *n.d.*).

1.3 History of Europol

As mentioned earlier, the German chancellor Helmut Kohl wanted a European police force. In 1991, this proposal created a discussion amongst the, at that point, 12 Member States of the European Union (*House of Lords*, 2008, p. 12). The discussion was about the best possible way to fight crime and guarantee security, leading to the idea of establishing Europol (“*Ten years of Europol*”, 2009, p. 11). The establishment of Europol was agreed in the Maastricht Treaty on European Union in 1992, which came into force in 1993 (*Madsen*, 2009, p. 98). Article K1 (9) of the Maastricht Treaty established matters of common interest, including:

“police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office.”
(“*Ten years of Europol*”, 2009, p. 12).

The Maastricht Treaty is formally called the Treaty on European Union (from now on referred to as TEU) and its framework was based on three pillars (figure one on the next page). The first is community domain, which deals with economic, social and environmental policies. The second pillar is the common foreign and security policy, which deals with foreign policy and military matters. The third pillar is the police and judicial cooperation in criminal matters, which deals with international co-operation in the fight against crime. Therefore Europol was established under the third pillar (*Pisuisse & Teubner*, 2005, pp. 17-19). However, with the Treaty of Lisbon – which entered into force on December 1, 2009 (“*In your country*”, 2009) – the three pillars merged into one (“*Explaining the Treaty of Lisbon*”, 2009, “*Justice, freedom and security*”, para. 1). This means that the EU received legal personality (“*Treaty of Lisbon*”, 2009, p. 1), which will be further discussed in the third chapter.

In 1993 the European Council took the first step towards formalizing European police cooperation. This happened through the formation of the Europol Drugs Unit (from now on referred to as EDU) (“*Ten years of Europol*”, 2009, p. 12). The establishment of the EDU was more a gesture towards the Germans, who practically pressured other EU MS into establishing a European FBI (*Schans & Buuren*, 2003, p. 75).

The EDU, which started operating in 1994, had no executive powers, although it was allowed to support national police forces in criminal investigations (*“Ten years of Europol”*, 2009, p. 12). Its mandate did expand in the following years, until 1999 when it officially changed into Europol (Schans & Buuren, 2003, p. 75), and included terrorism, motor vehicle crime, drug trafficking and all serious forms of organized crime (*“Ten years of Europol”*, 2009, p. 12).



Figure 1 – Three pillar structure

(*“The European Union, its foundation and its three pillars”*, n.d., para. 1).

In 1998 the Europol Convention, under the Maastricht Treaty, was ratified by the EU MS and came into force. Under the Convention, every Member State was required to choose a national unit to exchange information between its own legal authorities and Europol (*“Ten years of Europol”*, 2009, p. 14). The national units were required to send at least one liaison officer to Europol headquarters. This way the flow of information, in both directions, would be easier (*“Ten years of Europol”*, 2009, p. 14).

Other treaties concerning Europol, between 1998 and 2009, will be further discussed in the third chapter. In that chapter the legal framework of Europol will be looked at.

1.3.1 To which crimes does Europol provide support to investigations?

When the Europol Convention was signed in 1995, terrorism was not a priority for Europol (House of Lords, 2008, p. 36). It became a priority after the attacks of September 11, 2001. Today, the mission of Europol is the following:

“to make a significant contribution to the European Union’s law enforcement action in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime within its competencies with a particular emphasis on the criminal organizations involved.”

(*“Ten years of Europol”*, 2009, p. 14).

As mentioned before, the EDU was the forerunner of Europol. In 1999, there was another expansion of the mandate, which included child abuse, forgery of money, and the authorization to start negotiations about cooperation agreements with third states. This made Europol a completely developed partner in fighting organized crime within Europe’s borders and beyond (*“Ten years of Europol”*, 2009, p. 21).

Before the Treaty of Lisbon entered into force, Europol could only take action when there was a suspicion of an organized crime network whose illegal activities affect at least two Member States (*M. Carneiro, personal interview, October 16, 2009*). However, taking action needs to be done in agreement with the authorities of the Member States (*House of Lords, 2008, p. 15*). Since the Treaty of Lisbon, it changed into serious crimes affecting at least two Member States. An example of this would be a serial killer who kills several people in different EU MS (*M. Carneiro, personal interview, October 16, 2009*). Furthermore, these illegal activities have to be within Europol mandated areas, which consist of the following:

- Illegal drug trafficking;
- Illegal immigration networks;
- Terrorism;
- Forgery of money (counterfeiting the Euro) and other means of payment;
- Trafficking in human beings including child pornography;
- Illegal vehicle trafficking;
- Money-laundering.
- Crimes against persons;
- Financial crime and cybercrime.

(*“Fact sheet on Europol”*, n.d., “Mandate”).

The priorities above were recommended by the Management Board to the Council, who decided whether or not Europol should be able to give EU MS support in these areas (*“Council Decision 2009/371/JHA”*, 2009, p. 39, article 4).

To further expand the tasks of Europol, a protocol was signed in 2003 and entered into force in April 2007 (*Bruggeman, 2007, p.2*). The protocol made the following possible, employees of Europol can work in international teams, information and analysis can be exchanged between the teams and Europol at any time, Europol can give certain authorized law enforcement agencies direct access to the information Europol has, and it is allowed to involve experts from non-EU countries in an investigation coordinated by Europol (*Europa NU, n.d., “werkzaamheden”*).

Europol supports EU MS by doing the following, making it easier to exchange information between Europol Liaison Officers (ELOs), EU MS and Third Parties; making strategic reports and crime analysis based on information given by EU MS and third parties; providing expertise and technical support to ongoing investigations in the EU (*“Fact sheet on Europol”, n.d., “Mandate”*).

Before the Treaty of Lisbon was ratified, Europol was an intergovernmental organization. With the ratification of the Treaty, Europol is now an institution of the EU with intergovernmental characteristics (*M. Carneiro, personal interview, October 16, 2009*). It will start working with a Council Decision instead of the Europol Convention, which means that it will become a European agency (*M. den Boer, personal interview, October 8, 2009; “Europol: new structure and mandate”, n.d., “summary”*). The new legal framework changed the following, the European Parliament (from now referred to as EP) will have a veto in the establishment of Europol budget, which gives the EP more power through “the involvement of the European Parliament in the adoption of that budget, including the establishment plan, and the discharge procedure” (*“Council Decision 2009/371/JHA”, 2009, p. 1, para. 5*). Before the Treaty of Lisbon came into force, Europol received contributions from each EU MS, on the basis of their Gross National Product (*M. Carneiro, personal interview, October 16, 2009*).

1.4 Conclusion

In this chapter differences were examined. The FBI was established in 1908, while Europol was established almost 90 years later. Another difference is that the FBI serves both as a federal criminal investigative body as well as an intelligence agency (*C. Brown, personal interview, November 3, 2009*), whilst Europol only handles criminal intelligence (*“Home”, n.d.*). In 1991, the German chancellor Helmut Kohl wanted a European police agency that would be set up along the lines of the American FBI (*“Ten years of Europol”, 2009, p. 11*). His idea of a “European FBI” was based on the German ideal of a federal Europe, which Europe is not (*M. den Boer, personal interview, October 8, 2009*). However, his idea eventually did lead to the establishment of Europol.

Both organizations were established for almost the same reason. The FBI was established to fight interstate crimes, which is based on federal legislation (*M. den Boer, personal interview, October 8, 2009*). Europol was established to have a Union-wide system for exchanging information on criminal activities, which would make police cooperation easier (*“Ten years of Europol”, 2009, p. 12*).

With the Treaty of Lisbon, Europol changed from being an intergovernmental organization into becoming an institution of the EU with intergovernmental characteristics. This means that the EP has more power over Europol, for example by having a veto in the establishment of Europol budget. This is a good change, because EU MS with a larger Gross National Product do not need to pay more than the EU MS with a smaller Gross National Product.

Though Europol does not have the power to make arrests, it does not mean it will never have this power. The FBI did not have the power of arrest when they were established, that power was gained 26 years after its establishment. Europol focuses on serious international crime affecting the interests of two or more Member States and it may take action when there is a suspicion of an organized crime network whose illegal activities affect at least two Member States. However, Europol can only do so, in agreement with the authorities of the Member States. This means that Europol does not have direct jurisdiction of a single EU MS. This is something that could be changed, in case Europol has legitimate reason to believe a suspect is hiding in a particular EU MS.

2 Structure of the FBI and Europol

2.1 Introduction

This chapter will examine the structure of the FBI and Europol. Because the FBI is much older, the aim of this chapter is to examine whether the two organizations have a similar or a different structure. This chapter will also show what effect, if any, structure has on the organizations responsibilities and effectiveness.

In the FBI headquarters, much time spent on researching, writing, and debating policy changes (*Koletar, 2006, pp. 38-39*). Koletar (2006, p. 39) also mentions that over half of the people in the FBI are support employees, not agents, and that the FBI would not run without them. The reason why the FBI hired non-agents is because the technology was moving too fast for someone who had spent a large amount of his career doing investigative duties. At this point there are non-agents at every level of the FBI, for example the assistant directors (*Koletar, 2006, p. 40*).

Europol was created to become the ‘European center for intelligence exchange, development, analysis, cooperation and support in relation to the fight against international organized crime’ (*“Ten years of Europol”, 2009, p. 27*). Europol has 126 liaison officers representing EU MS and Third Parties (*M. Carneiro, personal interview, October 16, 2009*). Within Europol, the U.S. is represented by the FBI and the U.S. Secret Service. Europol is also represented at the two American organizations (*“Enhanced cooperation with the U.S.A.”, 2006, para. 4*). These liaison officers are a bridge between Europol and the Europol National Unit (from now on referred to as ENU). Every EU MS created a ENU which is usually integrated in an international police cooperation department (*M. den Boer, personal interview, October 8, 2009*), and has sent at least one person from it to become a liaison officer at Europol (*Occhipinti, 2003, p. 61*). If two or more EU MS feel the need to investigate a certain criminal activity, the liaison officers will work with together on requesting analysis.

2.2 FBI

Since 2001, the FBI is led by director Robert S. Mueller III (*“Directors, then and now”, n.d.*). The director is appointed by the President, for a 10-year term, with the advice and permission of the Senate (*Masse & Krouse, 2003, p. 2*). On October 18, 1976, Congress passed a law that limited the director to a single 10-year term of office (*Koletar, 2006, p. 18*), because J. Edgar Hoover was the director for 48 years. Congress feared that having someone in charge for such a long period would inhibit diverse views. (*C. Brown, personal interview, November 3, 2009*).

At this point, the President of the United States is elected for a 4-year term and another 4 years if he gets re-elected. Therefore, the director of the FBI does not change with every new President (*Briggs, 2009, p. 236*).

The FBI consists of several units, which can be seen below, in figure two. The units are divided by subject area and crimes investigated (*E. Ruona, personal interview, November 3 2009*). There are 5 branches, National Security; Criminal, Cyber, Response, and Services; Human Resources; Science and Technology; and Information and Technology (“*FBI Executives*”, *n.d.*). Every branch has its own Executive Assistant Director (EAD) and is subdivided in several divisions; every division has its own Assistant Director (“*FBI Executives*”, *n.d.*). The FBI has an annual budget of over \$6.4 billion (*Gaines & Miller, 2009, p. 146*).

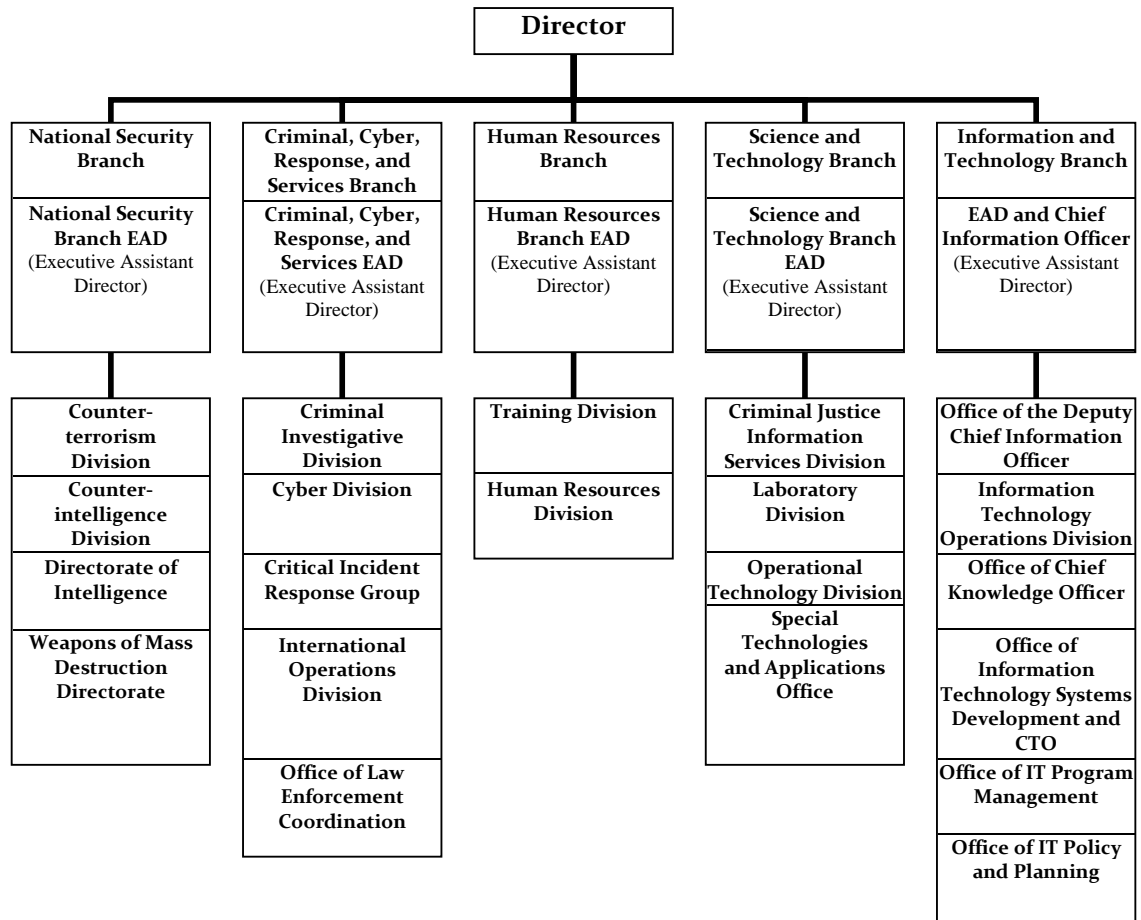


Figure 2 – FBI organization chart.

(“*FBI Executives*”, *n.d.*)

The National Security Branch, which is shown in figure two, was established on September 12, 2005, as a response to the terrorist attacks of September 11, 2001. The Weapons of Mass Destruction Directorate was added to that branch in July 2006, because prior to establishing it no one branch dealt with information regarding Weapons of Mass Destruction (*National Security Branch, n.d.*).

In 2009, the FBI had over 30,000 employees (*Gaines & Miller, 2009, p. 146*) working either in the FBI headquarters, as field offices or as legal attachés overseas (*Masse & Krouse, 2003, p. 2*). The headquarters handles oversights, priorities, and administrative functions for field offices and attaches. The legal attachés assist the FBI in priorities of the United States. For example if there is a bombing overseas, the Legal Attaché in the country works with the foreign government or law enforcement to solve the crime (*C. Brown, personal interview, November 3, 2009*). The FBI also has 56 field offices and 400 resident agencies. The reason why there are more field offices than States is because some States have more than 1 field office (*E. Ruona, personal interview, November 3 2009*). For example, Texas has 4 field offices, in Dallas, El Paso, Houston and San Antonio (*"Field divisions", n.d., "Texas"*). Each field office has jurisdiction over several counties, e.g. El Paso has jurisdiction over 17 counties, while Dallas has jurisdiction over 136 counties (*"Field divisions", n.d., "Texas"*). Every field office has a Special Agent in Charge (SAC) who reports to the director at the headquarter (*C. Brown, personal interview, November 3, 2009*). Except for the field offices in Los Angeles, New York City, and Washington, D.C., which are managed by an Assistant Director in Charge because of its large size (*"Your local FBI office", n.d., para 1*).

2.2.1 Case study

Every organization has its successes and failures. Below two examples will be given; one is an acknowledgement of a success made within the Cyber Division, the other is probably the biggest failure of the FBI, not preventing the attacks of September 11, 2001.

On April 15, 2010, McAfee – an anti virus software company – awarded, the assistant director in charge of the FBI Cyber Division, Shawn Henry with the McAfee Cybercrime Fighter Award because he “has engineered innovative strategies and redesigned investigative programs to protect the nation and its citizens from cybercrime and make real strides for law enforcement combating this relatively new type of crime.” (*Evers, 2010*)

According to Jeffrey-Jones (2007, p. 244) the FBI failed at tracking Al Qaeda members. Ben-Veniste (2009, p. 224) argues that the FBI had several missed opportunities including following up on foreign born Muslims attending flight schools within the U.S. Ben-Veniste (2009, p. 224) also believes the FBI knew that two Al Qaeda members were in the U.S. Zegart (2007, p. 121) argues that the FBI failed to follow up on their presence due to its structure. The responsibilities of collecting and analyzing intelligence were divided geographically. The Central Intelligence Agency (from now on referred to as CIA) was in charge of tracking terrorists abroad and the FBI domestically. This means that when a suspect entered the U.S., the CIA would not look at the file and leave it to the FBI (Zegart, 2007, pp. 117-120). The CIA is not permitted to gather intelligence in the U.S. (C. Brown, personal interview, November 3, 2009). This creates a gap in intelligence sharing because the FBI might not be informed that the CIA has investigated an individual entering the country (2007, pp.117-120).

In order to prevent terrorist attacks from happening again, the Department of Homeland Security (from now on referred to as DHS) was established in 2002. Some organizations have been transferred into the DHS, such as the Transportation Security Administration, U.S. Coast Guard and the U.S. Secret Service (*"History: who became part of the Department?"*, 2008). The FBI and the DHS work together, in order to protect U.S. citizens from future terror attacks. It is important that the organizations communicate well with each other since they have overlapping jurisdictions (C. Brown, personal interview, November 3, 2009). Even though the DHS was established to prevent terrorist attacks within the U.S., it specifies that the "primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question" (*"Homeland Security Act"*, 2002, p. 8). This kept the FBI from becoming part of the DHS.

2.3 Europol

With the Treaty of Lisbon in 2009, the structure of Europol changed. The old structure can be seen on the third page of appendix four; the new structure is figure three on the next page. The main difference between the structures is that the names of the departments have changed. For example, most units that fell under the serious crime department now fall under the operations department. With the previous structure, drugs fell under the department of serious crime but now there is no specific drug unit.

Since April 2009, Europol has a director from the United Kingdom, Rob Wainwright (*"Rob Wainwright"*, n.d.). The director is appointed by the Council of the European Union for a 4-year term, which may be extended once for another 4-year term (*"Ten years of Europol"*, 2009, p. 24).

The director is assisted by 3 Deputy Directors, who are also appointed by the Council for a 4-year term, which may be extended once (*“Ten years of Europol”*, 2009, p. 24). Their appointment does not coincide with the presidency of the Council of the European Union which is elected for a six-month period (Duncan, Jancar-Webster & Switky, 2008, p. 188).

As mentioned in the introduction, Europol has 126 liaison officers representing EU MS and Third Parties. Every EU MS is required to send at least one officer, from each national unit, to Europol (*“Council Decision 2009/371/JHA”*, 2009, p. 42, art. 9). For example, The Netherlands is required to send at least one officer from the Dutch police, Public Prosecution Service, The Royal Netherlands Marechaussee, and the Special Investigation Services (*“Ten years of Europol”*, 2009, pp. 102-103).

The names of the Europol departments have changed. The departments used to be, Information Management and Technology (IMT); Serious Crime (SC); and Corporate Governance (CG). All these departments have their deputy director, assistant director and secretariat (M. Carneiro, personal interview, October 16, 2009). Since the Treaty of Lisbon, the departments are, Operations Department (OD), Governance Department (GD), and Capabilities Department (CD) (*“Europol Organization Chart”*, 2010).

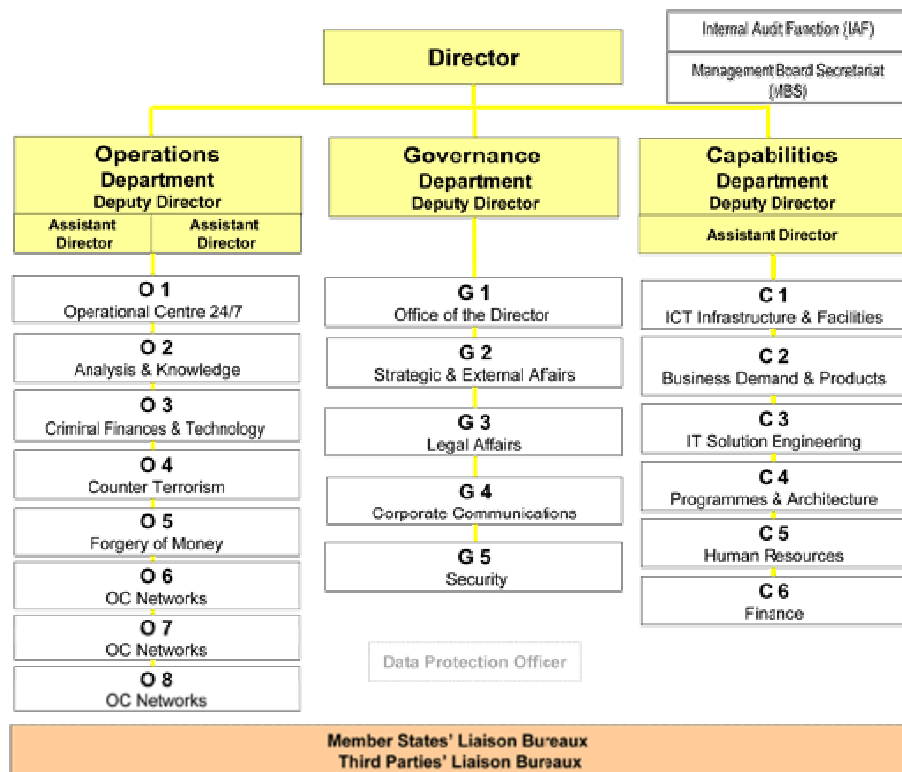


Figure 3 – Europol Organizational Chart.

(*“Europol Organization Chart”*, 2010).

Europol is still supervised by the Management Board which consists out one high-ranking representative of each Member State and the European Commission. Each Member State receives one vote. The Management Board gets together at least twice a year in which the current activities and the future developments of Europol are discussed. At least two-third of the majority needs to vote in favor in order to accept a decision (*"Management and control", n.d., para 2*). Before the Treaty of Lisbon, Europol received contributions from each EU MS which was based on their Gross National Product. In 2009, Europol had a budget of 65.4 million Euros. Since the ratification of the Treaty of Lisbon, Europol is financed from general budget of the EU (*M. Carneiro, personal interview, October 16, 2009*).

2.4 Conclusion

The FBI consists of 5 branches, each of them are clearly divided. For example, in the National Security Branch, there is a counter terrorism division and a weapon of mass destruction division. The Science and Technology Branch consist of a laboratory division and a criminal justice information services division. As mentioned in the previous chapter, the FBI can investigate violations of over 200 categories of federal law. Because the 200 categories fall under three national security priorities and five criminal priorities, its branch structure seems to be working.

Miscommunication, or rather lack of communication, between the FBI and the CIA is an important reason why the attacks of September 11, 2001 happened. As a response to the attacks, the DHS was established in 2002. The FBI is working together with the DHS, but communication skills must continue to grow in order to prevent any future attacks. It is difficult to say if the attacks could have been prevented even if the FBI and CIA communicated well especially since if the attacks of September 11, 2001 failed, terrorist would have relentlessly try another way to attack the U.S.

Europol has changed its structure after the Treaty of Lisbon. It still has three departments however their names have changed. Also, some of the units have moved to different departments. For example, human resources and finance once fell under the corporate governance department together with legal affairs and security but at this point human resources and finance fall under the capabilities department, while legal affairs and security fall under the governance department. The serious crime department used to be clearly divided into priorities of Europol but with the new structure, it has changed into the Operations Department, which is unfortunate because some the priorities no longer have a unit. The drugs unit and the crimes against persons unit no longer exist, it is not clear in the new structure under which unit it falls.

I believe that this is a disadvantage, because illicit drug trafficking and crimes against persons are priorities for Europol. Not all units are gone but the forgery of money unit does exist under the new structure. The terrorism unit continues under a slightly different name, counter terrorism.

The director of the FBI is appointed by Congress for a 10-year term (*Masse & Krouse, 2003, p. 2*), while the director of Europol is appointed by the Council of the European Union for a 4-year term ("*Ten years of Europol*", 2009, p. 24). In the first chapter it was said that the European Parliament would have more power over Europol since the passage of the Lisbon Treaty. Therefore it would be an idea for the director of Europol to be appointed for the same amount of time as the President of the EP, which is 2½ years (*McCormick, 2005, p. 96*). It is also possible for the director of Europol to be appointed for a 5-year term, which is the same amount of time as Members of the EP are elected (*McCormick, 2005, p. 94*). In my opinion, being a director for 4-years is a reasonable time and being one for 10-years is too long. However, I would suggest a 5-year term for both organizations.

One of the branches that the FBI has that Europol lacks, is the National Security Branch ("*FBI Executives*", *n.d.*). This is most likely because every European Union Member State has its own view on National Security. However, this will change if Europol receives direct jurisdiction over a Member State. At this point, Europol does not receive direct jurisdiction over a Member State, because there are too many cultural and language barriers within the EU (*M. Carneiro, personal interview, October 16, 2009*).

3 Legal frameworks for the FBI and Europol

3.1 Introduction

The jurisdiction of the FBI has expanded over the past 100 years; a brief overview of the most important Acts leading to the expansion of FBI jurisdiction will be given in this chapter. Historically, arguments have arisen regarding FBI jurisdiction. When President John F. Kennedy was assassinated, it was seen as a local homicide; therefore the local police handled the case. However, when Lyndon B. Johnson became president, he ordered the FBI to take over the investigation. After that, Congress passed a law making sure this would never happen again, by making sure deaths of federal officials would fall under FBI jurisdiction (*"History of the FBI: Postwar America"*, n.d., para.17).

Europol can not choose which criminal cases it would like to collect data on, because it needs to be done in agreement with the authorities of the EU MS (*House of Lords*, 2008, p. 15). Because Europol was established to improve the information exchange between the EU MS, Analysis Work Files (from now on referred to as AWFs) were introduced in September of 1999. By the end of 1999, seven AWFs were opened in areas such as Eastern European organized crime and Islamic terrorism. When at least 2 EU MS want to collect and analyze data on a specific area of crime, within the Europol Mandate, an AWF can be opened. It contains data that is relevant for specified categories of individuals, such as, criminals, suspects, victims and witnesses. Third Parties, that have a cooperation agreement with Europol, can also join and contribute to the AWFs. By the end of 2004 there were 19 AWFs (*"Ten years of Europol"*, 2009, p. 29).

This chapter will provide more examples on legislation that apply to the FBI and Europol, in order to find out what the organization can and can not do. A more detailed overview of acts and treaties that apply to both organizations can be found in appendices one & two.

3.2 Legislation for the FBI

In 1910, Congress implemented the White Slave Traffic Act (or Mann Act) which was the first Act of the FBI. This Act made the transportation of women across state lines "for the purpose of prostitution, or for any other immoral purpose" a federal crime. The reason why it was also referred to as Mann Act is because Congressman James Mann proposed this Act. The primary goal of the act was to limit and control organized prostitution. There was a fear that local and state police alone could not protect women who are lured into prostitution (*Theoharis, et al.*, 1999, p. 6).

For example, if women were transported from Wisconsin to Illinois, the local and state police from Wisconsin would lose jurisdiction and would have to contact the police officers in Illinois to brief regarding the crime. By the time officers in Wisconsin contacted officers in Illinois, the perpetrators might already be in Indiana. (*Theoharis, et al., 1999, p. 6*). Every state in the U.S. has a different legal system. For example, if the perpetrator killed someone in Wisconsin he would receive a life sentence but (*Galliher, Koch, Keys & Guess, 2005, p. 31*) had he killed someone in Illinois he may receive the death penalty (*Galliheret, et al., 2005, p. 221*). Human trafficking was not the only territory the BOI wanted to combat.

In 1919 the role of the BOI expanded further with the Motor Vehicle Theft Act (or Dyer Act). Due to the increase in auto sales, the United States saw a huge increase in auto theft crimes. The Act made sure that the BOI could investigate stolen automobiles cases when the vehicles were transported over States (*Theoharis, et al., 1999, pp. 6-7*). Like the Mann Act, the Dyer Act also addressed concerns that local and state police had regarding resources or power relating to criminals crossing state lines (*Theoharis, et al., 1999, pp. 6-7*). The Dyer Act was a success for the BOI. Bureau officials were able to create a record of arrests and recovered property. However, during this time the BOI still did not have the power to carry firearms or make arrests. The BOI was able to create a record of arrests and recovered property through cooperation with local police and through their own research (*Theoharis, et al., 1999, p. 7*).

In June 1933, federal prisoner Frank Nash was being transported under police and DOI supervision. As they arrived at Union Railway Station in Kansas City, 3 gunmen opened fire with machine guns and pistols. Even though the gunmen were supposed to rescue Frank Nash, they ended up killing him as well as the four lawmen (*Kessler, 2002, p. 31*). This incident was known as the Kansas City Massacre and led to the May/June Crime Bills, giving DOI agents the right to make arrests and carry firearms (*"Timeline of FBI history", n.d., "1930-1939", para. 7*).

Because this chapter will only summarize FBI legislation, the next relevant Act occurred in 1970. The Organized Crime Control Act gave the FBI the ability to use wiretaps, provide immunity for witnesses who would testify in front of a jury, and punish persons lying under oath (*Hagan, 2010, p. 418*). The FBI can not use wiretaps whenever they would like, they would have to get a court order first (*Riley, Treverton, Wilson & Davis, 2005, p.4*).

The most recent Act dates to October 2001, which is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act – it is also known as the USA Patriot Act. This Act was an immediate response after the attack of September 11, 2001 (*Jeffrey-Jones, 2007, p. 233*) which provided the FBI with extra resources to, for example, hire new agents, making it easier to search for extra information about potential terrorists and fight international money laundering (*“Timeline of FBI history”, n.d, “October 26, 2001”*). However, some people argue this is conflicting with the Fourth Amendment (*Jeffrey-Jones, 2007, p. 233*), which states “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly described, the place to be searched, and the persons or things to be seized” (*Mauk & Oakland, 2005, p. 360*).

3.2.1 Jurisdiction of the FBI

The jurisdiction of the FBI over a crime is determined by several factors. These factors are where the crime took place, if the crime violates federal law, or if the crime involves the crossing of state lines (*Morgan, 2000, pp. 35-36*). In the U.S. crimes are primarily fought at state and local level (*E. Ruona, personal interview, November 3 2009*) which means that the FBI is not considered to be a national police force (*Gaines & Miller, 2009, p. 146*). The FBI does not have authority over the local police; it relies only on their cooperation (*E. Ruona, personal interview, November 3 2009*).

A good example would be the police department in Miami, Florida. The city is a gateway for drugs smuggling from Central and South America. Therefore the police department spends a high percentage of its resources in special drug fighting units. They have also formed cooperative partnerships with federal agencies such as the FBI and U.S. Customs and Border Protection in an effort to stop illegal drug and weapons coming into the U.S. through that area (*Gaines & Miller, 2009, pp. 169-170*).

The state and local agencies do provide support to intelligence activities, mainly through participation in FBI Joint Terrorism Task Force (from now on referred to as JTTF). The first JTTF was established in 1980. Prior to the September 11 attacks there were 35 JTTFs. After the September 11 attack 65 JTTFs were added (*“Protecting America against terrorist attack”, 2004, para. 3 & 5*). The JTTF consists of FBI agents, DHS and law enforcement authorities from federal, state, and local agencies. They all work together preventing terrorism and exchanging intelligence under the supervision of the FBI (*Riley, Treverton, Wilson & Davis, 2005, p.4*).

State and local authorities contribute with specialized skills, such as language capabilities. An important way of building intelligence is through wiretaps. Although wiretaps are generally illegal in the U.S., the federal government and many states have permission to intercept wire and electronic communications if they have a court order (Riley, Treverton, Wilson & Davis, 2005, p.4) which became easier to obtain since the Patriot Act (“Timeline of FBI history”, n.d, “October 26, 2001”).

3.2.2. Case study: FBI

During the 1930s the Bureau was searching for Public Enemy John Dillinger. However, during that time Bonnie Parker and Clyde Barrow were also seen as Public Enemies as they were committing bank robberies. Bonnie and Clyde were also engaged in shootings with the local police, which they survived. After being involved in a series of crimes for a period of 4 years, a federal judge in Dallas issued an arrest warrant charging them with violation of the Motor Vehicle Theft Act. They transported a stolen vehicle from Texas to Oklahoma and on 23 May 1934 they drove their vehicle at high speeds in an attempt to pass a barricade. However, shots were fired on the moving vehicle causing both Bonnie and Clyde to die (Theoharis, et al., 1999, pp. 55-56). This occurred one year after the FBI got permission to carry firearms (“Timeline of FBI history”, n.d, “1930-1939”, para. 7).

3.3 Legal framework of Europol

In the first chapter the Maastricht Treaty, which created Europol, was discussed. However, this was not the only EU Treaty that was important to Europol.

The Treaty of Amsterdam, which came into force in 1999, included the Schengen Agreements in the EU law. The two Schengen Agreements, originally ratified in 1985 and 1990, ended the internal borders between the EU Member States. The only EU MS that did not sign the Schengen Agreements were the UK and Ireland (“Ten years of Europol”, 2009, p. 16). This was because the UK and Ireland had a Common Travel Area agreement with each other, which meant that both countries could not adopt the Schengen Agreement, without terminating their agreement (M. den Boer, personal interview, October 8, 2009). The UK and Ireland asked if it was possible to participate in the fight against illicit drug trafficking and the Schengen Information System (from now referred to as SIS) (Kaczorowska, 2008, p. 32), which will be further explained below. With the ratification of the Schengen Agreements, there were no more border controls between EU MS, which made it easier for criminals and criminal organizations to operate internationally and move from one Member State to another (“Ten years of Europol”, 2009, p. 16).

The Schengen Agreements therefore included conditions on cross-border police and judicial cooperation to ensure that criminals could not ‘disappear’ by moving from one Member State to another. Because of this, Europol was given a central role in coordinating police cooperation within the EU (*“Ten years of Europol”*, 2009, p. 16).

The SIS was established to place alerts about either wanted or missing persons. If a person was found and specific action needed to be taken, a request could be added. None of the EU MS are obligatory to enter information in the SIS (*Kaczorowska*, 2008, p. 33). At this point, SIS has approximately 20 to 30 million registrations (*M. den Boer, personal interview, October 8, 2009*). Europol only has partial access to the SIS, which is not an ideal situation because now it does not know if certain people are registered in the SIS (*M. Carneiro, personal interview, October 16, 2009*).

The Amsterdam Treaty also made the first mention to Joint Investigation Teams (from now on referred to as JITs). The idea was picked up and further planned at the European Council in Tampere, Finland, in October 1999. The Councils conclusions called for “joint investigative teams to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism.” JITs were later to become more important in the activities of Europol (*“Ten years of Europol”*, 2009, p. 16). To strengthen the role of Europol even further, the European Council also decided to set up Eurojust to improve judicial cooperation and a European Police Chiefs Task Force to coordinate policing at the operational level (*“Ten years of Europol”*, 2009, p. 16). Europol and Eurojust work together in a few ways, for example, the exchange of information and JITs. Every Member State, Europol and Eurojust assigned one expert to work within the JIT, this is to for example, overcome linguistic problems and exchanging information on legal frameworks (*Fletcher, Löff & Gilmore*, 2008, pp. 91-92).

In the first chapter the Treaty of Lisbon was also briefly discussed. This Treaty was officially signed by the Heads of State of the EU on 13 December, 2007. However, each Member State had to ratify this Treaty. The last Member State to ratify this Treaty was the Czech Republic on 13 November 2009 (*“In your country”*, 2009). Therefore the Treaty of Lisbon entered into force on 1 December, 2009 (*“In your country”*, 2009). As mentioned in the first chapter, the three pillar structure that was established in the TEU no longer exists (*“Treaty of Lisbon”*, 2009, p. 1). Since the ratification of the Treaty of Lisbon, the three pillars merged into one which established a single legal personality. This means that the European Community has been replaced by the EU, which took over all the rights and obligations (*“Treaty of Lisbon”*, 2009, p. 1).

Now that the EU is a single legal personality, it can for example, sign treaties, act before an international court or judge and become a member of an international organization (*Telò, 2009, p. 131*).

In Article 69E of this Treaty, the possible establishment of a European Public Prosecutor's Office within Eurojust is mentioned. This Office shall combat crimes affecting the financial interests of the European Union. It shall be responsible for investigating, prosecuting and bringing perpetrators and their accomplices to judgment (*"Treaty of Lisbon", 2007, "Article 69E", pp. 66-67*). The European Commission wanted to establish this Office because there was a need to prosecute perpetrators of fraud more effectively (*"Green Paper on criminal-law protection", 2001, p. 5*). There will be a chief European Public Prosecutor, "who would provide the minimum degree of centralization necessary at Community level", and Deputy Prosecutors, "who would be integrated into the national justice systems and who would actually bring offenses to trial" (*"Green Paper on criminal-law protection", 2001, p. 28*).

Europol and the European Public Prosecutor's Office shall work together by exchanging information with each other. An example is if the European Public Prosecutor's Office believes that laundered money is being used for trafficking stolen vehicles, it should inform Europol. If Europol has identified a criminal organization which is engaged in fraud, it should also inform the European Public Prosecutor's Office (*"Green Paper on criminal-law protection", 2001, p. 66*).

Article 69G mentions that the European Parliament and the Council shall decide the structure, operation, field of action and tasks of Europol. Examples of tasks are, "the collection, storage, processing, analysis and exchange of information". Other tasks that the Treaty mentions are "the coordination, organization and implementation of investigative and operational action carried out jointly with the Member States' competent authorities" (*"Treaty of Lisbon", 2007, "Article 69G", p. 68*).

In the first chapter it was mentioned that Europol would work with a Council Decision instead of the Europol Convention, from January 1 2010 onwards (*M. den Boer, personal interview, October 8, 2009; "Europol: new structure and mandate", n.d., "summary"*). The first chapter also gave some examples of what would change, another example is that in order to avoid unnecessary procedures, the ENU will have direct access to all data in the Europol Information System (*"Council Decision 2009/371/JHA", 2009, p. 8, art. 13*).

3.3.1 Jurisdiction of Europol

Europol does not have the power to make arrests but there is a tool that allows EU MS to deal with offenders from other MS, the European Arrest Warrant (from now on referred to as EAW) (Blekxtoon & Ballegooij, 2005, p. 195). The EAW does not fall under the jurisdiction of Europol, but of Eurojust (M. den Boer, personal interview, October 8, 2009). The European Commission published a proposal for the EAW on 19 September 2001, just over a week after the 11 September attacks. This EAW is seen as a tool for efficient prosecution (Blekxtoon & Ballegooij, 2005, p. 195). On 13 June 2002 the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States was adopted. Article 35 mentions that the Framework Decision shall enter into force 20 days after it is published (*"Council Framework Decision", 2002, "Article 35", p. 12*).

In Article 1 it states that the EAW "is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order" (*"Council Framework Decision", 2002, p. 2*). However, a Member State may also refuse to issue an Arrest Warrant. Articles 3 and 4 give several reasons for example, if the offender has been judged by a Member State for the same crime, if the sentence has been served or is being served. The offender may also not be held responsible if he is under aged, this is based under the law of the EU MS giving the EAW (*"Council Framework Decision", 2002, pp. 3-4*).

3.3.2 Case Study: Europol

On December 10, 2009, Europol was involved in a successful operation against child sex offenders on the Internet. The investigation lasted 2 years and was led by the Austrian Criminal Intelligence Service. There were house searches in 19 countries, which led to the arrest of 115 child sex offenders. Even though the investigation was led by the Austrian Criminal Intelligence Service, Europol received log files with the child abusive images. Europol was in charge of structuring and analyzing the content and provided analytical reports to the EU MS and other countries that had a Europol cooperation agreement (*"Successful operation against child sex offenders on the Internet", 2009*).

3.4 Conclusion

The FBI has a JTTF and Europol works together with JIT. The JTTF teams coordinated by the FBI represent cooperation between several authorities, and consist of, FBI agents, DHS and law enforcement authorities from federal, state, and local agencies. In JIT, although it is always an initiative of a MS, investigators from the country concerned and Europol work side by side.

However, Europol staff has no power to make arrests, or to give any kind of orders to the investigators of the country concerned. In the first chapter it was mentioned that Helmut Kohl wanted to establish a European FBI, so it is possible that there are similarities because it was partially based on the FBI.

The FBI was given the responsibility to investigate violations of federal laws. This means that the FBI did not take over the jurisdiction of local and state law enforcement. However, some jurisdictions were not clearly defined, such as auto theft and prostitution, because these are both federal and state crimes. Therefore, coordination was necessary. The FBI had contact with local police officers on a regular basis. However, the FBI received extended jurisdiction because there were concerns that local and state police did not have the resources or the power to arrest interstate criminals and combat serious crimes. This led to tension between the FBI and local or state police. This tension especially grew when the FBI received credit for solving a case, such as the capture of Public Enemy John Dillinger. When Dillinger crossed state line in a stolen car, it gave the FBI jurisdiction under the Dyer Act.

Differences between Europol and the FBI are that the FBI was given the responsibility to investigate violations of federal laws, while Europol does not have the responsibility to investigate any kind of violation because they are established to improve the exchange of information between Member States (*"Ten years of Europol"*, 2009, p. 29). This is done through AWFs (*"Ten years of Europol"*, 2009, p. 29).

It would be better if Europol could tell a Member State which crime to investigate, because within an AWF Europol has a wider overview of the organized crime network activities. Therefore, the Member States might be able to identify suspects and possible targets in a faster way. Europol should also have full access to SIS, so that it knows if and why certain people are registered in the SIS.

4 Conclusion

The purpose of this thesis was to examine if Europol was the “European FBI.” This term was first introduced by German chancellor Helmut Kohl, who wanted a European police agency that would be set up along the lines of the American FBI. In order to see if that is true, the history of both organizations was discussed, even though the FBI was established over a 100 years ago and Europol only 10 years ago. Also, several organizational aspects of both the FBI and Europol were compared, its legal framework as well as its jurisdiction.

The main argument against the term “European FBI” is that Europol does not have executive powers, which means that Europol can not make arrests or carry weapons. This does not mean they will never have it because the FBI did not have these kinds of power until 26 years after their establishment. At this point in time, with the cultural and linguistic barriers within the EU, it would not be wise to give Europol these executive powers. It would be confusing from a legal point of view, for example, it would be strange if a Portuguese police officer does a house search or arrests someone in the Netherlands, without speaking the language. That is why the EAW was created, even though this falls under the jurisdiction of Eurojust.

With the Treaty of Lisbon, several things have changed including the structure of Europol. It still has three departments, however they have different names. The serious crime department used to be clearly divided into priorities of Europol. With the new structure some of the priorities no longer have a unit. The drugs unit and the crimes against persons unit no longer exist, I believe that this is a disadvantage, because illicit drug trafficking and crimes against persons are priorities for Europol.

Europol does not have direct jurisdiction of a Member State, therefore it can not tell a Member State to investigate a certain criminal organization or person. At this point, if there are at least two Member States, they are the ones telling Europol they want to open an AWF. This is a disadvantage for Europol, because they have all the data from different AWFs in house, therefore Europol is capable of linking certain criminal activities faster.

Europol has been called the “European FBI” several times by different authors. However, the interviews conducted for this thesis and several authors conclude that not everyone agrees with that term. In my eyes Europol is not a European FBI, although that might change in the future when Europe has a more united front. This means that there should be less cultural differences and fewer differences in national legislation.

5 Recommendations

Something that could be changed within Europol is the period of time the director is appointed. The Director of the FBI is appointed by Congress for a 10-year term, while the Director of Europol is appointed by the Council of the European Union for a 4-year term. It would not be wise for Europol to have the same term as the Council of the European Union, because that changes among the MS every six months. However, it would be an idea for the Director of Europol to be appointed for the same amount of time as the President of the EP, which is 2½ years, because the European Parliament has more power over Europol after the Treaty of Lisbon. It is also possible for the Director of Europol to be appointed for a 5-year term, which is the same amount of time as Members of the EP are elected. In my opinion, being a director for 4-years is a reasonable time and being one for 10-years is too long. However, I would suggest a 5-year term for both organizations.

I do believe that Europol should have executive powers starting with direct jurisdiction of a Member State. Europol has all the data from different AWFs in house, therefore it is capable of linking certain criminal activities faster. Therefore, I think that Europol should be able to tell a Member State to investigate a certain criminal organization or person.

For the time being, Europol should not have to authority to carry weapons or make arrests because of the cultural and linguistic barriers within the EU. If a Dutch person were to be arrested by a Portuguese police officer, without being able to understand why they have been arrested or what their rights are, will cause a lot of commotion. If there is a more united front in the EU, with less cultural and linguistic barriers, Europol should be able to have these executive powers. If this happens, Europol and Eurojust should work together even more closely because Eurojust remains the organization that issues the EAW. This does not mean that the national police forces will disappear; rather they can then be compared with the U.S. state police.

Last but not least, Europol should re-open their drugs and crimes against persons unit under its new Operations Department. The FBI did the same thing when adding a Weapons of Mass Destruction Directorate to its National Security Branch. If Europol does not do this, nobody in particular that will review those cases and there will be a lack of communication; because employees will think someone else is handling it.

Glossary

Attorney General	Lawyer with the highest rank in the U.S. government and head of the U.S. Department of Justice since 1870
Central Intelligence Agency	Organization responsible for collecting information about foreign governments, corporations and individuals.
Citizen's arrest	An arrest made by a person who is not acting as a law-enforcement official
Congress	The group of people elected to make laws in the U.S., consisting of the Senate and the House of Representatives
Convention	A formal agreement between States
Crime	An illegal action, which can be punished by law
Department of Homeland Security	A Cabinet department of the U.S. federal government, established in 2002, with the responsibilities of protecting the U.S. from terrorist attacks and responding to natural disasters
Eurojust	A judicial cooperation body created to help provide safety within an area of freedom, security and justice
European Commission	Is the most powerful office in the EU. It is responsible for proposing legislation, implementing decisions, upholding the Treaties of the EU and the general running of the EU
European Council	Highest political body of the EU, which consist out of the head of state or government of the European Member States and the President of the European Commission
European Public Prosecutor's Office	Is responsible for investigating, prosecuting and bringing perpetrators to judgment
Europol Convention	The Convention creating Europol
Europol National Unit	This unit is the only liaison body between Europol and the competent national authorities
Federal	A federal country consists of a group of states which control their own affairs, but which are also controlled by a single national government
Field office	An office, of an organization, which makes it easier to operate outdoors in an area

Intelligence	Information about the secret activities of e.g. foreign governments and the military plans of an enemy
Intergovernmental organization	Organization in which Member States are bound to the treaty that established that particular organization.
Interpol	International Criminal Police Organization. It helps with international police cooperation.
Joint Investigation Team	Teams consisting of judicial and police authorities from at least two Member States. They are responsible for carrying out criminal investigations into specific matters for a limited period
Joint Terrorism Task Force	Teams of state and local law enforcement officers, and federal agencies who work together to investigate and prevent acts of terrorism
Law enforcement agency	An agency that has as task making sure that the law is obeyed, for example the police
Legal attaché	Someone who works in an embassy, and deals with the legal subject
Legal personality	An individual or group that is allowed by law to take legal action
Liaison officer	Someone whose task is to represent the interests of their countries at Europol
Mandate	To give someone the right or power to do something
Perpetrator	Someone who does something morally wrong or illegal
Police Chiefs Task Force	An advisory body of police matters
Protocol	An international agreement between two or more countries
Public Enemy	Term used in the 1930s to describe individuals whose criminal activities were seen as damaging to society.
Resident agencies	Sub-offices of the field offices
Serious Crime	Some forms of crime are less serious than others, for example shop lifting is less serious than kidnapping. All the forms of serious crime are listed in the annex of the Europol Convention. For example: murder, illegal trade in human organs and corruption
Schengen Information System	Database with either wanted or missing persons

Special Agent in Charge	A detective or investigator for a state, county or federal government
Supreme Court	The highest court of law in the United States
Third parties	Non-EU states and international organizations
Transnational crime	Criminal activities involving more than one country or existing in more than one country
Treaty	A formal written agreement between two or more countries
U.S. Department of Justice	Federal executive department, responsible for law enforcement and administration of justice
U.S. Marshals	Police officers employed by the national government
U.S. Secret Service	Federal law enforcement agency that is part of Homeland Security

List of abbreviations and acronyms

AWF	Analysis Work File
BOI	Bureau of Investigation
CG	Corporate Governance
CIA	Central Intelligence Agency
DHS	Department of Homeland Security
DOI	Division of Investigation
DOJ	Department of Justice
EAD	Executive Assistant Director
EAW	European Arrest Warrant
EDU	Europol Drugs Unit
ENU	Europol National Unit
ELO	Europol Liaison Officer
EU	European Union
Europol	European Police Office
FBI	Federal Bureau of Investigation
IMT	Information Management and Technology
JIT	Joint Investigation Team
JTTF	Joint Terrorism Task Force
MS	Member State
SAC	Special Agent in Charge
SC	Serious Crime
SIS	Schengen Information System
TEU	Treaty on European Union
U.S.	United States (of America)

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Appendix 1: Timeline of the FBI

1908

Attorney General Charles J. Bonaparte created a special agent force in the DOJ.

1910

Congress passed the Mann Act which made the transportation of women across state lines a federal crime.

1917

Congress passed the Espionage Act of 1917, which made stealing of government secrets, with the intent to support the enemy State, a federal crime.

1919

Congress passed the Dyer Act, which authorized the BOI to investigate stolen automobiles that were transported between States.

1921

J. Edgar Hoover became the Assistant Director of the BOI.

1924

J. Edgar Hoover was appointed Director of the BOI.

1928

The first BOI agent was killed in the line of duty, when trying to arrest an auto thief.

1932

Congress passed the Federal Kidnapping Act, which gave the BOI authority to investigate kidnapping cases, in which the perpetrator traveled between States. The BOI changed its name into U.S. BOI.

1933

The BOI became the DOI, and DOI agents received the nickname “G-man” which is short for Government Man. The agents received this name during the interrogation of a gangster named Kelly.

1934

After the Kansas City Massacre, in which 4 law enforcement officials, Congress passed the May/June Crime Bills. This gave the DOI agents the right to carry firearms and make arrests. Later that year DOI agents killed John Dillinger, after he resisted arrest.

1935

The DOI officially renamed the FBI.

1939

The FBI was authorized to investigate espionage and sabotage.

1940

The FBI created a Disaster Squad; this was to provide assistance to civilian authorities in identifying persons who died in a plane crash.

1940-1945

FBI investigated 19,299 suspected cases of sabotage. It founded some form of sabotage in 2,282 cases.

1946

Congress passed the Atomic Energy Act, with which the FBI was authorized to investigate persons who have access to nuclear data.

1947

The Executive Order 9835 established the Federal Employees Loyalty Program. If an agency found offensive information, regarding government employees, it could request the FBI to investigate.

1955

The FBI provided assistance from its Disaster Squad in identifying suspects, after an airplane exploded killing a total of 44 passengers and crew members.

1957

The FBI arrested a Soviet espionage agent.

1963

President John F. Kennedy was assassinated, the local police investigated this. However, President Lyndon B. Johnson ordered the FBI to investigate the murder.

1967

Law enforcement officials from the U.S. could view criminal histories of persons arrested through the FBI's National Crime Information Center.

1968

Congress passed the Public Law 90351, in which it was established that the FBI Director would be appointed for a 10 year term. This act came into effect after Hoover died.

1970

Congress passed the Organized Crime Control Act of 1970, this gave the FBI the ability to use wiretaps, provide immunity for witnesses who would testify in front of a jury and convicting a person who did not tell the truth when being under oath

1972

J. Edgar Hoover died in his sleep, he was 77 years old.

1978

The Laboratory Division of the FBI successfully used laser technology to detect fingerprints on a crime scene.

1983

The Hostage Rescue Team became operational; it would act in hostage situations throughout the country.

1985

This was the year were seven people were arrested for spying. One of them was also charged with selling military secrets to the Soviet Union.

1991

The Computer Analysis and Response Team were established, which provided examinations of computers and computer disks.

1993

The World Trade Center was attacked for the first time, a bomb exploded under the WTC.

1994

FBI agents arrested a former CIA agent and charged him with espionage for the Soviet Union.

1997

FBI established a National DNA Index System. This allows laboratories to link serial violent crimes to each other.

1998

US Embassies in Nairobi were attacked by terrorists. A Joint Terrorist Task Force cooperated in the investigation. A year later Usama bin Laden was added to the FBI's Ten Most Wanted because of his connection with the bombings.

2001

The World Trade Centers and the Pentagon were attacked by terrorist. As a direct response, President Bush signed the USA Patriot Act. This provided the FBI with extra resources to hire new agents, making it easier to search for extra information about potential terrorists and fight international money laundering.

2005

The National Security Branch was added to the FBI structure, as a response to the terrorist attacks of September 11, 2001.

2006

The Weapons of Mass Destruction Directorate was added to the National Security Branch. This is because there was to particular branch that dealt with Weapons of Mass Destruction.

(“Timeline of FBI history”, n.d; “National Security Branch”, n.d.).

Appendix 2: Timeline of Europol

1975

During the European Council Summit in Rome, the TREVI group was established. It was supposed to coordinate effective counter-terrorism responses among European governments. However, not long after the establishment it extended its focus to other areas of cross-border crime within the EU. It no longer existed when it was integrated in the third pillar of the Treaty of Maastricht in 1992.

1991

At the European Summit in Luxembourg, German chancellor Helmut Kohl said he wanted a European police agency that would be set up along the lines of the FBI.

1992

The establishment of Europol was agreed in the Maastricht Treaty on European Union in 1992, which came into force in 1993.

1993

The European Council established the Europol Drugs Unit, which was the forerunner of Europol. It could only assist national police forces in criminal investigations, it started operating in 1994.

1995

The Convention establishing Europol was agreed, it came into force in 1998 after EU MS ratified it.

1997

The Treaty of Amsterdam was signed, and came into force in 1999. This Treaty made changes to the Treaty of Maastricht. For example, it shifted immigration policy to the first pillar. This meant that the third pillar could focus more on police and judicial cooperation in criminal matters.

1999

The Europol Drugs Unit was renamed Europol and became fully operational. Its mandate expanded and Europol could now offer help to Member States when it came to child abuse, terrorism and forgery of money.

This was also the year in which Analysis Work Files were introduced; by the end of the year seven had opened in areas such as Eastern European organized crime.

2001

Europol had its first reorganization; three operational departments were combined into one Serious Crime Department. After the terrorist attacks of September 11, 2001, Europol set up a Counter Terrorism Task Force. This was set up to provide analysis work and intelligence. When Europol thought the terrorist threats decreased, the Counter Terrorism Task Force ceased to exist. However, after the terrorist attacks in Madrid of March, 2004, the Task Force was reactivated.

In this year, Norway was the first Third Party to install a liaison officer at Europol.

2002

Europol was already mandated to analyze intelligence on the forgery of money. In 2002 the Euro entered into circulation; this meant that Europol took on its role for the new currency.

This was also the year in which Eurojust was established.

2004

On June 9, Eurojust and Europol signed an operational cooperation agreement, which entered into force that same day.

2006

The Dutch police, 11 other EU MS, the FBI and Europol worked together in dismantling a child sex offender network. Europol provided assistance through the exchange of information and assisting in identifying suspects at national level. 150 houses were searched and several suspects arrested, the sex offender network was dismantled.

2008

By the end of this year, Europol had 461 employees and 124 Liaison Officers.

2009

The Treaty of Lisbon entered into force, which enlarged the mandate of Europol. It was now allowed to assist in serious crimes affecting two or more EU MS. Which means it could also assist in analyzing and collecting data on a serial killer, which was not the case before the Treaty of Lisbon.

(“Ten years of Europol”, 2009).

Appendix 3: Transcript of interview with Monica den Boer, Academic Dean of the Police Academy of the Netherlands

Kunt u in het kort iets over uzelf vertellen?

Ik ben wetenschappelijk decaan op de politieacademie. Daar houd ik mij bezig met professionalisering, verwetenschappelijking en ook internationalisering van het onderwijs. Daarin ben ik onder andere verantwoordelijk voor de Master Science of Policing. Daarnaast ben ik de houder van een politieacademie leerstoel, deze is sinds 2004 gevestigd aan de Vrije Universiteit van Amsterdam. Die leerstoel heeft betrekking op de vergelijkende bestuurskunde, in het bijzonder de internationalisering van de politie. Mijn hoofdinvvalshoek in Governance of Policing. Op de Vrije Universiteit houd ik mij bezig met verschillende onderzoeken, op dit moment met name op de ethiek vraagstukken tussen de vermenging van interne en externe veiligheid, daar komt Europese politie samenwerking ook in voorbij. Momenteel ben ik ook gedetacheerd bij de onderzoekscommissie Irak.

Kunt u meer vertellen over de vraagstukken van interne en externe veiligheid?

Er is steeds minder goed en zuiver onderscheid, bijvoorbeeld het vraagstuk van de minister van Binnenlandse Zaken die onlangs naar Afghanistan is gegaan. Zij heeft daar indruk kunnen verschaffen over de politiemissie, met name de training van Afghaanse politiefunctionarissen. Daar moeten Nederlandse politiemensen voor worden ingezet, bijvoorbeeld in het kader van VN missies. Er ontstaat dus een 'blurring', een hybride vorm van veiligheidsvraagstukken. Waarom worden training in landen als Afghanistan en Irak gedaan? Onder andere omdat we weten dat onveiligheid in een andere regio, zoals het Midden-Oosten, kan betekenen dat er in Nederland ook onveiligheid ontstaat. Wij kunnen daardoor last hebben van bijvoorbeeld drugshandel, wat nu ook het geval is. External security efforts hebben een binnenlands veiligheidseffect. Blurring gebeurt ook op andere gebieden, zo groeien politie en militair steeds meer naar elkaar toe. Defensie put uit modellen zoals community policing, dit betekent dat je dicht bij de burger staat door lokaal aanwezig te zijn, er wordt dus niet over de hoofden van de samenleving politiewerk verricht.

Er is een toenemende vermenging tussen politie en inlichtingen, de politie is steeds meer bezig met proactieve informatie-uitwisseling en undercover werk, hierdoor zie je dat ze meer naar elkaar toegrijpen. In het vraagstuk van multidisciplinair politieel optreden tegen georganiseerde misdaad, terrorisme, radicalisering is dit duidelijk te zien.

Dit wordt niet alleen gedaan door de politie, maar ook door samenwerking tussen de politie en de FIOD, dit is een onderafdeling van bijvoorbeeld de douane, het ministerie van financiën, het bankwezen en het verzekeringswezen. Dit is wederom een 'blurring', dit hoeft niet perse alleen intern en extern te zijn, maar het kan ook van private en publieke sector zijn. Het eigen onderscheid en verantwoordelijkheid van die organisaties is steeds minder precies aan te duiden, dit komt ook omdat er veel lagen zijn in dit soort vormen van samenwerking. Dit is bijvoorbeeld te zien bij de Verenigde Naties en de globale corporatie, de Europese Unie en de regionale corporatie en dan lager: nationaal en subnationaal. Al die lagen moeten goed op elkaar afgestemd zijn, om de 'accountability' overzichtelijk te maken.

U noemde net dat de politie undercoverwerk doet, politieel optreden tegen georganiseerde misdaad en terrorisme. Weet u hoe de misdaadbestrijding binnen de EU is georganiseerd?

In eerste instantie is de misdaadbestrijding georganiseerd in de lidstaten zelf, zij hebben de 'prime responsibility'. Er bestaat geen 'total operational action plan' tegen de georganiseerde misdaad op EU niveau. Daar wordt wel aan gewerkt, maar het is een stapvoets proces. De lidstaten hebben zelf politiediensten, daarbinnen hebben ze een verdeling van competenties, mandaten en prioriteiten. In Nederland is het belangrijk om georganiseerde misdaad te bestrijden, maar de minister van Binnenlandse Zaken hecht vooral veel waarde aan goede openbare orde bewaking in steden – dit is meer 'local policing'. Er zijn ook andere soorten vraagstukken, zo zet minister van Justitie zich nadrukkelijker in tegen mensenhandel, 'cyber crime' en de transnationale drugshandel. Hier kan hij internationale juridische kaders voor gebruiken, zoals verdragen die komen van bijvoorbeeld de VN, de Raad van Europa of de EU. De ministeries hebben dus verschillende soorten prioriteiten.

In alle landen is georganiseerde misdaad actief, in meer of mindere mate. De soorten georganiseerde misdaad is ook verschillend per land, in Denemarken is er bijvoorbeeld veel focus op de Hells Angels – deze hebben een stevige Scandinavische basis, dit trekt Zweden en Noorwegen er ook bij. Terwijl de criminele organisaties in Nigeria niet alleen bezig met drugshandel, maar ook met mensenhandel. Deze landen zijn dus verschillend in hun 'criminaliteitsaanbod'. Criminele organisaties doen dit soms bewust, omdat ze zich hiermee minder kwetsbaar maken voor het ingrijpen van de politie. De politie probeert zoveel mogelijk patronen in criminaliteit te ontdekken – zoals het witwassen van geld. Door, als criminele organisatie, te diversifiëren ben je bezig aan de tentakels van justitie te ontsnappen.

Het is een echte 'sport' of uitdaging voor criminele organisaties om in de juridische luwte te gaan zitten, in die landen waar straffen hoog zijn wordt dus niet geopereerd. Dat betekent dat de georganiseerde misdaad zich constant transformeert, naar andere plekken, vormen en segmenten van de markt. In de EU is er een actieplan georganiseerde misdaad, dat stamt uit 1997. Daar is de 'multidisciplinary group of organized crime' voortgekomen, die is nog steeds actief. Met een golvende beweging is de georganiseerde misdaad dominant op de prioriteitenlijst van de EU komen te staan, omdat het een vorm van criminaliteit is die internationaal bestreden moet kunnen worden.

De Europese Commissie en de EU geloven erin dat wanneer ze aan de burgers laten zien dat ze succesvol zijn in het bestrijden van misdaad, dat ze daadwerkelijk iets kunnen betekenen als regionale 'enterprise'. Europol, die stamt uit 1991 uit het verdrag van Maastricht, is een belangrijk antwoord op de georganiseerde misdaad.

Europol is in 1999 begonnen, dat is relatief een korte tijd vergeleken met andere organisaties. Er kan niet gezegd worden dat er een bron van georganiseerde misdaad bestrijding binnen de EU is, er is wel beleid en strategie, maar het is niet operationeel. Dit is een belangrijk onderscheid: het operationeel handelen, dus het uitvoeren van arrestaties, ligt primair in handen van de lidstaten zelf. Dat wil niet zeggen dat er op bilateraal niveau en op trilateraal niveau heel veel gebeurt, dus lidstaten kunnen een gezamenlijk opsporingsteam inrichten om samen recherche te verrichten om een georganiseerde misdaadgroep op te pakken. Dit was een voorbeeld van hoe de EU probeert de zaak wat meer tastbaar te maken.

U gaf net aan dat Europol een beleid is van de EU. Kunt u iets meer vertellen over het structuur van Europol? Wie staat er aan het hoofd en hoe is dit gestructureerd?

Er is een Britse directeur: Robert Wainwright. Met enige voorzichtigheid kan er gezegd worden dat deze benoeming een politieke proces was. Dit komt omdat Europol ook is voortgekomen uit een politiek besluitvorming, in het kader van het verdrag van Maastricht en later de andere verdragen van de EU. Het ligt aan de directeur hoe deze zijn organisatie wil inrichten, maar er bestaan units die zich toeleggen op onderscheidende vormen van georganiseerde misdaad. Ik meen dat Europol 100 'liaison officers' beschikt, deze zijn afkomstig uit de lidstaten zelf, de geassocieerde staten, maar ook uit Canada en de Verenigde Staten. Deze 'liaison officers' kunnen afkomstig zijn uit de politie, douane, maar ook uit de geheime diensten, dit betekent een samenvoegingproces als het gaat om discipline.

Deze 'liaison officers' zijn een brug tussen de organisatie Europol en de Europol Nationale Eenheid/ Europol National Unit (ENU). Elke lidstaat heeft een ENU, deze is normaal gesproken gehuisvest bij de National Criminal Intelligence Service, in Nederland is dat bij de Korps Landelijke Politiediensten (KLPD) en daarbinnen weer bij IPOL.

Kunt u iets meer vertellen over IPOL?

Niet veel, behalve dat het KLPD het 26^{ste} korps is, maar het enige korps met meer een landelijke taak in plaats van een regionale taak. Het KLPD is niet bovengeschiedt aan de andere 25 regionale politiekorpsen, maar nevensgeschiedt wat een belangrijk onderscheid is. De verkeerspolitie en de nationale recherche zijn voorbeelden die hierbij zitten. Het KLPD heeft het eerste verantwoordelijkheid in Nederland voor internationale politiesamenwerking. Dit betekent dat de Europol Desk, de SIRENE Schengen Desk en de Interpol Desk daar zitten, maar dat betekent niet dat de regio's helemaal geen verantwoordelijkheid hebben. Alle regio's hebben een coördinator internationale betrekkingen, waarvan de prioriteiten verschillen. Regio's kunnen zich inspannen om over de grens met andere landen samen te werken, bijvoorbeeld Nederland – België. Aan de zuidgrens is bijvoorbeeld een Joint Hit team: gezamenlijk operationeel samen optreden tegen misdaad zoals wapensmokkel. In elk lidstaat is die structuur weer anders, omdat de politie anders is georganiseerd.

De politiediensten in Italië zijn topdown, er zijn 3 politiediensten die in de internationale gremia actief zijn: Guardia di Finanza, Polizia di Stato en Carabinieri. Die komen aan de top samen in directoraten, bijvoorbeeld antimaffia en antidrugs directoraten. Frankrijk heeft ook een hiërarchisch model. Overal wordt op een andere manier de organisatie van de inspanning jegens internationaal politiesamenwerking gecoördineerd.

Europol heeft een Schengen Informatie Systeem (SIS), wat kunt u daarover zeggen?

Europol heeft dat niet zelf, dat heeft een lange geschiedenis. Schengen werd in 1985 voor het eerst opgericht, in 1990 kwam een uitvoeringsverdrag. In 1995 heeft Nederland het in werking gesteld, daarna werd ook het Schengen Informatie Systeem operationeel. Alleen de landen die toegetreden zijn aan Schengen doen daar aan mee, overigens zijn dat er wel veel. Er zijn ook landen die zich buiten Schengen stellen, Groot-Brittannië en Ierland hebben niet hun grenzen opgesteld maar ze doen wel mee aan SIS. In de tussentijd heeft de SIS heeft ongeveer 20 tot 30 miljoen gegevens.

Dat systeem is vrij ouderwets, omdat het een 'hit, no hit' systeem is, het is niet manipuleerbaar maar wel opvraagbaar voor geautoriseerde gebruikers. Het is tevens een grenscontrole systeem, alles wat er over de externe grens gaat kan worden gecontroleerd.

Het is wel zo dat Europol graag inzage wil, en ook heeft, in die data. Het Europol Informatie Systeem zal, op de een of andere manier, gekoppeld gaan worden aan het Visum Informatie Systeem en aan het Schengen Informatie Systeem. Daar is overigens wel strenge bewaking bij nodig, daar is de European Data Protection Supervisor niet enthousiast over, omdat er geen European Data Protection Law op het gebied van politiegegevens is. Er is tevens een Joint Supervisory Authority, die in elk onderscheidend geval moet wegen of de uitwisseling van die gegevens juridisch verdedigbaar is. Europol heeft dus geen SIS, maar een Europol Informatie Systeem.

Klopt het dat Europol informatie uitwisselt met de politiekorpsen in verschillende lidstaten?

Nee, het is niet zo van 'jij geeft mij wat en ik geef jou wat'. Het is een proces waarbij er verwacht wordt dat er een bottom up constructie is, dus dat er vanuit de lokale, regionale en nationale politiediensten informatie wordt gestuurd naar Europol. In de praktijk is dit een moeizaam verhaal, omdat een politieagent veel waarde hecht aan zijn informatie, daar wil hij niet vanaf. Dat kan betekenen dat Europol moet vechten om die gegevens te krijgen. Topdown werkt dat niet, alhoewel Europol die gegevens wel veredelt en analyseert. Vervolgens diept Europol de gegevens verder uit, in het kader van een internationaal Analytical Work File (AWF). Die AWFs zijn de intelligence dossiers op het gebied van bepaalde vormen van transnationale georganiseerde misdaad. Met die dossiers kunnen de korpsen in de lidstaten vervolgens, onder supervisie van Europol en Eurojust, aan de slag. Stel er is een grote internationale drugsmaffia, dan zal Europol zich inspannen om tegelijkertijd arrestaties te laten plaatsvinden in verschillende steden van Europa.

Het wordt dus zo geregisseerd dat Europol niet de operaties uitvoert, maar ervoor zorgt dat de operaties tegelijkertijd plaatsvindt, zodat de criminelen verrast worden door de actie. Daar ligt dus een analyse aan ten grondslag en het is niet zo dat de gegevens teruggepompt worden in politieorganisaties, er zit geen absolute wederkerigheid in. Dit is trouwens ook een klacht, omdat de politiemensen graag het resultaat willen terugzien van de gegevens die ze hebben weggegeven aan Europol. Dit is meer een informatiecultureel probleem.

Vindt u dat Europol goed samenwerkt met de politiediensten, of kan dit beter?

Het is niet Europol dat samenwerkt met de politiediensten, maar de nationale partners van Europol die in eigen land goed moeten samenwerken met de politiediensten. Daar zijn ook klachten, bijvoorbeeld: “jullie in Parijs zorgen er niet goed voor dat wij in Bordeaux onze gegevens ook krijgen”. Die klacht geldt ook ten aanzien van de KLPD. Er vindt een U-turn plaats om Europol heen, er gaan informele vormen van politiesamenwerking plaatsvinden die om de juridische route van Europol en Eurojust heenloopt. Dat proces verdient veel aandacht, informatie-uitwisseling tussen Europol en de ENU en vervolgens tussen de ENU en de politiekorpsen ten lande.

Vanaf 2010, onder het verdrag van Lissabon, is Europol geen intergouvernementele organisatie meer. Is dit volgens u een goed idee?

Vanaf 2010 gaat Europol met een ‘council decision’ draaien, de juridische basis veranderd dan van een overeenkomst in een nader besluit. Dat maakt Europol flexibeler, wanneer het gaat om uitbreiding of vernieuwing van een mandaat. In dat ‘council decision’ is tevens afgesproken dat Europol een ‘community agency’ wordt en niet langer een intergouvernementeel agentschap is. Dit komt omdat de begroting van Europol een bevoegdheid wordt van het Europees Parlement. Daarmee krijgt de EU meer te zeggen over dit agentschap, dan vroeger. Dit betekent meer transparantie en meer regels waarvan gemeenschap procedures het doel zijn.

Hiermee is een grote frustratie bij het Europees Parlement en dus ook de Commissie weggenomen, dat vind ik een goede zet wat al eerder had moeten gebeuren. Er is veel koudwatervrees wanneer het gaat om politiesamenwerking. Het verdrag van Lissabon zou meer effect hebben op de internationale politiesamenwerking om Europol heen, dat betekent dat de lidstaten een stuk soevereiniteit weggeven. In het verdrag van Lissabon staat tevens een groot voorbehoud, namelijk: de lidstaten willen het recht behouden om zelf te kunnen beslissen, wanneer het gaat om operationele politiesamenwerking. De lidstaten willen dus niet zomaar hun macht afgeven aan de Europese Unie. Ik vind dat het kaderbesluit een grote betekenis heeft voor Europol. De bestuurlijke omgeving van Europol zal drastisch veranderen, en de toekomst zal uitwijzen of Europol met behulp van het Verdrag van Lissabon tot een meer operationele dienst zal uitgroeien.

Waarom vind u dat het kaderbesluit een grote betekenis heeft voor Europol?

Met name vanwege het 'community influence', juist omdat het van intergouvernementeel naar communautair verschuift. Het Europees Parlement krijgt meer te zeggen, dat betekent dat de macht in handen was van nationale vertegenwoordigers die met een veto besluit de voortgang van Europol in de wielen kon rijden. Vanaf 1 januari kan dat niet meer gebeuren, dus de werkbaarheid van Europol gaat aanzienlijk vooruit, daar is het verdrag van Lissabon niet voor nodig.

Lijkt het u verstandig dat Europol en Eurojust één organisatie worden?

Nee, het zal voorlopig niet zo zijn dat Eurojust toezicht zal houden op Europol. In die zin zou je geen model kunnen gebruiken van een 'external judicial accountability', ook al vind ik dit wel belangrijk dat het er is voor Europol. Nu bestaat er de mogelijk Europol, via de nationale rechter, ter verantwoording brengen. De directeur kan besluiten tot ontheffing van de immuniteit en privileges van Europol ambtenaren, mocht dit het geval zijn. Eurojust heeft dus geen superviserende en controlerende bevoegdheid, maar kan wel juridisch de zaak valideren, een soort 'check' uitvoeren. Hiermee kijken ze of alles juridisch in orde is en of het bewijs dat wordt aangevoerd wel klopt. Intrinsiek oefent Eurojust een nevensgeschikte juridische toets uit door samen te werken met Europol, dit werkt. Alhoewel, die afstand die ze nu hebben kan in mijn opinie beter bewaard blijven omdat Eurojust een jongere organisatie is dan Europol. Eurojust heeft nog 5 tot 10 jaar nodig om meer volwassen en uit te groeien tot een 'European Public Prosecution Service', het verdrag van Lissabon geeft Eurojust die mogelijkheid.

Denkt u dat er meer gedaan kan worden om misdaadbestrijding in de EU succesvoller te maken?

Ik ben van mening dat het altijd beter kan, maar eerst moet er gekeken worden hoe het in de lidstaten zelf is. Er zijn landen waar georganiseerde misdaad welig kan tieren om allerlei redenen: soms is er een markt of een infrastructuur waar criminele organisaties zich goed kunnen vermengen. De lidstaten moeten dat tot een moeilijke beslissing komen: de infrastructuur dicht gooien, of een luik open zetten maar daarmee een zeker niveau van georganiseerde misdaad gedogen. Een derde uitdaging voor lidstaten is om de infiltratie van georganiseerde misdaad in de 'bovenwereld' eruit te halen, dit los trekken is een uitdaging. Hiermee wordt gekeken naar strafrecht, maar ook naar bestuursrecht en incentives om de criminele organisaties te handhaven. In mijn ogen kan Europol dit niet zelf. Op EU niveau zou ik heel voorzichtig het luik opzetten voor operationele samenwerking, wat eigenlijk al wel mogelijk is: 'Joint Investigation Teams', maar dit moet wel gebeuren.

Willy Brugman (voormalig senior deputy directeur Europol) zei vaak: “We moeten niet alleen maar kijken naar de wetgeving die het mogelijk maakt, maar ook de uitvoerbaarheid van die wetgeving.”

Op dit moment dreigt de prikkel voor lidstaten te verdwijnen, zowel intern als extern, in een groot aanbod van wat er gedaan kan worden op het terrein van veiligheid. Voorbeelden van intern zijn: crisis management en openbare orde optreden, voorbeeld van extern is naar landen gaan als Afghanistan, Irak en Kosovo. Op korte termijn, is in mijn ogen, de voornaamste uitdaging voor Europol: professionalisering van internationale samenwerking, met name de informatie uitwisseling. Dit komt omdat 90% van alle internationale samenwerking in de informatie uitwisseling en dus niet in de operationele samenwerking.

Hoe kunnen ze dit volgens u het beste doen?

Daar zijn ze al wel mee bezig, ze doen op dit moment veel aan het inrichten van een ‘European Crime Intelligence Model’. De kunst voor Europol is om dit niet teveel op een dwangbuis formule te laten lijken voor de lidstaten, de lidstaten zelf moeten hier dus een zekere input aan kunnen leveren. Een onderwerp als misdaad analyse wordt nog niet in alle lidstaten gebruikt. Ik vind dat er, cultureel gesproken, meer aandacht en begrip voor moet komen, dat kan door middel van training en opleiding. CEPOL (de Europese politie academie) heeft daar een belangrijke taak in. Dit is ook een kwestie van leiderschap, dus internationale politiesamenwerking is niet gebaat bij niet bij politiechefs die zichzelf laten verzuipen in budgetmatige zaken, maar die gericht blijven op de Europese horizon. Dat soort Europese politiechefs zijn nodig, die in hun eigen lidstaat de zaak willen trekken. Als die er niet zijn, kan Europol niet goed werken.

Wat weet u over het structuur van de FBI?

FBI heeft gefigureerd als model voor Europol in de gedachten van bepaalde mensen, niet bij iedereen. Kanselier Kohl had het idee van “Europese FBI”, dat was gebaseerd op het Duitse ideaal van een federaal Europa, wat niet is gebeurd. Het ideaal is soms leuk om erbij te halen, maar het is een ideaal dat voorlopig in de kast kan worden gelegd. Er moet gewerkt worden met andere uitgangspunten, het Amerikaanse model werkt tegen het achtergrond van een ‘federal legislation’, die wij niet hebben. We hebben geen EU strafrecht, geen EU strafproces recht en geen ‘EU code of criminal procedure’.

Dat betekent dat met afwezigheid van harmonisatie, de Europese politiediensten integraal moet gaan samenwerken, dit gaat niet lukken. Wat wel een voorstel is, is een incrementeel model: het geleidelijk groeiende model, hier verkeert Europol momenteel in.

Geleidelijk aan zou het kunnen dat Europol, bijvoorbeeld met de werking van het Europees arrestatiebevel, gezamenlijk Europese operationele bevoegdheden op zich neemt. Europol wil hier zelf nog niet over spreken, omdat er dan opgepast moet worden met wat er wordt gezegd, maar ook de 'accountability' kwestie weegt dan zwaarder. Europol zou dan een zwaardere vorm van controle en supervisie moeten krijgen, om dat te kunnen doen.

Het FBI model kan niet werken in Europa, de FBI is zwaar gericht op professionalisering, maar ook op informatie-uitwisseling en dat is een overeenkomst met Europol. Veel Europese politiemensen hebben modules gelopen in Amerika, dit is een emancipatie van het politiewezen. Europol is daar momenteel ook mee bezig, het speelt een leidende rol in reflectie van nieuwe politie-uitdagingen.

FBI heeft bevoegdheid om fraude en spionage tegen te gaan, vindt u dat Europol dit ook moet hebben?

Ik vind niet dat Europol de bevoegdheid moet hebben om spionage tegen te gaan, maar fraude wel. Fraude ligt in Europa ingewikkeld, omdat de Europese Commissie daar al een organisatie voor heeft: '*Organisation de la Lutte Anti-Fraude*' (OLAF). Deze organisatie houdt zich ook bezig met witwas misdrijven ten aanzien van het budget van de EU. Europol mag de overige Europese fraude misdrijven oppakken, dus Europol heeft die bevoegdheid al. Spionage is een ander verhaal, het ligt politiek gevoelig: dus is het beter om dat bij de veiligheidsdiensten en de geheime diensten te laten. Om spionage te kunnen legaliseren is er een eenduidige staat zijn, wat niet het geval is.

Welke overige bevoegdheden vindt u dat Europol moet hebben om succesvoller te zijn in misdaadbestrijding?

Ik vind dat Europol al een heel wat kan. Het is verstandig dat Europol de eerste 10 jaar laat zien wat het echt kan. Vervolgens moet de geloofwaardigheid onder de nationale politiediensten verhoogd worden. Tevens is het verstandig om een Europees 'Crime Intelligence Model' neer te zetten, waardoor er meer professionalisering is en de informatie uitwisseling beter wordt.

De analytische ‘work files’ moeten worden uitgebreid en Europol moet, in mijn ogen, meer aan de slag gaan met JIT. Over 10 jaar kan er gekeken worden of er gelegenheid is van het uitbreiden van de bevoegdheden, nadat Europol geëvalueerd is.

Tot slot: Europol is al een paar keer benoemd tot de “European FBI” door verschillende auteurs, bent u het hiermee eens?

Nee, het is net alsof appels en peren vergeleken worden. Mensen binnen Europol zouden misschien zeggen: “nee, we zijn niet hetzelfde. Staatkundig zijn we niet hetzelfde en we hebben te maken met een andere juridische achtergrond”. Maar, er zijn een aantal bevoegdheden die op elkaar lijken, ook al komen ze uit verschillende culturen. Omdat de FBI ouder is dan Europol, denk ik dat Europol wat lessen kan meenemen die de FBI zelf moet nog verwerken. Europol moet met cultureel gedifferentieerde achtergronden werken, bijvoorbeeld Groot-Brittannië en Frankrijk, dit zijn verschillende landen. Frankrijk wil meer juridische samenwerking en harmonisatie, de Britten zijn daar tegen. Dus Europol is een compromisproduct.

De FBI is geen compromisproduct, het is neergezet door Edgar Hoover omdat er een constatering was dat dingen niet goed werkten, bijvoorbeeld: teveel fragmentatie van inlichting uitwisseling en de drooglegging van alcohol in de jaren '30 die mislukte. Hiermee kon hij vanuit een “carte blanche” situatie gaan werken, om uit de crisis te komen moest het federaal worden aangepakt. Dit is een meer pro-integratie achtergrond, waartegen Europol is opgezet. Het schilderij waartegen Europol zich nu afzet is anders is dan 10 jaar geleden toen het verdrag van Maastricht tot stand kwam. Ondanks gebrekkige implementatie van JBZ-wetgeving, zijn er grote sprongen gemaakt in de Europese eenwording. Nu is Europa erg voorzichtig en doet alleen datgene waarvan het zeker weet dat het ook gedaan kan worden. Ik bespeur bij Europol ook een zekere terughoudendheid om weer enorm aan de slag te gaan. Bij de nieuwe directeur van Europol zie ik een gevoeligheid voor ‘accountability questions’. Om terug te komen op de vorige vraag: eerst moet Europol laten zien wat het kan, daarna settelen, stabiliseren en professionaliseren voordat het in de breedte en diepte springt.

Einde interview.

Appendix 4: Transcript of interview with Maria Carneiro, Second Officer at Europol

Could you shortly tell something about yourself?

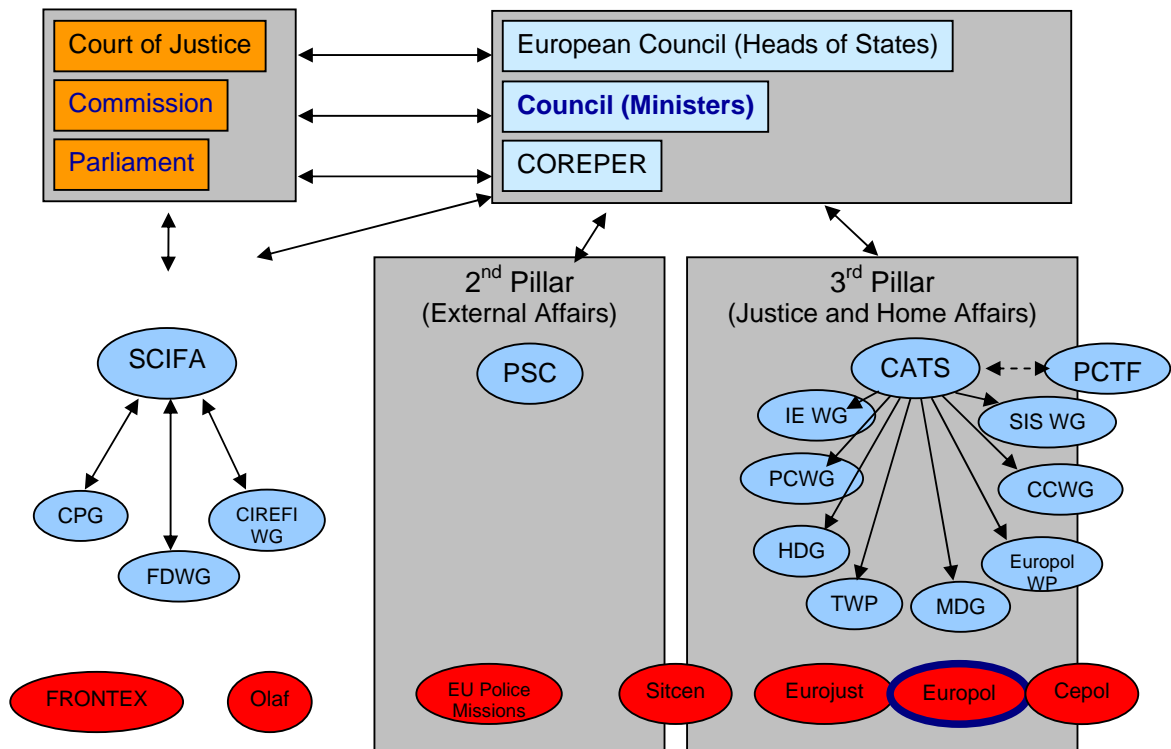
I am Maria Carneiro, I am Portuguese. I have studied Communication and Public Relations at the University of Lisbon. After working 6 years in Brussels, for different Director Generals of the European Commission, I moved to the Netherlands. In 2002 I worked at the Corporate Communications Unit of Europol, for 3.5 years. In 2005 I joined the Liaison Bureau Logistics Unit, nowadays the Information Management Coordination, where I have been working ever since.

What do you do in this Unit?

I am responsible for the coordination of liaison support. So everything that is non-operational support to the Liaison Bureau: Member States and Third Party Representatives at Europol. I also do coordination of all the activities of the Unit. I am mostly responsible for everything that has to do with communications, budget, planning and reporting within the Unit, of the products and services that we have. An example is the communication of the SIENNA information exchange tool. This is a tool that Europol has created to facilitate the information exchange between Europol and its cooperation partners, as well as amongst the cooperation partners. Basically I do many things.

How is crime prevention organized within the EU?

To answer that question, I would like to show you a slide that shows how Europol is positioned within the EU. For the time being, the EU still has the three pillar structure.



In the third pillar all the institutions, which deals with police cooperation, can be seen in this diagram. Article 36 of the Committee only deals with police cooperation. At the level of this Committee there is the Police Chiefs Task Force (PCTF), here we have the representatives of the PCTF. We have a Secretariat which is constituted by the Troyka – the past EU Presidency, the current one and the future one – governing the EU. The Police Chiefs Task Force (PCTF) is an advisory body of police matters. We also have working groups, which deal with crime prevention. These working groups try to harmonize processes and procedures at EU level. They also try to come up with ideas on how to improve the cooperation and communication with the Member States. There is also an Information Exchange Working Group (IE WG), where Europol participates actively. My Head of Unit is a permanent member of this working group. Europol also participates in the Police Cooperation Working Group (PCWG). Europol is represented in the Europol Working Party (Europol WP), this is a group which also decides on the Europol Mandate: such as “what should be the priorities on EU level?” That will be transmitted to the Council, who has the final word. The Customs Cooperation Working Group (CCWG), in which we participate as well. One of our Units deals in particular with this issue. There is also Schengen Information System Working Group (SIS WG).

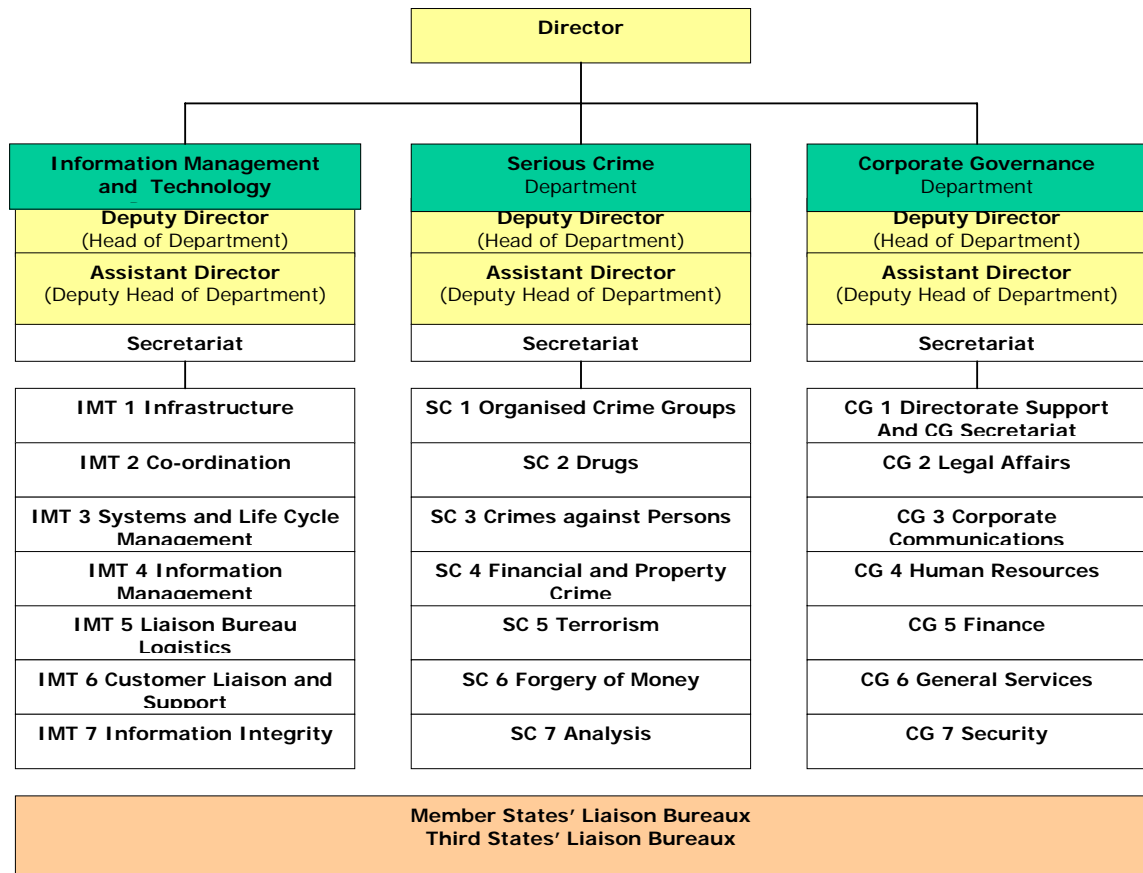
These are the groups that work actively on trying to prevent crime and, in each presidency, come up with better tools to enforce those we already have.

Do all these Groups work together?

They put their ideas together and present them to the Article 36 Committee, which is the body that coordinates the whole issue. Underneath – in the graphic – you can see that there are Eurojust, Europol and CEPOL, which is the European Police College in the United Kingdom.

This graphic shows how crime prevention is structured within the EU. But how is Europol structured?

I have another graphic for that. For the time being we also have a three pillar approach.



As you can see, we all depend on the Director of Europol. Our management, in each of the three departments, there is a deputy director and an assistant director. And then you have the respective Units, it all goes back to the Units.

The Units are supervised by the Management Board of Europol, which is constituted by every representative by each country of the EU. We also have a financial controller, which keeps an eye on our activities and checks whether we are spending the money properly.

We also have a Joint Supervisory Body, which is a body that sits in Brussels, which is constituted by representatives of each Member State Data Protection Institutions. They also keep an eye on us as far as the security of confidentiality of the information exchange with our partners is falling within the integrity criterion that is expected from us. So everything is secure in a proper way. We have to be very careful.

Why?

Because twice a year they come to Europol to make an audit to the systems. If the information is stored longer than it is needed, the storage deadlines can be seen in the convention, then Europol can get into trouble. So for data protection reasons, you are not allowed to keep information – especially on people – that is not needed. So if you have that information, you have to give very good account of it. You have to say why that information is needed.

You said that Europol could get into trouble, what kind of trouble?

The Joint Supervisory Body issues an annual report. It tells Europol that these things have to be sorted out, within a certain period of time. If it is not sorted out, they can carry out a negative report. The Joint Supervisory Body has a public report every year, so if we do not as we are told, what kind of image are we passing upon ourselves to the public?

Do you think Europol works well with police forces and Member States of the EU?

I think we do, in the past 8 years I saw a positive evolution in the way we work. We have a new generation of people that are really focused on reinforcing the relation with the police representatives of the Member States and also of the third parties. The attitude from Europol officials towards the Member States and vice versa has changed in a positive way. We are closer to each other and we can understand each other in a better way. This may also have to do with the rotation in the Liaison Bureau, because usually the colleagues that come to the Liaison Bureau are allocated to the National Unit beforehand. They know how it works at Europol, which makes it easier to establish communication and to reinforce the cooperation relations.

Europol will no longer be an intergovernmental organization in 2010, do you think this is a good idea?

This will only happen if the Czechs will ratify the Lisbon Treaty, but I think it will be a good idea. It is a change and change is usually good, because change usually represents a challenge. It may not be better, it may not be worse, but it will definitely be different.

Could you explain what will change?

Europol will become an EU body; we will officially be under the umbrella of the EU institutions. This is not the case at this point; we are now in a hybrid situation. We depend on the EU, for everything that is decision making, but we do not have the same staff regulations, the same salaries, we do not have the same financial rules, we are not under the budget of the EU. So, the new legal framework will consolidate our statute amongst the EU agencies, we will probably have the same as Eurojust already has.

So in 2010, you would get a budget from the EU?

This is already decided in the Council Decision. There are also other changes, but we would have to wait for the Lisbon Treaty to be ratified.

Do you know how big that budget is?

I have no idea.

How is Europol funded now?

We receive contributions from each of the Member States, on the basis of their Gross National Product. The Europol budget in 2009 was 65.4 million Euros. As far as I know, this year we did not ask for additional contributions.

The current situation when Europol becomes an intergovernmental organization will change in terms of the EU body?

Once our legal framework changes into the Council Decision, we will only become intergovernmental once the Treaty is ratified, otherwise we will carry on with our position as it is. From the first of January, we will be an EU body and we will receive community funding. We will have the same staff regulations, the same financial rules and we will also be under the Protocol of the Privileges and Communities of the EU.

What will change in terms of decision making, is that at this point the European Commission sits at the Management Board meetings as an observer, but from January onwards they will be entitled to have one vote participating therefore actively in the decision making process. So they have a word on how Europol is doing and also the European Parliament will have a veto in the establishment of our budget. This is to ensure transparency on what we are doing around here.

Do you think it would be wiser if Eurojust and Europol become 1 organization?

I think the two organizations should work in very close cooperation, but remain independent from each other. Police work and investigation on the field needs to be independent to be accurate and consistent. And sent to the judicial authorities when it is more concrete and you already have something to work from there, from a legal perspective. I am scared that if you have the two agencies together, the prosecutors will start intervening with police work at an earlier stage. This can probably cost some hindrances to the investigation and to the enquiries the police officers have to make. But this is my personal opinion.

Could there be done more to make the fight against crime within the EU more successful? If yes, what?

There is always room for improvement. I think that we need to build more trust amongst the law enforcement authorities. But also try to enforce the use of tools that we have at our disposal. We now have a new information exchange tool (SIENA – Secure Information Exchange Network Application) and we are trying to implement and to enforce the use of the tool at National Units level. So this means, not only between Europol and the Liaison Bureau. It is also between the Liaison Bureau and the National Units and from the National Units to designated competent authorities, in order to implement the Danish protocol. We also want to make sure that the requests made under the Swedish initiative, are complied with in an easier way. We are trying to facilitate the services we provide to the Member States and the third parties, which whom we have cooperation agreements.

What do you know about the structure of the FBI?

They are a federal agency and they are responsible for 200 criminal offences at federal level, which means at the level of the whole country and internationally. This is the reason why they have a police attaché here in The Hague that is accredited to the Benelux.

The FBI has the power to fight fraud and espionage, do you think Europol should have these powers too?

Depending on the type of fraud, we do fight it. We deal with: Euro counterfeiting, counterfeiting in general, money laundering and with fraud in terms of suspicious transactions. But I do not think we should have the power of espionage, because we are not mandated to do so by the Member States. We have a restricted mandate that does not include secret police activities.

Do you think it would be better if that mandate is more open and allows you to do espionage? Would you then like to have that power?

It will depend on a lot of things and I have my doubts on whether the Member States will agree on that. That will raise a lot of national issues, national security interests. I have my doubts that the Members of the European Union will delegate such an important power to an organization, that has 27 Member States and who is working with so many police forces, including those of Third Parties.

Which other powers / work fields do you think Europol should have?

Europol was created to support the Member States by analyzing criminal intelligence. That is our main task: to handle criminal intelligence. That is what we do and what we were mandated to do by the Member States. From 2010 onwards our mandate will be enlarged, especially once the Lisbon Treaty is ratified. We will also be able to exchange information with private parties, which is something we were not allowed to do beforehand. At this moment, the support that Europol can provide the Member States is limited to organized crime investigations. So, you have to have at least two Member States that are being affected by an illegal network whose activities are connected with organized crime. From January onwards, the requirement of organized crime will not be there anymore. It will be serious crimes affecting two or more countries of the EU, which means that it enlarges our mandate. We can then deal with a serial killer, which is not the case now. If there is a man that goes crazy and kills three people in the Netherlands, carries on to Belgium and kills another three there, goes to France and Portugal and kills four there than Europol can support the Member States in question with analysis of the information about this person. This is a serious crime affecting the interests of 2 or more sovereign states of the EU.

Do you think that if that were to happen – the serial killer – that Europol should have the ability to catch him and to arrest him?

It is not the mandate of Europol; it is not why we were created. It would be strange to see Europol assuming the powers that are nowadays allocated to the national authorities. From a legal point of view this would be confusing. It would be strange if a Portuguese police officer does a house search or arrests someone in the Netherlands, without speaking the language. I am not saying that it should not happen, but it gives a lot of food for thought.

Europol has been called the “European FBI” several times by different authors, do you agree with that term?

No, because we do not have executive powers. We can not arrest people or start investigations just because we feel like it. We work under a strict legal framework, we have very tight rules of data protection and rather pushy confidential classification levels of information. This can cause a problem in signing cooperation agreements with third states, because they have different classification. So, no, we are not a European FBI.

Should there be a total operational action plan against organized crime on EU level?

I think that we should have this kind of plan. For instance the organ which supervises the work of Europol, the Police Chiefs Task Force sometimes comes up with very strategic issues at very high level. An operational plan at European level for all the Member States with Europol supporting their operational activities would be a good idea as it will facilitate the implementation of the strategic issues.

Could you tell me more about the Europol National Unit (ENU)?

The ENU is the Unit responsible for all the relations with Europol and Europol matters. It is usually set up within an international cooperation department of a law enforcement authority of the country that has investigative powers at international level. You see it a lot in the headquarters of for instance the criminal police, judicial police or the national police. It depends on the structure of the country. The National Unit is defined by law and it is implemented by law. So it is not something that came out of the sky. It has a legal framework and it exists. The composition of the National Unit depends on the countries. If you take two different countries, there are two different Liaison Bureaux and two different National Units. It depends on the country on how the National Unit works. Important is to mention that approximately four times a year, there is a meeting of the Heads of Europol National Unit.

Usually when we have brilliant ideas we have to seek for the permission of the Heads of National Unit to go ahead with it. When it involves a lot of budget we have to seek agreement of the management board. You can imagine what it is like to deal with 27 bosses.

Does it cost a lot of tension to have the exchange of information between Europol and the ENU and again between the ENU and the police forces?

No, it all goes back to the kind of cooperation and communication that we have. We are physically together, Europol staff and Liaison Bureaux. Things are getting a bit better. From the Liaison Bureau to the National Unit it is ok and not a problem. But from the National Unit to the national authorities and national services, it can be a bit problematic. It is a snowball-effect, because if I ask you a question you do not have the answer, you would have to pass it on to the National Unit, they do not have the answer because they only coordinate the requests for information and rely on the contribution of the different units in the country. If the request is on drugs, they would have to contact the drugs service. If they do not get the answer from the drugs service, they cannot answer the Liaison Bureau who cannot answer you. Sometimes this goes the other way around.

What can you tell me about the Schengen Information System?

One thing that I can tell you is that Europol has partial access to the SIS. It is not an ideal situation, because we would like full access to the SIS. It would be good for us to know why certain people are registered in Schengen. Especially for our mandate, as far as organized crime is concerned, in illegal immigration and trafficking in human beings. My Unit and Head of Unit are working on it, so hopefully we can improve the access and the way we work with Schengen.

Are you busy with the European Crime Intelligence Model?

We are busy and trying to implement the European Crime Intelligence Model at Europol. This means that we are trying to allocate both our financial resources and our human resources in the most effective way. If we have last minute surprises, we can easily re-allocate the staff that is needed.

There are USA and Canadian Liaison Bureau within Europol, also a FBI Liaison Office, are there other non-EU countries involved?

Organized crime does not only happen within our borders. It trespasses our borders, but it also comes from outside. Europol Convention concerns only EU Member States. Therefore Europol had to find a way in cooperating with other parties outside the EU. We do that via cooperation agreements. You have two kinds of cooperation agreements: strategic agreements and operational level. Strategic agreements mean that the third party can send us the information they want, but we cannot send anything back – especially when it concerns information on personal data – but we can provide strategic information and strategic support. Strategic support means drafting reports, informing the countries which kind of criminal trends are happening, the modus operandi of certain groups – for instance in the case of euro counterfeiting, my colleagues sent out early warning messages saying “please be careful, we have found a new 50 Euro bill” so that all the countries are aware. At operational level the agreements allow the exchange of personal data. Israel is negotiating on operational level with us, when it comes to witness protection programs. From the moment you have a cooperation agreement, only even at strategic level, you can send a liaison officer to Europol. At this moment the only strategic agreement with liaison officers in house is obviously Colombia.

Why obviously?

Because of the drugs trafficking. We also have Albania, the second western Balkan country being present in Europol, which is a new priority with information exchange from the western Balkans. Soon I expect that Serbia and Macedonia will join Europol. We have an issue with Turkey, it is already more than five years that they want to send a Liaison Officer, but this is a political issue and there is not much Europol can do about it.

None of the countries you mentioned are African, why? Because there are a lot of illegal immigrants coming from Northern Africa to Europe.

We are working on it, at this point the only one with whom we had negotiations with was Morocco. The reason was the situation with Spain having to deal with a lot of immigrants entering the country via Morocco, but the negotiations are frozen for the time being.

Why were the negotiations frozen?

Because of political issues. We have also started establishing relations with China. The current non-EU countries that we have in house are: Australia, Canada, Columbia, Croatia, Iceland, Norway, Switzerland, 5 US Federal Agencies and Interpol. Interpol has a Liaison officer here and we have a Liaison officer there. We also have liaison officers in Washington.

How about Russia?

We are also working on upgrading the strategic agreement with the Russian Federation, but this is also a political issue.

Is it possible for every country in the world to join Europol headquarters? Could this be an aim for the future?

I would not say that, there are too many countries in the world. Do not forget that we have a restricted mandate and that our priorities are defined by the Council in Brussels. It really depends, if next year the Council decides that Southern Caucasus is a priority for Europol, we will sign a cooperation agreement with Georgia, Armenia and Azerbaijan. On the other hand, if the Council says “go ahead with an operational agreement with Israel and sign it as soon as possible” that is what we have to do. At this moment we are still negotiating with Israel, because it is a conflict area.

So, there are currently no Asian and African countries within Europol?

Not yet. I always say not yet because we have the initiative for the Mediterranean initiative, which was promoted by France. It is an association of EU countries that are operated in the Mediterranean area. If, at a certain moment, there are EU countries that find that it would be advisable to have a cooperation agreement. For example Greece, Italy and maybe France want a cooperation agreement with Libya, than we will have to start thinking about it. But it is not Europol's decision. It comes from above.

End of interview.

Appendix 5: Transcript of interview with Colleen Brown, Community Outreach Specialist at the FBI in Cleveland

Could you shortly tell something about yourself?

My name is Colleen Brown, Community Outreach Specialist for the FBI. My degree is in Environmental Health (Resource Management). I worked for 7 years as a National Park Ranger before joining the FBI to educate people about what the FBI does.

How is the FBI structured?

There are now 5 branches, this can be viewed at:

<http://www.fbi.gov/libref/executives/asstmain.htm>

How is crime prevention / fight against crime organized within the US?

We are charged with fighting terrorism, foreign counterintelligence, cyber crimes, public corruption, civil rights crimes, organized crimes, white collar crime, and theft/violent crime. We have 56 field offices (and over 400 resident agencies) within the United States, and are responsible for collecting intelligence within the United States Boundary. The CIA is responsible for intelligence overseas. The two agencies do coordinate and collaborate. The FBI also assists local and state law enforcement, when asked, within the USA. If the FBI is investigating someone for a federal crime, the state and local officials can also charge the criminal on state and/or local versions of a law that is being broken.

Is the FBI both an investigative and intelligence agency?

We are absolutely both an investigative and intelligence agency. The following website explains the intelligence philosophy: <http://www.fbi.gov/intelligence/philo.htm> We are not just an agency that solves crimes after they have occurred.

Our three top priorities fall within national security (more of a preventative than a straight reactive approach) - counterterrorism, counterintelligence, and cyber threats. The other things we concern ourselves with are our criminal priorities: public corruption, civil rights, organized crime, white collar crime, and violent crime.

So, while we will always work (with state, local, and other federal agencies) to solve crimes, we also have responsibility to gather information about crime trends and try to thwart criminals before crimes are perpetrated.

Do you think the FBI works good with police services?

The FBI works well with other police and intelligence agencies. With any collaboration, there might be an instance of two people not getting along, but when it comes to fighting crime, our agents and legal attaches are professionals and are dedicated to solving crimes and assisting other agencies in their investigations when legally possible.

The fight against crime can always be more successful. What could there be done (in your opinion) to make the fight against crime more successful?

I don't have the knowledge to speak to advice on your questions of improving law enforcement. I think that most agencies are leaning toward collaboration and working with the public instead of keeping them in the dark – a different angle than law enforcement looked from in the past. It has its pluses and minuses. But in the end, working together seems to create more trust and “buy-in” from the public.

What do you know about the structure of Europol?

I don't know anything about the Europol.

Do you think it would be wiser if Eurojust and Europol become 1 organization?

I cannot comment on the joining of your two organizations without knowing about them.

The mission of the FBI is "to protect and defend the US against terrorist and foreign intelligence threats and to enforce the criminal law of the US...." Has the terrorist part been in the motto since the beginning or was it added after the 9/11 attacks?

The Terrorist piece was added as a priority after 9/11, but really after some other key attacks – the first World Trade Center bombing, bombing of American embassies, the USS Cole incident, etc. We have worked this type of crimes before, but it was added as a priority.

The FBI has jurisdiction over violations of more than 200 categories of federal law. These are grouped within 3 national security priorities and five criminal priorities. Are these priorities linked with Homeland Security?

Homeland Security is a separate department, parallel to the Department of Justice. We work with them on protecting US citizens, using the over 200 federal laws. These laws cannot be found online.

It's difficult to draw jurisdictional lines between agencies that work particular laws. The same is true between local and state agencies on kidnappings, murders, robberies, white collar crime, etc. It is truly about communication between organizations and about keeping egos out of the equation! Both can be difficult depending on the people involved.

I read that the FBI has 3 main elements in the organizational schema: headquarters, field offices and legal attaches overseas, is that last one not the CIA? And why does the FBI has 3 main elements in stead of 1?

The FBI has a headquarters that handles many oversights, our priorities, and administrative functions for our field offices and attaches. The Legal Attaches are liaison offices that assist the FBI in our domestic priorities. For example if there is a bombing overseas, the Legal Attaché in the country (which often has an office in the US embassy) works with the foreign government/law enforcement to solve the crime. Additionally, sometimes foreign law enforcement asks the FBI to assist in solving crimes.

The CIA is the reverse – primarily overseas with minimal liaisons in the United States, interacting with other agencies here. They are not permitted to gather intelligence in the US. That is the job of the FBI.

Most lab work for the FBI occurs in our lab near Washington DC, not in our field offices – sometimes we use local labs, but not typically.

I also read that there is often contention between how headquarters executives and field executives see the world. Why is that? The Advisory Committee is an attempt to bridge that gap; is that successful?

I cannot speak with regards to the HQ/Field office question. There will always be issues between a HQ and satellite offices in a large organization, I believe. The advisory committees do attempt to bridge the communications.

Did Bonnie & Clyde and John Dillinger had anything to do with the May/June Crime Bill?

From all I've learned, it was definitely in response to the fact that agents were killed in the Kansas City Massacre (didn't have the power to carry firearms). A similar situation is that there were some agents shot and killed in Miami in the 1980s by some criminals who out-gunned the FBI agents. http://en.wikipedia.org/wiki/1986_FBI_Miami_shootout The agents were carrying revolvers (that hold only 6 bullets) and once this occurred, the Bureau switched to more powerful handguns with magazines of 13 bullets that are easier to switch than bullets into a revolver.

How do you see the future of the FBI?

I think any organization has room for improvement: through our efforts in community relations and outreach in the past 10-15 years, we've enhanced our public image and educated the American people on what the Bureau does.

<http://www.fbi.gov/hq/ood/opca/outreach/copintro.htm> This is what my role is as a Community Outreach Specialist. There are also people dedicated to public affairs, media coordination, and internal communications. There are differing opinions about what the Bureau should do in the future – some might say we should be two organizations instead of one (1 handling criminal efforts, 1 handling terrorism), some might say that these two are so interwoven that it makes sense that they're handled by one agency with increased communication between the parts. That's up for debate, and decided by the Director and Congress. As a current Bureau employee, I have my thoughts, but cannot speak to them as it's not appropriate.

End of interview.

Appendix 6: Transcript of interview with Eric Ruona, FBI agent in Philadelphia

Could you shortly tell something about yourself?

My name is Eric Ruona, I am attorney and became an FBI agent about 10 years ago after working as a public prosecutor and private attorney for 5 years. I work on public corruption cases in Philadelphia.

How is the FBI structured?

The work of the FBI is done in the field offices and resident agencies, which are sub-offices of the field offices. The legal attaché (foreign offices) function mostly as liaison with foreign countries and answer directly to headquarters. Additionally, headquarters has units divided by subject area, or crimes investigated. I do not have an actual organizational chart, however this web site may be helpful to you: <http://www.fbi.gov/homepage.htm>

How is crime prevention / fight against crime organized within the US?

In the United States crimes is primarily fought on the state and local level. For example in Philadelphia the Philadelphia police are responsible for investigating the majority of crimes such as violent crimes, property crimes, prostitution, drug offenses, traffic crimes etc. Each city has its own police force with this responsibility. Additionally the Pennsylvania State Police combats these crimes within the state of Pennsylvania. The FBI has limited jurisdiction, which is spelled out in the FBI web page above. We have jurisdiction over fraud, drug crimes, organized crime, terrorism, etc. We don't have authority over the local police and rely on their cooperation. This article may help to explain our federal system: <http://plato.stanford.edu/entries/federalism>.

Do you think the FBI works good with police services?

Yes. The FBI and the state and local police cooperate very closely. We have access to police services all over the country and the world and this can be helpful to our local partners. We also have more money and resources than many local departments, so we can assist them in their investigations. They have the benefit of local knowledge and can be very helpful to us. Most of our offices have task forces where the state and local police work directly with our agents and this works very well.

The fight against crime can always be more successful. What could there be done (in your opinion) to make the fight against crime more successful?

Continued and increased cooperation among police agencies. Criminals do not respect domestic or international borders and by effectively communicating and cooperating with each other we can take away criminals' advantage.

What do you know about the structure of Europol?

I do not know about Europol.

Do you think it would be wiser if Eurojust and Europol become 1 organization?

I do not know enough about Europol to have an opinion on this.

The FBI has the power to fight fraud and espionage, do you think Europol should have these powers too?

If it will make for greater cooperation and communication among European police agencies Europol should have these powers.

Which other powers do you think Europol should have, to be more successful in crime prevention?

I do not know enough about Europol to have an opinion on this.

Europol has been called the "European FBI" several times by different authors, do you agree with that term?

I do not know enough about Europol to have an opinion on this.

End of interview.