

TOWARDS AN EU CRIMINAL INTELLIGENCE MODEL — THE NEED OF AN EFFICIENT LAW ENFORCEMENT INTELLIGENCE EXCHANGE IN THE EU



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Abstract: International police cooperation in the EU, mainly police data exchange, has increasingly improved during recent years. However, EU legal instruments, largely reflecting the decisions of the Head of State and Government of Member States, highlight the need to implement an effective police data exchange concerning information generated in the Member States. To achieve this commitment first it is considered necessary to set up cooperation structures at EU Member State level which could provide an efficient police data exchange at international level.

INTRODUCTION TO THE CONCEPT OF CRIMINAL INTELLIGENCE

If, in the framework of an international meeting, we ask participants for the meaning of the concept 'criminal intelligence', we would probably receive several different definitions. Each participant would approach the concept dependant on their own understanding of security, as mentioned by Gariup (2013) or Button (2013), and it varies from country to country and, within the same country, from one law enforcement institution to another.

It could also be that some of the mentioned participants would refer to the concept of 'Intelligence-led Policing' (Ratcliffe, 2008) as the approach that helps police managers to better use crime related intelligence based on analysis to direct police resources aimed at disrupting organised networks and common criminality. This method used in EUROPOL (see House of

Lords, 2008) and other law enforcement agencies has its origin in their British and North American counterparts, however, this concept is not new.

The application of the cycle of intelligence (Phytian, 2013) as a decision-making tool, is based on data collection, processing, verification and an interpretation processes to produce intelligence that could help managers to decide on how to fight threats, is historic. Generals have also used it in military theatres through the centuries. Perhaps we should consider an innovation; the application of the intelligence cycle to fight organised crime or terrorism and other asymmetric threats (Thornton, 2007). For example, this methodology has been used by the Spanish Guardia Civil to dismantle ETA terrorism in the second half of the 20th century.

As we see, the concept of criminal intelligence, the process to collect, process, verify and interpret data to produce intelligence that fights organised crime suffers from different interpretations depending on the security culture

(1) The views expressed in this article are solely those of the author and not of other persons or institutions.



in each country and even distinct institutional approaches within a country. The EU Heads of Governments faced this conceptual problem with the incorporation of important definitions ⁽²⁾ in the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

In these circumstances, Framework Decision 2006/960/JHA opens the possibility of information and/or intelligence exchange, between competent authorities of EU Member States, by any existing channels (including bilateral cooperation), in criminal investigations or criminal intelligence operations to prevent, detect and investigate concrete criminal acts committed or that may be committed in the future.

Since Framework Decision 2006/960/JHA, there is no place for interpretation by any competent law enforcement authority from any EU Member State to collect, and analyse information on crime or criminal activities before starting a criminal investigation in order to prevent criminal acts.

LAW ENFORCEMENT TASKS IN THE EU MEMBER STATES AND SECURITY THREATS

If we perform a deep analysis of the criminal intelligence models implemented in EU Member States, we could conclude that there is no standard way to deal with information and/or intelligence to counteract security threats. We believe that law enforcement agencies develop in a greater or lesser degree within each Member

State, four types of functions systematised under the following topics:

- Public security tasks – The name of this task changes according to the EU Member State, and they refer primarily to classic police work in security prevention and reaction activities via uniformed patrolling in the territory;
- Administrative law enforcement tasks – These tasks refer to police forces carrying out specialised work at administrative level and complement public security, such as road safety, weapons and explosives control, immigration control, fiscal and border police, environmental police, etc.;
- Criminal investigation tasks – In this type of function we could incorporate police work specialising in criminal investigations at all levels;
- Counter-terrorism tasks – In many EU Member States depending on the type of terrorism, specialist counter-terrorism units or criminal investigation units specifically dedicated to the fight against terrorism, carry out investigations of terrorist offences.

All these tasks are interlinked and we could not consider them as isolated. For example, if a counter-terrorism unit is carrying out a criminal investigation on several suspects of a possible Jihadist cell (counter-terrorism tasks), the investigators would be very interested to know if these suspects are being investigated by a criminal investigation unit concerning a possible case of phone card fraud or drug trafficking (criminal investigation tasks). Additionally, if some of the suspects had been the consignee of a customs controlled container (administrative law enforcement tasks), or other

(2) Competent law enforcement authority' is a national police, customs or other authority that is authorised by national law to detect, prevent and investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities. Agencies or units dealing especially with national security issues are not covered by the concept of competent law enforcement authority. 'Criminal investigation' is a procedural stage within which competent law enforcement or judicial authorities, including public prosecutors, with a view to establishing, take measures and identifying facts, suspects and circumstances regarding one or several identified concrete criminal acts. 'Criminal intelligence operation' is a procedural stage, not yet having reached the stage of a criminal investigation, within which a competent law enforcement authority is entitled by national law to collect, process and analyse information about crime or criminal activities with a view to establishing whether concrete criminal acts have been committed or may be committed in the future. 'Information and/or intelligence' is any type of information or data, which is held by law enforcement authorities, and any type of information or data, which is held by public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures.



suspects from the same group were identified by a public security patrol (public safety tasks) when leaving a disco.

A criminal investigation team does not usually have the aforementioned information efficiently available. First, information normally obtained by customs officers in their daily tasks is not directly available to police forces and vice versa. Furthermore, in many cases, information and/or intelligence obtained by law enforcement officers working in the same Agency, but performing different tasks are subdivided into different information systems that are not usually interlinked.

THE COOPORATIVE TRIANGLE AGAINST SECURITY THREATS

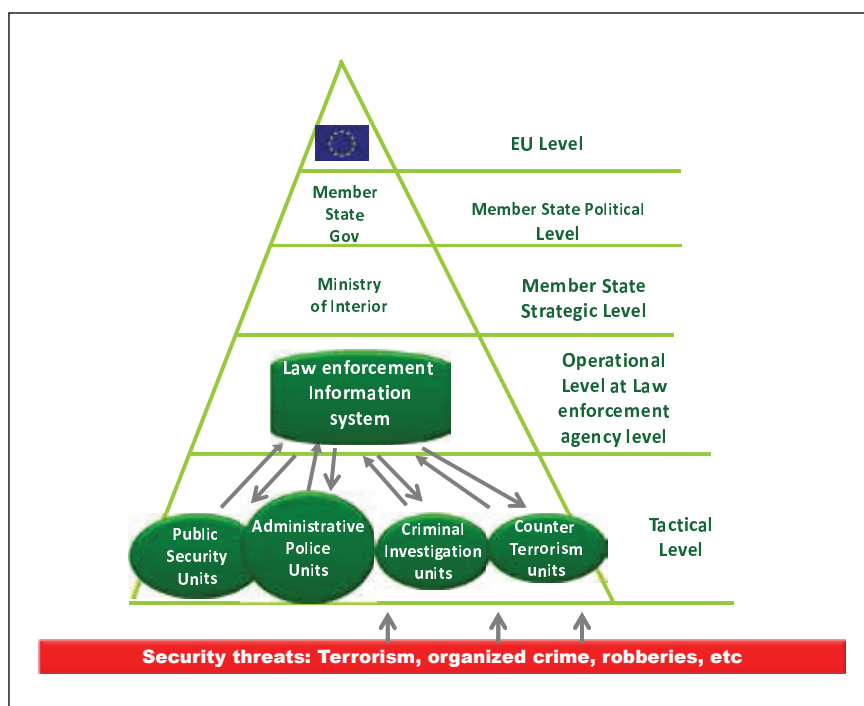
The extended criminal intelligence model in the EU Member States, shown in Figure 1, could be defined as 'The cooperative triangle against security threats' or the organisational structure that is set up to handle public security threats, by law enforcement agencies at the EU Member State level as they are entitled to do.

In this generic model, we can first identify a 'Supranational Political Level' represented by the EU institutions developing the Area of Freedom, Security and Justice (AFSJ) policies that are slowly crystallising into legal instruments implementing cooperation mechanisms such as channels and information systems at EU level (i.e. EUROPOL information system, Schengen Information System, VISA information system, etc).

In a second step we identify, the 'National or Federal Political Level' referred to as the application of the Public Security Policy at Member State level. A 'National or Federal Strategic level' represented by the Ministry of Interior or Department in the Ministry of Interior in each EU Member State; usually has the responsibility for management of the unique or various law enforcement agencies at national or federal level, and in some cases, coordination of regional police or local police forces.

At a 'law enforcement agency operational level', we find different information systems set up to collect, process and disseminate information and/or intelligence obtained from law enforcement units carrying out the various tasks (public security, administrative law enforcement, criminal investigation, and counterterrorism).

Figure 1: Cooperative triangle for security threats





Finally, a 'Law enforcement tactical level' represented by police, border control or customs units dedicated to performing their tasks according to their legal competence. At this level, a law enforcement officer faces security threats (i.e. illicit traffic, robbery, terrorism etc) daily and collects information and/or intelligence which is then stored in the agency information systems.

Law enforcement agencies are trying to adapt their criminal intelligence model, shown in Figure 2. It does not create a unique information system at an operational level, but needs to collect information and process it to produce intelligence and be able to disseminate it in an efficient way to be used by front line units at tactical level.

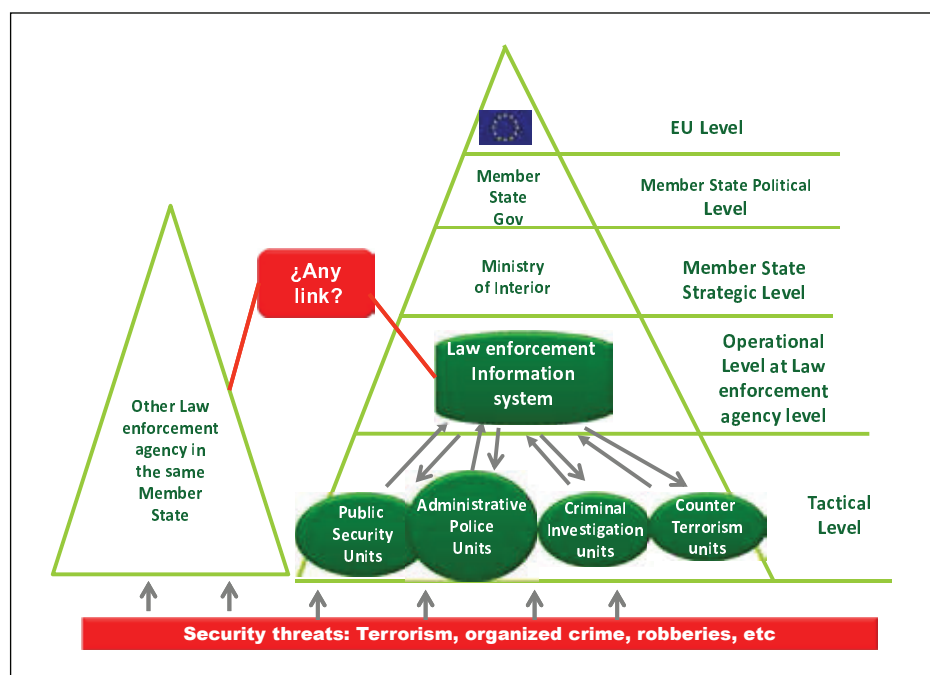
The analysis shows that this model is not entirely effective because of a lack of confidence in the exchange of information. Firstly, each law enforcement agency develops its own triangle of the threat, or strategy to combat security threats such as terrorism and organised crime, with little regard of the cooperative triangle or structures developed by other agencies within the same EU Member State, or other EU Member States.

In general, each police body at Member State level develops its structure and information systems to combat security threats in their area or area of responsibility. However, it does not normally take into account that it is unable to cover all aspects of security threats, and that these security threats move from one police responsibility area to another.

LAW ENFORCEMENT INFORMATION/INFORMATION EXCHANGE WITHIN THE EU: FROM A BILATERAL TO STRUCTURED COOPERATION

If we analyze how the Area of Freedom, Security and Justice (AFSJ) within the European Union (EU) has influenced the daily law enforcement work at EU Member State level, and especially the use of information systems established by EU legal instruments, we can assert that there has been considerable evolution indeed. Thirty years ago police cooperation and the exchange of police information among police administrations in different EU Member States was almost limited to bilateral and inter-relationship channels.

Figure 2: Different cooperative triangles for security threats.





In the mid 1990s cooperation mechanisms and structures were developed, and the AFSJ implemented new information systems (i.e. Schengen Information System, Europol Information System, Prüm System, Anti-fraud information system, Visa Information system, etc.) to facilitate the exchange of data related to law enforcement tasks among EU Member States. We have noted an evolution in the exchange of law enforcement information among EU Member States from a bilateral or regional cooperation to a structured cooperation through cooperation mechanisms such as information systems set up in the AFSJ. However there is still doubt, whether law enforcement data originated in an EU Member State efficiently reaches those who need it in another Member State.

According to the EU Treaty, there are no internal borders but only external ones in the EU. The EU's internal market seeks to guarantee the free movement of goods, capital, services and people within the 28 EU Member States. However, as criminals also move easily from one EU Member State to another, it is increasingly necessary to have an efficient exchange of law enforcement information among the various law enforcement agencies within all Member States.

In the EU there are many different law enforcement agencies (police, customs, border guards, etc) working at federal, national, regional and local level within Member States. All of them use information systems under EU and national data protection regulations, to collect, process, and disseminate law enforcement information needed for prevention and investigative purposes. Nevertheless, is this information available in an efficient manner to other law enforcement bodies at national or other Member State level?

THE LACK OF A REAL LAW ENFORCEMENT INFORMATION EXCHANGE AS SOURCE OF INEFFICIENCY IN THE AREA OF FREEDOM, SECURITY AND JUSTICE IN THE EU

The EU AFSJ policy and especially police cooperation aspects are differently applied at Member State level. Police models in the EU range from the simplicity of the existence of a single

police force in some Member States to cases such as the UK or Germany, where we find integral police forces at regional or state level working together with others with national or federal status. This scheme with some particularities is reproduced in other EU member states such as France, Italy, Portugal and Spain.

Council Framework Decision 2006/960/JHA of 18 December 2006 argues 'Formal procedures, administrative structures and legal obstacles laid down in the legislation of Member States are seriously hampering rapid and efficient exchange of information and intelligence between security services. This situation is unacceptable for EU citizens, and therefore calls for greater security and more efficient policing, while human rights are protected'. This is an important statement, as for the first time an EU legal instrument highlights the obstacles to the development of an effective AFSJ within the EU and its unacceptability for EU citizens.

The Framework Decision regulates the cooperation mechanism, and sets deadlines for the exchange of information. For example, Member States shall have in place procedures that allow them to respond within a maximum of eight hours to urgent requests for information and intelligence relating types of crime, when the requested information or intelligence is held in a database directly accessible by a law enforcement authority.

Just on a commonsense level, if it is intended to comply with the above-mentioned clause, it is first necessary to consider the set up of a 24/7 service at EU Member State level in which law enforcement information systems from the different competent authorities is made available.

THE NEED OF AN EFFICIENT EU CRIMINAL INTELLIGENCE MODEL

Thus, we need to overcome 'formal procedures, administrative structures and legal obstacles laid down in legislation of the Member States' that the Heads of State and Governments of all EU Member States recognise, via the Framework Decision, to be the source of inefficiency in the AFSJ. This could be resolved through the implementation

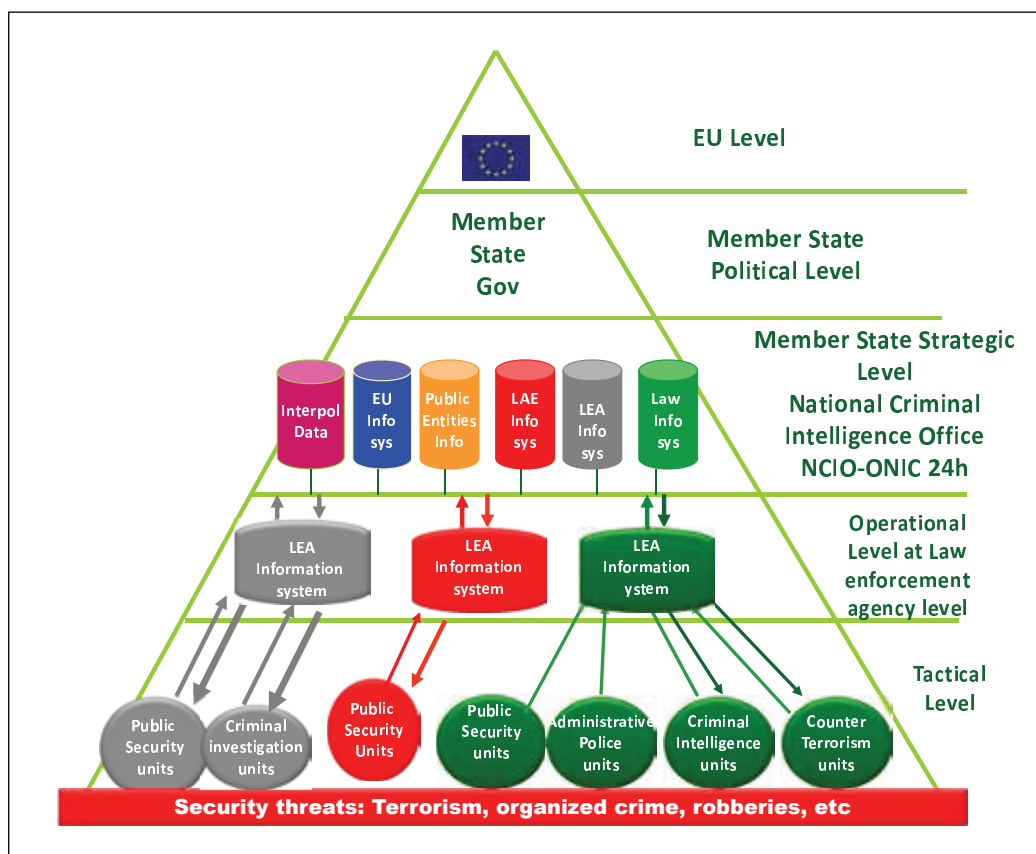


at EU level of a National Criminal Intelligence Office (NCIO).

This office would be at a strategic level under supervision of an independent authority, and over the various law enforcement agencies. The NCIO would coordinate Member State

law enforcement public information systems, private information systems, and international information systems (Interpol, Europol, SIS, VIS, EURODAC, etc) of interest, to develop the functions of criminal investigation and criminal intelligence to address the major security threats we all face.

Figure 3: Standard Criminal Intelligence Model at EU Member State level.



In the proposed model, figure 3, all information systems which might be of interest for law enforcement tasks at Member State Level, are shared with other agencies in the same country on a common platform or common table at the NCIO, as in previous steps to share them with other law enforcement agencies from the same and other EU member states. This new procedure would contribute to a more efficient process under The Council Framework Decision 2006/960/JHA.

Moreover, any authorised investigator from any police force or agency could request information from the NCIO-ONIC on a 24/7 basis. This procedure would assure that there is no overlapping of criminal investigations based on hit/no hit

technology. This process would be computerised and transparent for the user. Investigators could use a Google type search engine on data stored in the various information systems available to the NCIOs. The Framework Decision applies to all EU Member States; however, it does not oblige Member States to develop a standard criminal intelligence system at national level in order to be able to interoperate in an efficient way with other Member State systems. At this point, I believe that The Framework Decision would be hugely instrumental in harmonising EU Member State criminal intelligence models, national structures or platforms sharing information and intelligence, and also comply with the statements of the Decision.



In particular, there is no doubt that each EU Member State has a sovereign right to organize their own criminal analytical structures. However, it is also obvious that the EU has developed policies in various areas, including the AFSJ which have established uniform definitions and procedures for compliance with the purposes set out in the Treaty. In these circumstances, the EU could try to support Member States to implement the Framework Decision by funding such standard platforms at Member State level to achieve harmonisation, simplification and efficiency in the exchange of information of interest to the police. In any case, it is considered that the approach of a homogeneous criminal intelligence model in the EU would result in improved police effectiveness within the AFSJ based on the following aspects:

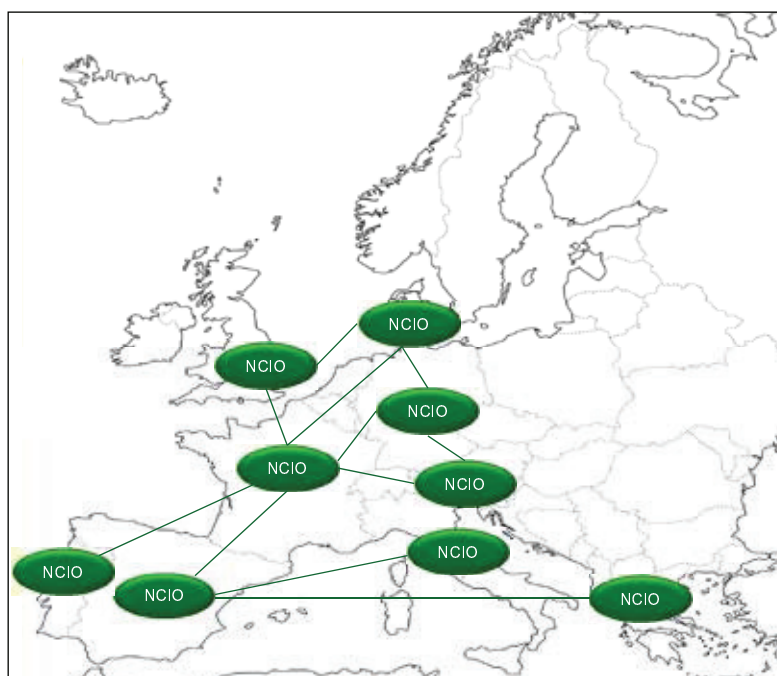
- Integrate into a standard criminal intelligence homogeneous model, different law enforcement actors fighting against major EU security threats;
- Improving law enforcement cooperation and coordination, at local, regional, national/

federal and international level, sharing information of common interests;

- Solving conflict situations, overlapping and duplication efforts among law enforcement agencies in the fight against security threats;
- Being transparent in data collection procedures of law enforcement interests. The model can be public, and would be subject to all the guarantees relating to national and international regulations concerning data protection.

This proposed EU criminal intelligence model is a theoretical and academic model, which does not contradict the European Criminal Intelligence Model advocated by EUROPOL, and highlights the necessity for law enforcement information/intelligence to be more efficiently shared through standard platforms (NCIOs). This scheme, configuring an EU neural network, would allow an efficient exchange of law enforcement information/intelligence under Council Framework Decision 2006/960/JHA.

Figure 4: Proposed EU criminal intelligence model.





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