



EU: Joint police operations target irregular migrants

By Chris Jones

The European Union is aiming to increase and formalise operational cooperation amongst law enforcement authorities. Significant effort is going into organising and carrying out joint police operations targeting irregular migrants.

In late October and early November 2012, 25 EU Member States along with Liechtenstein, Norway, Switzerland and EU border agency Frontex, participated in a “massive” joint police operation codenamed Aphrodite aimed at:

“[C]ombating illegal immigration, with the focus being on illegal border-crossing, the secondary movements of migrants who enter EU Member States illegally, the routes used and other information regarding smuggling of migrants”. [1]

The aim was to gather information on “interceptions” of irregular migrants and pass this information back to the Cyprus Police who, with the assistance of Frontex, produced an evaluation of the operation.

This evaluation considered “the aim and objectives of the operations... very largely achieved” and called for further repressive measures in a number of “recommendations for possible future improvements or best practices and/or further action.” For example:

“Law enforcement operational activities of the EU Member States and SAC [Schengen Associated Countries] should be stepped up as regards the detention of illegal migrants moving within the EU area. In this way, illegal immigrants could be detected either at the first Member State they enter illegally or in a neighbouring Member State, and could be prevented from reaching the final destination.”

Alongside the increased use of detention was the possibility of “covering the whole Eastern Mediterranean route” with police officers and border guards in a manner akin to “the increased activities of the Greek police at the Greek-Turkish land border.” Also recommended was an increase in cooperation between “law enforcement agencies of the Member States and border guard authorities,” and “enhancing police operations in Member States where migrants achieve illegal entry, or in neighbouring Member States”. [2] The evaluation report and its recommendations were approved by the Law Enforcement Working Party of the Council of the EU in June 2013. [3]

5,298 individuals were “intercepted” during the Aphrodite operation. Germany topped the table with 1,510 people, the UK was second with 728, and Spain (468), Austria (387) and Poland (365) followed. The majority of the 5,298 “intercepted” people were presumably detained with the intention to deport them – the final report does not concern itself with such details. It does note that “481 people applied for international protection upon being intercepted, and 201 applied after being intercepted,” but it is also unknown what happened to these individuals.

Information on “interceptions” was sent back to the Cyprus police and Frontex, but not simply so that Member States could congratulate themselves on the number of irregular migrants they had tracked down. A variety of information was required in order to generate intelligence on “the secondary movements of migrants who enter EU Member States illegally, the routes used and other information regarding smuggling of migrants”:

- Interception details: a unique case reference number; date and time of detection; location of interception; nearest city or town; means of transportation used during interception; means of transportation used to enter the EU;
- Intercepted migrants: nationality; gender; age, first point of entry into the EU; and first date of entry into the EU;
- Routes: main routes taken from third countries to enter the EU and SAC or EU/SAC countries used as transit countries; final intended destination;
- Modus operandi: false/falsified travel documents used (including nationality of passport); asylum application after or during detection; indications of smuggling of illegal migrants; facilitator’s nationality.

The aim of this data collection exercise was to inform the planning of subsequent large-scale police operations. The German government stated in response to parliamentary questions on the issue of European joint police operations that such exercises provide “a holistic view of illegal immigration flows for the entire internal Schengen space” [4] – therefore allowing for more efficient planning at European level.

Policing Europe

Joint European police operations are nothing new, although European governments and EU institutions and agencies have taken steps in recent years to improve their coordination. Many joint operations such as Aphrodite are organised within Council bodies such as the Customs Cooperation Working Party and the Law Enforcement Working Party. In such cases, a formal “coordination mechanism” [5] has been established “to avoid overlaps or incompatibilities as regard subject or timing”. [6] The mechanism is reviewed on a regular basis by the Council’s Committee for operational cooperation on internal security (COSI).

Aphrodite is also part of a new attempt to create a more formal mechanism for policing Europe – the “policy cycle for organised and serious international crime”. The aim of this is to ensure “optimum cooperation” between Member States, EU institutions and agencies, non-EU countries and international organisations in order to tackle “the most important criminal threats” facing the EU – one of which, officials have decided, is “illegal immigration”.

Based on provisions in the 2009 Stockholm Programme that call for the adoption of “an organised crime strategy, within the framework of the Internal Security Strategy,” EU Member States’ justice and home affairs ministers adopted in November 2010 a set of conclusions “on the creation and implementation of a EU policy cycle for organised and serious international crime.” These set out the purpose of the policy cycle:

“To tackle the most important criminal threats in a coherent and methodological manner through optimum cooperation between the relevant services of the Member States, EU Institutions and EU Agencies as well as relevant third countries and organisations.” [7]

According to the European Commission, the policy cycle “is a valuable first attempt to base cooperation on cross-border crime phenomena at EU level on the concept of intelligence-led policing.” [8] An initial, shorter cycle began in 2011 and will conclude at the end of 2013. It will be followed by a “full”, four year cycle, running from 2014 until 2017. This will be divided into four parts, described in a Europol document:

1. SOCTA – the Serious and Organised Crime Threat Assessment, delivered by Europol, will deliver a set of recommendations based on an in-depth analysis of the major crime threats facing the EU. The Council of Justice and Home Affairs Ministers will use these recommendations to define its priorities for the next four years (2013-2017);
2. MASP – Multi-Annual Strategic Action Plans will be developed from the priorities in order to define the strategic goals for combating each priority threat;
3. EMPACT (European Multidisciplinary Platform against Criminal Threats) – These projects will set out operational action plans (OAPs) to combat the priority threats”;
4. Review and assessment – the effectiveness of the OAPs and their impact on the priority threat will be reviewed by COSI [the Standing committee on operational cooperation on internal security]. [9]

The priorities decided upon by the JHA Council for the 2011-13 cycle were West Africa; Western Balkans, illegal immigration, synthetic drugs, container shipments, trafficking in human beings, mobile (itinerant) organised crime groups and cybercrime. [10] The overall aim of the illegal immigration priority from 2011-13 was to:

“Weaken the capacity of organised crime groups to facilitate illegal immigration to the EU, particularly via southern, south-eastern and eastern Europe and notably at the Greek-Turkish border and in crisis areas of the Mediterranean close to North Africa.” [11]

Following political agreement on the priorities, “expert groups” made up of police, border control, customs, judicial and administrative officials from member states, EU agencies, the Commission, the Council and, on occasion, “representatives from third countries and organisations such as Interpol”, [12] decided upon a set of “strategic goals”:

- Maintaining “a comprehensive intelligence picture, at national and EU level... on organised crime groups and the routes/modus operandi used by them for facilitating illegal immigration”
- Using this “intelligence picture for more effective and cost-efficient border control, investigation and prosecution”
- Enhancing efforts to address the smuggling of minors
- Improving “the effectiveness of inter-agency cooperation at EU, bilateral and national level including by enhancing vertical and horizontal information exchange”
- Using “innovative and efficient administrative procedures to disrupt organised crime groups/facilitators”
- Enhancing “cooperation at bilateral and European level with third countries in particular with relevant illegal immigration source and transit countries”
- Contributing to and making full use of “existing and future EU tools in the fields of external border management, immigration and law enforcement such as EU databases, networks, information exchange systems and funding programmes.” [13]

The next bureaucratic step was for OAPs to be drawn up for each year of the policy cycle. The OAP for 2012 included projects on establishing “the levels of cash being repatriated to source countries for illegal immigration,” workshops on “Common Risk Analysis at the EU level,” restarting “the SAHaraMED project aimed at improving the capacity of Libya in controlling and managing land and sea borders,” and “gathering intelligence on illegal migration OC [organised crime] groups from the EUROSUR big pilot project.” [14]

A progress report from May 2013 on the policy cycle’s illegal immigration project indicates that 12 of 16 projects undertaken in 2012 were considered completed with “key performance indicators” achieved. A further 10 projects to be carried out during 2013 were at various stages of preparation. One of the projects considered completed was the production of a:

“Tailored risk assessment (TRA) on illegal migration secondary movements emerging from southern, south-eastern and eastern Europe through the EU, and the involvement of organised immigration crime groups.” [15]

It seems that some of the information gathered during Aphrodite – for example on routes used by irregular migrants after entering the EU – was used to generate a “tailored risk assessment” that played a part in the planning of a “High Impact Operation” in Adriatic Sea ports and at the Italian-Slovenian border. [16] This was “eventually implemented in March 2013.” [17]

The new bureaucracy

Ultimate responsibility for and oversight of the policy cycle rests with the Standing committee on operational cooperation on internal security (COSI), which was established as a Council working party by Article 71 of the Lisbon Treaty to “ensure that operational cooperation on internal security is promoted and strengthened within the Union.” The committee, made up of “high-level officials from EU States’ ministries of the interior and of Commission representatives” (with representatives of Eurojust, Europol, Frontex “and other relevant bodies” sometimes invited to meetings as observers) is responsible for monitoring “actual delivery of the planned activities or action” every six months. [18] Beneath COSI are a series of new bureaucratic layers: National EMPACT Coordinators, Project Drivers and Co-Drivers, Project participants, and Europol which now plays hosts to the EMPACT Support Unit that oversees and assists with projects, plans and reports.

EMPACT (European Multidisciplinary Platform Against Criminal Threats) is “a structured multidisciplinary co-operation platform of the relevant Member States, EU institutions and agencies, as well as third countries and organisations (public and private)” [19] that will be used to organise and evaluate policy cycle operations. It follows on from the COSPOL (Comprehensive Operational Strategic Planning for the Police) project, established by the now-defunct European Police Chiefs Task Force with the aim of “providing support in strategic planning of law enforcement activities in the fight against organised and serious crime.” [20] A number of COSPOL projects – code-named WBOC, Syndru, Cocaine and CIRCAMP – were “integrated into the EMPACT framework” following the introduction of the policy cycle framework. [21]

Each policy cycle priority is managed by an EMPACT project group. These have four “key features”:

- An “intelligence-led” approach based on the European Criminal Intelligence Model; a “future-oriented and targeted approach to crime control, focusing upon the identification, analysis and ‘management’ of persisting and developing ‘problems’ or ‘risks’ of crime”;
- An “integrated character”, involving actors from a number of different countries,

- agencies, institutions and organisations;
- A “holistic” approach intended to address “all levers by which the phenomenon can be influenced by using measures and actions both of a preventive and a repressive nature”;
- “The project approach: a temporary management environment to develop activities in order to achieve pre-set goals.” [22]

The national officials responsible for ensuring the implementation of EMPACT projects are referred to as “National EMPACT Coordinators”. A Coordinator should be “a senior officer “with strategic command who has the authority to ensure the implementation of EMPACT in his country.” Their appointment “is a national competence and depends on the structure of the [law enforcement authority] in the [Member State].” [23] The Commission has suggested that the Coordinators be replaced “by the COSI representatives, who actually take the decisions about policy cycle priorities, strategic goals and EMPACT projects.” [24]

Beneath the National Coordinators sit the “Drivers” and “Co-Drivers”. These are Member State officials who chair EMPACT groups and are considered to be essential to the success of individual projects. [25] The Drivers draw up and implement OAPs along with the EMPACT project group; are able “to execute or delegate the management/leadership of a specific action”; should organise and chair group meetings; stay in touch with Member States and EU Agencies on “integration of the actions developed in the OAPs into their national planning and the Agencies’ yearly work programme”; submit progress reports to the EMPACT Support Unit; and “take into account the relevant cooperation with third countries and organisations.” A Co-Driver does not have to be appointed, although if one is put in place they can be a Member State or EU Agency representative. [26] An Italian official is the Driver of the illegal immigration project. [27]

Institutional support

Support from EU institutions for projects comes in the form of administration, intelligence provision, and training. An EMPACT project group is obliged to turn to EU agencies such as Europol and Frontex in order to obtain “a focused EU Intelligence Requirement” that will allow “intelligence gaps” to be filled. All members of the group should also attend “the relevant CEPOL [European Police College] training once the group has been established and before it starts its activities.” To help spread the word about EMPACT and the policy cycle, “the training may also be offered to other law enforcement officers.” [28] In 2013, CEPOL spent over €300,000 on providing 19 separate policy cycle-related courses, seminars and workshops. [29]

Europol has responsibility for much of the administration and coordination required to manage an EMPACT project. The agency hosts the EMPACT Support Unit, made up of permanent Europol staff and a member of staff seconded from the “Trio” EU Presidency (in which groups of three successive presidencies work together “to ensure consistency in the work of the Council over an 18-month period”). [30] The Support Unit is supposed to:

“Coordinate the activities of the eight EMPACT projects. This includes facilitating access to Europol funding, organising meetings, providing administrative support to meetings, distributing documents etc.” [31]

When an EMPACT group is established to implement and oversee a particular project a “designated Europol official” will act as an “EMPACT Project Support Manager, especially regarding the operational co-operation issues such as the effectiveness of the information and intelligence flow.” Support Managers are responsible for, amongst other things, presenting to project groups “the overall crime picture according to intelligence-led findings

at Europol.” They should also “contribute with concrete cases to the EMPACT project” and “be proactive and help to steer and facilitate the process.” [32]

A shaky start?

The first eight OAPs were approved by COSI in December 2011, with work supposed to begin in January 2012. Six months into the plans, a report by Europol found a number of problems with the implementation of the policy cycle. [33] For example, “the content and quality of the OAPs vary to a great extent” and “there has been a problem translating the strategic goals into concrete and tangible operational actions.” In November, Europol went further:

“The implementation of the 2012 EMPACT projects is so far not on track to meet the agreed strategic goals, the one exception is Priority F, THB [trafficking in human beings]. The other EMPACT Priorities include those making good progress, some making slow progress, and one that requires a review to consider whether it should be continued.” [34]

The Commission published another evaluation in January 2013 which essentially reiterated the finding of previous reports and recommendations. Member States need to follow up “their political decisions taken at COSI and Council... with operational commitment, including of resources, and the appointment of competent drivers and other experts.” More operational goals should be identified and there should be more flexibility in the organisation and execution of EMPACT projects, and there should be “recognition of the potential of Europol’s capabilities and of the importance of feeding information into Europol,” which “plays a key role in the medium and longer term.” [35]

By May 2013, things were looking up: a progress report by Europol stated that “progress has been made in all eight priorities of the 2012-13 policy cycle, although levels of support and activity by Member States are higher in some priority areas than others.” Europol’s major negative findings included a lack of operational activities for some OAPs, a concern that “intelligence flows to Europol need to be further improved”, obtaining EU funding for projects appeared to be difficult, and “difficulties in finding action leaders,” with “the majority of actions... led by Driver/co-Driver or Europol”. [36]

Europol has, perhaps unsurprisingly, praised the commitment of EU agencies to the policy cycle. In the agency’s December 2012 report, Frontex was noted for having “played an important role” in Priority C on illegal immigration, and the border agency “is also active as a participant” in Priority F on human trafficking. There is clear enthusiasm for the policy cycle project within Europol. At a meeting of EMPACT National Coordinators in May 2012, Europol’s Director, Rob Wainwright, was reported to have:

“[U]nderlined Europol’s commitment to the success of the policy cycle and explained that the upcoming re-organisation of Europol would contribute to ensuring that the policy cycle was the new way of doing Europol’s business and not treated as an additional task.” [37]

He noted that the agency was “undergoing an internal reorganisation which should be effective as of January 2013,” which means that “the support for the EU Policy Cycle by the Operations Department should be enhanced.” The question is whether the EU’s agencies, institutions and working parties can generate as much enthusiasm within the Member States for the policy cycle as they have themselves.

“A core group of committed participants”

Europol reported in May 2013 that the “illegal immigration priority” had “developed significantly” and that “it is now better focussed and has a core group of committed participants”. The report recounts the two operational activities that took place in 2012. One was the “High Impact Operation” noted above.

The other is “considered the most successful activity undertaken”. Project FIMATHU (Facilitated Illegal Immigration Affecting Austria and Hungary) was celebrated in a December 2012 press release from Europol, which highlighted support given by the agency to “successful cooperation between Austria and Hungary against illegal immigration”. The press release noted that 16 operations against “facilitated illegal immigration networks have been carried out by Austrian and Hungary [sic] authorities in the last 14 months, and 439 facilitators have been arrested.” [38]

Europol’s role in this hunt for migrants involved processing and analysing information collected by national authorities in order “to find interesting links between Austria, Hungary and the source and transit countries, to identify the criminal networks organising the illegal immigration.” This included “data extracted from over 500 mobile phones that had been seized.”

By the end of 2012, “7,249 illegal migrants were apprehended”. Questioned by *Statewatch* on what happened to these people, a spokesperson for Europol said the agency did not hold the information, but it was likely that many of those arrested claimed asylum, resulting in them being sent to “reception camps”, while “some would be sent back to Hungary.” Neither Hungary nor Serbia, the country through which many of the migrants made their way into the EU and to which many would therefore have faced return, have distinguished records when it comes to the fair treatment of migrants and asylum-seekers. The UNHCR said last year that Serbia should not be considered a safe third country to which to return asylum-seekers. [39]

The “successful results” of December’s operations led to 10 other countries joining the project: Bulgaria, Croatia, Czech Republic, Germany, Poland, Romania, Serbia, Slovakia, Slovenia and Switzerland. According to Europol’s press release, “the common aim is to dismantle the illegal immigration networks operating via the Western Balkans as well as in other European countries.”

Work towards this “common aim” continued in late January 2013, with “one of the largest coordinated actions against people smugglers made at a European level, involving more than 1200 police officers.” 103 people were arrested across 10 countries under suspicion of “clandestine smuggling of a large number of irregular migrants into and within the EU.” By the end of the month, over “7,500 irregular migrants [had been] apprehended and 981 smuggling incidents identified in total in the two countries” [40] due to operations undertaken in the framework of FIMATHU.

Europol declared in its May 2013 progress report that FIMATHU had “delivered concrete operational results” and was “a model activity”. Further operations are being planned. The report notes that while the illegal immigration priority had only half the number of actions in 2013 (8 as opposed to 16 in 2012), “6 out of the 8 are much more operationally focused”. [41]

Continuing the crackdown

The ongoing development of joint police operations, and the attempt to introduce a structured cooperation framework through the policy cycle, gives rise to a number of concerns. Firstly, there are the issues of transparency and accountability. While a number of public documents are available on the policy cycle, none make clear to the average person

how it functions and who exactly is responsible for it (the amount of bureaucratic jargon that had to be decoded in order to write this article is testament to this).

Furthermore, it appears that the policy cycle and the new frameworks and policies it introduces have not been subjected to democratic scrutiny by the vast majority of the parliaments of the Member States whose authorities are participating in policy cycle operations. While the Stockholm Programme provides a mandate for establishing the policy cycle, the Commission's 2011 annual report on the EU's Internal Security Strategy (which makes clear the purpose of the policy cycle and the political commitment made towards it) has apparently only been scrutinised by the parliaments of Malta and the UK. [42] Three years after the EU governments' interior ministers agreed to set up the policy cycle and two years after they set out the first round of priorities, the majority of national parliaments do not appear to have so much as noted its existence.

Secondly, the aim of the policy cycle to introduce intelligence-led policing operations across the EU, by plumping up the databases of EU agencies – in particular Europol and Frontex – raises a number of issues. A recent study by Joanna Parkin suggests that the agencies' receipt of vast amounts of information and the provision of "intelligence products" is shrouded in secrecy, which prevents "scrutiny and accountability of decisions and actions taken". The methodology used by Europol in drawing up its reports has come in for particular criticism:

"[I]t is almost impossible to evaluate the quality of the intelligence reports and threat assessments produced by EU Home Affairs agencies and, by extension, the validity of the 'evidence-based' claims which underpin the [Internal Security Strategy]." [43]

This raises particular concerns about operations targeting "illegal immigration" because both Europol and Frontex have in the past made spurious claims regarding the number of irregular migrants that enter the EU each year. [44]

The same report notes how EU agencies, whose powers are legally circumscribed due to Member State concerns over sovereignty, have nevertheless tried to "expand their powers and activities by engaging in 'soft' law and policy," for example by "funding research, gathering data and analysing information, developing training and exchanging and pooling best practice." This has been justified through:

"[T]heir unique positioning at the supranational level: only EU agencies, with their EU-wide overview of data, information and trends, are able to piece together the supranational picture of the EU landscape of organised or serious crime."

The policy cycle is, in part, intended to enhance the capabilities of these increasingly powerful but barely accountable agencies.

Thirdly, and most importantly, law enforcement operations aimed at targeting "irregular migrants" - whether directly or as a side-effect of targeting "facilitators" - can lead to discrimination and fuel suspicion and hostility within and amongst communities. In the UK, the Home Office last year significantly increased the number of immigration checks in public places such as train stations and bus stops as part of a government campaign to create a "hostile environment" for irregular migrants. [45] This raised "widespread concern of discriminatory practice and allegations of racial profiling by immigration officers" [46] after it appeared that the majority of those stopped for questioning and identification checks were black or Asian. The Home Office agreed to pay damages to one woman who claimed an identification check and questioning amounted to discrimination as she did not have a British accent, [47] although maintained that its operations are "intelligence-led" and do not target

particular ethnic groups. [48] Grassroots campaigns stepped up their own work in response to the stops. [49]

As demonstrated by the thousands of deaths in the Mediterranean over the last two decades, the EU's migration policies have failed to protect human rights and dignity. Further increasing repressive measures by police and border control agencies within the EU seems unlikely to lead to a different result. Nevertheless, the first "full" four year policy cycle will maintain a focus on "illegal immigration". This time round, Europe's law enforcement authorities will aim:

"To disrupt OCGs involved in facilitation of illegal immigration operating in the source countries, at the main entry points to the EU on the main routes and, where evidence based, on alternative channels. To reduce Organised Crime Groups' (OCGs) abuse of legal channels for migration including the use of fraudulent documents as a means of facilitating illegal immigration." [50]

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