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INTELLIGENCE EFFECTIVENESS IN THE EUROPEAN UNION (E.U.) IN THE NEW SECURITY ENVIRONMENT

by

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This thesis assesses the effectiveness of the European Union's intelligence agencies, Europol and Intelligence Analysis Center (INTCEN). It looks at the existing legal framework in the field of intelligence, the level of cooperation between the E.U. agencies, and the way the European Parliament exercises its control.

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LIST OF ACRONYMS AND ABBREVIATIONS

A.F.E.T. - Foreign Affairs Committee of the European Parliament

A.W.F. - Analytical Work File

BUDG - Committee on Budgets of the European Parliament

C.M.R. - Civil Military Relations

CONT - Committee on Budgetary Control of the European Parliament

COREU - *Correspondance Européenne*

C.T.T.F. - Counter Terrorist Task Force

C.S.D.P. - Common Security and Defense Policy

E.E.A.S. - European External Action Service

E.P. - European Parliament

E.S.D.P. - European Security and Defense Policy

E.U. - European Union

Europol - European Police Office

E.U.M.S. - European Union's Military Staff

E.U.S.C. - European Union's Satellite Center

H.R. - High Representative for Foreign Affairs and Security Policy

HUMINT - Human Intelligence

INTCEN - Intelligence Center

INTDIR - Intelligence Directorate within the European Union's Military Staff

J.I.T. - Joint Investigation Team

J.S.B. - Europol's Joint Supervising Body

L.I.B.E. - Civil Liberties, Justice, and Home Affairs Committee of the European Parliament

M.O.D. - Ministry of Defense

N.A.T.O. - North Atlantic Treaty Organization

N.S.C. - National Security Council

O.C.T.A. - Organized Crime Threat Assessment

S.E.D.E. - Subcommittee on Security and Defense

S.I.A.C. - Single Intelligence Analysis Capacity

SIGINT - Signal Intelligence

SitCen - Joint Situation Center

T.E.S.A.T. - Terrorism Situation and Threat Report

T.F.E.U. - Treaty on Functioning of the European Union

T.F.T.P. - Terrorist Financing Tracking Program

U.A.V. - Unmanned Aerial Vehicle

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I. INTRODUCTION

A. BACKGROUND

The end of Cold War and the fall of the Iron Curtain opened the path towards the enlargement of the European Union (E.U.). Today, it comprises twenty-nine states and is a major player in world affairs. On the international scene, the E.U. is unique: it is more than an alliance; but, still less than a federal state. Also, its political, economic, and cultural diversity, along with the members' desire to work closely together on economic, political, social, and security issues, is not matched by any other organization. This heterogeneous character can provide the E.U. with an advantage over the single states in formulating security policies, since each member country provides knowledge, expertise, and resources. At the same time, this diversity challenges the E.U.'s decision making process, due to the struggle between the members' national and the organization's interests. On the one hand, countries have an interest in cooperating to fight international threats; on the other hand, they strive to maintain national sovereignty and the monopoly of force. These issues become further complicated by the rapid and dynamic changes in the nature and level of threats in the new security environment. International terrorism, transnational organized crime, illegal immigration, energy resources scarcity, radicalization of politics, and deteriorating economic conditions are just few of the challenges that the E.U. currently faces. In order to cope with them, the E.U. constantly adapts its economic and security policies. As the world becomes even more interconnected and threats continue to transcend national borders, the need for closer cooperation between states increases.

Within this complex security environment, intelligence cooperation (both, for military and non-military purposes) plays a major role. Thomas C. Bruneau asserts that "effective intelligence agencies are the first line of defense"[1] in confronting contemporary international threats. Although there are multiple accepted definitions of

[1] Thomas C. Bruneau, Introduction: Challenges to Effectiveness in Intelligence due to the Need for Transparency and Accountability in Democracy, *Strategic Insights*, Volume VI, Issue 3 (Monterey: Naval Postgraduate School, May 2007), http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA485128.

intelligence, Mark M. Lowenthal captures the essence of the concept. He defines intelligence as a "process" aimed to identify, request, collect, analyze and disseminate certain types of information. Also, it is the resulting "product" of the process, and it is the "organization" of the intelligence system.[2] This definition will be used to analyze the European Union's intelligence system. When analyzing intelligence, one must consider its effectiveness. This is a very complicated task, for two reasons: first, "effectiveness – except by its absence, as in intelligence failure – is all but impossible to prove;"[3] second, there is little literature published on how to properly analyze intelligence. A very broad description of effectiveness may be that it represents the ability of the intelligence agencies to fulfill their assigned missions and tasks. Michael Herman, a British scholar and former intelligence officer, states that intelligence efficiency and effectiveness are "hard to measure" and the outcome of the process is hardly the object of a "traditional cost-benefit analysis." There is no "perfect system of accountancy" that could quantify intelligence efficiency and effectiveness.[4] Given these points, for the purpose of this thesis, Bruneau and Matei's requirements for effectiveness will be used: the existence of a plan (e.g., national security strategy and/or intelligence doctrine); structures/institutions capable of implementing those plans (e.g. NSC, MOD, Minister of Intelligence); sufficient resources (personnel, equipment, budget); and some interagency cooperation/coordination.[5] These are necessary conditions, but not sufficient.

In its quest for unity, the E.U. developed central institutions designed to contribute to better intelligence cooperation among its member states and increase situational awareness through sharing and fusion of information. The terrorist attacks in

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[2] Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington, DC: CQ Press, 2009), 8. Also refer to Thomas C. Bruneau and Steven C. Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 6–7.

[3] Thomas C. Bruneau and Steven C. Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 332.

[4] Michael Herman, *Intelligence Power in Peace and War* (Cambridge: Cambridge University Press, 1996), 298–300.

[5] Thomas Bruneau and Florina Cristiana Matei, Towards a New Conceptualization of Democratization and Civil-Military Relations, *Democratization*, 15:5 (Stanford: Institute for international Studies, 2008): 909–929.

the U.S. (2001), Spain (2004), and the U.K. (2005) showed the need for increased effectiveness of the intelligence agencies. The E.U. responded to the dynamic security environment by enhancing Europol and establishing the Joint Intelligence Center (SitCen), in 2000, the Intelligence Directorate (INTDIR) within the E.U. Military Staff (EUMS), in 2001, and the Satellite Centre (EUSC), in 2002. Although their creation was a major step toward knitting the E.U. member states better together, the effectiveness of these institutions dealing with the current security challenges and threats remains in question. The requirement for increased intelligence effectiveness remains unquestionable as a consequence of the asymmetrical, unconventional, and unpredictable character of current threats. The E.U. needs to work continuously on improving the effectiveness of intelligence to guarantee the Union's security.

In this context, this thesis will attempt to assess the effectiveness of the E.U. intelligence agencies, looking at Europol and INTCEN, as the main actors. The Satellite Center and the Intelligence Directorate will not be analyzed in this thesis, since they are "technical" and departmental agencies. Specifically, the thesis will attempt to answer the following question: *Has the European Union been able to successfully institutionalize an effective intelligence system, in order to respond effectively to the security threats and challenges of the 21st century environment?*

To answer the primary research question, the thesis addresses a second tier of questions:

- Why is an increase of intelligence effectiveness in the European Union needed?
- What are the challenges of intelligence effectiveness in the E.U.?
- Can these challenges be overcome, in order for the E.U. to increase its intelligence effectiveness? Is there a conceptual framework aimed at increasing intelligence effectiveness that can be successfully applied to the intelligence system of the E.U.?
- What lessons can be learned from the European Union's intelligence effectiveness?

B. IMPORTANCE

The importance of this thesis is threefold.

First, its information would help the European Union improve its intelligence effectiveness by identifying relevant issues. This could lead to an overall improvement of the European Union's security. Today, the E.U. represents more than 500 million people, in twenty-nine countries, among them two of the five permanent member states of the United Nations Security Council, four member states of the Group of Eight (G-8), and twenty-three of twenty-nine member states of the North Atlantic Treaty Organization (NATO). The European Union's gross national income is around thirty percent of gross world income. The defense budget of the E.U. member states represents almost twenty-five percent of world defense spending.[6] Therefore, the E.U. is of major importance in today's world affairs, and its steps in improving security determine outcomes which affect not only its member states, but also the global environment.

Second, the E.U. is a close ally of the United States. Improving the E.U.'s intelligence effectiveness would be relevant to the United States, since successful cooperation between the two is a top priority on both sides of the Atlantic. The need for better cooperation in the field of intelligence gained a sense of urgency after the 9/11 terrorist attacks against the United States. The consequent inquiry revealed that the terrorists used Europe as a staging area before embarking on their dreadful mission. Therefore, the 9/11 Commission recommended increased intelligence cooperation between the United States and the European Union to prevent such events from happening again. Also, the terrorist attacks in Madrid (2004) and London (2005) highlighted the fact that Europe is not secure from international threats. Consequently, the E.U. and U.S. acknowledged the importance of better cooperation between them, especially in sharing intelligence. Since then, contacts between E.U. and U.S. officials and agencies have increased. Ministerial level meetings between the two occur every year. Bi-lateral working groups develop policies to combat international threats. Also, the U.S. intelligence agencies (CIA, FBI, and NSA), have embedded liaison officers with their respective E.U. department counterparts, to provide for better intelligence sharing and cooperation. This cooperation has bridged many intelligence gaps in the fields of

[6] Klaus Becher, Has-Been, Wannabe, or Leader: Europe's Role in the World After the 2003 European Security Strategy, *European Security*, 13:4 (London: Taylor & Francis, 2004) 345–359, http://www.tandfonline.com/doi/pdf/10.1080/09662830490500008.

combating international terrorism, organized crime, and illegal immigration. Consequently, the answer to the major research question of this thesis will provide the United States with a better understanding of the E.U. intelligence system and its effectiveness.

Third, as the security environment changes, the world is witnessing an increased desire for regional cooperation. This cooperation exceeds the regular state-to-state political, economic, and military exchanges. It has tended to become more formalized, closer to what the E.U. represents. It is in this light that the lessons learned from the analysis of the E.U. intelligence system's effectiveness might present relevance to other organizations.

C. OVERVIEW AND ORGANIZATION

This thesis comprises six chapters.

The first chapter will outline the relevance of the topic, the literature review, and the methodology used throughout the study.

Chapter two will look at the E.U.'s actions towards the establishment of Europol and INTCEN, and provide a short history of those organizations, along with their current set-up, mandates, manning, resources available, and funding channels. The purpose is to determine whether the agencies are capable of fulfilling their missions and to provide the basis for the following analysis of their effectiveness.

Chapter three will analyze the evolution of the E.U. legal framework concerning intelligence and assess if Europol's and INTCEN's current mandates allow them to effectively fulfill their missions. It will analyze the general framework, the agencies' powers and competencies, and address their dependence on member states' agencies.

Chapter four will assess the level of cooperation, both between E.U. member states and the E.U. institutions and third party bodies. It will also identify and address the challenges to multinational intelligence cooperation and their effects on the E.U. agencies.

Chapter five will address the issue of democratic control of Europol and INTCEN by the European Parliament and national legislative bodies. It will focus on guidance and oversight, and attempt to recognize the challenges presented in this area.

Chapter six will identify lessons learned, building on Bruneau, Boraz, and Matei's framework. In addition, the study will suggest recommendations to improve intelligence effectiveness in the E.U.

D. METHODS TO ADDRESS EFFECTIVENESS

Research for this thesis follows two approaches: a review of the existing literature and a case study. The literature review will address the theoretical aspects of intelligence and effectiveness. Also, it will outline the characteristics of the new security environment. The case study will analyze the effectiveness of the two main E.U. intelligence agencies: Europol and INTCEN. The conceptual framework used to examine the intelligence agencies will be "the Civil–Military Relations trinity: control – effectiveness – efficiency."[7] Without a proper framework, the findings of this study would not be relevant. Unfortunately, only two aspects of the CMR trinity will be used (control and effectiveness). Efficiency is almost impossible to determine, since intelligence agencies' budgets are secret. Even when they do become public, they provide little data for a proper analysis. In particular, since the E.U.'s intelligence agencies receive funding both from the Union and the member states trying to assess efficiency becomes further complicated. On the other hand, control refers to the democratic control over intelligence agencies, and covers both direction (guidance) and oversight (monitoring). Effectiveness will be analyzed by looking at three major areas: legal framework (mandate, staffing, funding), cooperation (between agencies and with third-party bodies), and democratic control (guidance and oversight). The study will attempt to

[7] Bruneau, Thomas C. and Boraz, Steven C., "Intelligence Reform: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 1–21. Also refer to Thomas Bruneau and Florina Cristiana Matei, "Towards a New Conceptualization of Democratization and Civil-Military Relations," *Democratization* 15:5 (Stanford: Institute for international Studies, 2008): 909–929, and Florina Cristiana Matei and Thomas Bruneau, Intelligence reform in new democracies: factors supporting or arresting progress, D*emocratization*, 18: 3 (Stanford: Institute for international Studies, 2011), 602–630.

identify whether the three major areas provide conditions for the E.U.'s intelligence agencies to effectively fulfill their roles and missions. Finally, the thesis will advance recommendations to improve effectiveness. These recommendations might work for the E.U. as they do for states.

The first step in any study is to define the concepts. Bruneau observed that "the terms and concepts associated with intelligence are not agreed upon and ambiguous."[8] However, there are some ways to define intelligence: (1) as a process (2) as a product, and (3) as organization.[9] An overview of the intelligence process will help understand in what stages of this process the institutionalizing of the intelligence community is improving in effectiveness. It is generally accepted that the intelligence process has five steps: (1) identifying requirements (2) collection (3) processing and exploitation (4) analysis and production, and (5) dissemination. Lowenthal added two more steps (6) consumption and (7) feedback.[10] He also provided some alternative ways of looking at the intelligence community: an organizational view, a functional view, and a budgetary view.[11]

Although the concept of effectiveness is even harder to define, for the purpose of this thesis Bruneau and Matei's requirements for effectiveness will be used: the existence of a plan (e.g. European security strategy, intelligence doctrine, E.U. intelligence collection plan); structures/institutions capable to implement that plans (e.g. Europol, INTCEN); sufficient resources (personnel, equipment, budget); interagency cooperation/coordination; and democratic control exercised by the European Parliament.[12]

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8 Thomas Bruneau, Controlling Intelligence in New Democracies, International Journal of Intelligence and Counterintelligence, Vol. 14, No. 3 (Oxford: Taylor & Francis, 2001), http://dx.doi.org/10.1080/08850600152386837.

9 Lowenthal, *Intelligence: From Secrets to Policy*, 8.

10 Ibid., 55.

11 Ibid., 34.

12 Thomas Bruneau and Florina Cristiana Matei, "Towards a New Conceptualization of Democratization and Civil-Military Relations," Democratization 15:5 (Stanford: Institute for international Studies, 2008), 909–929.

E. PROBLEMS WITH E.U. INTELLIGENCE EFFECTIVENESS

The European Union's unique architecture, which reflects great cultural, economic, and political diversity, along with the dynamic changes in the new security environment, creates tremendous challenges in the process of developing coherent and effective security policies. The adoption of the European Security Strategy in 2003 was a first step towards improving cooperation among member states on security related issues. It recognized the need for an "improved sharing of intelligence among member states, and common threat assessments as the basis for common actions."[13] Meanwhile, member states struggle to find a balance between the pursuit of their national interests and the E.U.'s interests. Their desire to share intelligence collides with the natural tendency to "keep it secret" to protect national interests. Also, the issue of trust among member states becomes very important for developing an effective E.U. intelligence system. Björn Müller-Wille argues that "trust is often the most important obstacle in intelligence cooperation" and "just as the collection of intelligence in the field by agents and informers is based on building confidence with their sources (human intelligence), exchanging intelligence products between different European agencies equally requires the gradual development of trusting relationships."[14] To build confidence will continue to take time, since the E.U. consists of twenty-nine countries with different levels of economic, political and social development across its territory.

Also, effectiveness is hindered by the way the intelligence agencies are set up. In a study published by the E.U. Directorate-General for Internal Policies regarding the political oversight of the intelligence agencies, the authors argue that the E.U. intelligence agencies lack the "special powers" granted at the national level. None of the intelligence agencies has the ability to intercept communications, conduct covert surveillance, or use secret informants. Therefore, they are not intelligence agencies as

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[13] European Council, *A Secure Europe in a Better World: European Security Strategy* (Brussels: European Council Documents, 2003), http://www.consilium.europa.eu/documents?lang=en.

[14] Björn Müller-Wille, Improving the democratic accountability of EU intelligence, *Intelligence and National Security*, 21:01 (Oxford: Taylor & Francis, 2006), 100–128, http://dx.doi.org/10.1080/02684520600568394.

conceptualized at the national level.[15] Müller-Wille assesses that "in comparison to their national equivalents, E.U. agencies have 'clipped wings.' They do not have their own operational responsibilities or powers, nor do they collect any intelligence themselves. EU intelligence officers do not have any arms. They have no power to hold and interrogate anybody, tap phones and eavesdrop, or conduct clandestine operations. In principle, EU intelligence agencies are pure 'desk-agencies' that work with pen and paper."[16] The limitations imposed on these agencies by their given mandates, the lack of operational capabilities, and their heavy reliance on U.S. intelligence collection assets hinder their overall effectiveness.

The way the E.U. intelligence agencies are given their budgets plays a major role in their effectiveness. Europol receives a big part of its funding from the E.U. budget and the rest from the member states. The INTCEN is partly funded by the union but a big part of its budget consists of member states' contributions. The agencies' required operational resources are provided by the member states; however, they remain under national control at all times. This determines a series of outcomes, which limits the E.U. intelligence agencies' effectiveness. First, there are disputes among the member states over power and control of the agencies since they do not provide the same share of resources. Second, the intelligence agencies' budgets and staffing are often insufficient for them to operate effectively. Third, since the E.U. is only partly funding some of the agencies, it has insufficient control over their activities. In this area, the European Parliament shares the oversight responsibilities with the national legislative bodies. None of them is fully involved in the scrutiny of the E.U. intelligence agencies. This lack of appropriate democratic control may create conditions for abuses by the intelligence

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[15] Directorate-General for Internal Policies, Policy department C: Citizen's Rights and Constitutional Affairs, *Parliamentary Oversight of the Security and Intelligence Agencies in the European Union (*Brussels: European Parliament, 2011), http://www.europarl.europa.eu/RegData/etudes/etudes/libe/2011/453207/IPOL-LIBE_ET(2011)453207(PAR00)_EN.pdf.

[16] Müller-Wille, Improving the democratic accountability of EU intelligence, 110.

agencies. At the same time, it deprives the legislative bodies of valuable information about the intelligence agencies' needs, which affects their effectiveness.[17]

Given the factors mentioned above and the characteristics of the current security environment (organized crime, illegal immigration, international terrorism, political radicalization due to economic conditions, and the search for energy resources), this thesis hypothesizes that the effectiveness of the E.U. intelligence agencies needs to improve and that the problems are likely to persist unless the E.U. political institutions increase control and support of the intelligence agencies.

F. THOUGHTS ON INTELLIGENCE AND EFFECTIVENESS

There is a large amount of literature dedicated to the definition of intelligence. Lowenthal describes intelligence as a "process" aimed to identify, request, collect, analyze and disseminate certain types of information. Also, it is the "product" of the process, and the "organization" of the intelligence system.[18] This definition will be used for the study of the E.U.'s intelligence system effectiveness. Developing the concept, Betts, Bruneau, Boraz, Johnson, and Lowenthal argue that the main purpose of intelligence is to support political decision makers and contribute to national security.[19] Bruneau and Holts identified four essential functions for intelligence: collection, analysis, counterintelligence, and covert action.[20] Along the same lines, Betts identifies the

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[17] Müller-Wille, Improving the democratic accountability of EU intelligence, 114. Also, see the Parliamentary Oversight of Security and Intelligence Agencies in the European Union, 2011.

[18] Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington, DC: CQ Press, 2009), 8. Also refer to Thomas C. Bruneau and Steven C. Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 6–7.

[19] Richard K. Betts, *Enemies of Intelligence: Knowledge and Power in American National Security* (New York: Columbia University Press, 2007), 1–5. Bruneau and Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," 7. The national security operations mentioned by Bruneau and Boraz range from domestic police operations to covert operations launched outside the country's own borders. Lowenthal, *Intelligence: From Secrets to Policy*, 2–4. Loch Johnson, "Seven Sins of Strategic Intelligence," in *America's Secret Power: The CIA in a Democratic Society*, ed. Loch Johnson (New York: Oxford University Press 1989), 59.

[20] Bruneau and Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," 7–11. Also refer to Pat M. Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy* (Washington, D.C: CQ Press, 1995), 3–4.

functions as "collection, correlation, analysis, and dissemination of relevant information."[21]

Furthermore, there is literature focusing on the relation between intelligence reform and democracy. Regarding this subject, there is an imbalance between the number of studies concentrating on the consolidated democracies and the ones dealing with younger democracies.

Richard K. Betts, Robert Jervis, James Wirtz, Mark M. Lowenthal, and Loch K. Johnson, among others, write about intelligence in consolidated Western democracies. The central theme of the discussion is the "secrecy − transparency" dilemma. On one hand, intelligence requires secrecy in order to perform effectively; on the other hand, democracy requires transparency. Therefore, authors suggest that a universal solution cannot exist, and the balance between secrecy and transparency has to constantly adapt to the changing nature of threats.[22] Another major theme of debate within academia is the need for increased intelligence effectiveness, especially in the complex environment of democratic societies.[23] The authors mentioned above brought an immense contribution to understanding the relation between intelligence and human rights, rule of law, political control, and other democratic values. Also, there is abundant literature regarding the U.S. intelligence community, which focuses on the same issues.

By contrast, the amount of literature regarding the intelligence systems in the younger democracies is far less, due to the fact that the subject had been of little interest

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[21] Betts, *Enemies of Intelligence: Knowledge and Power in American National Security*, 1.

[22] Betts, *Enemies of Intelligence: Knowledge and Power in American National Security*, 1–18. Ian Leigh, "Intelligence and Law in the United Kingdom," in *The Oxford Handbook of National Security Intelligence*, ed. Loch K. Johnson (New York: Oxford University Press, 2010), 640–655. Stuart Farson, "Canada's Long Road from Model Law to Effective Political Oversight of Security and Intelligence," in *Who's Watching the Spies: Establishing Intelligence Service Accountability*, ed. Hans Born, Loch K. Johnson, Ian Leigh (Washington, D.C.: Potomac Books, 2005), 99–116.

[23] Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington, DC: CQ Press, 2009). Richard K. Betts, *Enemies of Intelligence: Knowledge and Power in American National Security* (New York: Columbia University Press, 2007). Loch Johnson, "Seven Sins of Strategic Intelligence," in *America's Secret Power: The CIA in a Democratic Society*, ed. Loch Johnson (New York: Oxford University Press 1989). Cynthia M. Grabo, *Anticipating Surprise: Analysis for Strategic Warning* (Lanham, MD: University Press of America, 2004). Richard Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11* (Lanham, MD: Bowman & Littlefield Publishers, 2005). Amy B. Zegart, *Spying Blind: The CIA the FBI, and the Origins of 9/11* (Princeton and Oxford: Princeton University Press, 2007).

to academia. Recently, this situation has improved and the number of studies pertaining to consolidating or newer democracies has increased. Hans Born, Stuart Farson, Mark Phythian, Marina Caparini, Timothy Edmunds, Steven Boraz, Thomas C. Bruneau and Cristiana Matei are a few of the authors who have written about this topic. The central dilemma in the newer literature remained the same (the balance between "secrecy" and "transparency"). Also, a large number of studies covered intelligence reform in the younger democracies as they transitioned from authoritarian political regimes. Bruneau and Matei discuss the factors which support or obstruct intelligence reform in newer democracies.[24] The question asked by many is whether intelligence and democracy are even compatible. Acknowledging the complexity of the challenges for the integration of intelligence in a democracy, Bruneau, Boraz, and Matei argue that intelligence can be compatible with democracy through a trade-off between the two.[25] Holt argues that, while the democratic pressure for transparency increases, "secrecy and democracy are incompatible; yet some intelligence activities are necessarily secret," in order to be effective.[26] Also, Bruneau, and Matei suggest that newer democracies need to invest resources and effort in maintaining their intelligence systems' effectiveness.[27]

In addition, there is literature which highlights E.U. steps towards the establishment of an intelligence system. Per Martin Norheim-Martinsen, Jacob Aasland Ravndal, G.M. Segell, Bjork Muller-Wille, J.M. Nomikos, and R.J. Aldrich write about this topic. Their focus is on the historical aspect of the establishment of an E.U. intelligence system, the reasons for such endeavor, and the description of the tasks and

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[24] Florina Cristiana Matei and Thomas C. Bruneau, "Intelligence Reform in New Democracies: Factors Supporting or Arresting Progress," *Democratization* 18: 3 (2011), 607.

[25] Bruneau and Matei, "Intelligence Reform in the Developing Democracies: The Quest for Transparency and Effectiveness," 757–771. Also refer to Bruneau and Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," 1–17. Steven C. Boraz and Thomas C. Bruneau, "Best Practices: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 331–342.

[26] Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy*, 1.

[27] Thomas C. Bruneau, "Introduction: Challenges to Effectiveness in Intelligence due to the Need for Transparency and Accountability in Democracy," *Strategic Insights* 4:3 (2007). Also refer to, Bruneau, Thomas C., and Boraz, Steven C., "Intelligence Reform: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 1–21.

missions. All authors acknowledge the creation of the intelligence agencies as a required step in the process of consolidating stronger political, military, and economic E.U. unity. In order to cope with the new internal and external security threats, the E.U. had to improve intelligence cooperation among its member states. Following the formulation of the first E.U. joint security strategy under the name of European Security and Defense Policy (ESDP), later changed into Common Security and Defense Policy (CSDP), the establishment of the E.U. intelligence agencies resulted as a necessity. Björn Müller-Wille argues that the E.U. formed its intelligence agencies in order to counter-balance the U.S. dominance in the field. Also, he continues by pointing out that the E.U. needed the intelligence system to provide for its own security and the need for heavy reliance on the United States.[28] Segell, Müller-Wille, and Nomikos argue for a centralized approach to E.U. intelligence, emphasizing the necessity of transnational agencies to coordinate the actions of the member states' intelligence services. Norheim and Ravndal argue that from the very beginning, the E.U. accepted a "mixture of intelligence, police and judicial, military, and other means, as integral to a comprehensive security approach."[29] Also, they identified three factors, which influenced the development of the central E.U. intelligence structures: "the configuration of participating states, mission mandates and bureaucracy."[30] These factors shaped the geometry of E.U. intelligence and directly affect its effectiveness.

There are fewer writings about intelligence effectiveness. Most of the studies focus on intelligence effectiveness, in general, and on cooperation. Requirements for effectiveness, according to Bruneau and Matei, include: the existence of a plan (e.g., national security strategy, intelligence doctrine); structures/institutions capable to implement that plans (e.g. NSC, MOD, Minister of Intelligence.); sufficient resources

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[28] Björn Müller-Wille, EU Intelligence Co-operation. A Critical Analysis, *Contemporary Security Policy*, 23:2 (Oxford: Taylor & Francis, 2010), 61–86, http://dx.doi.org/10.1080/713999737.

[29] Per Martin Norheim-Martinsen & Jacob Aasland Ravndal, Towards Intelligence-Driven Peace Operations? The Evolution of UN and EU Intelligence Structures, *International Peacekeeping*, 18:4 (Oxford: Taylor & Francis, 2011), 462, http://dx.doi.org/10.1080/13533312.2011.588391.

[30] Norheim-Martinsen & Ravndal, Towards Intelligence-Driven Peace Operations? 455.

(personnel, equipment, budget); and some interagency cooperation/coordination.[31] Stéphane Lefebvre identifies the need for intelligence cooperation as originating from the inability of a single agency to perform all tasks, the benefits of sharing the cost burden, and the advantages of using each country's expertise in different areas of the field. He also discusses some of the factors that deter intelligence cooperation, such as: differences in perception of the threats, differences in national interests, the unequal distribution of power, legal issues, and lack of trust between states and agencies, regarding the possible mishandling and misuse of the shared intelligence.[32] Bjork Muller-Wille looks specifically at the intelligence cooperation within the E.U. and asserts that the process is hindered by different national interests among member states, different intelligence capabilities, lack of adequate means to perform critical intelligence tasks (collection), and heavy reliance on the United States in this area.[33] Other authors, such as Norheim and Ravndal, argue that the E.U.'s intelligence agencies address only strategic issues, but do not develop at the operational and tactical levels.

The literature existing on the E.U. and its intelligence effectiveness lacks a conceptual framework. The studies are more like anecdotal accounts. Eric Van Um and Daniela Pisoiu argue that the study of effectiveness, although very important, "is plagued by both theoretical underdevelopment and a lack of methodological grounding."[34] This thesis will complement the existing general literature on intelligence effectiveness and E.U. intelligence effectiveness, in particular. It will also propose a conceptual framework to increase intelligence effectiveness, which may work for the E.U., as it works for individual countries and other regional cooperation initiatives.

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[31] Thomas Bruneau and Florina Cristiana Matei, "Towards a New Conceptualization of Democratization and Civil-Military Relations," *Democratization* 15:5 (Stanford: Institute for international Studies, 2008), 909–929.

[32] Stéphane Lefebvre, The Difficulties and Dilemmas of International Intelligence Cooperation, *International Journal of Intelligence and Counter Intelligence*, 16:4 (Oxford: Taylor & Francis, 2011), 534–536, http://dx.doi.org/10.1080/716100467.

[33] Müller-Wille (2002): EU Intelligence Co-operation. A Critical Analysis, 61–86.

[34] Eric Van Um and Daniela Pisoiu, Effective counterterrorism: What have we learned so far? *Economics of Security Working Paper 55* (Berlin: Economics of Security, 2011), 17.

II. EUROPEAN UNION'S INTELLIGENCE AGENCIES: TWO INSTITUTIONS SHORT OF A FULL SOLUTION

A. INTRODUCTION

The European Union member countries exchanged intelligence well before the creation of an institutionalized framework. This exchange proceeded either on an informal, ad-hoc basis or through multi-lateral agreements. The Club of Berne (*Club de Berne*) is a perfect example of informal cooperation before the development of the E.U.'s institutions. It was created in the 1970s by the six original E.U. members, as an informal forum of their security services. The heads of the national security services met regularly and discussed the evolution of threats against the E.U. The later E.U. expansion allowed the Club to grow, and it now includes representatives of all the member states. The Club produced threat assessment reports which were shared with members and some of the European Union's committees. Although the Club included all member states and produced intelligence products for the E.U., it was not an official E.U. institution. It had no legal mandate or legal provisions requiring participants to exchange information. Therefore, the E.U. identified the need to create official E.U. institutions which would fall under a written mandate with clear missions.

Also, in the late 1990s, during the war in the Balkans, Europe acknowledged that devastating conflicts could still occur within its territory. Consequently, the E.U. decided to strengthen Europol and to establish INTCEN, formerly known as SITCEN, in order to provide the framework for increased cooperation among its members. The process, however, was slow, and SITCEN/INTCEN was not created until the terrorist attacks in Spain and the U.K., conducted by Al Qaeda in 2004 and 2005, proved that Europe was a target of terrorism from both domestic and international sources. This realization "served as major impetuses towards increased intelligence sharing [within Europol] and the strengthening of the INTCEN."[35] As a result, Europol and INTCEN became the expression of the E.U.'s institutional framework for intelligence cooperation. In the

[35] Martin Todd, Could Europe Do Better on Pooling Intelligence? *Security & Defense Agenda Round Table Report* (Brussels, 2009).

context of current evolution of the security environment, their role in the development of the E.U.'s internal and external security policies has increased. This chapter presents the evolution of Europol and INTCEN, looks at their history, mandates, personnel, and resources as the basis for the consequent analysis of their effectiveness in the following chapters.

B. EUROPOL

1. History

The idea of establishing a European police force is older than the actual E,U, concept. In the 1980s, there were several calls from the main European countries, such as France, Germany, and the U.K. to increase police cooperation in order to deal with transnational crimes. In 1992, article K 1(9) of the Maastricht Treaty[36] on the European Union, mentioned, for the first time, the creation of Europol as a police agency, designed to fight organized crime, drug trafficking, and other serious crimes. One year later, the first European Drug Units (EDUs) were established by the E.U., as a first attempt to create EUROPOL. These institutions had no powers to arrest, but supported E.U. states in the fight against drug trafficking. Their mandate was expanded to include terrorism, motor vehicle crimes, and organized crime, paving the way for an operational European police force.

Article K about Europol in the Maastricht Treaty was agreed to in 1995, and became operational in 1998, after all member states ratified it. The convention established Europol's mandate and required all member states to designate national liaison units with Europol. Also, the member states had to "second" at least one liaison officer to Europol's headquarters, to "represent the interests of their national authorities and to facilitate the flow of information in both directions."[37] The convention ensured that all member states had an equal say in the way Europol was run and in its strategies by adopting a consensus-based decision-making process.

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[36] The treaty name comes from the city in Netherlands, where it was signed.

[37] Europol's history, Europol's web-page, 2012, https://www.europol.europa.eu/content/page/history-149.

In 1995, the E.U. expanded. This required an amendment to the Maastricht Treaty. Therefore, in 1997, in Amsterdam, Netherlands, the member states signed a new E.U. treaty. The new convention included the Schengen accords (1985 and 1990) and transformed them into permanent E.U, laws. The immediate effect of the Schengen accords was the abolition of internal borders between the member states. In order to ensure that criminal networks did not take advantage of the situation, member states included legal provisions in the convention that gave Europol a central role in coordinating police cooperation in the fight against organized crime, both within and outside E.U. borders. Also, Europol was subordinated to the Justice and Home Affairs Council of Ministers (the E.U. equivalent of the Ministry of Interior at the European countries' national levels).

Europol became fully operational in 1999, after all the legal and administrative issues were solved. Its mandate was expanded to include terrorism and child abuse. Also, Europol was given authority to cooperate with third states and international organizations.

The E.U. expansions of 2004 and 2007 influenced Europol's activity, too. On one hand, the E.U. was exposed to criminal networks, which used to operate outside its territories, and this posed new challenges. On the other hand, the expansion allowed Europol to gain valuable expertise by bringing in the law enforcement representatives who had fought against the crimes in their own regions.

Finally, in 2010, the European Council changed Europol's legal basis and transformed it into an E.U. agency. Europol moved its headquarters into a new building located in The Hague.

2. Mandate

Chapter 3 of the 1997 Amsterdam Convention stated Europol's six main tasks:

> (a) to collect, store, process, analyze and exchange information and intelligence; (b) to notify the Member States without delay of information concerning them and of any connections identified between criminal offences; (c) to aid investigations in the Member States, in particular by forwarding all relevant information to the national units; (d) to ask the

> competent authorities of the Member States concerned to initiate, conduct or coordinate investigations, and to suggest the setting up of joint investigation teams in specific cases; (e) to provide intelligence and analytical support to Member States in connection with major international events; and (f) to prepare threat assessments, strategic analyses and general situation reports relating to its objective, including organized crime threat assessments.[38]

The key word of those tasks was "information." This was reiterated in 2000 and 2003, when member states agreed that "the core business of Europol is receiving, exchanging, and analyzing information and intelligence."[39] These provisions allowed Europol to become the "European center for intelligence exchange, development, analysis, cooperation and support in relation to the fight against international organized crime."[40]

After the 9/11 terrorist attacks in the United States, the E.U. urged the member states to increase intelligence cooperation,[41] and Europol's mandate was expanded to include international terrorism. Its mandate then stated that Europol would have the authority to ask national police forces to launch investigations and cooperate with the FBI, Interpol, and other police organizations. Also, since criminal or terrorist investigations conducted in one member state proved, at times, to be related to others in other E.U. member states, Europol created vehicles to support criminal/terrorist investigations in E.U. member countries, namely the "Analytical Work Files" (AWF).[42] The AWFs are comprised of a collection of intelligence provided by the member states. The information is securely stored and securely disseminated to any member state for use in investigations.[43] Currently, Europol maintains two AWFs; one focused on Islamic terrorism and another on all other terrorist organizations in the E.U. Moreover, a Counter

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[38] Directorate-General for Internal Policies, Parliamentary Oversight of Security and Intelligence Agencies in the European Union, 44−45.

[39] Europol's history, https://www.europol.europa.eu/content/page/history-149.

[40] Ibid.

[41] Council of the European Union, Conclusions Adopted by the Council, *European Union Council's Documents (*Brussels, Justice and Home Affairs Council, 2001).

[42] Europol Information Management, Europol web-page, http://www.mvr.gov.mk/Uploads/Europol%20Products%20and%20Services-Booklet.pdf.

[43] Ibid.

Terrorist Task Force (CTTF) was established within Europol, in September 2001, after the terrorist attacks in the United States. Its mission was to collect and analyze relevant information regarding terrorist threats, and to produce a threat assessment for the E.U. decision-makers. Due to its limited resources, the CTTF did not produce the expected impact; therefore, in 2003, it was disbanded. It was only after the Madrid terrorist attacks in 2004, that the CTTF would be put in place again.[44]

Since March 2007, Europol's mandate has included the participation, in a support role, in the Joint Investigation Teams (JITs), which are temporarily-functioning teams of judicial and police representatives of at least two member states, responsible for conducting criminal investigations into specific matters.

Acknowledging that organized crime and terrorism are threats to its security, the E.U. changed Europol's legal basis in 2009, to make it a *de jure* E.U. agency.[45] These changes came into effect in 2010.

The agency's current mandate, as stated on its web-page, is:

> Europol supports the law enforcement activities of the Member States mainly against illicit drug trafficking, illicit immigration networks, terrorism, forgery of money (counterfeiting of the euro) and other means of payment, trafficking in human beings (including child pornography), illicit vehicle trafficking and money laundering. In addition, other main priorities for Europol include combating crimes against persons, financial crime and cybercrime.[46]

Also, Europol is responsible for producing two strategic intelligence products: the E.U. Terrorism Situation and Trend Report (TESAT) and the European Organized Crime Threat Assessment (OCTA). The TESAT "aims to provide law enforcement officials, policymakers and the general public with facts and figures regarding terrorism in the EU,

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[44] Directorate General for Research, International Terrorism and European Security, *Political Series (*Brussels, European Parliament, 2003), http://www.europarl.europa.eu/RegData/etudes/etudes/join/2003/326163/DG-4-JOIN_ET(2003)326163_EN.pdf.

[45] Since the Maastricht treaty to 2009, the Convention was amended by three Protocols focused on changing Europol's roles and responsibilities, yet none of the Protocols entered into force due to failure of ratification by all E.U. Member States.

[46] Europol's mandate, Europol webpage, https://www.europol.europa.eu/content/page/mandate-119.

while also seeking to identify trends in the development of this phenomenon."[47] The OCTA identifies and assesses emerging threats and describes the structure of organized crime groups, the way they operate, and the main types of crime affecting the European Union. The full versions of the reports are classified as "*restricted*," but there are unclassified versions available online.[48] Both reports are the basis for the E.U.'s organized crime and counterterrorism policies.

3. Personnel

Currently, Europol consists of approximately 700 personnel. Since analysis is the main activity, Europol employs more than 100 analysts from all member states covering organized crime and terrorism. Also, it has 130 liaison officers, who are seconded to Europol by E.U. and non-E.U. law enforcement organizations, representing more than thirty countries along with the remaining staff performing management, administrative, and technical support activities. The liaison officers participate in the development of the intelligence products, and also advise and liaise with their national authorities in establishing the Joint Investigation Teams (JITs).[49] The personnel employed by Europol come mainly from law enforcement agencies of the member states, and also from third party agencies. The analysts are permanent employees of Europol, and liaison officers are seconded by their national agencies, for limited tours.

4. Funding and Resources

Prior to 2007, Europol functioned as an independent international organization and received its funding solely from the member states. Following the Amsterdam meeting, the E.U. member states concluded that the Europol Convention had to be replaced by a European Council decision. This meant that Europol would become an E.U. agency and receive its funding from the community budget, rather than from member states. Also, this would allow for better control of Europol by the E.U.'s central

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[47] Europol's Terrorism Situation and Trend Report (TESAT) (Hague, European Police Office, 2012), Foreword, https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf.

[48] Europol's Organized Crime Threat Assessment (OCTA) (Hague, European Police Office, 2011), https://www.europol.europa.eu/sites/default/files/publications/octa_2011_1.pdf.

[49] Europol's web-page, https://www.europol.europa.eu/content/page/our-people-19.

institutions (the European Parliament). Therefore, in 2009, the E.U.'s Justice and Home Affairs Council adopted the decision to transform Europol into an E.U. agency, starting with January 1, 2010.[50] Its budget comes from the E.U. budget, although member states still contribute to it, but in a smaller percentage than initially.[51]

When it comes to resources, Europol does not have its own intelligence collection assets. It relies mainly on open-source intelligence and information provided by the member states, on a voluntary and "need to know" basis. It receives information from the law enforcement and intelligence agencies of the member states. They are the main providers as well as customers of Europol.

C. INTCEN

1. History

Initially established as the Joint Situation Center – SitCen, INTCEN is the main E.U. intelligence agency. Although, its origins can be traced back to the early cooperation of the Western European states, SitCen was officially created in 2000, by a unilateral decision of the High Representative, Javier Solana. This is the main reason why INTCEN does not have an E.U. mandate as a legal basis, or a publicly available mandate, as Europol does. Initially, it was comprised of seven analysts from France, Germany, Italy, the Netherlands, Spain, Sweden, and the United Kingdom, who were tasked to monitor open intelligence sources in order to inform the High Representative about situations abroad from areas in which he was interested.

In 2001, a British diplomat, William Shapcott, became SitCen's first director who played an important role in shaping the organization's future. The following year, at the initiative of some E.U. members, SitCen became the place where states would exchange sensitive information on foreign threats and developments. Initially, the information sharing took place only between the seven states represented in the organization, but

[50] Europol: new structure and mandate, http://europa.eu/legislation_summaries/other/l33261_en.htm.

[51] Initially, the member states provided the operational budget and personnel salaries. Starting 2011, when Europol became an EU agency, the operational budget and the analysts are paid from the EU budget. Member states do not contribute to the operational budget anymore, but provide the salaries for the seconded liaison officers.

gradually expanded. Information exchanged related mainly to the E.U.'s external terrorist threats. Starting with 2004, Javier Solana expanded SitCen's focus to internal terrorist threats as well. As a result, SitCen became the E.U.'s main forum for terrorism-related information exchange, looking at both internal and external threats.

Following the reorganization of the E.U., and the creation of the European External Action Service (EEAS – the E.U.'s Ministry of Foreign Affairs) in 2010, SitCen became part of the EEAS, under the direct authority of the E.U.'s High Representative for Foreign Affairs and Security Policy (HR). In 2011, SitCen was renamed "European Union's Intelligence Analysis Center" (INTCEN). Also, in 2012 INTCEN's structure changed and some of its entities moved to other services within the EEAS.

2. Mandate

Despite the fact that its mandate is not publicly available, INTCEN's role and mission can be deduced from declarations of the E.U.'s officials and from reports of the European institutions and Parliament.

Initially, INTCEN's mandate was to provide the E.U. with a crisis response center. In the first years, it was more "a calm newsroom with television-sets running CNN and computers linked to major news agencies,"[52] rather than an effective crisis center. All information was available on open-sources and the focus was on external threats. The terrorist attacks from Spain and the U.K. urged the member states to call for increased sharing of sensitive intelligence, especially in the field of counterterrorism. Therefore, in 2006, INTCEN's mandate expanded to cover both internal and external threats, and to allow for the collection, processing, analysis, and sharing of classified information. Expansions of the E.U., in 2004 and 2007, brought new members into INTCEN and increased its role in the E.U.'s security architecture. In 2010, INTCEN became part of the EEAS (not yet an official EU body), which allowed for better funding and legal status.

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[52] Jelle van Buuren, *Secret Truth*, The EU Joint Situation Centre, *Eurowatch (*Amsterdam, Eurowatch, 2009), 10, http://www.statewatch.org/news/2009/aug/SitCen2009.pdf.

Referring to the current mandate, the E.U. High Representative for Foreign Affairs and Security Policy, Catherine Ashton, described INTCEN as the E.U.'s "single crisis response center."[53] Also, the Curriculum Vitae of the current INTCEN Director, Iikka Salmi, states:

> EU INTCEN's mission is to provide intelligence analyses, early warning and situational awareness to the High Representative Catherine Ashton and to the European External Action Service, to the various EU decision making bodies in the fields of the Common Security and Foreign Policy and the Common Security and Defense Policy and Counter-Terrorism, as well as to the EU Member States. EU INTCEN does this by monitoring and assessing international events 24 hours a day, 7 days a week, focusing particularly on sensitive geographical areas, terrorism and the proliferation of weapons of mass destruction and other global threats.[54]

As well, the Cross-border Research Association published a report on INTCEN which identified its main missions:

> (1) monitors 24/7 world events and produces daily press summaries (2) serves as the EU main point of contact in crises management (3) prepares reports/analyses,[55] (4) advises the EU decision makers on new CT policies (5) provides active communication and coordination with the EU member states national security (intelligence) agencies, and (6) serves as the EU focal point for the EU CSDP operations abroad, which includes the capability to initiate urgent EU responses to crises, within those missions (early warning system).[56]

In addition, this report points out that INTCEN operates the *Correspondance Européenne* (COREU) information system (a classified network, which links the European Council, member states, and European Commission, in the field of foreign policy) and the New Communications Network (designed for the E.U. delegations

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[53] Directorate-General for Internal Policies, *Parliamentary Oversight of the Security and Intelligence Agencies*, 55.

[54] Iika Salmi, INTCEN's Director, C.V., http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede041011cvsalmi_/sede041011cvsalmi_en.pdf.

[55] Cross-border Research Association (CBRA), EU Situation Centre, *Focus* (Laussane, 2011), http://www.focusproject.eu/documents/14976/0/CBRA+analysis+of+EU+Situation+Centre?version=1.0. INTCEN reports and analyses are mainly designed for the EU Political and Security Committee (PSC), but also for other working groups like, Terrorism Working Group (TWG), CivCom, Military Committee, and Politico-Military Group.

[56] Ibid.

abroad). Also, INTCEN personnel support and accompany high E.U. officials while travelling, and serves as a coordination platform between member states and third parties during crises which involve the citizens of two or more E.U. countries.

The 2011, a E.U. Parliamentary report regarding the oversight of the security and intelligence agencies noted that "INTCEN's main role will continue to be that of serving as the E.U.'s information provider in crisis management situations, especially with regard to conflicts and the political dimension of natural disasters. INTCEN provides situation assessments during five phases of activity where such info is needed, which are: early warning, policy development, decision support, conduct of operations and mission evaluation."[57] Thus, INTCEN can also provide on-scene evaluation, because its members can be deployed to assist E.U. representatives in locations where crises emerge. During the Haiti and Libya crises, INTCEN had representatives on the ground to assess the situation and provide technical support to E.U. representatives.

However, INTCEN has no formal mandate to gather intelligence as traditionally understood. It relies mainly on open-source intelligence and information provided by the member states, on a voluntary and "need to know" basis.

3. Personnel

Prior to 2012, INTCEN consisted of three main units:

- The Civilian Intelligence Cell (CIC), which employed civilian analysts working on political and terrorism assessments;
- The General Operation Unit (GOU), which provided continuous operational support and non-intelligence research and analysis;
- The Communications Unit (CU), which ran the E.U.'s Council communication center.[58]

On March 16, 2012, the agency restructured to improve its effectiveness and facilitate its focus on analysis. Currently, INTCEN has two main divisions:

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[57] Directorate-General for Internal Policies, *Parliamentary Oversight of the Security and Intelligence Agencies*, 55.

[58] European External Action Service (EEAS) organizational chart, data retrieved October 25, 2012, http://www.eeas.europa.eu/background/docs/organisation_en.pdf.

- The Analysis Division (strategic analysis based on input from the member states);
- The General and External Relations Division (legal and administrative issues, and open source analysis).[59]

Consequently, some of INTCEN's previous functions were transferred to other European External Action Service (EEAS) bodies. The consular affairs and watch-keeping area are now part of the Crisis Response and Operational Coordination Managing Directorate, and the Communication Center moved to the Managing Directorate for Resources (IT department).[60] As a result, INTCEN main tasks were reduced to analysis and advice only.

Currently, INTCEN has its headquarters in Brussels, located next to the EEAS building. It employs around seventy personnel[61] that include twenty-four civilian and military background analysts. The analysts are seconded to INTCEN by their national intelligence services. Also, INTCEN employs E.U. officials, temporary agents, and national experts from the security and intelligence services of the member states.

4. Funding and Resources

Initially, INTCEN received its funding from the member countries represented in the organization. Starting with 2010, INTCEN has not had a separate budget, but is included in the one of the EEAS. Since the temporary agents and national experts are seconded by the member states, their salaries are the responsibility of their respective countries.

The INTCEN has access to E.U. members' satellites, such as France's Helios and Pleiades, Germany's SAR-Lupe, Italy's Cosmo-Sky Med, and U.S.-owned commercial satellites. The organization also receives diplomatic reports from the E.U.'s 135 official delegations around the world, and classified intelligence from the E.U.'s monitoring missions. It is worth noting that INTCEN does not have access to personal data, as

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[59] Parliamentary question, *Answer given by High Representative/Vice-President Ashton on behalf of the Commission* (Brussels, European Parliament, July 25, 2012), http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012–006017&language=EN.

[60] Ibid.

[61] Op. cit.

Europol does. It receives finished products from the member states' intelligence agencies, rather than raw intelligence.

D. CONCLUSION

This chapter provided a review of the E.U.'s main intelligence agencies, Europol and INTCEN. It looked at their historical evolution, mandates, personnel, and resources in order to identify whether their organization allows them to effectively fulfill their missions.

From the preceding discussion, it can be argued that while Europol and INTCEN provided the member states with an institutional framework for intelligence cooperation and strengthened the E.U.'s internal and external security, they demonstrated certain infirmities, some by design and some by practice, which limit their effectiveness. For one thing, given the flawed E.U. legal framework in this area and their dependence on national agencies, Europol and INTCEN fall short of playing a coordinating role in the security area. They are more forums for cooperation, rather than effective and powerful E.U. agencies. Moreover, given the way they are funded, manned, and resourced, it is hard to determine to whom and to what degree they are democratically responsible.

As both organizations were designed to be key players in the process of elaborating the E.U.s security policies, these infirmities have deep implications in overall E.U. effectiveness. Therefore, in the following chapters the defects will be addressed in detail.

III. A LEGAL FRAMEWORK IN SEARCH FOR "TEETH"

A. INTRODUCTION

Although intended to foster cooperation among member states in the fields of law enforcement and intelligence, Europol and INTCEN fall short of being effective E.U. agencies due to the flaws in designing and implementing the European legal framework. The political, economic, and cultural diversity of the E.U. is reflected in the way the member states decide to cooperate, or not, under the umbrella of these two agencies. In the absence of a clear and unified European vision with regard to intelligence cooperation, countries apply existing legal provisions according to their constitutions and interests, allowing for different interpretations of the same E.U. law among member states. Europol and INTCEN's mandates embed and preserve these differences, as they grant no real powers to the agencies over the member states. The E.U. intelligence agencies are entirely dependent on material provided by the national-level bodies and their willingness to cooperate within the E.U. institutions. Furthermore, both agencies have responsibilities to counter the terrorist threat to the union, which, in the absence of clear coordinating instructions, can cause conflicting situations. Finally, the agencies' mandates reflect the lack of uniformity across the E.U. in addressing intelligence and law enforcement cooperation. This chapter examines the potential problems arising from these issues, and the implications they have on Europol and INTCEN's effectiveness.

B. POWERS AND PROBLEMS

Europol and INTCEN are intelligence agencies, but with serious limitations built into their mandates, that is, the legal basis for their work. In a study on the political oversight of the intelligence agencies, published by the E.U. Directorate-General for Internal Policies, the authors argue that Europol and INTCEN lack the "special powers" granted to national-level intelligence agencies—and closely guarded by national governments. Specifically, the E.U. agencies do not have the ability to intercept communications, conduct covert surveillance, or use secret informants. Therefore, they

are not intelligence agencies, as conceptualized at the national level.62 Müller-Wille assesses that

> in comparison to their national equivalents, EU agencies have 'clipped wings.' They do not have their own operational responsibilities or powers, nor do they collect any intelligence themselves. EU intelligence officers do not have any arms. They have no power to hold and interrogate anybody, tap phones and eavesdrop, or conduct clandestine operations. In principle, EU intelligence agencies are pure 'desk-agencies' that work with pen and paper.[63]

During the adoption of the Europol Convention in 1991, member states agreed to grant Europol powers to operate across their territories.[64] More than twenty years after this initial engagement of the member states, Europol still does not have the authority to operate freely across E.U. territory. It acts only upon invitation from the member states, when an issue involves at least two member countries; Europol cannot pursue independent investigations. The Director of the Europol, Rob Wainwright, expresses these limitations:

> as Europol officers have no direct powers of arrest, we support law enforcement colleagues by gathering, analyzing and disseminating information and coordinating operations. Our partners use the input to prevent, detect and investigate offences, and to track down and prosecute those who commit them. Europol experts and analysts take part in Joint Investigation Teams (JITs) which help solve criminal cases on the spot in EU countries.[65]

Article 88 of the Lisbon Treaty also emphasizes that Europol has only a support role during investigations conducted by member states' agencies. The article states that "any operational action by Europol must be carried out in liaison and in agreement with

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62 Directorate-General for Internal Policies, *Parliamentary Oversight of the Security and Intelligence Agencies in the European Union*, 2011, http://www.europarl.europa.eu/RegData/etudes/etudes/libe/2011/453207/IPOL-LIBE_ET(2011)453207(PAR00)_EN.pdf.

63 Björn Müller-Wille, Improving the Democratic Accountability of the EU intelligence, Intelligence and National Security, 21:01, 2006, 110, http://dx.doi.org/10.1080/02684520600568394.

64 Cyrille Fijnaut, The Internationalization of Police Cooperation in Western Europe, 14 (Cyrille Fijnaut ed., 1993).

65 Director of Europol, Rob Wainwright, https://www.europol.europa.eu/content/page/introduction-143.

the authorities of the member state or states, whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities."[66] The key words here are "liaison" and "in agreement with," as they severely restrict Europol's power to operate across E.U. territory. These limitations limit Europol to a simple "technical support" role provided to national level institutions.

William Shapcott, the former INTCEN Director, states that INTCEN also has no operational role. Unlike Europol, it was not intended to be given such a role, and is less likely to receive it in the near future.[67] Furthermore, while INTCEN "enjoys political endorsement from the [European] Council"[68] because the majority of E.U. countries have representatives in the organization, it lacks a legal basis, "as the Council did not formally adopt a legal act for its establishment as an E.U. agency, nor is there a publicly available document with a clearly stated mandate or a similar constituting document."[69] This curious status is noted in the 2011 E.U. Parliament's report regarding the oversight of the security and intelligence agencies, which states that "INTCEN is the least well known and least understood [E.U. agency]," and its "founding document and mandate has not been made public."[70] Despite the secrecy, INTCEN can be described as a "fusion" rather than a distinct intelligence agency. Indeed, INTCEN's former director, William Shapcott, describes the organization as the place where "open source, military, diplomatic, and civilian intelligence is compiled to produce situation assessments, especially in the area of counter-terrorism."[71] The INTCEN analysts fuse intelligence from participating member states to create a more comprehensive threat picture at the E.U. level. They integrate new data into existing information, evaluate and analyze it to determine its value and trends, and disseminate their results to national intelligence agencies, which are the only institutions entitled to take action. The INTCEN does not collect information and

66 Directorate-General for Internal Policies, *Parliamentary Oversight of the Security and Intelligence Agencies*, 46.

67 Ibid., 56.

68 Op.cit., 12.

69 Jelle van Buuren, *Secret Truth*, The EU Joint Situation Centre, *Eurowatch*, Amsterdam, 2009, 12.

70 *Parliamentary Oversight of the Security and Intelligence Agencies*, 57.

71 Ibid., 58.

cannot conduct investigations, either independently or in cooperation with national agencies.

The main distinction between the E.U. agencies and national level bodies is that the first do not produce "actionable intelligence," which usually triggers an investigation. Rather, Europol and INTCEN provide strategic assessments of the threat picture and identify general trends. The E.U. agencies have no powers to task national level institutions to collect information or to launch an investigation based on their products. They push the information down to member states' institutions, but the latter have total freedom to decide what to do about it. The Europol and INTCEN have no powers to enforce any of their findings in member states. Additionally, Europol and INTCEN officers cannot take part in any coercive measures, such as arrests or investigations. For example, when Europol officers are part of a Joint Investigation Team (JIT), they are there only to assist and provide support to national agencies. Also, Europol representatives fall under the provisions of the national laws of the state they operate in. They do not have the freedom of movement of an FBI agent for example, who investigates a federal offence in a U.S. state. National law enforcement organizations are in charge and Europol officers can only be deployed if a member state specifically requests them. Similarly, INTCEN's officers deployed with the E.U.'s High Representative for Foreign Affairs and Security cannot collect information or conduct independent investigations. Their role is to advise the E.U. official and provide technical support, such as secure communications. These limitations deter the agencies' effectiveness and the implementation of a concerted approach to counter the threats to E.U. security.

C. DEPENDENCY ON NATIONAL AGENCIES

Europol and INTCEN provide the platforms for intelligence cooperation in the E.U., but they have no means to enforce it. The E.U. agencies rely entirely on national agencies' willingness to share information. In the absence of legal provisions and incentives to foster cooperation, Europol and INTCEN have no means to require the member states to cooperate. This is done strictly on a voluntary basis and based on the

"need to know" requirement, determined by the member states, rather than the E.U. institutions which allows the member states to decide when and, more importantly, with whom to cooperate. For example, the initial seven members of INTCEN (France, Germany, Italy, the Netherlands, Spain, Sweden, and United Kingdom) trusted each other enough to allow the exchange of intelligence, which allowed them to start cooperating.[72] The key issue is trust, because intelligence cooperation involves secrets. It is likely that the initial founders of INTCEN will cooperate more with each other, while the newer members have to work to reach the required trust level. This is also captured in Europol's mandate, which contains detailed restrictions on intelligence cooperation. Although, the following chapter addresses these restrictions in detail, it is worth noting that the E.U.'s legal framework grants member states absolute powers when it comes to intelligence sharing.

Furthermore, national agencies send "finished" products to E.U. agencies, rather than raw information, which gives the European bodies little room for their analysis. This preserves the national agencies' powers, since they do not want to disclose their sources or methods of analysis. Instead, Europol and INTCEN "compile" the national products into comprehensive reports, and then distribute them to E.U. decision makers and all member states. The E.U. agencies do not have their own collection assets; they can directly collect information from open sources only, including media and other publicly available data (Open Source Intelligence—OSINT). They can request information from the member states, but it is up to the national level authorities to decide to provide it or not. Although Europol and INTCEN have access to classified information, the fact that they cannot collect it themselves, nor direct the member states to provide it, seriously limits their effectiveness.

Moreover, member states second officers to Europol and INTCEN. These officers are paid by their home states and represent the interests of their respective countries within the E.U. agencies, rather than representing a common European Union interest. Accordingly, they are accountable to their national laws. Given the variations in the

72 Jelle van Buuren, *Secret Truth*, The EU Joint Situation Centre, 11.

national legal systems and member states' agendas, it is likely that effective cooperation cannot be achieved. The existing relations occur due to interpersonal relations between national representatives, rather than because of an institutional framework at the European level.[73] In addition, the national representatives with the E.U. agencies may present loyalty issues, especially in a situation when there is a conflict of interest between a member state and the E.U.

In case of an intelligence failure, national agencies will be held accountable by their citizens and decision makers. No one will blame Europol or INTCEN in a situation where citizens' lives might be lost due to an intelligence failure. Therefore, it is less likely that the national agencies will surrender any of their powers to E.U. agencies. The focus will continue to be on national bodies providing information to the E.U. agencies, and the latter acting as supporting elements, upon the request of the member states.

D. OVERLAPPING RESPONSIBILITIES

With the expansion of Europol's mandate to include terrorism, it seems that Europol and INTCEN have overlapping responsibilities in this field. Besides the operational issues this overlap causes, the problem of mandates is likely to persist, since the E.U. is very slow to change its legal framework. For example, in 2010 when Europol became a fully-fledged E.U. agency, the European Commission stated that it would revisit the agency's mandate in 2013.[74] It is likely that any 2013 revision will not produce major changes in the agency's mandate because of the complicated E.U. political affairs. In the current E.U. organization, Europol falls under the Council of Ministers for Justice and Home Affairs (the equivalent of Minster of the Interior, at the national level). Consequently, its focus is on the E.U.'s internal threats. The INTCEN is part of the European External Action Service (the E.U.'s Foreign Affairs Minister), and focuses on

73 Despite the differences between member states, usually when working in a multinational environment, the national representatives manage to put aside the "big politics' issues" and collaborate effectively. This interaction is often better than the one done through the official channels. For example, despite the U.K.'s decision to deny Romanian citizens free access on its labor market, the Metropolitan police, Romanian law enforcement, and Europol officers conducted a successful operation to combat an organized crime group, which operated in the U.K. and Romania. https://www.europol.europa.eu/content/page/operational-successes-127.

74 Parliamentary Oversight of the Intelligence and Security Agencies, 47.

external threats to E.U. security. In the area of counterterrorism, however, INTCEN has the responsibility to assess both external and internal terrorist threats. At the same time, Europol, as stated on its official website, is the E.U.'s agency designed to support member states in their fight against international crime and terrorism.[75] Accordingly, Europol is in charge of producing the annual Terrorism Situation and Trend Report (TESAT), which represents the E.U.'s basis for developing counterterrorism policies. The INTCEN cooperates with Europol in elaborating this report,[76] but it also produces additional reports. While, Europol is supposed to deliver support for operational concerns and INTCEN for strategic levels, in reality, the relationship is never that clear, and the E.U. politicians' calls for deepened cooperation do not meet the same enthusiasm at the agencies' levels.[77] With neither organization "officially in charge" of counterterrorism policies, neither can coordinate nor enforce measures in this field. As stated before, the gap is filled by national level agencies, which are very difficult to coordinate, since there are twenty-nine member states, each of them having more than one national agency in charge of counterterrorism.

The operational effect of the overlapping responsibilities is that both organizations report on the same issues. The INTCEN cooperates with Europol on TESAT, but releases a large number of reports on terrorism which are not the result of such cooperation. In turn, Europol maintains the counterterrorism cells in its task organization, and produces its own reports on the same threats. Technically, Europol is the organization in charge of producing the annual report about the terrorist threat to the union. At the same time, INTCEN is responsible for assessing the external and internal terrorist threats to the E.U. The issue is that there is little cooperation between the two agencies, due to bureaucratic reasons which will be further addressed in the following chapter. But, it is important to note that the two agencies' reports on organized crime and

75 Europol, Official web-page, Mission, Vision, Values, https://www.europol.europa.eu/content/page/mission-vision-values-145.

76 Europol's TESAT, 2012, https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf, 5.

77 Björn Fägersten, Bureaucratic Resistance to International Intelligence Cooperation – The Case of Europol, *Intelligence and National Security*, 25:4, 2010, 500–520, http://dx.doi.org/10.1080/02684527.2010.537028.

terrorism reflect these issues. For example, the reports have been criticized for being highly bureaucratized and failing to provide a clear and updated picture of the organized crime and terrorism in the E.U. A 2011 study on organized crime of the E.U.'s Directorate-General for Internal Policies emphasized several points regarding OCTA and TESAT: the perpetuation of the "usual suspects" misconception (incrimination of certain ethnic groups or/and regions of the E.U., rather than looking inside the phenomena), the lack of attention dedicated to other types of organized crime (environmental, financial, and other low profile crimes) and terrorism (homegrown terrorism), and the lack of outside police and intelligence circles expertise in the reports. The evaluation concluded that the reports are merely a "copy-paste" result of the previous versions, with no real time and updated analysis of the threats in the E.U.[78]

These issues, which identified that OCTA and TESAT do not reflect the dynamic changes in the organized crime and terrorism picture. They focus on traditional, "mafia-type" groups (assuming that criminal and terrorist organizations exists, they have a clear and stable structure, and permanent internal and external links), completely ignoring other low-profile criminal and terrorist networks and their ever-changing nature. One can argue that the emphasis Europol and INTCEN have put on Islamic terrorist groups, such as Al-Qaeda, facilitated the recent home-grown terrorist attacks in Norway (2011) and France (2012), which led to the loss of life more than eighty E.U. citizens. These attacks showed that home-grown terrorism cannot be ignored by E.U. intelligence agencies.

E. DIVERSITY VERSUS A UNIFIED APPROACH

Europol and INTCEN's mandates reflect the complicated way the legal system in the EU works. When it comes to compliance with E.U. laws, Gerda Faulkner, an Austrian scholar identifies three worlds of compliance: "a world of law observance, a world of domestic politics, and a world of neglect."[79] For example, while calling for better E.U.

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[78] European Union's Directorate-General for Internal Policies, International Organized Crime in the European Union, 2011, http://www.europarl.europa.eu/RegData/etudes/note/libe/2011/462420/IPOL-LIBE_NT(2011)462420(PAR00)_EN.pdf.

[79] Gerda Falkner, Oliver Treib, Miriam Hartlapp, and Simone Leiber, Chapter 14: Why do Member States Fail to Comply? *Complying with Europe? The Impact of EU Minimum Harmonization and Soft Law in the Member States (*Cambridge: Cambridge University Press, 2005).

integration and unified external representation, France and Germany maintain a high level of discrete national foreign policy which adds to their prestige and sovereignty. The U.K., while part of the E.U., seems to be the uncomfortable partner, because it kept its own currency, is not part of the Schengen area, and interprets any E.U. directive so that it fits its interests.

Given these differences, the process of making and implementing policies designed by E.U. institutions is often problematic, and there are instances of "failed and outdated strategies: slow, imperfect, or even failed implementation, and unforeseen results."[80] A very good example of a slow and outdated strategy implementation is the ratifying process of the Europol Convention. Although agreed upon in 1992, and later amended by three protocols, the Europol Convention failed to be put into force for several years due to the slow ratification processes in and among member states. By the time it was enforced, it was already outdated and ineffective. Acknowledging these issues, in 2009 the European Council replaced the Europol Convention with a Council Decision, which speeds up the approval process, since a Decision does not go through the same lengthy approval and ratification process as a Convention, but enters into force immediately and can be more quickly amended. In the preamble of the Decision, at the second point, the European Council admits that "the Europol Convention has been the subject of a number of amendments enshrined in three protocols which have entered into force after a lengthy process of ratification. Consequently, replacing the Convention by a Decision will ease further amendments as necessary."[81]

Effective intelligence cooperation requires a clear and standardized legal agenda which should enforce common procedures across the E.U. Instead, the current situation preserves the differences in each member state's approach to intelligence and law enforcement. Article 67 of the Treaty on Functioning of the European Union, states that "the Union shall constitute an area of freedom, security, and justice," which certainly implies a territory governed by the same laws, rules, procedures, and protections. At the same time, the Treaty on Functioning of the European Union (TFEU) guarantees "respect

80 Eleanor E. Zeff and Ellen B. Pirro, *The European Union and the Member States*, 4.

81 European Council's Decision establishing the European Police Office (Europol) (Brussels: European Parliament, 2009), https://www.europol.europa.eu/sites/default/files/council_decision.pdf.

for fundamental rights and the different legal systems and traditions of the Member States."[82] Across the E.U., there are major differences in the way member states define and punish criminal offences.

The definition of "terrorism" is a good example. Following the 9/11 attacks, the European Council acknowledged the need to establish a common definition of terrorism, in order to succeed with the implementation of the European Plan of Action (Nothing can happen, legally speaking, until an act or omission clearly constitutes a crime, which makes the definitional issue a basic threshold). The extraordinary meeting of the European Council of September 21, 2001 undertook to provide a uniform legal framework, and the subsequent Framework Decision presented a common definition of terrorism, along with rules for legal cooperation between the member states for the prosecution of terrorist acts. According to Article 1 of the Framework, "each Member State shall take the necessary measures to ensure that the following offences, [to include terrorism] are defined according to its national law […]."[83] The key phrase here is "defined according to Member States' national laws." As a result, terrorism is defined and prosecuted differently in each member state's law.

A fair amount of overlap in the basic definition of terrorism may be expected. However, Lord Carlile of Berriew, comparing the definition of terrorism as it is captured in the legislation of different countries throughout the world, points out that Austria, Germany, and Hungary, have no separate definition of terrorism in their national laws; they treat terrorism-related offences as common criminal acts (murder, arson,). In contrast, France, Latvia, Lithuania, and Romania have very broad definitions, which allow for criminal activities to fall under terrorism-related offenses. Finally, the Czech Republic, Croatia, Estonia, and Poland have very narrow definitions of terrorism, which

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[82] Treaty on Functioning of the European Union (TFEU), Article 67.

[83] European Council Framework Decision, Articles 1, 2, 3, and 4, found in Eugenia Dumitriu, The E.U.'s Definition of Terrorism: The Council framework Decision on Combating Terrorism, German Law Journal, 2004, http://www.germanlawjournal.com/pdfs/Vol05No05/PDF_Vol_05_No_05_585–602_special_issue_Dumitriu.pdf.

focus more on offenses against the constitutional order of the respective state.[84] Even in the countries that punish terrorism separately, the definition of terrorism is not uniform due to different national settings and the fact that not all European countries have ratified all the international conventions on terrorism.

In this context, a common European plan to counter terrorism is very difficult to develop. Given the differences in the way member countries define and prosecute terrorism related offenses, effective cooperation in the field of counter terrorism is difficult to achieve. Moreover, the divergent definitions of terrorism beget varying procedural approaches to this issue. In the countries that treat terrorism as a common felony, counterterrorism usually falls to law enforcement, whereas in the states where terrorism is defined as a separate offense, it is usually the job of intelligence agencies. This discrepancy causes additional challenges since different organizational cultures must work together within and between E.U. institutions (law enforcement versus intelligence agencies).[85]

Europol is in charge of handling and processing personal data, while INTCEN works with classified information. Because exchanging intelligence involves sensitive information, there is a need for common procedures to protect against mishandling, abuse, and unintended disclosure—a universal minimum standard of data protection across the E.U. The existing E.U. provisions are loose and this has led the member states to ask for separate personal data protection, for example, when the Schengen agreement to establish a European area of free circulation among the signatory countries was signed. As a result, member states negotiated additional data protection provisions, specific only to the Schengen zone. To avoid having different provisions for every new agreement member states sign, the E.U. needs to develop and implement a minimum standard of

[84] Lord Carlile of Berriew Q.C., *The Definition of Terrorism* (London: Crown Copyright, 2007), 9, http://www.official-documents.gov.uk/document/cm70/7052/7052.pdf. Lord Carlile is an UK independent reviewer of the terrorism legislation. The report was presented in front of the British Parliament, by the Secretary of State for the Home Department, in March 2007.

[85] These challenges will be addressed in detail in the following chapter.

data protection, while still allowing the member states some freedom for extraordinary circumstances.[86]

F. CONCLUSION

This chapter reviewed the reasons for Europol and INTCEN's lack of effectiveness, looking at the existing legal framework. It found that Europol and INTCEN are supranational intelligence agencies with particular limitations. Their mandates grant them no operational powers. Since they do not collect or produce actionable intelligence, as do their national level counterparts, their role is limited to providing strategic assessments and information on general trends. In order to perform their assigned tasks, both agencies rely entirely on member states' support and willingness to cooperate. Europol and INTCEN cannot task national agencies to collect or provide intelligence. They receive finished products from the national bodies, rather than raw intelligence. This leaves the E.U. agencies with little room for independent analysis. They disseminate the reports to member states, but cannot require them to launch an investigation. It is up to national agencies to decide what they do with the E.U.'s agencies reports. Europol and INTCEN are what Müller-Wille calls "pure desk offices." This limitation is their biggest weakness, and can be addressed through changes in the existing legal framework which should allow the E.U. agencies to determine a "need to know" basis for intelligence cooperation.

Furthermore, Europol and INTCEN have overlapping responsibilities in counterterrorism. The immediate operational effect is that they report on the same field. While this is not necessarily a bad thing, the lack of an E.U. coordinating body determines a situation in which Europol is in charge of producing the reports and INTCEN is responsible for providing the assessments. This problem can be fixed by assigning INTCEN with assessment and reporting of terrorism, while Europol can focus on organized crime. Besides the operational issues this overlap causes, the problem of

86 Jacqueline Klosek, The Development of International Police Cooperation within the EU and Between the EU and Third Party States: A Discussion of the Legal Bases of Such Cooperation and the Problems and Promises Resulting Thereof, *American University International Law Review*, 14:1 (Washington, 1999), 599−656.

mandates is likely to persist, since the E.U. is very slow in changing its legal framework. The current situation preserves the diversity of approaches to intelligence cooperation, rather than providing a unified E.U. vision. This is likely to continue, unless the E.U. develops legal incentives to increase cooperation among member states. At the same time, the E.U. has to streamline the implementation of directives and policies, by providing member states with specific guidance during the process. Additionally, the criminal procedures need to be harmonized across the E.U., to allow for effective cooperation.

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IV. INTELLIGENCE COOPERATION: A GLASS HALF−FULL

> Although the literature on international intelligence cooperation is sparse and largely historical there is hardly any doubt that all intelligence services perform some kind of liaison function. None has all the resources—financial, human, and technical—to be entirely self-sufficient in all areas. Furthermore, the transnational nature of security threats makes isolation an impossible option.[87]
>
> Stéphane Lefebvre

A. INTRODUCTION

The dynamics and diversity of the new security environment necessitate increased consideration for intelligence and intelligence cooperation. In order to counter international and homegrown terrorism proliferation, transnational organized crime, refugees, illegal immigration, and even humanitarian disasters, the E.U. needs effective and accurate intelligence. This can be obtained through a multilateral and multidisciplinary approach and increased internal cooperation. Moreover, political events in the Middle East and North Africa, which triggered a large wave of migration and refugees into Europe, showed that events taking place outside of E.U. borders can have a major impact on Europe's security and economic development. Therefore, the E.U. member states need to cooperate with each other, as well as with non-E.U. members and other international organizations. Given its architecture and characteristics, the E.U. offers the perfect platform for intelligence cooperation. Free movement within E.U. borders, adoption of a single currency, and opening of a single market for goods and capital within the union resulted in a decrease in border control and increase of the need to cooperate in the field of law enforcement and intelligence. Also, the adoption of the E.U. Common Security and Defense Policy in 2003 urged the member states to integrate their security capabilities, including intelligence agencies. But, the way the European platform is actually used does not match E.U. ambitions. The lack of a defined common E.U. interest, which allows for competing national agendas, combined with different

87 Stéphane Lefebvre, The Difficulties and Dilemmas of International Intelligence Cooperation, International Journal of Intelligence and Counterintelligence, 4 (Summer 2010), 536.

perceptions regarding the level and nature of threats, deter intelligence cooperation among the E.U. member states. Furthermore, trust, mutual benefits, enablers, and bureaucracy are all factors which affect the interaction between intelligence agencies. This chapter will address these issues and identify the current status of European intelligence cooperation.

B. CHALLENGES FOR INTELLIGENCE COOPERATION IN THE E.U.

Effective intelligence cooperation is difficult to achieve due to a host of challenges. Even at the national level, where agencies work for a single state's interest, intelligence cooperation is a complicated process.[88] At the E.U. level, there is further complication as the intelligence agencies have to represent the interests of twenty-nine different member countries. The lack of common interest, coordination, capabilities, and trust, along with bureaucratic resistance and improper balance between costs and benefits for member states are factors that prevent effective intelligence cooperation.

1. Lack of Common Interest

Lefebvre describes common interest as "a common enemy and great gains of sharing,"[89] and asserts that, if these are missing, the states will normally refrain from cooperating. Also, James Walsh argues that states will cooperate in the field of intelligence when they have a common interest and possible gains.[90] Although, some of the E.U.'s twenty-nine member states surrendered parts of their sovereignty to the E.U., by adopting the Euro currency, security, intelligence still remains a national responsibility. Therefore, it is hard for the E.U. to define and achieve and maintain a common interest across its territory.

In this context, although the E.U. has a Foreign Policy and Security representative, who is supposed to represent the organization's interests abroad, each

88 If one looks for example, at the intelligence cooperation in the UK will find that MI-5 and MI-6 have overlapping responsibilities, especially in the field of counter-terrorism, which makes them compete for resources, attention, and power.

89 Stephane Lefebvre, The Difficulties and Dilemmas of International Intelligence Cooperation, 528.

90 James I. Walsh, *The International Politics of Intelligence Sharing (*New York: Columbia University Press, 2010), 8.

member state preserves the right to pursue its own foreign policy goals. The current E.U. picture looks more like a conglomerate of competing interests, rather than a common one. Also, since the perceived level of threat is different among the member states, there are difficulties in establishing a common sense of urgency when it comes to security. For example, the terrorist threat is perceived higher in Denmark (55%), UK (47%), and Germany (34%), than it is in Romania (14%), Bulgaria (4%), or Hungary (5%),[91] countries which have economic and social issues of concern. As a result, the member states' priorities differ. These competing agendas did not prevent the most recent terrorist attack in Bulgaria (July 18, 2012). It showed that no E.U. member is safe from international terrorism, and can become directly or indirectly a target. Also, it highlighted the need for closer intelligence cooperation between E.U. members.

Given these factors, the current emphasis remains on member states' sovereignty and freedom to pursue their own national interests, rather than a common E.U. goal. This emphasis often allows for cooperation to happen outside the E.U. framework. The existing bilateral or multilateral agreements between member states are the main drivers of intelligence cooperation. They existed before the creation of the E.U. and are likely to remain in place. Given the complex geography of the E.U., the regional and sub-regional cooperation initiatives are better suited to solving intelligence cooperation needs since they address concrete, similar, and immediate regional threats which can be defined as regional common interests. It is obvious that states that share borders will have more reasons to cooperate with each other for mutual gains rather than cooperating with states from a different region of the union. Historical ties, similar cultures, and diplomatic relations are just few of the elements that will favor common interest and result in an increase in regional intelligence cooperation. While this cooperation is very valuable for particular member states, it falls outside the E.U. institutions. The resulting products of such cooperation might or might not be shared with all the E.U. members which, in the case of "no sharing," will deprive the union of important information and may distort an overall E.U. security picture.

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[91] The percentages represent how the terrorist threat is perceived by the population in each member state. Data retrieved from the 2011 Euro barometer, 12, http://ec.europa.eu/public_opinion/archives/ebs/ebs_371_en.pdf.

2. Lack of an E.U. Intelligence Coordinating Body

Intelligence cooperation, especially when it involves the exchange of sensitive information, requires an agreement between participating actors. Therefore, the fear of breaking that agreement or not handling the information properly is always present. A way to mitigate these fears is to have an organization or a country in charge of managing the flow of information. This requires that authority to enforce the agreement and penalize the ones who violate it. In this case, the organization or country responsible can be held accountable for the outcomes of the cooperation progress.[92] In the case of the E.U., Europol and INTCEN do not have any operational role or power to enforce any issue regarding security with member states. The E.U. agencies completely rely on national agencies' willingness to share information, and in the absence of legal provisions to enforce cooperation, they have no means to require the member states to share information. Also, none of the E.U. agencies is officially "in charge" of a particular threat or set of threats which would allow for better expertise in one area. Having common responsibilities, especially in the field of counterterrorism, requires that agencies cooperate with each other. Apart from the provisions that they must cooperate to produce the annual assessments reports, E.U. legislation does not contain any "teeth" to enhance cooperation, either between the E.U. agencies, or member states' agencies.

Formally, Europol's mandate has detailed restrictions on cooperation. These restrictions refer to the way Europol's products can be shared and accessed by member states other than the ones directly involved in providing that product. All member states have access to the "general nature" reports and products. But, if the product concerns several members only, they are the only ones that can access it, along with those they invite to. Also, if one of the member states requires a certain product, the country which produced the initial information can object, and the E.U. legislation requires consensus for sharing. In this case, the country that produced the information has veto power over other members, and there are no legal bases to prevent it from exercising this power. The countries involved in the development of an intelligence product are the only ones

[92] Jeanne Hull, We´re all Smarter than Any One of Us: The Role of Inter-Agency Intelligence Organizations in Combating Armed Groups, *Journal of Public and International Affairs*, 2 (2008), 36.

responsible for assessing its sensitivity and level of classification. The product cannot be shared without the agreement of all the involved countries. Also, any member states which participate in the analysis cannot share the product without the approval of the ones initially concerned. Although, the E.U. agencies are supposed to facilitate cooperation, and offer the member states equal opportunities to participate in the analysis process, the way the legal basis is written favors cooperation outside of the E.U. Allowing the states which produce an intelligence report to keep the right of denying access to any other member weakens E.U. institutions. The member states are the ultimate sovereigns when it comes to cooperation. They establish who, when, and how much access any other state has to the information shared. The E.U. agencies have no legal power to require a member state to share information with other members.[93]

When evaluating E.U. agencies, Bjorn Müller-Wille[94] compares them with those in the U.S. and argues "that in no sense does Europol [and INTCEN] have a coordinating role comparable to the U.S. Department of Homeland Security."[95] He notes that differences appear due to three factors: first, the European geographical picture is different from the U.S. one. The U.S. Department of Homeland Security has to coordinate "national" level activities, while the E.U. agencies work with multiple countries and national agencies. The European national agencies operate within their country's boundaries. Also, required cooperation with other agencies is often carried out at the national level through bilateral or multilateral agreements. The European states do not need the E.U. agencies to coordinate joint operations since this already takes place through other local or regional initiatives. Second, the national agencies are the ones that will be responsible to their public's opinion for any failure in combatting organized crime and terrorism. Although, an operation can be coordinated by E.U. agencies, still, the national agencies are in charge of providing good intelligence. Given this aspect, national

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93 J. I. Walsh, Intelligence-Sharing in the European Union: Institutions Are Not Enough, *JCMS: Journal of Common Market Studies*, 44, Issue 3, 625–643 (Oxford: Blackwell Publishing Ltd, 2006), http://onlinelibrary.wiley.com/doi/10.1111/j.1468–5965.2006.00638.x/pdf.

94 Bjorn Müller-Wille is a former Swedish army officer and intelligence analyst. Currently, he writes about European security and its area of interest is the EU intelligence agencies.

95 Bjorn Müller-Wille, The Effect of International Terrorism on EU Intelligence Co-operation, *JCMS: Journal of Common Market Studies*, 46 (Oxford: Blackwell Publishing Ltd, 2008), 56.

intelligence agencies will not hand over their responsibilities to Europol or INTCEN. Rather, they will engage in informal settings for intelligence cooperation, such as The Club of Berne (*Club de Berne*), Budapest Club, and Eursint Forum. As these are not formal E.U. institutions, there is no legal framework regarding their status, nor any requirement to share their products with all member countries. In the absence of an official coordinating body, member states will continue to resort to informal ways of cooperation. While the products of this cooperation increase intelligence effectiveness, they cannot be enforced throughout the E.U. This creates intelligence gaps at the E.U. level, which obviously can impact E.U. security.

Furthermore, as mentioned before, Europol's liaison officers and INTCEN's analysts are expected to facilitate cooperation and exchange of information, in accordance with their national laws. Since they are paid by their countries, and not by the E.U., and complete a limited tour as representatives of their national police/intelligence organizations[96] with the E.U. agencies, they are accountable only to their own national laws. In the absence of clear and unified guidance from the E.U., intelligence cooperation becomes difficult since member states have different national legal provisions regarding the processing and exchange of information.

3. Bureaucratic Resistance

Björn Fägersten identifies bureaucratic resistance as a major factor which prevents effective intelligence cooperation. The resistance comes from two reasons -different bureaucratic interests and different cultures. Bureaucratic interests translate into organizations' desires to maintain full control of the intelligence they produce in order to gain power. This is a rational approach used to pursue their own objectives, such as increased budgets and influence. As a result, the agencies will resist cooperation, because it is not in their self-interests. In the case of Europol and INTCEN, E.U. politicians' calls for increased intelligence cooperation have not been met with the same enthusiasm by the

[96] Europol's official web-page, https://www.europol.europa.eu/faq#n85.

two agencies.[97] The exchange of information between the two agencies has consisted only of the required information for the two major reports that Europol puts out every year, Organized Crime Threat Assessment (OCTA) and Terrorism Situation and Trend Report (TESAT).

Equally important is the challenge to cooperation due to bureaucratic culture. Intelligence agencies are very conservative and resist cooperating due to inherent secrecy involved in intelligence work. To begin with, in some cases, it is the legal framework pertaining to intelligence that may restrict cooperation. Also, the exchange of information between agencies and states involves approvals; the higher the classification of information, the higher the level of approval required. As a result, often the intelligence agencies will "over classify" intelligence, to make it harder to disclose. In the Europol/INTCEN case, current E.U. legislation does not contain any punishment for not sharing, yet lacks the required incentives to increase intelligence cooperation. On the other hand, since the classification of the product is the unilateral responsibility of the originating body, there is no legal way for the E.U. to argue about this issue. For that reason, it is safer for an analyst, agency, or member state to over classify information in order to restrict access to it rather than share classified products which might be mismanaged by the receiving bodies. In addition, intelligence agencies attempt to limit contact with other organizations, for fear of leaks or mishandling of the intelligence. For example, both INTCEN and Europol cooperate with their national counterparts with which they have trusted relations and are reluctant (especially INTCEN) to share intelligence with other bodies.

Related to the cultural aspect, the fact that different agencies have different responsibilities (e.g., police/law enforcement versus intelligence organizations) is also challenging, because this, too, can hinder sharing and cooperation. For example, counterterrorism is a law enforcement responsibility in some countries (U.K., Germany) and an intelligence agencies' one in others (France, Romania). This creates difficulties in

97 Björn Fägersten, Bureaucratic Resistance to International Intelligence Cooperation – The Case of Europol, *Intelligence and National Security*, 25:4 (Oxford: Taylor & Francis, 2010), 502, http://dx.doi.org/10.1080/02684527.2010.537028.

cooperation, since the issue is addressed in different ways. This manifests at the E.U. level, too, where Europol consists mainly of law enforcement and INTCEN of intelligence and military background officers. Björn Fägersten argues that INTCEN considers itself a superior organization and, at least in the field of counter-terrorism, the organization "in charge"; therefore, it does not see the need to share information with Europol and the existing E.U. legal framework does not force it to do so. Therefore, Europol cooperates mainly with law enforcement agencies from member and third party states, and INTCEN with intelligence and military agencies, especially the E.U. Military Staff in the Single Intelligence Analysis Capacity (SIAC).[98] The only required cooperation between the two agencies is to produce the annual reports on organized crime and terrorism. Organized Crime Threat Assessment (OCTA)[99] is produced by Europol, in cooperation with national law enforcement agencies. The Terrorism Situation and Trend Report (TESAT)[100] is put out by Europol, but INTCEN plays a major role in vetting it. The critics of the reports (to include here, the E.U. institutions in charge of supervising E.U. law enforcement and intelligence agencies – Directorate-General for Internal Policies and the European Parliament Supervising Commissions and Committees) argue that the reports are highly bureaucratized and fail to provide a clear and updated picture of organized crime and terrorism in the E.U.

A 2011 study on organized crime by the E.U.'s Directorate-General for Internal Policies emphasizes that both reports lack the expertise of outside police and intelligence circles. The reports reflect the products of the specialized (organized crime and terrorism) police and intelligence agencies, whereas, the complex process of combatting organized

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98 Col (GS) Dieter Haag (GE Army) and LTC (GS) Carlos Bernardo Anaya (ES Air Force), The first ten years of military Intelligence Support for the work of the EU, *Impetus – Bulletin of the EU Military Staff*, Spring Summer 2011, Issue # 11 (Brussels: Edition/Creation Composiciones Rali S.A., 2011**),** http://www.consilium.europa.eu/uedocs/cmsUpload/Final%20-%20Impetus%2011.pdf.

99 Europol OCTA, 2011, https://www.europol.europa.eu/sites/default/files/publications/octa2011.pdf.

100 Europol TESAT, 2011, https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf.

crime and terrorism involves other agencies (regular police, NGOs, and civil society).[101] As a result, the reports carry with them the bureaucratic cultures of the issuing organizations which hinder providing a comprehensive approach of the threats against the E.U.

4. Limited Capabilities and Resources

No state has all the necessary intelligence capabilities to be entirely self-sufficient.[102] Therefore, intelligence cooperation is required to provide for better security. Each of the twenty-nine E.U. member states brings something to the table. The powerful countries (France, Germany, and the U.K.) have the technical means to collect intelligence (satellites, SIGINT platforms, UAVs). The smaller states (Croatia, Hungary, and Romania) have excellent HUMINT and analytic skills. The sum of these competences provides the E.U. with a powerful intelligence capability. The only problem is that these resources are nationally owned. The E.U. intelligence agencies do not have their own assets and capabilities. They rely solely on what the member states agree to provide. Currently, the decision to share a capability is made at the national level, and the E.U. has no legal mechanism in place to enforce the use of resources. Although, reorganizing Europol as an E.U. agency was a major step forward in decreasing the agency's reliance only on national members' contributions, the organization is still dependent on individual countries to provide intelligence.

Another factor affecting intelligence cooperation is the relationship between the amount of resources a country contributes and its desire to control the outcome of such resources. Although, all member states benefit from the products Europol and INTCEN put out, the ones that contribute more have a tendency to influence the way the cooperation happens. The seven initial members of INTCEN are more likely to be in the position to have more influence on the terrorist threat picture in the E.U. and the resulting

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101 Directorate-General for Internal Policies, Policy department C: Citizen's Rights and Constitutional Affairs, *International Organized Crime in the European Union (*Brussels: European Parliament, 2011), http://www.europarl.europa.eu/RegData/etudes/note/libe/2011/462420/IPOL-LIBE_NT(2011)462420(PAR00)_EN.pdf.

102 Lefebvre, The Difficulties and Dilemmas of International Intelligence Cooperation, 536.

counterterrorism policies. Also, they tend to favor cooperation with the states that provide equal resources, and limit the access to information for the states that contribute less.

5. Gains

Gains are important drivers of intelligence cooperation. States will enter cooperation agreements only if they benefit from them. While the E.U. intelligence agencies provide the opportunities for increased intelligence cooperation, the benefits the member states get from this cooperation do not provide incentives for further engagement. Since the intelligence produced by the E.U. agencies does not add much value to what national agencies provide, the member states see no major benefits in formally cooperating through European Union channels. Probably the biggest weakness of the E.U. agencies is their reliance on national intelligence and police organizations. The national agencies are the main "providers and customers"[103] of intelligence products. This means that Europol and INTCEN's products come from the member states and return to them. They complement, but do not replace the reports produced by the national agencies. Therefore, the member states seem to feel that the E.U. agencies do not add much value to their products, and will refrain from cooperation. The emphasis in the E.U. intelligence system falls on national level agencies, rather than the central E.U. ones. As a result, the role of national intelligence will likely remain as prevalent as it is today, with the E.U. agencies working to augment those national products.

It is worth noting that some E.U. members have strategic partnerships with the United States. The United Kingdom, Germany, and even newer members like Poland and Romania have bilateral agreements with the United States and share intelligence, usually outside the E.U. agencies. The revelations of secret CIA prisons in Romania and Poland are good examples of such cooperation. Romania and Poland greatly benefit from their relationship with the United States, especially in the military and intelligence areas. In a situation where United States and E.U.'s interests collide, it is less likely that these countries will give up their arrangements with United States, in favor of the latter, unless

[103] Müller-Wille, The Effect of International Terrorism on EU Intelligence Co-operation, 58.

the E.U. would provide them with the same benefits (money, resources, and influence) the U.S. currently does.

6. Limited Trust

Björn Müller-Wille argues that "trust is often the most important obstacle in intelligence cooperation" and "just as the collection of intelligence in the field by agents and informers is based on building confidence with their sources (human intelligence), exchanging intelligence products between different European agencies equally requires the gradual development of trusting relationships."[104] The different levels of economic, political, and social development across the European Union affect trust of the E.U. agencies and between member states. The founding members of the Union trust each other more than they trust the newcomers since they have developed solid relationships. Jelle van Buuren states that these "privileged member states" have a greater influence than newer members on building the threat picture and developing the Union's security policies.[105] The recent political and social evolutions in Greece, Hungary, and Romania show that the relationship between the "older" and "newer" members of the Union still must develop before it reaches the required level of trust. Issues such as corruption, political and economic instability, radicalization, and weak judicial systems in the newer E.U. countries add to the difficulty of establishing trust between all the member states.

Furthermore, the initial seven members of INTCEN trusted each other enough to exchange classified information. As the union expanded, new members joined the organization, but the process of information sharing was slow, due to the required time to build trust. Even today, not all the member states have representatives in the agency, although all of them benefit from its products.

Also, trust between agencies plays an important role when national interests are at stake. In this instance, member states' intelligence bodies (either police or intelligence) may refuse to provide information to the European institutions if it pertains to national

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[104] Björn Müller-Wille, Improving the democratic accountability of EU intelligence, *Intelligence and National Security*, 21:01 (Oxford: Taylor & Francis, 2006), 100–128, http://dx.doi.org/10.1080/02684520600568394.

[105] Jelle van Buuren, *Secret Truth*, The EU Joint Situation Centre, 10.

interests, an on-going investigation, or security of individuals. The individual intelligence organizations may prefer to use the existing exchange channels, regulated by bilateral or multilateral agreements with trusted agencies, rather than Europol or INTCEN.[106] Operational intelligence cooperation, which involves personal data, requires a great deal of trust between the acting agencies. Since trust is not present in the overall European picture, the information exchanged between member states and E.U. agencies is mainly open-source and non-operational. The national agencies reserve the right to preserve operational intelligence and enter cooperation agreements only with trusted partners.

The lack of trust is reflected in different levels of external cooperation, as well. The E.U. agencies share information with non-E.U. members and third party bodies. The Europol Director has the mandate to initiate strategic and operational cooperation with external bodies.[107] Also, due to its external focus, INTCEN cooperates with other non-E.U. agencies. Since both organizations are still young entities, they do not have the same relations with external actors the member states have. Often, the external organizations cooperate with trusted national level agencies, with which they have agreements and treaties and long standing relations. The United States will prefer sharing intelligence with the U.K., since they have a long-standing trusted relationship, rather than with the newer E.U. agencies. Frequently, the results of this external cooperation remain outside the E.U. There is no legal mechanism in place to require a member state share with the others.

Moreover, the way the E.U. intelligence agencies were set-up plays an important role in intelligence cooperation. They were created from the top-down, by the European decision makers, and imposed on national agencies. This caused an unenthusiastic reaction from the member states' organizations which saw their positions of power threatened by the new agencies. Therefore, the national agencies met the E.U. intelligence bodies with a reluctance to share information. Building trust among member states and European agencies requires time. Since the E.U. is a young body, compared

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106 Directorate-General for Internal Policies, *Parliamentary Oversight of the Security and Intelligence Agencies*, 46.

107 Europol's website, facts, #99, https://www.europol.europa.eu/faq#n99.

with the nation states and their institutions, it will take time for trust to develop. The more member states are able to interact the further they will trust each other.

C. CONCLUSION

None of the above challenges must be treated in isolation. They are interrelated and have to be addressed in relation to the others, to provide for a better understanding of European Union intelligence cooperation. Given these issues, the conclusion is that the current European intelligence cooperation level is not as high as was the E.U. officials' ambition. The frequent calls for increased cooperation addressed by the politicians did not meet the same enthusiasm at the intelligence agencies' levels. The current emphasis remains on member states' sovereignty and freedom to pursue their own national interests, rather than on a common E.U. goal. This favors cooperation outside of the E.U. framework, through multilateral agreements. Its character is mainly informal and there is no mechanism in place to compel the member states to cooperate, either with each other, or with other bodies, through the E.U. agencies. The way the current legal mandates are written for the E.U. intelligence agencies does not enhance cooperation. Even when the states decide to cooperate within the E.U. agencies' framework, they have the freedom to choose with whom to cooperate and if the final product will be shared within the E.U. Having no power to enforce cooperation, the E.U. agencies are weak and often deprived of information exchanged between states through their national agreements. Furthermore, bureaucracy and lack of capabilities and trust between member states and agencies, add to the difficulties in European intelligence cooperation. The immediate effect of this lack of cooperation is represented by intelligence gaps which may allow threats to build up undetected. Also, these gaps could be easily exploited by organized crime and terrorist groups and, ultimately, lead to loss of lives of E.U. citizens.

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V. DEMOCRATIC CONTROL: SECRECY VERSUS TRANSPARENCY DILEMMA

A. INTRODUCTION

The exercise of democratic control ensures that intelligence agencies are accountable to the people through their elected representatives. This requires that the intelligence bodies be "transparent." Yet, intelligence agencies need "secrecy" to be able to operate effectively. Too much secrecy may lead to abuses by the intelligence agencies, while too much transparency can render them ineffective. Therefore, achieving the proper balance between the two is a constant struggle for democracies. Even though there is no "one-size-fits-all" solution for this dilemma, Bruneau, Boraz, and Matei argue that intelligence can be compatible with democracy through a trade-off between the two.[108] This process requires that the balance continuously adapt to the dynamic changes in the nature of security threats.[109] Consequently, Holt states, some intelligence functions have to remain secret, to allow for effectiveness.[110]

If the above dilemma constitutes a challenge for nation states, the situation becomes further complicated when looking at the E.U. The Treaty on Functioning of the European Union gives the European Parliament and national legislatures an explicit mandate to oversee Europol and other E.U. agencies.[111] The European Parliament needs to oversee the intelligence agencies. First, it is a co-legislator for intelligence related

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[108] Bruneau and Matei, "Intelligence Reform in the Developing Democracies: The Quest for Transparency and Effectiveness," 757–771. Also refer to Bruneau and Boraz, "Intelligence Reform: Balancing Democracy and Effectiveness," 1–17. Steven C. Boraz and Thomas C. Bruneau, "Best Practices: Balancing Democracy and Effectiveness," in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin, TX: University of Texas Press, 2007), 331–342.

[109] Betts, *Enemies of Intelligence: Knowledge and Power in American National Security*, 1–18. Ian Leigh, "Intelligence and Law in the United Kingdom," in *The Oxford Handbook of National Security Intelligence*, ed. Loch K. Johnson (New York: Oxford University Press, 2010), 640–655. Stuart Farson, "Canada's Long Road from Model Law to Effective Political Oversight of Security and Intelligence," in *Who's Watching the Spies: Establishing Intelligence Service Accountability*, ed. Hans Born, Loch K. Johnson, Ian Leigh (Washington, D.C.: Potomac Books, 2005), 99–116.

[110] Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy*, 1.

[111] Article 88 of the Treaty on the Functioning of the European Union (TFEU), *Official Journal of the European Union* (Brussels: European Parliament, 2010), C 83/84, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF.

issues; therefore, it has to ensure that the agencies do not misuse their powers and that they comply with the legal framework. Second, since the E.U. provides the budget for Europol and INTCEN, the European Parliament has to be sure that the money is spent correctly and efficiently. Third, overseeing the intelligence agencies ensures they have adequate resources and support to perform their tasks effectively. Also, the national legislatures need to exercise oversight of the E.U. agencies because they provide parts of the funding and seconded personnel in accordance with their national laws. This shared responsibility creates conflicting situations and gaps in the oversight process that affect the intelligence agencies' effectiveness and the overall security of the E.U.

As a result, a current assessment of the parliamentary oversight of Europol and INTCEN is necessary. This will allow identifying what means are available to the European and national legislatures to exercise democratic control of E.U. intelligence agencies. More importantly, it will identify any flaws in the process which need to be addressed. Acknowledging that democratic control entails a wide range of oversight areas (executive, internal, judicial, and financial), this chapter will focus on parliamentary oversight only as one key factor in increasing transparency and improving effectiveness.

B. PARLIAMENTARY OVERSIGHT

Parliamentary oversight can be regarded as the most democratic method of oversight. It is performed by representatives directly elected by the people. A wide representation in the oversight committees, either from all political parties (in the case of national parliaments) or all member states (in the case of the E.U.), ensures that oversight serves the general interest, rather than the interests of a particular political party or member state. Furthermore, legislative bodies have all the required capabilities to guarantee the effectiveness of the oversight process. Through their budgetary and legislation amending powers, parliaments can make sure that the findings and recommendations of the oversight bodies are taken into consideration by the intelligence agencies. At the same time, parliamentary oversight has weaknesses, too. Often, the members of the oversight committees are part of more than one parliamentary body, which entails their splitting their time between different areas. This diminishes the

oversight's effectiveness due to the lack of sufficient time and focus dedicated by the parliament to scrutinize the intelligence agencies' work. Equally important is that members of the legislative oversight committees may change with every election cycle. The intelligence agencies employ specific methods and procedures in their work which are not familiar to people outside of intelligence circles. Therefore, it is likely that members of the oversight committees, unless supported by expert staff, will lack the knowledge to properly understand the work of the agencies. In addition, oversight of the intelligence bodies requires access to classified information. This is often the most contested issue in the oversight process. On one hand, the intelligence agencies will attempt to refrain from disclosing information to protect their methods and from the fear of the mishandling of information by the receivers. On the other hand, the members of the oversight committees will demand access to information in order to fulfill their missions. In addition, the process of sharing sensitive information is highly regulated and follows complicated procedures. For example, at the E.U. level, there are conflicting legal provisions with regard to access to information. The general rule states that all documents of the E.U. institutions must be available for the public, but this is overruled by the provisions that allow the intelligence agencies to protect sensitive information, if disclosure will jeopardize the union's security. Furthermore, the legislation states that the entity seeking access to a document require approval of the document's emitting body. Given the supranational nature of the E.U., and the complex structure of Europol and INTCEN, comprised of E.U. staff and national seconded representatives, European parliamentary oversight of these agencies is a complicated task. Both, national parliaments and the European Parliament (E.P.) are to provide oversight. Acknowledging that there are no legal provisions (agreements) in place to regulate the access of the national parliaments and E.P. EP to the documents of the E.U. intelligence agencies, the following sections will describe the status of the oversight process, within the E.U.[112]

[112] REGULATION (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, *Official Journal of the European Communities (*Brussels: European Parliament, 2001), http://www.europarl.europa.eu/register/pdf/r1049_en.pdf.

1. The Role of National Parliaments

The E.U.'s legal framework assigns national parliaments an important role in the European construct. The general provision states that they have to cooperate with the E.P. in all aspects, to ensure proper functioning of the E.U. National legislatures provide input on legislative initiatives, receive E.P.'s reports, and participate in inter-parliamentary commissions, on different issues, including E.U.'s security.[113]

With regard to the supervision of the E.U. intelligence agencies, articles 85 and 88 of the Treaty on Functioning of the European Union (TFEU) state that national legislatures have a key role in this area, too. Both Europol and INTCEN consist of a mixture of E.U. staff and seconded personnel from the member states. As a result, the European Parliament has to cooperate with national legislatures in providing oversight of these agencies. The involvement of national parliaments derives mainly from the fact that seconded personnel are paid by the member states, and operate in the E.U. agencies in accordance with their individual national laws. Given this aspect, the oversight of their activities is better suited for the national constituencies and independent bodies, rather than the E.P. In this area, member states' parliaments have the sovereign right to decide when and how they supervise the E.U. agencies. There are three levels of national parliamentary oversight of E.U. agencies: "holding national governments accountable for their actions concerning E.U. bodies, direct engagement with E.U. bodies, and participating in inter-parliamentary cooperation concerning E.U. bodies."[114] Across these levels of oversight, national parliaments participate in the E.U.'s decision making process by providing input on legal initiatives and ensuring that the work of national representatives in the E.U. agencies remains within the existing legal framework. Since all of this oversight falls under specific national laws of each member state, there is no uniformity across the E.U. regarding the involvement of national parliaments in the

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[113] Protocol on the Role of National Parliaments in the European Union, *Official Journal of the European Union* (Brussels: European Parliament, 2004), 204–206, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:0204:0206:EN:PDF. See also, European Parliament, *Rules of Procedure*, 7th Parliamentary Term, March 2011, 1–151, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:116:0001:0151:EN:PDF.

[114] Directorate-General for Internal Policies, Parliamentary Oversight of Security and Intelligence Agencies in the European Union, 65.

oversight of E.U. agencies. Some parliaments are actively involved in this area, such as the U.K.'s House of Lords and the Dutch Parliament, while others do not manifest the same interest. Even when it exists, oversight is done on an ad hoc basis, rather than following a specific methodology with indicators of performance. Furthermore, national constituencies focus on overseeing Europol. The U.K.'s House of Lords scrutinizes Europol's handling and processing of personal data, visits the premises, and invites the director to participate in House sessions.[115] Other E.U. members, Latvia, Lithuania, and the Czech Republic, invite their national representatives with Europol to participate in the specialized parliamentary committee's meetings.[116] On the other hand, INTCEN has not received the same attention from the member states. This is mainly because it consists of personnel from the member states' intelligence agencies which tend to be more secretive and enjoy more freedom of maneuvering than the law enforcement agencies. Also, INTCEN does not handle or process personal data; therefore, the risk of human rights violations is less than in the case of Europol.

Until 2010, the most important oversight tool for national constituencies was the "power of the purse," since member states provided the budget for the E.U.'s intelligence agencies. After Europol and INTCEN became E.U. agencies and their budgets came mainly from the E.U., national parliaments' budgetary powers over E.U. agencies diminished. But, in the context of the recent "push" for strengthening cooperation in the E.U., the national parliaments' role in overseeing the E.U. agencies still remains relevant.

2. The Role of the European Parliament

The European Parliament is the legislative body of the E.U. It consists of elected officials from all member states. Since oversight's main purpose is to ensure that the intelligence agencies are accountable to the people through their elected officials, the E.P. is the E.U.'s institution which fulfills this task. To provide oversight of the intelligence agencies, the .E.P. has a wide array of tools and mechanisms available. It can call the

115 Directorate-General for Internal Policies, Parliamentary Oversight of Security and Intelligence Agencies in the European Union, 66.

116 Ibid., 66.

directors of the agencies to appear before the E.P., conduct informal meetings with the agencies, exercise its budgetary powers, and employ permanent or temporary parliamentary committees and specialized bodies to oversee certain aspects of the agencies' activities.[117]

a. Call for the Directors

Calling for the directors of the intelligence agencies to appear before the legislative bodies is a useful oversight tool, both at national and E.U. levels. On one hand, it provides the members of the parliament the opportunity to engage in public debates with the heads of the agencies, especially with regard to contested issues. On the other hand, it gives the directors a chance to inform the representatives on agencies' activities, require additional resources, and changes to the legal framework. Also, it is a good opportunity for the general public to be informed about the agencies. The downside of this oversight tool is that during the engagement the directors cannot address classified issues; therefore, the discussions are limited to general ideas and activities.

Currently, the European Parliament has limited powers to summon the directors of the intelligence agencies. While, article 48 of the Europol Decision states that the director of Europol is obliged to appear before the E.P. at its request,[118] there is no similar legal provision with regard to the director of INTCEN. The E.P. has no power to summon INTCEN's director, yet there is a certain level of engagement between the two. The head of INTCEN appears before the European Parliament and its Defense Subcommittee to discuss aspects of the agency's work, on an ad hoc basis. Since INTCEN is part of the EEAS and falls under the authority of the High Representative, legal provisions require that the High Representative regularly consult with and inform the Parliament with regard to foreign security related policies and that it is responsible for ensuring that the E.P.'s guidance is implemented into subordinated bodies' work.[119]

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[117] Directorate-General for Internal Policies, Parliamentary Oversight of Security and Intelligence Agencies in the European Union, 74.

[118] Europol Decision, Article 48, *Official Journal of the European Union* (Brussels: European Parliament, 2009), https://www.europol.europa.eu/sites/default/files/council_decision.pdf.

[119] Treaty on European Union (TEU), Articles 21 and 27d, http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf.

Although, the directors of Europol and INTCEN, along with the High Representative, engage with the European Parliament, there is still little interest for these events among the members of the European legislative body. A study of the E.U.'s Directorate-General for Internal Policies, published in 2011, points out that the members of the E.P. did not properly scrutinize the documents sent by the intelligence agencies supposedly due to lack of time and interest in security related issues. Therefore, during public hearings held by the agencies' directors, the parliamentary members could not ask pertinent questions about the agencies' work.[120]

b. Informal Meetings

While the informal meetings between the intelligence agencies' representatives and members of the E.P. do not necessarily constitute oversight, they have an important role in strengthening relations between the two. In the E.U., there is a lot of engagement at an informal level, especially between Europol and members of specialized committees of the E.P. The staffers of the intelligence agencies and the members of specialized oversight committees of the E.P. (Civil Liberties, Justice, and Home Affairs Committee LIBE and Foreign Affairs Committee AFET)[121] regularly engage in informal meetings to share information about agencies' activities. Also, the specialized committees send representatives to visit the agencies' premises. In 2010, members of the LIBE committee visited Europol's working facilities and received briefings on the agency's agenda.[122] Furthermore, the director of Europol regularly participates in conferences, meetings, and briefings, organized by the oversight bodies.

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[120] Directorate-General for Internal Policies, *Parliamentary Oversight of the Security and Intelligence Agencies in the European Union*, 2011, 75.

[121] LIBE Committee is the EP's Civil Liberties, Justice, and Home Affairs Committee, which supervises the EU agencies, in order to prevent human rights violations. More information about its activities can be found at http://www.europarl.europa.eu/committees/en/LIBE/home.html. AFET is the EP's Foreign Affairs Committee, which supervises the EU agencies which deal with foreign affairs issues (INTCEN). More information about its activities can be found at http://www.europarl.europa.eu/committees/en/afet/home.html.

[122] *Parliamentary Oversight of the Security and Intelligence Agencies in the European Union*, 2011, 75.

The INTCEN does not show the same enthusiasm in engaging in informal settings with the members of the European Parliament. The staffers of INTCEN do not participate in the events organized by the AFET committee. They are not required to do so, since these are informal meetings, but this absence prevents the members of the oversight bodies, and ultimately the EP from receiving valuable information on the agency's activities.

c. Budgetary Oversight

According to the Treaty on Functioning of the E.U. (TFEU), the European Parliament is the budgetary authority for Europol and INTCEN, although the latter receives its budget through the EEAS, rather than directly from the E.P.[123] Accordingly the E.P. is the body that provides budgetary oversight of Europol and EEAS. The European Parliament has no say in the member countries' contributions to either Europol or INTCEN. As a result, these contributions would be better suited to national parliaments' budgetary oversight.

The EP has two committees, which provide the budget and budgetary oversight. The Committee on Budgets (BUDG)[124] drafts the E.P.'s position regarding the E.U.'s annual budget. The Committee on Budgetary Control (CONT)[125] is responsible for the budgetary scrutiny of the E.U. agencies. As BUDG has the "power of the purse," it has more power over E.U. agencies than does the Committee on Budgetary Control. In order to properly scrutinize the intelligence agencies, BUDG requires access to information. If the required information is not provided, BUDG can apply the "reserve procedure," which means that it can block a part of an agency's funds, until the issue is resolved. Budget has used the procedure in the past, as a means to access information.

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123 TFEU, Articles 310–324.

124 EU's Committee on Budgets (BUDG) official webpage, http://www.europarl.europa.eu/committees/en/budg/home.html#menuzone.

125 EU's Committee on Budgetary Control (CONT) official webpage, http://www.europarl.europa.eu/committees/en/CONT/home.html.

This issue points to the lack of an appropriate legal framework to allow the European Parliament to obtain information about the intelligence agencies.[126]

Another issue regarding budgetary oversight is related to the way the E.U. budget is structured, based on functional areas of expenditure (personnel, administrative, and operational), rather than linked to policies and agencies' output. Therefore, it is very hard for BUDG to assign the budget according to policy priorities. Also, it is difficult for CONT to evaluate the efficiency of the intelligence agencies.

d. Independent Specialized Bodies

Europol is responsible for processing, storing, and transferring personal data. Given the sensitive character of working with personal data, the European Parliament created an independent specialized body to oversee Europol's activities in this area. The Joint Supervising Body (JSB)[127] consists of two representatives from each member state. Its main task is to ensure that Europol complies with the E.U. and national legal frameworks. With regard to personal data, JSB:

- Provides input on any draft agreement that Europol intends to sign with third parties, to ensure personal data are protected, both by Europol and the third party
- Reviews and monitors the cooperation agreements, once they have been signed
- Serves as an appellate committee for E.U. citizens, who request access to personal data and consider that they received an unsatisfactory response from Europol.[128]

Additionally, starting in 2010, JSB has monitored Europol's activities in the Terrorist Financing Tracking Program (TFTP) Agreement between the E.U. and the

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126 *Parliamentary Oversight of the Security and Intelligence Agencies in the European Union*, 2011, 77.

127 Europol Joint Supervising Body (JSB) official webpage, http://europoljsb.consilium.europa.eu/about.aspx?lang=en.

128 JSB official webpage, http://europoljsb.consilium.europa.eu/about/tasks-of-the-jsb.aspx?lang=en. See also, Europol's webpage, frequently asked questions, issue #107, https://www.europol.europa.eu/faq#n107.

United States, known as the SWIFT agreement.[129] Moreover, the Europol Council Decision requires that JSB provide reports to the E.P. and Council, on a regular basis. This is to ensure that Europol remains independent and transparent. These are all very important roles for the JSB in overseeing Europol, since the European Parliament is not involved in any of the above activities.

In order to fulfill its tasks, JSB meets four times per year and conducts inspections to check Europol's premises. Normally, JSB inspects Europol once every year, but additional inspections can be carried out when required by a particular situation. The JSB meetings are not public, since personal data are involved, but the body provides public reports. Its opinions are non-binding regarding personal data issues, but become binding when JSB acts as the appellate body. Failure to comply with JSB's appellate decisions is considered a violation of E.U. legislation.

So far, JSB has been very effective in scrutinizing Europol's work. For example, after the E.U. signed the SWIFT agreement, JSB conducted two inspections of Europol's premises, to oversee the implementation of the program. After each visit, JSB published reports with regard to the way Europol complied with E.U. legislation on the protection of personal data. The reports pointed out that Europol did not fully observe the E.U.'s legal framework when releasing personal data to U.S. agencies without properly reviewing them.[130] Additionally, several members of the JSB publicly expressed their concerns about the safeguard of personal data by Europol. A debate in the European

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129 AGREEMENT between the European Union and the United States of America on the processing and transfer of Financial Messaging Data held by SWIFT (Society for Worldwide Interbank Financial Telecommunication), from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (TFTP), designed to prevent and combat terrorism and its financing, in particular by mutual sharing of information, *Official Journal of the European Union (*Brussels: European Parliament, 2010), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0005:0014:EN:PDF.

130 JSB's Report on Europol's activities within the SWIFT Agreement, *European Union's Council Documents (*Brussels: European Parliament, 2011), http://europoljsb.consilium.europa.eu/media/205081/tftp%20public%20statement%20-%20final%20-%20march%202012.pdf.

Parliament was called for on this issue.[131] As a result, the JSB formulated stricter recommendations for Europol. Although the JSB's findings did not create legal obligations, Europol has demonstrated interest in implementing the recommendations. To prove its good intentions, Europol organized meetings and in- progress reviews with the members of the JSB to ensure that previous recommendations were taken into consideration.[132]

While JSB's reports are available to the E.P. and Council, there is little dialogue between the institutions. Many members of the E.P. are not aware of the existence and capabilities of the JSB. Therefore, even the members of the specialized oversight parliamentary committees do not engage in activities with the JSB. Better cooperation between these institutions will improve the oversight process since the purpose of the JSB and specialized E.P. committees is to protect citizens' rights. Members of the E.P. can use JSB's experience and develop relations with Europol to ensure that the agency's activities are kept within the legal framework. Furthermore, JSB can provide the E.P. with important information regarding Europol's work, and more importantly, its requirements to perform better. This would help strengthen Europol's overall effectiveness.

The E.P. does not have an independent specialized body to oversee INTCEN's work. Since INTCEN does not store or process personal data, the E.P. did not see the requirement to assign an independent entity to scrutinize the agency's activities.

e. Specialized Parliamentary Committees

The two main permanent parliamentary committees, which scrutinize and evaluate Europol and INTCEN's work, are the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and Committee on Foreign Affairs (AFET)

The LIBE Committee is responsible for:

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131 Press release: Terrorist Finance Tracking Programme is not respecting data protection safeguards, *Alliance of Liberals and Democrats for Europe (ALDE) (*Brussels: European Parliament, 2011), http://www.alde.eu/press/press-and-release-news/press-release/article/terrorist-finance-tracking-programme-is-not-respecting-data-protection-safeguards-37202/.

132 JSB's Report on Europol's activities within the SWIFT Agreement, 2011.

- protection within the territory of the Union of citizens' rights, human rights and fundamental rights, including the protection of minorities, as laid down in the Treaties and in the Charter of Fundamental Rights of the European Union;
- measures needed to combat all forms of discrimination other than those based on sex or those occurring at the workplace and in the labor market;
- legislation in the areas of transparency and of the protection of natural persons with regard to the processing of personal data;
- establishment and development of an area of freedom, security and justice, in particular: measures concerning the entry and movement of persons, asylum and migration, integrated management of the common borders, and police and judicial cooperation in criminal matters;
- the European Monitoring Centre for Drugs and Drug Addiction and the European Union Agency for Fundamental Rights, Europol, Eurojust, European police College (Cepol) and other bodies and agencies in the same area;
- determination of a clear risk of a serious breach by a Member State of the principles common to the Member States.[133]

Europol falls under the LIBE Committee, since it is accountable to the Council of Ministers for Justice and Home Affairs. The committee is generally responsible for examining questions, provided by the members of the E.P., with regard to Europol's work. To fulfill its tasks, with the approval of the E.P., LIBE can direct its members to conduct studies and fact-finding undertakings about certain areas of Europol's activities. Also, the committee can organize hearings of Europol's experts, when required to address a certain issue. If directed by the E.P. to address a particular aspect of Europol's work, LIBE is responsible for drafting a detailed report for the E.P. Additionally, LIBE can take the initiative and prepare reports for the E.P. concerning the issues from its areas of responsibility.

The committee is very active and effectively scrutinizes Europol's work. Members of the committee regularly engage with Europol's staffers, both on formal and

[133] European Parliament Rules of Procedure, Annex VII, Section XVII, *7th Parliamentary term (*Brussels: European Parliament, 2012), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20121023+ANN-07+DOC+XML+V0//EN&language=EN&navigationBar=YES.

informal grounds. Also, they conduct visits to inspect Europol's premises and discuss particular issues. Therefore, LIBE has a very important role in scrutinizing Europol's work. It serves a twofold interest. On one hand, it provides the E.P. with information about Europol, to ensure the agency complies with the E.U.'s legal framework. On the other hand, it advertises Europol's interests to the E.P. and facilitates legislative initiatives to increase Europol's effectiveness. The LIBE generates reports about Europol's role and European Internal Security Strategy, thus providing recommendations for the E.P. to strengthen the agency.[134] Consequently, these reports provide important information for the E.U.'s decision makers, and serve as a provider of guidance for development of the E.U.'s security strategy. Additionally, LIBE's reports regarding Europol's work function as an evaluation of the agency's effectiveness.[135]

Technically, INTCEN falls under the scrutiny of the AFET Committee and its subcommittee on security and defense (SEDE), since they are responsible for the EEAS, within which INTCEN is positioned.

The AFET Committee is responsible for:

- common foreign and security policy (CFSP) and the European security and defense policy (ESDP). In this context the committee is assisted by a subcommittee on security and defense (SEDE);
- relations with other E.U. institutions and bodies, the UN and other international organizations and inter-parliamentary assemblies for matters falling under its responsibility;
- strengthening of political relations with third countries, particularly those in the immediate vicinity of the Union, by means of major cooperation and assistance programs or international agreements such as association and partnership agreements;
- opening, monitoring and concluding negotiations concerning the accession of European States to the Union;

134 EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE), *Report on the European Union's Internal Security Strategy* (Brussels: European Parliament, April 24, 2012), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA7–2012–0143%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN.

135 Directorate-General for Internal Policies, Parliamentary Oversight of Security and Intelligence Agencies in the European Union, 76.

- issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries. In this context the committee is assisted by a subcommittee on human rights. Without prejudice to the relevant rules, members from other committees and bodies with responsibilities in this field shall be invited to attend the meetings of the subcommittee.[136]

The general responsibilities of the AFET Committee are the same as LIBE's. It can pursue questions addressed by the European Parliament, direct studies, organize hearings, and produce reports about INTCEN's work. In practice, AFET and its SEDE subcommittee show little interest in scrutinizing INTCEN's activities.[137] This is due to EEAS and the High Representative's attempts to maintain secrecy around INTCEN, and also the members of committees' lack of interest in asking questions about the agency's work. The E.P.'s study on parliamentary oversight of the security and intelligence agencies, published in 2011, points out that during the meetings between the AFET Committee and High Representative, often no document regarding INTCEN's work has been provided. Therefore, the engagements seem to have been limited to oral briefings, with no substantial outcome, since no concrete information was provided. Also, the members of the committee refrained from asking sensitive questions about INTCEN, as they did not see this as important for the oversight process. Furthermore, the study emphasized that since the creation of the EEAS, in 2010, AFET and SEDE did not conduct any meetings with the service to scrutiny its activities.[138] The AFET's latest report contains only a short note on INTCEN, which refers to its reorganization,[139] which was not new information, since it had already been publicized by the E.U. High Representative, Catherine Ashton, during a parliamentary questions session.[140] The

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136 European Parliament Rules of Procedure, Annex VII, Section I, *7th Parliamentary term (*Brussels: European Parliament, 2012), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20121023+ANN-07+DOC+XML+V0//EN&language=EN&navigationBar=YES.

137 *Parliamentary Oversight of the Security and Intelligence Agencies in the European Union*, 2011, 67.

138 Ibid., 71.

139 EP's Committee on Foreign Affairs, *Report on the implementation of the Common Security and Defense policy* (Brussels: European Parliament, October 31, 2012), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA7–2012–0357%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN.

140 Parliamentary question, European Parliament, July 25, 2012.

AFET report does not contain any assessment or analysis of INTCEN's role and work, nor does it advance recommendations for strengthening the agency. As a result, the specialized parliamentary committees do not provide effective oversight of INTCEN's work. This prevents the E.P. from obtaining valuable information about the agency's roles and capabilities which can result in a lack of understanding of how to properly employ INTCEN to enhance E.U. security. Correspondingly, INTCEN's secrecy hurts the agency itself, since improving transparency would facilitate better support for its work by the E.U.'s decision makers.

Although, INTCEN is part of EEAS, it also provides strategic assessment with regard to the terrorist threat within the E.U.; therefore, its work has implications for internal security, too. As a result, INTCEN becomes subject to oversight exercised by the LIBE committee. In practice, the LIBE committee does not scrutinize INTCEN, because of its work with the agencies which fall directly under its responsibility as well as the lack of access to information from INTCEN.

C. CONCLUSION

Democratic control of the intelligence agencies is required to ensure they do not abuse their powers and that they are able to perform their missions. Parliamentary oversight is the most democratic form of control, since it entails that the intelligence agencies remain accountable to the people, through their elected representatives. Given the complex architecture of the E.U. and the way Europol and INTCEN are staffed and resourced, parliamentary oversight of their activities is a shared responsibility of national legislatures and the European Parliament. However, member states' parliaments are best placed to provide effective scrutiny of Europol and INTCEN since they second national representatives to these agencies, in accordance with their domestic laws. Yet, while some national constituencies are active in this field, the majority of member states lack the necessary interest, time, and knowledge to perform this task, focusing solely on overseeing their own national intelligence agencies. On the other hand, the E.P. has very powerful tools and mechanisms in place to oversee the intelligence agencies. The E.P. has the "power of the purse" and the ability to amend legislation regarding Europol and

INTCEN's activities. Despite this, the E.P. seems to have a poor understanding of its role in the oversight process. The causes for this are the lack of interest, knowledge, and awareness of the members of the European Parliament about the capabilities and missions of the E.U. intelligence agencies. While Europol's work is better understood and scrutinized, INTCEN remains a secret to the majority of the members of the E.P., even for the members of the AFET and SEDE committees, who have demonstrated little interest in overseeing INTCEN's work. At the same time, the High Representative and EEAS have refrained from providing information about INTCEN. The secrecy surrounding the agency leads to a misunderstanding of its work, and has implications on both external and internal security of the E.U.

To improve the current situation, the E.P. needs to become more involved in the oversight process. Furthermore, the shared responsibility with the national parliaments requires closer cooperation between the E.P. and member states' legislative bodies to prevent a fractured oversight. The E.P. needs to step in and provide direction and assume responsibility for the intelligence agencies, especially INTCEN. In order to do so, the E.P. needs to receive assessments regarding the threats to the union and member states. Without these, the E.P. will not be able to develop effective counter measures. Moreover, the E.P. needs to address the challenges regarding the access to information, to increase Europol and INTCEN's transparency and ensure they comply with the E.U.'s legal framework. The information will provide the E.P. with a better understanding of the needs of the intelligence agencies. As a result, the E.P. can amend the existing legislation, increase budgets, or set new cooperation agreements, to increase the intelligence agencies' effectiveness.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. THESIS SUMMARY

This thesis sought to examine whether the E.U.'s intelligence agencies can effectively deal with the challenges of the current complex security environment. It looked at Europol and INTCEN, as they provide the framework for intelligence cooperation among the E.U. member states. This study acknowledged that an assessment of intelligence effectiveness is a very difficult task and that there is no "one-size-fits-all" approach to the issue. As a result, it built on Thomas Bruneau and Cris Matei's Civil-Military relations' trinity (control − effectiveness − efficiency)[141] and advanced a conceptual framework for assessing effectiveness. Specifically, the thesis looked at Europol and INTCEN's legal framework, cooperation, and democratic control to determine if they are capable of fulfilling their missions effectively, and at the same time, transparently.

Chapter one presented the reasoning for this research and the relevance of the subject. As the E.U. currently consists of twenty-nine countries, more than 500 million people, and a quarter of the world's defense budget, it is a major player on the international stage. Also, it maintains a form of cooperation between nation states as never seen before; more than an alliance, but short of a federal state. Therefore, this chapter argued that exploring the E.U. intelligence agencies' effectiveness is not a marginal effort, but one which can provide valuable insights for the E.U. and other similar international forms of cooperation. Furthermore, the chapter provided a comprehensive description of the existing literature on intelligence, effectiveness, and E.U. agencies. It argued that while there are many studies dedicated to intelligence and effectiveness in general, there are fewer studies that assess the E.U.'s intelligence agencies' effectiveness, and they lack an adequate conceptual framework Therefore, this

141 Thomas Bruneau and Florina Cristiana Matei, "Towards a New Conceptualization of Democratization and Civil-Military Relations," *Democratization* 15:5 (Stanford: Institute for international Studies, 2008): 909−929. Also look at Florina Cristiana Matei and Thomas Bruneau, Intelligence reform in new democracies: factors supporting or arresting progress, D*emocratization*, 18: 3 (Stanford: Institute for international Studies, 2011), 602–630.

thesis attempted to complement the existing literature on E.U. intelligence agencies, providing a framework which could be used for further endeavors to examine the topic.

Chapter two provided a short description of Europol and INTCEN's evolution to provide a better understanding of the subsequent analysis of their effectiveness. It looked at the agencies' histories, mandates, staffing, and resources in an attempt to identify whether these factors allow the agencies to fulfill their assigned tasks. The chapter found that Europol provides the institutional framework for law enforcement and intelligence cooperation among E.U. members to combat any form of serious offenses, including organized crime and terrorism. The INTCEN is the E.U.'s crisis center and provides assessment of the terrorist threat to both internal and external security. In this context, this chapter argued that both agencies are key players in the E.U.'s efforts to design security policies and that the study of their effectiveness is an important endeavor. The main findings are that both agencies evolved from informal and relatively small forums of cooperation between member states into complex and developed institutions. Their growth reflected the overall changes in the E.U. architecture and also the challenges of the current security environment. Europol is now a fully-fledged E.U. agency, with its own budget provided by the union and its role in the E.U.'s internal security is increasing. It employs analysts and E.U. staff, along with national representatives who act as liaison officers between member countries and Europol. The INTCEN transformed from a "calm newsroom with television-sets running CNN and computers linked to major news agencies,"[142] to an agency which delivers assessments reports that are the basis for the E.U.'s counterterrorism policies. Yet, INTCEN does not have a formal mandate, or at least, there is no founding document publicly available. This has implications on the agency's transparency and affects the way it is understood by E.U. decision makers. Furthermore, INTCEN consists of seconded national representatives. It does not have its own budget since the funding comes through the EEAS.

Chapter three reviewed the existing legal framework of the two agencies with regard to intelligence cooperation, and more specifically, Europol and INTCEN's

142 Jelle van Buuren, *Secret Truth*, The EU Joint Situation Centre, 10.

mandates. It found that despite the fact that INTCEN does not have a publicly available mandate, its missions and competences derived from the declarations of high E.U. officials, such as the E.U. HR for Foreign Affairs and Security Policies and agency's former or current directors. The chapter looked at the general legal framework, attempting to identify how the E.U.'s intelligence system works. It emphasized the role and powers of the member states in the functioning of the E.U. intelligence agencies. Since, running the E.U. is a common endeavor for the European Parliament and member states, this chapter found that sovereign states still have a strong say in the design of the union's legal framework, while maintaining their sovereign legal systems and cooperation procedures. In the absence of clear guidance from the E.U., the member states pursue their individual goals and interpret the legal provisions according to their national specific situations. This results in a lack of unity of effort at the E.U. level and affects the effectiveness of the E.U. intelligence agencies, as they are the expression of member states' cooperation. Furthermore, the chapter attempted to identify Europol and INTCEN's powers and competences. Because of emphasis on sovereign states, the E.U. institutions have limited powers to operate across the E.U. territory. They rely solely on member states, and have no powers to enforce cooperation. Also, the chapter emphasized that Europol and INTCEN have overlapping responsibilities, especially in the field of counterterrorism, which can cause intelligence gaps. These gaps are usually filled by the national intelligence agencies, but in the absence of a coordinating body at the E.U. level, they might be missed by both E.U. and national agencies, which can lead to increased risk to E.U. security.

Chapter four looked at the level of cooperation between the member states under the umbrella of the E.U. agencies. Specifically, it attempted to identify the challenges for increased cooperation. The chapter found that while cooperation between the member states exists, it is often done outside the E.U. legal framework and institutions, through multilateral agreements. States prefer to maintain their prior cooperation agreements, rather than entering new ones, under the E.U. framework. Since, exchanging intelligence requires a certain level of trust and mutual interest, which usually take time to develop, member states favor established regional and informal cooperation initiatives. The E.U.'s

calls for increased cooperation are challenged by additional factors, such as: lack of a common sense of threat, a coordinating E.U. body and capabilities. Furthermore, bureaucratic resistance and improper balance between costs and benefits for member states are factors which prevent effective intelligence cooperation.

Chapter five dealt with transparency and attempted to identify to whom and in what degree Europol and INTCEN are democratically accountable. It looked at the oversight and control provided by the European Parliament and member states' legislative bodies. The chapter argued that transparency is an important factor in improving effectiveness, for two reasons. First, it keeps the agencies accountable to the people, through their elected representatives, and ensures they comply with the existing legal framework. Second, transparency helps the agencies, too, by ensuring they are properly understood and known by the decision makers; therefore, they receive appropriate support and guidance to fulfill their assigned missions. The chapter addressed the way democratic control is exercised by specialized parliamentary committees, and independent bodies, which have a wide array of tools available to perform effective oversight and control of Europol and INTCEN.

B. CONCLUSIONS AND RECOMMENDATIONS

Considering the preceding discussion, the author can conclude that Europol and INTCEN provided the member states with an institutional framework for intelligence cooperation and strengthened the E.U.'s internal and external security. Yet, the two institutions demonstrate certain infirmities, some by design and some by practice, which limit their effectiveness.

For one thing, the E.U. legal framework presents flaws and allows the member states to implement directives and policies according to their national laws. The E.U.'s central institutions do not provide enough guidance for the member states. This lack causes different interpretations across the E.U. for the same legal provisions. Moreover, the process of implementing an E.U. directive is lengthy, since it has to be ratified by the separate national constituencies, before it becomes an E.U. law. Given the differences between member states, some directives may take years before they enter into force. This

is highly problematic, especially in the area of security, where dealing with the complex threat environment requires immediate action. Also, the current legal framework allows member states the possibility to not ratify a directive, but still remain part of the union. As a result, the E.U. directives apply only in the countries which endorsed them. This deters the implementation of a unified approach at the European level, especially in the areas of law enforcement and intelligence, where effective cooperation requires harmonized procedures. It is worth noting that intelligence cooperation involves the exchange of personal data and sensitive information, and the current E.U. legal framework does not have a standardized agreement on personal data protection, but separate ones for every agreement member states signed. This leads to confusion on how to protect this information and allows member states to refrain from sharing intelligence if it is thought the information is not properly protected. It is also true that in the area of security, member states do not have the same leeway as in other areas, but still the current emphasis remains on member states' sovereignty and freedom to pursue their own interests, which weakens the E.U.'s institutions. Since, Europol and INTCEN depend a great deal on national agencies to provide intelligence, they suffer from the general E.U. lack of unity. This, by far, is their biggest weakness. As their mandates grant them no operational powers, Europol and INTCEN are cooperation forums, rather than effective E.U. agencies. Both organizations fall short of playing a much needed coordinating role at the E.U. level. The Europol and INTCEN do not have their own intelligence collection means which makes them rely on member states' capabilities. This limits their effectiveness, because member states consider that the E.U. agencies cannot produce better assessments than the ones put out by the national intelligence bodies. In case of any intelligence failure, the national institutions are expected to be held accountable to the decision makers and public opinion, rather than the E.U. agencies. Therefore, member states still need to be convinced of the added value of the E.U. intelligence bodies. Additionally, the E.U. agencies' mandates give them no power to enforce cooperation. Since member states have total freedom to determine when, how, and with whom to cooperate, Europol and INTCEN play only a support role in European intelligence cooperation. They can act only upon invitation from member states which limits their

ability to enforce a unified strategy across the E.U. Furthermore, the current mandates allow for overlapping competences between Europol and INTCEN in the area of counterterrorism. This situation might create confusion and allow for intelligence gaps to occur, since neither of them plays the coordinating role in this area. Finally, the E.U.'s complicated bureaucracy decreases Europol and INTCEN's effectiveness. The annual requirement to develop complex reports leads to the agencies "checking the block," rather than producing effective studies. The INTCEN is simply too small to be able to effectively cover the terrorist threats to both internal and external security of the E.U. Additionally, the lack of interest from the E.U. decision makers and national legislatives for the E.U. agencies can result in dangerous outcomes for the E.U.'s internal and external security.

On the other hand, in the current context, the differences in the development of political and economic infrastructure among member states will most likely continue to influence the way they participate in the E.U. agencies. The E.U. needs to develop legal incentives for increased cooperation and provide specific guidance for the member states on how to implement specific policies and directives. Legal procedures need to be harmonized across the E.U., to allow for better and more effective cooperation. The adoption of the European Common Arrest Warrant and strengthening the European Court of Justice and European Court for Human Rights are important steps ahead, but not sufficient. The E.U. has to continue to constantly push member states to improve cooperation. Moreover, the legal provisions with regard to sensitive information and personal data protection need to be standardized, to facilitate a more effective exchange between member states and the E.U. institutions. To be able to enforce cooperation, the E.U. agencies require changes in the legal framework to give them, rather than the national bodies, the right to determine the "need to know" basis for intelligence cooperation., This requires that E.U. institutions assume responsibility for the outcomes of intelligence cooperation, a situation which is less likely to happen if the emphasis remains on member states' sovereignty. It seems that intelligence can follow the economic and financial sectors' examples, where the European Central Bank increased its role and tightened control over member states. Additionally, the E.U. must establish clear

and simple reporting channels for the intelligence agencies, to eliminate the existing complicated bureaucracy. Also, it should avoid maintaining annual requirements for complex reports such as OCTA and TESAT. Rather, it has to stimulate constant interaction between the decision makers and the agencies to allow for better information exchange and provide the feedback the agencies need to effectively perform their missions. This can be accomplished either by allowing Europol and INTCEN to focus on particular aspects of terrorism and organized crime each year, rather than struggling to cover all, or having Europol work on organized crime and INTCEN on counterterrorism, establishing them as the single points of contact at the E.U. level in these respective areas. In this context, INTCEN needs to be strengthened, in order to be able to effectively perform its tasks. Addressing these issues will improve the current situation and generate better security strategies and policies for the E.U.

On the same note, looking in depth at intelligence cooperation, this thesis finds that the current level is lower than E.U. ambitions. The frequent calls for increased cooperation put forward by politicians do not meet the same enthusiasm at the E.U. intelligence agencies' level. Effective intelligence cooperation is hard to achieve even at the national level as different agencies compete for resources and attention from the decision makers. The lack of a defined common E.U. interest allows for competing national agendas rather than a unified European approach. Equally important is the fact that there are important variations across the E.U. regarding the perceived level and nature of threats. This determines that member states which feel less threatened consider intelligence cooperation a low priority and focus more on economic issues instead. In this context, it is hard for the E.U. agencies to project a sense of urgency among member states, with regard to intelligence cooperation. Unfortunately, the 2011 terrorist attacks in Norway and in 2012 in Bulgaria demonstrated that no country is safe from the current environment's threats, regardless of its size or nature of foreign policy. Hopefully, these tragic incidents served as wake-up calls for the European countries and convinced them that combating current challenges requires effective intelligence and effective intelligence cooperation and sharing. Additionally, the process is challenged by the complex E.U. bureaucracy, which allows for turf wars between the agencies. The

differences in the organizational cultures of Europol and INTCEN deter effective cooperation, especially in the area of counterterrorism, where they share common responsibilities.

Finally, probably the most important challenge for the E.U.'s intelligence cooperation is the lack of trust among member states. Since the union expanded in several waves, it is hard for the new members to achieve the same level of trust older ones have. In this context, it is likely that the states will maintain existing cooperation agreements with trusted counterparts and enter new ones, only if they benefit from them. Developing trust takes time and constant cooperation between member states under the E.U.'s institutional framework, because the more the states cooperate, the more they will trust each other. Under these circumstances, the E.U. needs to develop incentives to stimulate member countries to enter cooperation agreements, within the E.U.'s institutions. Addressing the complex challenges discussed in this thesis requires a comprehensive approach, since they are interrelated and cannot be treated in isolation. This should involve a common effort of the E.U.'s institutions and member states.

While the description of legal framework and cooperation dealt with effectiveness, that of democratic control addressed transparency of the E.U. agencies. Although, there is a constant fight for finding the proper balance between effectiveness and transparency of the intelligence agencies, this thesis argued that transparency goes hand in hand with effectiveness. The reason behind this is that while having the agencies transparent ensures that they are accountable to the people through their elected officials, it also provides for the decision makers gaining important information regarding the agencies' needs to perform their tasks. This helps decision makers understand the work and provide the required legal and financial support for the intelligence agencies and will increase their effectiveness. Therefore, increasing transparency should be a goal for both the decision makers and intelligence agencies. Democratic control of the intelligence agencies is required to ensure they do not abuse their powers and are able to perform their missions. Parliamentary oversight is the most democratic form of control, since it entails the intelligence agencies remaining accountable to the people, through their elected representatives. Given the E.U.'s legal framework and the way Europol and INTCEN are

staffed and resourced, parliamentary oversight of their activities is a shared responsibility of the national legislatures and the European Parliament. Member states' parliaments are best placed to provide effective scrutiny of Europol and INTCEN, since they second national representatives to these agencies, in accordance with their domestic laws. While some national constituencies are active in this field, the majority of member states lack the necessary interest, time, and knowledge to perform this task, focusing solely on overseeing their own national intelligence agencies. On the other hand, the EP has very powerful tools and mechanisms in place to oversee the intelligence agencies. The EP has the "power of the purse" and to amend the legislation regarding Europol and INTCEN's activities. Even so, the EP seems to have a poor understanding of its role in the oversight process. The causes for this are the lack of interest, knowledge, and awareness of the members of parliament, about the capabilities and missions of the E.U. intelligence agencies. While Europol's work is better understood and scrutinized, INTCEN remains a secret for the majority of the members of the EP, even for the members of the AFET and SEDE committees, who have demonstrated little interest in overseeing INTCEN's work. At the same time, the High Representative and EEAS refrained from providing information about INTCEN. The fact that the agency does not have a publicly available mandate adds to the confusion and misunderstanding of its missions. The secrecy surrounding INTCEN hurts the agency and causes a lack of adequate support from the member states and E.U. decision makers.

To improve the current situation, the EP needs to become more involved in the oversight process. Furthermore, the shared responsibility with the national parliaments requires closer cooperation between EP and member states' legislative bodies, to prevent a fractured oversight. The EP needs to step in and provide direction and assume responsibility for the intelligence agencies, especially INTCEN. In order to do so, the EP needs to receive assessments regarding the threats to the union and member states. Without these, the EP will not be able to develop effective counter measures. Moreover, the EP needs to address the challenges regarding the access to information, by devising a system to increase the number of security cleared members of parliament, thus allowing them access to Europol and INTCEN's classified documents. This will increase Europol

and INTCEN's transparency and, therefore, awareness of the EP about the agencies. The information will provide the EP with a better understanding of the needs of the intelligence agencies. As a result, the EP can amend the existing legislation, increase budgets, or set new cooperation agreements, to increase the intelligence agencies' effectiveness.

To conclude, this thesis' main finding is that Europol and INTCEN represent forms of cooperation between nation states, at a level never seen before.[143] Despite this, there is still much room to increase their value. Addressing the flaws of the legal framework, developing incentives for states to strengthen cooperation, and enhancing the democratic control of Europol and INTCEN are key steps which the European Union can take to improve their effectiveness.

[143] Bjorn Fagersten argues in *Multilateral Intelligence Cooperation: A Theoretical Framework* (Kennedy School of Government, Harvard University, 2012) that the cooperation within the EU institutions, especially in the area of Common Foreign Policy and Security is higher than within NATO and UN. In the table used at page 5, he points out that the EU states have more interaction within the intelligence agencies and complete more tasks, than the members of NATO and UN. http://belfercenter.ksg.harvard.edu/files/Fagersten%20theoretical%20framework.pdf.

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