

Intelligent Intelligence
Challenges of European security co-operation
in the area of intelligence
Master's thesis

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Abstract

As the European Union faces many security threats in the present times, it needs to address them in an adequate and proportionate way. One of the instruments to tackle these security difficulties is intelligence, using valuable information to disrupt activities of criminal groups and to protect citizens and infrastructure of its member states. Intelligence co-operation in the European Union is however constricted by several obstacles. Aim of this paper is to analyse these hardships and to find the reasons behind them through investigation of the current intelligence network in Europe, main EU institutional intelligence agencies and informal intelligence group used by the member states.

The paper seeks to answer the question: What challenges has been the EU intelligence network facing in the recent years and why? In order to ensure safety and security for the citizens and infrastructure, European Union should establish effective co-operation between the member states and provide them with sufficient instruments to do so.

In order to be able to answer the research question, theory of new intergovernmentalism and the security governance approach have been chosen to provide us with a framework adequate for the complicated environment of the European Union and its member states. New intergovernmentalism theory is quite new theoretical approach to researching integration processes in the EU in the so-called 'post-Maastricht' era, when the behaviour of the actors, conditions for the activities of the Union and even the very international environment experienced dramatic changes. These changes are addressed in the six hypotheses, which are the foundations of the theory. Security governance as an approach is focused on issues connected to the proliferation of security threats. It represents a system of rule dependent on the states that are affected, which regulates various activities in the security-related areas through regulatory mechanisms. Combination of new intergovernmentalism theory and security governance provides us with an adequate framework with outlined factors (for example timeline or actors), allowing us the research the topic adequately.

During the research we have come to the conclusion that mistrust among the member states, differences in interests or lack of trust towards the EU intelligence institutions might be marked as the main reasons that intelligence co-operation in the EU is lagging behind. Intelligence and information is often very difficult and costly to obtain and gather, intelligence agencies of the member states have to protect their sources and thus, they are often hesitating on sharing their intelligence. Differences in professional and organizational structures also play an important role, because member states have often difficulties with determining, which of their intelligence agencies should be assigned to intelligence sharing.

Very important element of inadequacy of intelligence co-operation in the EU is member states' preference of informal collaboration groups (such as Club of Berne or G6), which are often criticised for non-existing legal basis and secrecy that is shrouding them. Co-operation is also challenged by the ambiguity caused by the exits of Denmark and of the United Kingdom, however co-operation to a certain extend is expected to be established. Future of this kind of collaboration thus remains quite blurred.

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Abbreviations

AWF – Analysis work files

CEPOL – European Police College

CJEU – Court of Justice of the European Union

EC – European Commission

ECST – European Convention for the Suppression of Terrorism

ECTC – European Counter Terrorism Centre

EDU – Europol Drug Unit

EEAS - European External Action Service

EEC – European Economic Community

EP – European Parliament

EPC – European Political Co-operation

EUMS – European Union Military Staff

IntCen - European Union Intelligence and Situation Centre

EU – European Union

JHA – Justice and Home Affairs

JPSG – Joint Parliamentary Scrutiny Group

PWGT – Police Working Group on Terrorism

SIS – Schengen Information System

1. Introduction

The present times, in which mankind finds itself, might be one of the most challenging periods of human history. It faces many threats and problems, whether it is melting of the ice caps, economic instability and inequality or violation of security of citizens all around the world. One of the most pressing matters the world elites are facing today is the threat of terrorism. Menace of danger caused by this “sword of Damocles” is ever-present, in European Union as well. In the recent years we have witnessed several displays of terrorism in Europe, horrendous acts of violence committed on civilians, such as train bombings in Madrid in March 2004, November 2015 attacks in Paris or March 2016 suicide bombings in Brussels. It is possible to witness new antagonist processes, which breed new conflicts, social phenomena and threats, endangering citizens and the European Union itself. New places of regional instability, risk of unchecked proliferation of weapons of mass destruction, international expansion of organised crime and drug trade, migration and human trafficking.

The questions of how to successfully prevent terrorist attacks or how to fight terrorism are one of the most discussed not only at the highest places in national governments and at EU level in Brussels, but in academia as well. Since the issue of terrorism is such a vast and complex problem, no one has found a formula to successfully prevent these kind of activities from happening so far. This kind of fight requires focus, knowledge, know-how, effective instruments and adequate co-operation. Some of the problems mentioned above were tackled by the police forces, but this proved that specific kinds of international criminality require more sophisticated instruments. These are represented by intelligence and intelligence agencies and bureaux, focusing on collection of critical information of military and political value (Gruszczak 2016). Intelligence and information have been crucial in securing victory and defending a country against an adversary since the ancient times.

Humankind recognized the power of information and nowadays it became one of the most valuable commodities, giving the information-owner enormous advantage against his adversary. These agencies aim to gather information through various methods (for example satellite surveillance) about the activities of various terrorist groups, movements of their “units and soldiers” or the their cashflow and use it against them, for example to disrupt their communication or to arrest suspects (Gruszczak 2016). Strategic criminal intelligence presents information in a broad view for the formulation of policies, in contrast with operational information for specific policing activities. It consists of information coming from various sources, such as policing and related agencies, auditors/forensic accountants, regulators, private sector firms and 'open-source' such as media or academia (Dorn 2008).

Images of intelligence officers being spy heroes, such as James Bond, are thus far from reality.

In order to be able to protect its citizens and infrastructure, a state or a group of co-operating states should have an effective intelligence agency (in some cases network of several agencies) focused on protecting the country and its borders. European Union as an integration grouping is no exception. In order to find a solution to its obstacles, it is important to secure regular information exchange among the intelligence agencies, their active co-operation and in the case of the European Union even some degree of integration in this matter. The current state of intelligence affairs in the European Union and its member states was formed not only by the inter-state, but by the global development as well. With its intelligence network consisting of whether Europol or an intelligence sharing forum Club de Berne, the EU belongs to the group of world actors standing against terror and violence, ready to defend its citizens. However, Europol and other members of the EU intelligence network are often subjects to many challenges in establishing common operations or co-operation, in form of various difficulties in the exchange of information, missing infrastructures, different bureaucratic interests or preferences (Fägersten 2016; Bures 2006). The aim of this paper is to focus and to explain the main challenges the EU intelligence faces nowadays and to find roots of these problems European Union faces in the process of making it more effective. Thus, we decided to ask the following questions:

What challenges has been the EU intelligence co-operation in the fight against terrorism facing in the post-Maastricht era and why?

Under challenges we will understand any sort of infrastructure deficiency, environmental imperfection, structural hardships or problems caused by the actions of member states and their preferences in the recent years focusing on the time period after the 1990s, a timeline provided by the theoretical framework. Regarding the EU intelligence network, the paper will focus mostly on the European infrastructure in the area of information gathering and fight against terrorism, namely Europol, European Union Intelligence and Situation Centre (IntCen) or Club of Berne.

Since creating and deeping co-operation in this area is a product of many integration processes in security and governance issues, it will also try to explore the issue from the theoretical point of view and apply it on the current situation as a product of certain level of integration in order to find an answer. This paper should provide the reader with knowledge about functioning of EU intelligence network and the co-operation among the member states

in this area as well, since the topic of terrorism is very relevant and the EU undisputedly faces this threat.

2. Methodology

The thesis aims to explain the challenges contemporary intelligence co-operation in the area of counter-terrorism. Europe is facing and provide the reader with an insight into their causes. In order to achieve this goal, we have chosen new intergovernmentalism and security governance as the theoretical basis. Through induction and analysis of the elements and factors these two approaches focus on, we believe the results would present an adequate image of the difficulties the member states of the EU and intelligence agencies of the EU are facing in the presents times.

New intergovernmentalism is a theory focusing on the quite recent developments in the European Union in the time period after the Maastricht Treaty, when the EU faced many changes. This theory provided us with its six main hypotheses, which have pointed us towards several important elements for the research, such as the required timeline (most of intelligence co-operation took place since the 1990s, however events prior to this period have also been described in the historical framework section), actors involved in the intelligence area or even the fact, that decision-making has become dependent on deliberation of the member states at all levels. Security governance on the other hand provided us with a broader ground for researching relations between the member states of the EU and the system of rule in the area of security. As a response to spreading of the dangers of terrorism or organised crime, it focuses on the ways national states could establish some level of international regulation of the security and intelligence co-operation. This approach allowed us to recognize and research the system of rule of the intelligence co-operation in the European Union, the relations between the member states or even the very legitimacy of these relations and their activities. These factors proved beneficial when researching the legitimacy of the informal intelligence co-operation groups, such as Club of Berne.

The paper is structured into several parts. First part, theoretical framework offers an insight into the theories and approaches that have been chosen to analyse and research the issue of intelligence in the European Union. This section is divided into two parts, security governance being the first and new intergovernmentalism the second, each dealing with the particular theory, their focus and elements. The following part focuses on the reasons why integration and co-operation in intelligence would be beneficial for the member states, highlighting the threats the EU faces today and how can intelligence tackle these difficulties. Next section of historical framework provides the reader with information about the historical development of the issue, beginning in the 1970s and going through each period to the present. Analytical part is divided into several subchapters. De novo bodies are analysed and description of their

structures, activities and goals are provided. Next part focuses on where the hardships with these institutions are, providing the reader with their analysis and with information and possible consequences of exit of Denmark and the United Kingdom from Europol. Analysis of the informal intelligence groups follows with illustration of their problematic nature. As the last part discussion was chosen to interpret the findings of the analytical part and to explain the results in terms of the theoretical framework.

Analysis was guided by the framework provided by the chosen theories. In order to successfully research intelligence co-operation in Europe, key actors needed to be specified and analysed. European institutions like Europol and IntCen were given focus in this paper, together with other informal co-operation groups (e. g. Club of Berne). Information about their legal basis, description of their activities, goals or structures was provided in order to create a framework of where to look for inadequacies and obstacles. Data gathered by this strategy of induction and analysis proved valuable for creating arguments and claims. The findings and arguments were backed by used sources (both primary and secondary) and later explained in the discussion in connection to theoretical framework. Conclusion thus provides results of discussion, where theory was applied to real cases of intelligence co-operation difficulties.

In terms of sources, in order to provide the reader with an adequate answer to the research question we have used a wide range of sources. This allowed us to have a comprehensive overview and insight into the intelligence issue. In the theoretical part, works of Christopher Bickerton, Uwe Puetter, Dermot Hodson and many others offered a great deal of knowledge about the problematics of new integovernmentalism theory. Information about security governance was provided by the works of several authors, e.g. Emil Kirchner, James Sperling or Mark Webber. In the analytical part, primary and secondary sources were used. Official documents of European Union provided information about the legal basis of analysed institutions and academia articles offered valuable information about the dynamics in intelligence area. Official documents of European Union have been analysed (e.g. the legal bases of Europol or European External Action Service in the case of IntCen) have been analysed in order to determine the very nature of these institutions or their responsibilities. Documents on counter-terrorism strategy of the EU or joint declarations of its member states were also analysed in order to obtain information about the calls for co-operation and collaboration. Quantitative data have been obtained from annual reports of Europol and World Drug Report (United Nations Office on Drugs and Crime), providing us with information about the budget or the size of Europol's databases or the information about drug use in

Europe. On the other hand, academia articles provided us for example with data on the historical development of the intelligence issue in the EU or valuable information about the relations between member states in the area of intelligence.

During the work on this paper we have found ourselves in a situation when we had to set some limitations in order not to wander too far from the research question. Timeline was set by the theory of new intergovernmentalism, focusing mostly on the post-Maastricht era period after the 1990s. However, in order to provide the reader with comprehensive outline of the intelligence co-operation in Europe, a subsection of historical framework starting in the 1970s has been created. Another limitation was thematically focused, the goal of the paper was to focus on intelligence sharing and co-operation. Despite the fact that intelligence presents an instrument for fighting various crimes like terrorism or drug trafficking, researching counter-terrorism policies or policies on fighting organized crime would mean deviation from the intended goal. This was also the case of the different professional cultures and enforcement agencies of each member state, highlighting the differences and comparing the national security systems was not intended to be of any importance in the paper. Another great limitation were the sources. The secrecy that persists in this area has caused from time to time an encounter with a need for information that was classified or couldn't be accessed otherwise. Many authors thus use information obtained from employees of these institutions.

3. Theoretical framework

Elites and competent intelligence experts of the EU and its member states have been concerned for quite some time with the notion of reforming the intelligence in way, so it can respond to current social needs with its structure, activities and legal status. As mentioned above, a state or a group of co-operating states are advised to have an effective intelligence agency (in some cases network of several agencies) to protect the country and its borders. As this is an issue of security, they should follow rules and know-how accumulated by experts of this field, get new insights into the problematics of security and eventually get inspired to deal with these difficulties. One of these notions dealing with the issue of security is the notion of security governance.

3.1. Security governance

Issues, this kind of governance is dealing with, are nowadays growing, mostly because of three main reasons: complexity of domestic governance and inability of governments to provide suitable domestic social contracts¹ without institutionalized co-operation with other states; proliferation of security threats (for example the digitalization of state, complications with exercising state authority internally and externally due to the changes in economy and society, increase in vulnerability to internal and external shocks, rising threat of non-state antagonists); persistence and growth of regional and domestic non-governance, which strengthens the vulnerabilities of open societies and states due to the externalities arising from this phenomenon (meaning the growing number of environments, where there is no effective government and allows radical fundamental groups to gain influence and support) (Sperling 2014a). Member states of the EU have given up a part of their sovereignty and their autonomy for the benefit of European integration. Growing irrelevance of geography and borders, technological innovation, irreversible economic openness or convergence around democratic governance and social democracy led to the emergence of the so-called post-Westphalian state within Europe (Sperling 2014b). The interdependencies, which are the product of internal economic project and loss of sovereignty, suggested that a certain degree of coordination among different actors (as in the case of European intelligence network) is necessary to face ongoing risks (Kirchner & Sperling 2007). Contemporary approach and theorizing of security as a problem of regional governance is caused by emergence of the post-Westphalian state and enlarging of spectrum of security threats and security agenda (Sperling 2014a).

¹ Favourable environment for individuals in terms of transferring some of their freedoms in order for state to provide security and good relationship between the authority of state and its citizens.

Security governance as an approach is not a theory per se, it is often considered to be a pre-theoretical endeavor² (Sperling 2014a) or a 'contested concept' (Christou et al. 2010). In Europe security has been seen as a socially constructed phenomenon, meaning different things to different groups in different places and at different times. This problem of complexity of the security actors, instruments or threats are to be interpreted as the problems of 'governance'. This loose concept is considered to be suitable for an environment so diversified and varied as the environment of the European Union, characterised by a multiplicity of actors and levels and their hierarchy (Christou et al. 2010). The term 'security governance' has thus proved to be elusive for a definition, vast literature provides several different definitions of the term. Mark Webber, professor of international politics at University of Birmingham, defines security governance as „*an international system of rule, dependent on the acceptance of a majority of states that are affected, which, through regulatory mechanisms (both formal and informal), governs activities across a range of security and security-related issue areas*“ (Webber 2002, p. 44). Emil Kirchner from the University of Essex offers similar explanation, he defines security governance „*as an international system of rules that involves the coordination, management and regulation of issues by multiple and separate authorities, interventions by both public and private actors, formal and informal arrangements and purposefully directed towards particular policy outcomes*“ (Kirchner 2006, p. 948). These definitions both consider the regulation of members' activities towards a common goal (a security policy) important and they both offer the possibility to examine not only the institutions engaged in the security sphere, but their interactions or division of labor among national states and international, supranational and in the case of the EU intergovernmental institutions as well. Formal and informal arrangements Kirchner mentions in his definition is possible to translate as the official and unofficial deliberation of member states in the main EU bodies, which is an important aspect of the new intergovernmentalism theory, which will be discussed later in the paper.

The term 'security governance' is possible to divide into two separate terms, 'security' and 'governance', each meaning something very different. This division should offer a better insight of what security government deals with and how it works. Kirchner considers them to be „*relatively contentious in meaning*“ (Kirchner 2006, p. 945). 'Governance' is characterized as the deployment of multiple forms of regulation (processes which allow norms or rules to be monitored, enforced or adapted) involving wide spectrum of policy actors and stakeholders

² It has an open-ended formulation and does not bear characteristics of a compact theory.

with solving a certain problem having in mind (Zürn 2010). Governance is thus typical for several modes of organization, levels and decision-making authorities, as it is in the case of the European Union. In international context there is no common government, but several national governments are able to form up and project national authority through their interaction, giving rise to governance, an enhancement through collective effort of international regulation (Zürn 2010). In the management of security in Europe there is a large number of non-state actors involved, consisting whether of private firms, national non-governmental organizations, international non-governmental organizations or international security organizations (European Union). Their importance is a subject of research (Kirchner 2007).

It is however very important to distinguish 'governance' from 'government', where Krahmman offers seven dimensions where these two terms differentiate: geographical scope, functional scope, distribution of resources, interests, norms, decision-making and policy implementation (Krahmann 2003). These dimensions offers several points, in which the main goals or activities of both government and governance break up.

Governance is mostly task specific and problem-solving in orientation, focused on the production of a desirable outcome; it is deliberate as well, outcome of governance is more intended than spontaneous or incidental (Webber 2014). It includes institutions and states as well, but it implies the way institutions (both formal and informal) interact and how it involves networks of actors that are not agents of the national state. These actors are affected by norms and values, with governance being premised on consent and legitimacy, for without consent collective action and compliance would not be possible and legitimacy refers to propriety or appropriateness of actions of a certain entity (Webber 2014). Legitimacy inheres not only in actors, but in the processes and formats within these actors interact and operate as well.

Governance as a concept is supposed to be a solution to a specific set of problems, in this case a problem of insecurity. It affects individuals, social groups and nation states as well. After the end of the Cold War (which fits the timeline of post-Maastricht era development of European integration) the term 'security' together with the term 'defence' started to be more often mentioned beyond the military scope in economic, political, environmental, social or cultural terms (Buzan et al. 1998). During the post-Maastricht era new security challenges have arisen, in contrast with the past, when threats to states originated with other states, new non-state actors have increasingly posed major threats. Webber describes several 'emerging'

security challenges, cyberspace, terrorism or transnational crime among others³. Insecurities in cyberspace represent a problem for national governments, businesses, private and public organizations and citizens as well. Since the late 20th century, terrorism has become an increasing threat to security in Europe as well. Transnational crime includes trafficking of humans, illegal drug trade or smuggling of arms and nuclear material and it can strike citizens and elites of Europe into fear and doubt about their very security (Webber 2014). These basically represent threats to systemic or milieu goals of states, legitimacy and authority of state structures and institutions, or national social cohesiveness and integrity. Thus in terms of security governance and post-Westphalian hypothesis of state, it is possible to define threats in two dimensions: the target of the threat (state, society or environment) and the agent of threat (state or non-state) (Sperling 2014b, p. 104). Previously mentioned problems are some of the issues current European intelligence network has to and tries to deal with and eliminate as one of the instruments of security governance in Europe.

Another way to think of 'security' is to consider it an objective threat to a specific object, a socially constructed norm able to empower and repress, relationships among national states influenced by the existence of international anarchy, a mode of power relations between various groups, or put even simpler, freedom from fear (Christou et al. 2010). This means that security can be a product of interaction among national governments, whether due to integration or an international cooperation. Wendt considers the European Union to be a co-operative security system, where countries identify positively with one another so the aspect of security and security itself is viewed as the responsibility of all members (Wendt 1992).

Considering all above, security governance consists thus of five features: heterarchy (where member states of the EU are equal); interaction of a large number of actors (member states, EU institutions and intelligence agencies, national intelligence agencies), both public and private; institutionalization that is both formal and informal (EU legislature and informal relations between national representatives); relations between actors that are ideational in character; and collective purpose (the purpose of EU to provide its citizens with safety and prosperity) (Webber et al. 2004). Governance and regional integration are terms that are related to each other. The aim of regional integration is to create a co-operation through common institutions and rules with precisely defined goals. Governance is an instrument or a way of conduct and leadership of these institutions in order to achieve established goals.

³ Webber mentions piracy, climate change and pandemics too, phenomena, which fall into certain groups Buzan provided. These are issues European Union tries to tackle as well, however they are not of interest for intelligence, which is the main subject of this paper.

However the question, if states are able to provide security and effective protection or if it would be possible within multilateral or supranational institutional framework, is left open.

3.2. New Intergovernmentalism

European Union began to deal with the issue of intelligence in a larger degree during the 1990s, in the so-called 'post-Maastricht era'. This period of development of the EU is characteristic with an increased activities in many areas, with completing transition from single market to monetary union and expansion from 15 to 28 members, but it also increased its involvement in socioeconomic governance and justice and home affairs. It was decided in the Maastricht Treaty that new areas of EU activities are to be developed without conceding substantial power to the European Commission or the Court of Justice, and later the Treaty of Amsterdam or Lisbon proved this. After Maastricht, integration was pursued via an intensification of policy co-ordination between member states, occurring at all levels, from heads of governments to national experts (Bickerton et al. 2015). Due to many changes in the legal framework, activities and structure of the EU, older theories of European integration have started to have difficulties with explaining these processes and academia had to look for answers elsewhere. A lot of focus was given to a new approach, named 'new intergovernmentalism', which was a reaction to previously mentioned developments. This theoretical approach was integrated into 'the family of intergovernmentalisms' because it shares analytical focus on the role of governments of member states as drivers European integration (Bickerton et. al. 2015). It tries to question and challenge conventional thinking about intergovernmental relations in Europe or interests of national governments and supranational institutions. The notion of spill-over originating in neofunctionalism (Rosamond 2000; Haas 1968) is however debatable to utilize in the issue of intelligence, however this topic is not the aim of this paper. Intelligence matters are strictly issues of security, handling sensitive information in order to ensure security for a state, its citizens and ultimately of the European Union itself. It is thus possible to expect discussions and negotiations about integration in this area. This is one of the messages of liberal intergovernmentalism, which is rather close to new intergovernmentalism. National preferences are influenced by domestic politics (created by pressure from domestic societal actors represented in political institutions) and then voiced during interstate negotiations, influenced by whether the nature of alternative policies and coalitions or possibility of commitments (Moravcsik 1993).

In their article, Christopher Bickerton (Cambridge University), Dermot Hodson (University of London) and Uwe Puetter (Central European University) offer six hypotheses on the new

intergovernmentalism, offering insight into the basis of the theoretical approach and elements it focuses on:

- *Hypothesis 1: Deliberation and consensus have become the guiding norms of day-to-day decision-making at all levels.*
- *Hypothesis 2: Supranational institutions are not hard-wired to seek ever-closer union.*
- *Hypothesis 3: Where delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo bodies.*
- *Hypothesis 4: Problems in domestic preference formation have become standalone inputs into the European integration process.*
- *Hypothesis 5: The difference between high and low politics have become blurred.*
- *Hypothesis 6: The EU is in a state of disequilibrium.*

(Bickerton et al. 2015)

These hypotheses can be divided into two groups, depending on the element they are describing and are influenced by. First group, into which hypothesis 1, hypothesis 2 and hypothesis 3 fall, is mostly focused on the intergovernmental interactions in the environment of EU bodies. In contrast the second group, consisting of hypothesis 4, hypothesis 5 and hypothesis 6, is basically 'a product of public opinion' in each member state, influencing behaviour and interests of each of them and their representatives, thus indirectly influencing informal and formal deliberation of the national governments. For the purpose of this paper we name the first group '*deliberation theses*' and the second one '*preference theses*'.

Deliberation theses

Hypothesis 1 presents the notion that deliberation and consensus-seeking have become the norms for EU decision-making in the post-Maastricht era. This means that member states see the seeking of consensual agreements and cooperation as the only option to find a solution to shared policy challenges (Puetter 2016). Puetter defines policy deliberation as a process, during which several actors collectively consider alternative policy options, taking into account known information, in order to find a commonly accepted policy response (Puetter 2016). International actors are thus prepared to rethink their preferences and interests in collective deliberation as a forum, where they can develop their opinions about a correct policy response. Policy deliberation is considered suitable for decision-making environments, where there is sharing of similar policy difficulties and strong interdependencies between the actors and individual policy options. It is also thought to be a process or an activity, whose outcome is open, it can continue even in the absence of agreement. On the other hand,

consensus represents the existence of agreement. It can be an outcome of deliberation, or a result of the absence of disagreement as well. New integovernmentalism sees deliberation and consensus as coupled. Lack of consensus can be a stimulus for further deliberation and for that reason of institutional mechanisms and working methods supporting deliberation (Puetter 2016).

Policy making has thus become more dependent from member states and their deliberation, with European Council gaining more power in day-to-day policy making, proved by its intensive involvement in the post-Maastricht period in the issue of justice and home affairs policy or economic governance. However, it is important to take into account the widening of the integration since the Maastricht Treaty, which had enormous impact on pattern of negotiations due to the bigger diversity of interests and more complicated management of intergovernmental relations (Bulmer 2015). As the issue of intelligence belongs to the topic of justice and home affairs of the EU, it is needed to state that the European Council has taken over the JHA agenda-shaping and uses its deliberation and consensus-seeking among national officials over JHA governance as a whole, thus confirming this hypothesis. JHA is thus characteristic by high-level deliberation (Wolff 2015).

Hypothesis 2 claims that the supranational institutions (such as European Commission or Court of Justice of the European Union) have been taking part on decentralization of decision-making in the post-Maastricht era. Authors of the hypothesis argument that these institutions have not been robbed of decision-making ambitions, but it has been directed elsewhere at projects that do not mean transfer of new significant powers to the supranational level (Bickerton et al. 2015). Period of the 1990s and after is characteristic by the lack of activity of the Commission or the Court of Justice in order to strengthen centralization of decision and policy-making in new areas of activity of the European Union. The Commission and the CJEU underwent changes during the post-Maastricht era and are no longer the 'engines of integration' they used to be (Bickerton et al. 2015). As mentioned above, JHA governance is marked by high-level deliberation, both in agenda-shaping phase and in its legal competences. In the area of JHA the European Commission finds itself sometimes in the position of an 'outsider' and is only given the task of implementing the decisions of the European Council. Traditional Community method is for that reason weakened (Wolff 2015). This hypothesis is strongly connected to the next one, dealing with the so-called *de novo bodies*.

Hypothesis 3 deals with the phenomenon of the so-called *de novo bodies*, created during the circumstances of integration in the post-Maastricht era. These bodies (various institutions, agencies or bureaux) can be described as a product of unwillingness for the empowerment of

traditional supranational institutions and centralization of decision-making in the European Union. These institutions tend to differ in their institutional design in several aspects. They often have an intergovernmental fiber that is more helpful for member states to control them (for example management boards often include representatives of each member state). *De novo bodies* are not supranational institutions per se (Bickerton et al. 2015). The agencies and *de novo* bodies is however difficult to define. Schout and Pereyra state that in the EU context, agencies are characterized both by their legal personality, administrative and financial independency and autonomy. Nonetheless, any further definition and characterization might seem unnecessary, because each of these 'agencies' has its own legal framework, responsibilities, competencies and of course, its name ('an authority, 'a centre', and others) as well (Schout & Pereyra 2011). To the group of newly created *de novo* bodies belong among others also agencies active in the intelligence issues, namely Europol or European External Action Service (part of which is European Union Intelligence and Situation Centre – INTCEN).

Drivers for the development and creation of these bodies can be found in the behaviour and preferences of the national governments and their representatives, who are facing the phenomenon of rising euroscepticism all over Europe. Member states of the EU are reluctant to transfer more power to the Commission or other supranational institution personifying the pursuit of ever closer union. However, majority of these bodies derive their legal status from secondary EU law, making the Commission an accomplice in the creation of these agencies (Bickerton et al. 2015). Some of the new bodies are however playing a coordinating role among national agencies. The Commission would have no incentive to take on the roles of the Europol or the European Police College (CEPOL), since it lacks policing expertise in their field (Bulmer 2015).

Considering previous claims of deliberation and consensus-seeking, there is an integration paradox coming up: member states pursue further integration but resist further supranationalism (Puetter 2012). This means that instead of pursuing deeper integration in the area of intelligence and delegating power to the Commission, they decided to create new *de novo bodies* negotiated in the European Council, because it is much more public-friendly. So far, euroscepticism has not deterred political actors to pursue integration, resistance has, on the other hand, reinforced the paradox. Member states rather make the decisions by themselves, representing their national interests in the European Council and the Council. Supranational control over foreign and defence policy has been limited, because these are the

areas where member states are reluctant to transfer powers to supranational institutions or to pursue integration through law (Bulmer 2015).

Preference theses

During the post-Maastricht era it is not only euroscepticism that is on the rise, but a crisis of representation as well, which is changing the European integration and its course. Hypothesis 4 deals with the changes in domestic preference formation, where the new intergovernmentalism considers a broad and contextualized view on this issue a way to explain the role of this crisis in the formation of integration processes (Bickerton et al. 2015). Formation processes needs to be places into context of ideology, which is in power at a certain time, state-society relations and their dynamics and the substance of contestation of politics in a given period (Schmidt 2009). This present deviation from liberal intergovernmentalism, where not only the outcome of domestic politics (national preferences) is important, but the process of the creation of this outcome become more relevant. Crisis of representation is often a product of the member state institutions and their governance in terms of European integration (such as those dealing with ratification of EU constitutional reform), other political actors might exploit this opportunity to create a wave of discontent among the citizens, explaining the growing frustration with majoritarian-based representative democracy. Populism is a fitting example as a problem in domestic preference formation. Rising support for populist and often radical politicians in whole Europe (Marine Le Pen in France, Geert Wilders in Netherlands, AfD party in Germany) creates difficulties for domestic systems to put together national preferences and voice them in Brussels.

Another issue of the post-Maastricht period the new intergovernmentalism is dealing with, is the issue of diminishing distinction between high and low politics, the subject of hypothesis 5. This scale of politics presents the idea of importance of a given issue or policy. Hoffmann explained the difference between both levels in terms of how is the issue essential to the government for the survival of the nation or the state (Hoffmann 1995). National governments are thus caught in a difficult position and need to balance between the needs and wishes of domestic voters and citizens, institutional rules and ways how to manage interdependence. In the present it is often difficult to state what issue presents a much bigger concern (whether of security or economic character) and what issue is on the other hand purely technocratic matter. Member states are often caught in various policy issues between rational interdependence management and the need to be attentive to domestic constituencies and institutional rules (Bulmer 2015). Time is also very important aspect. Illustrating the issue of intelligence, nowadays it plays an important role in defending national states, European

citizens and internal market, and thus it would be reasonable for national governments to have it on their agendas. However, intelligence co-operation has not experienced much development and has not been a subject of European negotiations in the past, interests of the European Union (or then European Communities) lied elsewhere, for example completing the common market. As the intelligence issue is a part of JHA area of the EU, it is suitable to note that JHA is being de-politicized in the EU discourse and by the use of EU agencies. These trends of agencification and operationalization take part in the blurring between high and low politics as well (Wolff 2015).

Issues of difficulties with the distinction between high and low politics have another consequence, they can lead to fueling the state of disequilibrium in the European Union, as stated in hypothesis 6. This disequilibrium was mainly created from the combination of socio-economic transformation and political development in the post-Maastricht era. This has been marked by the rising tension between national governments and their citizens and societies or previously mentioned euroscepticism. European Union experienced decline of public support in the recent times (due to f.x. Euro crisis, the refugee crisis or the threat of terrorist attacks), however as Bulmer stated, „*the EU has served as an ongoing 'political opportunity structure' that has been able to offer to member governments solutions to the dilemma of managing international interdependence while responding to pressures from domestic politics*“ (Bulmer 2015, p. 301), meaning the EU has potential to provide the member states with the right instruments to tackle these problems. Nonetheless, defining the term 'disequilibrium' might prove to be very evasive, as explaining its substance as well, and this is not the first time the EU is facing such difficult times (The empty chair crisis in the 1960s or the budgetary negotiations with the UK in the 1980s). In the case of new intergovernmentalism, disequilibrium represents one of the barriers of closer co-operation among member states.

After the Treaty of Lisbon a new model of governance was established in the Union, aiming to coordinate decentralised resources such as fiscal, diplomatic, military, security or elements of welfare state management rather than on the centralisation of these resources at the Union level and on further transfers of decision-making competences. This requires the member states to be in close agreement everytime they try to create a new common policy in these sectors.

Choosing both security governance approach and theory of new intergovernmentalism should be beneficial in terms of them offering a broad framework for analyzing challenges of EU intelligence network and intelligence integration. Security governance offers the possibility to explore relations among actors, their interactions or division of labour between national

states, supranational and intergovernmental institutions. Governance as a concept is supposed to be a solution to a specific set of problems, in this case a problem of security (or insecurity). New intergovernmentalism however creates a framework (timeline and subjects of focus – de novo bodies) for a subject, on which security governance is focusing, thus it is possible to claim these two concepts are complementary. Security governance should be a part of every regional integration, that is if there is any interests of building common security.

4. Analysis

In order to justify the need for co-operation in the area of intelligence, growing urgency of security challenges of the EU are analysed in next sections. This part also focuses on de novo bodies in the area of intelligence, the main European institutions (Europol and IntCen) in this field, characterizing their responsibilities or activities and researching the hardships these agencies have to endure. Apart from the EU 'vertical' co-operation, so-called 'horizontal' co-operation in form of informal intelligence groups proved to be a challenge for effective collaboration as well, providing the reader with data about them later in the paper. Information about the historical background is provided as well in order to have a more complex grasp of the issue.

4.1. Reasons for integration

Member states of the European Union face nowadays many challenges and history has showed that approaching challenges together with several partners might be profitable for all. Integration in Europe after the World War 2 helped the countries to establish new trade relations, co-operation in various areas and what is the most important, prevent any further conflicts and any escalation of them between them. Nicholas Dorn, professor of International Safety and Governance at Erasmus University Rotterdam, offers several other drivers for the development of intelligence and intelligence co-operation in Europe: the perception of a need for security measures in the context of the development of the single market and the opening of internal borders, increasing concern about the trans-national organized crime, co-operation against trans-national organized crime, the use of financial systems for money laundering, linking of anti-crime actions in the domestic sphere with those in foreign policy, threat of damaging economic system, growth and competitiveness by a criminal organized group, co-operation in the area of anti-crime actions or linking security issues and the Lisbon Agenda on employment and innovation (Dorn 2008). In order to implement effective instruments to fight these threats, it is important to create adequate environment for efficient intelligence co-operation. National security policies and international security co-operation arrangements in the last decades have begun to focus more on the increasing reliance on early warning, threat assessment, risk analysis or situational awareness. Intelligence has thus become an important aspect in contemporary security policies and can determine resilience of governments to threats and hazards (Gruszczak 2016).

Citizens of the European Union are today safer than ever before, they are not threatened by military conflicts, disasters or diseases to the extend they were in the past. Despite these positive trends a declining level of risk tolerance are causing a certain level of insecurity

among the populace (even small threats to security are not accepted) (Hertzberger 2007). This might be caused by the expansion or spread of Internet in the last decades, immense interest of press or extensive media coverage of every terrorist act in Europe. Public is thus exposed to pressure and feels increasingly threatened. European Union, as the partial provider or welfare and security, is responsible for ensuring safety and protection to its citizens. Results of Special Eurobarometer survey from 2015 prove that terrorism plays an important role. Around half of the respondents (49 %) identified terrorism as one of the EU’s most important security challenges, which presents an increase compared to 2011 (33 %). Terrorism was followed by economic and financial crisis (27 %), poverty (23 %), organised crime (23 %) and corruption (23 %) (European Commission 2015). Terrorism was marked as the most important challenge in 15 member states, economic and financial crises in two, corruption in six countries, poverty in four member states and organised crime in one. Organised crime and cybercrime are also considered to be threat to internal security, backed by 90 % and 80 % of responders respectively (European Commission 2015).

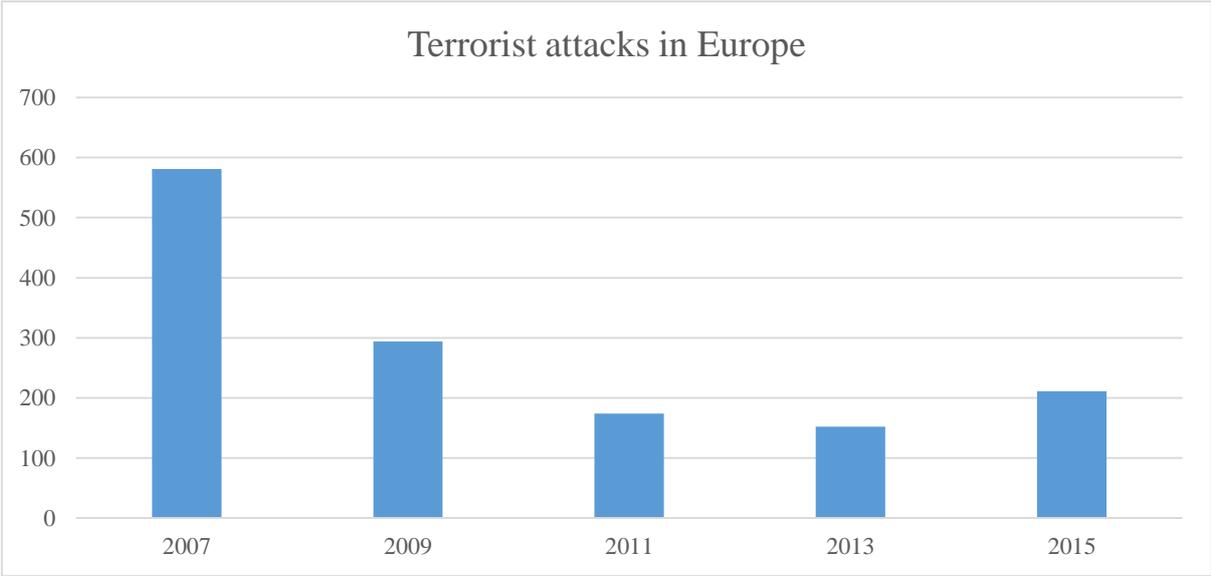


Figure 1: Number of terrorist attacks in Europe. Source: Europol

According to the statistics of terrorist attacks in the EU provided by Europol offer some insight into the situation. According to annual reports of Europol on terrorist activities in the EU, European Union Terrorism Situation and Trend Report (TE-SAT), there has been a decline in the number of terrorist attacks⁴ between 2007 and 2013, with a slow growth after 2013. As indicates figure 1, number of terrorist attacks in Europe in 2007 was quite high with a 581 attacks and 841 arrests of suspects (Europol 2010a). Declining trend of the attacks continued through 2011 until 2013. In 2013 Europol observed the minimal number of terrorist

⁴ These statistics include failed, foiled and completed attacks into one entry.

attacks in Europe, 152 attacks with 535 arrested persons suspected to be tied with terrorism. After 2013 the numbers started to rise again and in 2015 211 attacks took place in Europe with 1077 people arrested, one of the highest number of arrested people in the recent decades (Europol 2016a). Despite the relatively low number of terrorist attacks in the past few years, Eurobarometer results consider terrorism as one of the most crucial threats. This might be explained by higher sensitivity to insecurity as mentioned above, where even the smallest challenge to security is perceived negatively and is not accepted.

Another security challenge the EU is facing today is the drug trafficking and drug trade in its area. According to European Drug Report from 2016, published by European Monitoring Centre for Drugs and Drug Addiction, European drug market remains resilient with some indicators for cannabis and stimulant drugs now rising. Drug market is becoming also more complex with new substances available to consumers and ecstasy is experiencing a resurgence nowadays (European Monitoring Centre for Drugs and Drug Addiction 2016). In the global context, European Union is regarded as an important market for drugs, with supply lines originating in South America, West Asia or North Africa. European retail market with illicit drugs can be conservatively valued at around 24,3 billion € in 2013 (ranging from 21 to 31 billion €), with the largest share about 38 % being cannabis products (9,3 billion €). Cannabis is followed by heroin (6,8 billion €) and cocaine (5,7 billion €) (European Monitoring Centre for

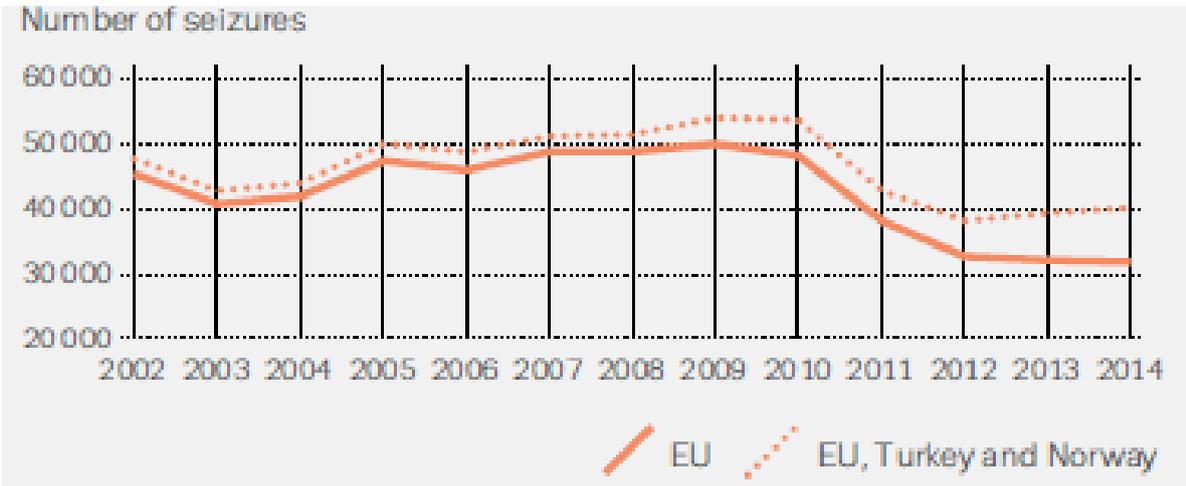


Figure 2: Number of heroin seizures. Source: EMCDDA

As figure 2 states, trend in the number of heroin seizures is negative, with the data decreasing since 2010. In order to prevent smugglers and drug traffickers from selling these commodities, it is important for the member states and the EU to establish some level of police and intelligence co-operation and sharing. On the other hand, there has been a slight

increase in the size of the seizures, however that does not change the fact that more law enforcement interventions are needed (European Monitoring Centre for Drugs and Drug Addiction 2016). Number of people in Europe consuming drugs is also quite alarming, according to World Drug Report from 2015 the best estimate of number of people (aged 15-64) who inject drugs is around 3 680 000, around 0,67 % of European population, which is the largest number compared to other continents and regions (United Nations Office on Drugs and Crime 2015).

Several of the threats mentioned above have sources in the very neighbourhood of the European Union. Instability of region of North Africa, Middle East, former Soviet states, Afghanistan or Pakistan provide fertile ground for religious fundamentalism, proliferation of drug trade and drug trafficking, or human trafficking as well. Civil war in Syria caused enormous influx of war refugees into Europe, leaving them to rely and depend on untrustworthy and treacherous smugglers. Long-term conflict situations in the Middle East also contributed to the rising threat of terrorism. Political vacuum created by whether the Syrian civil war, U.S. invasion in Iraq in 2003 or the absence of effective government in Afghanistan caused growth of influence and power of Islamic fundamental groups such as Taliban, Al-Qaeda or Islamic State of Iraq and the Levant. Southern member states of the EU such as Spain, Italy, and Greece are facing the effects of challenging demographic trends, where illegal immigrants reach their shores every week (Nomikos 2005). Intelligence is one of the ways to address these issues and find a solution to them. Given the similar security concerns of the EU member states, they have an interest to co-operate in this area and share information and intelligence, on the other hand there is unwillingness to give up sovereignty in such a sensitive and secretive area. Borderless Schengen area together with Common Foreign and Security Policy will not stand for anything if there is not a comprehensive approach to intelligence including all member states (Cross 2013). It is possible to argue that the significance and importance of intelligence has risen in the recent years. New aggressors are becoming more and more difficult to distinguish and to find due to their concealment, smugglers are using sophisticated ways to carry drugs or arms through national borders, intelligence has thus become a prerequisite for international disarmament and means more and more for the credibility of non-proliferation agreements (Müller-Wille 2004).

Contemporary intelligence needs to adequately address intracy, diversity and a broad range of activities numerous actors undertake. Accurate intelligence is essential for establishment of effective and legitimate security management and for organisational performance as well (Gruszczak 2016). Security challenges the European Union is facing today as an international

actor and as a community require a consistent and intelligence-focused response. Unless this objective is not shared by the EU institutions and agencies, the member states will hesitate to engage in a more intense form of co-operation. Co-operation in intelligence sharing must be profitable for all actors. Development in the recent years only proved the dominance and importance of knowledge and information in the area of security. Proposals and initiatives of the EU in the last few decades serve as a response to emerging problems of information analysis, knowledge management and intelligence sharing. Proliferation of security threats require a functional intelligence architecture (Gruszczak 2016).

4.2. Historical framework

Goal of this section is to provide the reader with information about the development and important events that formed the intelligence co-operation in Europe and with historical background behind it. European Union went through several significant changes (e.g. revision of the founding documents, merging several communities into one or accession of new members), which had an influence on the behaviour of its member states. This section also aims on highlighting the position and reaction of the EU after the terrorist attacks of 9/11 or 2004 attacks in Madrid. It also describes initiatives or instruments adopted during the post-1970s period and changes the Maastricht Treaty created.

Over the past few decades intelligence services in Europe had to adapt to a broad spectrum of radical environmental changes. Very dramatic were the changes in the late 1940s, when a new threat for the Western European countries emerged in form of the Soviet Union and the division of Europe into two separate parts. Later 'information revolution' has proved to be a challenge for established sources, methods and institutional structures as well (Rathmell 2002). Countries were thus facing several new challenges, how to face new danger in form of spreading of communism from the eastern part of Europe and how to embrace and make use of new technologies and methods in the sphere of intelligence when facing this threat. Over time technical development progressed even faster and number of threats perceived by the states increased as well. Danger of terrorism was growing too, events such as the massacre at the 1972 Munich Summer Olympics⁵ undeniably put pressure on politicians to protect against this kind of threat.

The development of intelligence co-operation on intergovernmental level in Europe has not started until the 1960s and the 1970s (as a response to the massacre committed by Black

⁵ Munich massacre was an attack during the Summer Olympics of 1972 in Munich, where Palestinian terrorist group Black September took hostage and then killed eleven members of Israeli Olympic team and one German police officer.

September) in form of very secretive beginnings in form of informal meetings and the creation of various clubs (Berne Club⁶ between the intelligence services, Vienna club about spying and migration, Pompidou club about drug trafficking, Quantico club about methods of law and order, TREVI club about exchange of information on terrorism), however activities of police co-operation in Europe have been publicized and recognized, but with some reluctance to submit them to accountability or transparency (Bigo 2008). Co-operation within these clubs however did not go as far as establishing new joint intelligence agencies. In this time the confrontation with cross-border and international terrorism created tangible consequences for the way intelligence agencies were organized in individual western European countries and what powers were they bearing.

One of the first steps of the member states of then European Economic Community (EEC) was setting up the TREVI forum (Terrorisme, Radicalisme, Extrémisme en Violence Internationale) in 1975 within the context of European Political Co-operation (EPC) (Fijnaut 2016). It led to a system of special procedures and liaison officers for quick exchange of information and acted as an umbrella for Interior Ministers to meet and exchange essential information, mostly in the area of counter-terrorism. David Brown, a member of Department of Defence and International Affairs at the Royal Military Academy Sandhurst, however presents July 1976 as the first recorded interest of then European Communities in the area of counter-terrorism, around the same time as the development of the TREVI framework began (Brown 2010). This difference might be credited to the ambiguity that has been shrouding these events since the very beginnings. In 1979 the Police Working Group on Terrorism (PWGT) was established, creating a forum for the EC security services to meet and co-operate. Both of these agencies focused mostly on the issue of terrorism, although TREVI's remit increased incrementally, eventually justifying six working groups covering organised crime and immigration as well (Brown 2010). Moreover TREVI group attracted the attention of the US administration, which was eager to participate in information exchange on important security issues. During this period the Western European Union was also active in this area to some extent.⁷ In 1977 European Convention for the Suppression of Terrorism (ECST) was signed under the auspices of Council of Europe, which focused whether on the issues of terrorism, extradition or removing some offences from the list of politically oriented offences (Council of Europe 1977). This convention had however some difficulties with

⁶ Also known as Club of Berne, this club will be discussed later in the paper.

⁷ WEU was declared defunct in 2011, its roots were used to create IntCen.

practical implementation because of the differing positions of then EC member states, a precursor of deep-rooted habit of EU co-operation in the area of security (Brown 2010).

Period of mid-1980s was characteristic for institutionalization of the informal clubs created in the previous decade (TREVI was created in 1975 but recognized no sooner than 1986) or development of multilateral agreements, which coordinated previous bilateral agreements in the form of international treaties and not in the form of European law (Bigo 2008). Also external factors, such as terrorism and drug trafficking, played a role in the development of police co-operation in form of the TREVI group. In mid-1980s there have been several occasions, when the member states agreed on elimination and abolishment of border checks, creating a potential risk for each of them, that needed thus to be addressed. The Schengen Agreement in its original agreement called for the creation of the Schengen Information System (SIS), a common and central computer network (Occhipinti 2003). Moreover in 1986 Single European Act was signed, creating therefore a need for further and deeper co-operation in the area of security and intelligence for the member states. In 1988 'Palma' document has set up a list of activities to be implemented in the next 20 years and provided a plan, which was subject to variations in political deliberation and agreements and geographical terms, but as Didier Bigo stated, there was „*not so much in the vision to have a security continuum linking terrorism, crime, illegal migration and surveillance of citizens of foreign origin in which the different police organizations at the European level would share their data*“ (Bigo 2008 in Bigo 1996, p. 186). European Commission followed all of these activities but had no real capacity for any kind of intervention.

The 1990s present great milestone of the development of European intelligence with signing of the Maastricht Treaty followed by the so-called post-Maastricht era. In 1991 during the presidency of Luxembourg in the European Council member states committed to establishing a Central European Criminal Investigation Office (named "Europol") for the areas of fight against international drug trafficking and organized crime, with the gradual development of its functions: relay station as the first step for the exchange of information and experience (up to 31 December 1992) and later powers to act within the member states (European Council 1991a). Later in the same year during the Dutch presidency in the European Council member states has agreed on the creation of a European police office (Europol), whose initial function was to organize the exchange of information on narcotics and drugs at the level of then twelve member states. TREVI ministers were instructed as well to take measure that would help Europol to be set up at an early date (European Council 1991b). Council has taken note of a report from the European Committee on the Fight Against Drugs as well and invited other

institutions of the community to try to make the act setting up the European anti-drug monitoring body adopted before 30 June 1992 (European Council 1991b).

Maastricht Treaty adopted in 1992 created the three pillars differentiating the role and power of the European Commission for each of them. The issue of security belonged under the second and the third pillar (Common Foreign and Security Policy, Justice and Home Affairs respectively). Title VI of Maastricht Treaty (Articles K.1 to K.9) set up the Third Pillar with Article K.1 defining areas of common interest of member states, from asylum policy, immigration policy, judicial cooperation in civil matters, criminal matters or customs cooperation, with point 9 of this article attributing to Europol the task of a forum for information sharing when stating: *„police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)“* (European Council 1992a, p. 132).

In June 1993 TREVI ministers have decided on a meeting in Copenhagen to create a co-operation team named Europol Drugs Unit (EDU), consisting of one or more liaison officer from each member state to co-operate due to the urgent problems international illicit drug trafficking or money laundering presented (Council of the European Union 1993). Its powers have been extended several times to include a wider spectrum of offences. Once the Maastricht Treaty came into effect, negotiations on Europol Convention started. In 1995 Council Act on the establishment of a European Police Office (Europol Convention) officially established a European Police Office (Europol), which did not come into force until 1998 (Council of the European Union 1995, 1998).

In 2001 the whole world was shocked by the attacks on 11 September in the United States. It was not until this moment that the member states of the EU understood the threat and the urgency of international fundamental Islamist terrorism and decided to extend the joint counter-terrorism policy to combat this issue. Numerous measures has been introduced to get the intelligence agencies of the member states to co-operate more closely or to improve the exchange of information and data among them, such as a new team of counterterrorism specialists at Europol has been established (Fijnaut 2016). However a number of innovations in the EU counter-terrorism policy were adopted before the events of 11 September, as stated by Monica den Boer and Jörg Monar⁸:

⁸ European Institute for Law Enforcement Co-operation, Brussels, and University of Sussex respectively.

„one could argue that several strata of counter-terrorism activities were already in place within the EU before 11 September: institutionally, a European police office competent to deal with terrorism-related offences; legally, conventions and additional legal instruments to facilitate extradition; and operationally, direct and regular contact between the heads of the European security services, an anti-terrorism repertory, and a regular update of the security situation.“

(den Boer & Monar 2002, p. 21)

The effectiveness and power of these institutions or conventions however is to be improved in the future, prior to 9/11, position of the European Union towards terrorism was limited just to a political level (Tsoukala 2004). Despite the condemnation of terrorism by the EU before 9/11 attacks, genuine EU counter-terrorism policy had been fully integrated into the Council's agenda only after the attacks on the United States (Bures 2006).

The attacks on US soil were definitely alarming for both the public and the representatives, Madrid train bombings in 2004 and London bomb attacks in 2005 however is where the terrorists struck „at home“ and this was another incentive for the EU and member states representatives to strengthen co-operation in the area of counter-terrorism and taking the fight back to the perpetrators. In 2007 Treaty of Lisbon has established a new body, European External Action Service (EEAS), which started its activity on the 1 December 2010 (Rettman 2010). Part of this EU body is also European Union Intelligence and Situation Centre. In 2009 Europol Convention has been replaced by the Council Decision establishing the European Police Office and it was reformed as a full EU agency in 2010 (Council of the European Union 2009). In January 2016 the European Counter Terrorism Centre (ECTC) was created by Europol as an operations centre to tackle the threat of terrorism and on a summit of EU national parliaments in April 2017 was agreed the creation of a Joint Parliamentary Scrutiny Group (JPSG).

As illustrated, development of intelligence co-operation has been in progress several decades, however the most important period is presented by the post-Maastricht era after the 1990s, when Europe faced the breach of its security on several occasions. Despite this fact, one of the most important catalyst for European intelligence co-operation was the 1972 Munich Massacre, conducted by the terrorist group Black September. European Communities answered the cross-border crimes with calls for co-operation and sharing of intelligence. As stated earlier in the paper, the member states of the EU always expressed interest in strengthening the collaboration in order to tackle these issues.

4.3. De novo bodies

In the European Union it is the member states that are the primary collectors, producers and consumers of intelligence, it represents the state's gathering of information about the dangers the state faces and how to counter these threats to the security and stability by means of espionage, sabotage, political violence, subversion or foreign-influenced activities (Gill 1994). However obtaining intelligence is difficult, time-consuming and often costly, thus it is considered to be a very valuable and sensitive product. It might be argued that national intelligence agencies and institutions are willing to exchange intelligence only when there is evident some added value, such as intelligence better than intelligence produced by national agencies on their own (a result of pooling expertise), intelligence difficult to gather due to the sensitivity of political reasons or intelligence that would not be possible to get on a national level. If these criteria are not fully met, centralized intelligence co-operation might suffer consequences, because it would not offer any advantage to a decentralized approach (Müller-Wille 2008). Co-operation could be embedded into the European Union system in two ways, top-down approach directing it by the European Council via the High Representative, or a horizontal co-operation among competent national institutions, agencies and services.

In the present times, a new different type of intelligence is getting attention. Increasingly more and more intelligence is gathered and obtained through so-called *open-source* material in the form of publicly available sources, such as public media, Internet chat rooms, blogs, commercial satellite images, governmental reports or even deep-web and dark-web⁹ (Cross 2013). Basically all information available publicly (not only available on the Internet), which prove to be useful to competent agency or body in order to ensure public security can be processed, stored, analysed and forwarded to other intelligence subjects. As its advantages can be considered its legal security (no breach of the law), simpler verifiability of the information, simpler sharing of the information and less costly obtaining of the information (Cross 2013). European Union is in terms of intelligence a collective actor, its institutions and agencies carry a joint responsibility for intelligence. In this context the EU fulfills the role of facilitator, exchequer, coordinator, owner, analyst and provider (den Boer 2015).

Europol

As explained earlier in the paper, the post-Maastricht era is characteristic for creation of a number of new *de novo* institutional bodies. As the member states of the EU were not ready

⁹ Deep web is an online Internet database, whose contents cannot be indexed by traditional search engines (Sun et. al., 2012). Dark web is the portion of the deep web that is intentionally hidden and no access is possible via standard Web browsers (Chertoff, Simon, 2015).

by 1995 to transfer sovereignty and authority to a supranational law enforcement entity, Europol with the headquarters in Hague, Netherlands was created as an intergovernmental body, outside the Community legal framework on the basis of a convention. Since the very beginning it has been a highly controversial body, even described as an 'unaccountable European FBI' (Statewatch 2002). The institution is authorized to support and strengthen co-operation of member states and their competent authorities in preventing and combating organized crime or terrorism affecting two or more member states. Europol also focuses on fight against drug trafficking, illegal money laundering, immigrant smuggling, human trafficking, racism and xenophobia or racketeering and extortion (Council of the European Union 2016a). Europol does not have executive powers however, its officers cannot carry weapons, interrogate, arrest or detain suspects or conduct home searches (Busuioac & Groenleer, 2013).

Originally however, counter-terrorism was not included in the agenda of Europol. After insistence of Spain this topic was included in its mandate as per 1 January 1999 (den Boer 2015). After the events of 11th September 2001 in the United States Europol's mandate was expanded. An extraordinary European Council was held with meeting of the heads of the member states and their governments and a joint message has been agreed upon, more intelligence is needed to be sent from the national institutions to relevant EU bodies such as Europol and the co-operation between them and other EU bodies needs to be improved and enhanced (Fägersten 2010). At the time of these attacks, the EU intelligence agencies and institutions shared information and practices through various forums and institutions both inside and outside the framework of the European Union with this trend continuing today.

Europol was given the right to ask police forces of member states of the EU to launch investigations and to share information with the United States and other third countries (Occhipinti 2003). It has also played an important role in the development of various instruments and methods for reliable intelligence sharing and exchange on organized crime and terrorism, which is orchestrated through the European Crime Intelligence Model (ECIM) or the Organized Crime Threat Assessment (OCTA) (Brady 2008; Vander Beken 2004). In 2016 Europol created the European Counter Terrorism Centre that focuses on tackling foreign fighters, online terrorist propaganda and extremism, illegal arms trafficking, sharing intelligence and expertise on terrorism financing and international co-operation between counter-terrorism authorities (Europol 2017). ECTC provides support to member states in investigations or in case of major terrorist attack provides a coordinated response. After the Paris attacks a task force *Fraternité* has been established to support the French and Belgian

investigations, resulting in 800 intelligence leads and more than 1 600 leads on suspicious financial transactions (Europol 2017). Data gathered by the instruments mentioned above are then used in the analysis work files (AWF), in which Europol is allowed to store, modify and use data concerning criminal offences and suspected of having committed or taken part in criminal act or are suspected to commit criminal offences in the future, persons called to testify in investigations, contacts and associates or persons who are able to provide vital information on the criminal offences under consideration (Council of the European Union 2016a).

Administrative and management structure of Europol consists of the Executive Director, three Deputy Directors and the Management Board. Current Director of Europol is Rob Wainwright, he is accountable to the Management Board and he is responsible for performance of the tasks assigned to Europol, daily administration or implementation of decisions adopted by the Management Board. Management Board consists of at least one representative from each member state and one representative from the European Commission and it is responsible for adoption of the work programme and the budget for the next year, rules for the prevention and solving conflicts of interest (in regard to its members) or adoption of various internal rules (Council of the European Union 2016a). It is the duty of the Director to report regularly to the Board the priorities defined by the Council and to annually submit a financial report. However, list of Management Board members is not public and it is quite overcrowded (each member state has a delegation of three or four members, making Management Board meetings quite crowded). This aspect has thus turned the board and decision-making process very difficult and deliberation with time for interventions and comments has thus many obstacles (Busuioc & Groenleer 2013).

Some member states argued and called for expanding the role of Europol to grant it investigative powers, others have opposed attributing it with an operational role because they consider it to be acceptable as a merely coordinating intelligence agency (Groenleer 2009). As stated in the latest regulation on Europol, in pursuing this objective Europol is charged with these tasks among others:

- collect, store, process, analyze and exchange information, including criminal intelligence;
- notify the member state through the national units of any information and connections between criminal offences concerning them;
- coordinate, organise and implement investigative and operational actions to support and strengthen actions by the competent authorities of the member states;

- participate in joint investigation teams;
- provide intelligence, information and analytical support to member states in connection with major international events;
- prepare threat assessments, strategic analyses and general situation reports;
- support member states' cross-border information exchange activities, operations and investigations by providing operational, technical and financial support.

(Council of the European Union 2016a)

It is evident that information and intelligence gathering and sharing plays a very important role in the activities of Europol. This data obtained by Europol is then inserted by national units, liaison officers or the staff in the Europol Information System and stored there, while being maintained by Europol. National units and liaison officers are designated by each member state and are responsible for sharing information and intelligence with Europol, supplying it with necessary intelligence and respond to its request for intelligence so Europol can carry out its tasks. These national units are also responsible for designating at least one liaison officer to Europol, who represents the national interests within Europol (Council of the European Union 2016a). This is where some of the difficulties and a challenges arise for the EU intelligence co-operation and where de facto state of intelligence sharing within Europol differs from de iure state. These challenges will be addressed later in the paper.

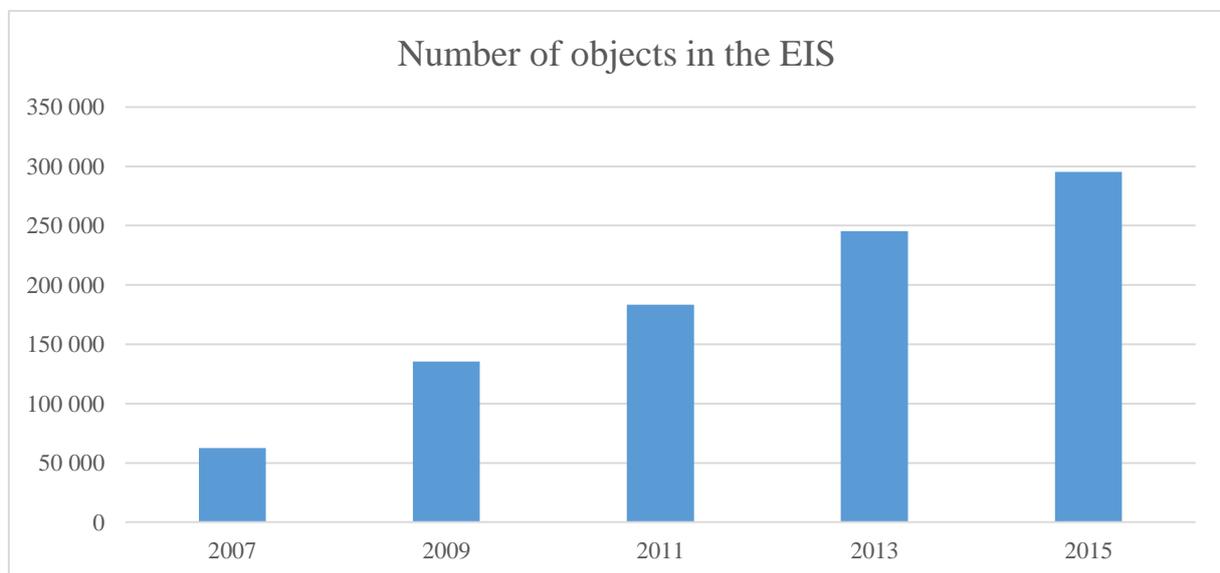


Figure 3: Number of objects in the EIS. Source: Europol

Figure 3 offers information about the number of objects in the Europol Information System. As can be seen, there was severalfold increase in the objects stored in the EIS system, in 2007 it was 62 660 objects, in 2009 the system contained information of 135 489 objects and in 2015 the number grew to 295 374 (Europol 2008, 2010a, 2016b). In 2011 EIS contained

183 240 objects and in 2013 it was 245 142 objects (Europol 2012, 2014). This can be argued to be a sign of rising importance and interest of the member states to co-operate in the area of intelligence and to share its information.

Figure 4 illustrates the development of Europol’s budget through the years with the relevant data. There is an evident trend of growth of the budget over time, with an increase more than 20 million € between the years 2007 and 2015 (Europol 2008, 2016b). Between years 2007 and 2009 there was only a modest increase in the budget (around 600 000 €), but the growth between 2009 and 2011 is evident, increasing from 68 500 000 € to 84 800 000 € (Europol 2010a, 2012). In 2013 the budget experienced a slight stagnation, declining to 82 500 000 €, but afterwards it grew again to 95 426 894 in 2015 (Europol 2014, 2016b). This can be caused by several reasons, the rise of importance of Europol, change of the funding method or some democratization in the transparency of Europol, this will be subject of discussion later in the paper.

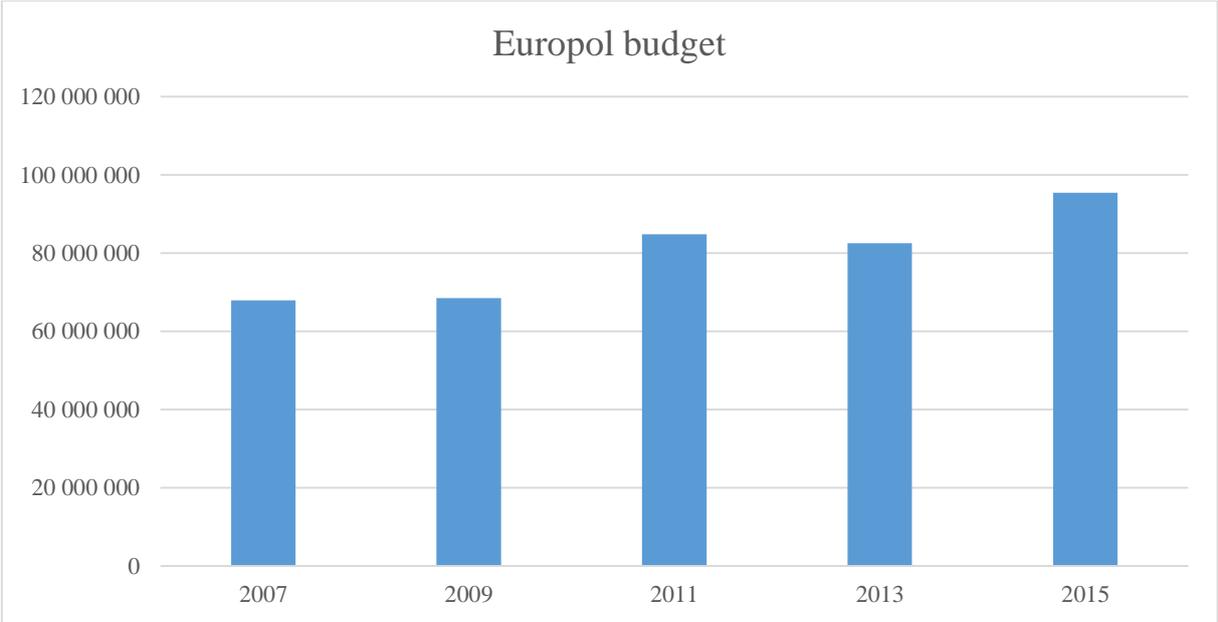


Figure 4: Europol budget. Source: Europol

IntCen

Structural changes created by the Lisbon Treaty offered favourable environment for transgovernmental co-operation in the area of intelligence. Then Joint Situation Centre (SitCen) was put in the centre of the European intelligence sphere. SitCen was established in 2002 as an institution responsible for monitoring and assessing events and situation all around the world on a constant basis with focus on potential crisis regions, terrorism and proliferation of weapons of mass destruction with being based in Brussels (Cross 2013 in Clarke 2005). Secrecy shrouding the activities and the status of IntCen itself is embedded in its very legal

basis, since it remains unclear. The decision to transfer the institution to the General Secretariat of the Council was made mostly on the initiative of Javier Solana (then High Representative for the Common Foreign and Security Policy). EEAS also refuses to provide the centre's constituting document, or confirming its existence, which only strengthens the gossip that there simply isn't any (Jones 2013). However creation of SitCen is mentioned in the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service. In 2012 SitCen's name was changed to EU Intelligence and Situation Centre (IntCen), it is based in the Council Secretariat since 1999 and today it is part of the structure of European External Action Service (den Boer 2015). Its mission is to provide intelligence analyses, early warning and situational awareness to the High Representative of the European Union for Foreign Affairs and Security Policy, currently Federica Mogherini, and to the European External Action Service (Europa.eu 2015). Main functions and tasks of IntCen in the present times are:

- to provide information that is not available publicly or provided elsewhere to the High Representative/Vice President and the Political and Security Committee, based on intelligence contributed by the intelligence and security services of the member states;
- to act as a sole point of the European Union for entering of classified information coming from member states' civilian intelligence and security services;
- to provide support and assistance to the President of the European Council and the President of the European Commission in exercising their functions and responsibilities in the area of external relations;
- to provide assessments, briefings and various products based on intelligence and open sources to the High Representative, to various EU decision-making bodies in the areas of Common Security and Foreign Policy, Common Security and Defense Policy and counter-terrorism, and to member states as well.

(Europa.eu 2015)

As listed above, it is obvious that compared to Europol, IntCen is the only actor that deals with the areas of defense, counter-terrorism and crisis management at the same time. However there is not a broad spectrum of sources on IntCen, its activities or structure, it is quite secretive and closed to the public (Cross 2013). This secrecy and discretion can be considered as a way to earn the trust of the member states and their national intelligence services. According to the EEAS HQ organizational chart published online, IntCen consists of four working groups, Intelligence analysis, Open source intelligence, Situation room, Consular

crisis management; and it answers to the Deputy Secretary General for CSDP and crisis response Pedro Serrano. Current IntCen Director is Gerhard Conrad (European Union External Action 2017). According to Mai'a K. Davis Cross (Edward W. Brooke Professor of political science at Northeastern University), IntCen consists of decision-making and implementation bodies, where the power to make decisions have the Intelligence Steering Board (chaired by the High Representative and Vice-President of the Commission) and the Intelligence Working Group (chaired by the directors of IntCen and the EU Military Staff's Intelligence division). Implementation bodies are IntCen itself and the intelligence directorate of the EU military staff (Cross 2013).

IntCen focuses on analysis, it works with open-source material, military and non-military intelligence from several member states and diplomatic reports. Open-source data together with national reports or other intelligence sources are used to produce their contextual analysis. Information are also received from the French, German and Italian spy satellites in the form of satellite imagery, and from reports of diplomatic corps of the member states as well (Cross 2013). Main intelligence products offered by IntCen are various situation and risk assessments, special reports or briefings. In its daily summaries, also produced by IntCen, it is possible to find description of important events or analysis based on intelligence and data (Gruszczak 2016). This is where problems arise as well. The member states are again not very compliant to share intelligence and important data and provide IntCen with it. According to Cross, between 17 and 20 EU member state provide intelligence to IntCen through their intelligence agencies. This means that despite the fact that not all member states participate in the intelligence sharing and forwarding in the framework of IntCen, all 27 of them receive its reports and analyses through their ambassadors and representatives in the Political and Security Committee (Cross 2013).

4.4. Challenges of Europol and IntCen

As stated earlier, intelligence and information are often very difficult to obtain and co-operation might be risky, expensive or even dangerous. Governments are aware of this fact and thus intelligence co-operation is not very common at the international level. These difficulties are however a part of a calculation when considering the costs and benefits of co-operative arrangements (Fägersten 2010). If an investment in a specific asset of an institution is high, international actors will consider the cost of any institutional change endangering the assets as well, in that case actors might hesitate and become reluctant to any risk of change. If an actor invests in a particular institutional arrangement, they have incentives to protect their investments and not demand any change by opposing it (Gourevitch 1999). This means that if

a member state of Europol invests in obtaining a piece of information or intelligence (for a price – protecting the human source etc.), he might have incentives not to share it because its source is thus threatened with being exposed, the information might get devaluated or otherwise damaged. This is backed also by the most important rule of intelligence, 'the control principle' – he who first obtains the intelligence has the right to control how it is used, who can it be shared with or what to do with it (Sawers 2010). Personal and organizational networks that create much of the intelligence sharing can thus be understood as an investment that is difficult to transfer to a different institutional setting. These networks and working relationships can be also regarded as an investment, because of the time it takes to establish them and because of the fact that they cannot be forced in terms of top-down approach (Fägersten 2010). This often caused difficulties and challenges for effective intelligence sharing in the European Union.

Europol

At the time of the events of 9/11 attacks in the United States there were several forums and institutions for the intelligence agencies to share information, such as Club de Berne or newly created Europol. Co-operation between these two subjects has been however sporadic or absent and Europol lacked resources or they were dispersed. Then Europol director Jürgen Storbeck called for more information provided by the member states and the Council decided to create Counter Terrorism Task Force (CTTF) within Europol. This unit consisted of police and intelligence officers specializing in the fight against terrorism and they were responsible for intelligence collection and its analysis (Fägersten 2010). Member states of the EU expressed interest in making Europol stronger and take intelligence co-operation at a higher level than it was at that time. On the extraordinary meeting of European Council on 21 September an expression of support of the American people was made and the EU promised to co-operate with the United States in bringing to justice the perpetrators of the attacks. Member states promised to share all useful data regarding terrorism with Europol and the Council called upon the ECOFIN and JHA Councils to take necessary measures to combat any form of financing of terrorist activities (European Council 2001a). Next month, in October 2001, in *Declaration by the Heads of State or Government of the European Union and the President of the Commission* the member states expressed the determination to combat terrorism, to eliminate Al Qaeda organization in Afghanistan or to focus on increasing co-operation between the operational services of each member state responsible for combating terrorism, that being Europol, intelligence services, police forces and judicial authorities (European Council 2001b). In December 2003 European Security Strategy was adopted by the

Council, which characterized terrorism, proliferation of weapons of mass destruction, regional conflicts or organised crime as the main threats to European security. However the document does not focus on intelligence issues, it only expresses the need for improved intelligence sharing and the need of intelligence in the fight against terrorism (European Council 2003).

The trend of increased intelligence co-operation was shortlived however and year 2002 offered several proofs. Belgian Minister of Justice Antoine Duquesne questioned the value of Europol in the fight against crime and terrorism (Occhipinti 2003). Europol reported serious gaps in completeness and timeliness of the flow of information and intelligence in CTTF in its annual report and lastly, in November the CTTF has been decided to be dissolved by the management board. The reason behind this was officially the fulfillment of the tasks the unit was assigned with (Fägersten, 2010), more realistic is however the termination of the unit because of lack of support from the providers of information, the member states (Aldrich 2004). At that time, Europol and the member states of the EU were bound by the Europol Convention, however the responsibilities of the national units resulting from the legal bond in terms of sharing information were the same as in the latest legal framework regulating Europol (Council of the European Union 1995, 2016a). Due to different intelligence interests of member states (caused by the 'value', 'price' of intelligence), they were not fulfilling their responsibilities to their abilities and causing a major challenge for establishing an effective intelligence co-operation in Europe. These problems however later repeated again.

After the 2004 terrorist attacks in Madrid new plans and ambitions were on the agenda of the EU. Due to the shock and surprised caused by the international Jihadist terrorism reaching the homeland of EU member states, their governments and representatives had thus serious incentives to support intelligence co-operation and strengthen Europol.¹⁰ Proposals of Austria and Belgium to create a 'CIA-style intelligence agency' did not meet with hoped-for enthusiasm. In Declaration on Combating Terrorism from March 2004 the European Council reacted on these attacks. Council considered full implementation of measures to combat terrorism to be a matter of urgency and called for examination of measures in, among others, simplifying the exchange of information and intelligence between law enforcement authorities of the member states (European Council 2004a). It also called for ensuring that law enforcement agencies of the member states (such as security services, intelligence agencies, police forces etc.) co-operate with each other and exchange all information relevant to fight against terrorism to the largest possible extent. In terms of intelligence, co-operation

¹⁰ For example previously dissolved CTTF was reactivated under the name CTTF 2.

mechanisms were to be improved for promotion of effective systematic collaboration between police, security and intelligence services and the flow of information to Europol was called to be enhanced. Member states were also asked to provide Europol with all relevant criminal intelligence as soon as possible (European Council 2004a). In the same year EU Plan of Action on Combating Terrorism was published, where seven strategic objectives to combat terrorism were characterized as:

1. *"to deepen the international consensus and enhance international efforts to combat terrorism;*
2. *to reduce the access of terrorists to financial and economic resources;*
3. *to maximise the capacity within EU bodies and member States to detect, investigate and prosecute terrorists and to prevent terrorist attacks;*
4. *to protect the security of international transport and ensure effective systems of border control;*
5. *to enhance the capability of the European Union and of member States to deal with the consequences of a terrorist attack;*
6. *to address the factors which contribute to support for, and recruitment into, terrorism;*
7. *to target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced."*

(European Council 2004b, p.4)

In terms of these objectives, intelligence was regarded whether as an instrument to disrupt the financing of the terrorist groups, or a way to maximise the capacity of the EU for detecting and investigating terrorists and their attacks. In 2005 the European Union Counter-Terrorism Strategy was presented with four main "pillars": prevent, protect, pursue, respond. Intelligence was part of this strategy as well as an instrument to gather information and use it in the decision-making process (Council of the European Union 2005a).

Again the wishes of policy makers were different from the real development of the issue. Although intelligence capacities and analytical capabilities of Europol were increased due to the pressure caused by the attacks, it did not increased correspondingly (Deflem 2006). Europol expressed concerns about these hardships that as a sole body focusing on intelligence and information sharing, it would be advisable if it was given the role of central institution for intelligence analysis or operational support, adding the fact that only two seconded experts were in the CTF2 unit at that time and thus Europol could not expect some contribution from the national intelligence agencies (Council of the European Union 2005b). Europol was

evidently not happy with being considered a secondary body for intelligence sharing and thus not supported in a way that would allow effective intelligence co-operation. This again was caused by the differences in bureaucratic interests mixed with reluctance and hesitating of national intelligence services to provide Europol with high quality intelligence and information. After the London attacks in 2005 the same situation happened again, policy makers called for strengthening support of intelligence co-operation, measures taken to achieve this goal has proven to be inadequate because of non-compliance of member states with the decisions or because of inferior quality of intelligence advanced to Europol. Co-operation between Europol and then SitCen has also been of quite questionable character. Paradoxical situation occurred, when for Europol to show added value as a European law enforcement agency, it required support of national police officers in collecting information (Busuioc & Groenleer 2013).

Intelligence co-operation might be also thwarted by the lack of legal documents or specific steps to make this kind of co-operation functional. There has not been adopted any kind of common intelligence policy or strategy in this sense so far, which makes the co-operation even harder. Member states are thus left to co-operate "blindly", without any kind of framework provided by the Union. States have thus to rely solely on the strategies and legislation regulating institutions focusing on fighting terrorism or organized crime (such as Europol or IntCen). Intelligence is not looked upon as a broad area of focus with opportunities for co-operation, but only as an instrument for achieving certain goals.

On the other hand, Europol was able to overcome some of these obstacles and lack of trust among the member states and national intelligence services to some extent. Importance of Europol definitely rised during the past decades and its influence as well. Despite some failures in the past Europol had to endure and overcome, it has managed to get in the forefront of EU intelligence co-operation and in the field of combating terrorism and organized crime as well. This could be backed by rising volume of data in the EIS system in the figure 3. Evidently there has been a positive trend of rise of the number of object in the EIS system. This can be argued to be a sign of a growing willingness of the member states to share their information and intelligence in the fight against whether cybercrime, terrorism, organized crime or drug trafficking. The same goes with the budget of Europol, as it might be another sign of growing importance of this institution. In 2007 Europol was given 67,894 million € and its budget has risen during the years with 68,5 million € in 2009 to approximately 95,43 million € in 2015 (Europol 2008, 2010, 2015).

However when discussing budget, several aspects must be taken into account: new member states has been admitted to the European Union and to Europol, and changes in the financing of Europol. Before the Council Decision of 2009 Europol was financed from member states' financial contributions, determined by their GNP. Latest legal regulation of 2016 created some changes in Europol's budget, where its revenues comprise a contribution from the European Union from the general budget of the EU and the draft of the budget is to be forwarded by the Commission to the European Parliament and the Council to authorise it (Council of the European Union 1995, 2016a). This type of funding was predicted to have an effect on intergovernmental status of Europol, the agency was feared to become more responsible to the Commission and the Parliament and less to the member states (Busuioc & Groenleer 2013). Delegation of power over budgetary issues to the Parliament can be related to the processes of democratization of the Union. This again might prove to present an obstacle for the activities of Europol. Giving authority over budgetary issues to several institutions may prove to be a problem. Enlarged financial role of the EU institution will mean their stronger influence over the activities, goals and priorities of the agency and could cause member states to lose their influence in this institution, or on the other hand, it would mean more influence and powers for MEPs which do not always have the required educational or professional background or are experts in the issues of security. For overwatching the activities of Europol the MEPs would need some insight into the information gathered by Europol, where immediately rises the risk of an information leak. Responsible institutions should thus find the right balance between the secrecy and transparency in the supervision of MEPs when deciding about the budget.

Despite these positive trends of growing importance of Europol in the post-Lisbon period the intelligence sharing issue remains. Certain Europol director stated:

„It's still an issue and it's been the biggest challenge that Europol has always had for the last 20 years. Which is one of facing a certain cultural resistance in the police community to sharing their information with Europol...Many of them are not used to even international police co-operation, let alone police co-operation with an institution within the EU. And it's breaking into that police culture that it's now the challenge for us.“

(Busuioc & Groenleer 2013)

Bureaucratic cultures or professional cultures of national police and intelligence agencies and institutions differ from member state to member state. These aspects are also mentioned by Fägersten, namely bureaucratic culture of intelligence agencies. He believes strictly national

professional cultures can create a difficulty to any change requiring increased contact or co-operation with other foreign colleagues and counterparts (Fägersten 2010).

Differences in organizational cultures in agencies tasked with counter-terrorism play an important role. Finland, Denmark or Ireland have one single national police service that is centralised under a certain chief office, the United Kingdom and the Netherlands have on the contrary decentralised police forces. Other example could be the use of CCTV cameras and footage, the police force of UK often relies on its use, in Denmark however they are prohibited by law (Brady 2008). It is thus difficult to provide national intelligence agencies with welcoming and adequate environment to feel safe and confident. Also because of these reasons not all states fully supported the ambitions of increased intelligence co-operation on the European level.

As we have seen, aspects such as networks, working relations and shared experience, form and influence institutional relationships. As Sir Stephen Lander, former Director General of UK Security Service, has noted: *„those joint activities generate friendships, trust with sensitive material, mutual respect and confidence, as well as understanding about constraints and difficulties. They matter,“* (Lander 2004).

Case of Denmark and United Kingdom

Intelligence co-operation in Europe and Europol itself has been shaken in December 2015 as well. A referendum took place in Denmark, focusing on the issue of its opt-out on EU justice and home affairs area and aiming to replace it with an 'opt-in' model. Danish opt-outs were contracted under the Edinburgh Agreement from 1992 after the ratification of the Maastricht Treaty was rejected by the Danish voters. On 30 October 1992 Denmark submitted to member states a document titled 'Denmark in Europe', which stated, among other things, that the defense policy dimension and co-operation in the fields of justice and home affairs are of particular importance (European Council 1992). Member states desiring to settle problems of Denmark with the Treaty agreed on Denmark becoming an observer to WEU and that nothing commits Denmark to become a member. Also, Denmark was not required to participate in the elaboration and the implementation of decision and actions in the area of defense, however it is not prevented from developing a closer co-operation (European Council 1992b).

In August 2015 Danish government announced that on the 3rd December 2015 the referendum will be held on the Danish opt-out on Justice and Home Affairs after a political agreement in the Danish Parliament (Minty of Foreign Affairs of Denmark 2015). Danish Prime Minister Lars Løkke Rasmussen and four other political parties stated that positive outcome of the referendum would be the best way to ensure Denmark stays in Europol,

helping the Danish police forces fight violent extremism and other cross-border crime. However in the results the majority of the voters chose 'no', with this option receiving 53,1 % of votes (The Local 2015). This presents a risk, both for Denmark and Europol, with Denmark possibly losing access to databases and important information and intelligence sharing instruments, and Europol losing an important member. After the referendum Rasmussen met with the Commission President Jean-Claude Juncker and Council President Donald Tusk to discuss the possibility and the way how could Denmark get a parallel agreement on Europol co-operation (Euractiv 2015). Juncker also informed Rasmussen that co-operation between Europol and Denmark would be impossible given the result of the referendum. Thus the process of investigating the political and legal possibilities for a limited co-operation was expected to be difficult and time-consuming (Euractiv 2015). In December 2016 an arrangement has been made, that despite it does not represents a full membership for Denmark, it should ensure a sufficient level of co-operation including exchange of relevant data (Reuters 2016). The date for Denmark's departure from Europol was set on 1st May 2017.

On 21st December 2016 Arie Ijzerman, the Chairperson of the Europol Management Board, send a letter to Christine Roger, Director General for Justice and Home Affairs at the General Secretariat of the Council, informing her about the proposal to the Council to add Denmark to the list of third states with which Europol conclude agreements (Council of the European Union 2016b). It was legally confirmed on 17th February 2017 when Council implemented decision about the addition (Council of the European Union 2017a). On 10th March 2017 an opinion of Joint Supervisory Body has been delivered, recognizing the situation between Denmark and Europol. If no agreement of co-operation would be concluded before 1st May 2017, an uncertain data protection situation could have been caused in terms of personal data exchange between the two parties. Since it was important to ensure co-operation between Europol and Denmark to enhance the Union's resilience to security threats, Europol has initiated the procedure for the conclusion of an agreement with Denmark (Council of the European Union 2017b). On 29th April 2017 an agreement between Denmark and Europol has been signed, having agreed among others on nonstop access to police databases and participation in information sharing. Denmark now holds the status of observer state and is allowed to participate in high-level meeting, unfortunately without voting rights (Morgan 2017). However, only time will tell how effective this co-operation is going to be when a review of this deal is scheduled in 2020.

Another event greatly influencing Europol is the often discussed Brexit. United Kingdom voted to leave not just Europol, but the whole European Union, creating a challenge for both European and global politics as well. The decision to put Denmark on the list of third countries might have implications for the case of UK once it leaves the EU (European Scrutiny Committee 2017). Rob Wainwright, current head of Europol, stated himself that he would expect Britain to get associate membership of Europol, but this kind of agreement would not let the UK directly access Europol databases. *„If you put at risk any part of the framework for international police co-operation and intelligence sharing, that Britain currently relies on then there clearly is potential for consequences,“* stated Wainwright in an interview in April 2016, expressing his expectations of Brexit to be consequential in the area of security as well (James 2016). Uncertain is the access to Schengen Information System as well. In December 2016 it was voiced that Britain will demand a leading role in Europol after leaving the EU with the ministers of UK would try to reach an US-like membership in Europol.¹¹ Home Secretary of the UK Amber Rudd also mentioned in December that the UK will not give up the membership in Europol after Brexit (McCann 2016). This was supported by claim of Wainwright that Britain will keep its intelligence-sharing agreement with European nations after Brexit and counter-terrorist activities should be a top priority for Theresa May in negotiations (Rayner 2017). UK's experience in fighting terrorism, drug trafficking or cybercrime would remain very valuable for Europol and other member states would be worried about the loss of the British expertise. Wainwright also expressed concerns of Britain becoming a 'second-tier nation' to Europol due to not having the same rights as full members after Brexit (Rayner 2017). However the rhetorics of the UK changed in March 2017, when interior minister Amber Rudd informed that Britain is likely to leave Europol after Brexit and could take their intelligence with them if no future security agreement would be made. She warned that a failure to reach this kind of deal would make co-operation in the fight against terrorism and crime more complicated and weaker (Addison 2017).

Negotiation over the UK-Europol agreement, being held in the future, present another challenge for contemporary intelligence sharing and co-operation in Europe. It is not clear yet what will be the outcome, but it is possible to say the negotiations might not be particularly simple and easy. However, this might also present another blow for trust towards this institution among its members. Threats of the UK of taking its sources and information with it after its exit present another obstacle for Europol to provide timely and important information

¹¹ United States and Europol signed an agreement about co-operation in 2001 and further co-operation and intelligence sharing has followed since.

to member states and added value to the project of European intelligence co-operation. Denmark agreed to keep the co-operation at least at some level, however as stated above, it cannot be considered to be a full member due to its presence on the list of third countries. Departure of a partner from any kind of co-operation might cast bad light and might be considered to be a sign of rising problems within the organization among the partners. However this is not the case, since both cases were caused by public vote in referendums. Effectivity in security governance in the intelligence area is thus threatened by these developments, with the deliberation and consensus seeking in the decision-making process having been given much more importance. National representatives and heads of government of the member states will have to find common ground for future co-operation. In case of Denmark deliberation was partially successful, consensus has been reached and co-operation will continue, although at a lower level. The UK will be with a high probability a different case.

IntCen

Regarding IntCen, as mentioned above, mistrust of member states towards other member states or the European institutions and intelligence agencies is an issue, just as in the case of Europol. The fact that only around 17 or 20 EU member states provide intelligence to IntCen through their agencies, but all 27 of them are willing to accept them, definitely serves as an expression of mistrust between the member states. Bureaucratic interests of the member states play an important role too in challenging the co-operation between institutions like Europol and IntCen at the EU level. Although national governments called for further co-ordination and co-operation between them, the outcome is not satisfying as it should be. It is related to unclear division of labour among the intelligence agencies and working groups involved in European counter-terrorism, which caused a creation of need for the actors to strengthen their own influence and activities rather than to try to establish effective co-operation arrangements (Fägersten 2010).

It is understandable that much of the data and documents produced by IntCen are confidential, since the very security of the EU is involved. When in 2013 portal Statewatch requested a list of documents produced by IntCen in 2012, its request was denied with a response that there is no such document available and that information about existence of such document could compromise the security and protection of public interest. On the other hand Statewatch was provided with a table indicating a number of documents produced and topics these documents focused on, it is reported that in the first six months of 2012 166 documents were produced, 17 classified as Secret, 129 as Confidential and 20 as Restricted (Jones 2013). IntCen's

refusal to provide any information about its documents is unusual, since the Council (one of the main customers of IntCen) usually gives descriptive information on the documents that it refuses to release in order to justify the refusal. The lack of transparency is obvious, confirmed by Jelle van Buuren and Chris Jones (van Buuren 2009; Jones 2013), despite IntCen being willing to provide to limited extend some basic information about its activities, goals or even documents it produces. Its lack of transparency might be proved by the official webpage of European Union External Action, where after searching the term 'intcen' in the search engine, only 4 documents and 1 press material is found, none of which provides useful and practical information about the centre.

4.5. Informal intelligence groups

While supporting political initiatives at the EU level, many member states participate in informal settings, usually in multilateral networks such as the Club of Berne or G6. These groups often offer its members more flexible and adequate environment, because states can choose its partners for possible co-operation. Club of Berne is one example, it was created in 1971 as a forum for the heads of the national European Union security and intelligence services and it has its own dedicated communications system (Lefebvre 2003). Currently it has 27 member states (that of the EU), together with Norway and Switzerland (Müller-Wille 2008). Although its main tasks is to serve as an interface or a mediator between the European Union and the chiefs of security and intelligence services and agencies of the member states on terrorist issues, it focuses also on direct operational co-operation (Müller-Wille 2008). In 2000 the Club focused on the role of intelligence with respect to European integration and a year later, in September 2001 a Counter-Terrorism Group (CTG) was founded within the institution to coordinate the work of national counter-terrorism experts and to support the co-operation and intelligence exchange between security and intelligence services of the member states (Lefebvre 2003; Bures 2008). Task of the CTG is to prepare threat assessments regarding Islamic terrorism, which is afterwards made available to various EU bodies and the national interior ministries. Yet, there is no formal link or connection to the European Union and although CTG can and indeed does communicate with Europol, it does not make Europol a member of whether the Club of Berne or of the CTG (Bures 2008). Informal contacts are common in this institution, usually taking place among smaller groups. The Club works in relative secrecy, its efficiency and its legal basis is often a subject of discussions (Lefebvre 2003).

G6 represents a group of interior ministers from the six biggest EU member states (France, Germany, Italy, Poland, Spain and the UK) that co-operate more closely than other EU

member states in the area of intelligence sharing (Bures 2008). Its creation in May 2003 (then with only five members, Poland joined later) meant to be an expression of frustration caused by the EU's bureaucratic JHA structures. It is supposedly working on making bilateral agreements, which should present sort of basis for future EU laws and measures (Lavenex & Wallace 2005). Ministers of this group meet informally regularly every year to discuss matters of security including terrorism, migration or organized crime. They have agreed on establishing a database of individuals suspected of connections to terrorist organizations, and a contact points for information on these suspects (Bures 2008). However, these are not the only informal intelligence institutions in Europe. Intelligence co-operation is taking place in other groups and initiatives like the Salzburg Forum, Baltic Sea Task Force, CEWIN, the Budapest Club, Eurosint Forum, Police Working Group on Terrorism (PWGT) or Middle European Conference, or it can take the form of a treaty between the EU states¹² (Bures 2008; Cross 2013; Müller-Wille 2008; Luif 2007).

Compared to institutions like Europol or IntCen, a very particular distinction can be observed. Europol and IntCen are bodies of the European Union and are provided by the EU institutions with administrative support, meaning they might be considered to be a direct extension of political and executive power in the member states. This 'vertical' approach to intelligence co-operation is considered to allow the institutions to exercise legal, democratic and social control over internal security actors and the intelligence exchange processes in which they are engaging (den Boer & Hillebrand & Nölke 2008). The EU legislation is making them much more transparent, perhaps sometimes to their own disadvantage. Groups like the Club of Berne or PWGT consist of a differentiated set of members in the form of a more networked, enhanced co-operation, allowing to participate to non-EU actors as well and justifying their existence with their informational, non-bureaucratic and professional nature. These groups are considered to be grouped in 'horizontal' institutions, they have an intergovernmental nature and none of them function independently from other participating member states (den Boer & Hillebrand & Nölke 2008).

The flexibility, accumulation of trust, division of labour and specialization or inclusion of non-EU members and thus broader field of participants are assumed to be the reasons why informal groups are more suitable for solving governance problems or achieving common goals than hierarchical strategies (Bures 2012). Since they are not part of the EU's institutional framework, they are active beyond the public's reach in a large extent and

¹² The Treaty of Prüm was an agreement between 7 members of the EU on supporting the cross-border co-operation, particularly in combating terrorism, cross-border crime and illegal migration.

without formal agendas or outcomes. This secretive character offers them the possibility to look effective, however the lack of accountability, oversight or transparency might lead to crippling their legitimacy (den Boer & Hillebrand & Nölke 2008). Number of informal groups might be also considered to be an advantage, Bures states that according to an interviewed EU official, more forums for discussion and personal communication bring only positives for EU counter-terrorism policy (Bures 2012). These groups might however be harmful to EU intelligence co-operation. Focusing on co-operation through the informal channels can detract attention from the official ways, institutionalized through Europol or IntCen. Often missing legal basis regulating activities of informal and horizontal networks causes lower democratic, legal and social legitimacy of these groups than in the case of an EU institution, such as Europol. These elements might thus undermine the success and legitimacy of vertical institutions and discredit them. According to Gegout even the very existence of these groups might discredit the EU decision-making because most of the decisions is then made outside the EU framework (Gegout 2002). Preference of national states for informal horizontal groups might be damaging, because they often appeal more attractive for direct but blurred operational business and thus can undermine not just the success, but the legitimacy of better-governed agencies like Europol (den Boer & Hillebrand & Nölke 2008).

5. Discussion

As illustrated in the paper, intelligence co-operation in fight against terrorism and information sharing in the European Union has experienced quite interesting development. The main focus were the challenges this area of security has faced in the post-Maastricht era and the reasons behind the hardships the EU member states have to overcome. In order to successfully research this topic, we have chosen two approaches to provide us with required theoretical framework, new intergovernmentalism theory and security governance approach.

In order to answer the research question, it would be rational to look at why would national states co-operate in a very sensitive area, such as intelligence, and delegate their powers to EU bodies. Analytical section provided us with several reasons for integration and closer co-operation in this sphere. Quite extensive drug market in Europe, the highest percentage of drug users among population compared to other continents or proliferation of new terrorist groups definitely present a danger for EU security (European Monitoring Centre for Drugs and Drug Addiction 2016; United Nations Office on Drugs and Crime 2015). Despite the declining number of terrorist attacks compared to the previous decades, there has been a decline in the level of risk tolerance with public becoming more sensitive to acts of terrorism, which can be backed by the results of the Special Eurobarometer from 2015 (Hertzberger 2007; European Commission 2015). It is thus possible to argue that significance of this area has risen in the recent times, since new actors are becoming increasingly more difficult to find and to protect from, to uncover arms and drugs smugglers or human traffickers (Müller-Wille 2004). It is thus responsibility of the EU to secure an effective management and co-operation and to create competent security governance in this area to tackle these threats successfully (Gruszczak 2016).

Initiative taken by the member states in the post-Maastricht era led to establishment of new institutions and agencies (de novo bodies), clearly linked to hypothesis 3 of new intergovernmentalism theory. According to it, governments and traditional supranational actors support the establishment of new bodies, in this case Europol and IntCen (Bickerton et al. 2015). Indeed, these agencies were created and supported as a response to security developments in Europe (such as 1972 Munich massacre, 9/11 attacks in the US, 2004 bombings in Madrid), with the member states agreeing on delegating some of their powers in order to tackle security threats. During the past decades member states have expressed on several occasions their support and interest to strengthen intelligence co-operation in the EU and they called for necessary measures to combat security threats (European Council 2001a, 2004a, 2004b). Decision-making in the area of intelligence was also proved to be a product of

interactions of member states and their deliberations. As hypothesis 1 of new intergovernmentalism claims, deliberation and consensus have become norms for decision-making at all levels (Bickerton et al. 2015). Webber claims that governance (in this case the governance of the EU security issues) is always deliberate and focused on production of a desirable outcome, which is more intended than spontaneous (Webber 2014). This can be considered to be a link between new intergovernmentalism and security governance, which proves that deliberation between member states aims to reach a consensus (desirable outcome) through goal-directed negotiations with member states voicing their national interests.

Council of the EU or European Council present the forums, where national representatives perform their deliberations and seek consensus in intelligence issues too. This hypothesis thus might reflect the conduct of member states at both EU and Europol levels, where they meet and negotiate about future activities. As stated in the theoretical part and proved by the analysis, *de novo* bodies in the intelligence area are mostly of intergovernmental character with none or very limited interventions of the Commission. This confirms hypothesis 2, where the supranational institutions (Commission in this case) often prefer delegation of powers to *de novo* bodies (Bickerton et al. 2015). In the case of intelligence co-operation as Bulmer states, Commission prefers delegation because it lacks policy expertise (Bulmer 2015).

In terms of deliberation of the member states, a difficulty and paradoxically, a solution at a same time, appear. Due to different interests and citizens' rejection of Maastricht Treaty ratification, Denmark was able to negotiate an opt-out in JHA area in 1992 (European Council 1992), thus a consensus with other member states was found. In 2015 Danish voters voted to leave Europol (The Local 2015), endangering thus the on-going co-operation. Again, deliberation of the two actors was successful and EU and Denmark were able to make an agreement about limited co-operation (Morgan 2017; Council of the European Union 2017b). Exit of the United Kingdom from European Union and Europol as well, and their threats of taking their intelligence with them is another challenge for Europol and for European intelligence co-operation. Case of Denmark and the UK illustrate that deliberation will prove to be of enormous importance in the future as well in the consensus-seeking process about finding common ground for agreements on co-operation. Board of Europol is no exception to obstacles as well, it consists of delegations of each member state's representatives, usually composed of three to four people. This results in over a hundred representatives present at the board meeting, which makes the deliberation and discussion quite difficult (Busuioc &

Groenleer 2013). Deliberation and consensus seeking (hypothesis 1) have thus become quite difficult, due to the large number of people deciding about Europol's activities and differences in national and bureaucratic interests (Busuioc & Groenleer 2013, Fägersten 2010).

In order to create an effective security governance in the EU to tackle the dangers described above, several obstacles have to be addressed. Research proved that despite several calls of EU member states for strengthening co-operation in intelligence, the results that followed were not quite satisfactory (Aldrich 2004; Deflem 2006; Fägersten 2010). One of the main reasons for intelligence sharing being thwarted and effectivity of EU security governance being restricted, is the lack of trust among the members (Cross 2013; Fägersten 2010), a great challenge of contemporary EU intelligence co-operation. As Fägersten stated, states have to consider the costs and benefits of sharing intelligence, that is often difficult and costly to obtain (Fägersten 2010). States are willing to share and exchange intelligence only if there is some value added (e. g. intelligence difficult to gather due to the sensitivity of political reasons) or institutional changes would not endanger the assets (Gourevitch 1999; Müller-Wille 2008). Apart from that, intelligence is due to its sensitivity and relation to state's security, usually very well guarded. In this matter, Sir John Sawers (the head of British MI6) claimed that most important rule of intelligence is 'the control principle' – he who first obtains the intelligence has the right to control how it is used, who can it be shared with or what to do with it (Sawers 2010).

It is thus understandable that member states have doubts about sharing intelligence with not only a few other states, but with whole institutions of at least 20 members. This is one of the reasons why states prefer informal 'horizontal' groups, offering more of accumulated trust (Bures 2012). These trust issues create a vicious circle, a 'chicken-egg' paradox. In order for Europol to get more trust from the member states, it needs to be engaged in the intelligence co-operation to a larger extent than it currently is. Member states however prefer collaboration through informal groups, because Europol is not trusted enough among national intelligence agencies and they rather choose their own partners, than to co-operate on the EU level (Bures 2012). However, as proved by the analysis, these groups often have questionable character with no legal basis, very little transparency and lack of accountability, endangering thus the EU decision-making with its discreditation and undermining success and legitimacy of EU-governed agencies (den Boer & Hillebrand & Nölke 2008; Gegout 2002). In case of IntCen, EEAS is its main authority and is subordinated to its leadership. However, little is known about the structure of the agency and much is kept in secrecy. This kind of ambiguity

and nontransparency can present an obstacle in achieving trustworthy and effective intelligence network in Europe (Cross 2013). According to Webber, legitimacy is important element of security governance approach, with legitimacy being related to the interaction processes of the actors too (Webber 2014). Legitimacy of the informal groups thus might be considered a challenge of intelligence co-operation, with possibly endangering EU agencies as well (den Boer & Hillebrand & Nölke 2008).

However, certain aspects of the theoretical framework proved to be of lesser importance in the research. Hypothesis 4, hypothesis 5 and hypothesis 6 focus mostly on the formation of preferences in conditions of domestic constituencies and environment. Intelligence is not an area that is whether of interest to public or even accessible to it (since it deals with matters of national security). However, Denmark with its opt-out referendum can be considered an exception in this case. On the other hand, urgency of security threats might be the solution to the dilemma of where to place intelligence in terms of hypothesis 5 of new intergovernmentalism, which deals with the blurred difference between high and low politics (Bickerton et al. 2015). Intelligence thus could be considered to be an issue of high politics, since the very security and safety in the EU is at stake and intelligence as an instrument to tackle these threats (in case of Denmark proved by the need for referendum). Hypothetically, the inability of the member states to provide their citizens with security and thus react to the pressure from the public (for example strong public support for counter-terrorism co-operation) might lead to growth of intolerance with the political elites (Bickerton et al. 2015; Fägersten 2010; European Commission 2015). Hypothesis 6 would thus prove to be right and the EU would enter a state of disequilibrium, proved by growing preference of populist movements. Formation of domestic preferences would thus have even more difficulties with the populists often preferring domestic- and national-oriented solutions (Bickerton et al. 2015). In terms of security governance approach, relationships between actors of these processes would thus become unfriendly and international system of rule could become increasingly more fractured. However, these are merely assumptions with hypothetical value and the fallout of intelligence co-operation failure and research of formulation processes of domestic preferences are not the goals of this paper.

In regard to theoretical framework we have used, it enabled us to answer the question of what are that challenges of European intelligence co-operation in the area of terrorism and why they emerged. It is possible to argue that intelligence co-operation in the EU is obstructed mostly by the unwillingness of member states to fulfill their commitments. Theoretical framework, provided by security governance and new intergovernmentalism, has proved that

this might be caused by several reasons, such as ineffective deliberation at all levels can present an obstacle for relations between the members, as in the case of management board of Europol (Busuioc & Groenleer 2013; European Council 1992). Relationships among the member states (an important element for establishing international system of rule) are also hindered by the mistrust that resides among them, which present a difficulty for establishment of effective co-operation and security governance. This mistrust leads members to prefer informal groups, whose legitimacy is considered to be questionable due to excessive secrecy or nonexistent legal basis (den Boer & Hillebrand & Nölke 2008). In case of IntCen, secrecy is however a component of this EU institution as well. Intelligence co-operation requires governance through a system of rule deep-rooted in some sort of legal basis (Kirchner 2006; Webber 2002). However, European Union does not have any common intelligence policy regulating intelligence sharing and co-operation in this matter, which also proves to be a difficulty for the member states since they are not provided with any guarantee of safety for their intelligence or any framework for sharing these information. Differences in professional cultures and structures of security institutions of the member states also play an important role, with the national police communities often not being used to international co-operation (Busuioc & Groenleer 2013).

6. Conclusion

The main goal of this paper was to research and analyse the hardship European intelligence co-operation has been facing in the post-Maastricht period. As an instrument for ensuring security and protection for the public of the EU intelligence plays an important role in the fight against threats like terrorism, organized crime, illicit drug trade or cybercrime. Without a comprehensive approach to this area the EU would be left vulnerable to future attacks and thus euroscepticism and disintegration processes could gain on strength.

With the help of the theoretical framework we chose, we were able to research contemporary intelligence co-operation in the EU and provide the reader with historical insight as well. Combination of new intergovernmentalism theory and security governance provided us with important elements to analyse, like the list of actors, on which we should keep our focus on during the research or the required timeline. New intergovernmentalism offers an insight into the developments of the post-Maastricht era, when most of the development of intelligence co-operation took place. Security governance on the other hand presents a quite helpful instrument to understand the dynamics and mechanics of creating this kind of co-operation. The framework allowed us to analyse the need for the co-operation in the area of intelligence, relations between the actors or the factors influencing their interactions.

As Europe is facing many security threats nowadays, it needs an adequate response to the perpetrators of terrorist activities. To answer the research question, in the analysed time period after the 1990s, EU intelligence co-operation faces unwillingness of member states to share their intelligence and information and to fulfill their commitments from their legal obligations. However, the area of intelligence co-operation is not of major importance, it is the intelligence itself that is the main subject of the issue. As we found out, this unwillingness can be caused by certain degree of mistrust between the actors, missing added value by EU institutions or even the very sensitivity of the area of intelligence and its rules. Member states also often do not feel safe in the co-operation when sharing sensitive information and intelligence, considering it an opportunity for exposure of their sources and endangering them. Feelings of mistrust hang among the member states and the European institutions are now in a very bizarre situation, the lack of trust towards them repels the member states from co-operating with them and causes them to rather prefer informal groups. Those are however often considered to be problematic with the lack of transparency and lack of legal basis. Integration in intelligence through transparent and legal channels is thus thwarted for the benefit of nontransparent and often secretive co-operation in groups like Club of Berne. Lack of legislature or common ground in the area of intelligence present a considerable challenge

as well. The fact that there has been no kind of common intelligence policy adopted or even negotiated on the EU level hinders the co-operation and causes than more problems. Differences in national enforcement and intelligence structures, diversity in bureaucratic and professional cultures proved an obstacle for intelligence co-operation as well, with the national officers often facing cultural or language barriers or not being used to international collaboration.

Collaboration in the sensitive area of intelligence requires much more than trust among partners. Differences in bureaucratic and professional cultures need to be approached as well, it is important to encourage and make relations between national representatives and intelligence officers friendlier and more efficient. Deliberation has become one of the most important elements of policy- and decision-making in the post-Maastricht era and it should be the responsibility of the national governments to go this way. However, the future of co-operation in intelligence is expected to have quite a few obstacles and is dependent solely on the stance of the member states.

7. References

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