

EU Home Affairs Agencies and the Construction of EU Internal Security

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Abstract

Regulatory agencies such as Europol, Frontex, Eurojust, CEPOL as well as bodies such as OLAF, have over the past decade become increasingly active within the institutional architecture constituting the EU's Area of Freedom, Security and Justice and are now placed at the forefront of implementing and developing the EU's internal security model.

A prominent feature of agency activity is the large-scale proliferation of 'knowledge' on security threats via the production of policy tools such as threat assessments, risk analyses, periodic and situation reports. These instruments now play a critical role in providing the evidence-base that supports EU policy-making, with agency-generated 'knowledge' feeding political priority setting and decision-making within the EU's new Internal Security Strategy (ISS).

This paper examines the nature and purpose of knowledge generated by EU Home Affairs agencies. It asks where does this knowledge originate? How does it measure against criteria of objectivity, scientific rigour, reliability and accuracy? And how is it processed in order to frame threats, justify actions and set priorities under the ISS?

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EU Home Affairs Agencies and the Construction of EU Internal Security

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1. Introduction

EU Home Affairs agencies play a central role in EU security policies. These supranational actors have, over the past decade, become increasingly active within the institutional architecture constituting the EU's Area of Freedom, Security and Justice (AFSJ). Both the Stockholm Programme – the third multiannual programme on the EU's AFSJ – and the EU's Internal Security Strategy (ISS) – which establishes the EU's security policy agenda – place EU regulatory agencies such as Europol, Frontex, Eurojust, CEPOL as well as bodies such as OLAF, at the forefront of implementing and developing the EU's internal security model.

The mandates and tasks conferred to these EU agencies, however, are constrained; agencies are intended to be primarily 'technocratic actors' – they have no executive powers and are mandated largely to support, facilitate or coordinate the actions of member states, with whom they share legal competence over policy areas of law enforcement, judicial cooperation and external border control. In addition to the delicate issues of national sovereignty, agencies operate in highly politicised and controversial policy domains, and are therefore subject to additional pressures to avoid accusations that their activities are 'politically driven'.

Against this background, the progressive, and in some cases highly dynamic, development of EU Home Affairs agencies over the past decade has to a certain extent been characterised by struggles for power and legitimacy, particularly via the use of 'alternative modes of governance', such as Union 'soft' law and policy. These non-legally binding policy instruments do not correspond with traditional EU regulatory acts but aim nevertheless to have an incremental impact by issuing model sets of rules, procedures and standards, 'best practices', guidance documents, working arrangements and other de facto activities with clear policy-making significance.¹ In other words, a central means by which EU Home Affairs agencies justify, legitimise and foster their powers is through the creation and control of 'knowledge' and its presentation as 'evidence'.

The EU's new Internal Security Strategy now takes this development one step further by integrating agency-generated strategic analysis products and intelligence tools into political priority setting and decision-making within the ISS. Agencies now play a critical role in providing the evidence-base that supports EU policymaking and steers the EU security agenda. Yet, claims of evidence-based policymaking always need to be treated with caution. While such approaches aim to depoliticise policy, purporting to provide an objective, technical foundation for making judgments and prioritising problems² claims of evidence-based policymaking often conceal complex struggles around the control of knowledge in the policy process, diverting attention from the critical role played by policy actors in influencing the selection, processing and framing of

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¹ E. Guild et al. (2011), *Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies*, study prepared for the LIBE Committee of the European Parliament, Brussels.

² M. Naughton (2005), "'Evidence-based policy' and the government of the criminal justice system – only if the evidence fits!", *Critical Social Policy*, Vol.25, No. 1, pp. 47 – 69.

facts and information. As Radaelli notes in his study of expert knowledge in European public policy, “knowledge enters the policy process in combination with interests, never alone”.³

The nature and purposes of agency-generated knowledge therefore call for closer attention and reflection. Agencies such as Frontex have substantial research budgets and large departments dedicated to R&D and ‘data-gathering’. They are also responsible for the large-scale proliferation of ‘knowledge’ on security threats facing the EU via the regular publication of ‘policy tools’ such as threat assessments, risk analyses, periodic and situation reports.

Where does this knowledge originate and how is it processed in order to frame threats, justify actions and set priorities under the ISS? Furthermore, given the distinction that can be drawn between ‘expert’ knowledge and knowledge based on independent academic research (which is arguably better placed to meet stringent criteria of scientific rigor and objectivity), what is the place of Social Science and Humanities (SSH) research in agency knowledge production? This question is particularly important when we consider the essential role of SSH research for exploring the wider range of issues critical to the understanding of internal security and crime fighting, such as the broad societal context surrounding crime phenomena, the ethical implications of security policies and considerations concerning fundamental rights.

While the existing academic literature on EU regulatory agencies focuses primarily on governance dilemmas, ‘agencification’, tensions between autonomy and accountability and mapping the sociology of power through information exchange,⁴ this research paper seeks to understand the role and functions of ‘knowledge’, the processes through which it is manufactured, manipulated and disseminated in the activities of EU Home Affairs agencies and the implications for the policy priorities driving the EU Internal Security Strategy. By conducting an in-depth examination of the knowledge-base and evidence that underpins policy-making within the ISS, including over so-called ‘new European crimes’ as understood by the FIDUCIA project – such as mobility-related and cross-border ‘threats’ – the paper will allow to locate us the research of the FIDUCIA project within the rapidly transforming landscape of the EU’s internal security policy agenda. By clarifying the uses (and mis-uses) of ‘knowledge’ as evidence and/or research in the construction of threats and implementation of the EU’s internal security strategy, this paper further aims to contextualize the question of trust-based policymaking in the EU. In particular, the study is guided by the following research questions:

1. What are the primary sources of ‘knowledge’ used by EU Home Affairs agencies? From where do these agencies obtain data for the construction and prioritisation of insecurity threats at EU level? What is the institutional and budgetary role of ‘research’ within those agencies?
2. How is the knowledge gathered by EU agencies processed and used?; what approaches are employed to analyze and manufacture data as research and what systems are in place to test the reliability, quality and objective nature of the data and analysis?
3. How does knowledge frame the discourses, actions and priorities of EU Home Affairs agencies – both in legitimising and justifying agency activities and in shaping future priorities and actions?
4. What are the main policy tools used by these actors presenting or based on that knowledge? How does ‘the knowledge’ manufactured by EU agencies shape priorities established under the ISS and impact policy agenda-setting on the EU’s wider ASJF?

³ C.M Radaelli (1999), “The public policy of the European Union: whither politics of expertise?” *Journal of European Public Policy*, Vol. 6, No. 5, pp. 757 – 774.

⁴ M. Groenleer (2009), *The Autonomy of European Union Agencies: A Comparative Study of Institutional Development*, Delft: Eburon Academic Publishers, 2009; M. Busuioc, *The Accountability of European Agencies: Legal Provisions and Ongoing Practices*, Delft: Eburon Academic Publishers, 2010; M. Busuioc, “Accountability, control and independence: The case of European agencies”, *European Law Journal*, Vol. 15, No. 5, 2009, pp. 599-615; D. Curtin, “Holding (Quasi-)Autonomous EU Administrative Actors to Public Account”, *European Law Journal*, Vol. 13, No. 4, July, 2007, pp. 523-541.

In addressing these questions, this paper draws on a methodology of research and questionnaire surveys distributed to key representatives in Europol, Frontex, Eurojust, OLAF and CEPOL, which were returned with detailed responses.

The paper begins in Section Two by providing a brief overview of the Internal Security Strategy, highlighting the central new role of agencies in the so-called ‘EU Policy Cycle’. Section three then undertakes an in-depth examination of agency activities for the manufacture, dissemination and use of ‘knowledge’ as set out in their legal mandates and *de facto* activities. On the basis of this empirical overview, section 4 then identifies four cross-cutting findings in the way EU Home Affairs agencies use and produce knowledge, its packaging as ‘evidence’ and the implications for the knowledge base underpinning the ISS.

2. The Internal Security Strategy: The role of EU Home Affairs agencies and knowledge

The EU’s Internal Security Strategy (ISS) was adopted by the Council of the EU in February 2010. The strategy sets out the common threats facing the Union and the principles and strategic guidelines to respond to these challenges, laying down the key elements of the so-called ‘European security model’.⁵

The ISS starts by identifying a number of “*common threats and security challenges*” including terrorism, serious and organised crime, cybercrime, cross-border crime, ‘violence itself’, natural and man-made disasters and road traffic accidents,⁶ drawing on examples taken from the Eurojust and Europol annual reports and threat assessments.

When moving to the ‘responses’ to these challenges developed at EU level, the ISS cites as a key instrument the “analysis of future situations and scenarios: threat anticipation” and refers specifically to the production by Europol and other EU Home Affairs agencies of “*threat assessments*”.⁷ The emphasis by the ISS on the contribution and activities of these EU Home Affairs agencies (particularly Europol, Eurojust and Frontex) corresponds with the political priorities set in the scope of the 2009 Stockholm Programme, which called upon the Council and the European Commission to “*define a comprehensive Union internal security strategy*” on the basis of “*stringent cooperation between the Union agencies, including further improving the information exchange*”.⁸

When outlining the main principles and strategic guidelines of action composing the EU Security Model, the ISS highlights, amongst others, the following two guidelines:

First, the dimensions of “prevention and anticipation: a proactive, intelligence-led approach”, guided by a stronger focus on the prevention of criminal acts and terrorist attacks *before they take place*;⁹ and second, effective operational cooperation between EU Home Affairs agencies, where the role of the post-Lisbon COSI (Standing Committee on Operational Cooperation on Internal Security) within the Council is presented as central for “encouraging increasingly coordinated, integrated and effective operations”.

⁵ Council of the EU, *Internal Security Strategy for the European Union: Towards a European Security Model*, 5842/2/10, Brussels, 23 February 2010.

⁶ The main “*crime-related risks and threats*” facing Europe today according to the ISS are:

...terrorism, serious and organized crime, drug trafficking, cyber-crime, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption, trafficking in arms and cross-border crime.

⁷ Council of the EU, *Internal Security Strategy for the European Union: Towards a European Security Model*, 5842/2/10, Brussels, 23 February 2010, p. 7.

⁸ Council of the EU, the Stockholm Programme – An Open and Secure Europe serving and protecting citizens, 5731/10, Brussels, 3 March 2010, p. 60.

⁹ Council of the EU, *Internal Security Strategy for the European Union: Towards a European Security Model*, 5842/2/10, Brussels, 23 February 2010, p. 11.

The ISS called on the European Commission to present concrete actions putting the Strategy into practice. This came in the shape of the Communication on “The EU Internal Security Strategy in Action” adopted in November 2010,¹⁰ which identifies the five “most urgent challenges” (terrorism, serious and organised crime, cybercrime, border security and disasters) and proposes five strategic objectives and a number of specific policy actions from 2011-2014, aimed at making the EU “more secure”. These include, by way of illustration, “disrupting international crime networks”, which according to the Communication:

...calls for more joint operations involving police, customs, border guards and judicial authorities in different Member States working alongside Eurojust, Europol and OLAF. Such operations, including Joint Investigation Teams, should be set up – where necessary at short notice – with the full support of the Commission in line with the priorities, strategic goals and plans established by the Council on the basis of relevant threat analyses.

As regards the second strategic objective dealing with the prevention of terrorism and radicalisation, the Communication notes that “*the threat from terrorism remains significant and is constantly evolving*”, an assertion made on the basis of the Europol’s 2010 Terrorism Situation and Trend (TE-SAT) Report.¹¹

Both the ISS and the Communication on the ISS in Action give EU Home Affairs agencies (and particularly Europol, Eurojust and Frontex) an elevated role in identifying and defining the phenomena considered to signify the most important security threats to the EU.

This position is further consolidated by a Joint Report issued by these three EU Home Affairs agencies in May 2010 titled “*The State of Internal Security in the EU*”, which aims to provide an analysis of “the principal threats to internal security in the EU” on the basis of three strategic documents:

- Europol’s Organised Crime Threat Assessment (OCTA),
- Europol’s Terrorism Situation and Threat Report (TE-SAT) and
- Frontex Annual Risks Analysis (ARA).

The Joint Report concludes on the basis of the ‘evidence’ and ‘analysis’ carried out in these policy tools that “the internal security of the EU faces a substantial threat from organised crime, terrorism and illegal immigration”,¹² which are deemed to require a concerted EU response. The report underscores the interconnected nature of organised crime, where counterfeiting, irregular migration, trafficking of goods and persons and terrorism are inter-linked and mutually facilitative phenomena.

As regards the implementation of the ISS, again a key role is foreseen for EU Home Affairs agencies. The architecture framing the practical implementation of the ISS is the so-called ‘EU Policy Cycle’. According to Council Conclusions adopted in October 2010 on “*the creation and implementation of an EU Policy Cycle for organized and serious international crime*”,¹³ the Policy Cycle aims at dealing with criminal threats:

...in a coherent and methodological manner through optimum cooperation between the relevant services of the Member States, EU Institutions and EU Agencies as well as relevant third countries and organizations.¹⁴

¹⁰ European Commission, Communication, *The EU Internal Security Strategy in Action: Five Steps towards a more secure Europe*, COM(2010)673 final, 22.11.2010.

¹¹ Footnote 16 of the Commission Communication, *The EU Internal Security Strategy in Action: Five Steps towards a more secure Europe*, COM(2010)673 final, 22.11.2010.

¹² Council of the EU, *Joint Report by Europol, Eurojust and Frontex on the State of Internal Security in the EU*, 9359/10, Brussels, 7 May 2010, p. 10.

¹³ Council of the EU, Council Conclusions on the creation and implementation of a EU policy cycle for organized and serious international crime, 15358/10, Brussels, 25 October 2010.

¹⁴ Council of the EU, Council Conclusions on the creation and implementation of a EU policy cycle for organized and serious international crime, 15358/10, Brussels, 25 October 2010, p. 5.

The policy cycle consists of four steps: i) policy development on the basis of threat assessments; ii) policy setting and decision-making by the Council through the identification of a number of priorities; iii) implementation and monitoring of Operational Action Plans (OPAs); and iv) an ex-post evaluation.

A first two-year Policy Cycle was agreed and is being implemented (2011-2013) on the basis of Europol's 2011 Organised Crime Threat Assessment (OCTA) report. This period is expected to serve as a learning process before the first fully fledged four-year policy cycle begins in 2013, based on a new Serious and Organised Crime Threat Assessment (SOCTA). The new SOCTA will remain under the lead of Europol but will draw more explicitly upon the input of other EU Home Affairs agencies and member state authorities, integrating the contributions of a range of EU and national actors into one assessment. In turn, the operational plans which will be drawn up during the third step of the policy cycle will be incorporated into the various agencies' work programmes, thus according EU Home Affairs agencies a key role in both the priority setting, as well as implementation phase of the cycle.

Thus a recent report issued by Europol summarising its experience in the implementation of the EU Policy Cycle underlines:

The commitment of the Justice and Home Affairs agencies remains crucial for the success of the EU Policy Cycle. Frontex as the Co-driver for priority C – illegal immigration has an important role to play. Next to Europol and Frontex, Eurojust, CEPOL and EMCDDA have been the main actors at agency level so far.¹⁵

The monitoring and coordination of the EU policy cycle takes place primarily in the Council's Standing Committee on Operational Cooperation on Internal Security (COSI). COSI was set up in February 2010 in order to facilitate operational cooperation and coordination in areas covered by police and customs cooperation, by authorities responsible for the control and protection of borders as well as judicial cooperation in criminal matters when relevant for operational cooperation.¹⁶ COSI is additionally responsible for helping to ensure consistency in the activities of Europol, Eurojust and Frontex and "other relevant bodies" which may participate as observers in Committee meetings. COSI prepares, on the basis of Europol's threat assessments, the political decision-making and conclusions concerning the priorities of the policy cycle for adoption by the JHA Council; it supervises the drafting of the annual Operational Action Plans (OAPs) and receives the annual evaluations of the policy cycle. In addition, Home Affairs agencies have begun reporting systematically to COSI concerning their operational activities.¹⁷ COSI thus functions as the main clearinghouse for policy development, decision-making, policy implementation and evaluation,¹⁸ with EU Home Affairs agencies as the critical feeders of knowledge, evidence and expertise into this policy cycle.

3. Mapping agencies' production and use of knowledge: Unpacking the evidence-base of the ISS

Section 2 demonstrated the central role of 'evidence' originating from EU Home Affairs agencies in the development and implementation of the ISS. Section 3 will attempt to unpack this evidence by taking each of the five agencies in turn and examining how each agency produces and uses 'knowledge'.

In order to capture the diverse range of ways in which EU home affairs agencies make use of 'evidence', expertise and information, 'knowledge' is here broken down into three categories: The first category

¹⁵ Council of the EU, EU Policy Cycle: Implementation Monitoring, 11246/1/12, Brussels, 19 June 2012, p. 7.

¹⁶ Decision of the Council of the EU on setting up the Standing Committee on operational cooperation on internal security, 2010/131/EU, OJ L, 52/50.

¹⁷ A. Scherrer, J. Jeandesboz and E.P. Guittet (2011), *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, Study prepared for the LIBE Committee of the European Parliament, Brussels, p. 42.

¹⁸ A. Scherrer, J. Jeandesboz and E.P. Guittet (2011), *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, Study prepared for the LIBE Committee of the European Parliament, Brussels, p. 44.

examines the extent to which each agency functions as an intelligence actor. By ‘intelligence’, we refer to a distinct form of knowledge that supports a proactive, as opposed to reactive, approach to crime fighting. The precise form of such intelligence differs from agency to agency – referred to variously as ‘risk analysis’, ‘strategic analysis’ or ‘threat assessment’ – but all imply the collation and processing of data and information to extract an overarching (often future-oriented) analysis that relies on the early identification of ‘threats’ as a strategy to prevent organised crime. Within this category we also examine the agency’s activities for data and information management, through the gathering and processing of data (including statistical data) as well as information related to investigations, cases or other relevant details affecting crime trends. The second category is ‘Research and Development’ and groups the research tasks that agencies engage in, ranging from internal research activities by agency staff, sometimes in cooperation with member state experts, to research and development tasks that are outsourced to external contractors. The third category examines any other activities for the production and dissemination of knowledge, in particular training and other learning-based tasks, such as the establishment of fora or networks focused on the pooling of expert knowledge or exchange of practices.

Although a certain degree of overlap between these categories is inevitable, they prove helpful when identifying commonalities in the way the agencies selected, produce and use knowledge. Certain categories will be more relevant for certain agencies than others, given the wide diversity in the mandates and tasks between Europol, Frontex, Eurojust, OLAF and CEPOL and this variation is reflected in the overview below.

3.1 Europol

Europol (European Police Office) is the EU’s Law Enforcement Agency Headquartered in The Hague, the Netherlands, and employing a staff of around 700 persons.¹⁹ Europol’s formal objective, as laid down in the 2009 Europol Council Decision²⁰ and echoed in Article 88 of the Lisbon Treaty, is to “support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more member states”.

Europol has no executive powers – its mandate is primarily to act as a support service to the member states, with its core tasks to facilitate the exchange of information between member states and to develop criminal intelligence. In recent years it has also been granted more operational powers, the clearest manifestation being its participation (in a support and coordination role) in Joint Investigation Teams, together with Eurojust and representatives of national police forces.²¹

Due to a prevailing police culture that has been reluctant to trust and cooperate with the agency, the literature contends that Europol has, since its establishment, encountered obstacles (especially related to the lack of information sharing by member states) to performing its full functions and delivering on expectations.²² However, the central place of Europol within the EU Policy Cycle is now expected to offer a new institutional impetus to the agency.²³ Its leading role in providing – via the SOCTA – the knowledge and evidence base underpinning the EU’s ISS now provides Europol with the possibility to demonstrate its added-value at EU and national law enforcement levels. The positioning of Europol in the field of cybercrime and the decision to place the European Cybercrime Centre within the agency is further reflection

¹⁹ See the Europol official website at: www.europol.europa.eu

²⁰ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121/37, 15.05.2009.

²¹ Article 6 of the Europol Council Decision.

²² A. de Moor and G. Vermeulen (2012), “The Europol Council Decision: Transforming Europol into an Agency of the European Union,” *Common Market Law Review*, 47, pp.1089-1121.

²³ M. Busuioc and D. Curtin (2011), *The EU Internal Security Strategy, the EU Policy Cycle and the Role of (AFSJ) Agencies: Promises, Perils and Pre-requisites*, Study for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament.

of the strong place of Europol within the ISS.²⁴ Moreover, the forthcoming Commission proposal for a Regulation on Europol to replace the Europol Council Decision (expected in 2013) will further reinforce and consolidate this agency's powers.²⁵

Against this backdrop, the development and dissemination of 'knowledge' features increasingly heavily in the activities of Europol, primarily through this agency's efforts to consolidate its role as an intelligence broker but also in its efforts to establish its position as a centre of expertise for the combat and prevention of organised and serious crime.

3.1.1 *Europol as an intelligence actor*

During the past years, and particularly with the entry into force of the Europol Council Decision, Europol has increasingly positioned itself as a knowledge centre for strategic insight into the phenomena of organised crime in the EU. The Europol Council Decision now identifies as one of the agency's main tasks to "prepare threat assessments, strategic analyses and general situation reports relating to its objective, including organised crime threat assessments."²⁶

The two most important strategic products are the EU Terrorism and Situation and Trend Report (TE-SAT) and the EU Organised Crime Threat Assessment (OCTA), soon to become SOCTA, which lies at the centre of the EU policy cycle and provides the basis for identifying EU crime priorities (as discussed in Section 2).

3.1.1.1 *TE-SAT*

The TE-SAT was established in the aftermath of the attacks of 11 September 2001, initially as a reporting mechanism from the Council's Terrorism Working Party (TWP). The TE-SAT is now produced annually by Europol and seeks to present basic facts and assemble figures regarding terrorist attacks and arrests in the European Union, compiling data on failed, foiled and completed terrorist attacks as well as arrests of terrorist suspects. The report also aims to present trends and new developments from the information available to Europol, with the report categorising terrorist groups by motivation (e.g. 'religiously motivated', 'separatist', 'right wing', etc.).²⁷

According to Europol TE-SAT 2012, the content of the TE-SAT is based on information supplied by EU Member States, some third states (Colombia, Croatia, Iceland, Norway, the Russian Federation, Switzerland, Turkey, and the US) and partner organisations (Eurojust and Interpol), as well as information gained from open sources.

Given that the TE-SAT does not seek to analyse the root causes of terrorism, nor assess the impact or effectiveness of counter-terrorism policies and law enforcement measures taken, and does not take into account the highly divergent national contexts and specificities between the member states, the TE-SAT has been charged with over-simplifying the terrorist phenomena in member states.²⁸

²⁴ Press release, "An EU Cybercrime Centre to fight online criminals and protect e-consumers", IP/12/317, 28 March 2012.

²⁵ Commission Communication on Delivering an Area of Freedom, Security and Justice for Europe's Citizens: Action Plan Implementing the Stockholm Programme, COM(2010) 171, Brussels, p. 32.

²⁶ Article 5 of the Europol Council Decision.

²⁷ See for instance, Europol, TE-SAT 2012: Terrorism Situation and Trend Report (available at: <https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf>).

²⁸ A. Scherrer, J. Jeandesboz and E. P. Guittet (2011), *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, Study prepared for the LIBE Committee of the European Parliament, Brussels, pp. 23-24.

3.1.1.2 OCTA

The OCTA aims to provide a picture of the threat posed by certain criminal networks and organised crime phenomena in the EU. It describes the main characteristics of criminal groups present within the EU, the extent of criminal markets and the regional dimension of organized crime. Reports are published on a bi-annual basis with Europol having released the first “European Organised Crime Threat Assessment” (OCTA) in 2006. Prior to this, the agency had compiled annual general situation reports. However, the OCTA aimed to go beyond simply presenting an overview of national data, but rather sought to identify trends, make assessments of future threats and put forward recommendations on the prevention and control of organised crime.²⁹

The OCTA addresses specific crime areas such as ‘drugs’ or ‘trafficking in human beings’, breaking down each theme into geographical ‘hubs’ and identifying crime networks tagged according to their nationality/ethnic origin, often accompanied by pictorial mappings of crime hubs and visual representations of the threats posed. Statements in the OCTA on criminal networks and the level of threat are limited to rather general observations, at least in the publicly available versions of the report, relying on qualitative statements with little detail or supporting empirical data or statistical information provided. The narrative of the reports is one of increasing threats, of an ever more complex and transnational nature.³⁰

Concerning the methodology behind the preparation of the OCTA, little is known in detail given the high level of confidentiality surrounding the process. The only indication provided by the report itself is a short acknowledgement stating:

The EU Organised Crime Threat Assessment is the product of a systematic analysis of law enforcement information on criminal activities and groups affecting the EU... It has been produced by strategic analysts in Europol’s Analysis and Knowledge Unit (02), drawing on extensive contributions from the organisation’s analysis work files (AWF), SCAN team and external partners...³¹

Nevertheless, a body of research has examined the content of the OCTA reports and methodological approach underpinning them. For instance, Carrapico and Trauner find that the OCTA’s methodology leaves significant scope for independent assessment by Europol. Although the general methodological approach has been jointly agreed between Europol and the member states, once data and information has been gathered from the member states and the national reports have been complemented by information from the Europol Analysis Work Files, Europol Information System and contributions from other actors (such as Frontex and Europol) then Europol alone is responsible for the interpretation of that information. Ultimately, the agency has substantial responsibility to pinpoint the areas, activities or populations which represent the greatest threats and which should be given priority in the fight against crime.³²

Other academics have focused on the scientific rigour of the method for determining crime threats in Europe, raising serious questions over the quality of the methodological approach (see section 4 of this paper). However, somewhat surprisingly, an extensive evaluation commissioned by Europol’s Management Board and carried out by the Consultancy firm RAND Europe makes no mention of the OCTA methodology or the quality of Europol’s strategic analysis products. This seems a stark omission given the range of critiques levelled at the OCTA by external researchers. Whether these have been taken into account in Europol’s recent efforts to devise a revised methodology for a Serious and Organised Crime Threat Assessment (SOCTA) as part of the new EU policy cycle for serious and organised crime is not yet clear.

²⁹ A. de Moor and G. Vermeulen (2012), “The Europol Council Decision: Transforming Europol into an Agency of the European Union,” *Common Market Law Review*, 47, pp.1089-1121.

³⁰ For an extensive analysis of Europol’s OCTA, see J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament.

³¹ Europol, *OCTA 2011: EU Organised Crime Threat Assessment*.

³² H. Carrapico and F. Trauner (2012), *Europol’s contribution to a European Union strategy on organised crime: exploring the potential of experimentalist governance*, Paper presented at the UACES conference Passau, 3-5 September.

3.1.1.3 SOCTA

The new methodology for SOCTA was presented to COSI for validation in mid-2012.³³ The methodology was elaborated by Europol together with the involvement of an expert group of member states and EU agencies³⁴ and claims a number of improvements compared to the OCTA, including a broader range of indicators and the addition of new ‘crime relevant factors’ to be included in the analysis. However, the information provided continues to be rather general in nature and it remains to be seen to what extent the new SOCTA, which will be released for the first time in 2013, will represent a divergence from the OCTA. Needless to say, the methodology that will ultimately be developed will prove critical to the effectiveness and credibility of the policy cycle. Sheptycki, Ben Jaffel and Bigo have suggested that should the SOCTA incorporate a wider group of expert participants in a deeper level of analysis, this would help Europol and OCTA gain legitimacy and efficiency, overcoming critiques related to an overdependence on police sector and insider knowledge and allowing to incorporate other kinds of expertise and experience that could improve analytical rigour.³⁵ However, it appears that Europol have chosen not to take this route. Under the heading ‘Limitations’ in the Council document setting out the new SOCTA methodology, the distinction between ‘intelligence’ and ‘scientific research’ is clearly stated:

Intelligence analysis is different from scientific research. In the latter the principal aim is to acquire knowledge on a chosen subject. With intelligence analysis the objective is to facilitate effective interventions. Here the aim is to find out what has happened, is happening now or could happen in the future. This has a bearing on the recognition and interpretation of indicators for specific situations and developments. There are other differences which set analysis apart from research, such as the need for speed, secrecy and professional trust.³⁶

3.1.1.4 Data and information management

One of Europol’s principal tasks is to collect, store, process, analyse and exchange information and intelligence between member states. However, neither for purposes of operational nor strategic analysis, does Europol systematically collect data. Rather Europol relies on the competent authorities of the member states to provide data (on a voluntary basis) via their respective Europol National Units (which function as the liaison bodies between Europol and the member states).³⁷

To store and process this data, Europol possesses two core information systems: a Europol Information System (EIS) and Analysis Work Files (AWF). The former is a platform to store personal information on persons suspected or convicted of crimes for which Europol is competent. The latter stores a wider set of data perceived as necessary to provide operational analysis to aid investigations and operations carried out by the Member States.

The AWFs thus process data not only on suspects but also their contacts, associates, victims, witnesses and informants. In addition to their operational support function, AWFs also play a key role in feeding Europol’s strategic analyses which result in the OCTA/SOCTA. Currently Europol has 23 AFW projects divided between two databases (a database on counter-terrorism and a database on serious and organised crime). The decision to collapse what was previously 23 databases into just two reflects an attempt by Europol to

³³ Council of the EU, Serious and Organised Crime Threat Assessment (SOCTA) – Methodology, 12159/12, Brussels, 4 July 2012.

³⁴ Draft Council conclusions on the creation and implementation of an EU policy cycle for organised and serious international crime, 15358/10, Brussels, 25 October 2010.

³⁵ J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament.

³⁶ Council of the EU, Serious and Organised Crime Threat Assessment (SOCTA) – Methodology, 12159/12, Brussels, 4 July 2012, p. 6.

³⁷ A. De Moor and G. Vermeulen (2012), “The Europol Council Decision: Transforming Europol into an Agency of the European Union,” *Common Market Law Review*, 47, pp.1089-1121.

establish greater linkages between analysis projects and crimes, and an attempt to build a more complete picture of the EU crime phenomena.

Although, the EIS sits at the core of Europol's activities, its functioning has been marred by the reluctance of member states to feed the system. Certain member states have proved more diligent than others at entering data and lack of trust between member states law enforcement authorities has led to an unwillingness to share all relevant information with Europol. In addition, a large proportion of information is exchanged on a bilateral basis between national liaison officers, thus sidestepping Europol's information processing procedures and creating deficiencies in the agency's analysis of wider crime trends.³⁸ Indeed, Europol itself has conceded that the lack of consistency in the way Member States' share information results in "intelligence gaps" and can lead to a distorted view of the crime picture in the EU.³⁹

Europol's reliance on Member States concerns not only the quantity of data received but also its quality. Article 8(4)(d) of the Europol Council Decision entrusts the Europol National Units with the task of evaluating information and intelligence in accordance with national law. Occasionally Open Source data is sent to member states for confirmation but on the whole, Europol is not in a position to assess the validity and reliability of member states' data.

In addition, Europol screens and collects Open Source Intelligence and draws on access to several public commercial databases which also feed into the agency's strategic or operational products. Europol has also stepped up efforts to gather data from private bodies, in line with recent trends in police cooperation in which the use of data collected by private companies for law enforcement purposes has steadily become more and more important. The Europol Council Decision (Article 25) provided the agency with the legal basis to receive and process data from private persons and bodies, such as universities, banks or insurance companies, both from member states and third states. De Moor and Vermeulen (among others) have highlighted concerns regarding this development, not least linked to the accuracy of data from private parties:

The nature of information and intelligence from private partners – often collected in a commercial environment for commercial purposes – requires additional safeguards, in order to ensure the accuracy of this information... the development of new partnerships must not occur at the expense of its own law enforcement professionalism.⁴⁰

Despite these doubts, Europol has signalled its intention in its Work Programme for 2013 to step up partnership with private parties: "In 2013 the outreach activities will focus on establishing long-term strategic partnerships with the private sector... the input from non-law enforcement actors will add great value and complete the intelligence picture in the concerned crime areas."⁴¹

3.1.2 Research and development activities

Research is mentioned in Article 5.4 of the Europol Council Decision which states that Europol may, "in accordance with the staffing and budgetary resources at its disposal and within the limits set by the Management Board, assist Member States through support, advice and research." Examples cited include training exercises and 'crime prevention methods'.

As suggested by the tentative wording of this provision, research plays a more limited role within Europol than it does in certain other EU Home Affairs agencies, such as Frontex or CEPOL. There is no special unit devoted to R&D within Europol and no separate research and development budget. Nevertheless, Europol is

³⁸ Disley et al. (2012), *Evaluation of the Implementation of the Europol Council Decision and of Europol's Activities*, RAND Technical Report, prepared for the Europol Management Board, p.49.

³⁹ *Ibid.*, p. 48.

⁴⁰ A. de Moor and G. Vermeulen (2012), "The Europol Council Decision: Transforming Europol into an Agency of the European Union," *Common Market Law Review*, 47, p. 1108.

⁴¹ Europol, Work Programme 2013.

clearly investing efforts in pioneering new techniques to prevent and combat serious cross border crime and terrorism, via projects that it undertakes in collaboration with member states as well as third countries.

For instance, Europol has begun work on a joint project with the US Department of Homeland Security (DHS) on "countering violent extremism" developed out of a meeting between Europol and the DHS in late 2011, which will see the two agencies and authorities from Member States sharing "information on case studies, focusing on suspicious behaviour and other indicators, and develop best practices to counter terrorist radicalisation."⁴²

Although the majority of research collaborations appear to take place between Europol and members of national competent authorities or professional experts, there is some evidence of cooperation with the academic community. For instance, the 2011 Europol activity report refers to collaboration with the UK's Christ Church University in Canterbury to research and compile national practices on homicide investigations, with a view to potentially producing a European manual on the subject. Europol is also engaging with academics experts to give advice on the application of the new SOCTA methodology.

An additional example of Europol's activity in the research domain is the 'expert input' the agency delivers as a member of the Security Advisory Board for the European Commission's 7th Framework Programme in which it advises on the prioritisation of research topics for the Work Programme in the area of Security. It has also recently increased its involvement by becoming part of the Expert Group which decides on incoming applications for Security Calls.⁴³

The agency has signalled its intention to strengthen its role in research and development citing the aim "to develop a research and development capacity with external partners"⁴⁴ and this is reiterated in the latest Europol Work Programme for 2013.⁴⁵

3.1.3 Other activities for knowledge production and dissemination

Europol is also actively strengthening its position as a platform for knowledge exchange and law enforcement expertise through additional activities such as hosting working groups and contributing to trainings, which result in soft policy tools such as handbooks, guidelines and manuals.

Europol has established a variety of networks, working groups and task forces which aim at sharing best practices and developing and disseminating standards.⁴⁶ One of the most recent initiatives followed the Norwegian terrorist attacks of 2011 following which Europol created a Task Force on Violent Extremism made up of experts from EU member states tasked with researching and reporting on new initiatives to counter violent extremism as well as developing an online portal for the "exchange of best practice, analysis and assessments".

Europol also delivers a number of trainings, for instance on strategic analysis (the tools and methods necessary to produce strategic analysis products) or technical trainings on specific crime areas (e.g. on dismantling drug laboratories, investigating currency counterfeiting). In cooperation with CEPOL, Europol delivers around 10 training events each year focused on serious and organised crime.⁴⁷

In addition, Europol hosts the European Cybercrime Training and Education Group (ECTEG), an official ad hoc sub group within Europol that was founded in 2007 to provide experience and knowledge to enhance the

⁴² Europol, *Europol Review – General Report on Europol's Activities 2011*.

⁴³ Europol, *Europol Work Programme 2012*.

⁴⁴ Council doc. 6517/10, *Europol Strategy 2010-2014*, Brussels, 22 February 2010

⁴⁵ Council doc. 12667/12, *Europol Work Programme 2013*, Brussels, 17 July 2012.

⁴⁶ Europol, *Europol Review – General Report on Europol's Activities 2011*, pp. 32-34.

⁴⁷ Disley et al. (2012), *Evaluation of the Implementation of the Europol Council Decision and of Europol's Activities*, RAND Technical Report, prepared for the Europol Management Board.

coordination of cybercrime training.⁴⁸ Over the past years ECTEG has developed, piloted, delivered and distributed 14 accredited cybercrime investigation training modules to police officers throughout the EU. In addition ECTEG has provided trainers and its training material to INTERPOL and the OSCE to deliver its cybercrime investigation training outside the EU member states.

3.2 Frontex

Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, was established in 2004 as a ‘first pillar’ agency tasked with coordinating and assisting Member States’ actions in the surveillance and control of the external borders of the EU.⁴⁹ The agency which is headquartered in Warsaw, Poland, has experienced a dynamic growth since its creation. Staff numbers have risen from 43 to 300 since 2005, while the agency’s budget has increased from €6 million in 2005 to €86 million in 2011.⁵⁰

As its main tasks, Frontex coordinates Joint Operations (essentially the deployment of increased border officials and experts to areas of the EU external border which find themselves under increased pressure), supports Member States in the return of irregular migrants to their countries of origin (so-called Joint Return Operations), and acts as an intelligence body, gathering information on the situation at the external borders (and further afield) and compiling risk assessments. Furthermore, a modification to its legal framework in 2007 established the possibility for the agency to coordinate Rapid Border Intervention Teams (RABITs), a pool of border guard officials drawn from participating member states and deployed “to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third country nationals.”⁵¹ The new legal mandate for Frontex adopted in 2011, represents the most recent step in the continuing expansion of the agency’s powers and activities, strengthening Frontex capacities in a number of areas including the ownership of technical equipment, data processing and according the agency a co-leading role in joint operations.⁵²

Yet, despite the strengthening of its mandate, Frontex continues to be framed as a primarily technical body, charged with operational coordination but without direct operational powers, which remain firmly within the competence of the Member States. This limitation of the agency’s powers has led commentators, such as Pollack and Slominski, to observe that Frontex’s most important resources “are not its legal powers or financial means but information and knowledge, which in turn serve as the basis for cooperation, coordination and persuasion.”⁵³

3.2.1 *Frontex as an intelligence actor*

Risk analysis sits at the core of Frontex and, according to the official Frontex website, forms the basis for the whole range of the agency’s activities, from joint operation through to training and research.⁵⁴

The Frontex Regulation stipulates that Frontex “shall develop and apply a common integrated risk analysis model”.⁵⁵ On the basis of this model, Frontex is required to prepare both general and tailored risk analyses

⁴⁸ See the ECTEG website at: www.ecteg.eu

⁴⁹ Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349/1, 25.11.2004.

⁵⁰ Council of the EU, “Strengthening the European external borders agency Frontex – Political Agreement between Council and Parliament”, 11916/11, Presse 192, Brussels, 23 June 2011.

⁵¹ Article

⁵² Council and Parliament Regulation (EU) No 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304/1, 22.11.2011.

⁵³ J. Pollack and P. Slominski (2009), “Experimentalist but not accountable governance? The role of Frontex in managing the EU’s external borders”, *West European Politics*, Vol. 32, No. 5, pp. 904 – 924.

⁵⁴ See also House of Lords, (2008) *Frontex: the EU external Borders Agency – Report with Evidence*.

⁵⁵ Frontex Regulation, Recital 6.

which feeds into the adoption of appropriate border management measures.⁵⁶ Risk analyses are published on both a quarterly, annual and bi-annual basis and have either a general, pan-EU scope or are targeted to specific geographical regions. Risk analyses are additionally divided into public or restricted versions, depending on the sensitivity/confidentiality of the data contained therein.

Box 1. Key Frontex Risk Analysis Products

- Frontex Annual Risk Analysis Report
- Frontex Semi-Annual Risk Analysis report
- Frontex Risk Analysis Quarterly report
- Western Balkan Annual Risk Analysis
- Western Balkan Quarterly report
- Eastern Borders Annual Risk Analysis
- European Document Fraud Annual Risk Analysis
- Weekly Monitor on North Africa and the Near East

As with Europol's intelligence products, the Frontex risk analysis reflects a future oriented, proactive and prevention approach to security threats facing the EU:

Analytical work is more than identification of risks. It is about maximising effectiveness in preventing cross-border crime – particularly human trafficking and smuggling – and ensuring the security of the EU's external borders by predicting future trends and proposing remedies.⁵⁷

Risk analyses are based on both qualitative and quantitative data gathered from a range of sources including border authorities of Member States and non-EU countries; EU level institutions and agencies (including Europol, and the European Commission – Eurostat), other international organisations and open source data (including academic publications, studies and media reports). However, the principal contributors are the Frontex Risk Analysis Network (FRAN) established by Frontex in 2007 as a key means to gather statistical data and information from member states' national authorities. The backbones of the Annual Risk Analysis are the monthly statistics provided by Member States within the framework of the FRAN.

In addition, in its effort to provide an update to-date picture of the situation at the external borders, Frontex also produces situation and crisis monitoring and delivers early alerts and situation reports to “internal and external customers.”

In terms of application, Frontex risk analyses have a range of direct implications for Frontex activities. Intelligence concerning the numbers and nationalities of migrants, migration routes and smuggling networks feed directly into the planning and launch of Joint Operations and RABITS.⁵⁸ They also underpin planning for other (non-operational) activities such as training or research and development and as such prove key in determining priorities in the Frontex annual work programmes. Critically, the Frontex ARA has previously served as one of the three main strategic documents (together with the OCTA and the TE-SAT) on which threats have been identified within the ISS and will in future contribute to the SOCTA.

3.2.1.1 Data and information management

Frontex has established a number of mechanisms in order to exploit various information sources and data. The core data collection instrument, launched in 2007, is the Frontex Risk Analysis Network (FRAN) through which it receives monthly updates and statistics from the Member States. Statistics focus on six indicators of irregular migration: 1) detections of irregular border crossing, 2) refusals of entry, 3) detections

⁵⁶ Frontex Regulation, Article 4.

⁵⁷ See the official Frontex website: www.frontex.europa.eu/intelligence/risk-analysis

⁵⁸ Frontex Regulation, Article 8d(3).

of irregular stay, 4) asylum applications, 5) detection of facilitators and 6) detections of forged documents.⁵⁹ A form of consolidation and quality check of this data is enacted via the organisation of an Annual Analytical Review whereby members of the FRAN participate in a one day exercise aimed at sharing knowledge on likely risks to the EU border in the years ahead. Participants are then given one week to consult with colleagues at the national level to provide additional comments and rank the risks identified.⁶⁰

Frontex also has access, and is contributor to, ICO-Net, a web-based information and coordination network for national migration authorities.⁶¹ Statistics on return were added as a seventh indicator of the regular data collection exercise as of 2011.⁶²

The fact that Frontex took over, in 2010, the work of CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration), a Council working group that collected statistics and facilitated information exchange between Member States on irregular immigration,⁶³ has cemented Frontex's authority as a source of data on irregular migration 'threats' at the EU's external border.

Frontex also makes use of open sources of information 'especially in identifying the main push and pull factors for irregular migration to the EU.' These include reports issued by government agencies, international or non-governmental organizations as well as official EU reports and mainstream news agencies. With regard to the latter, Frontex has developed a Real-time News Event Extraction Framework as a news mining tool to extract information from online news sources.⁶⁴

However, as with Europol's OCTA, doubt has been cast over the accuracy of Frontex's data collection and processing mechanisms and the way in which these are used for risk analysis and priority setting purposes.⁶⁵ That these doubts are not shared by the agency itself is indicated by Frontex's explanation of its adopted symbol on its risk analysis publications:

The triangle is a symbol of ideal proportions and knowledge, reflecting the pursuit of factual exactness, truth and exhaustive analysis. The dot at the centre represents the intelligence factor and the focal point where information from diverse sources converges to be processed, systematised and shared as analytical products. Thus Frontex risk analysis is meant to be at the centre and to form a reliable basis for its operational activities.

The logo therefore captures quite succinctly how Frontex perceives its intelligence role, as recipient of a wide range of diverse data sources which it processes, (via a rather opaque methodology), into a new and unchallengeable 'truth'.

3.2.2 *Research and development activities*

Of the five EU Home Affairs agencies studied here, Frontex has been most active in developing the research and development dimension of its activities. Frontex boasts an expanding Research and Development Unit

⁵⁹ Council of the European Union, New JHA Working Structures: Abolition of CIREFI and transfer of its activities to Frontex and the Working Party on Frontiers, 6504/10, Brussels, 22 February 2010.

⁶⁰ Frontex, Annual Risk Analysis 2012, p. 8.

⁶¹ European Commission, "Reinforcing the fight against illegal immigration – Secure web-based network for the coordination and exchange of information on irregular migration", Press Release IP/06/57, Brussels, 20 January 2006.

⁶² Frontex, Annual Risk Analysis 2012, p. 7.

⁶³ See the description on the European Commission website, "Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi)": (http://europa.eu/legislation_summaries/other/133100_en.htm). See also Council of the European Union, Conclusions on the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi), Brussels, 30 November 1994.

⁶⁴ M. Atkinson and J. Piskorski (2011), "Frontex real-time News Event Extraction Framework," *Proceedings of the 17th ACM SIGKDD international conference on Knowledge discovery and data mining*, pp. 749-752.

⁶⁵ S. Carrera and E. Guild (2010) 'Joint Operation RABIT 2010' – FRONTEX Assistance to Greece's Border with Turkey: Revealing the Deficiencies of Europe's Dublin Asylum System,' *CEPS Liberty and Security Series*, November 2010.

(RDU) which has grown from two staff members in 2007 to 16 staff members in 2012, supported by a large annual research and development budget exceeding €2.5 million in 2011.⁶⁶

The research function of Frontex has, since its inception been laid down in its founding Regulation and was reinforced and strengthened by the 2011 revision to the Frontex Regulation which now stipulates that Frontex “shall proactively monitor and contribute to the developments in research relevant to the control and surveillance of the external borders and disseminate that information to the Commission and the member states.”

The objectives of the R&D Unit are listed as follows:⁶⁷

- a) to drive the process of harmonisation and development of standards, both technical and operational, for border control;
- b) to provide for adequate representation of the common interests of the Member States in European border security research;
- c) to keep Member States informed concerning new technical/technological developments in the field of border control.

To implement these objectives the unit produces guidelines and commissions external studies to assess the value of new technology and to help establish priorities for the development of future capabilities for European border security. The main research and development products produced by Frontex RDU include studies and reports, as well as so-called ‘Best Practice Guidelines’ and toolkits. As indicated in Table 1, Frontex both conducts its own internal research (sometimes carried out in collaboration with member of national authorities’ border services) and commissions studies or reports by external experts or academics.

Research and Development allows Frontex to, in the words of Pollack and Slominski, “experiment with new solutions to certain problems, some of them not even known yet.”⁶⁸ The uncertainty surrounding how precisely to put into operation an Integrated Border Management has left Frontex with considerable scope to experiment with solutions, including through analysis, research and pilot projects.

A prime example of this has been Frontex’s use of research to respond to the high profile problem of how to secure the EU’s southern border with a maritime patrol network operating within a European border surveillance system. Work began with the 2006 MEDSEA study, which examined the feasibility of a Mediterranean coastal patrol network and its follow up study, BORTEC, which focused on the related challenge of establishing a surveillance system covering the entire southern maritime border of the EU.⁶⁹ The result has been the development of a European Patrols Network and a Commission proposal for the establishment of a European Border Surveillance System (EUROSUR) which allocates a core, coordinating role for the Frontex agency.⁷⁰

Table 1. Guidelines and studies produced by the Frontex RDU⁷¹

Title	Year of publication	Authoring organisation
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⁶⁶ Response to questionnaire.

⁶⁷ Frontex, *Multi Annual Plan 2010-2013*.

⁶⁸ J. Pollack and P. Slominski (2009), “Experimentalist but not accountable governance? The role of Frontex in managing the EU’s external borders”, *West European Politics*, Vol. 32, No. 5, pp. 904 – 924.

⁶⁹ Frontex (2010), *Beyond the Frontiers: Frontex, the first five years*, Warsaw.

⁷⁰ Proposal for a Regulation Establishing the European Border Surveillance System (EUROSUR), COM(2011) 873, Brussels, 12.12.2011.

⁷¹ Information taken from the Frontex website: www.frontex.europa.eu

Anti-corruption measures in EU border control	2011	Center for the Study of Democracy
Futures of Borders	2011	Liron System Ltd
Operational and Technical security of Electronic Passports	2011	Frontex RDU
Best Practice Guidelines on the Design, Deployment and Operation of Automated Border Crossing Systems	2011	Frontex RDU
BIOPASS II Automated biometric border crossing systems based on electronic passports and facial recognition: RAPID and SmartGate	2010	Frontex RDU in collaboration with the EU Joint Research Centre
Ethics of border control	2010	University of Birmingham
SeBoCom Pre-Study: A preliminary study on Secure Border Communications	2008	Frontex RDU in collaboration with the Ministry of the Interior of Slovenia and the EU Joint Research Centre
BIOPASS – Study on Automated Border Crossing systems for Registered Passengers at Four European Airports	2007	Frontex RDU in collaboration with the EU Joint Research Centre

Frontex has also, via its research and development unit, carved out a prominent role in EU research funding. It enjoys strong links with the European Security Research and Innovation Forum, participates in the evaluation of research project proposals and is represented in end-user advisory boards of research projects where it is able to exert an influence over project development. For instance, Frontex chaired the end user advisory board of an EU funded project which developed border control ‘robots’ – autonomous land vehicles designed to detect and pursue irregular migrants.⁷² As the agency itself notes, “after five years Frontex has managed to reach a critical position from which it can influence EU security research in the area of border security.”⁷³

3.2.3 Other activities for knowledge production and dissemination

Aside from the above-described activities, Frontex has also overseen a growing role in fostering the harmonisation of border guard education and training at EU level.

Frontex is tasked with establishing common training standards and providing them for joint training activities.⁷⁴ It provides both training at European level for national level border guard trainers (multiplier effect) as well as offering any additional training courses and seminars on the control and surveillance of

⁷² N. Nielsen, *EU-funded consortium unveils border-control robot*, EU Observer, 10th April 2012; See also the official project website at: <http://talos-border.eu/>.

⁷³ Frontex (2010), *Beyond the Frontiers: Frontex, the first five years*, Warsaw, p. 53.

⁷⁴ Article 5 of the Frontex Regulation.

external borders and return of third country nationals. For this purpose, a Frontex Training Unit (established in 2005) and a network of national training institutions offers their training capacity to Frontex in order to deliver joint trainings at their sites.

The Common Core Curriculum developed by Frontex was launched in 2007 and represents the first standardised set of skills and knowledge criteria for basic-level border-guard training in the EU. It was devised in cooperation with representatives of the Member States “to bring together best practices and shared goals and values from across Europe.” The CCC includes modules representing the full range of border-related topics from detection of false documents and stolen cars to human rights, international law and leadership,⁷⁵ and in content is relatively detailed. Thus the chapter “Crime Investigation” in the ‘General’ section, which all border guards are supposed to study, is made up of sub-sections including topics such as “Definition of motive” and “Criminal signs in border crimes”.⁷⁶

Although Frontex has been careful to ensure that the process of putting together the Common Core Curriculum draws on a range of views and knowledge, including that of non-member state representatives such as the International Organisation for Migration (IOM) and the UNHCR and academic experts, nevertheless the fact that certain member states such as the UK are more active contributors than others, offers a channel by which member states can export and upload their knowledge and techniques to a EU level training context.⁷⁷

By 2011, all EU Member States, Schengen Associated Countries and a few third states had integrated common training standards into their national training structures and participated in joint training activities.⁷⁸ However, the precise impact of these training activities is difficult to ascertain. Horii draws attention to the gap between Frontex training and the lack of evidence as to its outcomes. She highlights the inadequacy of Frontex’s reliance on participant feedback to assess the extent to which knowledge and skills learned through the common training has improved the way border guards conduct their work, whether border guards more aware of the human rights dimension of irregular migration for instance, and the lack of indicators to collect this data (including the difficulty of gathering evaluations of migrants as to the level of service they receive from border guards).⁷⁹

3.3 Eurojust

Eurojust is the EU agency responsible for judicial cooperation in criminal matters. Established by a Council Decision in 2002 and headquartered in the Hague, Netherlands with a staff of around 300,⁸⁰ its principal task is to support and improve the coordination of investigations and prosecutions among the competent judicial authorities of the EU member states when they deal with serious cross-border and organised crime.

The agency is composed of 27 national members, one from each member state, usually senior judges, prosecutors or police officers, who hold a permanent seat in the Hague and form the College of Eurojust. The agency has no real investigative or prosecutorial powers. It exists essentially to broker cooperation among national authorities. Thus its principal task is to improve the coordination of investigations and prosecutions

⁷⁵ See the Frontex website: <http://www.frontex.europa.eu/training/curricula>

⁷⁶ Frontex, *Common Core Curriculum*, p. 16.

⁷⁷ S. Horii, “It is more than just about training: The effect of Frontex border guard training”, Paper presented at the UACES Conference, Passau, 3-5 September 2012.

⁷⁸ Frontex, *Frontex General Report 2010*, p. 27; Frontex, *Frontex Programme of Work 2012*, p. 95.

⁷⁹ S. Horii, “It is more than just about training: The effect of Frontex border guard training”, Paper presented at the UACES Conference, Passau, 3-5 September 2012.

⁸⁰ Eurojust, *Annual Report 2011*.

between national authorities in the member states and to improve cooperation between those authorities, including by facilitating the execution of mutual legal assistance and extradition requests.⁸¹

Eurojust may request the authorities of a Member State to undertake an investigation or prosecution, coordinate between the competent authorities of a member state and set up so-called Joint Investigation Teams. Since its establishment, Eurojust has been involved in a considerable number of cases concerning terrorism, human trafficking, drug trafficking and money laundering.

In 2009, Eurojust saw a significant revision of its legal basis in order to enhance its operational effectiveness. On the basis of the 2009 Eurojust Decision, Eurojust can now conduct investigations and prosecutions of criminal behaviour constituting serious organised crime, and concerning two or more member states.⁸²

Concerning Eurojust's place within the ISS, Eurojust contributes, from its specific standpoint, to Europol's SOCTA, TE-SAT and to the EU policy cycle more generally via regular, ad hoc contributions. In turn, the results of the priority-setting processes (Operational Action Plans) are then integrated in Eurojust's casework priorities, with Eurojust's work priorities adopted annually "in light of the Council's assessments of crime threats to EU citizens".⁸³

Similar to the other EU Home Affairs agencies examined here, and under the impetus of its role within the framework the ISS, Eurojust is actively working to frame itself as a 'Centre of Expertise':

Eurojust is developing a centre of expertise concept to facilitate effective judicial action against organised cross border crime in the European Union by serving as a repository of institutional knowledge and experience in the area of judicial cooperation in criminal matters.⁸⁴

3.3.1 *Eurojust as an intelligence actor*

An intelligence approach has traditionally been less developed in Eurojust than in other EU agencies, such as Europol and Frontex. This is partly, as Busuioc and Curtin have noted, because the organisational structure of Eurojust, with its College composed of 27 national members, has not facilitated strategy development nor a proactive (rather than reactive) approach to cross-border crime.⁸⁵ However, a turn towards intelligence-led policing has been noted in Eurojust's activities, with the agency having gradually established its analysis capacities.⁸⁶ Furthermore, Eurojust has signalled its intention to strengthen the intelligence aspect of its work in its Multi-Annual Strategic Plan of 2012 – 2014, hinting at activities that would serve to complement Europol's OCTA and TE-SAT. It thus sets as a key objective to:

Enhance crime type analysis by identifying trends in line with the Organised Crime Threat Assessment (OCTA) and EU Terrorism Situation and Trend Report (TE-SAT) priorities.⁸⁷

So far, this approach has been most evident in the activities of the Eurojust Counterterrorism Team which was created in the aftermath of the Madrid 2004 bombing attack and which has been strongly promoting a proactive approach. The team has been active in efforts to become a counterterrorism 'centre of expertise' by identifying risks, trends and best practices. According to Coolsaet, "its aim is to evolve from a purely

⁸¹ For more information see P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels; A. Serzysko (2011), 'Eurojust and the European Judicial Network on a new legal basis,' *ERA Forum*, Vol. 11, pp. 585 – 600.

⁸² Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 138/14.

⁸³ Eurojust, *Annual Report 2011*.

⁸⁴ Eurojust, *Annual Report 2011*, p.64. See also *Eurojust's Multi-Annual Strategic Plan 2012 – 2014*.

⁸⁵ M. Busuioc and D. Curtin (2011), *The EU Internal Security Strategy, the EU policy cycle and the role of (AFSJ) agencies: Promise, perils and pre-requisites*, Study prepared for the LIBE Committee of the European Parliament, p. 17.

⁸⁶ See for instance, P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels.

⁸⁷ *Eurojust's Multi-Annual Strategic Plan 2012 – 2014*, p. 7.

retroactive coordination to a (more) proactive one.”⁸⁸ For instance, the Counter-Terrorism Team convenes regular tactical level meetings with the Member States in which Eurojust representatives push the Member States towards the sharing of best practices regarding their own national counterterrorism experiences with different kinds of terrorist groups and the mapping out of the potential linkages between these nationally-based terrorist groups.⁸⁹ Examples include a tactical meeting on ‘Violent single issue extremism/terrorism’ which took place in April 2011 and an annual strategic meeting of all Eurojust national correspondents for terrorism matters in July 2012 which “examined the results of a questionnaire provided by EU judicial authorities on the use of the internet by Islamist extremists, and worked on case analyses.”⁹⁰

The Counterterrorism Team is responsible for producing the Terrorist Conviction Monitor (TCM), a report based on information received from Eurojust’s national correspondents for terrorism under Council Decision 2005/671/JHA of 20th December 2005 as well as through open sources. Eurojust issued three editions of its TCM in 2011. The TCM identifies cases of general EU interest in terrorism matters and best practices through judicial case analyses, and disseminates information on legislative developments in this field.⁹¹ Michele Coninx, current President of Eurojust, and former Chair of the Counter-Terrorism Team, has stated that Eurojust’s Terrorist Convictions Monitor “goes far beyond the information available in the TE-SAT reports in that it provides detailed judicial analyses of terrorism related criminal investigations and judgments”.⁹² The reports are only available to judicial authorities upon request.

Aside from intelligence activities related to terrorism, Eurojust engages in other forms of crime analysis – largely performed by the Case Analysis Unit, which processes information received from the 27 national authorities and drafts statistical reports and strategic analysis reports based on the data entered in the Case Management System (CMS). The in-depth, case-by-case cross referencing analysis capacities of the CMS, as well as the recruiting of more analysts in the last years, have enabled Eurojust to enhance its strategic analysis capacities.

As part of the turn to an intelligence approach, Eurojust has made a number of efforts to identify crime areas which it considers strategic, the idea being to “single out a certain type of crime and to discuss the specificities of investigating and prosecuting issues, relevant best practices and to create informal contacts among responsible officials.”⁹³ Such strategic meetings have been held not only on terrorism (as mentioned above) but also on trafficking on human beings and the European Arrest Warrant. This includes coordinating the drafting of strategic analysis on key areas of casework.

Concerning the practical and policy application of Eurojust’s strategic analysis, this information feeds directly into operational activities such as Joint Investigation Teams. Eurojust also contributes information to Europol’s OCTA (soon to be SOCTA). Since 2006 it also contributes to Europol’s TE-SAT report by providing data on judgments, appeals, types of terrorist activity and profiles of convicted terrorists.⁹⁴

⁸⁸ Rik Coolsaet (2010), ‘EU Counterterrorism strategy: Value-added or chimera?’ *International Affairs*, Vol. 86, No. 4, pp. 58-9.

⁸⁹ O. Bures (2010), ‘Eurojust’s Fledgling Counterterrorism Role’, *Journal of Contemporary European Research*, Vol. 6, No. 2, pp. 236–256. Bures cites as an example a tactical meeting which brought together 19 member states and Europol to discuss an ethno-nationalist separatist terrorist group in 2007.

⁹⁰ Eurojust, *Annual Report 2011*, p. 30.

⁹¹ Eurojust, *Annual Report 2011*, p. 30.

⁹² Interview with Michele Coninx, Chair of the Counter-Terrorism Team of Eurojust, in 2009, cited in O. Bures (2010), ‘Eurojust’s Fledgling Counterterrorism Role’, *Journal of Contemporary European Research*, Vol. 6, No. 2, p. 245.

⁹³ P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels, p. 63.

⁹⁴ O. Bures (2010), ‘Eurojust’s Fledgling Counterterrorism Role’, *Journal of Contemporary European Research*, Vol. 6, No. 2, p. 245.

Janey argues that Eurojust's tandem work with Europol, as well as developments at national level, have worked as underlying factors which have helped to cement the turn towards intelligence activities:

The intelligence-led rationale to which Member States clearly subscribed to in the post 9-11 security environment redirected prosecutors towards the police, and to being more involved in police investigations. This proactive role of authorities involved in prosecuting crime, involving investigation into patterns of organised crime, is a trend which affects Eurojust's work and to which it seems to be aligning itself.⁹⁵

3.3.1.1 Data and information management

Data is of vital importance in Eurojust's casework. Data on criminal cross-border cases is collected from national authorities for both operational purposes but also on the strategic level, where data is collected for the purpose of studying recurrent judicial cooperation problems, criminal trends and to identify best practices.⁹⁶ The most important source of Eurojust data and information are the member state national authorities (and to a lesser extent the results of Europol's analyses).

However, as with other agencies examined here, Eurojust has encountered significant obstacles to the systematic collection of data from the member states. A 2007 survey among all National members showed that a vast majority have casework which is not registered in Eurojust's Case Management System, and almost two-thirds do not have statistics on this unregistered casework. In addition very few member states were found to provide Eurojust with data concerning terrorist offences, despite their obligations laid down in the Council Decision of 2005 adopted explicitly for this purpose.⁹⁷

It is expected that the amendments of the 2009 Eurojust Decision may help to resolve the inadequate flow of information between the member states and Eurojust. Particularly as Article 13 of the Eurojust Council Decision now obliges member states to systematically transmit information to Eurojust and in doing so to transmit information via a streamlined template.⁹⁸ It has been suggested from various quarters that this amendment, which allows Eurojust to impose a clear obligation on member states to systematically transmit information under defined criteria and to define exactly what data is transmitted, will have far reaching consequences for Eurojust's activities, including for its analytical capacities.⁹⁹ It would provide the agency with the grounds to take further its work identifying serious cross-border criminal phenomena and preparing strategic reports on given crime areas. As Janey notes:¹⁰⁰

The 2008 Decision, when fully implemented, will move Eurojust into a position whereby it will possess a sufficient amount of information to be able to filter incoming data and find connections, and thus to take the initiative with regard to cases... Emphasis could shift to Eurojust's qualitative input by generating its own cases through analytical work conducted on the basis of the information it is now receiving... All this will entail a major shift from a reactive to proactive style of working.

3.3.2 Research and development activities

While research is not specifically mentioned within the tasks and objectives set by the Eurojust Council Decision, Eurojust officials nevertheless view research as 'essential' for the agency's development and daily

⁹⁵ P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels, p. 95.

⁹⁶ Responses to questionnaire.

⁹⁷ O. Bures (2010), 'Eurojust's Fledgling Counterterrorism Role', *Journal of Contemporary European Research*, Vol. 6, No. 2, pp. 242; Eurojust, *Annual Report 2008*.

⁹⁸ Article 13, paragraph 11 of the 2009 Eurojust Council Decision.

⁹⁹ A. Serzysko (2011), *Eurojust and the European Judicial Network on a new legal basis*, ERA Forum, Vol. 11, pp. 585 – 600; P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels; Eurojust questionnaire responses.

¹⁰⁰ P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels, p. 91.

activities.¹⁰¹ There is no unit specifically charged with research tasks but rather research related activities are spread over several different units, including the Information Management Unit which has managed research projects, the Case Analysis Unit (CAU) and the Legal Service which performs research on EU legal developments.

A certain proportion of these research tasks have a direct practical application geared towards improving Eurojust's working methods or operational processes via research projects. Thus, Eurojust has engaged in research to enhance the interoperability of systems at an EU judicial level or to develop the Case Management System. In particular, the so-called EPOC (European Pool against Organised Crime) software projects which aimed to facilitate the secure storage of case-related personal data, the exchange of information amongst National Members and the analysis of that data.¹⁰²

Eurojust also undertakes a form of research project titled 'Strategic projects'. One such project, focusing on 'Enhancing the work of Eurojust in drug trafficking cases' analysed and evaluated data and outcomes of Eurojust coordination meetings on drug trafficking cases between 1st September 2008 and 31st August 2010, to identify the main challenges and solutions concerning drug trafficking cases identified in Eurojust's work.¹⁰³ The project's final report incorporates discussions at a so-called 'strategic seminar' in Krakow and the results of casework analysis. The research input is largely conducted by Eurojust representatives with additional contributions from the Member States as well as experts from Europol and EMCDDA. Other examples include a strategic project initiated by Eurojust's trafficking and related crimes team entitled 'Eurojust action against trafficking in human beings', the goal of which is to identify possible legal and practical obstacles to THB prosecution in the European Union as well as a recently finalised strategic project on in the area of VAT fraud.¹⁰⁴

Eurojust also commissions ad hoc research studies on specific areas of its work. For instance, a research project analysing the role of Eurojust in the fight against human trafficking was conducted by the University of Amsterdam in 2005 under the auspices of the Dutch National Member at Eurojust and in close collaboration with the THB team at Eurojust, resulting in the report "Eurojust and human trafficking: the state of affairs".¹⁰⁵

Finally it could be mentioned that Eurojust is also a provider of a research and expertise to other organisations. For instance, in 2011 Eurojust provided written contributions to studies initiated by the European Parliament on 'Estimated costs of EU counter-terrorism measures', and 'How does organised crime misuse EU funds?'.¹⁰⁶

3.3.3 Other activities for knowledge production and dissemination

A concrete manifestation of Eurojust's mission to become a 'centre of expertise' is its pulling together of various 'practitioners networks' consisting of experts from national authorities who share experiences and practices. Eurojust houses the network of contact points with respect to persons responsible for genocide, crimes against humanity and war crimes (Genocide Network)¹⁰⁷ as well as the European Judicial Network

¹⁰¹ Questionnaire responses.

¹⁰² For more information, see the EPOC Project page at the Eurojust website at: <http://www.eurojust.europa.eu/Practitioners/operational/EpocIV/Pages/epoc-iv-project.aspx>

¹⁰³ Eurojust, *Enhancing the work of Eurojust in Drug Trafficking Cases – Final Results*, Strategic project, January 2012.

¹⁰⁴ Eurojust, *Annual Report 2011*, p. 33.

¹⁰⁵ See B. de Jonge (2005), *Eurojust and human trafficking: The state of affairs*, University of Amsterdam and Eurojust.

¹⁰⁶ Eurojust, *Annual Report 2011*, p. 30.

¹⁰⁷ See the Eurojust website at: <http://eurojust.europa.eu/Practitioners/networks-and-fora/Pages/genocide-network.aspx>

and the JITs Network. Eurojust also takes part in the work of the European Judicial Training Network¹⁰⁸ and the network of liaison magistrates.¹⁰⁹

Eurojust is also highly active in providing fora for experts, practitioners and – on some occasions – academics, to meet and exchange views and practices. These have taken the form of closed ‘Strategic seminars’ (e.g. a strategic seminar on drugs co-organised with the Polish Presidency of the EU in October 2011), or workshops organised at larger academic conferences, such as the workshop organised at a conference of the European Academy of Forensic Science in August 2012.¹¹⁰

3.4 OLAF

OLAF, the European Anti-Fraud Office, is not technically an EU regulatory agency but a Directorate General of the European Commission, based in Brussels with just over 400 staff. Nevertheless, the body has budgetary and administrative autonomy, designed to make it operationally independent so that it can carry out an investigative function. Given its (semi) independent status, as well as the nature of its activities and cooperation with bodies like Europol and Eurojust, it will be considered here alongside other EU Home Affairs agencies.

OLAF was established in 1999 with the mission to protect the financial interests of the European Union by combating fraud, corruption and any other illegal activities that harm the EU’s financial interests.¹¹¹ The Office also investigates misconduct internal to the EU institutions and supports the European Commission in the development and implementation of fraud prevention and detection policies.

OLAF is empowered to conduct both internal investigations (i.e. inside any European institution or body funded by the EU budget) and external investigations (i.e. at national level in both EU and non-EU countries), wherever the EU budget is at stake. For this purpose, OLAF may conduct on-the-spot checks and inspections on the premises of economic operators, in close cooperation with the competent Member State and third-country authorities. Reports drawn up by the office can constitute a preparatory stage for prosecutions in the national courts. OLAF’s principal areas of activity cover the use (or mis-use) of EU funds, customs fraud, smuggling of counterfeit goods, tobacco and alcohol, and combating counterfeiting of the euro.¹¹²

It is via these activities, particularly the Office’s cooperation with Europol in the field of euro counterfeiting, customs fraud and smuggling of illegal goods that OLAF’s activities can be situated within the architecture of the ISS. The ISS explicitly mentions the role of OLAF when discussing the dismantling of criminal networks and combating criminal financing, citing the need for more joint operational activities between the Office, Eurojust, Europol and member state authorities.¹¹³ OLAF will also be a regular contributor of information and strategic analysis to the new SOCTA.¹¹⁴

As an investigative service, OLAF cannot impose penalties but must rely on the member states and EU institutions to carry out its recommendations. In view of the constraints on its powers, OLAF adds value via a number of additional tasks complementary to its operational activities in the fight against fraud, including

¹⁰⁸ See the European Judicial Training Network website at: <http://www.ejtn.net/>

¹⁰⁹ P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels.

¹¹⁰ Eurojust press release, “Improving forensic evidence in cross-border cases: Contribution of Eurojust to discussions at the 6th EAFS conference.”

¹¹¹ OLAF derives its legal basis from Article 325 of the Lisbon Treaty and the Commission Decision establishing the European Anti-Fraud Office (OLAF) OJ L 136/20, 31.05.1999.

¹¹² See OLAF, *The OLAF Report 2011*, European Commission, Brussels.

¹¹³ Commission Communication, *The EU Internal Security Strategy in Action: Five Steps towards a more secure Europe*, COM(2010)673 final, 22.11.2010, p. 5.

¹¹⁴ Council of the EU, Serious and Organised Crime Threat Assessment (SOCTA) – Methodology, 12159/12, Brussels, 4 July 2012.

ensuring the collection and analysis of information, providing technical support, including training, to other EU institutions and national authorities and maintaining direct contact with the police and judicial authorities of the member states.¹¹⁵ A key expression of the Office bringing its ‘know-how’ to anti-fraud policymaking is its preparation, since 2000, of the EU’s Anti-Fraud Strategy. Within the context of the anti-fraud strategy, the Office has been called on to “develop the means needed for an overall view of the phenomenon of transnational fraud.”¹¹⁶ Consequently, a visible effort has been made to “give concrete expression to the value added at Community level”,¹¹⁷ including by developing a platform for the office’s expertise through developing its intelligence function, and mutual exchanges of know-how, practice and experience.

A reform of OLAF is currently underway via the European Commission's Proposal for the amendment of Regulation (EC) No 1073/1999 which aims to strengthen OLAF’s operational efficiency, and improve information flow between OLAF and other EU institutions and bodies.¹¹⁸

3.4.1 OLAF as an Intelligence Actor

‘Intelligence’ has become an emerging dimension of OLAF’s activities, as part of the increasing emphasis placed by the Commission on the Office’s fraud prevention mandate. In its 2003 evaluation of OLAF, the Commission welcomed the establishment of a strategic and operational intelligence function in OLAF and urged further progress in this respect, calling on the office to “develop its strategic and operational intelligence function and to adapt, in liaison with the national authorities, to the mobility of transnational and organised crime while preserving the possibility of unannounced action on the ground.”¹¹⁹

Within OLAF, the Unit D4 “Strategic Analysis, Reporting, Joint Operations” is the main department together with Unit C3 “Operational Analysis and Forensics” which are responsible for intelligence activities. While official documents concerning OLAF make general reference to “information exchanges and exploitation of strategic and operational intelligence”¹²⁰ between OLAF, member states and various EU bodies there is little elaboration as to the form such intelligence takes nor how it is used. Under the heading of ‘strategic analysis’, the OLAF website simply states that:

OLAF carries out analyses of its investigations in order to identify a number of threats and vulnerabilities the EU's finances and reputation are exposed. The results of the analyses provided input for recommendations aimed at the Commission services for their day-to-day activities and the preparation of policy activities and legislative acts.¹²¹

One element of OLAF’s strategic analysis activities are the so-called ‘Case compendiums’ or ‘casebooks’ – files produced by OLAF on anonymous cases which comprise a short description of the techniques used by fraudsters, patterns of vulnerabilities and fraud indicators (‘red flags’). Depending on the subject of the cases, the compendiums are made available to relevant Commission departments, Executive agencies, and

¹¹⁵ Article 2 of the Commission Decision establishing the European Anti-Fraud Office (OLAF) OJ L 136/20, 31.05.1999.

¹¹⁶ Commission Report, *Evaluation of the Activities of the European Anti-Fraud Office (OLAF)*, COM (2003) 154 final, 02.04.2003, p. 26.

¹¹⁷ Commission Report, *Evaluation of the Activities of the European Anti-Fraud Office (OLAF)*, COM (2003) 154 final, 02.04.2003, p. 16.

¹¹⁸ Commission amended proposal for a regulation amending regulation (EC) No. 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing regulation (EURATOM) No 1074/1999, SEC (2011) 343 final, COM(2011) 135 final, 17.03.2011.

¹¹⁹ Commission Report, *Evaluation of the Activities of the European Anti-Fraud Office (OLAF)*, COM (2003) 154 final, 02.04.2003, p.16.

¹²⁰ Commission Report, *Evaluation of the Activities of the European Anti-Fraud Office (OLAF)*, COM (2003) 154 final, 02.04.2003.

¹²¹ See the OLAF website at: http://ec.europa.eu/anti_fraud/policy/preventing-fraud/index_en.htm.

authorities in the member states.¹²² In addition, OLAF develops specific ‘threat analyses’ to combat the counterfeiting of euro notes and coins on the basis of statistical and technical data that it receives from member states and other sources (see below).¹²³

OLAF’s intelligence and threat analyses feed into defining the investigative priorities of the agency on specific sectors or geographical areas.¹²⁴ They are also transmitted to other Commission departments and EU agencies where relevant, particularly Europol, with whom OLAF has, since 2004, a Strategic Cooperation agreement which allows the two organisations to cooperate at a strategic and technical level on fraud, corruption, money laundering and euro counterfeiting.

3.4.1.1 Data and information management

OLAF gathers data from the Member States authorities, its own operational experience and a variety of other sources, including Commission audits, Court of Auditors reports, third countries (particularly where it concerns euro counterfeiting) and open and commercial sources.

Given the importance of data reporting by the Member States for investigative purposes as well as a means for OLAF to gain an accurate and comprehensive picture of fraud across the EU, OLAF has put in place dedicated information tools for reporting purposes, such as the Information Management System (IMS) embedded in the Anti-Fraud Information System platform.

However, it has been noted that despite OLAF’s sustained attempts to put in place channels of cooperation with the member states, there is no uniform system for the exchange of data and details of irregularities and cases of fraud. This is partly because systematic data collection is affected by the diversity of meanings awarded to fraud, and the differences in the level of criminalization attributed to fraudulent behaviour in the national laws of the member states. The Office has also complained of a more general lack of communication between national audit authorities which has led it to face inherent difficulties in obtaining data on EU fraud from national authorities. As Xanthaki states, “lack of information on new cases of EU fraud at the national level deprives OLAF of a whole parameter of success in the completion of its task.”¹²⁵

While OLAF has struggled to gather data from national authorities, the proportion of information coming from non-public sector sources has seen a steady increase. In its 2011 Annual report, OLAF reported that the Office had received 1046 so-called ‘incoming information items’ in 2011, three quarters of which came from private sources.¹²⁶ As always with data from private sources, there are questions marks over origin and accuracy. With regard to information received from member states, the reliability is guaranteed by the member state authorities themselves. It is not clear how accuracy of information received from private sources about possible frauds and irregularities is ensured.

This is an important question given the multi-varied uses of this information. As well as using this information for its own investigations and analyses, OLAF shares it through several different databases and applications such as the ‘Irregularity Management System’, available to Commission departments, the ‘Central Exclusion Database’ on individuals or entities blocked from receiving EU funds and the ‘Early Warning System’, which contains information on people, companies and organisations that could pose a fraud threat to EU funds or revenue and which is open to the Commission and EU agencies.¹²⁷

¹²² See the OLAF website at: http://ec.europa.eu/anti_fraud/policy/preventing-fraud/index_en.htm.

¹²³ Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, OJ L 181/6, 4.7.2001.

¹²⁴ OLAF, *Investigation Policy Priorities (IPP)*, Brussels 2011, available at: http://ec.europa.eu/anti_fraud/documents/ipp_for_amp_en.pdf

¹²⁵ H. Xanthaki (2010), “What is EU Fraud? And can OLAF really combat it?”, *Journal of Financial Crime*, Vol. 17, p. 138.

¹²⁶ OLAF, *The OLAF Report 2011*, European Commission, Brussels.

¹²⁷ For more information, see OLAF’s website (http://ec.europa.eu/anti_fraud/policy/preventing-fraud/index_en.htm).

3.4.2 *Research and development activities*

Research and development activities at OLAF are centralized in Unit D5 ‘Hercule, Pericles & Euro protection’ which undertakes both its own internal research tasks as well as financing external activities under the so-called ‘Pericles’ and ‘Hercule’ programmes.

A large proportion of this unit’s R&D activities are focused on technical research tasks which have a practical application in the fight against fraud, and particularly euro counterfeiting. For instance internal R&D is centralized within the European Technical and Scientific Centre¹²⁸ (situated in Unit D5) which analyses and classifies every new type of counterfeit euro coin and delivers technical reports to Coin National Analysis Centres and law enforcement authorities.

Concerning external research and development projects, these are funded largely under either the Pericles Programme, which supports diverse projects aimed at strengthening the protection of euro banknotes and coins,¹²⁹ or the Hercule Programme which is focused more generally on improving transnational and multidisciplinary cooperation between the member states and the Commission in fighting and preventing fraud against the EU budget.¹³⁰ While research projects and studies funded under the Pericles Programme are of a more technical nature (for instance, a study on the ‘Definition of a calibration procedure for electrical conductivity measurement of coins’ and ‘Security features for future coins’), the Hercule Programme allocates a modest research budget (0.7 million euro in 2012) for co-financing academic studies and seminars on the protection of EU financial interests, including comparative law studies.

In addition to research projects commissioned under these two multi-annual financing instruments, OLAF can also issue open calls for tender on ad hoc studies. In 2012 for instance, the Office commissioned a study to assess the impact of corruption on public procurement.¹³¹

3.4.3 *Other activities for knowledge production and dissemination*

Partially to off-set the limitations on OLAF’s powers, the office has seen a multiplication of sub-bodies created to support or improve OLAF’s performance in fulfilling its tasks. One of the most important of these is the OLAF Anti-Fraud Communicators Network (OAFCN) whose aim is to create dialogue and work to inform, raise awareness and develop a ‘prevention culture’ among practitioners and national authorities.

In addition various task forces have been created composed of OLAF representatives and relevant experts from the competent authorities of the Member States acting as crisis units in certain sectors.¹³² One such example is the OLAF Cigarettes Task Group which investigates and coordinates criminal cases relating to large-scale, international cigarette smuggling.

In addition to the coordination and exchange of information and practices, OLAF also provides the competent national authorities with training, in the form of organising seminars, workshops and visits, including through activities co-funded/outsourced to external contractors under the Pericles and Hercule

¹²⁸ Established by Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect euro coins against counterfeiting, OJ L 19, 21.01.2005.

¹²⁹ Council Decision of 30 January 2006 amending and extending Decision 2001/923/EC establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the ‘Pericles’ programme), OJ L 36/40, 08.02.2006.

¹³⁰ Decision No 878/2007/EC of the Parliament and Council of 23 July 2007 amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme) □ OJ L 193, 25.7.2007, p. 18–22.

¹³¹ See the term of reference for the study at: http://ec.europa.eu/anti_fraud/documents/calls-for-tender-2011/anti_fraud_evaluation_mechanism_en.pdf

¹³² Commission Report, *Evaluation of the Activities of the European Anti-Fraud Office (OLAF)*, COM (2003) 154 final, 02.04.2003.

Programmes (see section 3.4.2. above). OLAF also provides training on analytical tools and, training on how to identify risk indicators both for Commission officials and Member State representatives.¹³³

3.5 CEPOL

The European Police College (CEPOL) was founded in 2002 and established as a third pillar EU agency in 2005 located at Bramshill in the United Kingdom. CEPOL's mandates and tasks are laid down in the Council Decision 2005/681/JHA, which states that "CEPOL shall function as a network, by bringing together the national training institutes in the Member States whose tasks include the training of senior police officers, which shall cooperate closely to that end."¹³⁴

CEPOL's principal objectives are to increase knowledge of national police systems and structures of other member states, and improve knowledge amongst police of EU and international instruments, with a view to support the development of a European approach to the fight against crime, and in particular cross-border crime.¹³⁵

In terms of tasks, CEPOL's core business is to provide training courses for senior police officers of the EU member states, with a focus on spreading information and knowledge and fostering cross-border contacts. Developing common curricula, exchange programmes and the dissemination of research findings are additional tasks.¹³⁶ The agency relies heavily on decentralized networks for the delivery of its actions, via the establishment of National Contact Points in the member states, situated either in the national police training institute, the Interior Ministry or the Police.

Concerning CEPOL's place in relation to the wider EU security policy architecture, CEPOL uses the ISS as a guideline for the identification of current and future challenges in European Law Enforcement. As stated by CEPOL's Director, Ferenc Banfi, "CEPOL follows closely the changes originating from the Lisbon Treaty and the Stockholm Programme and updates its curricula accordingly. The recent Council conclusions on the creation and implementation of an EU policy cycle for organized and serious international crime will be incorporated into our training portfolio. The promotion of this policy will be among our key objectives."¹³⁷

In addition, within the ISS, CEPOL is directly called upon to contribute together with EU member states, Europol and Eurojust to the development of capacities for investigation and prosecution of cybercrime – including through cybercrime awareness and training capabilities – and to a strategy on collection, analysis and sharing of information on criminal financial transactions, including training.

It has been highlighted that the current CEPOL Council Decision has not kept pace with the development in CEPOL's new strategic mission, tasks (including research related) and goals which include to develop CEPOL into "a European law enforcement knowledge base".¹³⁸ Consequently, early steps have been taken towards an amendment of the CEPOL Council Decision,¹³⁹ with the Commission intending to propose a new Council Decision on CEPOL in 2013.

¹³³ OLAF official website: http://ec.europa.eu/anti_fraud/policy/preventing-fraud/index_en.htm.

¹³⁴ Article 1 of the Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA, OJ L 256/63, 1.10.2005.

¹³⁵ Articles 5 and 6 of the Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA, OJ L 256/63, 1.10.2005.

¹³⁶ Article 7 of the Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA, OJ L 256/63, 1.10.2005.

¹³⁷ Speech by Ferenc Banfi, Director of CEPOL at the EPP Group Hearing on "The Future of Intelligence and Internal Security" 31 arch 2011.

¹³⁸ CEPOL, *Multi-Annual Strategy Plan 2010 – 2014*.

¹³⁹ Hence the decision by the European Commission to commission a study and impact assessment by the Consultancy GHK on the amendment of the Council Decision 2005/681/JHA setting up CEPOL which was published in 2012.

3.5.1 *Trainings and learning-based activities*

It is CEPOL's vision that the agency be acknowledged by authorities in the policing and academic world as the primary source of learning and development in the field of education and training for better cooperation and policing in Europe.

Face-to-face training is the agency's main activity, with CEPOL typically organising between 80-100 courses and seminars per year. The implementation of the activities takes place at the National Police Training colleges of the Member States and activities cover a wide-range of themes. In 2011, training covered a range of topics included police cooperation; counter-terrorism and extremism; white collar and environmental crime; irregular immigration and border management; trafficking in human beings; drug trafficking; other serious and organized crime; crime prevention and public order.¹⁴⁰

Available data indicate that CEPOL's training activities have had a total reach of around 11,604 participants over the period 2006-2011. The progressive development and rolling out of e-learning programmes and online webinars is expected to increase the participation rates of CEPOL's training activities significantly.¹⁴¹

CEPOL trainings are based partially on its so-called 'Common Curricula' which are also intended to be incorporated into national police training arrangements. To date, CEPOL has developed 10 Common Curricula.¹⁴² In order to ensure that its training and common curricula impact national law enforcement culture, CEPOL has put in place tools to ensure learning is translated from the individual to the institutional level, including by developing trainings specifically on the implementation of common curricula at national level and requesting participants of exchange programmes to draw up 'cascading plans' to demonstrate how new knowledge will be put in place in their organisations.¹⁴³

Finally, it is relevant to note that CEPOL is currently in the process of developing a Masters degree level training programme, in which modules are currently in the process of development by the CEPOL secretariat and four partner police training institutes.¹⁴⁴

Given the growing importance of CEPOL's training activities, its ambition as to their impact on national police cultures and even the development of more academic degree qualifications, the quality and relevance of its learning tools becomes critical. In this context, it is important to highlight that there have been certain criticisms directed towards CEPOL's training activities. For instance, taking the topic of human trafficking as an example, the five year evaluation report on CEPOL found that the content of the Common Curricula on THB had a number of flaws. These included the fact that elements of the module were outdated; only a handful of member states had been involved in the drafting which undermined its relevance for other member states. Also of concern, the curricula was found to provide little background on the human trafficking phenomena (such as root causes) and tended to emphasise the legislative and criminal aspects of trafficking, rather than providing a well-rounded overview of the challenges that human trafficking brings to law enforcement, with social issues, such as a focus on the treatment of victims, given limited attention. The evaluators summarized the shortcomings as follows:¹⁴⁵

“Rather than seeking to invigorate the CC with a range of ideas, experiences, perspectives, and techniques, CEPOL took the view that only police trainers have the necessary expertise to develop its

¹⁴⁰ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report., p. 28.

¹⁴¹ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report., p. 32.

¹⁴² For more information see: <http://www.cepola.europa.eu/index.php?id=common-curricula>.

¹⁴³ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report., p. 32.

¹⁴⁴ <http://en.en.sp.interieur.gouv.fr/Home/News/On-the-way-towards-a-CEPOL-Master-programme>

¹⁴⁵ *CEPOL Five Year Report*, 31 January 2011, p.49-50.

CC. This has led to a somewhat narrow, and even dated, coverage of the subject, and is possibly a contributory factor in its limited interest to Members States with more experience in this area.”

A similar assessment is echoed in the latest evaluation report on CEPOL which found that the content of trainings have been slow to adapt to new thinking and approaches. For example, despite recommendations formulated in post course evaluations of 2006, 2007 and 2008, to divide the training on the fight against trafficking in human beings and illegal immigration into two specific trainings, one single training on these issues continued in 2009 and 2012. Only in 2011 was a specific training on trafficking in human beings implemented.

The shortcomings identified here in the content and approach to CEPOL trainings raise serious questions, particularly where they concern such sensitive topics of police activity.

3.5.2 *CEPOL as an intelligence actor*

Due to the nature of its mandate and tasks, CEPOL does not produce its own intelligence products nor deal with operational intelligence. Nevertheless, in line with its obligation to align its activities with the policy cycle and the ISS, CEPOL has been careful to locate its training actions within the narrative framework of an increasingly intelligence-led approach to EU security and crime fighting. The CEPOL Director Ferenc Banfi has underscored where he sees CEPOL’s place in the new EU security architecture:

The efficient and effective realization of the Internal Security Strategy and the Stockholm Programme require a new security culture, and requires changes in the attitudes among law enforcement officials. A new generation of EU Law Enforcement Professionals will not spring up overnight but will develop as a result of renewed attention towards law enforcement training and education.¹⁴⁶

According to Dr Banfi, by contributing to joint intelligence training CEPOL helps to foster a genuine European law enforcement culture by offering European training to authorities of all EU Member States, encourage the understanding of European dimensions and the complexities of law enforcement cooperation; enhance specific skills, knowledge and experience in developing joint intelligence-led operations, and encourage the sharing of data, information and intelligence; and build confidence and trust among law enforcement organizations.

Out of the range of seminars, courses and conferences offered by CEPOL, those offered on the following themes relate most directly to fostering this intelligence culture: crime intelligence; risk assessment and intelligence-led policing; undercover operations; Joint Investigation Teams; South-east European Organised Crime organizations; North-east European Organised Crime organizations and counter-terrorism. CEPOL also draws upon Europol’s OCTA as a reference document when defining its training priorities.¹⁴⁷

3.5.3 *Research and development activities*

In addition to its main role in training, CEPOL carries out a range of activities in the research and science field of policing. This is despite the fact that reference to research in the CEPOL Council Decision is limited, mentioning only the task to ‘disseminate best practice and research findings’. The agency’s research activities have gone beyond dissemination and CEPOL is taking an increasingly active role in this domain.

Research activities are primarily the responsibility of the Research and Knowledge Management Officer, who is responsible for all distributive and organisational aspects regarding police research and police science in the EU.¹⁴⁸ In addition, Research and Science Correspondents are appointed in each of the member states

¹⁴⁶ Speech by Ferenc Banfi, Director of CEPOL at the EPP Group Hearing on “The Future of Intelligence and Internal Security” 31 March 2011.

¹⁴⁷ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report.

¹⁴⁸ Until recently, all issues around research were the responsibility of CEPOL’s Science, Research and Development Unit and the Research and Science Working Group until these were disbanded following an institutional restructuring in 2011 and 2012.

with the task of forging a “link between the national police training institutes, a country’s scientific community and CEPOL Secretariat with regard to police science and research.”¹⁴⁹

The core research related tasks managed by the agency are CEPOL’s Police Research and Science Bulletin and the Annual Police Research and Science Conferences.

The CEPOL Police Research and Science Bulletin is an electronic periodical “dedicated to the dissemination of research findings on the one hand and to making a significant contribution towards the promotion of a European approach to police science on the other”.¹⁵⁰ The scope of the publication is quite wide and includes editorials and articles about new findings or publications in police research to advertising upcoming events or CEPOL activities. The Bulletin is drafted by CEPOL members as well as accepting contributions from external professionals and academics. Three editions of the Bulletin were published in 2011. Members of CEPOL’s Research and Science Working Group perform the role of editorial board of the publication.

CEPOL’s Annual Police Research and Science Conferences are the flagship event for CEPOL’s research and science activities, the aim being to again, support the dissemination of research results and promote cooperation between police training institutions, universities, research institutes and researchers in the field of police science. In 2011, the conference focused Cyber security, cyber crime and social networks and was co-organised with the Spanish Ministry of Interior.¹⁵¹

In addition to these two core tasks, CEPOL also engages in ad hoc studies, such as those (authored in collaboration with external researchers) on the state of European police research¹⁵² and events with a research dimension. One such example was a conference on domestic violence co-organised with the Cypriot Presidency of the EU together with the Cypriot Police. The conference preceded by in-depth analytical study conducted by Cyprus police on domestic violence which was presented and discussed during the event. It is interesting to note that the vast majority of the participants at the conference were members of national police authorities with only two academics and one representative from a Civil Society Organisation present.¹⁵³ This is relevant to note given that such meetings not only aim to disseminate research findings but also gather expert input which then feeds back into CEPOL’s ‘knowledge’ and learning products. For instance, the joint Presidency conference on domestic violence was used to present, discuss and edit a European Union handbook of best police practices in overcoming attrition in domestic violence and results from the event will also supplement the CEPOL Common Curriculum on Policing Domestic Violence.¹⁵⁴

Finally, CEPOL also participates in external research projects. For instance, CEPOL participates as an associated partner in the EU funded GODIAC research project which aims to establish a common approach to policing political demonstrations. The project is financed under the Prevention and Fight Against Crime Programme of the European Commission’s DG Home Affairs and coordinated by the Swedish National Police Board, with the majority of partners in the consortium also composed of police authorities.¹⁵⁵ In 2011,

¹⁴⁹ See the CEPOL website: www.cepola.europa.eu

¹⁵⁰ See the CEPOL website: <http://www.cepola.europa.eu/index.php?id=science-research-bulletin>

¹⁵¹ See the CEPOL website: <https://www.cepola.europa.eu/index.php?id=news-room>

¹⁵² G. Hanak and V. Hofinger (2005), *Police Science and Research in the EU*, CEPOL and the Institute for the Sociology of Law and Criminology, Vienna; H. Jaschke et al (2007), *Perspectives of Police Science in Europe – Final Report*, Project Group on a European Approach to Police Science.

¹⁵³ Presidency note on the outcome of the CEPOL Presidency Conference on overcoming attrition in domestic violence through policing held on 10-12 July 2012 in Limassol (Cyprus), doc no. 12718/12, 28 August 2012.

¹⁵⁴ Presidency note on the outcome of the CEPOL Presidency Conference on overcoming attrition in domestic violence through policing held on 10-12 July 2012 in Limassol (Cyprus), doc no. 12718/12, 28 August 2012.

¹⁵⁵ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report, p. 29.

a European Parliamentary question was tabled on the compatibility of the Godiac project with fundamental rights.¹⁵⁶

CEPOL's five year evaluation report noted that CEPOL focused essentially on promoting expert or professional collaboration rather than using its networks of National Contact Points as a way of engaging a broader range of stakeholders.¹⁵⁷ This assessment was confirmed by the most recent evaluation of CEPOL by the Consultancy GHK, which identified the lack of structured cooperation between the agency and national and European research institutes or initiatives as an important shortcoming. It stated that:

At national level, there is a strong link between NCPs and national police academies. In contrast, this link is much weaker when it comes to cooperation with other universities and national research institutes. This lack of cooperation undermines the quality of CEPOL outputs in relation to research and science.¹⁵⁸

3.6 Inter-agency cooperation

Beyond the growing importance of individual agencies and their knowledge activities within the ISS, the need to stimulate inter-agency cooperation and exploit synergies between their activities has also become a major focus. The Stockholm Programme highlights “stringent cooperation between the Union agencies, including improving their information exchange” as one of the principles of the EU's ISS.¹⁵⁹

In 2009 the Swedish Presidency requested Europol to draft a report on how to further improve cooperation between the four Home Affairs agencies Europol, Eurojust, Frontex and CEPOL.¹⁶⁰ The report identified 5 key objectives of cooperation of which the third was to “combine efforts in the field of research and development” and the fourth to “undertake joint efforts in the field of training”. The four agencies in question are now charged with implementing the measures proposed in the report using a scorecard to track their progress.¹⁶¹

These new efforts to develop systematic cooperation between the agencies will build on a quite extensive set of pre-existing bilateral relations, examples of which have already been highlighted in the overview of agencies' knowledge activities above. For instance, Europol and Eurojust's cooperation (based on an operational agreement signed in 2009)¹⁶² include the exchange of information, including strategic analysis. Eurojust contributes to Europol's OCTA and TE-SAT and participates in an estimated two-thirds of Europol's Analysis Work Files while Europol in turn participates in regular casework coordination meetings.¹⁶³

Similarly Frontex and Europol regularly exchange information, strategic assessments and engage in operational cooperation covering issues of common concern, namely trafficking in human beings and facilitated immigration. They are regular contributors to one another's intelligence products (Frontex to the

¹⁵⁶ European Parliament, Question for written answer to the Commission by Cornelia Ernst (GUE/NGL) on ‘Compatibility of the Godiac project with fundamental rights’, 21 February 2011.

¹⁵⁷ *CEPOL Five Year Report*, 31 January 2011.

¹⁵⁸ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report., p.39.

¹⁵⁹ Council of the EU, the Stockholm Programme – An Open and Secure Europe serving and protecting citizens, 5731/10, Brussels, 3 March 2010.

¹⁶⁰ Letter from Mr. Werkstrom, Swedish Presidency, to the Director of Europol of 30 November 2009, cited in the General Secretariat (2010), *Interim Report on Cooperation between JHA agencies*, 29 January 2010, 5816/10.

¹⁶¹ Council of the European Union (2011), *Scorecard – Implementation of the JHA Agencies report*, 18077/11, 5.12.2011.

¹⁶² Agreement between Eurojust and Europol, 1 October 2009, The Hague. Available at: https://www.europol.europa.eu/sites/default/files/flags/eurojust_.pdf

¹⁶³ P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels.

OCTA and Europol to the ARA). Frontex has had less cooperation with OLAF and Eurojust due to their specific mandates although it has intensified contacts with Eurojust since 2010, including collaborating to produce the Frontex manual of Trafficking in Human Beings.¹⁶⁴

In addition to Eurojust's relations with Europol and Frontex, it has also signed a Practical Agreement on Arrangements of Cooperation with OLAF, based on which the two agencies hold quarterly meetings, engage in regular exchanges of case referrals, summaries and related information.¹⁶⁵ OLAF in turn has relatively extensive relations with Europol, given that fraud and corruption are covered both by Europol and OLAF's mandate. Relations are based on an operational cooperation agreement in place since 2004 allowing exchanges at both technical and strategic level on fraud, corruption, money laundering and counterfeiting of the euro.¹⁶⁶

Concerning CEPOL, formal cooperation is mainly concentrated around relations with Europol and Frontex. A 2007 Cooperation agreement with Europol provides for the exchange of strategic information (e.g. strategic reports, threat assessments, best practice, training but excluding personal data). Similarly, relations with Frontex (based on agreement of 2009) aims to enhance coordination and exchange of information on training activities, contribute to the development of common training materials as well as exchanging expertise and best practice. CEPOL consults with Europol and Frontex concerning the identification of training needs and priority areas (drawing particularly on the OCTA).¹⁶⁷

4. Cross-cutting features in the production and use of knowledge by EU Home Affairs agencies

Section 3 of this paper examined each of the five EU Home Affairs agencies in turn, making a systematic overview of the way in which each agency produces and uses knowledge in its daily activities. Building on this empirical overview, four cross-cutting issues or findings emerge pertaining to the place of knowledge in the activities of Europol, Frontex, Eurojust, OLAF and CEPOL. These shared features are central when understanding the link between the ISS and knowledge (including when evaluating evidence-based claims underpinning the ISS) and the place of agencies in the knowledge production process.

4.1 Lack of conceptual clarity around 'knowledge'

The first finding is that 'knowledge' as presented by EU Home Affairs agencies is an ambiguous and fluid concept. All of the agencies under study use and engage with terms such as 'knowledge', 'data', 'information', 'evidence', 'research' etc. yet definitions of these terms are seldom, if never, provided, neither in the agencies' legal mandates, nor in their official publications. As a result, EU Home Affairs agencies use terms interchangeably or apply a wide interpretation of such concepts, engaging in a diverse range of knowledge activities.

Table 2 demonstrates the extent to which all five agencies are experimenting with a range of techniques of knowledge production. However, as might be expected given the conceptual ambiguity surrounding these terms, there is no common approach across the agencies, and each agency has its own habits, practices and framings when engaging in activities for the manufacture of 'knowledge'. Thus the nature of 'data collection' varies agency by agency, from the systematic reporting of statistical data as defined by legal instruments adopted specifically for that purpose, to the ad hoc gathering of information submitted on a

¹⁶⁴ Council of the European Union (2011), *Scorecard – Implementation of the JHA Agencies report*, 18077/11, 5.12.2011.

¹⁶⁵ Information regarding a Practical Agreement on arrangements of cooperation between Eurojust and OLAF, OJ C 314, 09/12/2008.

¹⁶⁶ Administrative arrangement between Europol and OLAF, 8 April 2004, Brussels.

¹⁶⁷ GHK (2012) Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity – Final Report.

voluntary basis by member states, a divergence which can have important consequences for the reliability and relevance of the knowledge and evidence for which such data form a part.

Table 2. Engagement by the five agencies in different forms of knowledge production

Type of 'knowledge' activity	Europol	Frontex	Eurojust	OLAF	CEPOL
Information					
<i>Developing intelligence</i>	✓	✓	✓	✓	
<i>Data gathering</i>	✓	✓	✓	✓	
R&D					
<i>Internal research</i>	✓	✓	✓	✓	✓
<i>Collaborative research</i>	✓	✓	✓		✓
<i>Outsourcing to externals</i>		✓		✓	✓
<i>Inputs to EU FP research</i>	✓	✓			
Other soft policy tools	✓	✓	✓	✓	✓

'Intelligence' too takes various forms and performs various functions. Referred to by a variety of terms (risk analysis, strategic analysis, threat assessments, situation reports) the intelligence activities undertaken by these agencies diverges from a traditional understanding of intelligence as typically understood in the context of criminal justice policing towards a proactive, future-oriented approach to crime-fighting (see section 4.3. below). The predictive nature of their intelligence products again varies from agency to agency with certain strategic tools providing rather an overview of current trends rather than identifying future threats.

A further example of this conceptual ambiguity can be found in the multiple understanding and functions of 'research and development' activities. Our overview revealed a diverse picture of how 'research' is interpreted between agencies (and even within single agencies). What is classed as 'research' by certain agencies often overlaps with information sharing, intelligence, or the development and exchange of 'best practices.' For instance, a joint project currently being undertaken between Europol and the US Department of Homeland Security on "Countering Violent extremism" will see the two agencies "share information on case studies, focusing on suspicious behaviour and other indicators, and develop best practices to counter terrorist radicalisation".¹⁶⁸ This interpretation of research very much fits with Europol's role as an intelligence broker.

¹⁶⁸ Europol Annual Report 2011.

We see that for several agencies research has a primarily technical/operational focus, with the purpose of responding directly to practical needs of the agency or the national competent authorities of the member states. For example, Eurojust has managed research projects aimed at strengthening the exchange of data between the member states and Eurojust. Even so-called ‘strategic projects’ undertaken by Eurojust serve, to a certain degree, as an evaluation mechanism of the successes and challenges of cooperation experienced by this agency and provide recommendations for improvements, including in many cases actions to strengthen Eurojust’s role as a broker for coordination and cooperation. Indeed, it has been highlighted that action plans to improve internal processes are often the result of research made and data collected for a strategic project.

Likewise, much of the research and development activities undertaken or funded by Frontex feed directly into the development of new border management technologies or surveillance systems. As Frontex has stated “The agency strives to support the European Commission initiatives in the area of border management through evidence-based research and the development of new systems and tools.” Key examples in this respect are Frontex’s support, through research projects, for the Commission’s legislative proposals on the Smart Borders Package and European Borders Surveillance System (Eurosur).

These examples demonstrate the wide boundaries of agencies’ ‘research’ activities and the caution that might be applied when dealing with results and evidence that emerge from them. In general, the question of ‘what is knowledge’ is intimately linked with the question of what constitutes objective evidence. Ambiguity in the former inevitably spills over into the latter. Lack of common definitions or understandings leads to uncertainty, and leaves scope for the manipulation of concepts. This has direct repercussions when it comes to assessing the quality of knowledge and evidence, as is explored further when assessing the place of independent academic research in agency-generated knowledge.

4.2 Agency-generated knowledge and the place of independent academic research

A key interest of this study was to investigate the place of independent research in the knowledge activities of EU Home Affairs agencies. However, our findings reveal that, on balance, the proportion of ‘knowledge’ generated by agencies based on the inputs of independent Social Science and Humanities researchers and academics is relatively small.

The overview in section three of this paper indicates that ‘knowledge’ is primarily drawn from member states national authorities and ‘experts’ – specialist professionals or practitioners that EU Home Affairs agencies engage with via the means of specifically established networks, task forces or working groups designed to pool information, gather practices and elicit feedback. There is some evidence of a shift in certain agencies, namely Frontex, which has begun to collaborate on a more regular basis with external academics or universities. Likewise, Europol has drawn on independent academic advice when developing and applying the new SOCTA. Nevertheless, overall the input of independent, academic expertise is modest.

This marginalisation of external academic SSH research represents an imbalance in the agencies’ production of knowledge. The question of knowledge cannot be limited to the provision of expertise to EU Home Affairs agencies, when that expertise is embedded in a specific security or law enforcement culture. Indeed, it could be argued that an evidence-based EU policy in the field of internal security is best supported by a pluralistic debate and critical review.

Lack of such a critical review can lead to gaps in the knowledge base underpinning agency activities and by extension the ISS. One such gap that can be identified is the lack of a focus on ethics. This is an important omission given that the means undertaken by EU agencies to mobilise and support the fight against crime have led to the use of practices which can at times present inconsistencies with the protection of civil liberties and fundamental rights.¹⁶⁹ This is one domain where the input of social science and humanities research (with its focus on the impacts of phenomena for societies and individuals) could bring substantial

¹⁶⁹ E. Guild et al (2011), *Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies*, Study prepared for the LIBE Committee of the European Parliament, Brussels.

added value. Frontex has shown a willingness to remedy this gap, for instance by commissioning a study on ethics and border control carried out by the University of Birmingham (which comes alongside a recent drive to address fundamental rights criticisms concerning the agency's practices.)

There are a number of tools available to the EU institutions and agencies which can help facilitate the critical input of recognised scholars in the social sciences. Research projects funded under the EU's 6th and 7th framework programmes can generate a significant degree of scientific expertise.¹⁷⁰ In recent years however, the handling of the EU's research funding with regard to security research, and especially of the FP7 Security Theme (FP7-ST), deserves more scrutiny. The formulation of research priorities has been revealed to be heavily steered by representatives of national and EU Home Affairs agencies as well as representatives from private sector security companies.¹⁷¹ Indeed, section three of this paper showed how Frontex and Europol in particular have taken on an increasingly active role in the programming and development of FP7 research priorities and projects. As a study reviewing security measures in the FP7 Programme for the European Parliament has found,¹⁷² the outcome of this process is a dialogue that is limited in scope, addressing security research primarily through the concerns of security agencies, services and the industry.¹⁷³

4.3 A drive towards intelligence-led policing

The emphasis in the Internal Security Strategy on prevention and anticipation and the drive towards a proactive, intelligence-led approach to cross-border crime at EU level, (see Section two of this paper), is reflected in the growing prevalence of intelligence-led tools and strategies among EU Home Affairs agencies.

Sheptycki, Ben Jaffel and Bigo¹⁷⁴ refer to intelligence-led policing as:

Developing data gathering, including and integrating covert and open sources, personal and non-personal information, to rely on an expert system (software or group of experts) in order to discover patterns of behaviour of a special group, from whose past behaviour, future steps can be deduced... the model is oriented towards the present and future actions committed by suspects more than the discovery of past events and the conviction of criminals.

The empirical overview in section 3 of this paper reveals that, to varying degrees, all the agencies under study are engaged in the production of analytical tools and early warning systems that aim to anticipate crime and predict, rank and diffuse threats. Table 3 sets out the key intelligence products and activities of each Home Affairs agency studied here. It is important to stress that these products take various different forms and serve varying purposes. For instance, different products will have a different focus depending on the mandate of their authoring agency. Thus where Europol's 'threat assessments' focus on organised criminal groups, their behaviour and inter-relationship with criminal markets, the Frontex so-called 'risk analyses' focus on immigration routes and risk factors relating to the EU external borders. Certain products (Europol's OCTAs, Frontex's ARAs) are more future-oriented than others (such as Eurojust's Terrorism Monitor).

¹⁷⁰ For a critique on the wealth of research pertaining to EU migration policy and the application of these research results in EU policymaking, see S. Carrera & M. Merlino (2009), *Undocumented Immigrants and Rights in the EU: Addressing the Gap between Social Science Research and Policy-making in the Stockholm Programme?* CEPS Liberty and Security in Europe Series, December 2009.

¹⁷¹ A. Scherrer, J. Jeandesboz and E. P. Guittet (2011), *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, Study prepared for the LIBE Committee of the European Parliament, Brussels, pp.95-96.

¹⁷² J. Jeandesboz and F. Ragazzi (2010), *Review of security measures in the Research Framework Programme*, Study for the Directorate-General for Internal Policies of the European Parliament, Brussels.

¹⁷³ The study found that an overview of security research projects sponsored through FP7 reveals an unequal distribution of funding, which is concentrated on a small number of participating countries and a small number of organisations, mostly major defence and security companies and applied research institutions. In addition, a large proportion of these projects are dedicated to developing technologies of surveillance, to the detriment of a broader reflection on the impact of such technologies for citizens and persons concerned with the EU's security policies.

¹⁷⁴ J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International Organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament, p. 20.

Table 3. Key intelligence products and related tools by EU Home Affairs agency

Europol	Frontex	Eurojust	OLAF	CEPOL
EU Organised Crime Threat Assessment (OCTA)	Frontex Annual Risk Analysis Report	Terrorism Conviction Monitor	Casebooks	Training tailored to strategic threats
Serious and Organised Crime Threat Assessment (SOCTA) – <i>forthcoming</i>	Frontex Semi-Annual Risk Analysis report	Strategic analysis reports		
Russian Organised Crime Threat Assessment (ROCTA)	Frontex Risk Analysis Quarterly report			
Organised Crime Threat Assessment on West Africa (OCTA-WA)	Western Balkan Annual Risk Analysis			
EU Terrorism Situation and Trend Report (TE-SAT)	Western Balkan Quarterly report			
OC-SCAN Threat notices	Eastern Borders Annual Risk Analysis			
	European Document Fraud Annual Risk Analysis			
	Weekly Monitor on North Africa and the Near East			

However, what is important to bear in mind is that the majority of products listed above feed directly or indirectly into the policy cycle of the Internal Security Strategy with almost all of the agencies examined here (except CEPOL) contributing strategic analyses and intelligence input into Europol's OCTA, future SOCTA and TE-SAT. While CEPOL does not produce or develop intelligence itself, its training programmes are tailored to strategic threats with an EU dimension as well as offering trainings on how to conduct strategic analyses.

4.3.1 Intelligence and intransparency

Intelligence-led approaches to crime prevention are characterised by intransparency, with law enforcement agencies and other security bodies often keen to stress the necessary confidentiality that surround the gathering, processing and dissemination of intelligence.

Similarly, it is difficult to obtain detailed information about the intelligence products generated by the agencies, their data sources and methods. Few of the products listed in Table 3 are fully public. Europol produces both a restricted version and a public version of its OCTA and TE-SAT. Some Frontex risk analyses have both a public and a restricted version, while others are classified as restricted only. Eurojust's Terrorist Convictions Monitor is only available to member states' judicial authorities upon request. The EU Home Affairs agencies under study emphasise that confidentiality is a pre-requisite for efficiency and for confidence building among member states security practitioners.

The proliferation of intelligence actions by EU Home Affairs agencies and the secrecy surrounding these activities indicates that, despite the abolition of the former pillar structure with the Treaty of Lisbon, its legacy is still very much present in AFSJ cooperation and the activities of agencies like Europol, Frontex and Eurojust. Academics and policymakers expected that, with an end to the first/third pillar divide, this would also signal a diminution of third pillar ways of working – and their deficiencies – such as a high democratic deficit, weak judicial control, together with the lack of transparency and accountability. Yet, with the integration of the agencies into the EU Internal Security Strategy and the JHA Policy Cycle, the working

methods and mentalities not only reflect a continuation of the third pillar spirit but its contamination into formerly first pillar areas, such as external border controls and migration and asylum. The purpose and mandates of an agency such as Frontex becomes blurred, with Frontex increasing evolving into a police and intelligence actor.¹⁷⁵

This culture of secrecy can act to prevent scrutiny and accountability of decisions and actions taken. In the case of the intelligence products produced by agencies such as Frontex and Europol, it serves to shield them from thorough review of their robustness and reliability. This is particularly the case when strict confidentiality rules apply not only to the information contained in the intelligence reports, but also to the methodologies used to produce them. For instance, several academics and scholars have noted their struggle to obtain information about the methodology employed by Europol to devise the OCTA reports.¹⁷⁶ In the absence of information about how data was gathered, sources selected, and how data and information has been processed, it is almost impossible to evaluate the quality of the intelligence reports and threat assessments produced by EU Home Affairs agencies and, by extension, the validity of the ‘evidence-based’ claims which underpin the ISS.

4.3.2 *Limitations and risks of intelligence products*

Scholars have called into question the overall reliability, effectiveness and societal implications of threat assessments and the risk-based analyses that feed intelligence-led approach to crime prevention.¹⁷⁷

The intelligence products of EU Home Affairs agencies have not escaped criticism. Europol’s OCTA, taking as it currently does a central place in the EU’s policy cycle, has drawn the greatest attention from academics. What is known about the methods and approaches used to prepare the OCTA has been strongly criticized by the academic and research communities.¹⁷⁸ For instance, the scientific rigour of the questionnaire method used by Europol to gather information from member states has been called into question given the ambiguous wording of the questions, lack of clear definitions or criteria for key concepts – such as organised crime – as well as the lack of transparency surrounding the procedures used to process the data gathered by these questionnaires. As mentioned above, very little is known about how data is made comparable and how information is filtered so that it fits into the overall threat assessment model.¹⁷⁹

Broader questions of information reliability have contributed to the scepticism surrounding Europol’s OCTA (and its regional variations including the ROCTA, OCTA-WA) and TE-SAT. One of the major obstacles to assess organised and serious crime in the EU concerns the lack of information and the difficulty to obtain reliable data and statistics. Challenges in this domain are evident for each of the four agencies (Europol,

¹⁷⁵ S. Carrera and E. Guild (2011), *Towards an Internal (In)security Strategy for the EU?*, CEPS Liberty and Security in Europe Series, CEPS, Brussels, January 2011.

¹⁷⁶ See for instance, A. Scherrer, J. Jeandesboz and E. P. Guittet (2011), *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, Study prepared for the LIBE Committee of the European Parliament, Brussels; P. van Duyne (2007), “OCTA 2006: the Unfulfilled Promise”, *Trends in Organised Crime*, Vol.10, pp.120 – 128.

¹⁷⁷ J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament; K. Von Lampe (2004), “Making the second step before the first: Assessing Organised Crime”, *Crime, Law and Social Change*, 42, pp.. ; J. Sheptycki (2004), “Organisational pathologies in police intelligence systems: some contributions to the lexicon of intelligence-led policing”, *European Journal of Criminology*, Vol. 1, No. 3, pp. 307-332.

¹⁷⁸ A. de Moor and G. Vermeulen (2012), “The Europol Council Decision: Transforming Europol into an Agency of the European Union,” *Common Market Law Review*, 47, pp.1112; P. van Duyne (2007), “OCTA 2006: the Unfulfilled Promise”, *Trends in Organised Crime*, Vol.10, pp.120 – 128; P. van Duyne and T. Vander Beken (2009), “The incantations of the EU organised crime policy making”, *Crime, Law and Social Change*, Vol. 51, pp. 261-281; J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament.

¹⁷⁹ P. van Duyne (2007), “OCTA 2006: the Unfulfilled Promise”, *Trends in Organised Crime*, Vol.10, pp.120 – 128; P. van Duyne and T. Vander Beken (2009), “The incantations of the EU organised crime policy making”, *Crime, Law and Social Change*, Vol. 51, pp. 261-281.

Frontex, Eurojust and OLAF) examined here, whose efforts to gather comprehensive data and information on EU crime phenomena has been marred by a lack of cooperation among the member states on whom they are particularly reliant. This inevitably has important knock-on effects for the knowledge-base on which strategic analyses are conducted and intelligence products are based.

The reliance on member states to contribute data, and their mixed record in this domain, implies that the gaps and weaknesses that have marked Europol's data collection would similarly affect the accuracy of its OCTA and TE-SAT. Even if one accepts that it is possible to produce a reliable threat assessment, this is certainly not possible without first establishing a solid information base. Moreover, establishing such a base, even if data is forthcoming, is rendered additionally complicated by the challenge of making data comparable, especially given the lack of similar offence categories. How this is achieved in the case of OCTA, which receives input from a vast array of actors (EU member states, EU agencies, private bodies and third countries) has not been explained.

Even where comparable data is available, threat assessments and situation reports need to be treated with caution. Where crime trends are discernible in such reports, they may refer more to contextual variables than to patterns of criminal cooperation or degrees of 'threat' posed by criminal networks. Changes in the broader environment surrounding criminal networks (political, legal or societal developments) may impact crime levels and do not allow to draw any indications regarding the activities, size or structure of criminal networks. In this vein, scholars have pointed to the *dis*-organised nature of organised criminal groups, contending that the inherently fluid, unstable, temporary and local nature of crime undermines the very concept that it is possible to map serious organised crime.¹⁸⁰

Situation reports and threat assessments, rather than reflecting change in the number of organised crime activities, can more often than not, simply reveal the investigative priorities of the police. Among both law enforcement officials and scholars, there is growing acknowledgment that situation reports often reflect primarily on the investigative priorities and allocation of resources of the police.¹⁸¹ Other data contained in situation reports and threats assessments such as OCTA may also be influenced by organisational factors. According to Van Lampe:

Since most reported investigations are conducted by specialised units which typically focus on specific types of offenses or, most notably, specifically ethnically defined groups of offender the types of offences and the nationality of the suspects that appear in the organised crime reports are likely to reflect these specialisations more than actual variations.¹⁸²

An overwhelming focus on so-called "non-indigenous" criminal groups and an emphasis on associating criminal organisations with a specific nationality or ethnic group is a distinguishing feature of the OCTA. This stands in tension with evidence of in-depth academic studies and research which indicate that, contrary to the commonly held belief about ethnic homogeneity among organised criminal networks, most cases involve multi-national crime networks and the composition of active criminal organisations in the EU are almost never mono-ethnic or nationality based.¹⁸³

¹⁸⁰ J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament.

¹⁸¹ K. Von Lampe (2004), "Making the second step before the first: Assessing Organised Crime", *Crime, Law and Social Change*, 42, pp. 240.

¹⁸² K. Von Lampe (2004), "Making the second step before the first: Assessing Organised Crime", *Crime, Law and Social Change*, 42, pp. 241.

¹⁸³ K. Von Lampe (2004), "Making the second step before the first: Assessing Organised Crime", *Crime, Law and Social Change*, 42, pp. 242; J. Sheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament.

Singling out certain national/ethnic groups in this way is problematic as it raises suspicion and stigmatises whole communities. This provides one example of how anticipative logics, particularly where they venture into the territory of profiling criminal groups, can have negative societal impacts, such as hindering processes of social integration and exacerbating the exclusion and marginalisation certain sections of society, threatening the social cohesion of the EU.¹⁸⁴ Such approaches do little to foster ‘trust’ between citizens and the law enforcement institutions, particularly when they are not supported/justified by a strong empirical basis.

4.4 Knowledge as a source of legitimacy and authority for EU Home Affairs agencies

The final cross-cutting finding of this study relates to the different functionalities of knowledge in the work of EU Home Affairs agencies. There have been various attempts in the literature to construe theoretical models aiming at facilitating a better understanding of the use of ‘research evidence’ or ‘knowledge’ by government agencies. Boswell has studied the alternative functions of knowledge use by policymakers, identifying three main types: the ‘instrumental’ knowledge use which involves applying knowledge in a specific way, for instance to solve a policy problem or otherwise meet the needs of policymakers; ‘legitimising’ knowledge use, by which an organisation draws on ‘expert knowledge’ to enhance its legitimacy and claim more resources and competences over certain policy areas; and finally a ‘substantiating’ function by which knowledge can bring authority to certain policy decisions, where knowledge is primarily targeted at enhancing the credibility of a certain decision rather than directly improving the quality of the actors’ policy outputs and practices.¹⁸⁵

What is the extent of instrumental, legitimising and substantiating uses of knowledge in EU Home Affairs agencies? This analysis of agencies activities reveals all three functions of knowledge are at play. Without doubt, knowledge plays an important instrumental function in the work of EU Home Affairs agencies, demonstrated by the way agencies engage in research projects which take a primarily ‘problem solving’ or ‘applied research’ approach. These include research projects aimed at spearheading new techniques in crime analysis (Europol), strengthening information exchange (Eurojust), and developing new technologies to improve border surveillance (Frontex). However, when examining the instrumental function of knowledge more closely, a nuanced interpretation is necessary. One must bear in mind that in the process of defining a problem and using ‘research’ or ‘knowledge’ to fill the gap, the very construction of a ‘problem’ by an agency may serve other organizational purposes. This is evidenced for instance, by Frontex’s role in the development of Eurosur, and the way that a series of research projects commissioned by the agency not only identified and defined as a the problem the surveillance of the EU’s Southern external borders but also developed a solution that placed Frontex at its core and involved an implicit increase of responsibility for the agency.

Indeed, we find many examples of agencies drawing on knowledge for legitimising purposes. Our research confirms that a reliance on ‘expert’ knowledge, via the establishment of networks and working groups is high among each of the five EU Home Affairs agencies. Some agencies have been explicit about their wish to use research to establish partnerships with private sector experts and industry practitioners (Europol, Frontex). As scholars have argued, such measures endow public authorities with “epistemic authority”,¹⁸⁶ creating trust and confidence that their decisions and policy priorities are well-founded. This is particularly important when “the level of risk” characterizing the policy area involved, such as terrorism, internal security, migration, etc – is high, i.e. the features of the policy are under contestation.

¹⁸⁴ A. Scherrer, J. Jeandesboz and E. P. Guittet (2011), *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, Study prepared for the LIBE Committee of the European Parliament, Brussels, p. 81.

¹⁸⁵ C. Boswell (2009), *The Political Uses of Expert Knowledge: Immigration Policy and Social Research*, Cambridge University Press, Cambridge.

¹⁸⁶ R. Geuss (2001), *History and Illusion in Politics*, Cambridge University Press, Cambridge.

However, for EU Home Affairs agencies, there are additional drivers which render the legitimizing function of knowledge particularly important. EU Home Affairs agencies operate in highly sensitive policy domains, which, despite dynamic European integration driving the construction of the AFSJ, still lay at the heart of national sovereignty of the EU member states and their national law enforcement authorities. Subsequently, the powers accorded to EU Home Affairs agencies have been circumscribed in their legal mandates – restricted to primarily playing a supportive or coordinating role. This has left the EU Home Affairs agencies, on paper at least, with little operational powers and possibilities to directly impact policymaking in the EU. While member states have restricted the powers of EU Home Affairs agencies, and sometimes shown reluctance in the degree to which they cooperate with them, at the same time agencies have been under considerable pressure to demonstrate their value-added. Certain agencies (Europol, CEPOL, OLAF) have, at specific moments in their evolution, received strong criticisms from the member states regarding their overall effectiveness and relevance.

These factors drive agencies to expand their powers and activities by engaging in ‘soft’ law and policy – actions relying on non-legally binding policy techniques such as funding research, gathering data and analysing information, developing training and exchanging and pooling best practices. Agencies have justified and leveraged these activities by emphasising their unique positioning at the supranational level: only EU agencies, with their EU-wide overview of data, information and trends, are able to piece together the supranational picture of the EU landscape of organised or serious crime, especially cross-border crime. A particular example here is Eurojust, whose lack of a formal mandate to elicit cooperation from member states led it to rely on ‘informal’ powers, deriving – as Jeney has contended – a ‘persuasive authority’ from networked knowledge.¹⁸⁷ Further, the future oriented intelligence products of EU Home Affairs agencies, the threat assessments and risk analyses, serve to reinforce the notion that the work of the agencies is increasingly valuable and indispensable. Here, Scheptycki, Jaffel and Bigo’s assessment of the added legitimizing function intelligence can play for police bodies and agencies such as Europol is instructive:

They have insisted that they did not want operational powers (or not many) but that these would be vital to address the central threat of interconnecting transnational organised crime, terrorism and illegal migration, a threat so complex that it was beyond the reach of local or national police, not least because these interconnected threats were not only European, they were global. Through this narrative, their future as organisations has then been dependent on convincing that the threats of transnational organised crime and terrorism were more and more dangerous, more and more global, more and more unpredictable (except for them, because they have the capacities in terms of technologies and human competences to do so).¹⁸⁸

The intelligence dimension of EU Home Affairs agencies work also provides a clear example of these agencies’ application of the substantiating function of knowledge. The predictive potential of Europol’s threat assessments and Frontex’s risk analyses have been strongly questioned, as have their real operational value for police officers and border guard officials on the ground, given the very general nature of these reports, their lack of specificity and the high divergence of situations faced by practitioners at national and local levels. One might argue therefore that these tools fulfil a primarily symbolic function, enhancing the credibility of policy decisions and garnering support for a preferred course of action. This can be seen both in the way intelligence products play a key role for agencies such as Europol and Frontex in providing the rationale for operational actions but also their place in feeding the Policy Cycle of the ISS. Here it is pertinent to note that recommendations stemming from the OCTA have in the past been so general as to justify almost any policy decision.

¹⁸⁷ P. Jeney (2012), *The Future of Eurojust*, Study for the Directorate General for Internal Policies of the European Parliament, Brussels, pp. 76, 94.

¹⁸⁸ J. Scheptycki, H Ben Jaffel and D. Bigo (2011), *International organised Crime in the European Union*, Note prepared for the Committee on Civil Liberties and Justice and Home Affairs of the European Parliament, p. 20.

5. Conclusions

EU Home Affairs agencies are engaging in an expanding range of activities for the manufacture and control of ‘knowledge.’ The precise form and extent of such knowledge (co)production varies from agency to agency, with certain agencies consolidating extensive research and development agendas or expanding already well established intelligence tasks, while others remain in the early stages of this process. Nevertheless, each of the five EU Home Affairs agencies examined display a dynamic approach to ‘knowledge,’ not only experimenting with a diverse range of activities but revealing clear ambitions to position themselves in the future as ‘centres of expertise’ or ‘law enforcement knowledge bases’. The recent elevation of EU Home Affairs agencies to the forefront of the ISS and the EU policy cycle has served to validate and incentivise the knowledge activities of Europol, Frontex, Eurojust, OLAF and CEPOL, formalising their responsibility for the provision of ‘knowledge’ on security threats facing the EU, via the regular publication of, or input to, policy tools such as threat assessments, risk analyses and situation reports.

However, when examining the exact nature of agency driven ‘knowledge’ in closer detail, this paper finds that it presents several shortcomings when measured against criteria of objectivity, scientific rigour, reliability, relevance and accuracy. The knowledge (co)produced, applied and disseminated by EU Home Affairs agencies relies predominately on ‘expert’ knowledge drawn from networks of representatives from national law enforcement bodies, interior ministries as well as professionals and practitioners from security industries, while the input of independent, academic (university-based) social science research is marginalised. This results in a narrow form of expertise, embedded in a specific security or law enforcement culture, one which does not take into account wider debate and critiques surrounding the ultimate effectiveness or broad societal impacts of EU security policies, nor of their implications for civil liberties and fundamental rights. Further, such networked expertise undermines the concept of *depoliticised* knowledge, a precondition for ‘evidence-based’ policy-making.¹⁸⁹

Concerns over the objectivity of agency-generated knowledge are reinforced by the centrality of intelligence-based knowledge as expressed through products and policy tools such as Europol’s OCTA, Frontex’s Risk Analyses and the various forms of strategic analysis carried out by Eurojust and OLAF. Although in developing these products, agencies may draw upon a wide range of data and information sources, the processing of this information and its constitution into a new form of ‘knowledge’ is performed by a single agency. Not only does this raise questions concerning neutrality, but the very opaqueness of the process puts such products beyond the reach of scientific assessments of their robustness and reliability. Moreover, increasingly intensive inter-agency cooperation means that intelligence as ‘knowledge’ is being circulated, re-packaged and re-cycled inside and between agencies, becoming self-reinforcing, yet increasingly separated from its original evidence base/sources.

Finally, this paper finds that the concept of ‘knowledge’ becomes profoundly diversified and transformed when examining the functions it serves in the work of EU Home Affairs agencies. Our analysis reveals a very complex landscape in terms of the different forms of knowledge produced and used by EU Home Affairs agencies and exposes an active use of ‘substantiating’ and ‘legitimising’ functions of knowledge in agency activities. Where agencies engage in research activities geared towards identifying problems and developing solutions which ultimately place greater power or strengthen the role of the agency itself, this raises important questions concerning independent research and conflict of interest.

In conclusion, the proliferation of activities by EU Home Affairs to stimulate research, gather information, develop intelligence, and pool practices in support of the EU’s fight against crime or migration management does not necessarily equal a parallel improvement in the knowledge base underpinning the ISS. The knowledge gaps and imbalances identified in this paper call for careful scrutiny of the rationale and justifications for policy priorities and decisions under the ISS, if the EU is not to be left facing a credibility gap in the implementation of its security agenda.

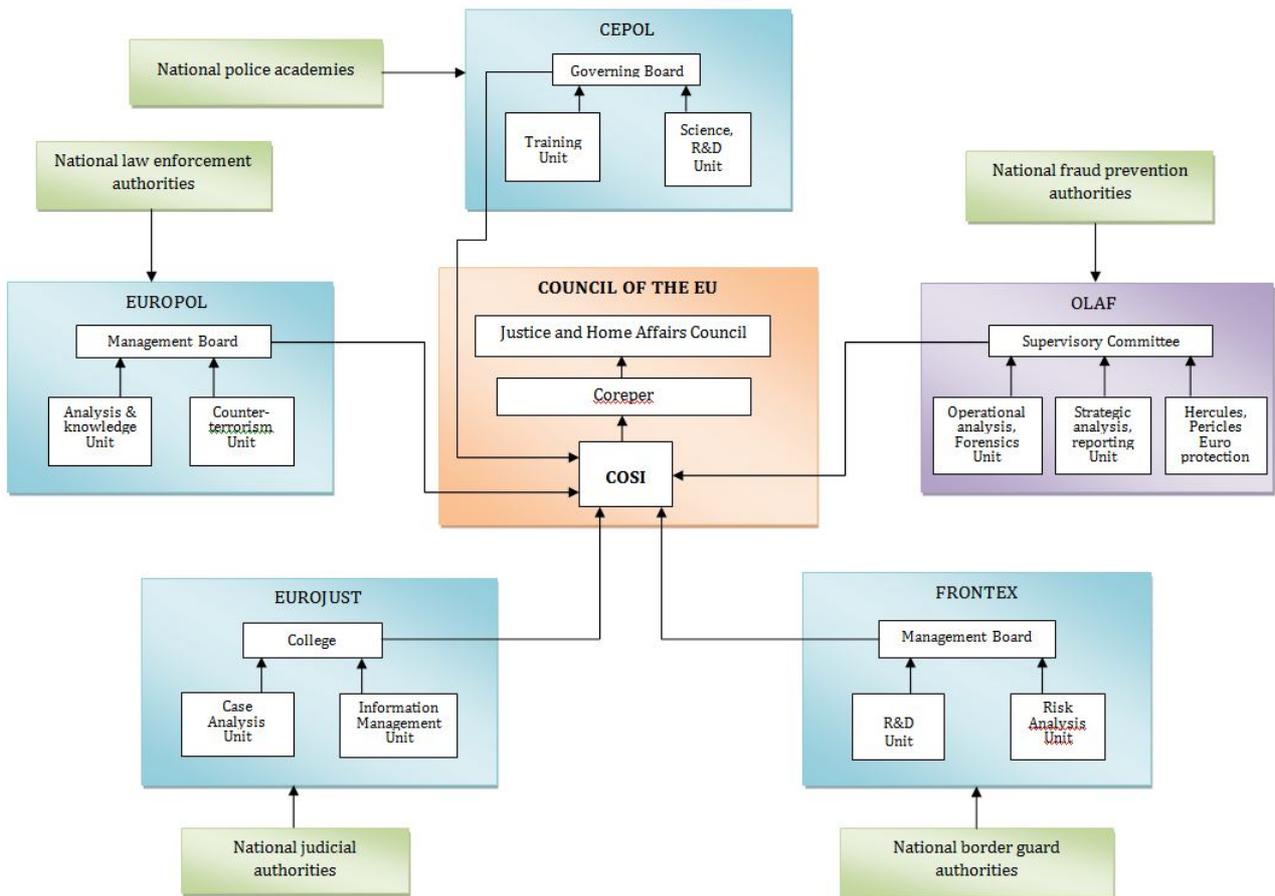
¹⁸⁹ M. Naughton (2005), “‘Evidence-based policy’ and the government of the criminal justice system – only if the evidence fits!”, *Critical Social Policy*, Vol. 25, No. 1, pp. 47–69.

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Annex 1. Mapping of EU Home Affairs agencies and the flow of knowledge inside the ISS





The FIDUCIA Project – New European Crimes and Trust-Based Policy

1 February 2012 – 31 January 2015

FIDUCIA is a research project that aims to shed light on a number of distinctly “new European” forms of criminal behaviour that have emerged in the last decade as a consequence of technology developments and the increased mobility of populations across Europe.

Proposing new approaches to the regulation of such behaviour, the central idea behind the FIDUCIA project is that public trust (in Latin *FIDUCIA*) in justice is critically important for social regulation, in that it leads to the public acceptance of the legitimacy of institutions of justice and thus to compliance with the law and cooperation with legal authorities. While being highly relevant in responding to ‘conventional’ forms of criminality, trust and legitimacy may be of special significance in light of ‘new crimes’.

The FIDUCIA consortium places special importance on developing concepts of trust-based regulation and on translating these concepts into practical reality by means of a number of recommendations that could trigger a change in direction in European criminal policy.

After an initial phase of state-of-the-art-review, FIDUCIA will conduct a series of four case studies of new forms of criminality across the European Union: trafficking of human beings, trafficking of goods, the criminalisation of migration and ethnic minorities, and cybercrimes.

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- The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), Finland
- Birkbeck College – University of London (BBK), UK
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- London School of Economics and Political Sciences (LSE), UK
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