Mapping the Field of the EU Internal Security Agencies *

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General introduction

The current trend in Europe is towards the promotion of the development of the "Area of Freedom Justice and Security" (hereafter AFJS) primarily in the name of the "fight against terrorism" and the "freedom from threats".

According to the promoters of this trend, interpreting Freedom and Justice in the light of Security requirements, the development of police and intelligence cooperation at the European level has to be the main priority. Indeed, it is deemed to be the best way to realise the vision of FJS in the context of the rise of the imperious threats embodied in "global terrorism" and "transnational organised crime". Hence, major "progress" has been achieved in the Europeanization of security cooperation (intelligence, police, prosecution), while for example procedural rights in criminal affairs and the right of the defence are still "stuck" at the national levels. The "natural" locale of Justice and Liberty has thus become the nation state.

As a consequence, a too emphatic affirmation of the importance of individual freedoms is currently interpreted as a defence of the traditional logic of state sovereignty either at the national level (nation-state) or at the European level ("European state"). But of course, so goes the argument, this can not be a credible and responsible option in a world in which the threats emanating from transnational organized crime and terrorism have gone global and in which the temporality of the construction of a "European state" is not adapted to the acuteness of the threat. In sum, a European and transnational cooperation in security matters is deemed an imperious necessity when considering the "worst case scenario" and to refuse such a Europeanization – here founded as we shall see on a rationale of "pooling of sovereignty" – would be to demonstrate an unacceptable level of national egoism. The perspective of an Europeanization – here understood as a process of integration and/ or harmonisation – of Justice on the other hand is looked upon with suspicion and Member States are expected to keep their "internal freedoms" within their borders. It goes without saying that this structuration of the "debate" on the AFJS is likely to have very concrete consequences.

It is for example against the backdrop of this line of reasoning that one can interpret the fact that the efforts to reinforce civil liberties at the EU level after the Tampere Summit in 1999 were slowed down by concerns that the European Courts would become too strong. It also partially legitimates the concern on the part of some Member states to see the European Parliament and the EU Commission gaining more powers.

This argumentation, founded on the assumption of the functional relation between the Europeanization of security professionals and the globalization of threats, does however not hold. A thorough analysis of the dynamics affecting the European field of the professionals of security

indeed reveals that the imbalance between Liberty and Security at the European level is rather to be attributed to factors that have little to do with the exceptional threat environment prevailing after the 11th of September 2001, as this study hopefully contributes to highlighting.

This study is the result of a collective endeavour aiming at documenting, analysing, and understanding the dynamics underlying the European field of security. It has been constituted by the whole of the French Team (WP2) of the CHALLENGE project. The results presented in this study allow for preliminary conclusions regarding the overall processes underlying the European field of professionals of security. It also provides, along with four deliverables already produced both by the WP2 (CERI/ Sciences Po and *Cultures & Conflits*) and CEPS (WP 5 & 15) [1], with substantial empirical details concerning the field's main agencies and institutions. However, both from the point of view of the empirical research and the possible conclusions, this research is far from completed. It should hence be seen as a work in progress and one of the parts, although an important one, of an ongoing research rather than as an end-result.

The general approach of this study derives from the specific methodology of "mapping the field of security" as it has been developed by Didier Bigo and the WP 2 (Bigo 2005; Bigo & Tsoukala 2007). As such it is different from many of the more mainstream publications on security-practices at the European level. Indeed, many of these mainstream publications look upon European security-practices through the lenses provided for by the pre-existing institutional and legal distinctions between agencies and institutions. They often analyse the latter thoroughly and in detail, but without situating them in the overall inter-institutional context in which they operate and outside of which they cannot be fully understood. Moreover, they often fall into the trap of the institutional and legal boundaries that hide the extent to which the prevailing security-practices are transversal to official and/or legal distinctions.

Other publications avoid these pitfalls by analysing social practices at the European level as deriving from professional networks that trans-

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1 . WP2 Challenge Deliverable, "Mapping the European Union's field of the professionals of security, preliminary results for year 2 of the program", June 2005; CEPS Challenge Team (WP 5 & 15), "Syllabus of EU security agencies, Institutional Settings, Competences and Responsibilities", June 2005; WP 2 Challenge Deliverable 155, "Judicial Cooperation in Europe", 2007; Challenge WP2 deliverable 180, "Biometrics and Surveillance", 2007.

cend institutional and official distinctions and categorisations (Sandholz & Stone Sweet 1998; Guiraudon 2001). These approaches highlight the extent to which specific professions cooperate, exchange information or interact in other ways. Hence, when applied to security-practices, they allow accounting for the fact that – amongst other factors because of legal diversity, diverse spaces of control, development of bilateral arrangements and intense institutional engineering – "policing" in Europe (and more broadly speaking protection against a wide array or threats) is very much a matter of a relatively fluid network composed of diverse security-authorities. While allowing for an analysis of the interactions between different institutions and avoiding the pitfalls of a too blind belief in institutional boundaries, such an approach however risks considering security-professionals as an all-encompassing and all-inclusive category embracing all professionals that are part in a way or another of this network. In this case, hierarchies might be underestimated, processes of exclusion or inclusion overlooked and the distinction between central and peripheral actors neglected.

From this point of view, analysing security professionals as constituting a relational and transversal field of practice allows avoiding the two abovementioned pitfalls (Bigo 1998; C.A.S.E. collective 2006). It allows accounting for the boundaries and hierarchies that structure relations between professionals of security, while avoiding the pitfalls of the exclusively institutional, sectoral or national approaches. It facilitates the analysis of the interdependencies between different professionals (police, military, customs, judges, border-guards etc.), while not considering the field of security as a homogeneous or unlimited social space. On the contrary, the field of the professionals of security is a bordered and fragmented social space that, in spite of its heterogeneities, can be analysed as being structured by a set of common beliefs, practices and meanings. Such an approach allows going beyond the official organization charts with their often narrow categorisations. It also avoids underestimating the professional and/or bureaucratic struggles, power-relations and bordering mechanisms that play an important role in the explanation of what is at stake in the contemporary security practices at the European level. Professional, national, regional, sectoral and even inter-sectoral "solidarities" and struggles might override the network logic as well as the institutional boundaries.

A FEW METHODOLOGICAL REMARKS ON THE THEORY OF FIELDS

While the concept of a field has to be defined within a broader theoretical framework, and more specifically the bourdieuan framework (Bourdieu 1992; Bigo 2006b), it is here important to point to some of its basic implications without going into details. This is necessary in order to be able to understand the added value of an approach in terms of fields. Indeed, the elements of field-theory used in this deliverable can for practical purposes be brought down to a few very simple principles.

The positions of social actors, and the relations between these positions, can be represented as forming a space, a social space. The positions of the actors in this social space cannot be conceived of in absolute terms. Every position can only be located relatively to the other positions in this social space. For example to say an institution (an actor, an individual…) holds "a lot of power" (whatever the type of power one is looking at) only makes sense relatively to institutions holding less power (or no power at all) and vice versa. The corollary of this simple fact is that if the level of power held by one institution changes considerably, the positions of all the other institutions change. Indeed the positions in the social space are relative one to another. The relational and relative nature of social attributes, "privileges" and powers – of what is called "capitals" in the theory of fields – hence implies that the social position of a given institution is dependant on the capitals held by other institutions.

As a consequence, institutions will be likely to enter into struggles one with another over their relative positions and, thus, over capitals. However the notion of social space is very broad and gives no indication as to its boundaries, its periphery, its centre... Moreover, the social world being complex, different "positioning systems" and a multiplicity of types of capitals can be conceived of the specific capitals over which the institutions struggle might be widely different and depend, amongst others, on the activities they engage in. The notion of field can then be said to refer to a specific social space structured by struggles over a specific capital determining part of what is at stake in these struggles. One can for example assume that the same elements will not be at stake in the struggles structuring the field of security-policies and the ones structuring the field of agricultural policies. These are indeed, although this would have to be sociologically proven, two different fields of practice.

When analysing the European field of professionals of security, it is hence important to look at the struggles, the relations and positions structuring the field. That is what will be done here. Moreover, an institution cannot be assumed to be part of this field only because it seems "natural" given its name ("European military staff", "European police office" for the field of security) or its activity. An actor or institution can only be said to be part of the European field of security after a thorough analysis of its relations, its standpoints and its practices has been made. Indeed, only such an analysis can prove this institution to be engaged in the struggles over the capitals relevant in this field. These struggles will then also allow analysing the dynamics structuring this field and hence understanding what is at stake in it.

However, beyond these introductory remarks, to talk of a specifically European field of professionals security is to posit that the national spaces of security practices are not closed any longer (if they ever were) and that the fields of internal security and external security are to certain extent merging (Bigo 1998). As such, one of the main and central questions is the one of the boundaries of the European field of security. Although this question has been explored in the annexes, it will be a recurrent theme throughout this study.

Whereas the overall methodology of the mapping project – as it was originally conceived of – has already been detailed in a previous deliverable [2], the specific methodology followed in this study is slightly less ambitious and slightly more precise. Indeed, it is to provide with the crucial empirical and analytical "building blocks" that are to allow – along with the research yet to be carried out – fulfilling the aims set out by our research project. Moreover, from the point of view of the empirical research, the scope of the quantitative and qualitative data has here been limited to a few of the security-sites (agencies, institutions, professionals, sectors…) that the research will ultimately cover. The focus will here mainly be put on the European security agencies having a clearly stated legal status such as the European Police Office (EUROPOL), the European Judicial Cooperation Unit (EUROJUST) and the European Anti-Fraud Unit (OLAF), involved in the European sub-field of police cooperation and judicial cooperation in criminal affairs, as well as the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX). The role of security technologies and data-bases in the European field of professionals of security has also been scrutinized and will here allow for crucial insights.

Of course, when useful, the role of other European institutions (European Parliament, European Commission, institutions of the second pillar etc.), of private actors (security industry…) or of national levels will be mentioned without necessarily having been extensively scrutinized yet [3]. Indeed, either these sites play an important role in the activities of the

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2 . Challenge WP2 Deliverable, "Mapping the European Union's field of the professionals of security, A methodological note on the problematique", December 2005.

3 . It ought here to be mentioned that the role of MPs and Parliaments (national and European), the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR), in their resistance to some of the trends prevailing in the European field of security has yet to be more thoroughly scrutinized by the Challenge WP2 Team.

European agencies on which extensive investigation have already been made, or they might be mentioned in order to highlight a significant cleavage or distinction.

Part of the methodology is here to explore different types of distinctions and cleavages arising from the analysis of the discourses, practices, institutional characteristics and objective positions of the agencies and institutions. Hence a set of graphs will here attempt to highlight the elements that seem crucial at this stage [4]. One of the ultimate aims of this research project is to produce extensive graphs over the social spaces of standpoints concerning (in)security on the one hand and the social spaces of institutional positions on the other and try to show the different correlations and the articulations. This is however not what will be done here. The graphs produced here anticipate upon this aim by highlighting the lines of cleavage that will have to be considered and that already, at this point, appear to be crucial. Whereas originally the aim was to include the recently created European Gendarmerie Force (EGF) in the research, this will not be done at this stage for a certain number of reasons that have been detailed in the study.

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4 . The graphs presented here attempt to illustrate the objective positions of the agencies (when the contrary is not specified) as opposed to their institutional standpoints, i.e. their points of view as illustrated by their declarations for example.

RESEARCH STRATEGY AND METHODOLOGY

There are various ways of studying a transnational field of security professionals. At first, our aim was to look both at national and European agencies through a diverse set of criteria. The wide array of differences between the diverse national situations of the 27 Member States would however have implied to carry out a large preliminary investigation in order to identify the pertinent items of the analysis. We have therefore chosen to limit the research to the study of the European agencies. This has led us to analyse the formation of a security field at the European level through a sociological study of the professional elites that contribute to its emergence and consolidation. This move has allowed gathering precise and interesting information, some of which has been included into this deliverable. It supposes to carry out a large number of interviews in order to analyze the transformations of positions and relationships between the agents involved in the professional space. Ultimately it is hoped to allow for the analysis of the collective biography of a field. The data gathered through these interviews has been confronted to the social trajectories and the institutional positions of the social agents in order to avoid possible biases on their part. Indeed, while a bibliographical review might allow identifying institutional and official discourses, only a biographical investigation allows having an understanding of the underlying strategic motivations and value-based assumptions. Indeed, the latter are partially determined by the social agents' resources as well as on the competitions in which they are involved.

Drawing on the research of Garth and Dezalay, we have hence diversified the scope of our research by focusing on concurrent, convergent or parallel careers, in order to show the progressive structuring and institutionalization of this social space (Dezalay & Garth 2002). Such a biographical approach allows questioning the institutional, disciplinary and national boundaries. Indeed, the trajectories of the political and judicial European elites have to be understood both in relation to the space of which they are part at the European level and in relation to the struggles inside the national institutions they originally come from. Their trajectories are often transversal to these boundaries (inter-institutional boundaries, national/ European boundary etc.). For example, it would be impossible to understand the engagement of some French criminal police officers in Europol without taking into account the relative symbolic devaluation of their institution in France since the beginning of the 90s.

This research strategy has involved two steps. First, we have tried to shed light on the most visible divisions and oppositions between and inside the institutions. In order to do this, we have interviewed the most "visible persons" in each professional field of activity. For example, directors and former directors were unavoidable interlocutors [5]. Secondly, we used the classical investigation strategy of snowballing: we used the names, the contacts and the information given during the first interviews, in order to extend the scope of the investigation to less visible but nevertheless important actors. This is how we identified the different poles of the European security field that structure the different graphs in this deliverable.

The general outline of this study will be as follows: in the first part, the formal and actual relations between the different European agencies, institutions and professionals (as well as the role played by legal settings in this context) will be analysed focusing on their specific features, the struggles structuring them and the questions they raise. This will allow insisting on some of the core elements that are at stake in the complex inter- and intra-institutional relations structuring the European field of security. In the second part a more analytical and dynamic approach, focusing on the main professional oppositions and cleavages structuring the European field of the professionals of security, will attempt highlighting the main trends emerging from these relations' current structuration and economy.

PART I – Legal bases, formal and informal relations between European security agencies and their impact on the overall economy of the European field of professionals of security

The role and impact of the security agencies' legal bases in the decision-making processes and power relations at the European level

While treaties can be signed by states in virtue of their legal sovereignty, one could equally claim that they simultaneously constrain the latter's political sovereignty. This is all the more true if they institute and establish transnational and supranational authorities as is for example the case of the Treaty Establishing the European Community (hereafter TEC) proceeding from the integration method ("community method") "with due respect for the subsidiarity principle". On the other hand, sovereign states can strike treaties following a rationale of pooling sovereignty (Keohane & Hoffman 1991) that is legally constraining, but the logic of which is to allow for a strengthening of the leverage on the part of a collective of states on the societal dynamics affecting them. While the "pooling of sovereignty" – as represented for example by the principle of mutual recognition as we shall see – prevents Member States from reverting to a pure logic of national sovereignty, it simultaneously allows minimising the degree of European integration. This is partly the logic underlying the intergovernmental method of operation governing the second and third pillars of the EU. The EU as a whole, as well as its security agencies, hence oscillate between these two logics: the supranational logic and the logic of "pooling of sovereignties".

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5. Interviews between 2004 and 2007 with the director of EUROJUST, interviews with heads of units at EUROPOL, the EU Commission (DG JLS, DG RELEX, Police Cooperation Unit…), etc.

The legal bases of the different security institutions focused upon in this deliverable are diverse. In this respect, a first distinction would be between the agencies of the first pillar (FRONTEX and OLAF for example) established under the TEC and submitted to the community method and the agencies of the two other pillars – in this case the third pillar (EUROPOL, EUROJUST) – established under the Treaty on the European Union (hereafter TEU) and to which the intergovernmental method applies. All the agencies considered here have a clear legal basis and institutional identity either under the TEC or the TEU. In either case, they are legally part of the EU. This is the main reason for which the European Gendarmerie Force (hereafter EGF) has not been fully included into this deliverable in spite of our initial intention to do so. The EGF can be said to be illustrative of the logic of pooling sovereignty. But, since it was initially created by a "declaration of intent" signed only by 5 Member States, it was not an EU body until the 18th of October 2007 when a treaty establishing and governing the EGF (Eurogendfor) was finally signed under the Portuguese Presidency.

When analysing the legal bases of the European security agencies from the point of view of their effects on the power relations between the actors at the intergovernmental level and the ones at the community level (and hence from the point of view of the sovereignty/supranational distinction), primary legislation embodied in the European treaties (TEU, TEC) is however not the only element to be considered. Just as important, or even more important, is which (binding) secondary legislation (regulations, first or third pillar decisions, directives, conventions, common positions, framework decisions…) establish and govern the practices of the agencies. Regarding the two abovementioned logics, one could say that – all other things being equal – directives and framework decisions (but also conventions as we shall see below) are more towards the (pooling of) sovereignty pole as compared to decisions and regulations. Indeed, directives and framework decisions leave to national authorities the choice of form and methods while decisions and regulations are binding in their entirety.

Concerning the agencies considered for this deliverable FRONTEX is based on a regulation (Council Regulation No 2007/2004 – OJ L 349, 25/11/2004 P. 0001 - 0011), OLAF on a Commission Decision (Commission Decision of 28 April 1999 establishing the OLAF - OJ 1999 L136 [6]) and EUROJUST on a third pillar decision (EU Council Decision

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6 . The procedural rules are however established under regulations.

of 28 February 2002 No 2002/187/JHA – OJE L 63/1, 6.3.2002 – amended by Council Decision of 18 June 2003 No 2003/659/JHA – OJE L 245/44, 29.9.2003). The specificity of Europol is that it is the only organisation, also within the framework of the third pillar, having been created on the basis of a convention (OJ C 316 of 27.11.1995; see: Bruggeman 2007). Conventions are agreements of international law which become binding for the Member States only after they have expressed their consent to be bound by their provisions. This means that any modification of a convention has to be legally ratified by the Member States in accordance with their respective constitutional requirements. In this respect the legal base of Europol is more towards the pooling of sovereignty pole than the other agencies and institutions.

The abovementioned elements are summarized in the following graph positioning the institutions on a horizontal axis representing the continuum reaching from a "pooling of sovereignty pole" to a "supranational pole". The graph tries to account both for the legal bases relative to primary legislation and secondary legislation.

Graph 1:
The Legal Bases and the European Field of Professionals of security
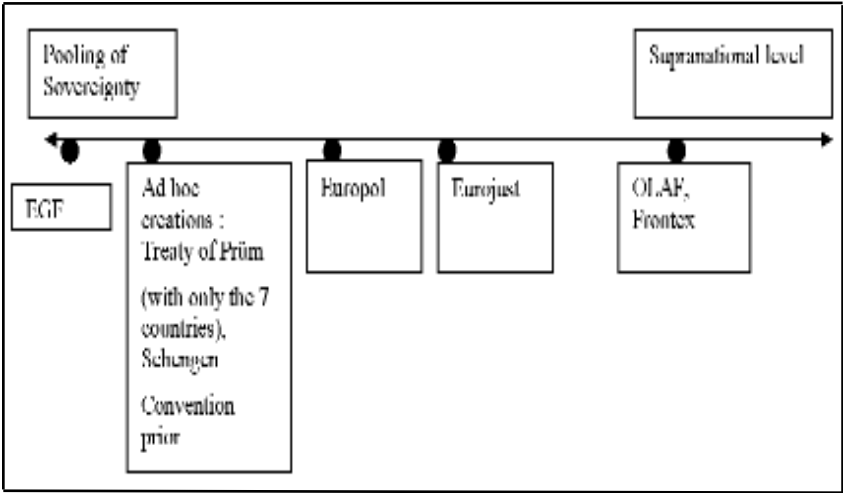
However, this graph is too much limited to the strictly legal dimensions to fulfil the aims set out for the mapping of the European field of the professionals of security. Hence, although the distinction between the pooling of sovereignty and the supranational logic is an important one, the model has to be considerably refined shall one be able to draw significant conclusions. This will here be done by focusing on the functioning of the different agencies and institutions as well as on their relation to the process of European integration on the one hand and the supranational/pooling of sovereignty continuum on the other.

At this stage, it is important to mention that the current trend, as it emerges from the observation of the dynamics of the European field of the professionals of security, is towards intergovernmental arrangements and a logic of (re-)nationalisation as opposed to a dynamic of integration (Mégie et als. 2006) [7]. This phenomenon can partially be attributed to a strategy on the part of the Council of the EU, and particularly of the Secretariat General of the Council (hereafter SGC), to prevent a further strengthening of the Commission's (and to a certain extent of the European Parliament's) assertiveness. It can for example be observed in the failure of the Corpus Juris Projects and the European Chief Public Prosecutor project in despite of the fact that these projects had been supported by the EU Commission [8], the Commission of Budgetary Control (Cocobu) of the European Parliament, the director of the OLAF, the latter's Control Committee and the magistrates of the Call of Geneva and the Strasbourg Manifesto networks (Paris 2006) [9].

The creation of the EUROJUST unit, conceived as a response on the part of the Council – and hence of the Member States – to the European chief public prosecutor project, must hence be interpreted as an affirmation of the intergovernmental logic in the field of judicial cooperation in crimi-

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7. This re-nationalization can for example be observed in the securitization of threats to economic community interests that, although it was previously used as an argument in favor of an increased integration of the EU, is increasingly used as an argument in favor of the responsibility of the Member States.
8. With some nuances however, particularly for DG JLS that has paradoxically been critical of the projects as opposed to the European Commission's DG for Budget.
9. It is however here important to mention that the Reform Treaty (the revised constitutional treaty) may provide in its Art III – 274 that "*In order to combat crimes affecting the financial interests of the Union, a Regulation of the Council may establish a European Public Prosecutor's office from EUROJUST*" (see: Steve Peers, "EU Reform Treaty, likely text of the JHA provisions", Statewatch, 25 June 2007, www.statewatch.org).

nal affairs. This was for example confirmed by the refusal on the part of the Member States to see the European Commission having a delegate in the EUROJUST unit as was suggested by the Communication of the European Commission on EUROJUST of the 22nd of November 2000.

Moreover, while EUROJUST was originally in its institutional form intended to be more "communitarian" and have more organisational autonomy from the Member States than EUROPOL, this has ultimately not been the case. The intention of some representatives during the negotiation leading up to the creation of EUROJUST was indeed to demonstrate a greater efficiency of European judicial cooperation as compared to police cooperation. However, although EUROJUST has national members (and not mere "liaison magistrates" as proposed by Germany initially preferring the model of the Europol liaison officers or ELOs for EUROJUST) (Mangenot 2006), it has not the same independent human resources in its Administration Group as EUROPOL. EUROJUST can in this sense be said to have less organisational autonomy from the Member States than EUROPOL.

This is all the more true as the nomination of a British prosecutor, Michael Kennedy, as President of the College of EUROJUST can be interpreted as a concession to the suspicions of Great-Britain concerning a too far reaching European judicial cooperation in criminal affairs. On the contrary the fact that the first two presidents of EUROPOL have been Germans is revealing of the fact that a relative "integrative" approach of police cooperation seems to have been preferred, on the model of the German *Bundes Kriminal Amt* (BKA), over a model only involving ELOs [10] (Bigo 1996). These examples also show that the process of European integration to a certain extent is more complex than what can be grasped by the dual distinction between the sovereign state level and the European level. The latter level is often a projection and/ or exportation of a national model, just as the European or "communitarian" level might be subsequently nationalised by the Member States. Hence, the creation of European security agencies – as of any European body – results both from the competition between Member States and from the competition between different professional elites inside these states. In order to understand the development of EUROPOL, of EUROJUST, or any other

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10. Concerning Europol it must however be emphasized that its director does not have a significant strategic autonomy relatively to the member states because the political control of the body, besides the JAI Councils, is mainly ensured by the national representatives in its board and not by its director.

agency, it is then necessary to investigate the whole set of projects, complementary or concurrent, simultaneous or successive, that have shaped them and that redefine them every day [11]. However for the purpose of the mapping of the field of security professionals the "pooling of sovereignty" / supranational distinction still remains largely operational.

Generally speaking, when analysing the tension between the integration of the EU and intergovernmental arrangements, the second option seems currently to prevail in the European field of security (Bigo, Carrera et als., 2007). This is all the more true as the arrival of Mr. José Manuel Barroso as President of the European Commission in April 2004 seems to have further strengthened the logic of the pooling of sovereignty as illustrated for example by the renunciation to the projects of reinforcement of the OLAF unit (Pujas 2006).

The Treaty of Prüm, as signed in May 2005 by seven states (and hence prior to the integration of the main dispositions of the Treaty into the legal framework of the EU), further weakened the projects favourable to an increased European integration in the fields of justice and security (Balzacq & Bigo et als. 2006). Indeed, it establishes a privileged exchange of data between these states on matters relevant for the fight against transnational organised criminality, terrorism and illegal immigration. Hence, it illustrates a preference for intergovernmental and even extra-European procedures questioning the dynamic of integration in the third pillar. The failure of the Constitutional Treaty of the European Convention, and even more so the project of a revised and less ambitious Reform Treaty - as championed amongst other by French President N. Sarkozy - seem to confirm this trend. Indeed, the latter can to a certain extent be said to aim at blocking the powers of the Commission, the European Parliament and the European Courts [12].

The abovementioned elements seem to confirm the aversion on the part of the Member States to see a more integrated and/ or harmonised field of European judicial cooperation eroding their prerogatives beyond what is needed for the principle of mutual recognition to be applied. Intergovernmentalism hence currently comes in the guise of the principle

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11 . For these kind of studies on others European institutions, see the special issues of Actes de la Recherche en Sciences Sociales, n° 166-167, mars 2007, *Cultures & Conflits*, n°38-39, 2000, and Politix , vol.43, n°11, 1998.

12 . see Annex 1 of the "Draft IGC Mandate" of the Presidency Conclusions of the Brussels European Council, 21/22 June 2007.

of mutual recognition, as illustrated for example by the European Arrest Warrant (EAW) or the Evidence Warrant project. Indeed, many member states do not want to relinquish their powers to the community level, to the principle of harmonisation or to a more powerful European Court of Human Rights. But at the same time, they want to avoid a "regression" towards an unbridled state sovereignty: they are favourable to a process of Europeanization understood as the progress of intergovernmental cooperation. The affirmation of the principle of mutual recognition, as vehemently called for by the Hague Programme on Justice, Freedom and Security endorsed by the European Council of November 2004, must be interpreted in this context (Bigo 2006a). Indeed, as shown convincingly by Sandra Lavenex, "*in AFSJ, mutual recognition promotes the freedom of movement of judgements and judicial decisions; that is state-decisions*" (Lavenex 2007: 764). Its advantage then for governments is that, to a certain extent, it promotes sovereignty while at the same time theoretically preventing sovereignty from being interpreted as "state egoism". Indeed, mutual recognition disjoins jurisdiction from national territory.

This intergovernmental trend, sometimes taking the expression of extra-EU cooperation arrangements, can also be observed in the European Security and Defence Policy (hereafter ESDP). Indeed, the newly created EGF, aimed at promoting the ESDP and the AFSJ, was until the 18th of October of 2007 [13] – in despite of its potential pertinence for the second pillar – not part of the European Union. Prior to this date its legal status and basis was hence highly unclear. The secrecy surrounding this institutional endeavour was consequently not only revealing how far the Member State's suspicion towards the "communitarian" level is concerned, but also how far the inter-governmental institutions are concerned (notably the Council of the EU). However in the case of the EGF, these suspicions had also to be analysed in the light of the prevailing tensions in the second pillar on the issue of the EU's Atlanticist stance [14].

Concerning EU external relations, it must moreover be emphasized that the process of "externalisation" of the AFSJ, while promoting transpillarity between the first and the third pillars, seems primarily to fur-

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13. As has already been mentioned the EGF Treaty was finally signed on the 18th of October 2007

14. Similar tensions seem to explain why the mandate of the EU Counter-Terrorism Coordinator Gijs de Vries, appointed to the European Council on the 25th of March 2004, was not renewed after his three year term in March 2007.

ther the latter (Jeandesboz 2007). Indeed, it has given an increased relevance to the professionals of security of the third pillar (EUROJUST, EUROPOL etc.) and the intergovernmental level in the field of external relations: "*the intersection, however, is largely one-sided. It is less the professionals of the management of Community external relations that get involved in security, than professionals of the management of insecurities that intervene in external relations* [15]".

All of the abovementioned is however not to say that the intergovernmental interpretation of the EU (Moravcsik 1998; Keohane & Hoffman 1991) has proven the federalist/supranationalist approach to be false (Sandholz & Stone Sweet 1998) or that there is an unequivocal and irreversible tendency towards intergovernmental arrangements. On the contrary it shows that the process of integration is neither linear nor homogeneous (Courty & Devin 2001) and that an analysis of the struggles underlying this process is therefore likely to be more helpful than grand narratives on either the permanence of intergovernmental logics or the linear evolution towards a Federalised Europe. This is all the more true as the current strategy on the part of the SGC and the Council to limit the assertiveness of the community level is to be interpreted in the light of a more long term dynamic of consolidation of the powers of the EU Commission.

Some of the abovementioned elements are summed up in the following graph (Graph 2) that decomposes the pooling of sovereignty/supranational continuum into two related but different distinctions. Indeed, its horizontal axis positions the agencies following their compliance to the logic of unification of the EU "territory" as a single space of control and of implementation of the common policies. While the failed European Public Prosecutor and the Corpus Juris authority projects were clearly inscribed in a process of integration of national spaces of control and judiciary authority into a single space, this is also – although to a lesser extent because of its limited investigative powers and leverage on Member States – the case of OLAF. It is however not the case of FRONTEX: in spite of it being a first pillar agency aiming at Integrated Border Management (IBM), it has only coordination prerogatives. Although it is a first pillar agency, it is simultaneously highly relevant for the third and second pillar and hence to the intergovernmental levels. EUROPOL and

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15 . See: Annexes - The limits of the European field of security: professionals of (in)security and professionals of the management of external relations.

EUROJUST are also, when merely following a rationale of liaison and exchange, supportive of a logic of national levels of control.

The vertical axis positions the agencies and units following their relation to the partially opposed principles of harmonisation and mutual recognition. This distinction is different from the previous one. For example a model founded on national levels of control can be based on a rationale of harmonization of rules, procedures and practices or on a logic of mutual recognition in which differences are recognised but not reduced. As such, the European Arrest Warrant (hereafter EAW) clearly follows a logic of mutual recognition since it in no way implies a harmonisation of procedural rights and particularly the rights of defence (Bigo, Carrera et als 2007). To some extent, this is also the case of the Treaty of Prüm. On the other side of the continuum, the European Chief Public Prosecutor and Corpus Juris projects clearly follow a rationale of harmonisation since they are based on the principle of a unified judicial space. There cannot be such a unification without automatically being based upon the principle of harmonisation. Between these two poles, FRONTEX, EUROPOL and EUROJUST, by promoting an increased cooperation in their respective fields of competence, are based on a principle of recognition while trying to promote common practices and norms. In the field of the fight against "fraud to community interests", OLAF is closer to the principle of harmonization since it is not as dependant upon specific requests on the part of the Member States as the European Police office, EUROJUST and FRONTEX.

While the relations between the objective positions of the different agencies on this graph may be interesting as such, they are also important because they illustrate some of the lines of cleavage that structure the institutional competitions and rivalries in the European field of professionals of security. Indeed "*the harmonisation projects in the judicial field* (…) *are most often blocked by intergovernmental methods and rules of unanimity.* (…) *This leads to relations of competition* (…). *The institutional relations between the OLAF, EUROJUST, the Liaison Magistrates and EUROPOL unfold in such a configuration* [16]".

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16 . Challenge WP2 Team, Deliverable 155, "Judicial Cooperation in Europe", December 2006, p. 2.

Graph 2:
The position of the security agencies and units in the process of Europeanization
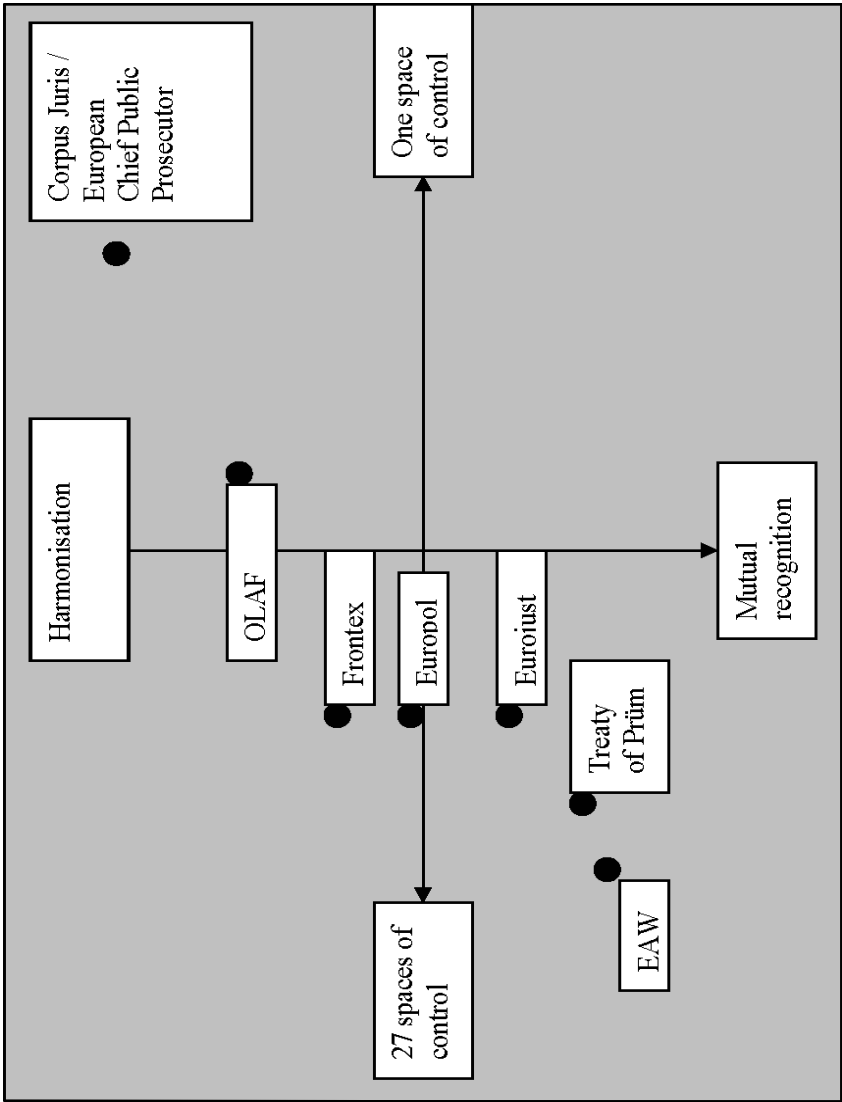
The formal relations between the European security agencies

The formal inter-institutional relations are an important element when analysing and assessing the overall structure and economy of the European field of security. They provide with useful insights, not so much into the actual practices, alliances and relations between institutions, as into the ways in which institutional engineering at the European level has tried to deal with the interdependence between different professions, services and institutions. These interdependences might indeed be a source of rivalry in spite of – or rather because of – the functional specialisations between the different institutions. The official or unofficial rationales of the formal relations are however highly variable. Moreover, there might sometimes be a multiplicity of rationales for one and the same formal relation depending on who is speaking.

In some cases, formal relations are based or perceived to be based on the argument of the risk of unnecessary duplication of activities by different institutions. This is for example the case with the relations between OLAF and EUROJUST on the issue of their respective competencies regarding "fraud to community interests". This is one of the reasons for which in 2005 a special team was created within EUROJUST dedicated to working with OLAF. But the formal relations thus established seemed merely to hide ongoing struggles on competencies between different institutions sharing a same kind of professional expertise (magistrates of EUROJUST and OLAF). In other words, institutional logics and distinctions might in some cases override professional logics. This was for example illustrated by the issue of the suppression of Euro counterfeiting that saw fierce struggles over the respective competencies of OLAF and EUROPOL. In July 2005, a Council Decision however designated EUROPOL as the central office for the suppression of counterfeiting in cooperation with the Member States, the European Central Bank (ECB), OLAF and INTERPOL. The official agreements between OLAF and EUROPOL on the issue however to a certain extent only mask the existing tensions between the two institutions as shown by the fact that the exchange of information between OLAF and EUROPOL still seems to sporadic [17].

In other cases the formal inter-institutional relations might be much more based upon the perceived complementarities between different

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17 . Interview at the Office of Police Cooperation of the EU Commission, Brussels, 2007.

professional activities. This has for example been the case with the European judicial and police cooperation through respectively EURO-JUST and EUROPOL. Hence, in 2005 a special team dedicated to cooperation with the European police office was created at EUROJUST after the latter had been moved to the Hague (June 2004) in order to strengthen its relations with EUROPOL. But in this case, inter-institutional relations might also have been established in order to temper the struggles between different professional sectors and build trust between them. But these formal relations, intended to promote confidence-building between the different professions, have in fact often been used by the latter as a tool for inter-institutional surveillance [18]. Perceived relations of complementarity can also be observed through the formal relations between FRONTEX and the National Border Guards and more broadly speaking though the different relations between the European level and national levels following the principle of subsidiarity (Balzacq, Jeandesboz 2007). But here it is the potential complementarity between levels of governance and not between professions that is at stake.

Formal relations might in some cases have been established for reasons that have to do with the dynamics prevailing in other fields of practice. For example, the transatlantic relations of EUROJUST seem to have been established as much for diplomatic reasons related to the external relations of individual Member States as for reasons linked to the specific requirements of the activity of EUROJUST. Indeed, EUROJUST is highly dependant upon the strategies of the Member States. The relations between EUROJUST and the individual Member States are highly asymmetric. The latter are for example fully free in their nomination of the "national members" of EUROJUST and determine both the terms of their mandate and wages. It is here important to mention that, generally speaking, the non-negligible impact of the United States on policy-choices at the EU level often is related to their influence on the nomination by Members States of certain persons to strategic positions at the EU level [19].

It is equally important to look in what direction the formal relations go. Are they one-sided or do they go in both directions? In the former case, it might be the sign of highly asymmetric power relations. For example, the fact that there is a US Liaison Prosecutor at EUROJUST but not the

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18 . Interviews with officials of Eurojust and Europol between 2005 and 2006.
19 . Interviews with several EU officials.

reverse is revealing. It is therefore important to mention the agreement through which this position was established. On November the 6th 2006, the US signed an Executive Agreement with EUROJUST, in order to improve transatlantic law enforcement coordination and enhance the ability of the US and the EU to fight international crime. The agreement, establishing the position of US Liaison Prosecutor to EUROJUST, was to foster the exchange of information between law enforcement communities in the US and the EU and strengthen cooperative efforts to prevent and prosecute organized crime, human trafficking, cybercrime and terrorism. But, though the agreement contains safeguards concerning the protection of personal information and individual privacy for both citizens of the USA and the EU, there has been no reciprocity in the exchange of personnel.

Concerning the transatlantic relations, it ought to be mentioned that the ability to exchange information through formal and institutionalised relations beyond the borders of the EU is often a resource in the professional and inter-institutional struggles within the European field of security. This is all the more true as the European field of security is increasingly interlinked with transatlantic security dynamics [20]. For example, in the aftermath of 11th September 2001 an agreement between the US and EUROPOL for the exchange of information and intelligence was reached on 6th December 2001 without the approbation of the Joint Supervisory Board of EUROPOL. The speed with which the agreement was signed and the bypassing of the Supervisory Board illustrate the eagerness on the part of the European police office to engage in transatlantic data exchange at a time at which no transatlantic relation whatsoever had yet been established with EUROJUST. EUROPOL has ever since signed an agreement with the US that has been approved by the Supervisory Board. However, many important questions remain, notably concerning the respect of privacy in the US and the accuracy of the data provided by the FBI (Bigo 2007a).

Generally speaking, legal, institutional and official relations are the result of the crystallisation of the inter and intra-institutional power relations that prevail at the moment of their establishment. Indeed often – especially when relations between the Member States and the first pillar are involved – their rationale is to provide the national governments with a level of control over the European agencies. This is for example illustrated

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20 . See Annexes: The geographical limits of the European security field: the transatlantic dimension.

by FRONTEX: the composition of this first pillar agency and the mode of nomination of the Management Board clearly reminds of the internal structure of the agencies of the second and third pillars. In practice they hence submit the border control agency to the dynamics and struggles structuring the intergovernmental level.

As shown here, it is important to analyse and comment on the formal relations in order to assess how they are to be understood and the nature of the social meaning attached to them. In other words, formal relations do not "speak by themselves". However, it is not only important to look at the existing formal relations. Equally important is the absence of formal relations. Hence the scarcity of formal relations between DG JLS and the agencies of the third pillar seem to reveal the currently prevailing, and partially successful, strategy on the part of the initial signatories of the Prüm Treaty to exclude the EU Commission from issues related to the European judicial cooperation in criminal affairs and the bodies dealing with JFS issues. But to be fully fair, one has also to look at the actual relations. Indeed, one has also to analyse the informal relations that might exist in spite of the absence of formal relations or the absence of significant relations in spite of existing formal relations.

The informal relations between the European security agencies

When approaching social practices in terms of a field of professionals, it is important to look both at the formal, institutionalised and/ or official relations on the one hand and at the informal, more loose and evolving relations on the other. This is all the more true when looking at the European field of security professionals. Because of the relative absence of common standards in some activities that have only recently been propelled to the European level [21], a general lack of "trust" between diverse actors at the European and national levels [22] and the fact that competencies are still in the process of being defined, the extent of the discrepancies between formal and informal relations is still – generally speaking – greater at the European (supranational or intergovernmental) levels than at the national levels.

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21 . For example the external border management involves different types of professions – independent border guards, police, gendarmerie, military… − in an officially same type of activity.
22 . Due to diverse operational, organisational legal and political "cultures", multiple legal orders and spaces of control, diverse approaches to European integration, different definition of information…

Consequently relations of "trust" will tend to compensate for the absence official relations and relations of "distrust" will tend to void official relations from their initial meaning. Indeed, when compared to the national "fields of power", the European "fields of power" are still widely fragmented, indeterminate and fluid (Madsen 2006: 7-10). The discrepancy between the intended use of the EAW on the one hand and its actual and current use today on the other is in this regard revealing (Martin 2006, Lavenex 2007).

In other words in many cases there might be no significant relation between institutions in spite of the formal existence of such relations. For example, it seems that the Memorandum between OLAF and EURO-JUST have been voided of its intended meaning by the institutional struggles between the two sites. These struggles can, amongst other factors, be attributed to the tensions between the first and the third pillars. The same could be said, although to a lesser extent, about EUROJUST and EURO-POL: the formal arrangements between the two offices have until now only had a very limited impact on their actual relations because of what seems to be tensions between two different professions. Informal relations are however being tied through the Joint Investigation Teams (JITs), created by a framework decision of the Council (OJ L 162, 20.06.02) to carry out criminal investigations into trafficking in drugs and human beings as well as terrorism, and involving both agencies.

Indeed, it must here be emphasised that the tensions between the magistrates and the police officers of the third pillar are to a certain extent neutralised by the interactions between the second and third pillars [23]. Indeed, though the police and the magistrates tend to disagree within the third pillar, they collaborate "defensively" on all issues concerning the relation to the second pillar. Hence, in spite of dynamics of transpillarisation in the field of security, the boundaries between the pillars have all but disappeared. On the contrary they play an important role by homogenising the intra-pillar relations. The discourses on the importance of "bridging the gap" between the pillars – in other words on the importance of the coordination structures ensuring the flow of information between the professionals of the different pillars – do not amount to a questioning of the pillarisation of the EU. In this sense, one could say that many magistrates and police officers at the European level still operate within a "classical" framework,

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[23] . This has indeed been confirmed by interviews with personnel of EUROPOL and EUROJUST in 2007.

not in the sense that they reproduce the distinction between internal and external securities in its geographical sense, but in the sense that their practices of cooperation tend to reproduce the boundaries between the pillars.

As has already been mentioned, in some cases inter-institutional relations are foremost informal in nature. At the most general level, one can note that a meeting of the EU's JFS Agencies (EUROPOL, EUROJUST, OLAF, FRONTEX, CEPOL but also the EU Joint Situation Centre or SITCEN) has been held in July 2006 in order to promote such informal relations. But the limits of this type of "multi-agency" meetings have been highlighted by the fact that tension have arisen between EUROPOL and EUROJUST over where to hold the second meeting [24]. Hence, most of the informal relations have remained "bilateral" in nature [25]. For example, the exchange of information on training activities and "best practices" between FRONTEX and the European Police College (CEPOL) takes place on an informal basis. Diverse sources also seem to confirm that there is an exchange of non personal data and risk-analyses between FRONTEX and EUROPOL. Moreover FRONTEX has contributed to EUROPOL's "Organised Crime Threat Assessment". This exchange occurs without any formal relations between the two agencies (Jorry 2007: 22).

It is here important to mention that EUROPOL's legal setting is a Convention. Consequently, any establishment of formal relations between EUROPOL and other European agencies presupposes a modification of the founding Convention. The European police office hence tends to establish informal relations with the other agencies in order to avoid the heavy procedure of having the Convention changed by the Member States but also (less officially) because it is a less constraining and hence a more flexible option for the office. The legal form of the Convention is in this regard both an objective constraint on the establishment of formal relations, and

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24 . Interview with an official of EUROJUST, Brussels, 2007. On these meetings see the speeches of Michael Kennedy and Isabelle Delattre at the 2007 CHALLENGE Annual Conference:
http://www.libertysecurity.org/IMG/pdf_annual-challenge-conference-july07.pdf

25 . It must however be mentioned that an overall coordination between all the third pillar agencies remains an important objective. Hence the project of the creation of a Comity of Internal Security (COSI) was mentioned in the Draft Constitution Treaty. This project might remain in the Reform Treaty. See CARRERA Sergio, GEYER Florian, "The Reform Treaty & Justice and Home Affairs, Implications for the Common Area of Justice, Freedom and Security", CEPS Policy Brief 141, August 2007,
http://www.libertysecurity.org/article1586.html

a discursive and justificatory resource for an agency very concerned by its autonomy in the relations it establishes.

In many cases informal relations are merely interpersonal. Magistrates, police officers and other officials at the European level often maintain relations, through interpersonal relations, with their respective Member State authorities and particularly within the administrations by which they were previously employed. The informal character of these relations does however in no way imply that they do not in some instances produce significant effects. It is equally important to mention that sometimes informal relations at the European level have to be understood as the result of struggles or solidarities in which the protagonists have been involved at their respective national levels. For example the interactions between the Director of the Commission's DG for Budget, the Commission of Budgetary Control of the European Parliament (Cocobu) and the President of OLAF on the issue of the European chief public prosecutor project can only be understood when taking account of the German nationality of the main protagonists. Indeed, these interactions were mainly fuelled by the interpersonal relations between Michaele Schreyer of the DG Budget, Ms Theato of the Cocobu and Franz-Hermann Brüner of OLAF and the fact that they were simultaneously involved in the political struggles of the German field of politics through their political parties (respectively: *Grünen* and CDU for Schreyer and Theato)

The distinction between formal and informal relations reminds us of the fact that the developments of the European field of professionals of security follow both long term and short term dynamics (Madsen 2006). On the short term treaties can be signed, legal arrangement can be conceived and memorandums can be written, but on the long term the process of European integration does not necessarily follow. However, conversely legal arrangements often merely crystallise existing power relations and long-term dynamics.

PART II – The main cleavages and systems of opposition and division structuring and transforming the European field of professionals of (in)security

When having a quick and superficial glance at many of the European agencies that have been scrutinized for this study, one could conclude from their often very different aims and missions that they follow radically different logics. This is all the more true, one could argue, as they

fall under different pillars of the EU. When looking at the relations between the agencies, it is then tempting to restrict oneself to the categories imposed by the EUs pillarized structure. When approaching these agencies as being part of a European field of professionals of security it however appears that beyond the disagreements and opposition, many of the agencies' professional and institutional standpoints share a same doxa, a same "common sense" of what is at stake regarding security at the European level. This doxa is not a consensus. It does not preclude sometimes very strong disagreements as has already been highlighted (Bigo 2006b).

It however implies that there always is an agreement on what and how one disagrees. When looking at these agencies from this perspective, it appears that they share many commonalities. For example, to the extent they become involved in security-issues, they all focus on global, transnational or "regional" security as opposed to local violence. Moreover, as opposed to the traditional stance of military professionals – that is currently however also in a process of transformation (Guittet 2006; Olsson 2006) –, they do not consider frontiers as the main "line of defence" against threats. They rather focus on the control of population and the tracing of individuals. In this respect, FRONTEX is no exception (Jorry 2007). Moreover they all, in varying degrees, focus on mainly technological and non-political solutions to threats to security as opposed to political or diplomatic solutions [26]. At an even more general level, they all convey – through their practices and discourses – a sense of centrality of the question of the relevant priorities regarding the threats to be fought against, although they tend to give different answers to it.

These commonalities however do not allow concluding that the field of security is a homogenous space. On the contrary, many different oppositions and cleavages emerge from the relations analysed so far. Indeed, the field of the professionals of security, like any social field as shown by Pierre Bourdieu, is a field of confrontation where the same sense of the "social game" being played, and of what is at stake in it, merely fuels struggles between the institutions, their bureaucracies and, ultimately, between individual actors (Bourdieu 1992). These struggles might concern economic or human resources, power positions or other social "privileges". But these struggles are all the more fierce in the field of the professionals of security as the field is structured by a general competition over the legiti-

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26 . On this distinction see Annexes: the limits of the European field of security and the professional of conflict management.

mate classifications of threats. As a consequence, close relations between two sites will not necessarily mean that relations of "trust" prevail.

One of the main lessons that could be drawn from the European construction in security matters is that there is not only one meaning or direction emerging from the process of Europeanization. The field of the professionals of security is on the contrary structured by multiple meanings, cleavages, oppositions and lines of confrontation that might position the actors on one side or the other but that also leave space for multi-positionings [27]. Although main trends might be isolated and observed, important transformations or even minor "revolutions" cannot be excluded in the near future. This is however not to say that the multiple fragmentations preclude a thorough analysis of the field as a whole. On the contrary, it allows describing the field by focusing on the lines of confrontation structuring the struggles. It also allows identifying the actors that are central to the field and the actors that seem more peripheral but that, nevertheless, play an important role.

Regarding the distinctions relative to the discourses on threats, dangers and risks, the main systems of opposition and division have already been pointed at in the first methodological deliverable of the Challenge French Team [28]. One of the more central lines of confrontation is the one opposing the increasingly central "moderns" – focusing on the blurring of the internal/external security distinction – on the one hand, and the "ancients" maintaining these distinctions either in their geographical form (internal space at the national or European levels as delineated by a geographical boundary) or at the institutional level (distinction between pillars for example) on the other.

Other lines of confrontation include the opposition between security understood as the protection of the individual and security understood as the protection of a collective actor, protection understood as focusing upon the monitoring of the future (proactive protection and prevention) or as focusing on the pursuit and punishment of suspected criminals (Bigo 2005) [29]. We will here draw upon these distinctions in order to high-

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27 . Interestingly, for example, Peter Hustinx is both European Data protection Supervisor (EDPS) and Chairman of the Commission for the Control of INTERPOL's files. The professional rationales of these positions are not likely to be the same.

28 . Challenge WP2 Deliverable, "Mapping the European Union's field of the professionals of security, A methodological note on the problematique", December 2005.

29 . *Idem.*

light the cleavages that we have observed in the interviews, the analyses of the official or non-official literature or the studies of professional practices that have been carried out for this study. We will also add new lines of division when necessary.

These lines of confrontation will be illustrated by schematic graphs that allow visualising the relevant security-dynamics. It is however important to repeat that an institution is never a homogenous whole nor are its official boundaries necessarily relevant. It is hence important not to fall into the trap of the "institutional illusion" reifying, "naturalising" and "black-boxing" institutions as pre-constituted closed units. Institutions are often structured by internal struggles and lines of confrontation might hence cross through a given institution. All of this is important to bear in mind when looking at the necessarily schematic graphs.

Operational and Informational Competences and prerogatives

In order to illustrate the wide range of competencies and prerogatives of the different European security agencies, one could position the latter on a graph accounting both for the agencies' operational competencies and access to information. Competencies and prerogatives are essentially objective in nature in the sense that they are conferred by legal texts and to a certain extent reflect the activities the agencies effectively engage in. However they will also have an impact on the "importance" and perceived centrality of the agencies in the European field of professional of security. Indeed, all other things being equal, an agency disposing of its own data-bases or having a direct access to the relevant data-bases will be endowed with a significant "informational capital" allowing it to be in a position of power in relation to other agencies. This is especially the case if the latter are dependant upon the former in order to access the relevant data.

Moreover, the (indirect or direct) access to databases plays a central role in the capacity on the part of an agency to engage in credible strategic threat assessments and/or risk analysis. The treatment (organisation, prioritisation, classification and ultimately interpretation and anticipation of the threat environment) of data, and hence the production of a security-knowledge, is indeed conditioned upon the access to the relevant data. Agencies that have no access to databases will hence be *de facto* excluded from this type of activity. The increasing importance of access to databases in the "rules of the game" of the European field of security – structured as it is by the centrality of new information technologies, digitalisation and collection

of information – is one the recurrent features revealed by the research carried out for this study. It is illustrated by the fact that some institutions have made requests to access databases without having a direct, or at least evident, need of this data in the pursuit of their institutional activities (Holboth 2007). It can also be seen through the fact that the focus is increasingly put on the access to databases *per se*, while the necessity of a prior common definition of relevant data or information is generally neglected.

When considering the access to data and information one must distinguish agencies and units possessing their own databases (EUROPOL with regard to the information system and index system of the EUROPOL computer system or TECS), agencies having a direct and more ore less automatic access to databases or other "exclusive" sources of information (OLAF with regard to the AFIS and CIS [30]), agencies having an indirect and conditional access to databases (FRONTEX, EUROJUST) and finally agencies that have no access whatsoever. However, rather than strict categories, one should rather speak of a continuum of access to information. In the graph, the vertical axis tries to grasp the position of the different agencies in this continuum.

Another crucial element that has to be accounted for is the operational competencies of the security agencies. Indeed, the field of the professional of security is generally structured by the valorisation of "operationality", i.e. the capacity to act *ex post facto*, or even better proactively and preventively on the threats. Of course, distinctions have to be introduced following the type of activity one is considering. For example, concerning European police cooperation, the capacity to engage in "strategic activities" is generally valorised to the detriment of operational competencies generally assimilated to the police-services that are still "stuck" at the national level and have not been able to make the move towards the European level (Bigo 1996). However, all other things being equal, operational competencies and capacities are undeniably an asset in the relation to other services or agencies in the field of the professionals of security. An agency already having a significant access to information will for example in general be able to capitalise upon this prerogative if it simultaneously has operational competencies.

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30 . OLAF manages two systems: the Anti-Fraud Information System (AFIS) and the Customs Information System (CIS). Through the CIS, customs, police, coastguards and agricultural and public health services share sensitive data in a single database. The CIS, which was developed by the OLAF, complements the older AFSI.

Hence for example the ability on the part of EUROPOL to participate in joint investigation teams (JITs) and the projection of it potentially becoming an investigatory body play a significant role in the power relations with other agencies and/or with national authorities [31]. It is to some extent the potential projection of EUROPOL becoming an investigatory body, notably by virtue of the protocol of the 28th November 2002 amending the EUROPOL convention [32], which allows it in some cases negotiating in a position of strength with the national authorities. Indeed, the latter expect that if they cooperate efficiently with the police office such an investigatory prerogative will become redundant and hence unnecessary [33]. The importance of operational prerogatives is also illustrated by FRONTEX. The latter's very restricted access to data is indeed to a certain extent compensated for by its however limited competences in terms of operational activity through coordination and/or Rapid Border Intervention Teams (RABIT) acting within its framework. It must however be emphasised that, by virtue of the ambiguity of the provisions of article 10 of Council Regulation N° 2007/2004, it seems that FRONTEX's staff could theoretically exercise the repressive powers conferred to it by the requesting state for operations on the latter's territory [34].

As far as operational competences are concerned one can make a distinction between: 1/ full-fledged and autonomous capacities of intervention: the agency can "act" independently (more or less) on its own initiative (theoretically OLAF [35]); 2/ full-fledged capacities of intervention on case by case requests by an external authority (theoretically and poten-

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31 . This seems to explain the move on the part of EUROPOL to engage in analytical support to Member States through the creation of files placed under the responsibility of Member States through MSOPES (Member States Operational Projects Europol Support). The MSOPES were however ultimately declared illegal by the Common Control Authority of Europol (see: "Second Activity Report of the Joint Supervisory Body of Europol", November 2002-October 2004, p.16) because they were not considered compatible with the provisions of art. 10 of the EUROPOL Convention. This article provides that all files created by the agency must fall under the supervision of the Common Control Authority.
32 . This protocol, amending the EUROPOL Convention, allows Europol to request the competent authorities of the Member States to investigate.
33 . Interview with an EUROPOL official.
34 . The staff of FRONTEX "acting on the territory of another member State, shall be subject to the national law of that member state".
35 . In theory, OLAF carries out all the powers of investigation conferred on the Commission by Community legislation and the agreements in force with third countries in an independent way. In practice however, fraud and other irregularities are almost always detected in close cooperation with the relevant national investigation services. Indeed, the principal obligation in this area falls to the Member States.

tially FRONTEX); 3/ delegated capacities of intervention by coordination: the agency can influence the operational capacities of other institutions by coordinating or participating otherwise to the latter's "interventions" on its own initiative without having been requested to so (theoretically EUROPOL by virtue of the protocol of the 28th November 2002); 4/ delegated capacities of intervention without decision-making prerogatives: the agency plays a role (coordination…) in the "intervention" of other institutions but without taking decisions and only when requested to do so (EUROPOL [36], EUROJUST, FRONTEX); and finally, 5/ no operational competencies whatsoever.

The following graph does not of course account for the whole of what is at stake in the different agencies' access to data and operational competences. However, it grasps crucial elements affecting the power relations structuring the European field of professionals of security. To a certain extent it thus allows positioning the different institutions following criteria that play a crucial role in the determination of their centrality (or not) in the European field of professionals of security. Hence, it is for example not astonishing that "mobilisation networks" of magistrates (Call of Geneva, Strasbourg Manifesto…) are peripheral to the field of security. Indeed they have neither significant informational capital nor operational capacities. On the contrary EUROPOL appears as potentially central to the field to the extent that, although limited, its operational competencies are not negligible and its access to information, because of its possession of data-bases, is highly significant.

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36 . But it will be interesting to see how the entry into force of the protocol of the 28th November 2002 in 2007 might impact on the powers of EUROPOL.

Graph 3:
Prerogatives and competencies of the European security-agencies

Operational capacity and competencies

EUROPOL

OLAF

Access to information

EUROJUST

FRONTEX

European Magistrate networks (call of Geneva...)
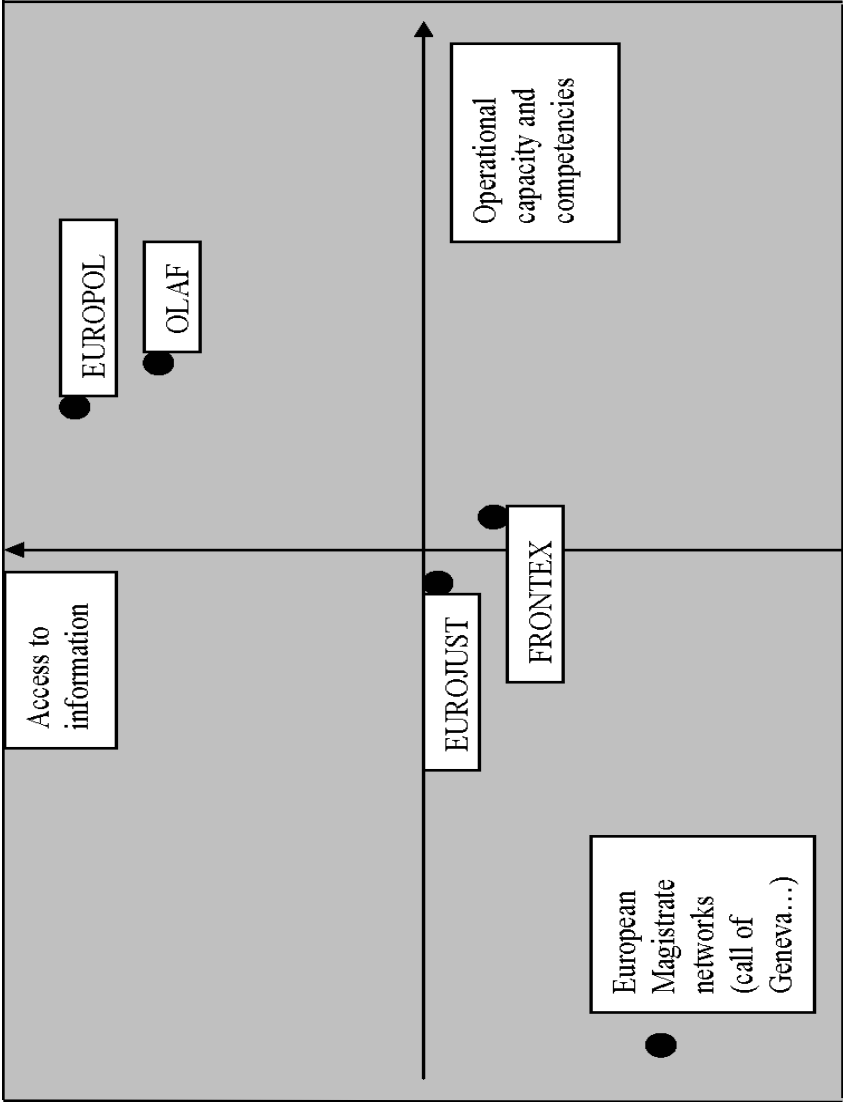
The security agencies' practical stance towards the issue of profiling and intelligence-led approaches

The struggles structuring the field of security might be struggles over material or human resources. However one of the specificities of the field of the professionals of security is that all struggles over resources fuel rivalries over the legitimate systems of classification of threats. Indeed because these classifications are essentially socially constructed (a threat always refers to the dimension of the potential as opposed to the actual), and therefore allow for a wide variety of standpoints, an overall consensus between the different agencies and professionals is highly unlikely given their different institutional positions and trajectories in the field. The ensuing struggles and rivalries between different services, professions and institutions over the classification of threats are then one of the main field effects. However, when looking at the security discourses and practices at the European level, dominant trends can be observed.

In this respect, one of the conclusions that can be drawn from the analysis of the European field of security, and in particular of the field of judicial and police cooperation in criminal affairs, is that the role of intelligence services (police intelligence or military intelligence) and their specific rationale is increasingly attractive and predominant (Bonelli 2005a & 2005b; Bonditti 2005; Gill & Phythian 2006; Bigo 2007b). The logic of intelligence is mainly one of anticipation and of a proactive monitoring of the future. Its aim is indeed to identify and localise a threat before it is actualised and materialised. As such it can be opposed to the logic of criminal justice focusing on the arrest and the prosecution of the individual perpetrator or suspect of an already committed crime. Hence while the logic of criminal justice focuses on individuals, the intelligence logic of anticipation rather focuses on groups. Indeed, the guiding principle of criminal justice is the one of the individual's moral responsibility for his acts. On the contrary, for the intelligence rationale, the main problematique is the anticipation of an act. In other words, the importance of the identification of a specific individual about to commit the act, while not being irrelevant, might be mitigated by the fact that he might not be irreplaceable. Should he be "neutralised", the crime could still be perpetrated by somebody else. The intelligence logic thus focuses on collective entities, i.e .human groups. It is then important to recognise that the intelligence rationale reaches far beyond the services officially labelled as such or that are composed of recognised professionals of intelligence.

Simultaneously a second important trend emerges from the analysis of current security-practices. Indeed, the role played by the collection of mass-intelligence, the constitution and interconnection of databases combined with the resort to expert systems and data-mining, seems to further approaches operating through the establishment of profiles. The latter are hoped to allow for the conviction of suspects following the criminal justice rationale or the anticipation of future crimes and/or threats following a rationale of prevention. In other words, the practice of profiling is compatible both with the logic of criminal justice and the intelligence rationale. In both cases, the practice of profiling operates through the "depersonalisation" of the individual by establishing categories of populations following the diverse set of criteria that is deemed important by the "profiler". In order to target the individual involved or to be involved in an act, its general characteristics – that might be shared by a larger category of individuals – are isolated. This depersonalising approach of the targeting of the individual, that seems to be furthered by specific technologies, might then be opposed to an approach directly going after the individual itself once he has been identified by other means.

There are of course no predeterminations whatsoever in the general imposition of both of these logics – the one of the intelligence-led rationale and the one of profiling – in the European field of the professionals of security. However, at the European level, it seems that the logic of "traditional policing", following a rationale of criminal justice and focusing on crimes already committed by specific individuals, is progressively being marginalised or rather relegated to the national levels. This is indeed a consequence of the fact that this logic is today considered as less of a strategic importance. When considering the agencies and institutions analysed in the framework of this project at the European level, the "pure" and traditional logic of criminal justice targeting specific persons seems to be relatively absent. On the contrary the attraction of the intelligence rationale seems to be pervasive although significant nuances have to be introduced.

The example of FRONTEX is in this regard revealing. Although its role is indeed to further and promote an integrated border management regime (IBM) at the EU's external borders, it does not operate following the traditional distinction between internal and external securities in which the geographical border is understood as a line of defence. On the contrary, it follows a proactive and, to a certain extent, intelligence-led approach focusing on populations beyond the EU's external border and to be controlled at a distance. Indeed, its Risk Analysis Unit places risk assessment at the core

of FRONTEX activities and was from its inception to "develop and apply a common integrated risk analysis model [37]" through general and tailored risk analyses focusing on certain groups of people and territories. This has been partially done through the Common Integrated Risk Analysis Model (CIRAM). These anticipatory activities are however dependant upon the data provided by local authorities as well as upon exchange of information with EUROPOL. In other words, the operational cooperation model adopted by FRONTEX is one of "intelligence-led cooperation" [38].

In the case of EUROPOL, the logic of intelligence-led police cooperation seems also to be pervasive. The expertise, strategic reports and crime analysis it produces – and that are, like the OCTA (Organised Crime Threat Assessment), to assess the future threats and the groups of populations from which they are likely to emanate – clearly follow a rationale of police intelligence as opposed to traditional investigatory judicial police activities. The belief in the role of the collection and compilation of data in bases that are thought to allow for an efficient assessment of the threat (provided the data is correctly treated and analysed) once they have reached a critical mass, is indeed illustrative of an intelligence rationale. This trend has been re-affirmed by the director of Europol, Hans-Peter Ratzel, after the 11th of September 2001 through an increased integration and intertwinement of the police and intelligence services [39]. It is however here important to insist on the fact that institutions are not homogenous entities. On the contrary elements of differentiation between services and departments have to be introduced. For example, one has to make a distinction between the activities of the ELOs and for example the activities of the "Analysis Unit" of the Serious Crime (SC) Department. Indeed the latter is closer to the intelligence-rationale than the liaison activities of the ELOs that are closer to the criminal justice approach.

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37 . Article 4 of Council Regulation n° 2007/2004.

38 . Carrera Sergio, "the EU Border Management Strategy, FRONTEX and the Challenges of Irregular Immigration in the Canary Islands" Monday 23 April 2007; http://www.libertysecurity.org/article1406.html

39 . This development has been confirmed by an interview with a member of the staff of the Management Board Secretariat of Europol 2007. This development could be part of a broader transatlantic trend. Indeed the increased integration of police and intelligence services can also be observed, and is even more pervasive, in the USA. This raises the question of the role played by EUROPOLs transatlantic relations as well as its relations to the institutions and the professionals of the second pillar. Indeed, the interviews carried out for this project tend to confirm that EUROPOL has enduring relations, amongst others, with SITCEN on the issue of counter-terrorism.

The increased engagement of EUROPOL in intelligence activity is moreover interesting when considering the relations between the European police office and EUROJUST. Indeed, while some actors wished at the creation of EUROJUST to see it one day control EUROPOL and at the very least prove European judicial cooperation more efficient than police cooperation, these ambitions have ever since been fully abandoned [40]. It seems that the relations between police and justice at the European level have rather evolved in favour of the police component. Indeed, EUROJUST's College is now nearly exclusively composed of national prosecutors (a part from the police officers appointed by some countries in accordance with their national systems and from the notable exception of the Austrian member) – in other words of magistrates from the respective Member States accusatory authorities. This development is crucial here because the latter are increasingly following or at least submitted to an intelligence-led rationale. Indeed, although prosecutors focus on deeds of "real" individuals (as opposed to profiles), their main role is to assist the police in transforming the data collected into legally compelling evidence that can be used in a court of law [41]. In this respect, given the preventive logic prevailing in judicial and investigatory police activities since the 11th of September 2001, prosecutors are *de facto* involved in the intelligence approach to threats as opposed to an approach focusing on the rights of the defence. At the European level, we are hence witnessing a dual judicial subfield: one mainly linked to prosecutors and very close to the accusatory authorities of the Member States and a second more marginalised one focusing less on the accusation than on procedural rights and especially the rights of the defence [42].

When looking at the distribution of the agencies and services following their relations to the practice of profiling, other interesting conclusions can be drawn. As far as EUROPOL is concerned, the Analysis Unit clearly works with profiles of risk-groups whereas the ELOs have a less depersonalising approach to the extent that they work, not unlike EUROJUST, on specific cases involving clearly identified individuals. The case of OLAF is interesting because, when partly working from an intelligence perspective through the "Fraud, Prevention & Intelligence Unit", the "Mutual Assistance & Intelligence Unit" and the "Operational Intelligence

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40. Interview with an official of EUROPOL.
41. This role division however differs slightly from member state to Member State. In Germany for example, the law provides that the police is assisting the prosecutor's investigation while the latter leads it.
42. See Annexes - The Professionals of Judicial Cooperation in Criminal Affairs.

Unit", it also gets involved in profiling and prevention. Finally the EU Joint Situation Centre (SITCEN) is probably the institution that works the most openly and exclusively from an intelligence perspective focusing on profiles of risk-groups with the possible exception of the General Operation Unit (GOU) [43]. Indeed, the Situation Centre gathers national experts to analyse intelligence assessments from the Member States. It is however important to mention that while both SITCEN and EUROPOL tend towards the intelligence rationale focusing on profiles, this in no way implies that their perception of the relevant threats and their overall classification of threats is the same. Hence, while the SITCEN staff participates in the elaboration of the terrorist lists and hence plays a central role in the construction of the external and internal threats, EUROPOL does not follow this list. Generally speaking, EUROPOL seems to have a broader approach both to threats and to the groups likely to be involved in it [44].

The following graph tries to sum up some of the abovementioned elements. It is however important to insist on the fact that the general trend and the power relations in the European field of the professionals of security are currently "moving" towards the prevention/ pre-emption "pole".

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43 . See : WP2 Deliverable, Preliminary Results for Year 2 of the Programme, June 2005, p. 45
44 . Interview with an official of EUROPOL.

Graph 4:
Position of the security agencies, targets of security-practices and attitudes towards the intelligence-led rationale
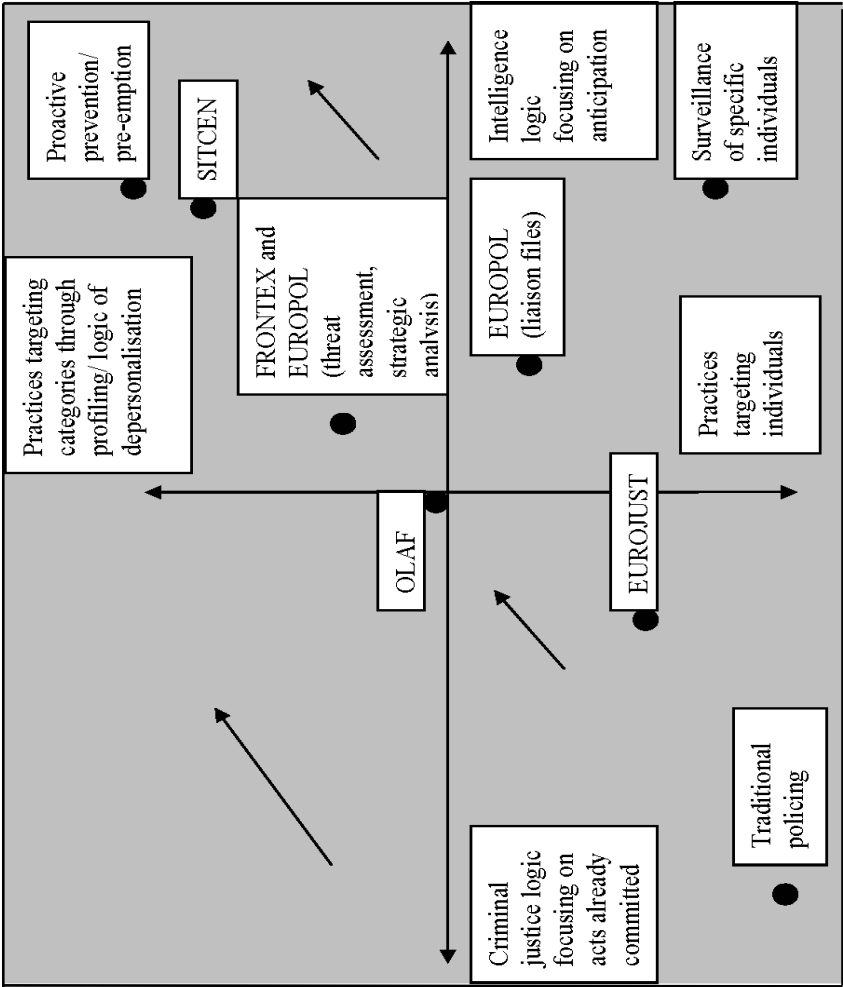
The relation to technology and databases in the European field of professionals of security

The abovementioned intelligence rationale raises a crucial question from the point of view of our research project: the role played by security-technologies and the structure of databases in the transformation of the European field of professionals of security. Indeed, today data is less exchanged by persons knowing each other than directly collected from databases by accredited persons not bound to case-by-case authorisations. While this development is partly linked to the political choices that have been made (notably after September 11th 2001) and is still contested as shall be seen, its very conditions of possibility are to be found in a set of technological developments affecting the structure of databases and allowing for an increased interconnection and automaticity between them. These developments are crucial from the sociological point of view because they lessen the role of organisational factors in the exchange of data.

Part of the research of the French Challenge Team has focused on the role of technological tools such as biometrics and the networks of databases they necessarily work with. The latter are progressively becoming the technical (as opposed to "human") modality through which institutions exchange or may potentially exchange information on people. These networks of databases thus raise many questions concerning the institutions they interconnect. Should these institutions be allowed to access all information on people? For which purposes: immigration control, prevention of crime?

One of the deliverables prepared by the WP2 Team has shown what is at stake in the issue of the progressive integration of the still fragmented system of databases (SIS, VIS, EURODAC, SIRENE, TECS, CIS) into a single system [45]. Many initiatives now actually tend to integrate the existing databases into a single system. However, although European countries have been good at integrating and sharing immigration-related information, they have not been quite as eager to integrate and share law enforcement information. The Treaty of Prüm has tried to fill this gap (Geyer & Guild 2006). But concerning police information, Member State agencies are still reluctant to relinquish ownership and control. There is also a general lack of political commitment to harmonise standards and laws, including data protection laws, which would allow for a more integrated system. It has nevertheless

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45 . Challenge WP2 deliverable 180, "Biometrics and Surveillance", 2007.

been suggested that law enforcement authorities should have access to SIS, VIS and EURODAC and certainly EUROPOL has repeatedly manifested its will to access the Schengen System.

The very logic supporting the initiatives emanating from the European Commission is currently that of the constitution of a huge integrated space of exchange: a complex network of partially connected databases. All of this fuels the de-differentiation of the police, immigration control and anti-terrorism/intelligence functions by the implementation of a unified technical system.

It is however important here to make a distinction between the partial interconnection of databases on the one hand and the centralisation of data in a single database on the other. Indeed, on the intergovernmental level, the trend is not towards the centralisation of data in a single base at the European level – which is the option on which EUROPOL has been founded – but rather towards the institutionalisation of the principle of fragmentation and the acceptance of multiple databases at the national and European levels. Indeed, the lack of "trust" between governments and institutions and the strong push towards intergovernmental arrangements have done much to limit the principle of availability of data. The Treaty of Prüm is here once again illustrative of a more general trend: the Index-system it puts in place implies that data has to be requested as opposed to being directly available. It nevertheless confirms that the general paradigm prevailing at the intergovernmental level is one of the networking and interconnection of databases.

In this context, an important cleavage in the European field of security is between the administrations promoting a technological solution to the interconnection of databases and the ones wanting to maintain human interfaces. The first approach, relying primarily on machine-driven processes, is vehemently promoted by the US administration. However, it finds "natural" allies in some firms of the security industry developing, amongst others, profiling software and data-mining technologies as well as expert-systems. It is also furthered by "internationalised" police officers, notably at the Management Board of EUROPOL [46]. Following this perspective the different databases are to communicate directly with each other through specific technologies making any human intervention redundant and hence unnecessary. Through the establishment of profiles, the "relevant" data is to

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46 . Interview with an official of Europol, 2007.

arrive directly on the desk of the personnel to which it is destined. In a sense this approach is hence contrary to the approach officially adopted by EUROPOL and in which the exchange of data is conditional upon a certain amount of trust between the professionals involved in the exchange.

This "automatic" and technological approach is contested from outside as well as from inside the field of security, both by actors in the public sector and the private sector [47]. Paradoxically, at the European level, the intelligence services and personnel do not seem necessarily to be the fiercest defenders of this option. Moreover, the technicians and the computer scientists at EUROPOL seem to oppose this development that deprives them of one their professional *raison d'être*. The latter are however relatively marginalised in the overall institutional framework of EUROPOL. They are for example seldom present at the reunions of the Management Board of the European police office. The main cleavage seems thus here to be between different professional sectors rather than between institutions.

In the following graph the vertical axis positions the institutions following their relation to the intelligence-led rationale already dealt with in the previous graph (graph IV). The horizontal axis distributes them on the continuum reaching from the institutions using or promoting technological interfaces between databases to the ones preferring human interfaces. We have placed EUROPOL as evolving towards the inter-connexion of databases through technological interfaces because, as already mentioned in this deliverable, the current power-relations within the European police office seem to be to the advantage of the Management Board. Although the problematique has until recently been relatively remote for EUROJUST, it has recently showed an interest in the issue of access to data by setting up an information system. However it remains highly dependant upon human interfaces as the graph shows. The same thing is true for FRONTEX as has already been mentioned. Suffice it here to remind that, although the Border agency's activities involve profiling and intelligence sharing, the safeguards included into the initial proposition of the Commission restricted FRONTEX's access to information to exclusively non-personal data. As far as it seems, the exchange of information occurring between the agency and Europol is indeed limited to "operational data".

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47 . See Annexes - The limits of the field of the professionals of security and the "risk managers".

From the research carried out it appears that the position of the SITCEN is towards the reliance on machine-driven processes and close to the one of the US administration. As the graph shows, the dominant trend in the field of security is towards an increased reliance on technological solutions to the problem of the networking of databases.

Graph 5:
Technology, inter-connexion of databases and intelligence-led approaches
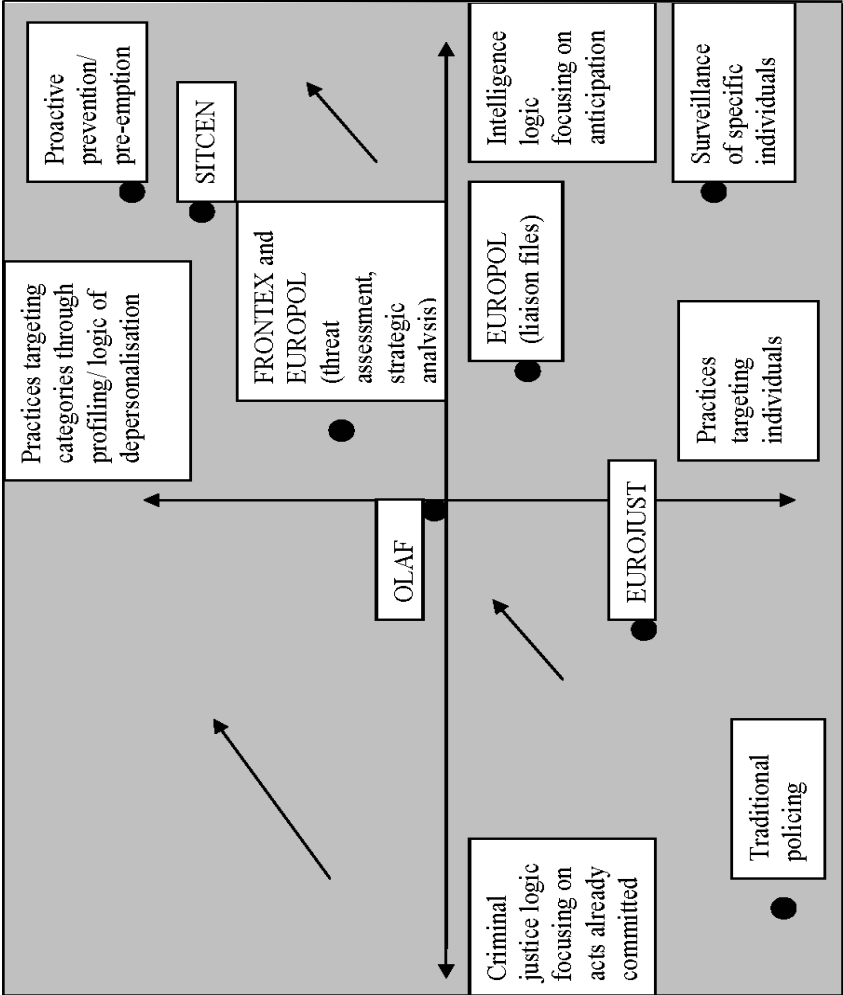
General Conclusions

Trying to summarise the very diverse elements and conclusions that could be drawn from this research is a difficult and risky exercise. However, we will here try to focus on two crucial interdependent dimensions of this research: an empirical and policy-oriented one on the one hand and an analytic one on the other. Both elements will allow highlighting the general aims of the research endeavour as well as the importance of an approach in terms of a field of security.

On the empirical level, it seems clear that the process of emergence of a subfield of judicial cooperation in criminal affairs at the European level has been fuelled by security preoccupations to the detriment of preoccupations with issues of justice and liberty (Balzacq & Carrera 2005; Bigo, Carrera et. als 2007). This can be seen in the imbalance at the European level between the (very relative) Europeanization of the space of judicial cooperation and the failure to establish common rules and procedures concerning procedural rights (and especially the rights of the defence) and the admission of evidence. The existence of a Framework Decision on the European Arrest Warrant in the absence of any harmonisation of procedural rights is in this regard revealing (Guild 2006) in spite of the fact that the potential impact of the EAW has been lessened by the absence of relations of trust between national judicial authorities (Lavenex 2007). Equally revealing is the fact that the newly created European Union Agency for Fundamental Rights (FRA) is not empowered to act in the third pillar or that the competencies and powers of the Commission, the European Parliament or the European Court of Justice have not significantly increased in spite of the prevailing discourse on transnationalisation (of threats). In other words, the professionals involved in the European field of security seem to have succeeded in imposing their agendas and priorities at the European level. In this respect, one can speak of the field of the professionals of security as a field of domination (Bigo 2005).

However from an analytical point of view, this research has shown that the imbalance between security and justice at the European level is a field effect, a consequence of the structure of the European field of the professionals of security. When observing this imbalance without mapping the field of security, one could conclude that it is the direct consequence of the salience of security issues in the form of "global terrorism" after the attacks of the 11th September 2001 or the consequence of a successful strategy on the part of the US administration to determine the

European policy agenda. However, when analysing the issue in terms of an emerging field of security, things become slightly more complex. Indeed, to study this imbalance as a field effect is also to recognise that it is neither the consequence of a single strategy nor of an intentional one. It also supposes that there is not necessarily one single causal factor involved in this process. On the contrary, a multiplicity of interacting factors is involved and there is consequently an over-determination of the processes at hands: the causes are structural rather than linked to one specific factor.

Hence, this deliverable has tried to show that this imbalance is not the consequence of a security-consensus at the European level. On the contrary, several types of actors, sometimes engaging in strategic alliances, have tried to contest it. This can for example be seen with the alliance between some bureaucracies within the European Commission (especially the DG Budget), the OLAF unit and a diverse set of networks of magistrates (Call of Geneva, Strasbourg Manifesto) supporting the Corpus Juris Projects and the European public prosecutor project [48]. Moreover parliamentary committees and especially the LIBE Committee of the European Parliament have tried to resist the prevailing imbalance. But precisely, the latter actors have often been peripheral to the field of security and, in the case of the magistrate networks, insufficiently "Europeanized" as opposed to the magistrates of the accusatory authorities. In this context, due to inter-service rivalries within the Commission, DG JLS has been rather supportive of the initiatives on the part of some Member States to retain their prerogative in terms of the legitimate use of coercive force.

Simultaneously, the pervasive anticipatory intelligence-rationale of the prevailing security-practices at the European level, as well as a firmly entrenched belief in technological solutions to the issue of the interconnexion of data-bases, have further undermined the prospective of a Europeanized justice and a more systematic cooperation between defense lawyers, the judiciary and data protection officials. In other words, it becomes clear that one specific actor cannot be "blamed" for the security/justice imbalance. The latter is the consequence of a multiplicity of inter-institutional, intra-institutional and professional strategies. Only an approach in terms of a European security field can account for this and

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48 . It must however be mentioned that OLAF has paradoxically often been accused by its Supervisory Body and especially by Delmas-Marty of neglecting issues related to the rights of the defence.

hence allow for an alternative to both of the flawed approaches generally summoned to analyse the current restrictions on Fundamental Rights and individual freedoms in the European Union. According to the first one, the liberal framework of the European regimes has been intentionally, albeit secretively, subverted by a transnational class of security-bureaucrats. According to the second, the limitations imposed upon individual freedoms are negligible because the principle of "presumption of innocence" only applies to the innocent and "only criminals have something to fear from current security-measures". Both assumptions are false. The Member States' and the EU's liberal framework remains intact although its co-existence with increasingly pervasive illiberal security practices are, to say the least, worrying.

This is of course not to say that these processes are inevitable. On the contrary, the identification of the different elements that are involved, combined with the analysis of the overall structure of the European field of the professionals of security, here serves to shed light on the remaining margins of manoeuvre that could be exploited from a policy-making perspective. Indeed, although the prevailing illiberal practices at the European level are over-determined, this is not to say that they cannot be limited or constrained. In this respect, this analysis allows highlighting that the current imbalance between justice and security has nothing to do with a functional response to a particularly constraining threat environment. Hence, one useful starting point could be the realization that, currently, the relevant question in legal matters is not how legal instruments at national and European levels can best be adapted to the current state of the threat, but rather how they can me made to restore a more balanced conception of AJFS…

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ANNEXES – The Limits of the European Field of Professionals of Security

The geographical limits of the European field of professionals of security: the transatlantic dimension

When considering the limits of the European field of security, different aspects can be focused upon. The geographical aspect first: is the European field of security limited to the geographical area composed of the 27 Member States? Does it stop at the physical/geographical external borders of the European Union or does it transcend this border? Much research has been carried out on this issue. These studies often show that security practices now reach beyond this limit in order to pro-actively identify the potential threats to the EU before they reach its "territory". They have shown how visa-policies, combined with biometric tools, can be interpreted as a new security practice of "policing beyond borders" and aiming at the protection of a territorial space from unwanted infiltrations. The question of the European Neighbourhood Policy (ENP) and its security dimensions are crucial in this respect. But these elements are only one aspect of the question of the geographical limits of the European field of security professionals. They put the territorial space at the core of the question by considering the European "territory" as a space to be protected from potential threats and unwanted migrants. They distinguish the space to be protected from others spaces considered as potentially dangerous.

Another aspect of the question concerns the relations between the European field of security and other fields of security. The question is here not if "Europe" has to be protected from other spaces but if there is an extension of the European field of security – or even the inclusion of the latter in a broader field (transatlantic? "Western"?). A central question in this respect is whether there are connections with other fields of security and especially with the United-States. Do those connections justify an analysis in terms, not just of a European field of professional of security, but of a transatlantic field of security?

The narratives on the "fight against terrorism" on the one hand (Europe) and on the "global war against terror" on the other (USA) have a set of intriguing commonalities in this respect. Even if they have to be distinguished, they both share the idea of the disappearance of the traditional enemy as embodied in the figure of the hostile State. The traditional figure

of the enemy state is now replaced by that of terrorism and terrorist groups. This move works with a progressive redefinition of the traditional categories of security analysis and implies new security configurations attempting to secure territorial spaces as well as the populations living on them.

However, after September 11th 2001, many narratives at the political level have insisted on the divergences between a weak Europe and a strong America. Other narratives have on the contrary insisted on the historical relations between the two continents. None of these narratives fully reflect what is going on at the transatlantic level. The first discourse does not help understanding "alliances" between some politicians in Europe and the Bush administration on the war against Iraq for example (Blair in UK, Aznar in Spain, Berlusconi in Italy). It also does not reflect the bureaucratic routines that have been strengthened after September 11th, thus highlighting that behind the sometimes strong divergences expressed at the political level (Chirac, Schröder, Zapatero), routinised modalities of cooperation between national bureaucracies (and especially between security-services) have continued to work well.

Furthermore, these narratives do not help understanding that the political levels on the one hand, and the bureaucratic levels on the other, are not homogeneous and that political standpoints have to be considered in relation to their national contexts. Professionals of politics and professionals of security can both be divided very schematically into two categories: atlanticists and anti-atlanticists. But, when considering security professionals, even the atlanticists denounce the absence of reciprocity in the Euro-Atlantic relations.

When considering the European level and not just national levels, these narratives also do not help understanding what is at play when considering EU-USA agreements on PNR. In the agreement, contested by the Parliament and the Working Group 29, the possibility of reciprocity is clearly highlighted as soon as Europe will be equipped of a CAPPS II-like system. This shows the strong convergences between both sides of the Atlantic. But these convergences did not work without strong contestations.

Other developments seem to confirm these convergences. Commissioner Frattini and Robert Mueller, Director of the FBI, met on January the 25th 2006 to discuss EU's proposed data protection framework in relation to the PNR agreement but also principles for access to and exchange of police data, cooperation in the fight against terrorism, operatio-

nal cooperation between Europol and U.S. law enforcement agencies, the assignment of an FBI agent for liaison with Europol, and joint training sessions. Working meetings were also held with the US Postal Inspection Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the US National Central Bureau, the US Department of Treasury and the Drug Enforcement Administration. During these meetings an improved way of cooperation between the respective institutions and Europol in preventing and combating organised crime was discussed. The USA and Europol signed an agreement in 2001 and one in 2002 which allows for the exchange of technical and strategic information as well as personal data. Europol opened its Liaison Office in Washington D.C. in 2002, while the US Secret Service and FBI placed their liaison officers at Europol in 2005. Europol and the USA intend to implement common standards on clearances and to develop adequate measures for the exchange of classified information. Best practices are shared and exchange programmes for analysts take place on a regular basis in strategic and joint operational actions.

The transatlantic dimension of the European field of security is still in the process of being defined. It is however hampered by divergent approaches to the question of terrorism (militarization in the case of the US, a more police-oriented approach in Europe). Moreover it is resisted by some professionals of security on the one hand – referring for example to the absence of guarantees concerning a real reciprocity in the exchange – and by the civil rights promoters on the other hand.

The limits of the European field of security and the professionals of conflict management: European crisis management and EU-UN relations

When looking at the limits of the European field of professionals of security, one possibility is to take the transformations of the practices related to conflict and crisis management, both in the EU arenas and at the international levels, as a starting point.

While the Cold war security architecture was articulated around the nuclear threat, the collapse of the Soviet Union triggered a debate on the need to adapt to the changing nature of conflicts. Indeed, the numerous intrastate wars which erupted in the early 1990s, usually referred to as "New Wars", have been followed by a profound transformation of the practices associated to conflict management. The 1992 issued UN Agenda for Peace, emphasized this new way of handling international organized

violence – in a more free, but also more dangerous and interdependent world – by urging to address the root causes of conflicts such as poverty, underdevelopment and undemocratic governance. Thus, in order to tackle the new threats of the post-cold war era, a whole set of practices and labels were associated to conflict management, such as multilateral peace keeping/ peace support operations, humanitarian interventions, crisis management, state building... Various international and regional organizations (UN, EU, NATO, OSCE), but also States and NGOs are involved in this new understanding of conflict management. It is hence now widely accepted that the concept of security does not only apply to the security of the states and military issues, but also to new sectors (environment, economy, society) and referent objects (individuals).

In this regard, conflict management constitutes an original set of practices, as it aims at managing insecurities, but also encompasses a vast range of actors, who are not professionals of security *per se*. To put it short, conflict management bridges the divide between the worlds of diplomats, police, soldiers and development experts, which can for practical purposes be referred to as professionals of conflict management.

At the European level these practices are usually referred to as Crisis Management. It transcends the traditional pillar structure, as numerous actors and agencies are mobilized along a Crisis management continuum (DG Relex, DG Development, Frontex, Council of the EU – DGE VII and IX –, Member States). This notion is often described as constituting EU's added-value on the international arena. As stated by Javier Solana, "*In response to crises, the Union's particular characteristic is its capacity to mobilise a vast range of both civilian and military means and instruments, thus giving it an overall crisis-management and conflict-prevention capability in support of the objectives of the Common and Foreign Security Policy.*" So far, more than 15 – civilian, military and police – Crisis management operations in the framework of ESDP have been launched since 2003. They cover a vast range of capabilities such as police assistance, security sector reform (SSR), border assistance, rule of law.

To claim EU crisis management to be an added-value of the EU as a security actor is oversimplifying since the idea of combining multiple means to tackle organized violence is shared by various non-EU actors. Indeed, even if the labels are not the same, the practices referred to are similar. For example, NATO's Peace support operations, UN's Peace operations and EU crisis management draw on the same conflict management

knowledge. Moreover, conflict management professionals have established trans-institutional contacts. The relations between the EU and the UN illustrate the implications of this shared knowledge and challenge the limits of the European field of security.

Since 2000, several meetings have been held in order to develop links and cooperation in the field of conflict management between the EU and the UN. This convergence reached its highest point with the signing of a "Joint Declaration on EU-UN Co-operation in Crisis Management" in September 2003. This document aims at improving the cooperation between the two organisations by setting up a EU-UN steering committee gathering a staff of 15 to 20 persons meeting twice a year. The structure of this steering committee is highly interesting as it is nearly exclusively composed of staff from the European Council and from UNDPKO (United Nations Department of Peacekeeping Operations), except for one representative of the EC Commission and the UN department of Political affairs (DPA) respectively.

A traditional divide within the two institutions is replicated here. Within the EU, the definition of Crisis management differs between the Council and the Commission. A consensual definition is still lacking. On the one side, the Commission traditionally promotes the conflict prevention dimension of crisis management, and on the other side the Council focuses more on conflict management and thus on the use of more coercive means. At first sight, this division of labor seems obvious. Indeed, the use of coercion and therefore the implication of military means depend on intergovernmental mechanisms. However the steering committee aims at discussing the whole range of European crisis management means. Within the UN, the same divide exists between the DPKO and the DPA, the former focusing on the management of crisis and the latter on prevention.

Thus, the broadening of EU-UN relations is the locus of a struggle among professionals of security aiming at imposing their own vision of conflict management. Bureaucratic struggles between different EU and UN agencies are hence reflected in the steering committee. Analyzing this phenomenon through the lenses of the field of security professionals is interesting as it enables analyzing the transversal dynamics induced by the meetings of the staff of two broad institutions. At the level of the professional trajectories of the actors involved in the EU-UN cooperation, it is worth mentioning the fact that a growing number of staff alternatively work in both institutions. Thus, to *do crisis management* enables to be considered as an expert on security issues in different arenas.

The limits of the European field of security and the professionals of judicial cooperation in criminal affairs

When analysing the European field of security, it is crucial to locate its limits in order to identify the actors considered as professionals of security at the European level but also to assess what actors are central and peripheral to this field. In the case of the European judicial cooperation in criminal affairs one can identify a first boundary between the judges involved in the process of cooperation at the European level and those who remain focused on judicial affairs at the national level. This line of cleavage lies at the core of the mapping of the actors of judicial cooperation in criminal affairs. This first differentiation does not however explain why some professionals of the judiciary get involved in European cooperation and/or are at the centre of the European field of security.

In her analysis of the *Corpus Juris* project and the Call of Geneva [49], Natacha Paris has mapped out some of the actors having initiated mobilisations in favour of the "Europeanization" of justice and forming what she has called the "Corpus Juris networks". Having a very activist approach, these actors seem however to have remained confined to the margins of the European subfield of judicial cooperation and hence of the field of security. Indeed, even if their declarations furthered the diffusion of ideas promoting judicial cooperation at the European level, their institutional and judicial positions have not allowed them to be at the heart of the bureaucratic logics underpinning the field. For some of them, this situation is however only transitory. The actors of the judicial field are indeed often multi-positioned.

On the other hand, the actors that have actually succeeded in getting centrally involved in European judicial cooperation are often judges who occupied positions linked to European questions in their respective national ministries before being nominated to positions at the European level as national representatives or in a European unit (SGC, OLAF, Eurojust, Permanent Representation, Liaison Magistrates). There is currently, at least since the inception of the network of Schengen Magistrates, a professional dynamic of specialisation in European penal matter. As the JHA field is institutionalised, these magistrates see their positions change.

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49 . Paris N., "L'européanisation de la justice pénale au nom de la lutte contre « la criminalité organisée » dans les années 1990", in "Arrêter et juger en Europe : genèse, luttes et enjeux de la coopération pénale", *Cultures & Conflits*, Paris, L'Harmattan, n°62, 2006.

In the case of France, the Schengen Magistrates have often become representatives in the European Judicial Network (EJN). The magistrates at the centre of the European cooperation have hence often been through successive re-trainings and specialisations and have a professional experience drawing on the diverse positions they have previously occupied.

A second characteristic element of these magistrates is that they are often representatives of their respective national accusatory authorities. In the case of France and of Italy, it means that they are part of the public prosecutor's department. Eurojust illustrates this since the national representatives are nearly all (with the notable exception of the Austrian Member) prosecutors. This can be explained by the way in which the European penal cooperation has been driven by security-concerns and hence seen as a tool in the fight against transnational criminality. It is in this regard interesting to note that this close relation to the accusatory authorities is an important factor of differentiation with the magistrates at the periphery or excluded from the European field of professionals of security.

The limits of the European field of security: professionals of (in)security and professionals of the management of external relations

The setting-up of the *Area of freedom, security and justice* (AFSJ) through the Tampere milestones and the Hague programme has been accompanied by a growing insistence in European policy-making arenas on externalisation. Externalisation formally involves the insertion of considerations related to the JLS domain in the conduct of the EU's external relations. In practice, then, externalisation has opened up the question of the intersection between the practices linked to the management of insecurities, on the one hand, and the practices associated with the management of Community external relations, on the other.

Indeed, while JLS considerations are increasingly inserted in external relations initiatives, the main actors in this sector remain the officials of the External relations directorates (DG Development, DG Enlargement, DG Relex, DG Trade, with the EuropeAid Cooperation Office for the management of Community external assistance programmes) within the Commission, in relation with their counterparts in the Council General Secretariat. One needs, in this respect, to raise the question of the relations between these officials and the security agencies and services at the European level.

The European neighbourhood policy (ENP) provides a relevant example. Initially designed as a broad policy of rapprochement between the European Union and its neighbours, the ENP has, in the course of its elaboration, incorporated a stronger emphasis on JLS questions, and has been reconfigured by a discourse focusing on the potential insecurities stemming from the proximity of the EU to troubled areas. The aim of the ENP as it stands today is to preventively promote good governance, not so much because it fulfils the objective of rapprochement which had initially been its focus, but because good governance is conceived of as an instrument of stabilisation against potential insecurities linked, in the language of the European security strategy, to "[n]*eighbours who are engaged in violent conflicts, weak states where organised crime flourishes, dysfunctional societies or exploding population growth*". At the same time, responsibility for the conduct of the ENP lies mainly within the services of DG Relex, through the "geographical" units supported by the ENP coordination units. There seems to be, in this regard, a contradiction between a discourse focusing on potential insecurities, and the actual practices that structure the management of the neighbourhood, which lie in the hand of Community professionals of the management of external relations.

With regard to the specific question of the ENP, we need to broaden the scope of our investigation in order to investigate this quandary. The ENP, because it focuses on the border regions of the EU, should in fact be conceived of as an alternative take on the management of borders at the European level. The official position on the ENP would have this policy as part of the EU system of integrated border management (IBM). It is clear, however, that the neighbourhood had initially been conceived as an alternative to border management policies, understood as leaning too much towards an exclusionary-securitarian stance. But it is also clear that, when it comes to border management, investments by professionals of (in)security have been made elsewhere, and in particular in Frontex. While Frontex is formally a Community agency, it is subordinated to the practices and struggles occurring in the third pillar of the Union. It is dependent on national security services, in particular national border guard agencies, for its strategic orientation as well as for its staffing and the conduct of its missions. Its action, furthermore, is geared towards logics of control and coercion.

Opposing the practical logics at work in Frontex on the one hand, and the ENP, on the other, then allows us to sketch a contrasted picture of the EU border regime. This regime is characterised by the co-existence of two "tracks" of management: one focusing on coercion-oriented security

practices, involving in particular a logic of control and surveillance of specific groups determined through profiling and risk analysis; and the other, dealing with the border regions of the EU through a logic of governance, and the provision of technical and financial assistance to governmental authorities (including local, regional and national services) and non-governmental actors alike in the neighbours. These "tracks", however, are not strictly parallel. At the discursive level, they both share a focus on the management of insecurities in the neighbourhood. At the practical level, initiatives and agencies participating in the logic of externalisation of the AFSJ have in particular benefited from Community external relations funding. Agencies such as Eurojust, Europol or Frontex can claim Community funding for programmes engaging with third countries, in particular for the training of law-enforcement officials and judges. The European Police College (CEPOL) has for instance been granted MEDA funding for training police officials of Mediterranean countries in a variety of fields, including dealing with organised crime, cybercriminality or political violence (MEDA/CEPOL I and II). Similarly, Eurojust used to run the EuroMed Justice programme (now under the responsibility of the European Institute for Public Administration). Broad strategic objectives, such as so-called "security sector reform" (SSR) are common to both tracks.

The intersection, however, are largely one-sided. It is less the professionals of the management of Community external relations that get involved in security, than professionals of the management of insecurities that intervene in external relations. What holds true for the ENP, in this regard, is also pertinent for other aspects of the management of external relations. Immigration liaison officers (ILO) get involved in questions of development through the connection between migration control and development. Policemen and judges are sent abroad in the context of the conduct of external relations. In other words, through the development of what could be called an "antidiplomacy", the sector of Community external relations is increasingly subjected to a colonising effect from professionals of the management of insecurities.

The limits of the field of the professionals of security and the "risk managers"

The fight against money laundering and the financing of terrorism lies at the intersection of the police, judicial, diplomatic and financial social universes. One of its peculiarities is that it is dependant upon relations between public and private entities that did not necessarily cooperate prior to

the interest in the financing of terrorism. Financial surveillance measures require the full participation of private actors, notably in the banking sector. Through the institutionalisation of these previously unseen relations with police and judicial services, the private financial (and non-financial) sector has become, sometimes against its will, the main site of control of financial flows. The legal requirements that are regularly enforced in European legislations have placed these "financial actors" at the heart of this "dispositif" of surveillance and prevention of financial operations. They are indeed compelled to be extremely cautious that the services they provide are not used to finance or launder money for terrorist activities. Hence an important question is the one of the distinction between the private and public realms. The extreme porosity between the two sectors leads some to conclude that these financial actors are relegated to the role of executers of public security aims. Considering the new responsibilities of the private actors, the narrow cooperation with public authorities leads to a routinization of the exchange of information and even a co-production of intelligence.

The reconfiguration and the strengthening of financial surveillance have created a social space composed of institutions engaging both in risk management and security and that are public or private as well as commercial. However the new requirements in terms of traceability of capital flows interfere with the requirements of the financial and commercial activities of some sectors and professions. The calls for more control hence lead to tensions and resistance to the effects of securitisation on the part of the financial actors. These conflict-ridden relations between divergent requirements can be seen in the evaluation of the economic and financial impact of the costs of the attempts to detect and eliminate the financial resources of terrorist activities.

An important question is hence refers to the limits of the field of the professionals of security. The differences between the latter on the one hand and the private « risk-managers » on the other is hardly difficult to sense. Indeed, the « risk-managers' » preoccupation is mainly the operational risks that can threaten the reputation of their credit activity or other activities. The risk of being suspected of financing terrorism is hence only one risk among many others. However, whether they are at the centre or at the periphery of the field of the professionals of security, these actors have a central role. Indeed, police institutions and intelligence services are highly dependant upon the information these private institutions provide them with.

Limits of the European field of security and antiterrorist diplomacy

When considering the limits of the European field of security, the process of legally defining terrorism is particularly interesting. Indeed it has illustrated the extent to which the process of Europeanization is still limited and constrained by the national levels of the EU Member States. It thus raises the question of the extent to which one can speak of a specifically European field of security. Is not just an assemblage of national levels?

The traditional narrative on European counterterrorism usually describes a historical process of institutionalisation of agencies and laws beginning with intergovernmental cooperation and culminating in integrated counterterrorist instruments, such as the European arrest warrant often mentioned as an example of integration. Several studies have however shown the contradictions of this apparently flawless process. In the field of counterterrorism, agencies and governments have both cooperated and competed with each other at all times. For instance, TREVI was a forum where agencies exchanged information, as much as a competitive space characterized by mutual distrust. Extradition agreements were for a long time the result of an institutionalisation of pre-existing bilateral agreements and thus of State-to-State compromises and negotiations. Moreover, the progressive Europeanization of this field shows some serious limits since counterterrorism remains a state prerogative. The Treaty of Amsterdam, signed in 1997, included terrorism as a subject of European decision but maintained the unanimity vote. Thus, as is the case for all Third Pillar matters, any decision is the result of diplomatic relations and intergovernmental compromises. Furthermore, the analysis of the process of defining terrorism in 2002 shows that, in a situation of perceived urgency, intergovernmental negotiations totally obscured the role of MEPs. The text of the Framework Decision was the result of discussions among state representatives within Committee Article Thirty-Six and the Committee of Permanent Representatives. The role of the European Parliament was exclusively consultative. It was all the more diminished as MEPs were only consulted when their advice could not be taken into consideration by the Council any longer. Therefore, beyond its apparent Europeanization, the field of counterterrorism is still characterised by diplomatic compromises and dissensions between the governments of the Member States.

The process of defining terrorism has consequently shown some of the limits of the European field of security. Indeed, the process has

remained under the exclusive control of diplomats, which implies that bilateralism, pressures, bargains and a general lack of transparency have been part of the decision-making process to some extent.