



## Analysis

### Secrecy reigns at the EU's Intelligence Analysis Centre

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**The Centre's reports are widely distributed within the EU and have a direct bearing on political decision-making despite an alarming lack of operational transparency and democratic accountability.**

The EU Intelligence Analysis Centre (INTCEN) is the most recent name for an institution that has existed in a number of forms since 1999. It monitors events both inside and outside the EU in order to provide “intelligence analyses, early warning and situational awareness” to EU institutions and Member States in the fields of security, defence and counter-terrorism. While it remains relatively small and lacks a clear legal basis, the agency's size and remit have expanded over the years. INTCEN's work often influences political decision-making, raising questions over whether the secrecy surrounding the institution's work is acceptable.

#### History of INTCEN

INTCEN became part of the European External Action Service (EEAS) in 2010, but has a far longer history. Its origins, as “a structure working exclusively on open source intelligence,” lie in the Western European Union (WEU), an intergovernmental military alliance that officially disbanded in June 2011 after its functions were gradually transferred over the last decade to the EU's Common Security and Defence Policy. [1]

The exact date that INTCEN's predecessor organisation began its work within the WEU is unknown. With the establishment of the European Security and Defence Policy in 1999 it was transferred to the EU along with the EU Military Staff (EUMS) (the EU's “source of military expertise” [2] which is responsible for organising “concepts, doctrine, capability planning and capability development including crisis management exercises, training, analysis and lessons learned.”) [3] Some years later, the EUMS Intelligence Division began to work with INTCEN. It should be noted that any forces directed by EUMS in exercises or operations are seconded to it from EU Member States.

In 2002 INTCEN's predecessor organisation was established as a directorate of the General Secretariat of the Council and given the name of Joint Situation Centre or SITCEN. At this point it began to move beyond the collection and analysis of open source information. Staff from seven Member States' intelligence services were seconded to the centre and began to exchange sensitive intelligence as part of an “insiders club” made up of intelligence analysts from France, Germany, Italy, the Netherlands, Spain, Sweden and the UK. [4]

In the years to come, the centre's remit and intelligence sources gradually expanded. In 2004 Member States were encouraged to share information, intelligence and assessments on internal threats – “internal security, intelligence investigations, border surveillance and crisis management” – and in 2005 an “intelligence capacity on all aspects of the terrorist threat” was developed through the formation of “a special counter-terrorist unit...within the Civilian Intelligence Cell.” [5] This is based on intelligence shared by the Counter Terrorism Group (CTG), an inter-governmental structure that lies outside EU frameworks and an offshoot of the Club de Bern. It is made up of the intelligence services of EU Member States, as well as Norway and Switzerland, according to William Shapcott, former SITCEN director. Questioned before the UK House of Lords in 2010, Shapcott said that the Club was “originally intended for counterintelligence – all the classics: counterintelligence, countersubversion and counterterrorism – and it sort of farmed off counterterrorism when the CTG was created.” [6]

In 2007 the centre's ability to analyse situations outside the EU was strengthened by the establishment of the Single Intelligence Analysis Capacity (SIAC), which pools civilian intelligence with that obtained by the EU Military Staff's Intelligence Division. SIAC provides “intelligence input to early warning and situation assessment” as well as “intelligence input to crisis response planning and assessment for operations and exercises.” [7] The EU Military Staff was transferred to the EEAS in 2010 at the same time as SITCEN, although the institutions themselves have not been merged.

### **Legal basis**

The legal basis of INTCEN remains unclear. According to a 2009 report by Jelle van Buuren, at the time a researcher for the Dutch Eurowatch Institute (*Stichting Eurowatch*), the decision to transfer the organisation from the WEU to the General Secretariat of the Council “was not made on the basis of a Council Decision but on the initiative of Javier Solana.” This, van Buuren argues, means that:

*SITCEN [as INTCEN was known at the time] enjoys political endorsement from the Council but no formal legal legitimacy as the Council did not formally adopt a legal act for its establishment as an EU agency. Nor is there a publicly available document with a clearly stated mandate or a similar constituting document. [8]*

The lack of formal legal basis or a constituting document was put to the EEAS by *Statewatch*. A spokesperson, Michael Mann, responded:

*The EU INTCEN is not an Agency but was at the time part of the Secretariat General of the Council and was subject to the administrative autonomy of that Secretariat. Pursuant to the Establishment Decision of the EEAS... it has been transferred to the EEAS.*

This avoids answering the question. The Decision establishing the EEAS does not contain provisions formally establishing INTCEN rather it simply notes that all of SITCEN's staff and functions will be transferred “en bloc” to the EEAS, with the exception of SITCEN staff “supporting the Security Accreditation Authority.” [9] Refusing to provide the centre's constituting document – or even saying whether one exists – serves to reinforce the assumption that there isn't one. Asked for a document outlining INTCEN's mandate and purpose, the EEAS provided the “EU INTCEN Fact Sheet” which contains only basic information on the centre and its work.

As regards the ability of the General Secretariat of the Council to establish bodies of its own accord, the rules governing the Council at the time Solana decided to bring INTCEN into the fold make no

mention of “administrative autonomy.” The rules do state that “committees of working parties may be set up by, or with the approval of, Coreper [the Committee of Permanent Representatives of the Member States], with a view to carrying out certain preparatory work or studies defined in advance,” [10] although the role of the Joint Situation Centre clearly seems to indicate that it could not be considered a committee or working party.

A document issued by Solana on the establishment of the centre makes no mention of any legal basis, although it does demonstrate the degree of personal autonomy he held. “I am implementing a number of structural and procedural changes within the Council Secretariat,” he declares, “intended to enhance its capacity to properly analyse, exploit, protect and distribute sensitive intelligence material made available by Member States.” [11]

The only mention made of legal provisions relates to the need for:

*High standards of security being maintained, in line with the requirements of the Council Decision of 19 March 2001, due to enter into force on 1 December 2001 [adopting the Council's security regulations]... Secure handling arrangements will be put in place to ensure that assessments are distributed securely and appropriately within the Secretariat. [12]*

It would therefore seem that INTCEN continues to lack any formal legal basis, but retains “political endorsement” from EU and Member State institutions.

### **The present day**

It was not until 2012 that SITCEN was restructured and renamed INTCEN. According to the INTCEN Fact Sheet, its main functions are to:

- “Provide exclusive information that is not available overtly or provided elsewhere”;
- “Provide assessments and briefings and a range of products based on intelligence and open sources”;
- “Act as a single entry point in the EU for classified information coming from Member States’ civilian intelligence and security services”;
- To “support and assist” the presidents of the European Council and Commission “in the exercise of their respective functions in the area of external relations.”

Ilkka Salmi, former head of the Finnish security service the Suojelupoliisin (which deals with “counterterrorism, counterespionage and security work”), [13] holds the post of director, a job that reportedly earns him €180,000 a year. [14] Salmi answers to Catherine Ashton, head of the EEAS and also High Representative of the Union for Foreign Affairs and Security Policy. His predecessor was William Shapcott, a former UK Foreign and Commonwealth Office diplomat who is now the Director-General for Personnel and Administration at the General Secretariat of the Council of the EU.

INTCEN currently employs 67 people, out of approximately 3,500 employed by the EEAS in total (1,500 at its headquarters and 2,000 in EU delegations overseas.) There are two main divisions within INTCEN. The Analysis Division has 47 staff split into sections based on geographical and thematic topics, and provides “strategic analysis based on input from the security and intelligence

services of the Member States.” The General and External Relations Division has 15 staff and deals with legal, administrative and IT issues and undertakes open source analysis. Ilkka Salmi and four staff working directly for him make up the remaining five.

INTCEN’s human resources are small in comparison to other intelligence services. The UK’s MI5 - to take one of the bigger, if not the biggest - EU Member State intelligence service employs 3,800 people “about two-thirds” of which undertake “the main investigative, assessment, policy and management work.” [15] However, INTCEN has grown considerably in recent years. In December 2010 the EUobserver reported that the centre had “a team of 15 analysts, soon to be expanded to 21.” [<http://euobserver.com/institutional/31541>] This would indicate that the number of staff working on analysis has more than doubled in the last two years.

### **Who gets information?**

According to the head of the EEAS, Catherine Ashton, reports and briefings are provided primarily to her own office, but also to EEAS senior management, the Commission, and EU Member States’ representatives in the Political and Security Committee, which allows them to be disseminated further into national state bureaucracies. Europol, Frontex and Eurojust also receive intelligence reports produced by the centre. [16] “The need-to-know principle applies,” says Ashton, “as well as the proper security clearance.” [17]

A recent agreement between the Parliament and the Council allows access for vetted MEPs to classified documents (marked RESTRICTED, CONFIDENTIAL, SECRET or TOP SECRET) held by the Council to do with “matters other than those in the area of the common foreign and security policy, which is relevant in order for the European Parliament to exercise its powers and functions.” [18] Those granted access must be approved as “having a need-to-know by the relevant parliamentary body or office-holder,” have the appropriate security clearance, and have received instructions on their responsibilities for the protection of information.

Also under discussion is an updated agreement on access for MEPs to classified information in the field of the EU’s common foreign and security policy (CFSP); current rules date back to 2002. CFSP is an area which more directly concerns the work of INTCEN, and this is reflected in the most recent draft text, the purpose of which is to set out “provisions governing access by the European Parliament to classified information held by the Council and the European External Action Service in the area of CFSP, including the Common Security and Defence Policy.” [19] In both cases, while access to classified information has to a limited extent been extended, the practical effect in terms of increased accountability is extremely limited, as will be discussed below.

### **What kind of information?**

The types of report produced by INTCEN differ. Situation assessments, updated every six months, are “long-term strategic papers, mainly based on intelligence.” Special reports provide “either follow-up of a crisis or an event, or a thematic paper focusing on a specific topic of current interest.” Intelligence summaries are focused on “current important events with a short intelligence based analysis,” and risk assessments, which are updated every six months, focus on “risks for EU personnel in a given country.” [20]

According to INTCEN:

*Analytical products are based on information provided by Member States' security and intelligence services, open sources (media, websites, blogs etc.), diplomatic reporting, consular warden networks, international organisations, NGOs, Common Security and Defence Policy missions and operations, the EU Satellite Centre, visits and fact-finding missions. [21]*

Information used in assessments is apparently also received from "all relevant departments within the Council, Commission and the EEAS including EU delegations." However, according to van Buuren, the centre "does not work with raw intelligence or operational information." Michael Mann, a spokesperson for Catherine Ashton, confirmed "this is still the case." [22] According to William Shapcott, referring to the work of INTCEN's predecessor, SITCEN:

*The information shared with us is generally not designed to help with that sort of [urgent] warning. SITCEN can write a respectable analysis of the overall threat in Europe and the types of features that it has, but it will not help you much in judging what next week's threat in Paris or London will be. There are other people better placed to do that. [23]*

There are clear limitations to INTCEN's intelligence-gathering and analysis role. The intelligence and security services of all Member States are asked to provide information but, as Ashton said, "contributions depend on the availability of intelligence in the Member States' services and the willingness to share them." [24] Member States are not obliged to provide INTCEN with information or intelligence, leaving INTCEN subject to the whims of various Member State agencies. Nevertheless, it is clear that the centre still views its work as being highly sensitive.

### **Secret, confidential, and restricted**

In July, *Statewatch* requested a list of all documents produced by INTCEN during the first six months of 2012. Producing lists of documents upon request is accepted as common practice at the Council of the European Union, which has faced court cases and complaints to the European Ombudsman in the past over its failure to do so. It was therefore presumed INTCEN would provide such a list.

The centre was not forthcoming. "There is no such document available," said the response. "You will easily understand that, in this particular case, information on the mere existence of a document produced by the EU INTCEN could prejudice the protection of the public interest as regards public security and/or international relations," explained EEAS Head of Division Cesare Onestini. However, "having regard to the spirit of transparency" a table was supplied outlining the number of documents produced and the topics they focused on.

Further correspondence saw some minor corrections to this information – the EEAS apparently produced 166 documents in the first six months of 2012, rather than 178. Of the 166, 17 reports were classified as SECRET, 129 as CONFIDENTIAL, and 20 as RESTRICTED. The EEAS did not provide specific information as to how the different types of report and subject were reflected in its revised total. No documents have been awarded TOP SECRET classification, a designation that is apparently extremely limited in use. One *EUobserver* article says that some officials "cleared to read TOP SECRET files had not seen a single one in over 10 years of work." [25]

In response to further arguments that they have a legal obligation to provide the information requested – based on court cases and common EU institutional practice – EEAS stated that many of the documents produced by INTCEN had the classifications of SECRET or CONFIDENTIAL and were thus protected by Article 9(3) of Regulation 1049/2001 which stipulates that “sensitive documents shall be recorded in the register or released only with the consent of the originator.” The letter stated that: “an institution may decide not to record such sensitive documents in the register and therefore decide not to reveal their mere existence.” It was also noted that 11 of the 20 documents classified as RESTRICTED were listed on the Council’s register, while nine were “short-lived documents of a purely internal nature.”

The refusal to provide any substantial information on the topics covered by INTCEN documents is unusual, given that the Council frequently gives descriptive information on documents that it refuses to release in order to justify the refusal. For example, one document requested from the Council was initially produced at the EEAS and marked RESTRICTED. Despite refusing access, the following information was provided:

*The document contains information concerning the Syrian Revolutionaries Front [“a group closely aligned with the Syrian Muslim Brotherhood that sprung up to coordinate weapons deliveries to the opposition,” [26]] provided by individuals and groups of individuals in and outside Syria, as well as EU internal opinions and assessments regarding the situation in Syria. Given the content of this document, the General Secretariat considers that its disclosure would put at risk the individuals mentioned in the document, thus being detrimental to the protection of the public interest as regards public security. Furthermore, in view of the sensitive content of the document, its disclosure would hinder the diplomatic efforts the EU is making with its international partners to find a solution to the on-going crisis in Syria.*

*Disclosure of the document would undermine the protection of the public interest as regards public security and international relations.*

This provides some insight into topics discussed that, at least to some extent, are based on intelligence reports produced by INTCEN.

### **Transparency and accountability**

“Transparency and accountability in the field of security and intelligence stays imperative for the democratic and social legitimacy of security and intelligence agencies,” argues Jelle van Buuren. “As [INTCEN’s] reports can have political and policy implications, it seems a democratic prerequisite that some level of transparency is guaranteed.” [27]

According to Michael Mann, EEAS spokesperson, “the Council Working parties are EU INTCEN customers and regularly receive its intelligence products.” The Terrorism Working Party and the Working Party on Terrorism – External Aspects (COTER) are the most regular recipients of reports. At the beginning of October, in an attempt to strengthen the centre’s position, the Council called for INTCEN’s work “on the internal and external aspects of counter-terrorism” to be “used in the best possible manner.”

According to declassified documents, by March 2007 the Working Party on Terrorism had adopted 75 recommendations made by the centre. This covered issues such as: “the threat to aviation

security from Islamist terrorism”; “terrorists’ access to weapons and explosives”; “anatomy of a terrorist network”; and “the threat from North African extremists in Europe”. Given that INTCEN reports are explicitly designed to inform the decision-making process it is logical that a greater degree of democratic accountability, oversight or transparency – if not all three – is justified. Recently issued documents on “strengthening ties between Common Security and Defence Policy and Freedom, Security and Justice” also call for INTCEN’s involvement in the development of a framework for intelligence-gathering during policing missions outside the EU. [28]

The limited access to classified Council and EEAS documents afforded to some MEPs also does little to address concerns over accountability and democracy. While the possibility for a limited number of individuals to view documents produced by INTCEN exists, it is only in a tightly-defined framework that they can do so – for example, if they are part of a committee that deals with foreign affairs and they need access to information on a particular topic. Even then, what they can do with that information outside the offices in the Parliament set aside for the storage of classified information is extremely limited, because they are not able to discuss their findings with anyone else. In 2010, a member of the Parliament’s Foreign Affairs Committee said that the set-up for viewing classified information related to the CFSP had “questionable value for [the Committee] because Special Committee members cannot tell their colleagues what they know and cannot claim a superior status in decision-making.” Providing access to information but denying the power to use that information seems to be little more than a public relations exercise.

Jelle van Buuren argued in 2009 that “SitCen suffers from a profound lack of transparency – and therefore is not accountable as could be expected in democratic societies.” [29] This conclusion still holds true, despite INTCEN being willing – to a limited extent – to outline its aims and sources. It is obvious that any institution dealing with intelligence and security matters will attempt to cloak its work in secrecy, and INTCEN is assisted in this by the fact that, as an institution, it lacks a legal basis that outlines not just what the agency should do, but how it should do it. The structure of the EU institutions also means that the future direction of its work remains in the hands of the unelected and largely-unaccountable officials of the Commission, the Council and the EEAS. At the end of 2011, the European Parliament passed a resolution on EU counter-terrorism policy that called for the Commission to:

*Carry out a study to establish if counter-terrorism policies are subject to effective democratic scrutiny, on the basis of publicly available information and information provided by the Member States, including at least the following issues... an overview of the instruments for democratic scrutiny of cross-border cooperation by intelligence agencies, and more specifically of SITCEN, the Watch-Keeping Capability [part of the EU Military Staff], the Crisis Room, the Council’s Clearing House and COSI [Standing Committee on Operational Cooperation on Internal Security]. [30]*

The Commission has yet to act on this request, and is under no obligation to do so.

## Endnotes

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<https://www.consilium.europa.eu/eeas/security-defence/csdp-structures-and-instruments/eu-military-staff?lang=en>

[3] Ibid.

[4] EU INTCCN Fact Sheet, p.1; 'Secret Truth', p.10

[5] 'Secret Truth', p.11

[6] House of Lords Select Committee on the European Union, 'Inquiry on EU Internal Security Strategy', 6 December 2010, p.8, <http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/ISS/cEUF061210ev2ISS.pdf>

[7] Ibid at [2].

[8] 'Secret Truth', p.10, 12

[9] Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU)

[10] Council Decision of 5 June 2000 adopting the Council's Rules of Procedure (2000/396/EC, ECSC, Euratom)

[11] Secret General/High Representative, 'Intelligence cooperation', 15 November 2001, p.4,

[12] Ibid.

[13] 'The Finnish Security Policy 2008-2010',

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[15] MI5, 'Staff and management', <https://www.mi5.gov.uk/home/about-us/who-we-are/staff-and-management.html>

[16] 'Secret Truth', p.17

[17] Answers from the Commission to questions from Martin Ehrenhauser: 25 July 2012 and 16 August 2012:

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<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-006020&language=EN>



[18] European Parliament, 'Forwarding to and handling by the European Parliament of classified information on matters other than those in the area of the common foreign and security policy', 13 September 2012,

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[19] General Secretariat of the Council, 'Access by the European Parliament to classified information in the area of the Common Foreign and Security Policy', 23 October 2012,

<http://www.statewatch.org/news/2012/oct/eu-council-ep-access-class-info-15343-12.pdf>

[20] EU INTCEN Fact Sheet, p.2

[21] Ibid.

[22] 'Secret Truth', p.12; Ibid at [17].

[23] Ibid at [6], p.16

[24] Ibid at [17].

[25] Andrew Rettman, 'What is 'SECRET UE' anyway?', EUobserver, 24 September 2012, <http://euobserver.com/secret-ue/117634>

[26] Sarah Childress, 'What's known about Syria's "murky" opposition', PBS Frontline, 22 June 2012, <http://www.pbs.org/wgbh/pages/frontline/foreign-affairs-defense/syria-undercover/whats-known-about-syrias-murky-opposition/>

[27] 'Secret Truth', p.4, p.12

[28] Plans emerge for the collection of personal data outside European borders to obtain "comprehensive situational awareness and intelligence support", Statewatch News Online, 30 October 2012,

[29] 'Secret Truth', p.18

[30] European Parliament, 'Resolution of 14 December 2011 on the EU Counter-Terrorism Policy: main achievements and future challenges',

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