

THE GREEN AND RED LIGHTS OF THE NEW REGULATION  
ON EUROPOL:  
NEOFUNCTIONALISM AND LIBERAL  
INTERGOVERNMENTALISM

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## Summary

This paper investigates whether the 2016 regulation on the functioning of Europol can best be explained by either of two major conflicting theories of European integration: neofunctionalism and liberal intergovernmentalism. The explanatory power of each theory is tested through a congruence analysis. This analysis is based on the rigorous development and operationalization of the paradigms that each theory presents. The results indicate that neofunctionalism wields a superior degree of explanatory power over the case of the Europol regulation. Specifically, the observations made through this analysis show that neofunctionalism offers accurate predictions of institutional behavior across national and supranational arenas. It successfully accounts for the active role of the European Commission in policymaking, as well as the evolving behavior of the most interested national actors, such as national law enforcement authorities. Neofunctionalism also displays a strong ability to analyze inter-institutional relations, successfully accounting for the role of the European Parliament. Furthermore, this research sheds light on the so-far unexplored role that non-political EU agencies, in this case Europol, take in promoting their own interests in the policy process. The analysis also reflects on the relative potential that liberal intergovernmentalist theory has in analyzing the present case, and comments on what conclusions can be made in terms of the contemporary evolution of EU internal security policy in the post-Lisbon period.

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## List of acronyms and abbreviations

CATS: Coordinating Committee in the area of police and judicial cooperation in criminal matters

CEPOL: European Police College

CMP-EFTA: Committee of Members of Parliament of the EFTA countries

COREPER: Committee of Permanent Representatives

COSAC: Conference of Parliamentary Committees for Union Affairs of the Parliaments of the EU

COSI: Standing Committee on Operational Cooperation

DG COMM: Directorate-General for Communication

ECTC: European Counter-Terrorism Center

EFTA: European Free Trade Area

EPCC: European Police Chiefs Convention

EU: European Union

EUROPOL: European Police Office

EDPS: European Data Protection Supervisor

EP: European Parliament

FBI: Federal Bureau of Investigation

IOCTA: Internet Organized Crime Threat Assessment

IPEX: Interparliamentary EU Information Exchange

IRU: Internet Referral Unit

JHA: Justice and Home Affairs

JIT: Joint Investigation Team

JPSG: Joint Parliamentary Scrutiny Group

LIBE: European Parliament Committee on Civil Liberties, Justice and Home Affairs

QMV: Qualified Majority Voting

OCTA: Organized Crime Treat Assessment

OLP: Ordinary Legislative Procedure

SOCTA: Serious and Organized Crime Threat Assessment

TE-SAT: EU Terrorism Situation and Trend Report

TFEU: Treaty on the Functioning of the European Union

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# 1. Introduction

## 1.1. Introduction to the case: Regulation 2016/794 on Europol

The European Union Agency for Law Enforcement Cooperation (Europol) is the European Union agency dedicated to supporting national law enforcement services and facilitating their mutual cooperation in the prevention of and fight against international crime and terrorism, by providing a forum for information exchange, intelligence analysis, law enforcement expertise and training (European Parliament, 2019). It has its origins in TREVI (*Terrorisme, Radicalisme, Extrémisme et Violence Internationale*), a forum for security cooperation amongst the European Community interior and justice ministers in 1976. The Treaty of Maastricht recommended the creation of a “European Police Office” with a purpose extended from terrorism and cross-border crime to narcotics (European Union, 1992). In 1995, the European Police Office was created under the Europol Convention and fully began its operations in 1999. Following the Treaty of Lisbon in 2009, the European Police Office became the European Union Agency for Law Enforcement Cooperation and was fully integrated into the EU under Council Decision 2009//371/JHA, which replaced the Europol Convention and reformed Europol as a full EU agency, subject to the general rules applicable to all EU agencies. The Treaty stated that “The European Parliament and the Council, by means of regulations adopted in accordance with the Ordinary Legislative Procedure, shall determine Europol’s structure, operation, field of action and tasks” (European Union, 2007). Since then, the agency has seen remarkable growth, from only six employees at its humble beginnings to nearly one thousand today and coordinating over eighteen thousand operations every year in the EU.

In May 2016, the European Union adopted a new regulation aimed at updating the powers and mode of governance of Europol. The full title of the regulation is “*Regulation (EU) 2016/794 of the European Parliament and the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/936/JHA and 2009/968/JHA*”. For the purpose of clarity and conciseness, it will from now on be referred to as “regulation 2016/794”, or simply “the Europol regulation”. These reforms on Europol were proposed and passed in light of the EU’s growing concern with the threat of terrorism, cross-border organized crime and cybercrime (European Commission,

2016). These new elements of Europol's governance are the core of regulation 2016/794: they and the process behind their adoption are the main focus of the present thesis. In terms of Europol's power and freedom as a decentralized EU agency, this regulation has a twofold aim: increasing the effectiveness of the agency through its mandate, as well as enforcing stricter self-control and accountability structures in its governance system. The details of these measures are presented below.

The first important measure contained in Regulation 2016/794 concerns the fight against terrorism, cybercrime and other forms of organized crime. In what was essentially an expansion of its mandate, Europol became better equipped to tackle transnational criminal threats through new rules for itself and its stakeholders. Under this regulation, Europol received the explicit competence and task to "coordinate, organize and implement investigative and operational action jointly with member states" (Europol, 2017). Furthermore, it is now the duty of member states to provide Europol with the data it needs to proceed with investigations, although the Treaty prohibits the agency to force them to do so. This comes after significant information gaps were observed between member states in the fight against terrorism. As Counter-Terrorism Coordinator Gilles de Kerchove stated, 90% of all data contributions to Europol's databases would only come from five member states prior to 2013 (Le Vif, 2016). Europol can now exchange information with private entities like firms and NGOs to expand the range of the available participants to its activities. It also clarified the rules of operation for existing units operating under Europol's watch such as the European Counter Terrorism Center (ECTC) and the European Union Internet Referral Unit (IRU), which can now directly request action or information from social media platforms that could be home to terrorist content. Overall, the EU gave Europol new tools in order to become "the EU's main information hub" in the fight against terrorism and serious organized crime.

As well as containing rules relating to the expansion of Europol's mandate, new safeguards were put in place by the European Union to ensure the protection of personal data and democratic oversight. The European Data Protection Supervisor (EDPS), the independent authority enforcing the EU institutions' respect of citizens' right to privacy and personal data protection, is given the authority to monitor the work of Europol. Furthermore, a clear procedure for complaints by EU citizens was created to prevent abuses of personal data by the agency. The most significant step has to do with democratic oversight. Although the EU legislative

institutions already wielded strong control over the Management Board appointments and budgets of Europol, it was decided that the agency needed an organized method of parliamentary scrutiny. This method was already part of the Treaty of Lisbon, which laid down “the procedures for scrutiny of Europol’s activities by the European Parliament, together with national parliaments” (European Union, 2007). This section of the Treaty had not been on the EU’s agenda since 2010, and the agency therefore needed to be updated. Thus, the European Parliament and member-state parliaments now have a mandate to scrutinize the actions of Europol through a new structure in EU governance: the Joint Parliamentary Scrutiny Group (JPSG) (European Union, 2016). The JPSG is composed of MEPs and selected members of national parliaments and meets yearly in the country holding the rotating Council Presidency. It has, unlike similar, weaker interparliamentary conferences in the EU, “an explicit mandate to scrutinize and an explicit object of scrutiny” in Europol (Cooper, 2018). “Scrutiny”, in this context, is defined as the following: “all actions taken by a parliamentary body in the course of monitoring all aspects and phases of an executive authority’s activities, whether legislative, whether involving policy formulation or implementation, whether or not it involves public expenditure” (Cooper, 2018).

## 1.2. Problem statement and research question

The Europol regulation is a case worthy of significant attention. It has the clear intention to promote augmented powers for one of the major supranational actors in the field of EU internal security cooperation. By achieving this, the EU has shown that it is willing to further integrate the region in one of the more difficult and contentious areas of EU policy. It sends a powerful message: that its priorities in the fight against terrorism and organized crime transcend issues posed by borders, cultures and political systems. At the same time, the regulation contains strict measures to control Europol and its behavior and make it accountable to the democratic institutions of the member-states and the Union. The duality of the issue raises important questions on the recent progress of Justice and Home Affairs (JHA) integration. On one hand, one could think that there is enough trust in agencies like Europol to delegate more administrative and operational powers to it. Yet on the other, the glaring concern for accountability and democratic control suggests that this trust has clear limits and that deepened

integration in this area of policymaking remains a slow and cautious process. This case therefore enters the overarching debate of European integration studies: which interested parties (between supranational institutions and member states) are the drivers of integration? According to intergovernmental scholars, cooperative institutions such as Europol are “tools” that member states create, use and maintain to satisfy their own needs. For advocates of supranational theory, it is supranational institutions, keen to promote their own power and legitimacy, that drive integration and create and expand other institutions. While a basic interpretation of this legislation may suggest that the measures for the accountability of Europol are purely the result of states’ concerns for institutional control and that the measures to expand its powers are the result of a supranational desire for extended influence, a deeper analysis may suggest otherwise. For this reason, this paper will implement an analysis of the adoption of the Europol regulation through the lens of the classical debate on EU integration. Thus, the main question guiding this research is the following:

*Does neofunctionalism or liberal intergovernmentalism best explain the adoption of the Europol regulation?*

This research will be conducted in line with the two major features of this policy: the expansion of operational power and the expansion of political accountability. These decisions are both defining elements of the Europol regulation and need to be studied in relation to each other. They are interconnected and interdependent, as are power and accountability in most political organizations. The case, as well as the theories selected, call for an analysis based on specific predictions of institutional behavior. Thus, this research will try to answer the following sub-questions: Which institutional actors were most heavily involved in the expansion of Europol’s powers? Which institutional actors were most determined to establish stronger political accountability structures for Europol? What was the role of Europol itself in influencing the course of integration on these matters?

### 1.3. Introduction to the relevant legislative procedure

The rules relating to the structure and governance of Europol are governed under the Ordinary Legislative Procedure (OLP), or co-decision procedure: “the European Parliament and

the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks" (European Union, 2007). The Treaty of Lisbon draws the important distinction with "operational" police cooperation, which relates to the "measures concerning operational cooperation between [police, customs and other specialized law enforcement services]" (European Union, 2007). These measures govern the cooperation of these services outside the mandate and administrative structure assigned to Europol, meaning that the cooperation of these independent services is governed separately from Europol, which, post-Lisbon, is a full EU agency governed directly by the EU institutions. "Operational" cooperation, relating to member-state law enforcement, is therefore not governed under the ordinary legislative procedure: "The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament." (European Union, 2007).

A short explanation of the OLP is in order. The OLP, which applies to the present case of the Europol regulation, functions as follows, as explained by Hix and Hoyland (2011). Under the OLP, the Commission submits a proposal to the EP and the Council, and the EP issues an opinion by simple majority. Then, the Commission decides whether to incorporate the parliamentary amendments and sends the revised proposal to the Council. The Council either approves the proposal or amends it, having the ability to amend any possible amendments made by the EP. In the event that the Council adopts all the amendments the proposal becomes law. If the Council adopts a common position that differs from that of the parliament, the proposal goes for a "second reading", where the EP can amend or reject the proposal with an absolute majority vote. If there is no absolute majority to amend or reject, the proposal becomes law. If there is, the Commission issues its opinion and sends the proposal back to the Council. The Council then adopts the amendments by Qualified Majority Voting (QMV) if they are supported by the Commission and by unanimity if there are not; in which cases the proposal becomes law. If the Council and EP texts differ, a "conciliation committee" is established and composed of 27 permanent member state representatives, 27 MEPs and a representative from the Commission. If the conciliation committee fails to agree, the legislation falls through. The way in which the use of the ordinary legislative procedure played out for the case of the Europol regulation will be explained in further detail as part of the analysis in Chapter 6.

## 2. Literature review

This section explores the relevant points of discussion around the case to create a more complete understanding of its context. The first section will explain the sometimes misunderstood contemporary and historical features of international police cooperation and try to position Europol within this field. It will explain the debate surrounding the powers delegated to Europol and how these have changed over time. The second section will summarize the debate around the democratic accountability of Europol and explain how the case will be approached in relation to this debate.

### 2.1. Operational powers in international police cooperation

Transnational crime, by definition, has a complete disregard for national boundaries. Criminal groups are mainly interested in the opportunity to expand their reach to new and available foreign markets that allow them to grow in profitability, power and size. They may be faced with the choice of competing with and eliminating other groups or forming alliances. Either way, large criminal organizations seek to extend their business to new countries, causing a key problem for national governments. Transnational criminal groups challenge the key political and organizational assumptions on which the work of national police forces is founded, and have shown their ability to subvert traditional policing methods by single states. Cooperation is national police forces' response to this problem: they have had to relax their notion of national jurisdiction in order to match the transnational nature of criminal threats (Lemieux, 2010). Police cooperation is defined as the intentional or unintentional interaction between two or more police entities for the purposes of sharing intelligence, conducting investigations and apprehending suspects (Anderson, 1989; Lemieux, 2010; Robertson, 1994). The most commonly cited historical precedent for police cooperation is the cooperative action between nineteenth-century European states in the criminalization and persecution of certain political movements that were deemed dangerous to state stability and public safety, such as anarchism (Deflem, 2004; Gabriel, 2010; Gerspacher, 2008; Jensen, 1981; Liang, 1992). Today, transnational crime includes a wide range of lucrative activities, fraud and threats to public safety. The development of international police cooperation has been a slow and difficult process, first through bilateral contacts, and

progressively moving towards international and regional structures such as Interpol and Europol. It has been made difficult by the variety of national “models” of policing (Lemieux, 2010), concerns for jurisdictional sovereignty (Anderson, 1989; Deflem, 2004) and political rivalries. Nevertheless, police cooperation has evolved immensely since the creation of Interpol in 1923, with the progress of democratic rule, advances in technology and communication, and increased economic and political cooperation (Deflem, 2004; Lemieux, 2010; Robertson, 1994).

Police cooperation agencies have always been the subject of debate over the amount of power that should be handed for them to operate. In an operational sense, police forces are a service that states want to keep total control over. Historical and contemporary police cooperation has always been limited by intrinsic concerns for the protection of national sovereignty. Thus, there have always been fundamental limits to the available powers given to these institutions. No existing police cooperation agency, Interpol and Europol included, has the ability to carry out arrests. Jurisdictional sovereignty is the key to the effectiveness of national police forces, as none of them can tolerate physical operations by foreign police on their territory. Thus, the relationship between states and police cooperation agencies is complicated, especially in the context of an integrated political union like the EU. Europol’s role has evolved since its creation, albeit in different ways. Before the Treaty of Lisbon, the Council expanded the types of crime in which it was competent to include terrorism, Euro counterfeiting and money laundering, and eventually to all areas of international organized crime. The expansion of operational powers was always a more controversial matter, made more difficult by Europol’s legal status. States were reticent to cede any operational powers to Europol, as the agency often suffered from a lack of trust (Busuioc, 2016). While some scholars have referred to Europol as potentially becoming a “European FBI”, such direct operational powers are an unattainable dream even in an area as integrated as the EU. As Brady states, “Europol’s added value to national police forces would be destroyed if the office became a competitor with operational powers” (Brady, 108). It took a lengthy five-year process of national ratification to cede the ability to initiate and participate in Joint Investigation Teams (JIT). Even then, the rate of JIT use remained very low until after 2010, which meant that Europol could not effectively prove its value to national police forces. Europol is also constrained by the level of participation from national law enforcement agencies. In its early years, participation was unsubstantial. Europol was seen as a competitor to national law enforcement agencies, who often chose to exchange

information on a bilateral basis: in 2003, 80% of information exchanges took place bilaterally, outside of the structure provided by Europol. As the agency depends on data being delivered by national police forces, its hands are tied when member-states fail to participate. Different events gave the member-states an impetus to recognize the value of Europol to their own efforts, such as its publication of Organized Crime Threat Assessments (OCTA) since 2006, or the establishment of the Euro. The establishment of a single currency enabled Europol to demonstrate its abilities, as it gave member-states the opportunity to fight counterfeiting on a unified basis, to the benefit of individual police forces. Thus, the effectiveness of Europol has always been dependent on the trust and participation of member-states, which have been slowly growing since its creation.

## 2.2. The debate over the democratic control of Europol

An important dimension of this case is the quest to adapt the governance of Europol into the framework prescribed by the Lisbon Treaty with the creation of the JPSG. When Europol became a full EU agency whose Management Board and budgets became controlled by the EP and the Council, it was decided that these control measures should be accompanied with measures to ensure the accountability of the agency to these institutions, and to the European electorate. This did not simply happen automatically, as there had already been an extensive debate over the lack of democratic oversight of Europol prior to the Lisbon Treaty. This section will explain why the concerns for democratic oversight arose and which actors were most vocal in articulating them.

Between its establishment and the Treaty of Lisbon, Europol had little parliamentary accountability – a fact that animated fierce public and academic debate. In its original conception, Europol was an intergovernmental agency. The main source of authority was the board, composed of member-state representatives and a Council representative, which excluded other supranational actors such as the EP. The budget was funded by member-state contributions. The Council remained the body with the most power over Europol, endorsing the work programme (drafted by Europol itself), approving the draft budget, and dismissing the director. Europol's agreements with third countries, other bodies such as Interpol and international organizations were subject to approval by the Council as well (Busuioc, Curtin, & Groenleer,



2011). The Treaty of Amsterdam gave the Council the obligation to consult the EP prior to taking certain measures regarding Europol. However, the Council failed to fulfill these obligations on twelve of the seventeen occasions in which this was required (Trauner, 2012). For example, after the 9/11 attacks, Europol had concluded a strategic and operational cooperation agreement with the United States to allow the transfer of personal data on EU citizens. The Council had not consulted the EP on these measures despite the EP's fears of a possible violation of EU data protection rules (Trauner, 2012). The EP often complained that consultation was done *ex post*, and that its role depended on the changing "transparency-mindedness of the EU Presidency in charge" (Staten-Generaal, 2002). The lack of accountability to the EP stems from the early design of the agency, as the drafting and negotiation of the Europol Convention was completed without any intervention or opinion from the EP – an event that later became known as an "unfortunate precedent" (Staten-Generaal, 35). This meant that the EP did not receive any powers towards Europol, lacking the ability to request an appearance of the Director and the tools for effective scrutiny. The EP campaigned for several years to be granted some form of control, and its concerns intensified when the idea of establishing Europol as a Community agency was first introduced. It, however, had a clear position regarding the future role of national parliaments: "as a European organ, Europol must be monitored by another European organ -the European Parliament- and not by national parliaments" (Crum et al., 89). In 2001, at a conference organized by the Dutch Parliament, representatives of national parliaments suggested the creation of a parliamentary oversight committee called "PARLOPOL" to overcome information deficits and serve as a basis for the coordination of parliamentary opinions (Crum et al., 2013; Staten-Generaal, 2002). However, national parliaments were never as engaged as the EP in the pursuit of control over Europol, as they had been exercising indirect control through ministers on the Council. Furthermore, Busuioc points out that this indirect control was deemed sufficient by the national parliaments, as they did not usually have control over police matters (Busuioc & Groenleer, 2013). Under the Europol Convention, national parliaments found it a slow and difficult task to ratify the protocols to amend the role of the agency, and therefore supported the conversion of Europol into a Council Decision, which meant accepting EU financing and an increased role for the EP. Garibay states that the process of establishing parliamentary control gradually made its way into the negotiations for the Treaty of Lisbon (Crum et al., 2013) where

the wording was left intentionally vague to leave the design of the parliamentary scrutiny system to a later decision made under the OLP.

The decision to implement a group for parliamentary scrutiny is a part of the Treaty of Lisbon and the debates on Europol that led to it. Following the Treaty, the debate was no longer on whether or not Europol should be overseen by an interparliamentary system, but what shape this interparliamentary system was to take (Crum et al., 2013). This paper will therefore not elaborate on the decisions leading up to the conception of the group, but rather on those leading up to its actual implementation. The implementation of parliamentary scrutiny is a part of the new Europol regulation, and has not yet been the subject of a detailed institutional analysis – a gap that this paper seeks to address.

Overall, this section has demonstrated how and why Europol has faced problems with operational effectiveness and political oversight. As explained in the introduction, these two issues form the core of the Europol regulation. The progression of both political oversight and operational autonomy are the driving forces behind the evolution of Europol and have both taken important steps forward in this legislation. This progression is also the result of variably interested and variably influential actors seeking to influence it. As the signing into law of the Europol regulation is a recent event, these issues have been insufficiently discussed in relation to the legislative process. This analysis will therefore, with the help of the theoretical framework developed in the next chapters, analyze the potentially evolving role of these actors on the policy process with regard to these issues.

### 3. Research design

#### 3.1. Introduction to case study research

Blatter and Haverland (2012) have developed an extensive methodological account of small-N research in the social sciences. They state that the multiplicity and diversity of observations per case makes it possible to connect empirical cases to a rather large set of theories, and for the theories to be connected to different paradigmatic camps. Thus, small-N research is appropriate for comparing divergent theories and potentially useful for reaching new grounds in theoretical innovation. The study of the Europol regulation needs additional attention from a theoretical point of view. As a multidimensional policy issue, one can make a broad array of empirical observations relating to this single case, observations that can then be analyzed in terms of the diverse and developed theoretical frameworks in the field of European integration.

#### 3.2. Research strategy: congruence analysis

This thesis will conduct a congruence analysis. A congruence analysis is “a small-N research design in which the researcher uses case studies to provide empirical evidence for the explanatory relevance or relative strength of one theoretical approach in comparison to other theoretical approaches” (Blatter & Haverland, 144). When using this approach, selected theories lead to sets of specific propositions, which are then compared to a broad set of empirical observations drawn from the case. One theory has stronger explanatory power if deduced implications from this theory and observed evidence from the case wield a higher degree of congruence than is achieved using another theory. The goal is not to attempt to reject or falsify theories through empirical testing, but to use empirical information to judge the explanatory power of a theory in relative terms by comparing these actual observations with expectations derived from another.

There are two main types of congruence analysis: “complementary theories” approaches and “competing theories” approaches. A complementary approach implies that divergent theories lead to complementary implications in the real world and that a plurality of theories can

contribute to more comprehensive explanations of empirical observations. It attempts to challenge dominant theoretical perspectives and promote new ones. Competing theories approaches are more closely related to positivist and realist epistemology, meaning that they have a deeper concern for scientific verification of existing paradigms rather than the elaboration of new ones. The key assumption is that theories lead to contradictory implications in the real world and stand in opposition to each other. The goal is preferably to identify a relatively superior theory in the explanation of a case.

This research will implement a competing theories approach. The case at hand has not been the object of extensive research, let alone theoretical research. This means that there does not exist a “dominant” theoretical framework that one could aim to challenge using a complementary theories approach. While the theories have been selected in terms of their potential explanatory power, the selection of the case allows them to start from an “equal” point of departure, meaning that the use of a competing theories approach is more justified. The use of competing theories aims to test the explanatory power of two theories of European integration, neofunctionalism and liberal intergovernmentalism in the case of the Europol regulation. The choice of these two theories emanates from a careful decision, as they are the two most developed theories of integration and therefore possess large sets of abstract concepts relating to the integration process. The expectations in each theory are the result of a very complete understanding of the most relevant actors in integration, their motivations, and the structures in which they operate. This case study will attempt to stay as true to these theories as possible and make use of the concepts and expectations that best define them in order to evaluate their degree of congruence with the empirical facts of the case. The analysis and its results will be presented as rigorously as possible, using a strict method to measure the strength of individual indicators and providing visual tools to better understand them.

### 3.3. Collection and use of empirical data

This thesis involves a wide variety of sources of empirical data. These sources include newspapers, scientific journals, communications and official reports from EU agencies, interest group documentation, EU treaties and legislation, government reports and communications, as well as polling and voting statistics. Sources have been studied and used to connect the empirical

facts that they reveal with the expectations formulated by neofunctionalism and liberal intergovernmentalism. The development of the theoretical framework for this thesis was done thanks to a wide range of scientific literature from different periods, both from original authors and other scholars. The original literature has been used as much as possible to create the fullest understanding of each theory, but, wherever necessary, literature from other scholars has been used to support the degree of scientific relevance of the different claims. In analyzing questions related to hard policy, official documentation from the EU will be used at length. This includes the main text of the Europol regulation, the original proposal from the Commission, the opinions on first and second reading of the EP and the Council as well as the relevant amendments, the relevant sections of the EU treaties and the various programming documents outlining the policy objectives of the EU institutions. Furthermore, documentation relating to budgetary issues has also been taken into account where relevant to the analysis. Questions relating to domestic issues will be answered using media sources from the largest variety of countries as possible, the results of national referenda on different issues relating to Europol, as well as the results of polls conducted by domestic and international institutions.

## 4. Theoretical framework

### 4.1. Selection and relevance of the theories

The choice of the theories with which to conduct this study was informed by several academic considerations. Although many “post-integrationist” theories, mainly constructivist and sociological, have gained importance since the 1990s and 2000s, there remains an overarching debate in studies of European integration. The competing paradigms in this overarching debate, as explained by Hix et al. (2011) remain the “supranational” vs “intergovernmental” paradigms of understanding integration. In supranationalism, non-state actors like the European institutions or internationally oriented interest groups are considered the main drivers behind European integration. On the other hand, intergovernmentalists firmly believe that integration is a case of member-states designing and maintaining institutions at an international level to suit their own respective interests. Given the recent and relatively unexplored nature of the case, it is important to evaluate the value of the two classical theories of integration that best represent this dichotomy: neofunctionalism and liberal intergovernmentalism.

The changes in EU governance after the Lisbon and Maastricht treaties have created a new dimension to the theoretical debate in the field of JHA. Every treaty since Maastricht has expanded the so-called “communitarization” of JHA policymaking, with the 2008 Return Directive being the first text to be adopted with co-decision between the Council and European Parliament (Bickerton, Hodson, & Puetter, 2015). The expansion of the OLP and the disappearance of the “third pillar” under Lisbon has led scholars to believe that the supranational, and not the intergovernmental dynamic, has become dominant in JHA. Indeed, the EP is seen as the biggest winner, co-deciding in most JHA areas, while the Commission now has two specific Directorates-General of “Justice” and “Home Affairs”. Supranational dynamics have thus been extended to more sensitive fields than had been predicted, even such areas as counterterrorism (Kaunert, 2010). This has led Lavenex and Wallace to claim that current JHA governance is no longer simply the product of intense cooperation among “governmental actors below the level of heads of state and governments, such as ministerial officials, law enforcement agencies and other bureaucratic actors” (Lavenex & Wallace, 469).

Despite the apparent new political reality of the EU, many scholars have put forward the potential value of liberal intergovernmentalism in explaining integration policymaking areas other than the Single Market. Frank Schimmelfennig, a vocal follower of Andrew Moravcsik, explains that his theory was designed when integration was primarily economic in nature. He states that liberal intergovernmentalism had empirically focused on the role of economic interests in integration because that had been the focus of integration in the timeframe “from Messina to Maastricht”, as suggested in the title of the founding book on liberal intergovernmentalism (Schimmelfennig, 2015b). Schimmelfennig emphasizes that “liberal intergovernmentalism does not assume economic interests to be the exclusive source of national preferences and is not limited to commercial and economic integration” (Schimmelfennig, 727). Thus, the theoretical design of liberal intergovernmentalism and its use so far mean that it can be useful in analyses of other areas of EU policymaking than simply economic and commercial ones. As Schimmelfennig states: “there is good reason to elaborate liberal intergovernmentalist theory for the newly integrated policy areas – such as internal and external security policies, immigration and fiscal policy” (Schimmelfennig, 727). Indeed, liberal intergovernmentalism has the potential to make important theoretical contributions to the field of JHA policy. Several scholars have decried the glaring lack of intergovernmentalist analyses of evolutions in the JHA: “The most glaring gap in the current academic literature on EU internal security cooperation is the lack of renewed intergovernmental approaches” (Bossong & Rhinard, 191). Many therefore consider that there is a theoretical gap in which to develop more intergovernmental analyses of internal security integration (Niemann, 2016). The present case provides an opportunity to fill this gap. Internal security issues like those in JHA are indissociably tied to international relations conceptualizations and intergovernmental dynamics because they are shaped by sovereignty-based considerations such as “national interests” and “national power”. Omitting the intergovernmental dimension of European integration makes it very difficult to explain the reasons for increased integration, or, inversely, the resistance to integration in certain areas of policymaking and in the political priorities of certain member states. The case of integration in the Europol regulation is therefore an opportunity to contribute to this ongoing and dynamic debate between supranational and intergovernmental politics, while taking into account the variety of actors described earlier. The following section will explain the origins and reasoning

of each theory. It will also set out each theory's main expectations regarding the integration process, which will lead to the development of a clear operationalization of the case.

#### 4.2. Neofunctionalism

Neofunctionalism is one of the older theories of European integration. It was developed by Ernst Haas in *The Uniting of Europe: Political, Social and Economic Forces 1950-1957* (Haas, 1958). It initially attempted to explain Europe's yet novel experience with supranational cooperation after the Second World War that took place under the European Coal and Steel Community and (ECSC) and the European Economic Community (EEC) (Niemann, 2016). Haas and other theorists like Leon Lindberg sought to create a grand theory that could account for similar processes elsewhere in the world. However, as Europe became the most advanced form of regional integration, neofunctionalism gradually became associated with European integration and is now one of the foundations of theoretical debate in this field. Today, neofunctionalism is still one of the most frequently used theories of European integration. This takes place both in the context of its undeniable contributions to the field and in light of the animated contemporary debate that has seen the development of rivals to classical integration theory.

Neofunctionalism evolved from functionalism, which was more profoundly anchored in normative conceptions of regional integration as an answer to international conflict. While functionalism seeks to advocate conditions that would bring about a fairer and more peaceful world, neofunctionalism is primarily analytical, seeking to understand the reasons for, processes leading to, and consequences of, regional integration (Saurugger, 2013). Neofunctionalism emphasizes the mechanisms of technocratic decision-making, incremental change and learning processes. While the complexity of variables leading to political decisions are taken into account, neofunctionalism seeks to underline the idea that functional interests, not just ideologies, lead to regional integration. In neofunctionalist theory, deeper integration changes the perception and opinions of political elites: both values and interests are gradually redefined in terms of regional rather than purely national orientations. Haas defined integration as:



The process whereby political actors in several distinct national settings are persuaded to shift their loyalties expectations and political activities towards a new center, whose institutions possess or demand jurisdiction over the pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the existing ones.

Haas (1958, 16)

The main underlying assumptions of neofunctionalism are the following. Firstly, neofunctionalists ascribe to the idea that all relevant actors in the process of integration are rational beings. They are able to learn and adapt their behavior, but their behavior is primarily based on their interests. Interest-driven national and supranational elites recognizing the limitations of national solutions provide the key impetus to integration. Secondly, decisions are believed to have unintended consequences: as stated in the “spillover” thesis, neofunctionalists refuse to define a specific path for progress, simply stating that when integration is launched, it is likely to go further and deeper – though in a relatively unpredictable pattern. The final core assumption is that institutions created by integrative measures take on a life and behavior of their own. Over time, they become not only tools for member-states to achieve their goals, but independent actors pursuing their own agendas.

The process of integration that neofunctionalism predicts is defined through two main mechanisms: first, a “positive spillover effect”; second, a “socialization of elites”. Spillover is a key concept, as it encapsulates the perception of political change within neofunctionalism (Haas, 1958). It is a process in which political cooperation conducted with a specific goal in mind leads to the formulation of new goals in order to assure the achievement of the original goal (Lindberg, 1963). Spillover is the result of a convergence of demands within and amongst nations in integrative structures, rather than a pattern of identical demands and hopes. There are three distinct types of spillover: functional, political and cultivated.

#### 4.2.1. Spillover

“Functional spillover” takes place when cooperation in one area “functionally” creates pressure for cooperation in other related areas: further integrative actions become necessary to achieve an established objective (Niemann, 2016). Policy sectors in modern politics tend to be so interdependent that it is difficult to isolate them from one another. European states can therefore agree on integration in a separate area that would facilitate the achievement of the original goal. “Political spillover” takes place in situations where the political process is more deliberated, where national elites and interest groups argue that supranational cooperation is needed to solve particular problems. These groups, through political spillover, realize that problems of substantial interest cannot be effectively addressed at the domestic level. A learning process arises, whereby these groups transfer their political expectations, efforts and loyalties to the European stage. “Cultivated spillover” describes the role of supranational institutions that, seeking to expand their own powers, become agents of integration. This is an idea that is also common in new institutionalism, where institutions can outlast their creators and take on a higher degree of control than their creators intended. The key actor to consider when speaking of cultivated spillover is the European Commission, which is inclined to take positions in favor of further integration (“more” Europe) and ignore arguments that it sees as being in line with national interests. EU institutions, and the Commission in particular, act not only as mediators, but policy “entrepreneurs” during the policy process.

#### 4.2.2. Elite socialization

The “socialization” thesis suggests that actors in the policy process, over the course of integration, will tend to develop supranational instead of national loyalties. Many neofunctionalists have pointed to the proliferation of working groups and committees at the European level, which led to a system of “bureaucratic interpenetration” bringing civil servants from the EU and national governments into frequent and recurrent contact (Niemann, 2016). This environment is conducive to mutual trust and contributes to the development of a newly formed loyalty to the EU and its system of governance. Actors, over time, start to value the patterns, contacts and methods involved with supranational problem-solving. Neofunctionalism

predicts the establishment and stabilization of groups loyal to supranational institutions and holding pan-European ideas.

#### 4.3. Liberal intergovernmentalism

Andrew Moravcsik is the founder of liberal intergovernmentalism, which, since the 1990's, has become one of the most influential theories of the European integration process. The core of this theory is that, unlike neofunctionalism, states, and not institutions, are the drivers of integration: "integration can best be explained as a series of rational choices made by national leaders" (Moravcsik, 1998: 18). The European Union "is best seen as an international regime for policy coordination" (Moravcsik, 1993: 480), where member states are the "masters of the treaty" and enjoy most of the decision-making power and political legitimacy. This theory is based on assumptions of the "rational actor model", in which states behave rationally, calculating the utility of alternative courses of action and choose the one that maximizes their utility under the current circumstances. This is according to the notion of "bounded rationality": in the decision-making process, the rationality of actors is "bounded" by the information they have and the finite amount of time available to make a decision. Thus, states behave rationally according to the circumstances in which they operate. Drawing from liberal theory and IR theory, liberal intergovernmentalism emphasizes the importance of the power and preferences of states. Liberal intergovernmentalism is a so-called "bottom-up" theory: states embody foreign policy goals and state preferences vary in response to shifting pressures from domestic groups, whose preferences are aggregated through political institutions (Moravcsik, 1997). The plurality of domestic actors is taken into account but the state remains a unitary actor on the international.

Liberal intergovernmentalism is organized as a process similar to Robert Putnam's metaphor of "two-level games": states define policy preferences at home, with regard to their domestic political environment (first level), and strike inter-state bargains on the international stage, namely in institutions like the EU (second-level). Moravcsik adds the stage of institutional delegation (3) to those of national preference formation (1) and inter-state bargaining (2). Institutional delegation (through "creation" or "adjustment" of institutions) is the act of securing the outcomes of the previous two processes in the face of potential political uncertainty. This creates a complete process through which integration is achieved. Cooperation, or its failure,

Moravcsik says, emerges only at the end of the multi-causal sequence (Moravcsik, 1998). This sequence is the basis of liberal intergovernmentalist analyses of European integration processes and is used as such in this thesis. This process is explained in further detail below.

#### 4.3.1. First-level games: The liberal intergovernmental model of preference formation

In liberal intergovernmentalist perspectives on European integration, national preference formation is also referred to as the “demand” for integration. In LI, the demands of individuals and societal groups are treated as “analytically prior to politics” (Moravcsik, 1997). Preferences are not, as realists might argue, “monocausal”: subordinate to a single overarching policy concern such as national security (Moravcsik, 1997). The actions of politicians are grounded in domestic and transnational civil society and seen as the aggregation of the tastes, resource endowments and social commitments of these groups. Collective action and political exchange are the means through which the ideational and material interests of different social actors are advanced. These actors act upon social and material incentives for exchange and action: the greater the expected benefits, the stronger the incentive. In the liberal view, the state is the “transmission belt” through which social actors’ preferences are translated into policy. No government, however, rests on universal or unbiased political representation – the institutional structure of each country matters and not all groups are represented equally. Moravcsik determines that even in formally fair, democratic societies, social, political and economic monopolies are able to dominate policy because of a relatively inegalitarian distribution of property, risk and information. Preferences are “issue specific”: the appropriate model of preference formation differs slightly according to the substantive issue. Economic concerns are represented by a balance between specific producer interests (insider business and workers) and the broader interest of taxpayers and actors with high stakes in promoting regulation (Moravcsik, 1998). Producer interests take the lead in areas easily captured by economic interests (such as industry and agriculture) while the others loom larger in more diffuse but salient policy issues like environmental policy, immigration, aid, and, indeed, police and judicial cooperation (Moravcsik, 1993; Moravcsik, 1998; Wiener, Börzel, & Risse, 2019). In the latter case, public interest groups and public opinion at large play a crucial role in preference formation. Economic

interests do not exclusively determine preferences, as the theory also takes into account other, non-economic interests. Moravcsik and other authors have also pointed to the importance of security, or non-economic concerns, in preference formation, which are formed through different domestic actors such as defense, interior and foreign ministers, often building on public opinion and interacting with other domestic elites.

#### 4.3.2. Second-level games: The liberal intergovernmental model of inter-state bargaining

For the “demand” created during the formation of preferences, states find “supply” of integration as a result of inter-state bargaining. Liberal intergovernmentalism employs a bargaining theory of international cooperation to explain the nature of policies that emerge from negotiations among states. Integrative outcomes are the result not just of national preferences, but that of the configuration of preferences of all states: the causal preeminence of state preferences does not imply that states always get what they want (Moravcsik, 1997). During the negotiation stage, states must overcome the collectively suboptimal outcome and achieve cooperation in favor of mutual benefit, but also decide how to distribute the mutual gains of cooperation amongst states (Wiener et al., 2019). Outcomes depend mainly on the relative bargaining power of the states in negotiation. According to LI, in the EU context, the most important factor for bargaining power is “asymmetrical interdependence”: the uneven distribution of benefits from a specific agreement, compared to the benefits of unilateral or alternative options, or “outside options” (Wiener et al., 2019). “Unilateral alternatives and the threat of non-agreement”; “alternative coalitions and the threat of exclusion”; and the “potential for compromise and issue linkages” are the three most important factors with regard to bargaining power according to Moravcsik. This separates states that have the highest need for a specific agreement from those that have the lowest. The more divergent the state preferences, the more asymmetrical the interdependence, and conversely.

#### 4.3.3. Institutional delegation: creation or adjustment of institutions

As a result of inter-state bargaining, states are prepared to reach a substantive agreement that leads to the establishment of institutions or the adjustment of existing ones. This side of the process is poorly represented in the traditional intergovernmental framework, so Moravcsik draws on a “regime-theoretical” account of institutions (drawing from rational and neo-liberal institutionalist theory) to answer the need for an accurate conceptualization of institutions (Moravcsik, 1993; Moravcsik, 1998; Wiener et al., 2019). This leads to a view of institutions as “instruments to cope with unintended, unforeseen, and often unwanted consequences that arise when states commit to coordinate their policies” (Keohane & Nye, 229). These institutions help in solving or preventing problems with defection, non-compliance, oversight and incomplete contracting with commitment to specific procedures. Problems of cooperation and coordination vary on an issue-specific basis, and institutional designs often vary similarly, namely in the distinction of “high” and “low” politics, or with differences in distributional conflict and enforcement methods (Moravcsik, 1998). Liberal intergovernmentalism also takes into account the potential importance of domestic commitment mechanisms. Like all liberal international relations theory, liberal intergovernmentalism considers that the most fundamental guarantee of the stability of policy coordination comes with the adaptation and design of domestic institutions, and not exclusively with the imposition of international norms (Moravcsik, 1998; Wiener et al., 2019). Actors involved can use these domestic institutional tools both to signal and achieve compliance.

## 5. Operationalization

In order to effectively achieve the goals of this research, we must create a clear structure with which to connect abstract concepts from the theories used and the empirical facts of the case. These theories have been chosen because they have contrasting explanations of the processes behind European integration. While decision-making processes that are purely “supranational” would not require any influence from national institutions, purely “intergovernmental” processes do not involve supranational actors. To assess the explanatory value of each, we must first formulate expectations that each theory would have regarding the case. These expectations are simple, falsifiable, and are related to the theories’ conceptualization of integration processes. The act of validating them or disproving them will build an incremental understanding of each theory’s contribution to the case. Each theoretical expectation will be illustrated using a set of indicators. These indicators have been directly taken from the theories themselves, as the “building blocks” of each theory. However, where relevant and reliable, they have also been taken from previous studies that made use of neofunctionalism and liberal intergovernmentalism. The selection and elaboration of these indicators are therefore the result of a careful reading of the theoretical literature and are based on recurrent depictions of how to observe given phenomena.

### 5.1. Neofunctionalist expectations

The next three sections will be dedicated to developing expectations and indicators related to the concepts in the previous section. The first operationalizes the notion of supranational entrepreneurship, while the second and third operationalize two neofunctionalist “learning” processes: political spillover and elite socialization. They are both important to the theory, but their importance has been stressed differently by Haas (1958) and Lindberg (1963).

### 5.1.1. Supranational entrepreneurship

One of the key expectations of neofunctionalist accounts of European integration is supranational entrepreneurship: the idea that the supranational institutions of the EU take a leading role in promoting and achieving integrative outcomes. The main focus of studies of entrepreneurship is the Commission – the main-agenda setter in most areas of EU policymaking. In neofunctionalist theory, the Commission is still the key actor when considering entrepreneurial behavior in EU policymaking. Thus, this section will mainly focus on the behavior and preferences of the Commission in relation to the Europol regulation. Based on a varied range of literature, the following expectation and indicators are therefore formulated to analyze the case:

*NF1: The adoption of the Europol regulation was the result of supranational entrepreneurship.*

- The Commission took advantage of its right of initiative, making the proposal proactively, using specific timing in the proposal and maintaining close ties with the Council Presidency.
- The Commission advocated more integrative measures than the other institutions.
- The Commission had a comparative information advantage over the member states and used it to shape the policy.
- The Commission was able to broker compromises and package deals to achieve its goals.

### 5.1.2. Political spillover

Haas stressed the dynamic of political spillover, the gradual shift of political expectations, efforts and loyalties towards the EU as the result of dissatisfaction with the pursuit of interests in domestic arenas. These individuals and groups therefore not only work more at the EU level but collaborate more with each other and give an extra impetus to the political process. The definition of these groups has evolved with time: while Haas mainly talked of non-governmental elites such as trade associations and trade unions, second-generation neofunctionalists widened their definition to any groups learning to enter the political process at the European level (Schmitter, 1970).



*NF2: The adoption of the Europol regulation was the result of political spillover.*

- Interested national entities were informed and could easily ascertain the benefits of policymaking at the EU level.
- The potential gains from further integration were perceived as high by national entities.
- These entities sought interaction with the Commission.

### 5.1.3. Elite socialization

The socialization of elites is the process by which actors involved in the policy process in the EU, including bureaucrats, interest groups, MEPs and Council ministers, gradually develop supranational allegiances to the EU through exposure to norms, social contacts and values that define the EU policy process. The organization and logic of social interactions affect behavioral practices, norms about appropriateness and preferences about outcomes, which are internalized by various actors (Beyers, 2005). The following expectation and indicators are formulated in relation to the case.

*NF3: The adoption of the Europol regulation was the result of socialization processes.*

- The individual and institutional actors involved developed relationships that were conducive to policy change.
- The relevant working groups and committees worked effectively and in harmony.

## 5.2. Liberal intergovernmentalist expectations

The following three sections will follow the progression of integration laid out by liberal intergovernmentalism and accordingly develop a set of indicators to test the accuracy of the theory. The first will gather evidence of the construction of national preferences in member states in the way that the theory predicts. Then, the second section will determine whether the policy was the result of inter-state bargaining. Finally, the third section will examine the degree of delegation to determine whether the course and result of negotiations impacted the new of adjusted institutions.

### 5.2.1. National preference formation

In LI, the first step to regional integration is the definition of national preferences. The interaction between national governments and their domestic constituencies is the driver behind the development of these preferences. At home, several groups and actors may have influence over their governments. Preferences are “issue specific”: the appropriate model of preference formation differs slightly according to the substantive issue. Because this issue area is primarily non-economic, the actors identified by Moravcsik that are relevant to such issues will be analyzed. In issues relating to JHA policymaking, Moravcsik considers domestic actors such as defense, interior and foreign ministers, who often build on public opinion and interact with other domestic elites. The following expectation and subsequent indicators have been formulated for the case in relation to national preference formation.

*LII: Domestic pressures on individual governments defined their national preferences in relation to the Europol regulation.*

- Interested domestic groups and institutions had specific preferences relating to the Europol regulation.
- The power and resource endowment of these groups influenced their ability to communicate their preferences.
- These actors voiced these preferences to their governments through domestic channels of communication.

### 5.2.2. Inter-state bargaining

The second stage of integration in liberal intergovernmentalism logically follows that of national preference formation. It is the stage in which national preferences are represented by their respective governments in the international arena. The position and behavior of states in negotiations is determined by national preferences. Asymmetrical interdependence means that the states with the most intense preferences regarding the issue will take a more active role in promoting it, and the states with the least intense preferences will be less proactive in the

negotiations. The attractiveness of unilateral alternatives to agreement is another basis for the outcome of negotiations.

*LI2: The process and outcome of the Europol regulation was determined through bargaining between national governments, along the lines of asymmetrical interdependence.*

- The negotiations were initiated by the most interested governments.
- The behavior and positions of states reflected the degree of attractiveness of unilateral alternative solutions to the agreement or that of the status quo.
- The evenness or unevenness of the distribution of benefits determined the course of negotiations.

### 5.2.3. Institutional delegation

The last step in the process laid out in liberal intergovernmentalist theory is institutional delegation. As a result of agreements emanating from inter-state negotiations, institutions are established or adjusted to “cope with unintended, unforeseen, and often unwanted consequences that arise when states commit to coordinate their policies” (Keohane & Nye, 229). Actors are faced with potential problems related to defection, non-compliance and oversight. The degree and nature of institutional delegation or adjustment is partly based on the identification of the actors that may commit breaches in the future and are a reflection of perceived uncertainty amongst actors. In cases of heavy delegation, governments try to remove future issues from the varying influence of domestic politics which can build up pressure for non-compliance. The following liberal intergovernmentalist expectation and indicators will attempt to reflect this.

*LI3: The Europol regulation contained a degree of institutional delegation which reflected the concerns of the negotiators.*

- Negotiators identified the actors most likely of committing non-compliance.
- Negotiators designed the agreement with the possible non-compliance of these actors in mind.
- The degree of institutional delegation reflected the areas of agreement between states.

## 6. Empirical analysis

As multiple theoretical expectations have been laid out, this section will now seek empirical evidence of each indicator in order to incrementally determine the level of congruence with the theories. It will attempt to make connections between what neofunctionalism and liberal intergovernmentalism predict in terms of institutional behavior and the empirical facts from the case.

### 6.1. Neofunctionalism

#### 6.1.1. Supranational entrepreneurship

This section will evaluate the evidence contributing to expectation *NFI*, which evaluates the degree of supranational entrepreneurship in the case of the Europol regulation. This expectation is made up of four falsifiable indicators: the European Commission's entrepreneurial behavior prior to the proposal and in writing the proposal, the comparative information advantage of the Commission and the brokering of compromises and package deals with stakeholders. The purpose of this section is to analyze institutional behavior to provide evidence for the verification or falsification of these indicators in the present case.

One of the tools that can be used by the Commission in determining the appropriate timing of proposals is public opinion. The Commission is indeed the EU institution in charge of gauging EU-wide public attitudes on wider or specific questions through the Directorate General for Communication (DG COMM). The DG COMM conducts a wide variety of polls through the Eurobarometer to determine the popularity of existing EU policies and the citizen's demand for new ones. As part of its entrepreneurial behavior, the Commission will often call upon the polling data provided by the Eurobarometer to design and justify the content of its proposals (Toshkov, 2011). There is evidence to suggest that the Commission was aware of specific concerns in EU public opinion and that it consciously took account of them in drafting the proposal. Its objectives for increased cooperation on matters relating to police cooperation (organized crime, terrorism, cybercrime and human trafficking) appeared to have been voiced consistently over several years leading up to and following the proposal in March 2013. The EU population, in these polls,

showed that various security concerns were becoming a more important part of their lives and political priorities. According to the Eurobarometer, terrorism and organized crime represented both the largest and fastest growing threats perceived by the EU population between 2011 and 2017 (European Commission, 16). In 2011, 58% of Europeans considered terrorism a “very important security challenge” to the EU. This number rose to 65% in 2015 and 76% in 2017 (European Commission, 2017). This substantial increase is without a doubt related to the multiplication of terrorist attacks on EU soil, namely in 2015 and 2016. While the rate leading up to the proposal in 2013 was already high, the vastly increasing saliency of the issue meant that the Commission was able to advocate for increased action in the fight against terrorism and organized crime both in the proposal for the Europol regulation and during the legislative process. In the proposal, it cited the 2011 and 2012 Eurobarometer reports on cybersecurity, terrorism and organized crime to establish a credible context for the regulation (European Commission, 2013b). The makeup of public opinion in the EU went beyond simply identifying perceived threats. The Eurobarometer reports also revealed that promoting efforts for increased EU cooperation in security matters was a very popular idea as well. It appeared that EU citizens had trust in the EU institutions to tackle these problems. Citizens were asked what institutions should have a “very important role” in ensuring the security of citizens in their countries (issues mentioned were organized crime, terrorism and cybercrime). There were wide variations in different countries, corresponding to different factors including the level of trust in their own institutions. Unsurprisingly, the police were the institution that was most seen as having to take “a very important role” in the security of citizens: the EU average for this answer was 68% in 2013 and 2014 (European Commission, 2015). However, alongside other national institutions (including armies and judicial systems), a relatively high rate of respondents (32%) stated that the EU’s institutions and agencies should play a very important role, with 37% of respondents stating that they should play a “fairly” important role (European Commission, 2015) in ensuring the safety of citizens. This suggests that public opinion was orienting towards accepting the EU as an important actor in security policy. Furthermore, in a report on “Awareness of home affairs” conducted in 2011 and 2012, the following statement was shown to respondents: “The EU institutions and governments of the member states should work more closely together [to fight terrorism and organized crime]”. When asked for their opinion on this statement, 91% of respondents stated that they “totally” or “tend to” agree (European Commission, 2012). Thus,

public opinion was vastly in favor of promoting cooperation between national institutions and the EU in the fight against terrorism and organized crime. This shows that existing institutions with this specific purpose, such as Europol were likely to be supported in order to address priorities so high on the public's agenda. Therefore, the polling data shown here not only demonstrates the high level of importance of terrorism and organized crime for the public in the EU, but also shows that the public strongly favored integrative solutions to these problems. Even if the Commission did not refer to all of the studies shown above, it is clear that the political environment was favorable to it making the proposal.

By analyzing the documents published by the different Council Presidencies, one can determine the level of alignment between the Commission's priorities and those of the Council Presidency. The Council Presidency rotates every six months and is responsible for the functioning of the Council. It determines the order of discussions for propositions made by the Commission. The member state holding the Council Presidency at the time of the Commission proposal (March 2013) was the Republic of Ireland. It was followed by Lithuania (July 2013 - December 2013), Greece (January 2014 - June 2014) and Italy (July 2015 - December 2015). In its programming document, the Irish Presidency cites the objective of strengthening law enforcement cooperation, stating that it would focus on proposals designed to tackle terrorism and organized crime (Irish Council Presidency, 2013). However, it did not specifically support any measures directly relating to Europol. The Lithuanian Presidency, however, set out an extensive agenda for JHA reform. It sought to "enhance the efficiency of EU law enforcement agencies, helping member states to combat serious cross-border crime and terrorism" (Lithuanian Council Presidency, 2013). As the proposal for the Europol regulation had already been presented, Lithuania professed strong support for the advancement of the new policy: "the Presidency will seek substantial progress in discussing a proposal regarding a Regulation on the European Union Agency for Law Enforcement Cooperation" (Lithuanian Council Presidency, 2013). At the LIBE Committee hearing on the EP opinion, the representative of the Lithuanian Presidency stated that they "had been working to find as many compromises as possible in the Council", hoping that the incoming Greek Council Presidency would "be ready to enter into dialogue and to reach results" (European Parliament, 2013). The Greek Presidency indeed put this legislation high on its list of priorities in its programme: "The Presidency also intends to further promote the discussion on the proposal for a Regulation concerning [Europol], with the

purpose of achieving conclusion of discussions at working party level” (Hellenic Council Presidency, 2014). It also expressed its interest in promoting the collection and exchange of information between member states in the context of police cooperation, as did the Italian Presidency (Italian Council Presidency, 2014). The detailed negotiations in the Council will be examined later on, but it can be stated that the Commission, as the agenda setter and main executive, benefited from the support of the relevant Council presidencies over the course of the legislative process.

The available evidence suggests that the Commission took a more integrationist position than the other institutions in drafting the proposal. Based on a close reading of the proposal, one can observe that certain propositions made by the Commission were fully rejected by the EP and the Council. One such example was a proposed merger of the European Police College (CEPOL), which has the purpose of training European law enforcement officers, with Europol, in line with the Commission’s objectives for the efficiency of EU agencies (European Commission, 2013b). The proposal refers to the Common Approach on decentralized EU agencies which notes that “merging agencies should be considered in cases where their respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure” (European Commission, 2013b). The proposal is accompanied by a general impact assessment of the proposed merger which notes its alignment with the Common Approach, as well as the projected budgetary impact of the merger. It states that the relocation of CEPOL at the current Europol headquarters and the administrative merger of the two agencies would “create important synergies and efficiency gains ... help identify training needs, thus increasing the relevance and focus of EU training, to the benefit of EU police cooperation overall” (European Commission, 2013a). The impact assessment notes that the budgetary savings of eliminating CEPOL would be a significant €17.2 million over the period 2015-2020 (European Commission, 2013a). However, the Commission stated that the budget increase necessary to proceed with the administrative merger was difficult to predict given the budgetary responsibilities of the EP and the Council (European Commission, 2013a).

Generally, this measure is in line with the Commission’s will to increase the EU’s engagement in the fight against organized crime and terrorism, and although it may seem that the proposed elimination of CEPOL would mean a decreased level of action, its plans were to eventually expand the EU’s activities in the field and promote a higher level of ambition for EU

policy (European Commission, 2013a; European Commission, 2013b). As soon as the first reading, the EP and the Council made it clear that there would be no merger between Europol and CEPOL. In a press briefing, the Council noted that “an overwhelming majority of delegations were opposed to the CEPOL merger, and all dispositions relative to this proposal will be deleted from the legislation”(Council of the European Union, 2014). The EP refused to take integrative measures for CEPOL and Europol, insisting that “Although [CEPOL and Europol] both relate to policing, they have very different objectives and tasks when it comes to cooperation in the European area of freedom, security and justice” (European Parliament, 2014b). The EP and Council also stated that the regulation should focus on more urgent priorities, citing the “non-essential role” of CEPOL to European law enforcement efforts and to national police forces, which were deemed to have sufficient institutional structures in place (European Parliament, 2014b; Paun, 2017). The CEPOL merger quickly became representative of other disagreements between the EP and Council and the Commission.

With regard to the rules relating to the expansion of operational powers, the proposal made the important call that “Europol should be able request member states to initiate, conduct or coordinate criminal investigations in specific cases where cross-border cooperation would add value” (European Commission, 2013b). This was a significant proposed step forward in terms of Europol’s autonomy. The EP, concerned with the overarching issue of legitimacy, amended the recital to add the obligation that not only should Europol always notify Eurojust of the request but should also “justify the request” (European Parliament, 6). This amendment indicates that the EP was endorsing the measures proposed by the Commission relating to the expansion of Europol’s authoritative powers – an objective in which the two institutions were in line with each other. However, it also shows that the EP was wary of accompanying such measures with consistent, albeit small and incremental, improvements in Europol’s accountability to democratic and judicial authorities - in this case, Eurojust. Moreover, the EP requested that Europol keep a record of collaboration in the operation of JITs targeting criminal activities falling under its mandate – a request that the Commission had not voiced anywhere in the proposal. Similarly, the EP introduced an amendment stating that whenever cooperation was initiated, “clear provisions should be drawn up between Europol and those member states involved, outlining the specific tasks, ... the degree of participation with the investigative or judicial proceedings of the member states, the division of responsibilities and the applicable law



for the purposes of judicial oversight” (European Parliament, 7). This amendment specifically concerns judicial legitimacy towards the member state law enforcement and judicial systems, by planning out a procedure to keep track of all relevant legal features of operations. Again, the Commission had introduced no such provisions in the proposal.

The EP was very wary of the necessity to establish strong new rules for the processing of personal data of EU citizens. This meant establishing clear limits on Europol’s capabilities and strengthening the role of the EDPS. In its will to reinforce the checks and balances of Europol, the EP proposed that not only should Europol “be able to process data provided to it by member states, third countries and Union bodies” (European Commission, 2013b), but do so “only as long as Europol can be considered to be lawful recipient of that data” (European Parliament, 10). It also insisted that “the principle of proportionality must be observed with regard to personal data processing” (European Parliament, 10). Proportionality is a general principle of EU law by which authorities must strike a balance between the means used and the intended aim (EDPS, 2017). By reaffirming it, the EP made an important clarification of Europol’s boundaries in data processing. Additionally, the EP specified why stakeholders should be able to determine the purpose of their data-sharing: “Purpose limitation contributes to transparency, legal certainty and predictability and is of especially high importance in the area of police cooperation, where data subjects are usually unaware when their personal data are being collected ... and where [data processing] may have an very significant impact on the lives and freedoms of individuals” (European Parliament, 11). This caution was even clearer when dealing with the issue of data on non-perpetrators. While the Commission advocated that personal data processing on victims, witnesses, minors and other relevant non-offenders should only be done if “strictly necessary for preventing and combating crime” (European Commission, 2013b) within Europol’s objectives, the EP, citing the absolute need for the privacy and protection of these persons, specified that Europol should unequivocally be barred from doing so (European Parliament, 17). It also specified a maximum three-year period for the storage of all personal data. One of the most important issues for the parliament in the pursuit of strong data protection measures was strengthening the role of the EDPS in relation to Europol. The EDPS is the main independent supervisory authority of the EU that ensures that European institutions and bodies respect the right to privacy and data protection when they process new data and develop new policies. The EP opinion on first reading contained many provisions calling for more systematic

interactions between Europol and the EDPS. While the proposal had clear standards for the prescribed role of the EDPS, stating that it should “monitor the lawfulness of data processing by Europol exercising its functions in complete independence” (European Commission, 2013b), the EP decided to impose much more detailed data protection requirements for Europol. While the proposal did not detail any conditions for the sharing of personal data between institutions, the EP stated that “The EDPS should ensure that [the exchange of information with other Union bodies] concerns only persons who have likely committed or are thought likely to commit offences in respect of which Europol has competence” (European Parliament, 13). This was one of the measures designed to keep Europol from overstepping its mandate through one of many of its methods for collecting data (not exclusively from member states but also from institutions). Further data protection rules related to Europol’s ability to negotiate international agreements with third parties – a power that was seen as a potential threat to the protection of EU citizens’ personal data. The EP insisted that the EDPS be consulted “in a timely manner before and during the negotiation of an international agreement ... and in particular before adoption of the negotiating mandate as well as before the finalization of the agreement.” (European Parliament, 67). Europol was also required to make a publicly available list of all such agreements.

Any propositions for the future design and functioning of the JPSG were completely absent from the proposal. The Commission deemed that future parliamentary matters should be left to parliamentary authorities, and as a result the EP was entrusted in drafting the design of the JPSG in its opinion on first reading. In Amendment 3, the EP insists on justifying the purpose of the JPSG, stating that its role is more specifically “to enhance the democratic legitimacy and accountability of Europol to the European citizens” and that “it is important to highlight the specific goals of Europol parliamentary scrutiny” (European Parliament, 2). The JPSG was proposed to be “established within the competent committee of the European Parliament, comprising the full members of the competent committee of the European Parliament and one representative of the competent committee of the national parliaments for each member state” (European Parliament, 91). Its main purpose was to ensure the correct application of the regulation, in particular with regard to the protection of fundamental rights and freedoms of natural persons and making sure that Europol never overstepped its mandate. The objective was to achieve this through strict and consistent parliamentary accountability. The duties of the JPSG were the following (from the amendments, summarized):

- a) Request the appearance, at least once a year, of a representative from the Commission, the Executive Director and the Chairperson of the Management Board to discuss matters relative to Europol;
- b) Request the appearance, at least once a year, of the EDPS to discuss the protection of fundamental rights and the protection of personal data in relation to Europol's actions;
- c) Request the presentation of the draft annual and multiannual work programmes; the consolidated annual activity report of Europol's activities, the annual report of the EDPS on the supervisory activities of Europol and the Commission report on the effectiveness of Europol;
- d) Request the appearance of selected candidates for the post of Executive Director or an Executive Director whose term is to be extended and provide a notification and justification of an Executive Director being removed.

(European Parliament, 2014a)

These propositions for the JPSG are almost identical to those in the Europol regulation. They reflect all of the objectives of the EP in relation to the regulation. Firstly, the establishment of Europol as a fully funded agency had to be accompanied by strict measures for parliamentary control of every aspect of its work. This scrutiny would take place through an examination of internal and external reports and other documents, the recommendation of Executive Directors to the Council, and the testimonies of all relevant actors including important neutral ones such as the EDPS. Secondly, regarding operational powers, the EP showed itself to be much more cautious than the Commission in delegating new autonomy to Europol. When it did delegate it new powers, it was very careful in accompanying them with strict checks and balances with the EDPS as well as intrinsic rules in how it could gather and use data. The Commission was still able to assert its own preferences, as the final legislation does not require one of its representatives to appear alongside Europol officials in front of the JPSG, as proposed by the EP.

Some countries have entertained special status in relation to JHA affairs and to Europol. In 1992, voters in Denmark voted to reject the Maastricht Treaty in a referendum. Subsequently, the European Council held a meeting in Scotland in which the Edinburgh Agreement was reached, granting Denmark exceptions to four components of the Maastricht Treaty so that it too could eventually ratify it. These exceptions were the Economic and Monetary Union (EMU), the

Common Security and Defense Policy (CSDP), the citizenship of the European Union and, finally, Justice and Home Affairs. The opt-out exercised by Denmark was written into the treaty, more specifically into an annex under “Protocol (No22)” (European Union, 2007). Denmark had chosen to join Europol at its inception in 1998, when the agency was not yet under full EU control. Danish police, by all accounts, strongly valued the country’s membership in Europol. As a country with persistent concerns for terrorism and immigration, Denmark was relying heavily on the data provided by Europol and the ease of communication it promoted with neighboring countries. In fact, it was revealed that Denmark’s police was by far the top beneficiary of the Europol Information System, using the system two hundred times a day – representing every fifth search of the database (The Copenhagen Post, 2015). Furthermore, the authorities had grown to value the role they played in decision-making and in the design of investigations (The Copenhagen Post, 2013).

The Lisbon Treaty changed the status of Europol from an intergovernmental organization to a full EU supranational agency falling under the JHA framework (European Union, 2007). It also modified the protocol for the Danish opt-out, extending it to the areas of police cooperation and judicial cooperation in criminal matters (European Union, 2007). Therefore, while the new Europol regulation was being devised, it became clear that unless it abolished its JHA opt-out, Denmark would no longer have a mandate to remain in Europol (Sorensen, 2015). Officials from the Rigspolitiet and the Danish government were fearful that an exit could “isolate Denmark in the fight against crime and terrorism” (Sorensen, 2015). A referendum was held in December of 2015 on whether to abolish the opt-out and subsequently become a full member of Europol. Against all predictions, the Danish people rejected the proposal by 53.1%, meaning that the country was faced with an exit (Danmarks Statistik, 2015). Danish officials, aware of the necessity to remain as close as possible to the agency, took steps to negotiate a deal with the Commission as soon as the results of the vote were known. It was also in the Commission’s interest to ensure the integrity of EU efforts for crime and terrorism, so it was willing to enter a comprehensive deal to prevent Denmark being left out of the information loop (Montesquieu Instituut, 2017). Danish PM Lars Løkke Rasmussen stated that although the country had “thrown away the keys to the front door, the agreement would go through the back door”(Morgan, 2017). The agreement was completed and signed just two days before the regulation would be enforced and Denmark complete its exit. In a statement, Commissioner for Migration, Home Affairs and

Citizenship Dimitris Avramopoulos and Commissioner for the Security Union Julian King stated: “The greatest efforts were made, led by President Juncker, to agree on operational arrangements minimizing the negative impact of Denmark's departure from Europol”, and that the agreement was a “tailor-made arrangement allowing for a sufficient level of cooperation ... fully in line with European data protection rules.” (Montesquieu Instituut, 2017). The main components of the operational agreement were that Denmark would hold the status of observer state and be able to participate in high level meetings, without voting rights, and would be given 24/7 access to the Europol database. Unlike a third country, Denmark would not have to deliver explicit reasons as to why they required certain data. It was also given access to the joint investigation teams that Europol could now direct on the basis of the Europol regulation. The Commission planned for the agreement to be reviewed in 2020 and made an extension dependent on Denmark’s continued membership in both the Schengen area and the EU. In the event of an imminent disruption of EU policy, the Commission was a highly cooperative actor in that it ensured that Denmark kept the most important benefits from Europol –access to EU criminal data- while imposing reasonable limitations and conditions that would ensure approval from the EP and the Council. It showed its ability and willingness to negotiate a compromise in the context of disagreements arising from the heightened levels of integration prescribed in the Europol regulation.

The Commission used a wide variety of information in writing the proposal for the regulation, as shown by the abundance of data provided through the Eurobarometer. It also collaborated with Europol in gathering data relevant to identifying the priorities of EU law enforcement. This data came largely from the wide variety of reports compiled by Europol, including the Internet Organized Crime Threat Assessment (IOCTA) reports conducted on the threats posed by increases in cybercrime, the Serious and Organized Crime Threat Assessment (SOCTA) that Europol has been compiling since the early 2000s to identify trends in EU-wide organized crime statistics, and finally the EU Terrorism Situation and Trend Report (TE-SAT), giving an overview of terrorist threats and trends every year. These publications, along with the Eurobarometer reports, are made public as soon as they are published by Europol, to match its set standards for transparency. They were therefore not exclusively visible or available to the Commission. Only the impact assessments relevant to the CEPOL merger and the regulation as a whole were for exclusive consultation by the Commission prior to the date of the proposal.

Therefore, the evidence to state that the Commission benefited from asymmetrical information advantages over other institutions and member states is very negligible.

Overall, this section of the analysis has demonstrated a high level of congruence between the case and expectation *NF1*. It has shown that the Commission was very aware of how to time the proposal. It was able to use evidence of significant public opinion trends to make the proposal at a time when the issues of terrorism, organized crime and the need for common solutions was particularly salient. It was also able to benefit from substantial political support from the rotating Council presidencies and had well aligned agenda-setting priorities with them. Its entrepreneurial behavior is further proven true when analyzing the content of the proposal in relation to the opinions from the EP and the Council: certain integrative measures like the CEPOL merger were completely taken off the table, while the EP was very cautious in delegating new operational powers to Europol. The EP also made sure to take strong first positions for its own discretion in relation to the design of the JPSG, while the Commission only showed its commitment to the “Lisbonization” of the Europol regulation. Finally, the Commission did not benefit from any significant information advantages, although this is only a small variation in otherwise fervently entrepreneurial behavior. Therefore, three of the four indicators designed to gauge the level of supranational entrepreneurship by the Commission have been convincingly validated.

#### 6.1.2. Political spillover

This section will gather evidence to confirm or falsify expectation *NF2*, relating to the process of political spillover. Political spillover is the process by which national entities gradually shift their efforts towards supranational institutions, who they believe can generate more effective political change in their interest. This section will attempt to find changes in the behavior and sphere of activity of these individuals and groups. Three indicators have been developed through which to achieve this, namely: the information about, and perception of, gains from the Europol regulation, and the activity of public and/or economic interest groups at the level of the Commission in relation to these gains.

The relationship between national law enforcement authorities and Europol is now established (Wood, 2018). Over time, the activities of Europol and its ability to feed national law enforcement with information that is crucial to fighting crime at home has become valued, and

the effects of European intelligence sharing for national police forces in palpable. Although they may not unconditionally support the strengthening of Europol (national law enforcement and EU agencies need to preserve clear jurisdictional boundaries), it has become clear that they can ascertain, especially in recent years, the benefit of furthering new Europol initiatives, especially if they are designed according to their demands. The evidence shows that national law enforcement authorities showed interest in endorsing features of the Europol regulation. One of the platforms through which the representatives of European law enforcement agencies could advocate for EU policy was through international meetings like the European Police Chiefs Convention (EPCC), which takes place annually. The EPCC is one of the few arenas of political representation for law enforcement agencies in which they can freely voice their advocacy or opposition to international policy solutions. Although these meetings are mostly chaired by Europol, the different delegations speak with separate voices and frame their opinions within the needs and concerns inherent to their domestic security contexts. In the present case, the EPCC was one of the few arenas in which delegations of police forces were able to communicate and seek the attention of the EU institutions, the Commission in particular. One of the key themes of police forces' advocacy towards the EU was the need for an international structure for the control of terrorist content online. A working group involving a majority of delegations highlighted that the global reach and decentralized structure of the internet fit the transnational nature of terrorism (Europol, 2015). Police forces, who saw themselves as having to constantly catch up to the digital capabilities of terrorist groups, made this a priority in the future evolution of Europol's mandate. The Belgian delegation, led by now Europol Executive Director Catherine De Bolle, manifested its interest in promoting EU efforts to control the spread of terrorist and extremist content. It stated that the process of requesting the removal of content between individual states and internet companies was long and grueling, with little real incentive for the companies to act rapidly. Thus, it endorsed EU level solutions about which the Commission and Europol had communicated. "Terrorist messages and images can still be easily spread through social media and [Belgium] would therefore like the support of many other countries to go to providers at an international European level to remove that content from the Internet", De Bolle stated (RW.ERROR - Unable to find reference:137). The Danish delegation took the floor to voice similar concerns about the need for a common front for the removal of internet content. It corroborated the claim made by visiting Federal Bureau of Intelligence (FBI) director James Comey, who had stated that social

media use and the intensity of radicalization in the United States were strongly correlated according to FBI research (Europol, 2015). Following the terrorist attacks in France, the French chief of police pointed out that the perpetrators were “home grown terrorists, who acted alone ... with ideological rather than structural connections to recognized terrorist networks, influenced by violent propaganda circulating on the internet” (Europol, 2015). This issue of “internet referral” was one of the most salient for national police forces. As predicted by Piquet, while there are differences in the security and criminal contexts of each country and their influence on law enforcement priorities is always variable, police forces seek international assistance when trying to tackle issues that are difficult or impossible to deal with on a purely national basis, or where the asymmetries of existing infrastructure are too great to coordinate on a country-by-country basis (Piquet, 1194). The removal of criminal content online is a perfect example of this and was therefore of prime importance for police forces advocating EU-wide solutions.

Interest group activity in the traditional sense of the term is generally less intensive in JHA matters than in, for example, Single Market issues. Groups representing non-economic or public interests may be less powerful and less institutionalized than economic interests. However, public servants such as the police are represented through trade union groups that establish contact with the Commission. This is visible in the way in which police interests were represented in the EU. When searching for specific interest groups advocating in a certain area of policy, researchers strive to make use of the Commission’s transparency and refer to the Commission Transparency Registry for Interest Groups. The main official advocacy group representing police forces at the Commission level is the European Confederation of Police. It represents the interests of more than 500,000 police officers in 26 European countries. Its main tasks are to ensure that European police are given a safe working environment, social rights and adequate tools (EuroCOP, 2018). Their advocacy is therefore done on the basis of labor rights, but not on the basis of increased political mandates for their agencies or for European structures that support them. Upon the author’s request, a list of meetings between EuroCOP and the Commission was provided. Any meetings that may have taken place in the period around the proposal would have been of interest to this research. However, no meetings with the Barroso Commission were reported, and the only other meetings taking place in the relevant period of time regarded matters unrelated to the Europol regulation, instead pertaining to issues of labor



rights and social representation for individual police forces (European Confederation of Police, 2019). What this means is that although police forces have a channel of communication to the Commission, it is one that is limited in terms of resources, depth of policy areas and influence.

This section has examined evidence contributing to the expectation *NF2* that nationally based interests “spilled over” to start representing themselves at the EU level rather than at the national level. Here, the main parties seeking increased integration were those heavily associated with the potential benefits of the Europol regulation – in particular to the expansion of Europol’s operational powers. Police forces have been increasingly benefiting from information and operations conducted by Europol, and therefore had experience as to what to expect were the agency to receive an increased mandate. Therefore, they took the opportunity to communicate what priorities they thought should be included in the regulation – in particular the creation of an international structure for the referral of terrorist propaganda online. However, neofunctionalism predicts that national entities seeking to achieve their goals at the level of EU policy will see the Commission as the most useful actor to approach. Because of the restricted means of lobbying available to individual police forces and the specifically union-based approach of public sector interest groups such as EuroCop, the law enforcement authorities of interested countries communicated their preferences on the future of the Europol regulation through other means, including through conventions chaired by Europol itself. Therefore, the expectation of political spillover can only be partially be validated in this case.

### 6.1.3. Elite socialization

Socialization is an important feature of neofunctionalist theory. It fits well within its conception of long-term developments in the relationships between institutional actors at the EU level. This section will analyze the evidence contributing to the claim that the adoption of the Europol regulation was the result of socialization processes, a theoretical expectation laid out in *NF3*. It will determine the nature of the relationship that actors entertained with each other, and in particular with Europol itself. It will also evaluate the way in which the working groups and committees behaved and negotiated. The idea of socialization is grounded in a more long-term approach to integration and is less associated with case or time-specific processes. Thus, where necessary, this section will adopt a slightly broader and more contextual view of the Europol

regulation to understand the potential importance of these predicted social dynamics within the case.

The relationship between Europol, its various principals and the public has arguably gone through significant changes. It has become clear that member states have come to value Europol as an entity and have developed close ties with it. This is shown in the statistics published by the agency as well as in the development of more organic relationships. For example, in 2017, Europol was conducting almost ten times the amount of investigations that it was conducting in 2010 (Europol, 2017). Europol's reports show consistent increases in the size and scope of their databases, increasing the data provided and used by member states (Europol, 2014; Europol, 2016). Europol is also an organization that has become increasingly communicative and available to law enforcement, as shown for example by its chairing of the EPCC's since 2011 and by the frequent contact between liaison officers, Europol and national law enforcement officers, as in the example of Denmark. Furthermore, Europol officials often state that they have become valued even outside their official mandate, in the agency's ability to communicate: "Risk and prevention underlies all the communication we do. This involves either highlighting new risks, for example giving advice to ministers on where they should put resources. We also need to inform the public, so we highlight crime assessments to the public in collaboration with member states." (Wood, 421). Europol, over the years and particularly since 2010, has been able to support the communicative action of national police forces by showing knowledge of, and authority over, threats that can be recognized and identified more easily by the wider European public. This, alongside its more general operational mission, has made it a valued ally of national policymakers in member states. Although Europol has been "proactive" in pursuing its goals for expansion (Wood, 2018), it has always been wary of staying on good terms with national governments. It displays pragmatism in seeking to preserve good relations, seeking not to contradict member state preferences as to not breach their trust. Piquet points out that it has to make the best of its limits and "avoid antagonizing national agencies, which remain its main "client", its *raison d'être*, and its source of information" (Piquet, 1197). The reason for this is the very different relationship that Europol has with the Commission and with the member states. While the Commission is a political organ that partly depends on the legitimacy of the agency and is more willing to delegate it more power, the member states are the actors that deal with the daily operational reality of Europol and can become disappointed with it, which can potentially

alter their attitudes. Both the Commission and the member states are “principals”, but only the member states are “clients”. Therefore, the member states and Europol have developed, over time, a symbiotic relationship of social and operational interdependence, where Europol relies on member state participation to operate and member states enjoy a progressively larger set of benefits from its operations. Europol’s positive ties with the Commission are also well recognized. Between 2013 and 2016, Piquet conducted a series of interviews with officials describing this relationship. One states that “the Commission needs visibility to survive and Europol is her front shop ... in a certain way, I think Europol will always be the Commission’s beloved child” (Piquet, 1196). With regard to the regulation, he continued, “Europol’s current expansion is also linked to its work and collaboration with the Commission” (Piquet, 1196). The Commission trusts Europol and partly drew upon data from Europol to produce the proposal (European Commission, 2013b), and regularly consulted Europol on the best way to organize negotiations with the Council and the EP. The relationship between Europol and the EP has arguably been slightly more difficult, especially in the context of this regulation. Indeed, as mentioned in Chapter 2, the EP was always frustrated with its inconsequential and undemocratic relationship with the agency. This was in part because of the low amount of contact between it and Europol, while hearings were still sparse and badly coordinated. However, the EP and Europol showed great intent in working with each other to solve this during the legislative process of the regulation, and as Europol was keen to please institutions, like the EP, that were inevitably going to gain more power over it (European Parliament, 2014). Again, Europol showed its ability to balance responses to multiple principals and cultivate good relationships that were conducive to the execution of its tasks and to ensuring its widespread legitimacy. In addition, when considering socialization processes, one must inevitably focus on Europol’s chief representative: the Executive Director. This officer is not only in charge of daily management and decision-making, he is also tasked with communicating with the Commission, the member states, the Council and the EP. Evaluating his role in the context of the new regulation is important because it is one of the main ways of gauging the behavior of Europol in relation to EU policymakers. The Executive Director is recognized as having expertise and leadership necessary to maintain key political connections, an image often cultivated by his frequent hearings and contacts with the EU institutions. In these hearings and negotiations, he was seen as having the negotiating skills and the patience to offer context-specific alternatives and show

flexibility (Piquet, 2017). The Executive Director in the relevant period was Rob Wainright of Great Britain, who was elected to two terms between 2009 and 2018. This perception of the Executive Director is very much founded on his performance, firstly because of the limited total number of Executive Directors, and secondly because he oversaw the most significant changes to the agency –the new Europol regulation being front and center in this respect (Wood, 2018). He was one of the main advocates for the regulation, touting the agency’s need for increased legitimacy and efficiency in achieving its missions (Europol, 2014). When asked about Wainright’s ability to stimulate progress on the regulation, one of Piquet’s interviewees stated, “He has charisma, he is a very good communicator, a gifted negotiator ... he is political because it is necessary in European bodies” (Piquet, 1200). Thus, Europol and its administrators, maintained very positive relationships with all policymakers involved in the legislative process, and were able to create an environment that was conducive to policy change.

The work of committees and working groups on the Europol regulation seems to indicate a similarly harmonious process. The Standing Committee on Operational Cooperation (COSI) was one of the key committees in this process, and generally the Council committee with the most responsibility in JHA affairs. It was established as part of the Lisbon Treaty and substantially strengthened and formalized cooperation on JHA matters. Before, a variety of working groups dealing with internal security had to coordinate each other’s work, and COSI was seen as the catalyst for the major changes experienced in JHA committee work in the post-Lisbon period (Tereszkiewicz, 2016). Tereszkieicz points out that over the course of the legislative process for the Europol regulation, “Europol in particular has been the main interlocutor of COSI” (Tereszkiewicz, 255), and showed great intent in participating in all relevant meetings. The Executive Director participates in most of the working groups. They present an opportunity for Europol officials to persuade other actors of Europol’s value, its capacity for problem-solving and its ability to satisfy its “clients” if given the means (Piquet, 1199). Similarly, the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) prided itself in “significant contributions to EU achievements in its field” since 2012, “in particular for developments concerning Europol, where CATS has been instrumental in identifying solutions to several difficult issues” (CATS, 3). However, much of the documentation from CATS and COSI is unavailable, meaning that the opinion voiced by

these Committees on how efficiently they worked with regard to the regulation should be taken with caution.

This section was tasked with examining the empirical evidence to support the claim that socialization processes defined by neofunctionalist theory contributed to the adoption of the Europol regulation. Overall, we can state that Europol was at the center of a very productive and trusting set of relationships with policymakers from all EU institutions, including representatives of national police, the Commission and the EP. It upheld a climate that was conducive to open and informed policy change. There is not enough evidence to suggest, however, that the working groups and committees shared a similarly significant level of efficiency in the policy process. The lack of abundant documentation relating to committee performance means that the role of Europol itself can be more safely emphasized over that of the relevant committees. Certain theoretical predictions that shape the socialization thesis can therefore be convincingly validated when focusing on the role of Europol.

## 6.2. Liberal intergovernmentalism

### 6.2.1. National preference formation

This section is tasked with gathering evidence to validate or falsify expectation *LII*, which relates to the formation of the national preferences of member states prior to the negotiation process. Liberal intergovernmentalism predicts that different interested national institutions and groups will communicate with and put pressure on their governments to represent their views regarding the legislation sitting on the negotiating table. Here, this assumption will be examined with regard to the behavior of these institutions. The indicators determining the congruence of the case with the liberal intergovernmentalist expectation are the following: the existence of specific interests in domestic groups that form the concerted need to influence national preferences, the domestic nature of the links between these groups and their governments, and the influence of power and resource endowment on these groups' ability to influence preferences.

The issues surrounding the design of the JPSG were of great interest to the EU's different national parliaments, as they were set to exercise a much-desired degree of control over the

activities of Europol. They were therefore very vocal in the expression of their opinions regarding the JPSG, but also sometimes on the features of Europol's projected mandate increase. National parliaments are powerful institutions that have the ability, in most political systems in the EU, to exercise significant pressure on their governments and their heads of state: as the main groups voicing their opinions on this case, they therefore have a significant amount of leverage on the political process. They are able to scrutinize the positions of their national governments in Council negotiations and can leverage their own indirect instruments such as asking oral and written questions in hearings, mandating or ousting their ministers. Since the Lisbon Treaty, national parliaments can also engage directly in the process of EU decision-making by using the subsidiarity mechanism or the political dialogue. Other instruments have been developed for parliamentary cooperation. These include interparliamentary conferences like the Conference of Parliamentary Committees for Union Affairs of the Parliaments of the European Union (COSAC) and international communication platforms like the Interparliamentary EU Information Exchange (IPEX). In arguing their preferences for the Europol regulation, the national parliaments of the EU made extensive use of these tools.

In 2011, at the EU Speakers Conference in Belgium, the issue of the parliamentary scrutiny of Europol was a key feature of the agenda. The speakers of the European national parliaments agreed that the previous state of scrutiny over Europol was insufficient and that to strengthen its legitimacy and accountability, the guidelines of the Treaty of Lisbon should be applied as soon as possible, emphasizing the role of national parliaments (Federal Parliament of Belgium, 2011). The opinions of the individual national parliaments were also voiced at different stages of the legislative process and communicated through a series of public documents. Regarding parliamentary scrutiny, the national parliaments that voiced their concerns seemed to have similar preferences. The president of the French National Assembly Claude Bartolone voiced the opinion of the French lower house on the proposal. The opinion of the National Assembly was that in no case should the Regulation "restrain the powers of control of Europol's activities that national parliaments may exercise" (Assemblée Nationale, 2013), emphasizing the necessity of national parliament and EP discretion on the JPSG. Similarly, the Dutch House of Representatives professed its own support for joint parliamentary scrutiny but stated that the discussion about how to establish these procedures should take place between the EP and the national parliaments (Ypma, 2015). The Czech Senate voiced these concerns as well and called

for a forum in which national parliaments and the EP could decide on the details of the JPSG: “the competence to initiate and hold a parliamentary debate [on parliamentary scrutiny] shall lie with both the European Parliament and each national parliament individually because only this approach will enable effective use of the power of scrutiny” (Senate of the Czech Republic, 2013). The British House of Lords was of the same opinion, welcoming the Commission’s flexible approach to parliamentary scrutiny and its intention to leave the details of parliamentary scrutiny to “informal agreement between the European Parliament and national parliaments” (House of Lords, 3).

Following the Parliament opinion on first reading, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) organized a meeting inviting representatives of national parliaments to give their ideas on the future design of the JPSG. This allowed for further discussion of the JPSG by national parliaments. The Chairwoman of the Committee deplored that not all parliamentary representatives were present but highlighted that the ones that were were very open in voicing their preferences. A representative of the UK House of Lords stated that “we believe the oversight mechanism should be a light one, avoiding the creation of new institutions, and building on the existing meetings between the LIBE Committee and the Home Affairs Committees of national parliaments, which are a very good template” (European Parliament, 2013). Danish Folketing representative Karsten Lauritzen called for the JPSG to be “flexible and efficient”, as did the representative of the French National Assembly. He also stated his belief that “the parliamentary oversight needs to avoid any involvement or interference in the operational work of Europol”, as Europol was becoming “an increasingly valuable and effective agency of the Union”. British Conservative MEP Timothy Kirkope concurred, stating, “I do not wish to see a Europol that becomes politicized ... or regulations that are so prescriptive in terms of the scrutiny that they make Europol’s work more difficult than in the past” (European Parliament, 2013). When asked to comment on the amendments reported by rapporteur Diaz de Mera, the representative of the House of Lords stated that the management and decision-making procedures of the JPSG tilted too far towards the EP and away from national parliaments, pointing out that the EP already had “privileged control over Europol through budgetary matters” (European Parliament, 2013). Therefore, when considering the formation of preferences on the important matter of parliamentary scrutiny, it is clear that the national parliaments were keen to be heavily involved in this process. Most parliaments that published opinions or argued in

international conferences and Committee hearings agreed that the regulation should contain strong provisions for their own hand in scrutiny, and sometimes even were at odds with the EP's own preferences, which emphasized its own deeply sought discretion over Europol. Piquet and Wood's research on the matter also seems to echo the slight confrontation between national and European parliaments. The representatives of the UK were slight outliers but did not put up a fight as the country's opt-out of JHA matters meant that they had to abstain from voting in the Council.

In terms of the increase in operational powers, national parliaments also voiced concerns regarding the future progress of the legislation. The Czech Senate was wary of specifying the rules under and around which Europol would be allowed to launch JIT's, stating that it wanted to avoid any legal uncertainty as to Europol's powers: "the coordinating and organizing activities of Europol must be based on voluntary consent by member states' authorities" (Senate of the Czech Republic, 3). Furthermore, it highlighted the importance of accompanying Europol's new legal status with safeguards as to its behavior: although it was clear that Europol would never be capable of coercive measures as part of its operational toolkit, it was deemed necessary to put this in writing: "the decision on the application of coercive measures as well as the execution of coercive measures must remain the exclusive competence of the relevant national police and judicial authorities in accordance with their national law" (Senate of the Czech Republic, 4). The issue of coercive measures was supported by all other national parliaments, because it was considered a common-sense clarification that needed to be stated in the regulation (European Parliament, 2013). The French parliament also raised concerns regarding the lack of concrete data protection measures in the proposal, pointing to the insufficient provisions governing the transfer of data between Europol and other institutions, organizations or third countries (Assemblée Nationale, 3). It also insists on ensuring the strength of European structures for personal data protection in relation to Europol – highlighting in particular the necessary role of the EDPS (Assemblée Nationale, 3). Prior to the EP opinion on first reading, where the EP devised a number of possible data protection safeguards, other parliaments had voiced similar concerns but were aware of the upcoming provisions that it would propose.

The issue of the planned CEPOL merger was also the source of vehement and concerted opposition from national parliaments. All the parliamentary sources above agreed on cancelling the CEPOL merger with very similar motivations, citing the lack of necessity for the merger and



the generally unconvincing budgetary savings proposed by the Commission (Assemblée Nationale, 2013; House of Lords, 2014; Senate of the Czech Republic, 2013; Ypma, 2015). Furthermore, the Spanish Parliament cited the lack of a proper Treaty basis for the CEPOL merger and, more importantly, made the claim that it would infringe on the principle of subsidiarity: “such merging could result in the EU regulating specific aspects of member states’ police training, whose convenience is far from proven” (Spanish Parliament, 5). The issue of violation of the principle of subsidiarity was subsequently voiced by the Belgian and German parliaments.

However, the concern for the democratic control of Europol even transcended the borders of the EU. Close neighbors of the EU were also interested in voicing their views on the regulation. The member states of the European Free Trade Association (EFTA) (Iceland, Switzerland, Norway and Lichtenstein) are Schengen members, participants in Europol cross-border investigations and beneficiaries of EU law enforcement data. In a resolution, the EFTA countries sought to inform the EP of the value that Europol has gained in their law enforcement actions through operational and partnership agreements and their Schengen membership (EFTA, 2013). The Committee of Members of Parliament of the EFTA countries (CMP-EFTA) therefore stated their interest in being involved in the new Europol regulation, welcoming the provisions for interparliamentary scrutiny and the central role that national parliaments were set to play in it. The resolution states that EFTA countries desire to be involved in the upcoming structure of interparliamentary scrutiny as “active partners and stakeholders” in Europol in order to make this scrutiny more complete (EFTA, 2). It actively sought for countries of their status to be integrated into the text of the regulation and urged the EU institutions to consider their demands. This attests to the importance of Europol as an operational force in non-EU countries, but also shows that concerns for parliamentary scrutiny and democratic accountability of the agency were shared, and indeed voiced, by all relevant parties.

This section has clarified the level of congruence between the first expectation laid out by liberal intergovernmentalist theory and the case: firstly, it is clear that, by virtue of the nature of the case, the interested actors had strong interests in voicing their preferences on the Europol regulation. National parliaments had a lot to benefit from in terms of power gains over the EU political process. Therefore, the main issue on which they voiced their preferences was unsurprisingly that of parliamentary scrutiny of Europol. As powerful actors in the preference

formation process, EU national parliaments consistently advocated for the design of the JPSG to take them into account, and were sometimes at odds with the intended direction desired by the EP. They put pressure on the actors involved in the next stages of the legislative process, including the Council and the EP. However, the level of congruence with the liberal intergovernmentalist expectations for national preference formation is not absolute. Indeed, much of the evidence here suggests that the lines of communication for the voicing of preferences by national parliaments were not domestically based. Instead, national parliaments found that they could take advantage of interparliamentary conferences and Committee hearings to set and debate their preferences amongst themselves. This gave them more collective visibility in the eyes of the EP and the Council and emphasized the convergence of their views.

### 6.2.2. Inter-state bargaining

This section will attempt to validate expectation *LI2*, which accounts for the liberal intergovernmental model of inter-state bargaining. The question here is whether the bargaining over the Europol regulation was intergovernmental in nature. This model predicts that bargaining between states operates on the lines of the degree of divergence of national preferences, or their “asymmetrical interdependence”. States that need integrative measures the least are at an advantage over those who need them the most. Here, we will determine the level of asymmetrical interdependence and determine the extent to which it guided the negotiations, and eventually the outcome. We will examine the following indicators: who initiated negotiations, the consequences of the distribution of benefits and what was the level of attractiveness of the status quo.

The Council is particularly powerful in JHA affairs, given the strong relation to national sovereignty, it is the “gatekeeper” of national interests. The JHA Council consists of the home affairs ministers of the EU member states, headed by the rotating Council presidency. It is also composed of ambassadors to the Committee of Permanent Representatives (COREPER II) who take preparatory decisions for the ministers, and the working parties consisting of experts and JHA counsellors. The Council mainly governs based on consensus, so it is very difficult to document exactly how national preferences were represented and played out as part of the negotiations. Thus, documentation on the common positions of the Council and committee

meetings will be featured prominently here, as well as individual actions taken by the Council. First, it is important to mention that in the field of JHA policy, Article 76 of the TFEU states that the Commission shares the right of initiative with the member states (European Union, 2007). The Commission may propose legislation as the agenda-setter, but one quarter of all member states in the Council may also propose a common proposal together. As shown in the earlier sections of this analysis, the Council was not responsible for the proposal, which was instead presented by the Commission. The Commission had its own objectives for making the proposal and did not receive an order to do so from the Council. As we have seen in the previous section, the national parliaments of the EU expressed strongly convergent preferences on a variety of issues. The first and perhaps most important of these issues was that of parliamentary scrutiny. In the past, the Council had shown itself as reticent on the issue of parliamentary scrutiny. The reason for this is that Europol has long been a purely intergovernmental body governed only by the Council, and the Council had desired for it to remain that way (see Chapter 2). In the negotiations for the Europol regulation, the Council had also, in the early stages, shown a resistance to the establishment of parliamentary scrutiny (Council of the European Union, 2014). Its particular point of resistance was for an increased role of the EP: the original position was that the Executive Director (appointed by the Council), should not have to be accountable to the EP by being requested to appear before it. This would have meant an increased role for the EP to the detriment of the Council. This original desire of the Council to retain intergovernmental authority over Europol indicates strongly convergent views amongst Home Affairs ministers and the behavior of the Council as a more unitary actor. However, the Treaty basis of a parliamentary scrutiny system was undeniable, and eventually the Council could no longer resist that it be put in place. It therefore decided to marginally favor national parliaments as a further solution for avoiding too much discretion from the EP (European Parliament, 2013). This was one way for the Council ministers to keep a certain degree of trust and legitimacy from individual parliaments while not ceding too much power to the EP: on its first opinion, it advocated for the JPSG to include larger delegations from national parliaments to restore the balance with the EP, something that some national parliaments had also been advocating for. On the issue of the CEPOL merger, the point of agreement expressed by national parliaments was represented in the decisions made by the Council. The Council showed very cohesive opposition to the CEPOL merger, as had national parliamentary delegations. The Commission had originally resisted the

EP's motion to completely delete any reference to CEPOL from the regulation. In the Council, the reaction was radical: an unprecedented group of 25 member states tabled an initiative to amend the previous Council decision establishing CEPOL. This proposal simply moved the CEPOL headquarters away from Bramshill, UK and towards Budapest, Hungary. The Council took advantage of an existing battle between member states seeking to host CEPOL and other agencies: the proposal was quickly adopted, making the possibility of the CEPOL merger even more distant. The status quo in the context of the Europol regulation would have meant a return to the Europol Council Decision. This was a very unattractive solution to most member states for several reasons. First, the need to "Lisbonize" Europol meant that failing to find an agreement would mean failure to respect the guidelines of the Lisbon Treaty. Second, the European ministers for home affairs strongly desired that Europol be given increased powers, in the form of new guidelines to request the launching of JIT's and direct communication with member state authorities. The process of negotiations and the final vote reflected this – as the final agreement of the Council found approval of all states, excluding Denmark and the UK who had opted out.

Overall, this section has shown that the Europol regulation was not the result of extensive intergovernmental bargaining. The relative ease of Council negotiations and decisions showed that preferences between states were largely aligned and that there were few disagreements among member states. The Council acted more as unitary actor than as a forum for extensive and difficult negotiation. The views of the states were therefore not very asymmetrical. The status quo was also unattractive to most states and easy to avoid, which contributed to the smoothness of negotiations. Finally, national preferences were not put forward strongly enough for the Council to take advantage of its right to set the agenda. This conclusion was reached taking into account the relative lack of available data, a lack of data which may also contribute to the indication that supranational entities like the EP and the Commission played a heavier role in the legislative process of the Europol regulation.

### 6.2.3. Institutional delegation

This section will, in accordance with the logical sequence prescribed by liberal intergovernmentalism, examine the content of the final agreement in relation to the outcome of negotiations in the previous stage. The content of the formal agreement and the precautions that

are taken within it are referred to as the “institutional delegation” of the agreement. Institutional delegation is the final step in the process laid out in liberal intergovernmentalist theory, explained as part of prediction *LI3*. Moravcsik states that institutions are created to “cope with unintended, unforeseen, and often unwanted consequences that arise when states commit to coordinate their policies”. The issues may most often relate to defection, compliance and oversight. Liberal intergovernmentalism predicts that part of the negotiation’s result is for actors to identify what other actors may be problematic in the future and to design the institution, regulation or agreement accordingly. The indicators that are used to verify this are the following: the reflection of the areas of agreement between states in the level and nature of delegation, the clear identification of the most likely problematic actors and the existence of measures addressing this prediction in the agreement.

The final version of Regulation 2016/794 showed that the legislative process and the negotiations had led to a certain level of planning to ensure that Europol could keep working effectively. The goal from the beginning in 2013 had been to strengthen Europol’s ability to fight terrorism and organized crime effectively. This, in terms of institutional delegation (the transfer of powers from member states to supranational institutions) meant that Europol needed to be given a more useful set of capabilities. Thus, according to evidence from the regulation, the first actor identified as potentially problematic was the collectivity of EU member states, whose lack of engagement and participation had been among the main impetuses for the start of the negotiations. The first major step for the regulation was Europol’s newfound power to request that states “initiate, conduct or coordinate specific criminal investigations in cases where cross-border cooperation would add value” (European Union, 2016). States were not forced to engage but needed to provide reasons to Europol as to why they would refuse. This is a major step forward in Europol’s mandate in comparison to the previously enforced Council Decision, which had no such provision. It meant that Europol, as well as the states, could use the information in its database to devise investigations. JIT’s were another area of expansion of Europol’s operational capabilities. Under the regulation, Europol could now fully participate in JIT’s that fell under its mandate, as well as contribute to all of the relevant exchanges of information with all members of the team (European Union, 2016). Furthermore, it is now the “duty” of states to send relevant and important information to Europol, as a way to enshrine member state

responsibilities in the regulation to ensure the effectiveness of the agency without adopting any coercive measures.

Another feature of the delegation of power to Europol is the official establishment of the IRU. Indeed, as a response to the Paris attacks and the increased urgency of terrorist threats in the EU, Europol had established the Internet Referral Unit (IRU) in response to complaints from police forces (see section 6.1.2.). This platform allowed Europol to make direct contact with internet and social media companies to remove terrorist and extremist content on their platforms. The IRU was considered a widespread success on national and EU levels: in 2016, it had assessed and processed over 11,000 messages across 31 platforms and eight languages. It boasted a rate of 91.4% of all referred content successfully removed. It also gathered vast quantities of data to better understand the *modi operandi* of propagandists and gradually improve the mechanism. While the IRU had a valid legal basis prior to the Europol regulation, it was not a part of the proposal and the Council was originally opposed to it. The question of whether it would be integrated into EU law was a difficult one. The text for the regulation contained no provisions for internet referrals until the success of the operation led for the IRU to be belatedly added to the law (Kreiling, 2017). The Europol regulation now has an explicit basis for the IRU through which Europol can conduct internet referrals (European Union, 2016).

While this relatively high degree of delegation showed that member states and internet firms could be seen as problematic actors as a result of negotiations, the other potentially problematic actor identified was Europol itself. Indeed, much of the regulation had the goal to keep Europol in check after its powers had been expanded. The most significant measure of these is clearly the new JPSG, which ensured that Europol was now fully accountable to the EP and to national parliaments. The design of the JPSG reflected the will of the national parliaments, who occupied a strong position in the scrutiny process with four seats per parliamentary delegation (European Union, 2016). Furthermore, the data protections (see section 6.1.) put in place bolstering the role of the EDPS ensured that Europol would be incapable of misusing EU citizens' personal data for purposes outside of its mandate or for transmission to third countries and international organizations.

As a result, an interesting observation can be made when relating this back to what liberal intergovernmentalism predicts. Here, the clarity of identification of problematic actors is validated, and the possible actions and reasons for non-compliance are visible. The legislation

contains clear predictive elements that allow us to identify that (1) member states were seen as needing more strict guidelines in their relationship with Europol, but that (2), Europol itself was to be surrounded by a set of strict operational and legal safeguards for the protection of data and in particular for democratic accountability. Thus, the level of delegation of power is twofold. On one hand, the power of Europol is strengthened and the ability of national authorities to resist it is eroded for the purposes of operational effectiveness. On the other hand, Europol itself is designated as a problematic actor, which in turn explains the caution that accompanied additional delegation. Therefore, although the mechanism set out by liberal intergovernmentalism appears to function, the actors that it predicts will appear as problematic are not necessarily states as a result of the negotiation process, but also EU institutions themselves. This is something that Moravcsik and liberal intergovernmentalism did not predict in the design of the theory.

## 7. Discussion of findings

Chapter 6 has discussed observations made about the process behind the Europol regulation and attempted to connect them to the expectations formulated by neofunctionalism and liberal intergovernmentalism. Each section dedicated to such discussion evaluated the degree of congruence between its respective indicators and the empirical facts that arose from the research. This chapter will bring together the results of this study to discuss them in a more holistic manner. Doing this will help introduce the deeper conclusions developed in the following chapter. In order to present the results in a clearer manner, this chapter also provides a table depicting the results according to the strength of congruence between indicators and empirical data. The level of congruence is summarized alongside each indicator as “STRONG”, “WEAK” or “NONE”. “Strong” describes a situation in which the empirical evidence comfortably confirms the occurrence of the indicator. “Weak” refers to a situation in which the empirical evidence is unsubstantial but not non-existent, and only partially confirms the content of the indicator. Finally, “none” refers to a situation in which there is no real evidence to support the indicator. The order of the table will follow the order of the analysis and of the presentation of conclusions.

Analyzing the behavior of the EU supranational institutions is a key feature of the neofunctionalist frame of analysis. Particularly, neofunctionalists look for a set of behaviors that indicates so-called “entrepreneurship”, where supranational institutions become the main drivers of policy change by proactively proposing new integrative measures and using their powers to promote them in the policy process. Neofunctionalism predicts that the European Commission is most likely to act as an entrepreneur and accompanies this prediction with a set of statements which formed the basis of the indicators grouped under *NFI*. The first indicator predicts that the Commission used its power of agenda-setting proactively. This refers to the timing of the proposal in relation to external factors and trends that may carry the policy forward, but also in relation to the priorities of the rotating Council Presidency. The analysis was able to identify that the Commission was either aware of, or explicitly invoked, specific public opinion trends relating to the fear of terrorism and the desire for increased EU internal security cooperation. Furthermore, the analysis of Council Presidency documentation and communications with the Commission indicates that the Commission maintained a close policy relationship with the



Presidency. As a result, the observations on the case are assigned a “strong” degree of congruence with the indicator.

The second indicator refers to whether the positions taken by the Commission advocated deeper integration than the other institutions like the EP and the Council. Research showed that the reaction of the EP and the Council to the proposal was a cautious and patient one. Both institutions fervently opposed the merger of Europol and CEPOL aimed at delegating more discretion on police training to Europol, and imposed strict measures for the control of Europol’s data usage and collection by the EDPS – something that the EP saw as seriously lacking in the proposal. Although the EP was in favor of an expansion of operational powers, it sought to accompany it with new operational and legal protocols, namely for autonomous investigations and JIT’s. Furthermore, the EP was proactive in seeking the establishment of, and its own power over, the future mechanism for parliamentary scrutiny. Therefore, the observations from the case lead to a “strong” level of congruence with the predictions made by the chosen indicator.

The third indicator predicts that the Commission benefited from an information advantage compared to the other institutions, meaning that the content of the proposal was informed by data generated by, and available to, the Commission only. Research found that the Commission chiefly used publicly available data from the Eurobarometer and Europol IOCTA and SOCTA threat assessment reports while the internal impact assessments it compiled played a smaller part and were eventually less consequential. Thus, there is “weak” evidence to support the claim of an information advantage.

Finally, *NFI* sought to determine whether the Commission used its power as a negotiator to negotiate compromises to achieve integration. The case of Denmark’s reaffirmed JHA opt-out and the Commission’s success in allowing it to remain in Europol demonstrates that the Commission took advantage of this ability, leading to a “strong” degree of congruence between this indicator and the case.

The second expectation formulated from neofunctionalist theory (*NF2*) examines the phenomenon of political spillover, in which national entities begin to seek solutions at the EU level after dissatisfaction over policy change at the national level. First, it states that the interested entities should be able to ascertain the value of policy change at the EU level. The analysis has shown that police forces, the national entities that would hypothetically see the most significant benefits from the increase in Europol’s operational capacity, had been able to perceive

the value of Europol as a platform for information and operational collaboration and acknowledged its value as an agency. They also acted together in stating how and why they would benefit from the content of the regulation, voicing, for example, specific demands in favor of an EU-wide internet referral system under the guidance of Europol. While they collaborated with each other and advocated integrative policy using new structures like the EPCC, they did not seek direct contact with the Commission in ways that neofunctionalist theory predicts. Therefore, it is clear that while there is “strong” evidence to suggest that national entities could easily ascertain the benefits of integration and that there is “strong” evidence that they perceived the benefits of integration as high, there is no (“none”) real evidence to show that they established direct contact with the Commission to push for integrative measures, as organized “interest groups” do in neofunctionalist theory.

The final expectation formulated under neofunctionalism was related to elite socialization (*NF3*). This expectation stated that the actors in the policy process developed relationships that were conducive to policy change, and that the working groups and committees working on the policy were able to operate harmoniously. The research found that Europol acted as a proactive policy actor, maintaining strong relationships developed over time with the Commission, the member states, and later, the EP. The director Rob Wainright was also a key actor in promoting communication between Europol and these institutions. However, nothing indicates that the work of CATS and COSI was particularly effective or harmonious, as a result of these groups’ relative lack of transparency. Thus, there is a “strong” level of congruence of the first indicator with the case, but only “weak” congruence with the second.

Liberal intergovernmentalism predicts that the integration process takes place in three steps in which national governments are the key actors. The first step, examined under expectation *LII*, traces the formation of national preferences of governments in the national arena. This expectation predicts that domestic entities will have specific preferences regarding the conditions of integration and will pressure their national governments to represent them in the negotiations. The evidence from the case suggests that this prediction rings true, as national parliaments repeatedly and consistently voiced their desire to establish their own power over Europol, favoring their own potential authority over that of the EP on the design of the JPSG – thus indicating a “strong” level of congruence with the indicator. National parliaments, as powerful and politically legitimate institutions bolstered by new fora for interparliamentary discussion and

cooperation, were actors that had the ability to heavily influence national preferences. Thus, this indicator can be marked with a “strong” degree of congruence with the case. However, the parliaments of the member states, and even some outside of the EU, did not use the channels of domestic communication and pressure that liberal intergovernmentalism predicts, instead mostly choosing to voice their demands directly to each other, and increasingly as a unified voice: this means that there was no significant evidence to support this specific indicator (“none”).

The second expectation (*LI2*) formulated by liberal intergovernmentalism is that preferences were argued by member states through intergovernmental bargaining. This is the theory’s weakest prediction in relation to the case for several reasons. First, it predicts that negotiations are started by the national governments with the strongest interest in the potential agreement. As explained earlier, the Commission took full advantage of its right of initiative, meaning that although member states could legally choose to launch negotiations, there is no evidence in the case to support the occurrence of this indicator (“none”). Second, the theory predicts that bargaining between states operates along the lines of asymmetrical interdependence of states. The Council is seen as the main arena for inter-state bargaining, but operates largely on the basis of consensus, which makes it difficult to accurately track national positions and the way they evolved. This meant that the two next indicators had to be verified through the results of consensus, suggesting that the Council appeared as a unitary actor. It was concluded that because negotiations were reasonably straightforward, preferences between states were broadly aligned and were reflected in the behavior of the Council. Thus, because of the difficulty of investigating the process predicted by the theory, this indicator was deemed as having “weak” evidence. Similarly, the status quo could easily be seen as unattractive, but the hard evidence to support this was also deemed to be “weak”.

The final expectation examined the final stage of liberal intergovernmentalist theory: institutional delegation (*LI3*). The relevant section analyzed the final legislation to determine how possible non-compliant actors were identified and how they appeared in the agreed text. First, it was clear that specific predicted non-compliant actors were identified in the legislation, leading to a “strong” determined level of congruence. The actors identified were quite varied, closely defined and closely regulated. The member states were identified as potential non-compliant actors, as they had been guilty of not cooperating adequately with Europol in the past, namely in terms of the supply of intelligence and of cooperation in investigations. The regulation

demonstrates this and addresses it with rules relating to all states, bolstering Europol's position. The second predicted non-compliant actor is Europol itself. The fact that the agency would be identified as such is not surprising: principals (here, both national and supranational) always have concerns for the future behavior of their agents. However, the identification of non-compliant actors in liberal intergovernmentalism is the result of inter-state bargaining. Problematic actors are predicted by the theory as being specific states in the agreement, rather than third parties like supranational agencies. The JPSG and the enhanced role of the EDPS demonstrate that the regulation needed to contain safeguards on "third" actors. Thus, Europol is highly present as a potential non-compliant actor, but not one whose nature is accurately predicted by the theory. Therefore, although the design of the regulation does not fully reflect the theory, a "strong" degree of congruence is assigned because the delegation of influence reflects the outcome of the negotiations. Finally, a "weak" level of congruence is assigned to the indicator stating that the delegation reflected the areas of agreement between states. This is because the area of agreement was identifiable but vague, thanks to the difficulties enunciated in the previous expectation, and therefore, this indicator cannot be validated as convincingly as the last.

Table 2: Level of congruence per expectation and per indicator

<u>Code</u>	<u>Theoretical expectation and indicators</u>	<u>Level of congruence</u>
NF	<u>NEOFUNCTIONALISM</u>	
<i>NF1</i>	<i>Supranational entrepreneurship</i>	
	Conscious timing of the proposal by the Commission	STRONG
	Commission advocates more integrative measures	STRONG
	Commission's comparative information advantage	WEAK
	Commission's ability to broker compromises and package deals	STRONG
<i>NF2</i>	<i>Political spillover</i>	
	Ability of national entities to ascertain benefits of integration	STRONG
	High perceived benefit to national entities	STRONG
	Interaction of national entities with the Commission	NONE
<i>NF3</i>	<i>Elite socialization</i>	
	Inter-institutional and individual relationships conducive to policy change	STRONG
	Harmony in working groups and committees	WEAK
LI	<u>LIBERAL INTERGOVERNMENTALISM</u>	
<i>LI1</i>	<i>National preference formation</i>	
	Existence of domestic actor preferences	STRONG
	Influence of power on preferences	STRONG
	Use of domestic channels of communication	NONE
<i>LI2</i>	<i>Inter-state bargaining</i>	
	Negotiations initiated by the most interested governments	NONE
	Benefit distribution determine the course of negotiations	WEAK
	State behavior and positions reflect attractiveness of status quo	WEAK
<i>LI3</i>	<i>Institutional delegation</i>	
	Negotiators identify actors most likely of committing non-compliance	STRONG
	Negotiators design agreement with non-compliance of these actors in mind	STRONG
	Degree of institutional delegation reflects areas of agreement between states	WEAK

Source: compiled by the author.

## 8. Conclusion

The goal of this study was to test the level of congruence between empirical observations on the legislative process of the Europol regulation and the expectations of the two main theories of European integration: neofunctionalism and liberal intergovernmentalism. It attempted to contribute to the lively theoretical debate between these two paradigms and to make a comment on their contemporary validity, particularly in the field of Justice and Home Affairs research. It has resulted in several noteworthy conclusions regarding both the theories and the case of the Europol regulation.

The conclusion of this analysis is that neofunctionalism has a clear explanatory advantage over liberal intergovernmentalism in the case of the Europol regulation. This is because neofunctionalism has provided excellent predictions for institutional behavior. It has accurately predicted the leading role taken by the Commission, which fully used its own powers when given the opportunity. It also predicted that police forces, as national entities that had been historically uninvolved with supranational policy processes, started to adapt to this new policy environment and advocate for their own needs. Finally, neofunctionalism predicted that long-term relationships between key actors, here between Europol and its various national and supranational principals, would develop and create a conducive environment for effective policy change. Although the degree of congruence between neofunctionalist propositions and the case of the Europol regulation is not perfect, the present observations have led this study to confidently validate key perspectives on European integration that the theory provides. The case of the Europol regulation shows how valuable and revealing long-term perspectives can be when studying integration, showing that progress such as the one observed in the present case would have been more unlikely ten or twenty years in the past. Learning processes like elite socialization and spillover show that institutional behavior changes over time as institutions outlast their creators. Furthermore, these institutions gradually gain and maintain their own power and legitimacy, and become stable, unavoidable actors in the policy process.

Liberal intergovernmentalism was found to have less explanatory power over the case than neofunctionalism. Certain features of the theory have still been somewhat useful to the analysis. It has been demonstrated that when domestic actors have specific preferences regarding a certain

issue, they will be able to communicate these preferences to their national governments, and that their ability to do so will be conditioned by their political and societal weight. Furthermore, governments' concerns with the preservation of their own interests are shown through other liberal intergovernmentalist predictions. For example, states behave according to the desirability of the status quo in a given case. Also, the nature of the final agreement shows that Europol has become a useful actor for states, but that they are still wary of its ability to overstep its mandate – thus designing the legislation with such concerns in mind. However, the shortcomings of liberal intergovernmentalism are clear. Its framework for understanding inter-state bargaining fails to adapt to the contemporary reality of the last truly intergovernmental body of the EU (the Council), which makes validating its predictions very difficult. Furthermore, domestic groups have benefited from new platforms of communication and no longer rely on domestic channels to put pressure on their respective governments. Most importantly, liberal intergovernmentalism seems outdated in a political arena in which treaty change has significantly altered political dynamics. The influence exerted by the Commission and the EP has extended so far into traditionally intergovernmental areas that liberal intergovernmentalism is progressively losing ground. The critique of liberal intergovernmentalism in relation to neofunctionalism can also be done on an ontological level: liberal intergovernmentalism perceives integration as a linear process composed of temporally, causally and logically interdependent steps. This makes it easier for one failed prediction to significantly weaken the others and erode the wider explanatory power of the theory. Neofunctionalism, on the other hand, thinks of integration as a set of broader, long-term processes that are more independent of each other and can each explain specific incremental aspects of integration. The value of neofunctionalism lies, therefore, in its superior flexibility.

The observations indicate that JHA policymaking is moving into a more supranational environment, where EU institutions are carried by a cautious but steady erosion of states' concerns for national sovereignty. This area of EU policy, where integration was traditionally more difficult, has become, over the long term, more dominated by the interests of supranational institutions. These institutions include those whose behavior is predicted by neofunctionalist theory. The Commission is now eager to promote integration in internal security because it is capable of driving this process with the support of the EP and with the relative cooperation of member state governments. It is eager to promote the legitimacy and efficiency of EU bodies (in

this case, Europol) in the fulfillment of its objectives for EU internal security. Bargaining around the content of the Europol regulation has also been shown as pitting the preferences of EU institutions against each other's, rather than those of national governments. As a way of developing a deeper explanation of the case, we can advance the idea that theoretical failures can shed light on the uniqueness of the Europol regulation. For example, neither theory predicts the way in which Europol itself has behaved in this process. It has been shown that today, the political activity and advocacy of EU agencies transcends their lack of formal executive or legislative power. Europol has therefore shown itself to be its own independent policy actor. Furthermore, the surprising political activity of national law enforcement agencies shows that the theories should broaden their idea of both "interest groups" and "societal groups". Finally, neither theory predicts the newfound ability for national parliaments to organize and communicate on an international level, which in the present case has allowed them to strengthen their ability to influence the policy process. Consequently, the case has found that both theoretical paradigms (including the one that is deemed stronger) can benefit from a certain degree of innovation.

The limitations of this research need to be taken into account when considering these conclusions. First, we must acknowledge that certain inevitable lacks of data may have influenced outcomes: data concerning supranational institutions was relatively more transparent and abundant than data concerning governmental and intergovernmental processes. This may have allowed slightly more detailed insight into supranational processes and unjustly affected observations relating to intergovernmental processes. Second, this research is inherently limited by its length, in the sense that a wider scope may have allowed for a more extensive analysis to be developed. Finally, this research has tried to contribute to the "classical" debate on EU integration by using neofunctionalism and liberal intergovernmentalism as the main axes of the analysis. It has demonstrated the explanatory value of each theory in the context of this fundamental dichotomy. However, this study does not in any way imply that research on the Europol regulation should be constrained by these two paradigms. It does not seek to disregard the potential value of newer theories of EU integration. On the contrary, it encourages subsequent scholarship to develop this case within the methodological and ontological scopes of theories like institutionalism, multi-level governance and constructivism, which have demonstrated strong explanatory potential in other cases. The variety of EU integration theories has blossomed



in recent years, and these new theories all have the potential to bring about new understandings of the Europol regulation.

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