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# International Cooperation in Civilian Intelligence

Is there a Legal Framework for Intelligence Exchange?

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**ABSTRACT:**
Tutkimus tarkastelee tiedustelutoiminnan, kansainvälisen yhteistyön ja tiedonvaihdon oikeudellista kehystä, selvittäen etenkin, onko tiedustelun kansainväliselle yhteistyölle olemassa sääntelykehikkoa. Tutkimus kiinnittää erityistä huomiota Suomen kansalliseen lainsäädäntöön, kotimaiseen perusoikeuspunnintaan sekä tiedustelutoiminnan ja vapaan demokraattisen yhteiskunnan väliseen jatkuvaan jännitteeseen. Tutkimus pyrkii selvittämään poliisilain 5 a luvun sääntelyn asettamaa toimivaltaa ja sen rajoituksia suojelupoliisin harjoittamalle siviilitiedustelun kansainväliselle yhteistyölle. Lisäksi tutkimus vertailee Suomen ja Tanskan oikeudellista kehystä, ja lähtökohtia tiedustelutoiminnan mahdollistamiselle vertaillen tiedustelua ohjaavaa lainsäädäntöä, tiedustelun valvontaa sekä keskeisiä tiedusteluviranomaisia. Tutkimus asettuu julkisoikeuden alaan sisältäen viitteitä kansainvälisestä oikeudesta, poliisioikeudesta sekä valtiosääntöoikeudesta. Tutkimusmenetelminä ovat lainoppi ja oikeusvertailu.

Tiedustelutoimintaa voidaan pitää modernin valtion välttämättömänä toimintona. Mikäli valtio ei itse toteuta tiedustelutoimintaa, joku muu kyllä tiedustelee sen alueella. Sen tavoitteena on luoda ajantasainen tilannekuva toimintaympäristöstä, muuttuvista uhkakuvista sekä merkittävästi kansalliseen turvallisuuteen vaikuttavista tekijöistä korkeimman valtiojohdon päätöksenteon tueksi. Tiedusteluyhteistyön sekä strategisen tiedustelun avulla taas jaetaan tiedustelutoiminnan muodostamaa taakkaa ja pyritään saavuttamaan tietoon perustuva etulyöntiasema suhteessa muihin valtioihin tai kilpailijoihin. Tiedusteluyhteistyö perustuu tiedusteluhyödykkeiden vaihtoon ja vastavuoroisuuteen (Quid Pro Quo). Tutkimus havaitsee, että yhteistyötä ei kuitenkaan harjoiteta, mikäli eri osapuolien välillä ei vallitse luottamusta. Tutkimus selvittää modernin kansainvälisen tiedusteluyhteisön historiallisia lähtökohtia sekä tiedusteluyhteisön sisäisesti kehittämää Originator Control periaatetta eli tiedonvaihdon luottamusperiaatetta. Tarkastelussa on etenkin tiedonvaihdon luottamusperiaatteen, avoimuuden ja valvonnan välinen jännite.

Tutkimuksen keskeiset havainnot osoittavat, että tiedustelun kansainvälisen yhteistyön sääntely keskittyy maiden omaan lainsäädäntöön, jolle ominaista on toimivalta vain maan omien rajojen sisällä. Suomen ja Tanskan oikeusvertailu osoittaa, että Suomen kansallinen sääntely huomioi tehokkaammin ihmisoikeusvelvoitteet sekä asettaa selkeitä rajoituksia siviilitiedusteluviranomaiselle, Tanskan säännellessä tiedusteluyhteistyötä väljemmin. Lisäksi tutkimus osoittaa Originator Controlin toimivan tiedusteluyhteisön sisällä de facto tietojenvaihtoa sekä yhteistyötä ohjaavana sisäisenä normina, heikentäen ulkoista valvontaa sekä tiedustelun läpinäkyvyyttä.

**KEYWORDS: Intelligence, Intelligence Cooperation, National Security, Originator Control, Fundamental and Human Rights, Oversight Mechanisms.**

## Contents

## Abbreviations

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| **Court of Justice of the European Union** | **CJEU** |
| **European Union** | **EU** |
| **European Court of Human Rights** | **ECtHR** |
| **European Convention on Human Rights** | **ECHR** |
| **Finnish Constitution** | **CoF** |
| **Finnish Defence Forces** | **FDF** |
| **Finnish Security and Intelligence Service** | **FSIS** |
| **Government Proposal** | **GP** |
| **North Atlantic Treaty Organization** | **NATO** |
| **Supreme Administrative Court of Finland** | **KHO** |
| **Treaty of the European Union** | **TEU** |
| **Treaty of the Functioning of the European Union** | **TFEU** |
| **United Nations** | **UN** |

# 1 Introduction and Research Background

Following the 2019 Finnish intelligence and Constitutional law reform the Finnish Security and Intelligence Service (FSIS) evolved towards pure intelligence service, rather than just a security and police service.[1] The security environment in Europe and within the European Union (EU) has been dramatically changing since the Covid-19 pandemic and especially after Russia's brutal invasion of Ukraine in February 2022. The new security environment for European nations has emerged in this very decade when this thesis is written. The changes have been rapid and profound for the European security landscape.[2] The changed security framework in Europe led to the expansion of North Atlantic Treaty Organization (NATO) when Finland and Sweden decided to apply for membership in NATO and became full members of the alliance.[3]

The aim of this thesis is to structure and define concisely, what is meant by civilian intelligence by examining the domestic legal basis for civilian intelligence, the competent authority, and the limits of its powers. This thesis studies the relatively new legislative framework of the Finnish legal system in the field of intelligence, which has led to the establishment of a fully authorised Security and Intelligence Service in Finland – Finnish Security and Intelligence Service (FSIS). The new legislation as well as amendment to the Finnish Constitution (PI 731/1999) Section 10(4) came into force in 2019.[4] In the current era FSIS's main tasks are safeguarding Finnish national security by intelligence activities conducted by gathering and analysing information for use of substantial policymakers. Furthermore, FSIS is combating terrorism as well as other activities that seriously threaten the democratic social order of the society. One example of this is preventing international organised crime that threatens the well-being of the democratic society. In addition, FSIS is preventing espionage and conducting counter espionage, as laid down in the Police Act (872/2011, Chapter 5 a, § 3). The Finnish Security and Intelligence

[1] Widlund, 2024, p. 44.
[2] Ministry of Foreign Affairs of Finland (n.d.), European Commission and Niinistö, 2024, p. 4 & p. 13.
[3] Government Offices of Sweden; Ministry of Defence, n.d.
[4] Widlund, 2024, p. 1; GP 198/2017 vp.

Service mentions international cooperation as one of the most important tasks it has. International cooperation means bilateral and multilateral information exchange, close cooperation within as well as outside Europe.[5] In Finland there are two authorities conducting intelligence activities, the FSIS and the Finnish Defence Forces (FDF). FDF is responsible for military intelligence, and it is the only authority that is prescribed by law to conduct these operations (Act on Military Intelligence 590/2019, § 1).[6] This thesis focuses on civilian intelligence (FSIS) as well as international cooperation of the civilian intelligence.

Intelligence as a concept can be comprehended in several ways: as information, as the organisation that processes it, as the practices of such an organisation, as a set of missions and as a process.[7] Intelligence is commonly understood as a process of gathering information, analysing it and making use of it. Intelligence can also be apprehended as a tool of foreign and defence policy making. In modern time intelligence is an essential tool for securing national security and interests for the state.[8]

A central feature in the Finnish perspective towards intelligence is how the Finnish legal framework of intelligence activities is divided into two parts, civilian intelligence and military intelligence. Instead of the more general divide between foreign and domestic intelligence being the general approach in other Nordic countries.[9] As a consequence of this the Finnish Security and Intelligence Service, which is the civilian intelligence authority, has been granted the authority to conduct both domestic and foreign intelligence activities (the Police Act, Chapter 5 a, § 3). These elements serve as the catalysts for this thesis to evaluate the legal frameworks regulating intelligence in Finland and comparing the Finnish legislation to other Nordic country Denmark.

[5] Finnish Security and Intelligence Service, n.d.
[6] Lohse & Viitanen, 2019, p. 37.
[7] Lohse, 2020, p. 68; Kent, 1966, p. 9–10
[8] Widlund & Paasonen, 2021, p. 5
[9] EOS-committee, 2025, p. 4.

In order to examine this question from a comparative perspective, this thesis includes also a comparative evaluation and analyses of Finnish and Danish civilian intelligence legislations. Denmark is selected for comparison since both countries are member states of NATO and the European Union. In addition, these countries are sharing a somewhat similar security environment. Intelligence agencies of both countries identify that their main espionage threats are related to both Russian and Chinese espionage activities on their soil.[10] Furthermore, this thesis aims to compare the foundations of the legal systems such as Constitutions of both countries and Constitutions' foundations for intelligence activities. Additionally, the Danish legislative framework for intelligence, oversight mechanisms for intelligence as well as possible similarities and differences for conducting international intelligence cooperation.

## 1.1 Research Problem and Research Questions

Since the domestic legislation framework of intelligence is fairly new matter in Finnish society, this thesis examines how international cooperation is regulated in the framework of civilian intelligence. Intelligence activities, operations and cooperation are mainly regulated domestically by the states themselves.[11] This raises a question regarding possible customary law developed by and within the international intelligence community: Are there principles or customary law in place that have not been developed by the states or international organisations such as United Nations (UN) or the EU, but instead the intelligence community itself?

One of the elements in the international intelligence community is the Originator Control Principle – Orcon. Orcon is based on reciprocity in bilateral relationships between intelligence agencies and the shared information is intended strictly only to receiving partner. Orcon operates in the area where trust is a key asset. If someone within the

[10] PET, 2023, p. 6-7; Finnish Security and Intelligence Service, 2025, p. 20-21.
[11] Sulmasy & Yoo, 2007, p. 627.

intelligence community loses trust it is very likely that the agencies capability to receive information decreases to almost non-existent.[12] Orcon's relation to democratic society as well as to intelligence oversight bodies are in the research loop of this very thesis. The aim of the thesis is to examine if there is tension to be found between the Orcon and a free democratic society.

The principle of democracy refers to the question of the user of the ruler public power and its users. The principle of democracy is in a close relation towards forming, steering and oversight of those public organisations which are using organised public power affecting citizens. Ultimately, the aim of the principle is giving legitimation to the use of the public power.[13] Other extremely important principle regarding the topic of this study is the Rule of Law principle. The Rule of Law refers to question about procedures used in public administration especially when significant public power is exercised. Furthermore, the content and scope of the use of public power comes into consideration. The aim of the Rule of Law principle is that the public authorities comply with the law, they do not exceed their authority within their jurisdiction as well as to protect individuals from public power and other individuals. In addition, the Rule of Law aims to full implementation of fundamental rights guaranteed to individuals by international agreements and in this case by the Finnish Constitution (hereafter, CoF) (731/1999). All the above considered, the Rule of Law safeguards the democratic legitimacy of the society.[14]

Customary international law can be interpreted as unwritten laws, norms and rules, developed under general practices and beliefs of state or international organisations.[15] It contains two necessary elements which define the customary rules. First element being so called "general practices", between either international organizations or states. The second being acceptance or Convention by the states or by international

[12] Lohse & Viitanen, 2019, p. 36–37.
[13] Jyränki, 2001, p. 13.
[14] Jyränki, 2001, p. 13–14.
[15] Rose et al, 2022, p. 19.

organisations, arguing that this practice is required by law. Known also in Latin as *an opinio juris sive necessitates or opinio juris* (an opinion of law or necessity).[16] Since the international intelligence community is not an international organisation, but it has long history of networking, working together, sharing information between agencies to tackle common problems.[17] The question is whether the international intelligence community has established its own internal principles, such as customary law?

In addition, a characteristic feature of intelligence is its constant tension in relation to a democratic society and the rule of law.[18] Understanding, analysing, and developing this tension is one of the interests of this thesis. The thesis strives to find how the tension is generated and how a competent authority (FSIS) can work with this tension to protect the Finnish national security, conduct work in line with principle of proportionality as well as respect the fundamental rights of the individuals in the society, as laid down in sections 2-3 of the Police Act. In this thesis the key fundamental rights to be examined over the tension between intelligence and rule of law are right to respect for private and family life and protection of personal data. These rights are guaranteed by the Finnish Constitution section 10, Charter of Fundamental Rights of the European Union (200/C 364/1) (the EU Charter) Articles 7 & 8 as well as by European Convention on Human Rights (ECHR) Article 8. Moreover, the right to liberty and security might also come into consideration as one of the rights protected by civilian intelligence.

Combining these elements, this thesis seeks to understand the new legal framework for intelligence and how the Finnish Intelligence and Security Service can contribute to the international level. In addition, this thesis examines if and how these activities are regulated.

This leads to the main research questions of this thesis:

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[16] Rose et al, 2022, p. 19.
[17] Sepper, 2010, p. 154.
[18] Widlund, 2024, p. 5.

1. How is international cooperation of civilian intelligence regulated in Finland and are there limitations over it?
2. What similarities and differences exist between Finnish and Danish intelligence legal frameworks, particularly in the regulation of international cooperation and democratic oversight?

This thesis examines civilian intelligence as a national activity. In addition, it examines its international aspects. Are there possible elements developed by the international intelligence community that may have conflicts with the domestic legal frameworks of the participating authority's home country? Moreover, it analyses the key legal principles which these organisations are obligated to observe. Likewise, exploring for principles within the intelligence community to determine how they impact on the domestic level, for instance with the oversight mechanisms.

Furthermore, this thesis identifies key fundamental rights that are potentially subjected to restrictions under civilian intelligence activities. What is the key legislation both in Finland and on European level to secure fundamental rights from intelligence activities? Simultaneously, how the legislation allows space for restrictions on fundamental rights securing national security and sovereignty.

## 1.2 Methodology

There are two main research methods used in this thesis. The first, legal dogmatics focuses on Finnish legal system. Legal dogmatics, which is applied to determine the content of the law currently in force.[19] Furthermore, it is necessary to examine the changes that have occurred in the Finnish legal system. The legal system refers to the entirety formed by legal norms and legal principles, which in Finland is generally divided into private law and public law.[20] This thesis is examining the legal bases of civilian

[19] Aarnio, 1989, p. 48.
[20] Virolainen & Vuorenpää, 2021, p. 43.

intelligence, competences of Finnish Security and Intelligence Service. In addition, it compares Finnish legal bases for intelligence activities to Danish on contrary. Evaluating their jurisdiction and restriction over intelligence agencies' duties by law. This thesis is in the field of public law.

Furthermore, through legal dogmatics, the thesis can determine how our national legal system has possibly evolved and been updated in recent years. What have the effects of these changes been in relation to my chosen research subject – the international cooperation in civilian intelligence – and its legal framework. This first method is mainly concentrated on the Finnish legal system.

The aim is to clarify in more detail, the powers of the intelligence authority, the civilian intelligence authority, and the security police, regarding intelligence and international intelligence cooperation. In Finland, Suojelupoliisi (FSIS) has been designated as the authority responsible for civilian intelligence as laid down in the Police Act, Chapter 5 a, § 1. Civilian intelligence is also regulated by the Act on Civilian Intelligence Communications Intelligence (582/2019). This thesis uses legal dogmatics to examine recent changes in the Finnish legal system, and the content of the laws regarding intelligence as well as the limits of the powers of FSIS powers in restricting fundamental rights.

The second research method is comparative law, which as a legal research method means comparing laws. It involves observing and identifying differences and similarities between legal systems. Comparative jurisprudence seeks to explain the reasons for these differences and similarities. Yet simultaneously comparative law is difficult to define precisely.[21] Still there is a clear basic starting point for comparative law. It aims to obtain information concerning law in some specific field. [22] This thesis examines elements from Nordic countries' legislation regarding intelligence and international

[21] Husa, 2013, p. 25.
[22] Husa, 2013, p. 59.

cooperation within intelligence and measures them to each other to comprehend similarities as well as contrasts between the states.

According to Jaakko Husa, five different levels can be identified to conduct comparative legal research.[23] The first can be seen as searching models for understanding and developing own domestic laws and legal system. This method is not often used for deep theoretical backgrounds of foreign legal system. The second level is widely used on European level. It is called harmonizing perspective on interests which is pursuing to discover the best and most functional solution on legal problems that are arising in several European states and their legal systems. These types of challenges arise particularly in relation to human rights before the European Court of Human Rights. Comparative law on the second level is more complicated than on the first level.[24]

The third level is executed in certain field of law.[25] For instance, fields of administrative, constitutional as well as field of international law. Fields in which this very thesis focuses on. The third level concentrates on exploring differences and similarities on system level including also conceptual framework impacting the systems from outside. There are significant similarities between the second and third levels.[26]

The fourth level is fully inside of the interests of information of the comparative law. Researcher explores explanations to differences and similarities of the legal systems and field of laws. The interest of normative information is no longer. On the other hand, the fifth level is challenging to separate from the fourth level since the fourth level needs the fifth to be comprehensive. Fifth level offers framing for the research question in which the fourth is exploring answers to. The fifth level is considered to develop the comparative law methodologies as well as theories.[27]

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[23] Husa, 2013, p 171–172.
[24] Husa, 2013, p. 172.
[25] Husa, 2013, p. 172.
[26] Husa, 2013, p. 172–173.
[27] Husa, 2013, p. 174.

This thesis employs the levels from one to three, since the aim is to understand domestic laws and legal system in Finland related to administrative and constitutional fields of law. In addition, exploring and understanding the tensions between intelligence activities and fundamental rights is also one of the intentions of the thesis. This requires attention at the European supranational level, both in terms of regulatory similarities and differences. Furthermore, the rulings of the European Court of Human Rights, which influence interpretative harmony, are examined. The third level is used in the study to examine intelligence community's possible customary law concepts that might be impacting how legal systems de facto operate in certain incidents. The Republic of Finland and the Kingdom of Denmark will be in closer evaluation regarding the second and third levels.

The aim of combining these methods is to generate de lege ferenda observations. De lege ferenda aims to evaluate various models in which future legislation could be based on. De lege ferenda argumentation relates to typical legal dogmatics or even alternative legal dogmatics. Thus, a proposed de lege ferenda solution regarding possible new legislation emerges as a byproduct of legal dogmatics aimed at interpretation and systematisation.[28] In this thesis de lege ferenda arguments are interpreted from a more liberal point of view based on an assessment of social appropriateness.[29]

The assessment of the legal framework between Finland and Denmark – which considers the rights of the intelligence agencies to conduct intelligence operations within their domestic jurisdiction, broader legal framework and the oversight bodies towards these very operators – aims to provide de lege ferenda arguments. De lege ferenda arguments are to be made to recognize models from other states'.[30] In addition, to clarify for the reader, these arguments are presented in the conclusions chapter of this thesis.

[28] Kolehmainen, 2016, p. 108.
[29] Kolehmainen, 2016, p. 108.
[30] Määttä, 2016, p. 143.

## 1.3 Research Ethics

According to Finnish National Board on Research Integrity (TENK) the main principles of research integrity include the principles of reliability, honesty, respect and accountability.[31] In order to operate in accordance with as well as respect these very principles, it is necessary to bring into light that this thesis is conducted via utilising research methods described in chapter 1.2. Moreover, large-scale language models such as OpenAI's ChatGPT (GPT 5.3 and 5.4-models) and Anthropic's Claude Sonnet 4.6 are used for searching and analysing sources for this thesis such as relevant case law and articles. The text of this thesis is not written by artificial intelligence (large scale language models), any interpretations or conclusions are not made or moreover written by these models. The entire text of the thesis remains author's own work and responsibility.

This thesis is the first broader study for the author to be written in English. For the translations and language maintenance the author has used DeepL's Pro translator and AI tools (ChatGPT 5.4, Sonnet 4.6). Particularly when searching for correct terms in English while translating from Finnish as well as refining the language.

This master's thesis is conducted under the guidelines of TENK[32], the University of Vaasa's Writing Guidelines as well as the Guidelines for Use of Artificial Intelligence in Teaching and Learning.[33]

[31] TENK, 2023, p. 11–12.
[32] TENK, 2023.
[33] University of Vaasa, 2023.

# 2 Intelligence and Main Intelligence Methods after WWII and the 9/11 Terrorist Attacks

## 2.1 A Quick Review of Modern Intelligence History

When did the modern intelligence community start forming and what are its main characters? Are there principles developed under the key intelligence agreements that still influence today? This chapter offers a concise historical overlook into modern intelligence's origins after the Second World War (WWII).

After WWII key foundations to intelligence origins are firstly National Security Act 1947, which created the Central Intelligence Agency (CIA) in the United States of America (USA). The first modern intelligence agency and the first time a country recognises the presence of intelligence agency.[34] Secondly BRUSA (British- U.S Communication intelligence agreement) – agreement in March 1946 later known as the UKUSA agreement, started a modernisation of the USA and the United Kingdom's (UK) cooperation for the peace time within the intelligence picture.[35] The UKUSA - agreement contains points in which the parties agree to cooperate sharing information and intelligence results between each other. In addition, the USA and the United Kingdom (earlier known as British Empire) agreed upon that other party may withhold information from another when its special interests required so.[36] This might be interpreted as protection of national interests from either side of the parties.

The UKUSA agreement can be seen as foundation to Five Eyes countries arrangement. The agreement was revisited and revised during the next 10 years of the first BRUSA

[34] Widlund, 2024, p. 33.
[35] National Security Agency/Central Security Service. (n.d.).
[36] British – U.S Communications Intelligence Agreement, 1946.

agreement[37]. The Five Eyes intelligence network developed during the Cold War when Canada, Australia and New Zealand became second parties to the UKUSA agreement. The development of the UKUSA to Five Eyes resulted to institutionalized as well as shared collection of Signals Intelligence (SIGINT) between these countries' authorities. One of the most integrated intelligence networks to known.[38] However, even though the historical documents were released, today the veil of secrecy remains closed on how the Five Eyes alliance is governed.[39]

On the other hand, the realisation of the intelligence sharing agreements by the National Security Agency (NSA) and CIA offers a rare opportunity to take a closer examination over the intelligence sharing agreement framework. Especially into the 1961 General Security Agreement between the Government of the United States and the Government of the United Kingdom. Since this very agreement lays down the roots for the "Third Party Rule" also known as the Originator Control Principle.[40] Evaluation of the agreement leads to realise that the countries have agreed upon that;

> The recipient government will not use such information for other than the purposes for which it was furnished and will not disclose such information to the third Government without the prior consent of the Government which furnished the information.[41]

It is interpreted that the origins for key principle impacting the whole intelligence sharing activities may have therefore emerged from this intelligence sharing agreement. It can also be seen as a starting point for the development of the Originator Control within the intelligence community.

From WWII until the end of Cold War at the beginning of 1990's intelligence's priorities were at military threats, great powers politics and competition between the West and

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[37] National Security Agency/Central Security Service. (n.d.) & see Appendix 1, Appendix J / Annexure J1 UKUSA Arrangements Affecting Australia and New Zealand.
[38] Sepper, 2010, p. 157.
[39] Kim, Lee, Lubin, & Perlin, 2018.
[40] Kim, Lee, Lubin, & Perlin, 2018.
[41] Kim, Lee, Lubin, & Perlin, 2018; Mercer, 2017, p. 2.

Soviet Union.[42] The fall of the Soviet Union in the early 90's led to the creation of new intelligence networks since the agencies noticed that there is a growing need for expanding networks to combat threats such as organized crime, terrorism as well as drug and human trafficking.[43]

The third transition phase within the intelligence community and the whole role of intelligence happened in the early 2000's affecting the collection of information to secure national security. The change was caused by the 9/11 terrorist attacks in New York, the United States of America. After 9/11 the individual rights to privacy and communication secrecy have experienced vital tension with national security in the Western Countries. The attacks led to substantial changes in laws and practices concerning intelligence as well as intelligence agencies in the West.[44] The 9/11 attacks also led to expanding these new intelligence networks which started back in the 90's. In some cases, these networks expanded cooperation with agencies that might be hostile and operate from illiberal societies. The agencies might be serving each other upon Quid pro quo. Meaning that the illiberal agencies might cooperate when they can have something in return serving only their very own interests.[45]

## 2.2 Intelligence Methods

What are the main intelligence methods used over the years by western intelligence community? There are five commonly shared intelligence methods that are taught and used to collect information within the western intelligence community such as Human intelligence (HUMINT), Signals Intelligence (SIGINT), Open-Source Intelligence (OSINT), Geospatial Intelligence (GEOINT) and Measurement and Signature Intelligence (MASINT).[46] As described in the introduction section intelligence as a concept consists

[42] Widlund, 2024, p. 33.
[43] Sepper, 2010, p. 154.
[44] Walsh & Miller, 2016, p. 345.
[45] Sepper, 2010, p. 154–155; 175.
[46] Kamiński, 2019, p. 84; 87; Gearon, 2015, p. 264; Henrico & Putter, 2025, p. 50.

of gathering, processing and making use of the information in the intelligence circle. The collection part of the circle includes at least these different intelligence methods.

### 2.2.1 Human Intelligence (HUMINT)

Human intelligence in which information is collected via human connections or by recruiting informants from key specific areas of interest or informants from other intelligence agency.[47] HUMINT is one of the oldest methods to collect raw information from human to human as one of the only way to gather information by directly speaking to human intelligence sources by controlling and guiding the other half's measures.[48]

### 2.2.2 Open-Source Intelligence (OSINT)

OSINT is related to information gathering that is focusing on sources that are available openly from non-secretive sources such as academic publications, public open data, for instance material provided by different authorities as well as media reports.[49] By gathering, collecting and producing information the OSINT intelligence material might be capitalized in ways that are sensitive and damaging to the target of the intelligence operation, and favourable to operating agency and state.[50] In addition, OSINT materials and operations can be conducted on social media platforms.[51] Recent technological, societal and environmental threat developments have led to formation of new disciplines such as Social Media Intelligence (SOCMINT) emerging from OSINT.[52] Thus, there are discussion on whether SOCMINT should be handled as its own discipline or as part of OSINT, since SOCMINT is in a so-called grey area regarding privacy and security.

[47] Sulmasy & Yoo, 2007, p. 625; 630; Kamiński, 2019, p. 88.
[48] Kamiński, 2019, p. 88.
[49] Gearon, 2015, p. 264; Kamiński, 2019, p. 97.
[50] Kamiński, 2019, p. 98.
[51] Kamiński, 2019, p. 98.
[52] Henrico & Putter, 2025, p. 47.

Yet, the framework can be resolved by structural analysis setting up the boundary management between these disciplines.[53]

### 2.2.3 Signal Intelligence SIGINT

SIGINT is seizing and obtaining information from communications, radars as well as measurement devices. In general SIGINT has two segments: Communication Intelligence COMINT and Electronic Intelligence ELINT. COMINT may include communication between people, companies etc from messaging, phone calls and other communication types. The data itself is captured from electromagnetic communications. Alternatively, ELINT gathers information from electronic signals such as radar signal which do not include speech or text.[54]

### 2.2.4 Geospatial Intelligence (GEOINT)

GEOINT is utilising as well as analysing images and geospatial information to elaborate on physical features as well as geographically referenced places on the earth. The activities are carried out from geospatial information, images and imagery intelligence. This information is obtained for instance from satellite images, reconnaissance aircrafts or unmanned vehicles.[55]

### 2.2.5 Measurement and Signature Intelligence (MASINT)

MASINT information is a product of quantitative and qualitative analysis of physical attributes of targets and events. The product of this analysis is used to identify these

[53] Henrico & Putter, 2025, p. 51.
[54] Kamiński, 2019, p. 93-94.
[55] Kamiński, 2019, p. 90-91.

targets or events. MASINT is one of the classic intelligence sources due to its effectiveness on identifying proliferation of weapons of mass destruction.[56]

These five intelligence disciplines can be seen as forming the operational foundation of intelligence activities in modern time.[57] Furthermore, there is also new disciplines forming from the originals such as Social Media Intelligence SOCMINT originating to Open-Source Intelligence OSINT.[58] From the standpoint of international cooperation SIGINT has shown how critical it is to conduct international cooperation. With the UKUSA agreement and formation of the Five Eyes countries coalition these countries were able to form SIGINT coverage to almost every corner of the world that either country could not have been able to form alone.[59] Soon after the 9/11 attacks governments of liberal democracies gave greater powers for intelligence agencies to prevent terrorism and other national security threats. On the other hand, this led to expanding and intensified tension between citizens fundamental rights and intelligence activities.[60]

## 2.3 International Intelligence Cooperation

What does international intelligence cooperation mean and why it is conducted in the first place? This chapter examines exactly that. In addition, it is evaluating why international cooperation is reasonable for intelligence agencies.

Comprehensive definition for intelligence cooperation is somewhat undefined. Thus, Pepijn Tuinier describes intelligence cooperation as partners from different nationalities working together for mutual benefit in the deliberative collection, enhancing data and information. Towards having a competitive knowledge advantage around national

[56] Kamiński, 2019, p. 96-97.
[57] Kamiński, 2019, p. 87.
[58] Henrico & Putter, 2025, p. 47; Kamiński, 2019, p. 98.
[59] Sepper, 2010, p. 157.
[60] Walsh & Miller, 2016, p. 346.

security.[61] Furthermore, international level within organisations such as NATO or the European Union cooperation happens frequently between parties which share common issues as well as interests.[62]

Nevertheless, intelligence cooperation takes place in situations in which engaging parties can expect some intelligence goods or services in return also known as the Quid pro quo practice. Intelligence agencies operate together when both parties can see the benefits for themselves.[63] Trust is interpreted as a key asset for intelligence cooperation. Furthermore, every time an agency is involved in intelligence cooperation it also sets itself vulnerable. To reduce vulnerability, intelligence services aim to act rationally by basing their cooperation on trusted partners.[64] Agencies operating from illiberal democracies or otherwise being less trustworthy may indicate clearly that cooperation is based on Quid Pro Quo. One of examples of these practices is the case when Russia's intelligence warned the U.S that information sharing is not one-way traffic, indicating that there must be something in return.[65] In addition, the intelligence cooperation is seen as contradictory, since the intelligence agencies are conducting their duties to serve their state's interests under their national mandate. Thus, as Tuinier describes there is a saying that intelligence agencies do not have friends, only adversaries and at best rivals.[66] Beyond this, when conducting intelligence cooperation, the agencies must balance between the possible benefits and risks.[67] The risks may be reduced for instance, by sharing only second-class information at first.[68]

Intelligence cooperation is conducted in order to achieve competitive knowledge advantage as mentioned. Thus, the knowledge advantage can be achieved through strategic intelligence. On the other hand, strategic intelligence is a tool to achieve the

[61] Tuinier, 2021, p. 118.
[62] Tuinier, 2021, p. 118.
[63] Tuinier, 2021, p. 123.
[64] Tuinier, Zaalberg & Rietjens, 2023, p. 393; 395.
[65] Sepper, 2010, p. 175.
[66] Tuinier, 2021, p. 123.
[67] Clough, 2004, p. 602.
[68] Tuinier, Zaalberg & Rietjens, 2023, p. 391.

knowledge advantage. Through the strategic intelligence nation may predict threats to national security and to political, societal and economic environment of the society.[69] Strategic intelligence itself is more affordable to conduct via shared burden, where the real advantages of international intelligence cooperation lie. Such as sharing resources or thematic specialisation achieved through collaboration with other agencies. [70] For instance the UKUSA – agreement is a compelling example of shared burden, since none of the countries within that agreement could not have achieved global SIGINT coverage alone. Yet through international cooperation they are forming it.[71] In addition, one of key benefits over cooperation is the second opinion from another agency. In this way intelligence agencies can try to avoid narrow thinking when discussing with someone from other perspective yet still having the somewhat similar responsibilities.[72]

Intelligence cooperation can be multilateral or bilateral as well as based on ad hoc cooperation and coalitions between agencies.[73] However, for instance with the bilateral cooperation combining two agencies into a deep relationship may lead into problems such as declining sovereignty over intelligence goods and product. This is risky especially if the relationship is impacting the matters regarding national security of the nation and is vetted by the other party. One of the most known comprehensive bilateral relationships is the U.S UK special relationship. Yet even in that bilateral partnership considerable amount of intelligence information is withhold from the other party as a result of protecting national security.[74] Additionally, intensive international intelligence cooperation may lead to circular reporting. This can be evaluated by an example. There are three agencies conducting cooperation under separate cooperation agreements and none of the agencies know about the third parties. Thus, a piece of intelligence information may be passed in a full circle and then received by the originating agency. This on the other hand, may be interpreted as corroboration for that information even

[69] Clough, 2004, p. 602.
[70] Clough, 2004, p. 605.
[71] Sepper, 2010, p. 157
[72] Clough, 2004, p. 605.
[73] Tuinier, 2021, p. 123; Sepper, 2010, p. 161.
[74] Clough, 2004, p. 605.

though it was an assumption in the first place. This demonstrates that bilateral partnerships are easier to govern than multilateral partnerships.[75]

In addition, bilateral partnerships between nations and security authorities can be agreed upon and regulated in treaties between nations. Such as the Agreement 38/2023 which regulates mutual protection of classified information between Finland and Ukraine. The purpose of the agreement is to ensure the protection of Classified information that is exchanged or generated in the process of cooperation between the Parties, as laid down in the Article 1.[76] In other words, by that agreement the parties de facto regulate the classification of exchanged information and recognise international cooperation. As the Government Proposal mentions aim of the treaty is to ensure protection for the classified information that is generated or exchanged among other in matters of defence, security and foreign affairs. On the other hand, the treaty does not require the exchange of classified information.[77] On top of that, one of the aims is to enhance Finland's possibilities to receive classified information from Ukraine as well as improve parties' cooperation within information security.[78] It should be also noted that this agreement is not the only one, since Finland is having similar agreement with several states.[79]

This thesis examines international intelligence cooperation as its central subject. The concept and meaning of international cooperation are therefore under evaluation for understanding what it means in practices. This allows to continue examining its possible legal frameworks. International intelligence cooperation despite its scope is regulated under domestic jurisdiction. [80] Furthermore, legal restrictions over intelligence cooperation are directed to agencies within their own national borders, while regulation

[75] Clough, 2004, p. 606.
[76] Suomen säädöskokoelman sopimussarja, 2023, p. 2.
[77] GP 190/2020 vp, p. 1
[78] GP 190/2020 vp, p. 9.
[79] GP 190/2020 vp, p. 3.
[80] Sulmasy & Yoo, 2007, p. 627.

for activities abroad are almost non-existent.[81] This leads to central question examined in the thesis, is there regulation over intelligence cooperation and how the intelligence community's inner principles may impact that legal frameworks? These concepts are examined in the following chapters of this thesis.

Chapter 2 as whole provides concise overview over the modern history starting points for intelligence cooperation and intelligence sharing. Since history and later developments especially regarding Originator Control principle has essential impacts not only Finnish intelligence legal framework but also the Danish intelligence legal framework as well as how the intelligence activities are overseen. The intelligence's most common intelligence methods were reviewed since they provide a glimpse into the operational side of intelligence. Making it clearer what kind of activities the thesis often refers to. Following chapter examines these aspects impacting Finland. Furthermore, Finland constructed modern intelligence laws as well as amendments to its constitution which came into force in 2019. These elements are under analyses in greater depth in chapter 3.

[81] Widlund, 2022, p. 580.

# 3 Intelligence in Finland

This chapter examines the legal basis of Finnish intelligence as well as the tension between intelligence activities and fundamental and human rights. Joonas Widlund describes intelligence to be secret intelligence gathering, aiming to obtain information to support the decision-making of state leadership and security authorities. Furthermore, understanding the state's security environment as well as backing the decision-making in the highest levels of government is supported by the intelligence.[82] Intelligence itself is conducted to protect national security as well as to advance and safeguard the interests of the state. Intelligence plays a vital role in threat assessment and security environment of the state.[83]

In the Finnish perspective, the legal definition of intelligence is similar to the definition of the USA, Great Britain and Sweden; the main components that intelligence contain, are with small variations; activity, process, product and organisation.[84] The Police Act Chapter 5 a, section 1 states: Civilian Intelligence is information gathering and utilizing conducted by Finnish Intelligence and Security Service to protect national security, backing highest state leadership decision-making as well as for other authorities' statutory tasks related to national security.

These definitions correspond to the introduction section's definition: intelligence is understood as gathering, analysing and making use of the processed information. In the Finnish society there are two main authorities to conduct intelligence operations. The FSIS on the civilian side and Finnish Defence Forces (FDF) on the military side. These authorities are defined in the Police Act Chapter 5 a, for FSIS and in the Act on Military Intelligence (590/2019) for FDF. The Act on Military Intelligence also regulates cooperation between FSIS and FDF regarding technical implementations of communication intelligence on behalf of FSIS, Act on Military Intelligence section 73. This

[82] Widlund, 2024, p. 32.
[83] Widlund, 2020, p. 136.
[84] Lohse & Viitanen, 2019, s. 37.

thesis considers mainly the civilian side of intelligence and FSIS in Finland. In many cases the interest of information does not direct at activities that are regulated illegal. Moreover, the interest of information is directed at events and phenomena related to changes in security environment close to Finland[85] or to protect Finland's so-called super interests.

Why are intelligence operations conducted in Finland in the first place, and why do the Finnish Security and Intelligence Service and Finnish Defence Forces gather information? They provide information to support decision-making and planning. Both FDF and FSIS maintain situational awareness and gather information on factors threatening Finland's national security.[86] Intelligence activities are carried out to protect Finland's so-called super interests as described in the Constitution of Finland. According to Lohse and Viitanen those super interests are the following:

1. Sovereignty and territorial integrity of the state of Finland, as laid down in section 1.1 and 4 of the Constitution.
2. The participation of Finland in international cooperation, as laid down in section 1 of the Constitution.
3. Democratic state and social order, as laid down in section 2 of the Constitution
4. The inviolability of legislative, executive, and judicial powers, as laid down in section 3 of the Constitution.
5. The right of life, personal liberty, integrity and security, as laid down in section 7 of the Constitution.[87]

[85] Lohse & Viitanen, 2019, 75–76.
[86] Puolustusvoimat, 2025, p. 8; FSIS, 2025, p. 3.
[87] Lohse & Viitanen, 2019, p. 39–40.

## 3.1 Key legislation for Intelligence

The aforementioned Constitutional principles - the integrity and sovereignty of Finnish state - are main core reasons why intelligence is conducted in the Finnish society. Civilian intelligence is conducted by the FSIS, and its main tasks consider the protection of national security, to support decision-making by the highest state authorities, and for other authorities' statutory tasks related to national security as laid down in the Chapter 5 a, section 1 of the Police Act. Civilian intelligence is defined as information gathering and utilization activity of the FSIS. Yet the process can be conducted only by the FSIS, and the process of civilian intelligence belongs only to the Finnish Security and Intelligence Service.[88]

Intelligence activities create tension between a free society, fundamental rights, and the actions of competent authorities. One of the fundamental rights that might be restricted by civilian intelligence is the right to secrecy of communications.[89] FSIS may restrict this right as laid down in sections 1-2 of the Act on the Use of Network Traffic Intelligence in Civilian Intelligence (582/2019). When targeted for example at terrorism, foreign intelligence activities and a crisis that poses a threat to international peace and security, as laid down in section 3.

Yet, before 2019 there was no legislation in Finland concerning intelligence balancing this tension.[90] The need for legislation for intelligence was identified in 2015 as part of the deteriorating security situation in Europe.[91] Even though there were no barriers to legislation in this area created by international agreements Finland is part of.[92] The new legislation concerning intelligence and amendments to CoF that came to force in 2019 meant a legalization of intelligence in Finland. The process required a review of Constitution on Section 10, protecting the right to privacy and more precisely secrecy of

[88] Lohse & Viitanen, 2019, p. 52.
[89] GP 202/2017 vp, p. 169.
[90] Widlund, 2024, p. 48; Lohse & Viitanen, 2019, p. 13.
[91] Valtioneuvosto, 2015, p. 30.
[92] Lohse & Viitanen p. 17–18.

communication as fundamental right. The review led to legislation change in the constitution and to amendment in section 10 of the CoF.[93] Now the amendment is the following:

> Limitations of the secrecy of communications may be imposed by an Act if they are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, during deprivation of liberty, and for the purpose of obtaining information on military activities or other such activities that pose a serious threat to national security. The CoF, Section 10(4).

As mentioned in the section 10 of the CoF, these limitations may only be imposed by an act, which corresponds directly with the principle of legality and the principle of legality in administration mentioned in section 2 of the CoF. Principle of legality in administration is one of the distinguishing marks of the realization of the rule of law and protection of individual from public power.[94]

On top of that, the oversight of Finnish intelligence authorities FSIS and FDF is regulated under Act on the Oversight of Intelligence Activities (121/2019). Section 1 of the act states that the act applies to the oversight of civilian and military intelligence. The act lays down a two-part structure for oversight of the intelligence activities including parliamentary oversight of intelligence in chapter 2 as well as oversight of the legality of intelligence activities in chapter 3. In addition, FSIS must comply with the Act on the Processing of Personal Data by the Police (616/2019). FSIS is regulated in Chapter 7 of that law. Section 50 regulates how FSIS may disclose the personal data it has in its registers. Section 51 on the other hand, regulates the disclosure of personal data for the purposes of international cooperation. The oversight of the Finnish Security and Intelligence Service is examined in more detail in chapter four. Additionally, the oversight mechanisms in place are also compared between Finland and Denmark.

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[93] Widlund, 2024, p. 47; GP 198/2017 vp, p. 30.
[94] Aarnio, 2001, p. 4; Jyränki, 2001, p. 13–14.

Furthermore, the legislator has drawn attention to the legality as well as other key principles when restricting fundamental rights. The restrictions must be kept as minimal as possible. General requirements for restricting fundamental rights are; The requirement to be established by law, Precise and specific nature of restrictions, Acceptability of grounds for restrictions, Proportionality requirement, The requirement of inviolability of the core area of fundamental rights, The requirement of legal protection, and The requirement of compliance with human rights obligations.[95]

Furthermore, there are also legal provisions written into some of the sections of the Finnish constitution regulating fundamental rights. According to preparatory works of the Finnish Constitution, by qualified legal provisions the lawmaker may establish special legal provision to authorise restriction on specific fundamental right under law. The provision may also restrict the lawmaker's ability to establish restriction to specific fundamental right under normal law. These provisions are intended to comply with the provisions found in the articles of the European Convention on Human Rights.[96] Internationally in the European context, especially the principles of necessity as well as proportionality are highlighted as key principles concerning intelligence activities.[97]

However, some fundamental rights were defined as precise and absolute during the constitutional reform[98] such as Section 7 of the CoF, which guarantees, the right to life. The absolute nature of a fundamental right must also be weighed in such a way that it cannot be generally absolute to the extent that it should not be restricted under any circumstances or to any extent. This would not always be the case even when the fundamental rights provision makes no mention of the possibility of restriction.[99] Fundamental rights may be restricted due to the fundamental rights of other private individuals, which may lead to situations of conflict between fundamental rights; such

[95] GP 309/1993 vp, p 30; PeVM 25/1994 vp, p. 5.
[96] PeVM 25/1994 vp, p. 5.
[97] EOS-committee, 2018, p. 4.
[98] PeVM 25/1994 vp, p. 4.
[99] Viljanen, 2001, p. 12.

situations are addressed through a balancing of fundamental rights. The aim of the balancing should be the balance between various fundamental rights. Such situations arise both during the legislative process and in specific instances of the exercise of public authority. There might also be valid reasons to restrict fundamental rights through the pressing national or societal need or interest.[100] According to a broad interpretation of fundamental rights, the public power has a duty to take active measures to protect and promote the realization of individuals' fundamental rights.[101]

## 3.2 Liberties of Individuals and National Security – a conflict?

One of those so-called super interests mentioned in chapter 3 is especially interesting since it has a paradox within it. At the same time, it also sheds light on the matter of constant tension between intelligence, fundamental rights as well as a democratic free society. The paradox between secret intelligence activities and fundamental rights it can be observed in more detail in section 7 of the CoF. Section 7 states that everyone has right to life, personal liberty and integrity. Right to individual liberty and freedom protects the individual from unjustified interference by public authority. [102] Simultaneously, these very rights in section 7 provide grounds for conducting intelligence activities that might be setting restrictions on both these rights and towards secrecy of correspondence protected as fundamental right in section 10 of the CoF.

The concept of security can be interpreted not only as security of the individual but also as societal condition as the common good.[103] The common good of society sets an operational principle for the public power to protect the individual freedom as well as common good, the national security. This operational principle gets its justification from the European Convention on Human Rights Article 8's criterion of restriction. This

[100] Viljanen, 2001, p. 12–13.
[101] Karapuu, 2011, 75.
[102] Tuori, 1999, p. 922.
[103] Tuori, 1999, p. 922–923.

criterion justifies the public power to interfere with an individual's right to liberty and freedom if it is necessary in a democratic society in the interest of national security, public safety and economic well-being of the country.[104] By this criterion the authorities are able to protect the individual from harms as well as to protect the societal condition, the common good. In addition, section 22 of the CoF regulates that authorities shall guarantee the observance of basic rights and liberties and human rights.

As described, the Police Act Chapter 5 a, § 3, mentions the targets of the civilian intelligence, including terrorism, national security, foreign espionage and activities that threaten the lives or health of large number of people or the vital functions of the society. In Finland civilian intelligence activities can be targeted only to these targets mentioned in 5 a section 3.[105] As characterized public power – a competent authority – may restrict the fundamental rights protected by the constitution under law (Police Act and Act on the Use of Network Traffic Intelligence in Civilian Intelligence) when the key principles for limitations are met. These limitations to the rights protected in section 7 are conducted to protect these very same rights of the individuals and wider public from threats posed by terrorism or activities vitally threatening these rights of the people. Paradoxically, the sections 7 and 10 of the CoF protects the rights of the people to life, personal liberty and secrecy of correspondence. The competent authority FSIS may restrict these rights of individual for the purpose of protecting these same rights for other members of the society. In this context, the section 7 of the CoF acts as a ground both for the intelligence activities and for refraining from conducting them. It thus has a dual role: serving as a normative basis for intelligence activities, yet simultaneously as the constraint against them.

Widlund provides a legal-theoretical analysis of this very framework in article Kansallinen turvallisuus: vapauden ehto vai rajoitus? (National Security a Prerequisite for Freedom or Restriction?) including Kaarlo Tuori's concept of security. This sheds broader

[104] Tuori, 1999, p. 923.
[105] Suojelupoliisi, n.d., A, p. 9.

light on the paradox between individual's rights and safety of the society and national security. The relationship between individual rights and the national security is vertical. The national security acts as justification for the state to use public power towards individuals and to intervene with the rights of one.[106] On the other hand, this is shaped by the concept of the security dimension, which can be divided into two parts. First as individual and second as collective security dimensions.[107]

The individual security refers to individuals right to security as well as their sense of subjective security. On the other hand, collective security is interpreted as public order and general safety of society (public safety) and national security. Widlund describes this from interpretation of fundamental rights standpoint that (general) security cannot only act as right of the individual but also as restriction to individual's rights.[108] This framework acts as an initiator of the paradox in section 7 since the rights of the individual as well as rights of the other individuals collective security (common good) are tied together. National security on the other hand, relates to interests where the object is to protect the state and its elements such as the government and armed forces. While the threat to stability of these institutions comes from outside of the state.[109]

## 3.3 The ECHR and The EU Charter – restricting intelligence?

Human rights refer to fundamental rights that are protected internationally by human rights conventions.[110] The protection and promotion of human rights have been taken to the international level in such a way that it binds the signatory states to promote the realization of human rights both internationally and regionally, within the signatory states. In many cases, human and fundamental rights aim at the same result and may

[106] Widlund, 2020, p. 137.
[107] Widlund, 2020, p. 137.
[108] Widlund, 2020, p. 137.
[109] Widlund, 2020, p. 139–140.
[110] Karapuu, 2011, p. 67.

even be identical in content.[111] From Finnish standpoint, there are two main international Human Rights frameworks in which Finland is part of. They are the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union (The EU Charter, (2016/C 202/02).

The ECHR is one of the most important human rights treaties for safeguarding and promoting fundamental and human rights. Additionally, it is generally considered as one of the most effective international human rights monitoring systems. The Convention effectiveness is based on the fact that it allows individuals within the jurisdiction of Contracting States to file individual complaints to the European Court of Human Rights (ECtHR), whose rulings are binding on the Contracting States.[112] The effectiveness is further reinforced by the fact that the Convention obliges the Contracting States to ensure the realisation of the rights written in the Convention.[113]

By comparison, the Court of Justice of the European Union (CJEU) is not a general appellate court of the EU. Individuals cannot appeal from national court's rulings to the CJEU. The CJEU deals only with appeals in which it has jurisdiction written in the Treaty of Functioning of the European Union (TFEU). The actions are Infringement action (Articles 258 and 259), action for annulment (Article 263), action for failure to act (Article 265), action for damages (Article 340) as well as a request for preliminary ruling (Article 267). The preliminary ruling is requested by the Member State for preliminary ruling in case needing for an interpretation and/or validity of a provision of the EU law. In addition, the preliminary ruling asked by the Member States is the most used form of action by the CJEU.[114]

[111] Karapuu, 2011, p. 67.
[112] Letto-Vanamo, 2020, p. 53.
[113] Pellonpää et al., 2018, p. 13.
[114] Raitio & Tuominen, 2025, p. 141–142.

Articles 2–18 of the ECHR comprise the first part of the Convention and are regarded as the core of the substantive rights within the human rights treaty system.[115] The first part of the European Convention on Human Rights is considered the part that sets the minimum standards required to protect fundamental and human rights.[116] The right to privacy of correspondence guaranteed in Section 10(2) of the CoF corresponds to Article 8 of the ECHR, which guarantees the right to respect for private and family life. It should be noted that this article fundamentally protects the individual's sphere of freedom against interference by public authorities. Regarding Article 8, it has been held that the promotion of rights requires the contracting state to take positive measures to safeguard those rights.[117]

However, the EU Charter or the ECHR do not explicitly prohibit intelligence activities from member states and their authorities. Both the ECHR and the EU Charter which are binding Finland, protect private life, confidentiality of communications and personal data against interference from public authority. Key Articles regarding intelligence are 7 & 8 in the EU Charter and in the ECHR Article 8 as mentioned earlier in the Introduction.

States have long used their public authority and intelligence to combat external threats while operating in secrecy especially when sharing information to each other.[118] Intelligence operations are made possible in ECHR article 8, since the fundamental rights are subject to restriction. As the Article mentions 8(2), authorities may intervene to this right by law, if it is necessary for protecting democratic society, public safety or national security for example.[119] This leaves space for states to restrict fundamental rights by law respecting principles of proportionality and necessity.

[115] Pellonpää et al., 2018, p. 367.
[116] Pellonpää et al., 2018, p. 367.
[117] Pellonpää et al., 2018, p. 778.
[118] Paasonen & Widlund, 2023, p. 209; Sepper, 2010, p. 156.
[119] Lohse & Viitanen, 2019, p. 128.

Two of the EU Charter articles are especially important regarding intelligence activities. Article 7, respect for private and family life, protecting secrecy of communication as well as Article 8 protecting personal data. Furthermore, article 52(1) of the EU Charter mentions that fundamental rights protected by the EU Charter may be restricted by law, with respect for essence of those rights and freedoms. Restrictions need to comply with the principles of proportionality as well as necessity. Restrictions must correspond to the objectives of general interest of the Union or need to protect the rights and freedoms of others.[120]

From the point of view of intelligence and its legitimacy, European Court of Human Rights (ECtHR) has ruled that national security can be one of the indicatives to restrict Article 8 of ECHR.[121] In the case Weber and Saravia v. Germany (2006) ECtHR held that strategic signal intelligence, including strategic large-scale interception of communications is not prohibited as such under Article 8. The measures are acceptable when applied to protect national security in a democratic society. Simultaneously, the measures must be implemented by law and subjected to principles of necessity as well as proportionality as the Article 8 of the ECHR regulates.[122]

ECHR as well as the EU Charter act as key supplements for the protection of fundamental rights and how the fundamental rights of individuals can be restricted by the ECHR signatory state's public authorities or EU's member countries. The EU charter is legally binding since it is equal to other Treaties of the European Union which form the level of primary law in the EU legal framework. However, the EU Charter is binding only when the EU member states are applying EU law (Article 51(1)).[123] In addition, the EU Charter is not intended to expand the Union's jurisdiction nor create new jurisdiction for the EU (Article 51(2)).[124] Furthermore, these criteria on restricting fundamental rights when

[120] Raitio & Tuominen, 2025, p. 340.
[121] GP 198/2017 vp, p. 20.
[122] Weber & Saravia v. Germany 2006.
[123] Raitio & Tuominen, 2025, p. 335–336; 339
[124] Raitio & Tuominen, 2025, p. 340.

conducting intelligence activities under ECHR and the EU Charter correspond, also with the paradox of the protection of the individual's rights and the balancing between one's fundamental rights and national security as described in chapter 3.2.

Intelligence and exercising intelligence activities can be interpreted as necessary functioning of a modern state. The characteristic role of national security is its close relation to intelligence. On top of that, national security has been agreed under the TEU (article 4(2), to remain totally to the states' competence. The European Union does not have shared jurisdiction concerning national security policies and competencies. [125] Therefore, intelligence activities, competencies and regulation remain under states' domestic jurisdiction.

Furthermore, even bulk interception of communication signals as well as intelligence sharing is ruled to be approved by the European Court of Human Rights in the case Big Brother and others vs The United Kingdom. ECtHR's ruling indicates that states may restrict fundamental rights protected under ECHR Article 8 in case of targeted or bulk interception of communication signals.[126] The ability and reasons to conduct bulk signal-intelligence activities is part of states' discretionary according to ECtHR in case Big Brother Watch vs the UK.[127] On the other hand, ECtHR has specially pointed that states must have and must develop oversight processes for bulk signal-intelligence and to ensure adequate legal safeguards for the people in their jurisdiction.[128] However, this in particular was under the microscope in ECtHR's Grand Chamber ruling of the case Centrum för Rättvisa v. Sweden (35252/08). As in the case Big Brother Watch v. the UK (Grand Chamber) the ruling of Centrum för Rättvisa found that the Swedish system for bulk interception of communications signals overstepped the margin of appreciation guaranteed for the state. In addition, there were three main defects in the Swedish system: the absence of clear rule on destroying intercepted material which did not

[125] Widlund & Paasonen, 2021, p. 5–6; Widlund, 2024, p. 89.
[126] Big Brother Watch vs the UK, Grand Chamber, 2021.
[127] Big Brother Watch vs the UK, Grand Chamber, 2021; Widlund, 2024, p. 118.
[128] Big Brother Watch vs the UK, Grand Chamber, 2021; Widlund, 2024, p. 118.

consent personal data, the absence of requirement in the Signals intelligence Act or other relevant legislation when transmitting intelligence material to foreign partners. On top of that, consideration was given to the privacy interests of individuals and the absence of an effective ex post facto review.[129] All things considered, ECtHR ruled that the Swedish states had violated the Article 8 of the European Convention on Human Rights. Court's ruling means that higher standards will apply to states' human rights obligations when they conduct large-scale signals intelligence operations.[130]

Both cases showcase that intelligence activities conducted by the member states of the ECHR must be submitted under key principles of clear legal bases, necessity, proportionality, independent oversight as well as safeguards against abuse. Once these criteria are met states may operate even a bulk signals-intelligence activities within the framework of domestic and transnational legal framework (ECHR).

A third relevant case regarding proper safeguards for fundamental and human rights under intelligence activities is the ECtHR's ruling over the case Szabó and Vissy v. Hungary (Application no. 37138/14). In this very ruling ECtHR evaluates if Hungary's domestic legislation (7/E 3 surveillance) restricting individuals' human rights to disproportionate extent. [131] Hungary's domestic law allowed large wide of jurisdiction to secret intelligence gathering conducted by the security officials. ECtHR mentions that it is undisputed that Hungary's interference to secrecy of correspondence and therefore individuals' right to respect for private life secured under Article 8 of the ECHR was conducted to secure Hungary's national security. In addition, the ECtHR is ruling that Hungary's legislation was sufficiently clear over definition of the threats subjected to intelligence gathering. Fulfilling the requirement of predictability. [132] National security and the protection of a free democratic society in ECtHR case law have served as bases for the conditions to restrict Article 8 of the ECHR, when necessary, in democratic

[129] Centrum Rättvisa v. Sweden, 2021; European Court of Human Rights, 2021, p. 2-3.
[130] European Court of Human Rights, 2021, p. 3; Widlund, 2024, p. 118.
[131] Szabó and Vissy v. Hungary., 2016
[132] GP 202/2017 vp, p. 59-60.

society.[133] However, overall assessment of Hungary's domestic legal framework on intelligence gathering activities were ruled to be in violation of the ECHR Article 8 since there was no safeguards in place to be sufficient, precise, effective and comprehensive enough to conduct surveillance under Hungary's section 7/E (3) surveillance. Additionally, safeguards were absent also on possible redress of surveillance activities. Furthermore, according to the ECtHR the scope of powers guaranteed by law, and the fact that these measures could be targeted to virtually everyone via possible mass surveillance of data traffic are interpreted in the ruling as violation of Article 8.[134] The ruling has subsequently influenced on how the ECtHR considered the safeguards regarding intelligence activities and surveillance to be comprehensive enough when balancing the states' rights to restrict fundamental right protected under ECHR. Such as in the case mentioned above the Big Brother Watch and others vs the UK 2021.

Nevertheless, a democratic society can tolerate intelligence activities and authorities' operating in total secrecy only to the certain point due to the fact that there is possibility of misuse of public power within the security services. Combined with the intensifying use of the term national security, governments may have temptation to use the over-collected information improperly.[135] It should be also noted that critical approach towards national security as a term is appropriate since there is a clear possibility of misuse of that term to gain political advantages.[136] In Finland term "national security" become part of the constitution as part of the intelligence legislation framework that come into force 2019, meaning a legalization of the term national security.[137] However, the amendment to section 10 of the Finnish Constitution had to be enacted before other intelligence legislation entered into force to ensure compliance with the constitution.

[133] GP 202/2017 vp, p. 60.
[134] Szabó and Vissy v. Hungary., 2016, The court's assessment section 89
[135] Venice Commission, 2015, p. 4.
[136] Widlund & Paasonen, 2021, p. 8.
[137] Widlund & Paasonen, 2021, p. 1.

This leads to closer examination of the case Tele2 Sverige ruled by the Court of Justice of the European Union (CJEU) (joined cases C-203/15 & C-698/15). Which demonstrates that the jurisdiction ownership regarding national security is somewhat blurred.[138] The main points of the case focused on domestic regulation demanding the telecommunication operators to maintain information regarding individual users' data for intelligence authorities and their activities. The data considered information regarding user's data traffic and location data.[139] The states mentioned that the national security is in domestic jurisdiction as well as retaining the information for counter-terrorism activities and national security purposes as valid reason.[140] The CJEU ruled that general widespread retention of users' data is preclude by article 15(1) of Directive 2002/58 when interpreted from the EU Charter articles 7, 8 and 11 standpoint.[141] It can be said when reflected to CJEU case law that the restrictions towards fundamental rights protected under the EU Charter should be interpreted narrowly.[142] It may be interpreted that the ruling of the case Tele2 Sverige included the extensions of the EU law through the directive to include the retention of data relevant to intelligence interest. Furthermore, as mentioned jurisdiction ownership regarding national security remains somewhat unclear between EU legislation and member states' domestic authority.

Directives are intended to guide the harmonisation of the EU member states legislation in specific areas of legislation. In addition, their role is moreover steering legislative development in a purposive manner, while they leave it to the states to decide on the forms and methods.[143] It may further be questioned whether it is appropriate to extend the Union's legislative competence, on a directive-based approach, into an area where the Treaties expressly confirm that competence is to remain with the Member States, TEU article 4(2). On the other hand, it has been confirmed that the directives' specific and sufficiently precise articles may have immediate effects. Especially when the articles

[138] Widlund, 2024, p. 89.
[139] Tele2 Sverige, joined cases C-203/15 & C-698/15, section 2.
[140] Tele2 Sverige, joined cases C-203/15 & C-698/15.
[141] Tele2 Sverige, joined cases C-203/15 & C-698/15.
[142] Widlund, 2024, p. 89.
[143] Raitio & Tuominen, 2025, p. 85.

aim is to grant as well as safeguard individuals' rights.[144] The ruling of the CJEU was justified, among other things by safeguarding the individuals' rights to privacy, Article 8 of the EU Charter.

## 3.4 Regulation and Limitations on International Cooperation

International intelligence cooperation may be interpreted as partner agencies from different states working together towards common benefit or goal. This can be executed by deliberate collection and enhancing of data and information, aiming for competitive knowledge advantage in matters of national security.[145] These cooperation networks operate in the shadows and secrecy to protect their own national interests as well as trust between each other[146]. Among others, international cooperation can be interpreted as sharing information and cooperated operations.[147]

In Finland the legal basis for international cooperation is written in the Police Act, Chapter 5 a, section 57. According to the section 57 international cooperation can be carried out to protect national security. International cooperation and information exchange is in the core of FSIS work to secure Finland's national security.[148] When operating within the territory of the cooperation state, the Finnish police officer of FSIS shall comply with the restrictions and conditions of the cooperation state (Chapter 5 a, § 57). In accordance with the preceding, that applies to foreign officer operating in Finland within cooperation of FSIS. The foreign officer is obligated to act as FSIS requires.

The international cooperation is executed by multilateral and bilateral ways. FSIS may execute cooperation in a form of intelligence operations and especially information

[144] Raitio & Tuominen, 2025, p. 259–260.
[145] Tuinier, 2021, p. 118.
[146] Sepper, 2010, p. 156.
[147] Sepper, 2010, p. 154.
[148] GP 202/2017 vp, p. 104.

exchange.[149] From the viewpoint of the Finnish state and societal perspective there is no interest to share information considering secrets or special information about Finnish companies' trade secrets. Information that FSIS shares to its counterparts must contribute to Finnish national interest and security.[150]

As written in the section 57(5) international cooperation executed by FSIS must comply with the international treaties which are binding Finland. Such as the EU Charter and ECHR mentioned earlier in the part 3.2. Cooperation as well as information exchange is prohibited if there is any reasonable grounds to suspect that, as a result of such cooperation or disclosure of information, any person would be exposed to the death penalty, torture or treatment violating human dignity, persecution, arbitrary deprivation of liberty or an unfair trial as laid down in the Police Act, Chapter 5 a, section 57(5). In addition, Finnish legislator especially contributed to current matter and underlined that international cooperation, and information exchange must be prohibited in such circumstances.[151] Moreover, international cooperation is especially complex from the viewpoint of fundamental and human rights. Via the cooperation an agency operating in a democratic society under legislation regulated the possibilities to conduct international cooperation might still conduct cooperation with agency from illiberal society. International intelligence cooperation is based on the expectation of reciprocity which might led to direct or indirect connections to cooperation which can be seen as inappropriate in accordance with human rights obligations.[152] The legal restrictions regulating international cooperation which for instance are mentioned above regarding FSIS are mainly targeted FSIS activities within Finland in domestic activities. There is only a slight chance to regulate international cooperation activities abroad.[153]

[149] Lohse & Viitanen, 2019, p. 111.
[150] Lohse & Viitanen, 2019, p. 112; PeVL 35/2018 vp, p. 25.
[151] PeVL 35/2018 vp, p. 25–26.
[152] Widlund, 2022, p. 579.
[153] Widlund, 2022, p. 580.

## 3.5 Originator Control

There is a tendency for cooperation to happen when one can wait for reciprocity in the exchange, known as Quid pro quo in the intelligence community. When cooperating the agencies or cooperation networks may exchange information or other intelligence assets as well as money. Cooperation between different agencies requires high level of trust as well as full compliance with a commonly shared principle, Originator Control (Orcon).[154] The Orcon plays significant role in the relations between intelligence agencies.[155] A highly trusted actor may be granted access to intelligence exchange information of other agencies in real time as well as on frequent basis.[156]

In simple terms, Originator Control – Orcon means that when Agency A hands over intelligence information to Agency B and the A Agency classified the handed information before handing it over. Agency B cannot declassify the information without A's approval. Neither can the Agency B hand it over to Agency C or other third party without the A's approval. As a conclusion, the Agency A's control over the information is absolute. In addition, there are no mechanisms to overrun A's decision over classification of the information if A does not want to change it or approve the handover onwards.[157] As mentioned, this form of information functions only when there is trust in place between the agencies.

When intelligence is shared between the actors there are two main principles applied to it to protect confidential material. First being, the "need to know" -principle. Only individuals who need the classified information in their respective expertise to conduct their work gain access to it. The second principle is that the shared intelligence and information remain as the property of originator of the information. The principle is also referred to as the Originator Control (Orcon) which dictates how the information can or

[154] Tuinier, 2021, p. 123; Widlund, 2022, p. 577.
[155] Kartalova, 2024, p. 74.
[156] Sepper, 2010, p. 162.
[157] Roberts, 2004, p. 251; EOS-Committee, 2015, p. 2-3.

cannot possibly be shared onwards. Orcon protects the one who originally shared the information and its interests.[158]

Orcon principle – confidential exchange of information - is not based on multilateral international agreements or international law. It is not based to state's domestic law neither. It is based on customary law, which has developed over the decades within the intelligence community.[159] The Orcon principle cannot be comprehended as pure customary law from the perspective of public international law, since there are no states or international organisations as actors to confirm Orcon, via the two necessary elements defining customary actions to be internationally recognised as customary law. These elements are general practices and acceptance by states or international organisations confirming that the practice is required by law[160], as described in the chapter 1.1. As regards Orcon principle only the first element is fulfilled. The general practices are identified in the international intelligence community since the international cooperation, information exchange and exchange of other intelligence goods are conducted either via an intelligence network including UKUSA or via bilateral cooperation on ad-hoc basis.[161] Despite the form of cooperation the exchange of information or other intelligence goods are handed over the principle of Orcon. Such recurring pattern is respecting the Orcon regardless of what the informant agency of receiving agency is. Orcon is respected throughout the international intelligence community since acting in accordance with Orcon is one of the elements to maintain the trust between agencies inside the community.[162] The Orcon principle can be interpreted as a form of self-regulation mechanism of the international intelligence community which is expected to respect as matter of customary law.[163]

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[158] Sepper, 2010, p. 160; Widlund, 2022, p. 575.
[159] Widlund, 2022, p. 575–576; GP 202/2017 vp, p. 104.
[160] Rose et al, 2022, p. 19.
[161] Widlund, 2022, p. 578; Sepper, 2010, p. 161.
[162] Sepper, 2010, p. 162.
[163] Widlund, 2022, p. 576; GP 202/2017 vp, p. 104.

The second criteria of customary law; acceptance by states or international organisations that the practice is required by law cannot be met. Originator control is not developed under any international treaties formed by states or declarations. The Orcon principle does not have an institutionalised position under international law nor in the case law of European Court of Human Rights.[164] The Orcon principle does not have institutionalised support in its traditional meaning. Instead, it is standard practice in the international intelligence community which has developed and formed over time. This underlines that the principle is essentially out of the reach of domestic control and legislative mechanisms.[165]

### 3.5.1 The Tension with Openness of Society and Orcon

From Finnish perspective there is also special legislation regulating public nature of the activities of public authorities and the documents in their possession, the Act on the Openness of Government Activities (621/1999). The so-called Freedom of Information Act and Orcon principle can be seen as very much in contrast to one other. The Act on the Openness of Government Activities (Freedom of information) emphasizes the importance of openness of document to the wider public in society.[166] The leading principle from that act is the principle of openness. Official documents shall be in the public domain, unless specifically provided otherwise in this Act or another Act, as laid down in section 1. The principle promotes openness and supports democratic society via transparency.[167] The Act ensures the promotion of the fundamental right of the access to information mentioned in section 12 of the Finnish Constitution. Additionally, that section includes specific legal provision which mentions that access to authorities' documents can be restricted under law. The provision is as follows:

> Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted

[164] Widlund, 2024, p. 63.
[165] Widlund, 2022, p. 575–576.
[166] Widlund, 2022, p. 581.
[167] Widlund, 2022, p. 581.

by an Act. Everyone has the right of access to public documents and recordings, Section 12(2) of the CoF.

The main principle of openness therefore conflicts with Orcon, since its key feature is to withhold information from out of reach from touch out of the need-to-know principle. Meaning only the one who need the information to conduct their duties have access to information or document.[168] Under Orcon the intelligence information is not intended to be shared to third parties without the original's approval[169] not mention to the wider public audience, leading to tension between the transparency of democratic society, its oversight mechanisms and Orcon.

### 3.5.2 Possible Breach of Orcon and Impact on FSIS

In Finland the Orcon principle is domestically recognised in case law. A ruling of the Supreme Administrative Court of Finland case 2010:31. The judgement addresses and recognises Orcon as a principle of the international intelligence community impacting Finnish legal system and intelligence authorities as well.[170] There are interesting elements in the Supreme Administrative Court's ruling to be analysed in more detail. The aspect of access to authorities' records (principle of openness) and protection of the Orcon principle.

The Supreme Administrative Court of Finland ruled that the principle of openness (Cof, § 12) is not absolute when balancing the principle of openness and national security. The document can be classified as secret under the section 24(1) subsections 2 and 9 among others, of the Act on the Openness of Government Activities. Additionally, the Supreme Administrative Court ruled that FSIS's international cooperation activities as well as trust towards the agencies in the intelligence community might be jeopardized, if the relevant documents are declassified and shared to a reporter demanding them. Due to the fact

[168] Widlund, 2022, p. 576; Sepper, 2010, p. 160.
[169] Sepper, 2010, p. 160.
[170] Widlund, 2024, p. 63; KHO 2010:31.

that, the information and document is received via international cooperation. According to Supreme Administrative Court, the declassification of the document might also have led to a declining ability of FSIS to maintain Finnish national security. The document and the information were not declassified by the Court's ruling.[171]

Thus, the Orcon principle creates considerable tension between legislative framework, fundamental rights obligations and national security activities. Whether these tensions manifest similarly in Denmark and Finland, and what differences might be observed in the fields of international cooperation legislation, oversight institution and EU-level cooperation in these states, is examined in the following chapter.

[171] KHO 2010:31.

# 4 Intelligence Legal Framework Comparison Between the Republic of Finland and the Kingdom of Denmark

## 4.1 Constitutional and Systematic Starting Points

The focus of this chapter is to examine legislation similarities as well as differences regulating intelligence furthermore, international cooperation conducted by intelligence authorities in Denmark and Finland. Both states are Nordic liberal democracies and member states of the EU and the NATO.[172] Finland being republic (§ 1.1 of the CoF) and Denmark being a limited monarchy where legislative power is vested jointly in the King and the Folketinget (Parliament), Chapter (Kapital) 1 of the Constitution of the Kingdom of Denmark (Danmarks Riges Grundlov) (Lov nr. 169 af 05/06/1953).[173] The basic form of Denmark's Constitution (Grundlov) originates to year 1849 while the last constitution reforms are from year 1953.[174] The countries' intelligence authorities Finnish Security and Intelligence Service as well as Danish counterparts being National security service, (Politiets Efterretningstjeneste), hereafter PET and the Danish Defence Intelligence Agency (Forsvarets Efterretningstjeneste), hereafter FE.[175]

The present chapter utilizes Husa's comparative law depth levels from one to three mentioned in the methodology chapter. On level one the aim is to create a more comprehensive understanding of the domestic legal framework of intelligence in Finland. The second level is taken under examination to discover functioning solutions on legal problems that are arising in both countries. In addition, these types of challenges might be in relation between intelligence activities and human rights obligations.[176] The third level will be practiced in field of intelligence authority, finding similarities as well as

[172] NATO, 2024; European Union, n.d.
[173] Danmarks Riges Grundlov, Lov nr. 169 af 05/06/1953.
[174] Andersen, Hansen, & Davies, 2022, p. 243-244.
[175] Andersen, Hansen, & Davies, 2022, p. 242.
[176] Husa, 2013, p. 172.

differences on system level regarding how public power to conduct intelligence activities are shared in the society. This chapter also includes an evaluation of possible conceptual framework impacting both countries systems from outside. [177]

The first level for the grounds of the Finnish legal framework for intelligence is found in the Constitution of Finland as mentioned in the chapter 3. Key sections of the Constitution are laid down in the sections 1, 2 and 3. These sections confirm the form of constitution, the principle of the Rule of Law in Finnish state as well as separations of public power and parliamentarism.[178] The legal bases and jurisdiction for FSIS is written under Police Act Chapter 5 a. On the other hand, intelligence jurisdiction for Finnish Defence Forces is written in under the Act on Military Intelligence. As has been pointed out in the 3rd chapter, regarding the CoF sections 7 and 10 are vital for the intelligence activities as well as balancing on the scale of fundamental rights when executing intelligence activities and restricting individuals' rights within Finnish jurisdiction.

From Danish perspective the Constitutional legal bases for intelligence activities are written under the Constitution of the Kingdom of Denmark (Danmarks Riges Grundlov). Regarding the Danish Constitution there is a requirement of Court order for conducting any examination of letters, papers and private property since the foundation of the Constitution in 1849. In addition, the constitutional reform in 1953 included telecommunication as well as postal services under the court order regulation.[179] The demand for court ruling to conduct these activities is written under Chapter 8 (Kapital VIII) section 72.[180] Furthermore, Procedural Law in 1985 strengthened the requirement of the court order. Since that, any interception without a court order is required to be tested before the court as soon as possible, within 24 hours of the start of the interception. [181] It can be interpreted that the Chapter 8 of Danish Constitution

[177] Husa, 2013, p. 172–173.
[178] GP 1/1998 vp, p. 71; PeVM 10/1998 vp, p. 12 & 37.
[179] Andersen, Hansen, & Davies, 2022, p. 243-244.
[180] Government of Denmark, n.d.
[181] Andersen, Hansen, & Davies, 2022, p. 244.

guarantees somewhat similar rights to individuals as Chapter 2 of the Finnish Constitution, such as the right to privacy of communications as laid down in the section 10 of the CoF and section 72 of the Danish Constitution. In addition, the paradoxical section 7 of the Finnish Constitution in relation to intelligence activities can be found in section 71 regulating personal liberties of Danish Constitution.[182] Moreover, Chapter 7 of the Danish Constitution regulates sections regarding human rights obligations.[183]

The main differences between human rights obligations and catalogues written in both states' constitution is that the Danish version is significantly older as well as concise when compared the newer Finnish Constitution. Chapter 2 of the CoF is comprehensive as well as refined in relation to human rights and human rights obligations binding Finland.[184] The beginning of this chapter mentioned that both states are members of the European Union, leading to a second notable difference between the Constitutions. On one hand the Finnish Constitution mentions Finland as a member state of the EU via 2012 amendment to the Constitution as laid down in section 1(3), creating comprehensive framework towards international cooperation of the Finnish state.[185] On the other hand Danish Constitution has not been amended in relations with the membership in the European Union.[186] From Danish point of view the ECHR can be interpreted as wider protection for human rights than the relatively concise catalogue within the Danish Constitution.[187] ECHR might be interpreted as an extra layer which is expanding the safeguards of human rights within Danish jurisdiction.

This also applies to mention of the Rule of Law principle on Constitutional level. Finland's relatively new Constitution, which came into force in 2000, mentions the Rule of Law principle in section 2, featuring it as one of the key elements of Finnish democratic society. The Rule of Law principle is additionally evaluated by the Administrative Courts

[182] Krunke & Baumbach, 2019, p. 278; Pedersen & Jørgensen, 2014, p. 4.
[183] Krunke & Baumbach, 2019, p. 278.
[184] Krunke & Baumbach, 2019, p. 278; Ojanen & Salminen, 2019, p. 363.
[185] Ojanen & Salminen, 2019, p. 366.
[186] Krunke & Baumbach, 2019, p. 271.
[187] Krunke & Baumbach, 2019, p. 278.

to review the legality of administrative decisions. In addition, the Constitutional Law Committee of the Parliament is conducting ex ante evaluations of the law proposals. This evaluation also consists of references to the Rule of Law principle of new law proposals.[188]

In Denmark on the other hand, the legal culture does not have strong tradition of codifying legal principles into the Constitution which means that in most cases the principles of law are unwritten. Courts as well as legal literature operate as guardians of the society of the considerations, values as well as presumptions which are implicitly behind constitutional and legal provisions.[189]

These short observations to starting points of both countries' constitutional and systematic legal starting point highlight few key differences between them. Both countries are even part of the supranational organisations such as the EU, impacting their legal systems. Differences in legal culture, and in particular the historical and cultural contexts of these countries, must be taken into account as factors contributing to these differences. This leads to an interesting comparison between the key authorities between them conducting intelligence activities.

## 4.2 Intelligence Authorities and Key Responsibilities

As mentioned in the chapter 3, there are two main authorities for conducting intelligence in Finland, the Finnish Security and Intelligence Service and Finnish Defence Forces. When focusing on the FSIS, its main tasks include combating terrorism and activities that seriously threaten the democratic social order of the society. Preventing espionage and conduct counter espionage as laid down in the Police Act, Chapter 5 a, §

[188] Ojanen & Salminen, 2019, p. 380-381.
[189] Krunke & Baumbach, 2019, p. 279.

3. In concise form, FSIS is detecting, preventing and uncovering actions that threatens Finland's internal or external security.[190]

In addition, FSIS's possibilities to hand over individuals' personal data to foreign intelligence agency is regulated under section 51 of the Act on the Processing of Personal Data by the Police. The FSIS can disclose personal data to foreign authorities or intelligence services responsible among others for national security protection, safeguarding legal and social order. FSIS may disclose personal information and data also to Europol, Interpol and NATO. Disclosures may be executed when it is necessary for the performance of duties of the FSIS, as laid down in the section 51.

However, that very same section 51 regulates also constraints for the disclosures. When handing over information it is necessary to pay attention to human rights situation of the receiving state as well as data protection level of the receiving state. Furthermore, section 51 adds that international cooperation and information exchange is prohibited when there are reasonable grounds to suspect that a person could be subjected to inhuman treatment or death penalty. Preparatory works of the legislation adds that when disclosing personal information in international cooperation FSIS must take the impact of the transfer on the data subject's rights into consideration.[191] These elements can be interpreted as inner restrictions to conduct international cooperation and as protective measures towards individual's human rights.

On the contrary, in Denmark the intelligence activities are designated to two different organisations. The National Police Security Service (Politiets Efterretningstjeneste, PET). PET is used as an abbreviation for the National Police and Security Service. The second being Danish Defence Intelligence Agency (Forsvarets Efterretningstjeneste, FE).[192] FE is used as abbreviation for the Danish Defence Intelligence Agency. The FE is on one hand

[190] Suojelupoliisi, n.d., B.
[191] GP 242/2018 vp, p. 109-110.
[192] Andersen, Hansen, & Davies, 2022, p. 246.

a foreign intelligence authority and on the other hand, also a military intelligence authority, conducting its intelligence tasks in political, financial and military areas of interest of information. Beyond this, FE's intelligence activities include such as gathering information on international terrorism and the proliferation of weapons of mass destruction.[193] These tasks correspond in relation to FSIS tasks of foreign reach. When executing its tasks and missions FE utilises among others SIGINT and HUMINT measures. Characteristics of FE include its willingness to remain out of the public eye and debate.[194] FE is moreover the direct counterpart of FSIS when evaluated from perspective of international cooperation. Thus, the PET is responsible for the domestic intelligence and FE for foreign intelligence they are divided between Justice department (PET) and Defence department (FE).[195]

PET is a designated authority to National Security and Intelligence. Its main tasks include identifying, preventing and investigating counter threats for democracy and security of Danish society.[196] PET's tasks are regulated under PET Act, Lov om Politiets Efterretningstjeneste (PET) (Lov nr 604 af 12/06/2013).[197] Furthermore, Administration of Justice Act and the Criminal Code functions as legal bases for PET's jurisdiction.[198] The Danish system for intelligence agencies divides them into categories of domestic and foreign intelligence operators. PET being the domestic intelligence agency.[199] While the Finnish system separates them to civilian and military intelligence operators.[200] This showcases a structural difference between Finnish and Danish approaches to intelligence disciplines and how the authorities are categorised in the society. There are similar tasks designated to FSIS in Finland when comparing them to both branches of the Danish system.

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[193]Danish Defence Intelligence Service (FE), n.d.
[194] Danish Defence Intelligence Service (FE), n.d. & Andersen, Hansen, & Davies, 2022, p. 243
[195] Andersen, Hansen, & Davies, 2022, p. 244
[196] PET, n.d., A
[197] Lov om Politiets Efterretningstjeneste (PET), Lov nr 604 af 12/06/2013.
[198] PET, n.d., B
[199] Bigandt & Laursen, 2022, p. 6
[200] EOS-committee, 2025, p. 3-4

While examining two of the key acts regulating the agencies FSIS (the Police Act, Chapter 5 a) and PET Act (Lov om Politiets Efterretningstjeneste) from both countries one thing especially draws attention; the differences in sections regulating international cooperation. In the Finnish legislation there is a specific section 57 regulating the FSIS's possibilities for conducting and participating in international intelligence cooperation. In addition, it includes the regulation when FSIS is not allowed to participate in international cooperation. In case of reasonable grounds to expect that the result of cooperation might threaten a person to encounter inhuman or degrading treatment such as death penalty, torture or unfair trial. In comparison, this kind of section constraining PET is not to be found in the Act regulating PET. In addition, the lack of explicit regulation over intelligence cooperation stands also for FE. The Act regulating the foreign intelligence authority FE (the FE Act) (Lov om Forsvarets Efterretningstjeneste (FE) Lov nr 602 af 12/06/2013)[201] does also not include a section regarding international intelligence cooperation.[202] The section 10 of the PET Act and section 7 of the FE Act however, regulates the agencies mandates over cooperation to each other as well as information sharing abroad.[203] Nevertheless, the sections should be interpreted as very limited with regard to the scope and nature of the regulation of international cooperation and the information exchange. Such is the closest regulatory mention over intelligence cooperation and information sharing while comparing the legal systems between Finland and Denmark.

Furthermore, international cooperation as part of FE's tasks, authority as well as jurisdiction is mentioned in the preparatory work of the FE Act (Lov om Forsvarets Efterretningstjeneste (FE)). The government proposal underlines that FE's intelligence activities differ significantly comparing to PET's intelligence tasks. Highlighting that FE's activities are oriented towards foreign matters which are important concerning Denmark's national interests.[204] In addition, the Danish legislator upholds that as small

[201] Lov om Forsvarets Efterretningstjeneste (FE), Lov nr 602 af 12/06/2013.
[202] GP 202/2017 vp, p. 43-44; Widlund, 2022, p. 591.
[203] Akhtar, Pedersen, Kiørboe & Jørgensen, 2016, p. 6.
[204] Folketinget, 2013, p. 6.

nation as Denmark, relies on international cooperation within foreign intelligence activities. In addition, international cooperation is mentioned as an essential task to FE, and it is based on the trust built up over the years.[205] Even the preparatory works highlights the importance of FE's capabilities exercise international cooperation. However, there is no mention and especially no restrictions on it in the FE Act. The mention regarding trust, could it be interpreted as approval for Orcon within the legal framework of FE? In this context the Danish legislation does not regulate international cooperation comprehensively leading to the fact that exercising it is fully in authority's margin of direction.[206]

From a standpoint of individuals' data and information exchange in Denmark both the PET and FE are exempted from the Public Information Act, some parts of the Public Administration Act as well as parts of the Act on Processing of Personal data. Moreover, the agencies have somewhat similar conditions for accessing information.[207] On top of that, their jurisdiction on accessing data has been increased since 2014 as mentioned below.

Latest amendments regarding the PET Act or FE Act considers agencies obligation to delete information (Act no. 1727 27/12/2016) which stands for PET. An extra layer of authority for PET and FE to access immigrations authorities records and systems (Act no. 506 23/05/2017. An amendment regarding the Danish Act on data protection and GDPR (Act no. 503 23/05/2018) which applies to both agencies. Again, amendment regarding both agencies right to use and store passenger name records (Act no. 1706 27/12/2018).[208] Since the laws regulating PET or FE do not have explicit section regulating international cooperation, the question arises how the international cooperation is overseen in Denmark? The following chapter showcases the oversight

[205] Folketinget, 2013, p. 7.
[206] Widlund, 2022, 591.
[207] Pedersen & Jørgensen, 2014, p. 2-3.
[208] Bigandt & Laursen, 2022, p. 3-4.

bodies of both countries Finland and Denmark. In addition, there is an evaluation between the oversight architecture.

## 4.3 Oversight Architecture

The previous examination of the key intelligence agencies, their mandates and tasks bring it to this chapter which exposes and evaluates the oversight architectures for both countries' intelligence agencies, particularly focusing on the oversight of international cooperation. A typical and an essential part of intelligence oversight mechanisms is its tension with the other parts of free democratic society.[209] This is due to the fact that oversight has characteristic feature of centralisation of public power and access to secret information. These elements consisting sensitive information are shared to just small amount of public authority oversight bodies, politicians and executive leaders. While the wider public audience of the society are kept behind the veil of secrecy.[210]

As outlined in the chapter three, the Finnish oversight systems over intelligence originates from the Act on the Oversight of Intelligence Gathering (121/2019), hereafter Intelligence Oversight Act. The Act regulates both civilian and military intelligence activities as laid down in the section 1. There is a two-part structure to be found over intelligence oversight. In the Finnish oversight system, the intelligence activities are overseen in parliament by the Intelligence Oversight Committee as laid down in Chapter 2 as well as by the independent oversight authority, the Intelligence Ombudsman as laid down in Chapter 3, section 5. The Parliamentary Intelligence Oversight Committee itself was established by amendment (123/2018) to the Finnish Parliament's Rules of Procedures (Eduskunnan työjärjestys, 40/2000). The Intelligence Oversight Act was part of the legal reform institutionalising and legislation reform in Finland in 2019.[211] In addition, the Intelligence Oversight Act focuses on regulating the independent and

[209] Widlund, 2024, p. 64.
[210] Widlund, 2024, p. 64.
[211] Widlund, 2023, p. 67.

autonomous oversight authority the Finnish Intelligence Ombudsman, yet it is particularly important legislation for the cooperation between Ombudsman and Parliament's Intelligence Committee.[212]

The Ombudsman is authorised to oversee both civilian and military intelligence authorities in Finland.[213] On top of that, Ombudsman has right to be present in court when requests for intelligence permissions are presented before the court. Furthermore, the Ombudsman has right to express an opinion about the court decisions as well as file complaints against them as laid down in the Intelligence Oversight Act, section 14.[214] In addition, the Ombudsman has right to execute inspections into public authorities' premises in order to oversee the legality of intelligence activities. Including the right to access all premises as well as information systems that are necessary for the inspection, as laid down in section 10 of the Intelligence Oversight Act. Furthermore, the Ombudsman has right to obtain, free of charge, from public authorities the information necessary for the performance of his or her oversight duties, notwithstanding confidentiality provisions, as laid down in section 8 of the Intelligence Oversight Act.

The Intelligence Oversight Committee on the other hand, concentrates on monitoring the appropriateness of intelligence activities and evaluating those activities. Moreover, it follows the implementation of fundamental and human rights in the legislative framework for intelligence.[215]

Denmark's oversight system on the other hand has gained legislative position in 2013 over intelligence activities and authorities PET and FE.[216] Prior that the oversight duties relied on executive branch despite the intelligence authorities originate back to the end of the World War. It can be interpreted that Danish intelligence authorities have long-

[212] Widlund, 2023, p. 67.
[213] Ignatus, 2022, p. 4.
[214] EOS-committee, 2025, p. 4.
[215] EOS-committee, 2025, p.4.
[216] Andersen, Hansen, & Davies, 2022, p. 245.

lasting influence from experience of the German invasion in 1940's. Which led to formation of saying "9th of April, never again" and this can be seen as a basis for development of intelligence culture and activities right after WWII in Denmark.[217]

While the executive control gained some oversight authority, this was accompanied by only a limited degree of external scrutiny. From the 1980's both authorities have been under parliamentary oversight body Control Committee (Kontroludvalget). In addition, before the year 1988 when Control Committee was added to oversight architecture, there was an independent Wamberg Committee overseeing and multiple authorities in Denmark and it was replaced 2013 by a politically independent TET (Tilsynet med Efterretningstjenesterne, hereafter, TET), the Danish Intelligence Oversight body as part of the 2013 legislative reform.[218] The PET Act regulates also the oversight body TET and its jurisdiction in Chapter 9, sections 16-22. TET has authority to oversee PET on its own initiative or regarding an appeal, as laid down in the section 18 of the PET Act. There is no specific own act over TET interpreted as the jurisdiction on intelligence activities as well as the jurisdiction to oversee these activities are regulated in the same Act. On the other hand, the FE Act regulates TET's authority over the oversight capabilities of FE, Chapter 7 of the FE Act in sections 13-17. According to section 14 of the FE Act TET is an independent authority. In addition, according to the section 15 TET oversees the data processing of FE. In accordance with PET Act and FE Act TET has full access to information held by the intelligence authorities as well as their premises.[219] These elements are somewhat similar when compared to ones over the Finnish Ombudsman.

Thus, before the 2013 reform PET and FE were under an ordinary measure by the judiciary and the general approach indicated that there was no need for specific statute law of dedicated judicial oversight. Additionally, the oversight legislature reform from 2013 has been criticised over its non-ambitious oversight mechanisms.[220] The

[217] Andersen, Hansen, & Davies, 2022, p. 246-247.
[218] Andersen, Hansen, & Davies, 2022, p. 245.
[219] Danish Intelligence Oversight Board TET, n.d.
[220] Andersen, Hansen, & Davies, 2022, p. 245.

Parliamentary Committee for the Intelligence Services continued its operating in the Danish parliament, however the work continued under a strict secrecy.[221]

Nevertheless, in 2024 the Danish parliament approved amendments to the PET Act which increase the overseeing elements over intelligence authorities. The TET was authorised with new jurisdiction the right to conduct retrospective oversight of the legality of operational activities of the PET. The increased jurisdiction includes also expanded supervisor authority's access to the PET's data. These amendments entered into force in January 2025.[222] In a way, such can be interpreted as similar to Finnish Ombudsman's access to FSIS data and premises.

In general, TET tasks include overseeing the Danish domestic (PET) and foreign (FE) intelligence services. In addition, it oversees also the Danish Centre for Cyber Security (CFCS) and the PNR unit of the Danish National police. The main task is to oversee how the agencies procedures of collecting, processing, deletion and disclosure of personal data comply with the legislation in force. Furthermore, with its expanded oversight mandate TET, also serves as the competent whistle-blower authority for intelligence activities.[223]

However, TET has faced challenges to conduct its oversight tasks. There have been instances where information requested by TET has remained with the Ministry of Justice and has not been provided in timely manner. On top of that, in 2019 a whistleblower initiated a case about FE's misuse regarding withholding information from TET.[224]

There are clear similarities between the Finnish and Danish oversight systems.[225] As mentioned both countries make a two-part divide to oversight parties, first being the

[221] EOS-Committee, 2025, p. 3.
[222] Justitsministeriet, n.d.; EOS-Committee, 2025, p. 3.
[223] EOS-Committee, 2025, p. 3.
[224] Andersen, Hansen, & Davies, 2022, p. 253.
[225] Widlund, 2023, p. 70.

independent oversight body having direct oversight capabilities into the intelligence authorities such as FSIS and PET. The second being the parliamentary oversight bodies. Intelligence Oversight Committee (IOC) in Finland and the Parliamentary Control Committee in Denmark's. However, the parliamentary oversight parts of the two-part systems overlap in more detail than the independent authorities.[226]

However, the Danish Parliamentary Control Committee (Kontroludvalget) operates under strict secrecy.[227] In addition, the committee has limited access to secret governmental material. Control Committee upholds rights to government materials as "secret" and its own materials are classified as confidential. On the other hand, the access does not cover the "top secret" material which intelligence materials often are. This indicated that the Control Committee do not operate fully within the ring of secrecy.[228] Leading to a question: can the Control Committee execute its tasks in full authority and act as a safeguard for individuals from public authorities overstepping their powers?

On the other hand, the Danish system relies more on the general legal principles and oversight bodies who, however, are not fully in the ring of secrecy. Furthermore, the fact that Danish legal framework does not have comprehensive regulation over international cooperation incorporated into PET Act or FE Act opens wider spectrum for the intelligence authorities to decide whether to participate in international cooperation. Regardless, the oversight authority TET the Danish system lacks democratic oversight and clear control of the oversight mechanisms.[229]

The Finnish Parliamentary Intelligence Oversight Committee is granted by access to classified documents to conduct its oversight duties. This IOC's right to access information can be compared to Chancellor of Justice's right to obtain information under

[226] Widlund, 2023, p. 70.
[227] Folketinget, n.d.; EOS-committee, p. 3.
[228] Andersen, Hansen, & Davies, 2022, p. 252; Widlund, 2023, p. 86.
[229] Andersen, Hansen, & Davies, 2022, p. 254

the Finnish Constitution section 111, leading to unconstrained information access without limitations over by secrecy or confidentially aspects.[230] However, secrets from operational side are still withhold from the committee.[231] As Widlund mentions, Parliamentary Oversight Committee's limited access to materials of intelligence agencies might prevent the Committees from executing their duties by handicapping them. Thus, he argues that the specialised committee for oversight duties is a better solution than the normal committee with added responsibilities over intelligence oversight.[232]

In addition, there is important notice to be made over intelligence oversight. According to Lisa Austin's concept of lawful illegality, the intelligence agency may act according to law yet still operate against the Rule of Law principle at the same time.[233] Since the Rule of Law principle is needed to be understood in wider spectrum of the society, by guiding the decisions in the democratic legislator[234] such as Intelligence Oversight Committees balancing between human rights and broader more powerful intelligence competences. The Rule of Law serves as a safeguard for the democratic legitimacy and public power of the society.[235]

This leads to the next interesting topic. The international cooperation and possibilities to oversee the information exchange between countries on international organisation level, such as the European Union. Can the possible legal frameworks for international information exchange be discovered and is the oversight framework adequate from perspective of the rule of law? These aspects are discovered in the following chapter.

[230] Widlund, 2023, p. 84-85.
[231] Widlund, 2023, p. 83.
[232] Widlund, 2023, p. 86.
[233] Austin, 2015, p. 295; Widlund, 2023, p. 68.
[234] Widlund, 2023, p. 68.
[235] Jyränki, 2001, p. 13–14.

## 4.4 Cooperation and Oversight Gap

Intelligence activities, gathering, processing and analysing as well as intelligence operation often require international cooperation, exchange of intelligence information to function effectively. The agencies from different countries work together in bilateral or multilateral bases.[236] However, as exposed at the previous parts of the thesis the jurisdiction over intelligence activities and for international cooperation rely on the domestic legislation of each country. In addition, the approach for regulating these elements can vary substantially between countries. As shown even between two similar Nordic societies Denmark and Finland. This section examines how the oversight gap may surface at EU-level and international level towards the third countries.

Denmark and Finland are both members of the EU and NATO and are facing the same challenges in the intelligence legal framework and oversight capabilities on national level. Their agencies such as PET, FE and FSIS exercise cooperation at the EU level. The cooperation of the different agencies within the EU can be seen in the European Union Agency for Law Enforcement Cooperation (Europol) concentrating on criminal intelligence cases. Europol is overseen by the Joint Parliamentary Scrutiny Group (JPSG) in which the European parliament and national parliaments act together as the oversight body over Europol's intelligence exchange and other activities. [237]

In addition, the EU has other dedicated intelligence institution called European Union Intelligence and Situation Centre (INTCEN).[238] Within the EU international intelligence cooperation is facilitated due to the shared values, interests as well as past traumas such as terrorist attacks in Madrid and in London at the beginning of the century.[239] Regarding INTCEN, it does not have authority to conduct intelligence activities on its own, moreover it relies on information shared to it from SIGINT sources by the EU member

[236] EOS-Committee, 2018, p. 3
[237] Kartalova, 2024, p. 70.
[238] Ahmet & Anil, 2021, p. 240.
[239] Widlund, 2022, p. 592; Ahmet & Anil, 2021, p. 242.

states' intelligence agencies. Cooperating agencies from the members states handover information based on their own willingness and interest, there are no obligations to cooperate with the INTCEN.[240] This leads to the fact that Orcon principle is fully in place inside INTCEN and there is no third party to oversee the activities over INTCEN. Moreover, the INTCEN itself does not have a mandate to oversee the international intelligence activities that run through it.[241] These elements are keeping the veil of secrecy firmly in place.

In case of Europol and criminal intelligence sharing, the same familiar principle Orcon is in place. Meaning that the JPSG's ability to oversee the Europol's intelligence exchange and cooperation is ineffective. Questions by the JPSG have been left unanswered as well as key reports holding sensitive information regarding Europol's activities, finances and threat analysis has not been handed to JPSG. Basically, the joint parliamentary scrutiny has been blocked by the Orcon.[242] Intensifying international cooperation and absolute interpretation of Orcon may lead to deficit over the accountability of intelligence agencies and oversight gap.[243] As shown, the reluctance from the Europol or the INTCEN to allow overseeing measures are examples of possible situations where the gap exist. In addition, even if the data exchange is legitimate, there are still possibilities for gaps over effective safeguards. Adding another layer to the challenge of ensuring legitimacy over intelligence information sharing.[244] Beyond this, as shown the legislation over intelligence activities as well as oversight mandates and authorities varies by country. One aspect of the challenge of overseeing the international intelligence cooperation is that the overseeing bodies have jurisdiction only domestically. A specific intelligence agency may conduct international duties, but the oversight mechanisms stay within the domestic national borders.[245] The EU-level cooperation lacks clear jurisdiction over oversight capabilities into its own agencies Europol and INTCEN. While the Orcon

[240] Widlund, 2022, p. 592.
[241] Widlund, 2022, p. 593.
[242] Kartalova, 2024, p. 70–71 & p. 75.
[243] EOS-Committee, 2018, p. 3.
[244] EOS-Committee, 2018, p. 5.
[245] EOS-Committee, 2018, p. 7.

principles highlight challenges regarding human rights obligations and the deficit over democratic ruling of these cooperation bodies.[246]

Internationally there is an example of deeply unsuccessful cooperation and intelligence exchange leading to human rights violation. In the case of Maher Arar, a Canadian citizen was detained on 26th of September 2002 at John F. Kennedy International Airport in New York and sent to Syria where he faced inhuman conditions and torture.[247] Mr. Arar was totally innocent of any wrongdoing. The Royal Canadian Mounted Police (RCMP) shared intelligence to the U.S authorities in relation to Arar prior his detention in New York as well as while he was detained by the U.S officials.[248] While Mr. Arar and other detainees were in prison in Syria the RCMP sent questions posed to Arar and others and even offered Syrian Military Intelligence a possibility of obtaining large number of sensitive information.[249] Mr. Arar was released from imprisonment in Syria on October 5, 2003. He was able to return home to Canada. To witness that the Canadian official had leaked information regarding the case to damage Arar's reputation and protecting the among other RCMP's self-interest.[250] The case is a useful example of failed safeguards of individuals' rights and risks on what comes to intelligence sharing. As shown the principles of necessity, respect of human rights and legislation over data protection and reliability might play vital role for keeping citizen safe from overstepped public power.

## 4.5 Regulation of International Cooperation at Four Levels

According to Widlund, it is possible to identify states at four different levels when assessing their regulatory frameworks in relation to international cooperation. The first level can be used to place the USA, the UK, and Denmark. These states do not specifically

[246] Widlund, 2022, p. 588.
[247] Government of Canada, 2006, p. 9; Sepper, 2010, p. 179.
[248] Government of Canada, 2006, p. 13-14.
[249] Government of Canada, 2006, p. 38; Sepper, 2010, p. 179.
[250] Government of Canada, 2006, p. 16 & p. 247

regulate international cooperation or set restrictions on it. At the second level, states there is general regulation in relation to international cooperation. However, no specific legislation on the exchange of information and data.[251]

At the third level, the regulation is more specific and sets some restrictions on cooperation as well as information exchange. The aim of the restrictions is to protect democratic values and human rights. Currently, states such as Finland, Germany and Canada can be found at this level. At the highest level four, there is a detailed and specific regulation in place regulating international cooperation and more importantly the Orcon principle is not absolute anymore. Regulation regarding the qualitative restriction for the partnering states and agencies. In addition, fundamental and human rights can be protected more effectively.[252]

The classification presented above of regulation levels reveals the regulatory gap in international intelligence cooperation, which contributes to the oversight gap as well. The comparative analysis conducted in the present chapter uncovers that Finland and Denmark both regulate their intelligence agencies. Yet, the level of regulation differs significantly. Finland being more specific and setting restrictions to international cooperation as well as individual's data exchange to foreign counterparts, while Denmark operates at the first level of Widlund's systematisation without clear clarifications over international cooperation in the legal framework, relying more on the general legal principles. The next chapter examines how the Finnish and Danish legislation could be developed as well as what kind of de lege ferenda suggestions raises though this thesis.

[251] Widlund, 2022, p. 591
[252] Widlund, 2022, p. 591–592

# 5 Conclusions

As the central question, this thesis asks if there is a legal framework for intelligence exchange. The answer is, however, not straightforward; as this thesis demonstrates, a partial legal framework exists at least at the national level as shown by the Finnish example. The Finnish legal framework has provisions explicitly governing the international cooperation while setting human rights-based restrictions over it. However, at the international level, such as within the EU and when compared with Denmark there are significant regulatory gaps to be found. [253] On top of that, the Orcon principle functions as de facto norm within the international intelligence community, but it lacks the mechanisms for accountability. In addition, it has challenges regarding human rights protection. [254]

Firstly, Finnish legislation over intelligence activities, jurisdiction and powers of the FSIS are written in a comprehensive manner. The thesis has evaluated the legal basis for both, the protection and obligations of a state to ensure fundamental rights and simultaneously how a democratic society can restrict these rights through the competent authority FSIS to conduct its intelligence activities to protect national security and well-being of the society. Furthermore, it can be interpreted that the Police Act regulates the civilian intelligence authority's capability to take part in international cooperation in relatively good manner. The Finnish legislation both enables and restricts FSIS jurisdiction to conduct international cooperation. Section 57 of the Chapter 5 a of the Police Act sets clear restriction over cooperation when there are reasonable grounds to suspect inhuman treatment of a subject of intelligence activities due to the cooperation. As showcased, Finnish legislation on civilian intelligence activities regulate also how FSIS may disclose individuals' personal data while conducting international cooperation under section 51 of the Act on the Processing of Personal Data by the Police.

[253] Widlund, 2022, p. 591.
[254] Widlund, 2022, p. 575-576 & 588; Kartalova, 2024, p. 71-72.

Secondly, the thesis demonstrates significant differences between Finland and Denmark over intelligence legislation. Especially regarding the aspect of international cooperation regulation. The foregoing is clarified utilising Widlund's levels over regulation clarity and requirements over international cooperation that indicates that Finland is at the third level (relatively good) and Denmark at the bottom at the first level (weak).[255] Whereas, the most concrete difference is in the Acts regulating FSIS (the Police Act, Chapter 5 a) and the FE Act on behalf of FE's activities. FSIS's jurisdiction on international cooperation and data exchange including individual's personal information is more strictly regulated. Section 57 of the Police Act's Chapter 5 a enables international cooperation for FSIS yet simultaneously lays down restrictions upon it for safeguarding individual's rights.

Furthermore, section 51 of the Act on the Processing of Personal Data by the Police lays down somewhat similar legal framework upon the personal data disclosure of the FSIS to the international counterparts. By comparison, as the thesis argues, Danish legislation does not include similar detailed and comprehensive sections over regulating FE's and PET's international intelligence cooperation nor the information exchange of individuals personal data. Instead, the agencies are even exempted from acting in accordance with the Act on Processing Personal Data.[256]

On constitutional level the Finnish Constitution lays down more extensively how key fundamental rights under intelligence activities can be restricted under law. Therefore, this thesis argues that Finnish legislation on civilian intelligence activities regulates and safeguards key fundamental rights in more detail than the Danish legal framework for intelligence activities. In addition, as long as countries regulate their authorities' jurisdiction and powers substantially over intelligence activities in such diverse ways, it is essential for individual's rights to have safeguards also from the international treaty system. These safeguards are provided especially by the ECHR. Additionally, in the EU-area the EU Charter adds another level as shown in the chapter 3.3.

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[255] Widlund, 2022, p. 591.
[256] Pedersen & Jørgensen, 2014, p. 3.

The Originator Control - Orcon on the other hand, have been examined throughout this thesis. Orcon does not meet the *opinio juris* requirements of international customary law perspective, since the international intelligence community is not a state of official international organisation.[257] However, this thesis interprets that it functions within the international intelligence community de facto – as one. It is recognised in case law such as the Supreme Administrative Court of Finland's ruling 2010:31. Furthermore, it is recognised as leading factor of both countries Denmark and Finland preparatory works for legislation. Especially from the point of view of trust and key elements for the intelligence agencies to carry their duties.[258] Moreover, as shown in the chapter 4.4, the Orcon functions as absolute on the EU level institutions as well, including agencies such as INTCEN and Europol.[259] This thesis argues that under showcased elements the Orcon withholds the oversight bodies and full democratic accountability away from intelligence activities. This may lead to devastating consequences as shown with the Mr. Arar case in chapter 4.4.

Together, these findings demonstrate that the international legal framework for intelligence cooperation as well as exchange is fragmented – more or less robust at the Finnish national level, absent at the Danish level and structurally inadequate at the EU and international level. This, on the other hand, leads to accountability and oversight gaps which the Orcon principle does not resolve.

After a comparative analysis conducted over Danish and Finnish legal systems regulating intelligence activities, this thesis provides de lege ferenda observation over two different categories. The first is the Danish legal framework. There is a noticeable gap in the PET Act and the FE Act over specific regulation for international cooperation activities. This thesis interprets that the absence of regulation preventing FE and PET from participating

[257] Rose et al., 2022, p. 19.
[258] GP, 202/2017 vp, p. 104; Folketinget, 2013, p. 7.
[259] Kartalova, 2024, p. 71; Widlund, 2022, p. 593.

in international cooperation should be changed. The PET Act and FE Act should be revised to have clear indicators when the authorities are not allowed to participate in international cooperation. Such indicators are laid down in the Finnish Police Act Chapter 5 a, section 57 as well as the Act on the Processing of Personal Data by the Police, section 51. These elements should be implemented into Danish legislation to safeguard and ensure Danish human rights obligations in more detail. In addition, in a free democratic society precise regulation and the preservation of the Rule of Law principle may enhance the legitimation of intelligence activities.

The second category of de lege ferenda suggestion contains the Orcon Principle. This thesis has shown the tension between intelligence activities, free democratic society and fundamental and human rights. As a result, there is room for development not only in Finland and Denmark but also at the EU level. As shown the Orcon principle is absolute in both countries as well as at the EU level cooperation.[260] In addition, it has been suggested to dismantle the absolute interpretation of Orcon, at the same time it has been identified a challenging task.[261] The oversight bodies of intelligence agencies have jurisdiction only within their countries' borders. Thus, implementation of Orcon principle could come with categories including collaboration of different agencies. This thesis proposes that the legal system should have an expiration date for the information under Orcon. In this way, the senders' absolute ownership of the piece of information can be handed over to the oversight body, parliamentary committee or even some cases to the public. These expiration categories would be for instance 10 years, 20 years and 30 years and they would be written into intelligence legislation. Moreover, in this way intelligence agencies could clean themselves from contamination problems also. Furthermore, the sending agencies would be aware when the absolute Orcon will come to an end and act accordingly. By acting accordingly, the free democratic society may gain better understanding over intelligence activities and how to develop them as well as the regulation. In addition, a somewhat similar idea for the declassification of the shared

[260] Kartalova, 2024, p. 71–72.
[261] Widlund, 2022, p. 593; Roberts, 2004, 262.

information over time is mentioned in Elizabeth Sepper's article "Democracy, Human Rights and Intelligence Sharing".[262]

Limitations regarding the study arises from the field of language. The comparative law method did not achieve its full potential since only levels one to three was used. This is due to the fact that significant proportion of the source materials were in Danish language, and therefore research relied heavily on translations of the acts as well as the preparatory works. Additionally, since both countries under closer examination are members of NATO, that aspect of intelligence activities and cooperation are not included in this thesis which is a sincere limitation.

Concerning future research, a gap was found regarding the Orcon principle. How will it develop in the future and more importantly how the absolute interpretation can be omitted? On top of that, states do bilateral agreements over cooperation in certain fields of activities and interests as shown in the chapter 2.3 for the future research it would be interesting to examine, if these bilateral agreements could be used for more transparent intelligence activities and cooperation to ensure fundamental and human rights. Furthermore, the future research could focus on the absolute interpretation of the Orcon and how that absolute interpretation could be limited through mutual cooperation agreements. In addition, NATO membership in the field of intelligence and intelligence cooperation could be an area for future research.

[262] Sepper, 2010, p. 194

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