

## IMPROVING INTELLIGENCE TRANSPARENCY: THE JOINT VENTURE OF BUILDING AN INITIAL FRAMEWORK

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### Abstract:

*In the contemporary period, especially in the last three decades, transparency, openness and access to information have fallen into a new era of interest for numerous actors playing in the societal democratic arena – citizens, organizations, the private sector, governments, media, politicians, international partners and so on. A paradox of transparency should be its presence in the intelligence field – born and raised on a strong basis of secrecy and conspiracy. While questioning what intelligence transparency is or, how we like to call it – “intelligence in plain sight”, we discovered the inexistence of a public, academic or institutional framework defining the topic.*

*Therefore, this article aims at taking the first steps into this direction, by defining a couple of constants and variables, essential parties and indicators which should be comprised into a strategic joint venture, setting out to develop a framework for the practice of intelligence transparency. Also, this article underlines the need for liaison between these factors, meant to balance between the two oxymoronic adjectives – secretive and transparent. The analysis starts with a picture of how transparency looks like for governments – whether they are open or not, and it goes on with a legal perspective, only to end by catching the few elements surrounding the intelligence transparency topic. The main contribution of this article is that it overwhelmingly underlines the gap in both academic and administrative literature for a framework for intelligence transparency.*

**Keywords:** *transparency, secret, intelligence, legal, framework, joint-venture.*

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## Introduction

Is silence speaking? Is silence a tool for efficiency? Is silence still the best solution for intelligence agencies and services? This paper emerged from a paradox present in the public sphere, namely the silence of an intelligence community set in place in an environment characterized by an abundance of communication and openness.

Intelligence services “have become a social constant” (Postelnicu, 2012) and not a state extravagance and bear the stigmata of secrecy, and one may even say that they suffer from some kind of disease, a “maladie”, “*mal-à-dire*”, meaning that, in comparison to other state institutions, intelligence services are rather inclined to silence and have a *difficulty to communicate*. In this paper we aim to connect dots, so that we can come up with an initial framework for improving intelligence transparency.

In this attempt, we looked at the concept of transparency from its emergence in the governmental field, as a concept, as a practice, from a holistic perspective which includes legal aspects, risks and advantages, role and functions, as well as forms of manifestation. Also, we included a legal perspective on intelligence transparency in relation with the oversight bodies, which led to an almost unanimous perspective that there should be zero secret in this interaction and, implicitly, 100% transparency.

Building this kind of background, of a broader context, help us narrow the issues to our topic of interest, which is intelligence transparency. Our purpose was to identify the relations that connect the dots in a network of constants and variables capable of offering transparency in the intelligence field, which is ultimately defined as a framework. Within this framework, our analysis and projection brought together actors, stakeholders, standards, processes, but also contributors who have a leading role in developing knowledge and fostering understanding of the intelligence field and activity.

## The concept of transparency

The concept of transparency is widely spread and often encountered and used worldwide, in connection with multiple actors:

from governmental institutions and non-governmental organizations, to academic topics and scientific research.

The concept of transparency was subject to academic literature, viewed through several lenses, focusing on its constituent elements, with well-established roles, rather than identifying comprehensive definitions. Following our analysis, we have established that, within the academic community, there has not been an agreement regarding a unanimously accepted definition of the concept of transparency.

On the one hand, while putting aside the concept and taking on the idea of transparency, available to all, a definition accessible to any individual who is not concerned with a fundamental evolution of the concept, in a given field or context, we looked at existing definitions in the Cambridge Dictionary (2020), where we identified two meanings that can be associated with the concept of transparency. The first meaning is “see through”, which defines transparency as the ease of seeing through – “easy to read”, which makes an existing subject more accessible, easier to understand, easier to approach. The second meaning is that of “open”, which defines transparency as the quality of being open and without secrets. Another approach presented as a peculiarity with respect to official public administrations activities or any other organizational related topics, adds an essential element to the transparency equation, namely trust. Thus, transparency is defined as a situation in which financial or organizational activities are conducted openly, without secrecy, so that individuals can trust that they are fairly and equitably treated.

On the other hand, the fundamental approach to transparency, through academic study, reveals an impossibility to define the concept of transparency unanimously, due to its complexity and wide range of topics, areas, levels where transparency has a direct or indirect impact, functional or operational. With respect to the named diversity of fields, Ball (2009) refers to non-governmental or supranational organizations, to the field of international relations, to non-profit institutions and activities, to public policy-making processes or to the academic literature on public administration.

Continuing on the study of fields impacted by transparency, we found that the variety stated by Carolyn Ball was confirmed and

completed by Stiglitz (2002) who talks about the fact that, at the academic level, the concept of transparency has been approached in studies belonging to multiple fields, such as negotiation theory, international security, and administrative efficiency.

We can ascertain that there are several actors involved in the practice and theory of transparency and that there is a widespread interest in the concept, but we have come to believe that this is an actual double-edged sword, since the variety of areas in which transparency has a functional and operational impact leads to an impossibility in identifying an unanimously accepted definition. This initial assumption was confirmed by a number of researchers, who reinforce the idea that the lack of a definition is due to the complexity of the concept and the diversity of areas on which it has a significant impact (Relly & Sabharwal, 2009). Also, Florini (2007) argued regarding a specific type of transparency (government transparency) that a single definition has not yet been accepted neither by the academic community, nor by the practitioner's branch. The perceived cause at that time was the lack of understanding of the concept of transparency, which led to the difficulty of operationalizing and defining it (Grigorescu, 2003; La Porte, Demchak, & De Jong, 2002).

We can identify in the literature partial definitions, or rather definitions limited to the field where there is an established practice of transparency, setting fractioned frameworks of transparency roles, functions, contributions to the efficiency or effectiveness of a process or activity, or, conversely, of negative aspects due to a lack of transparency.

While keeping in mind the lack of a unanimous definition, the interest in the present article focuses on the relevant roles of transparency in given contexts and systems, rather than finding or building an explicit and singular definition, given the fact that we are mostly interested in the specific field of intelligence agencies and services.

### **Three-dimensional format: purpose - implementation - evaluation**

The elements that constitute a process of transparency, in a three-dimensional format comprised of purpose - implementation - evaluation, are those that we will further identify, by exploring several areas, following on the role of transparency in their development.

In association with the public administration, Grigorescu (2003, p. 643-667) mentions that transparency is associated with “good governance”, as a general principle, which leads to an increased difficulty in identifying a correct, applicable and specific operationalization of the concept, but defines a clear relationship between the governance process and the need for transparency.

While domains such as management or the administrative areas started to look for ways to increase their efficiency, transparency has emerged as a result of the need for a tool to help combat systemic development failures and counter democratic deficiencies (McGee & Gaventa, 2010). Researchers and practitioners who promote democracy, associate transparency, following the wave of democratization that took place in the twentieth century, directly with the need for control, specific to a modern, contemporary democratic system. Basically, democracies are required to “deliver the public good”, and this action must be subject to new forms and tools of public control. Traditional forms of democratic control, involving only actions by the state towards its own institutions are considered to be outdated and increasingly insufficient. Thus, the need arose for multi-lateral control exercised both by public bodies, as well as by citizens – as an additional measure to those led by state institutions, designed to ensure ancillary, complementary supervision (Ball, 2009). Practically, transparency becomes the tool that provides the new control actors with the necessary information to follow the correctness of the government apparatus.

We can thus appreciate that transparency is closely linked to the control activity, as a complementary tool available to other actors than the institutional, traditional ones. After the mid-1970s, we can speak of a revolution, a reform of the public control forms, as traditional standards of control were systematically developed and strengthened,

so that the control activity became a system in itself and in its own right (Power, 1999). This is specific to the development of the contemporary society, which can be defined as an “audit society” or a “performance society” (Ball, 2012). The performance involves an actor who “performs”, but also one or more of them who watch and evaluate what is available, open and made accessible to them.

The relationship between institutional actors and the public sphere was addressed by the Institute for Public Policy Research (2001) which discusses the public-private partnership (PPP) and introduces the idea of hybrid control, meant to support its performance. The basic principles proposed for the success of such a partnership are: transparency, clarity of roles and the ability to adapt to the citizens’ needs.

Carolyn Ball (2009), in an attempt to define transparency, has identified associations with three representative metaphors for the concept of transparency.

In the first metaphor, transparency is perceived as a public value highlighted by society for its role in combating corruption, therefore there is a direct association of transparency with control activity and democratic governance.

In the second metaphor, transparency is synonymous with openness (accessibility and availability of knowledge) to the decision-making processes of governmental and non-governmental institutions. This association translates into processes subsequent to transparency, such as encouraging openness towards the public sphere, increasing concerns about the relationship between privacy and secrecy with respect to processes that involve, under certain conditions, the right to brake, through various specific methods, citizens’ privacy (secrecy versus privacy).

In the third metaphor, transparency is perceived as a complex tool of good governance, used in various programs, policies, organizations at the state level. Within these systems, transparency is joined by other characteristics or features that ensure the success of a process, activities, program, and policies etc., which fall under the authority of decision makers. The related, complementary and interconnected characteristics are: transparency, control, efficiency and effectiveness. The most relevant aspects lie in the fact that they have a

significant impact, at organizational and structural level, being associated both with macro processes such as policy development and micro-processes being presented in the day-to-day activity of government employees.

Ball (2009), in his extensive analysis of transparency, concludes that this has become an unofficial mandate issued by the general public and more and more often a legal mandate.

The concept of legal mandate translates into the obligations of public administrations to grant access, in an organized, systemic and intentional way, to certain categories of information, the knowing of which is, in fact, a citizen's right. The existence of a balance and a coherent relationship between the legislative and executive systems is unequivocally necessary in a democratic state. The existence of such a functional system makes it impossible for one of the two branches to exercise a dominant control or influence over the other and could represent one of the main pillars in the prevention of possible abuses conducted by representatives of public institutions, including security and intelligence services.

Although democratic systems have been marked by traditional forms of administration, nowadays across the public sphere the clearly defined format and concept of control was intertwined with the complementary presence of transparency. Thus, Karp (2005) or former US President Barack Obama (2006) argued that, in the processes of democratic or organizational optimization, we started from the idea of "extended control" (greater accountability), only to reach a system based on balance and efficiency due to the relation between control and transparency.

Recent reports call for transparency in close connection to human rights and freedoms, based on a private – public balanced relationship, in the case of activities of collection and management of individual and bulk data, but also interception of communications (Eskens et al., 2016). This perspective has been identified in the chronology of the literature in several works, being approached similarly by authors such as: H. Born (2004), P. Birkinshaw (2006), C. Ball (2009), J. Klaaren (2010).

Even if we cannot expose a singular definition of transparency, we have extracted from literature a series of constitutive elements (constants), common to the idea of “transparent” and the concept of “transparency”, which refer with predilection to the institutional, governmental architecture. These are representative of this paper, especially in terms of setting transparency roles in the functional and operational architecture of a modern democratic state. Thus, we can conclude the following about transparency:

- it is an organized, systematic process of communication;
- it is not specific to a field, but is approached and practiced multi and inter-disciplinary;
- it is an indicator of a democratic system, encouraging “good governance”;
- it has a particularly important role to play in preventing and combating corruption;
- it involves public exposure and thus allows monitoring of the internal activity of organizations or institutions;
- it contributes, but is not limited to encouraging external control, to increasing an organization’s credibility and to building a relationship of trust;
- it encourages access to the information, by high availability for all those actors who wish to be part of the complementary monitoring and control system;
- it lies between an unofficial mandate and a legal obligation.

Summarizing once again the approaches to transparency, the most important key words, the lack of which would render a discourse of transparency incomplete, are: good governance, democratic control, fight against corruption, unofficial mandate, legal obligation, trust.

### **Pin-pointing the emergence and evolutions of government transparency**

The emergence of a globally-extended concept of government transparency is closely linked to a number of intrinsic but also extrinsic areas of government architecture, such as: the growth and internationalization of the media, the technological boom, the diversification of national security issues, the third wave of democratization post-Cold War (Finel & Lord, 2000, p. 3-5; Lord, 2006).



### **A preparatory legal perspective**

And yet, which feature or field best defines the origin of transparency? Synonymy with good practice? Legislative obligation? Voluntary responsible behaviour of institutional actors? The manipulation tool that mimics openness through selective transparency? While some of the questions and options presented are predominantly subjective, one of them has been identified as an emerging source of transparency, namely the legal component. Referring to the legal norms and provisions associated to transparency, they began to rise in the 1970s and allowing citizens and especially the media to access to public information, mainly regarding the activity of the American public administration. Ball (2009) argues about this kind of provisions that “they created transparency”.

However, we consider this conclusion to be a rather general one, with which we do not agree, as it relates strictly to the time of the 1970s, and due nuance is needed. Indeed, that period was marked by the emergence of legislative provisions on access to information (Freedom of Information Act – FOIA – 1966 – 1974, Whistle blower Protection Act – 1989, Sunshine in Government Act – 1976 etc.), which led the way to transparency through incipient forms, to the increased availability of information of public interest to the public sphere and media, to the education of the population to act in the sense of access to information, disclosure of abusive activities. We consider these to be only a starter, a catalyst, a trigger of a series reaction.

Other normative acts that created premises for the implementation and development of transparency were: Columbia (1985) – Law on the publicity of official acts and documents; Hungary (1992) – Law LXIII on the protection of personal data and access to data of public interest; Bosnia and Herzegovina (2000) – Law on free access to information, Romania (2001) – Law on free access to information of public interest etc. Land marking in 2017, worldwide, there were 119 countries that have adopted legal regulations on free access to information (Alphabetical and Chronological lists of countries with FOI regimes, 2007), and the full list can be found at [www.freedominfo.org](http://www.freedominfo.org).

The Access Info Europe report (2006) has monitored, worldwide, acts on free access to information, concluding that, of the 65

pieces of legislation analysed in Europe and the US, 50 were aiming at providing extended access to information of public interest, highlighting that most developed democracies recognize this right (Access of Information: a Fundamental Right, a Universal Standard, 2006, p. 1).

As presented above, most approaches to transparency do not define or detail the concept itself, but refer to transparency in different contexts, functionally defined – in which case transparency is mentioned as a tool or policy of good governance or thematic – areas where transparency is or would be required. In either case, the literature records the need for public administrations to disseminate information of public interest, the variation of their typologies being quite large – from regulatory and normative materials to raw materials used in different areas.

Since the 1990s, we can say that, globally, the frequency of legislation on free access to information has been unprecedented. This process has not only been supported by legislation, but by other actors, such as non-governmental organizations. Researchers have identified a chronological parallel process which is represented by inter-governmental relations and practices, which exercised pressure on states in order to assume and implement transparency norms and practices (Relly & Sabharwal, 2009).

Various researches have shown that government transparency is a moral duty (Liston-Heyes & Juillet, 2020) and is closely related to the professional integrity of the public system (Mishory, 2013).

Simultaneously, transparency has been highlighted as having a functional purpose with respect to public institutions, as it creates the premises for a culture based on public trust and confidence, while building on the informed presumption of innocence.

From a thematic perspective, referring to the governmental system as a whole, transparency has often been defined in relation to the phenomenon of corruption: transparency would be “an essential element of the basic approaches used by governments to promote public openness and reduce corruption” (Bertot, Jaeger, Grimes, 2011, p. 79). The same article details the risks of lack of transparency, the main categories of risks identified being associated with corrupt

behaviour and tendencies. There are three categories of risks resulted from the lack of transparency, namely social risks (hindering the development of social trust and public interest), administrative risks (encouraging opportunism and favouritism in the allocation of physical or information resources) and managerial risks (reducing the efficiency of the public sector, by affecting partnerships with different actors).

According to the Corruption Perceptions Index, control and transparency are two key elements in reducing the degree of corruption at the state level, and directly and indirectly, in increasing public confidence in administration and governance (Liston-Heyes & Juillet, 2020).

Summarizing the approaches to government transparency, we can pin-point the time for emergence in the 1970s, through incipient, incomplete forms, and the beginning of the stage of conceptual coherence, in the 1990s.

Following up to nowadays, in the last decade, the most common framework for discussing government transparency is by changing parts of its DNA, a mutation from offline to online through eGovernment conception and tools.

### **eGovernment**

When we talk about open government data – OGD – we can say that this is a trend, a movement that has created a niche for promoting availability of data, a transparency tool provided to public administrations, a niche that could be defined as eTransparency. The creation of online portals for data sets has met the major need of governments to promote transparency by publishing government-accessible data sets in an accessible environment to as many stakeholders as possible – such as online – that can be used for control activities on one hand by civil servants, and on the other hand by any actor interested in reusing and processing them for the purpose of social and economic development (Lourenço, 2015).

Researchers interested in this field raised two major concerns about the efficiency and complexity of this type of portals for online transparency: the first regarding their effectiveness in disseminating information and data to achieve the objectives of transparency and

control; the second regarding whether it is possible to actually evaluate the efficiency. Starting from the lack of assessments on the implementation of the principles of open governance, beyond the general idea of providing everything necessary and sufficient for control and transparency, the unanimous conclusion revealed the need for a set of specifications, rules, characteristics to define a pre-established evaluation framework.

The development of the portals started both from the need to be able to access collective, cumulative data, to the detriment of searches performed on the inhomogeneous pages of each public institution (with different structure, with different formats, with disparate and uneven types of information), to encourage public administrations to develop a strategy of transparency and extensive control and to generate a series of standards for publishing data of public interest (Lourenço, 2015).

In general, the two criteria taken into account for designing the architecture of such an online portal are the type of public entities (authorities) that will be engaged and the types of information that will be published. Globally, the main types of information in collective data set portals are performance indicators – budgetary, financial and data management. From this perspective, the question that arises is whether national security information that is likely to be part of the processes of transparency and construction of the security culture can or should be present in these types of portals, should be disseminated through other channels and tools to specific audiences or shouldn't be published at all. Even more, from this article's perspective, we are interested in the cumulus of actors and indicators that could provide a framework for evaluating the above-mentioned issue.

Last but not least, what is particularly important about eTransparency is that the literature has mostly confirmed two hypothesis: the information provided on an institution's own website is a proxy for the level of transparency of that entity; the second conclusion is a quantitative one, namely that the dissemination of an enormous amount of data and information does not equate to increasing the level of transparency and does not necessarily and unequivocally facilitate the control activity (Lourenço, 2015).

### **Advantages of transparency and the risks of its lack**

Before going forward approaching transparency related to the intelligence field and activities, we will present a series of general advantages and risks related to the use and lack of transparency, in order to provide an initial framework of analysis, which can be extended or reduced while applying it to the intelligence domain.

Arguing the benefits of transparency, studies conducted with respect to states that have implemented transparency measures across the public sector have shown a tendency to produce more information of public interest than other similar governments and a predisposition to increased and more complete dissemination of this information to civil society than those that do not have an institutionalized practice and tradition of transparency (Lord, 2006).

While looking at public stakeholders and promoters of transparency, we have identified a pioneer in defining and promoting institutional transparency as an instrument of good governance. Namely, we are presenting the work of Barack Obama, who issued at the beginning of his term as President of the United States of America, through the institution of the Presidential Administration, a Memorandum on Transparency and Open Governance for the heads of executive departments and agencies, followed by a governmental progress report, in which transparency has been defined among the core values of the Obama administration, along with public participation in the act of governing and intra-governmental collaboration. According to the report (2009, p. 1), the governmental agencies and departments have a duty to provide citizens with information on the work that is carried out, in order to provide sufficient and necessary elements for possible accountability (not referring to the control activity).

The Obama Administration initiative has started a trend and a good practice regarding the principles and advantages of implementing transparency across the public sector, aspects arising from the concern and debate in the public space and in the academic environment that followed.

On the one hand, transparency, as part of the foundation of a good governance framework, is intertwined with a wide range of

principles, such as effectiveness, efficiency, accountability, responsiveness and integrity. On the other hand, while talking about the public sector as a whole, transparency is mainly introducing risks by its nonexistence, risks that are visible and cannot be ignored on a longer term. At the social level, the lack of transparency allows the creation of mental scenarios across the population, based on non-objective information, incorrect and/or incomplete. Typical sources of such scenarios are cultural customs and beliefs, the result of various experiences and narratives created and made available in the public space by stakeholders, other than the one belonging to the government and public administration (media, bloggers, vloggers, social media groups and influencing public profiles etc.). Also, the lack of transparency, in opposition to its presence, creates premises for reducing social trust and confidence in the public administration as a whole and also at an individual level – as a result of apparent secrecy. Also, whether we talk about countries where the level of trust and confidence is already very low, the lack of transparency is one of the most counter-productive measures that stay in the way of developing and increasing it in a healthy manner.

The lack of transparency is also a premise for opportunism, and the main categories of risks identified are associated with corrupt behaviour and trends. In addition to the social risks presented earlier, the literature has also identified administrative risks (encouraging opportunism and favouritism in the allocation of physical or information resources) and managerial risks (reducing the efficiency of the public sector, by affecting partnerships with different actors) (Bertot, Jaeger, Grimes, 2011, p. 80).

### **Intelligence transparency or intelligence in plain sight**

The concept of intelligence has been defined by several authors throughout the twentieth and twenty-first centuries, but the classic meaning is that presented by the father of the intelligence field, Sherman Kent, who established a multidimensional definition, through three elements: activity, process and knowledge (Kent, 1966, p. 7). We note the use of the term knowledge in connection with intelligence which is more than information, it is custom made knowledge (Krizan,

1999), through a complex process of continuous collection, verification and analysis of information, which allows us to understand the problem or situation in actionable terms (Krizan, 1999, p. 7).

In this paper we are interested in intelligence activities conducted by state institutions with clear legal responsibility in the field – namely intelligence services and agencies. These are the main actors we focus on, followed by the other stakeholders who are present and notable in the public sphere – oversight bodies, media, and civil society.

The intelligence services work *ex officio* with classified intelligence and documents, which fall under the concept of secrecy, as stated by an intelligence practitioner, “the world of intelligence, traditionally closed, specialized in knowing and keeping secrets” (Westerman, 2019, p. 31).

While considering the fact that intelligence agencies are part of the governmental apparatus, but at the same time have particularities with respect to their public statements, communication, oversight and control information, in this paper we focus on the relation between secrecy and transparency, for this is, the turning point that differentiates governmental transparency from intelligence transparency. Over time, various policies and measures have been developed to reduce the distance between the intelligence services and the rest of the government apparatus, but it is expected that a perfect balance of control will not be achieved, given the inherent secrecy of business traditional executive ownership and control of intelligence activities by the secret services (Lester, 2015, p. 1-2).

When looking for a more clear connection between intelligence and secrecy we have identified that, while conducting its role in ensuring the national security of a state, the essential functions of intelligence are (Lowenthal, 2003, p. 2-5): early warning of strategic threats; making predictions and expertise on long-term security developments; providing information support and support in the decision-making process by state decision-makers and, occasionally, by other actors working in the field of state security (e.g. private actors managing critical infrastructures); maintaining the secrecy of national

security information, intelligence requirements, sources, methods and means.

Transparency in intelligence is a recurring topic both on the agenda of public opinion, of the legislative bodies, and of control and oversight committees in multiple states. Intelligence services view transparency rather as a negative and risky element than a positive trend specific to reform and modernization processes, leading to new forms of communication and control specific to democratic systems. Transparency is associated with a decrease in the efficiency of intelligence activities, as the nature of the intelligence services' activity is characterized by silent efficiency, and therefore by a high degree of secrecy. In consolidated democracies, a solution for the public-secret dichotomy has been identified, in strict compliance with legal provisions, democratic principles and by assuming the values that characterize the balance between transparency and effectiveness. In the US, one of the identified systemic solutions in achieving a balanced equation of transparency-secrecy has been to reduce corruption and increase control and oversight activity (Doorey, 2007).

We discussed Lowenthal's perspective (2003) on the functions of intelligence, the fourth being "maintaining the secrecy of national security information, intelligence requirements, sources, methods and means". The difficulty for intelligence services and agencies is to maintain a balance so that they can cultivate a climate of social trust, while not jeopardizing the security of their missions.

This taxonomy is particularly important from the perspective of openness to intelligence, as it could be a starting point for achieving standards of transparency, by establishing categories of data and information that are not intended to be made public – national security information, of intelligence requirements, sources, methods and means.

The literature highlights the need for a layered system of transparency measures, setting out the rules for the dissemination of information, based on clear policies, so that it does not depend on an arbitrary and unilateral decision of institutional decision-makers. The layered system is defined according to a number of constituent elements, such as the target audiences, specialized by their needs for transparency (oversight bodies, media, civil society – with special



attention to non-governmental organizations), the moment of communication or transparency, as well as the need to establish what can and cannot be made public – as a standard, in the form of a predefined list of information.

According to Eskens, van Daalen & van Eijk (2016), the layered transparency system can be characterized according to the following categories of elements and activities:

- informing the external actors involved or affected – individuals, national control bodies, civil society;
- ensuring an adequate level of openness to the intelligence activity, before, during and after the activity;
- making available that information, contexts, deliberations, statistics, operational data etc., which will not be disseminated publicly, for being classified.

The field and practice of national security is defined by the coordination and development of specific capabilities. Free access to information managed by actors directly involved in this field is subject to a limited level of expectation.

The expectations of citizens or actors involved or co-interested in the field of national security are defined by the development of the security culture. It should be noted, however, that expectations are not homogeneous and depend on the relationship between the specific actors with the intelligence regards. If the general public has a level of expectation related to their own needs and interests, institutional actors define a level of expectation that is rather regulated by legislation and procedures, given their roles in the government architecture.

In democracies, the so-called secret services – public institutions engaged in intelligence activities, oversight and transparency are key elements for the two present the reflection of the system in which they operate, while serving on one hand the individuals and on the other the democratic society (Spielmann, 2012). The author highlights the relationship between the operational requirements specific to national security and the need for instant audit, while conducting operations, as an asymmetric one, which can be balanced by transparency measures at the level of intelligence services. These measures are addressed both to

the general public and to bodies that generate formal oversight mechanisms.

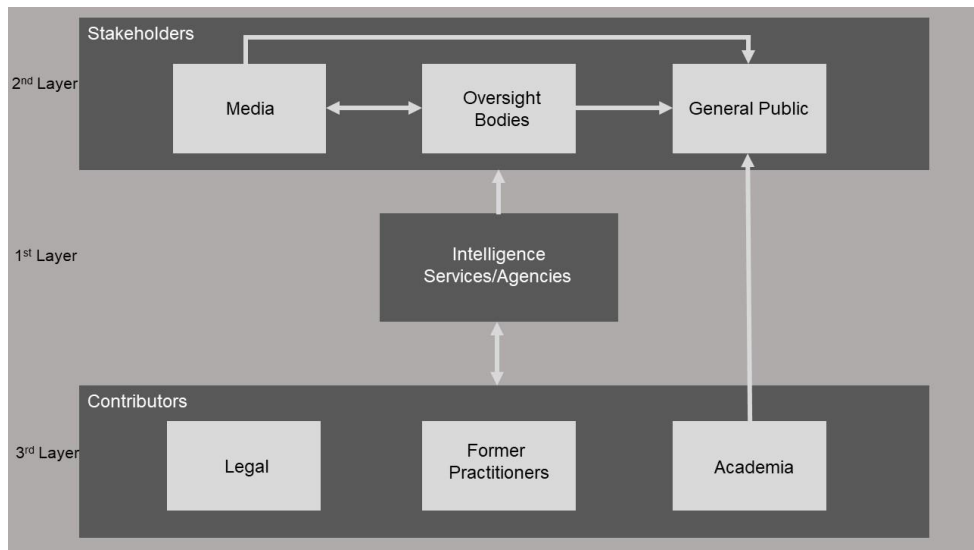
### **Legal perspective on intelligence transparency towards oversight bodies**

While considering different stakeholders of intelligence transparency, we have identified that one of the most important one is or should be the bodies which are mandated to exercise oversight on the intelligence agencies and services. From an emerging legal point of view with respect to the legal responsibilities of these bodies, they were adopted in the immediate vicinity of the 1970s, the zero moment of openness to transparency (Born, Johnson, & Leigh, 2005). Thus, these oversight bodies have been invested with the responsibility to:

- 1974 – USA – evaluate all national intelligence agencies, approve zero-level priorities, verify both the legality and efficiency of intelligence services, while having full access to the necessary information, regardless of classification level;
- 1984 – Canada – verify the legality and efficiency of intelligence services, having full access to the necessary information, regardless of classification level;
- 1994 – United Kingdom – audit budgetary, administrative and strategic aspects of MI5, MI6 and GCHQ, specifically those related to the efficiency of the services' activity, without involvement in assessing compliance with legality; access to the necessary information was provided, but not guaranteed when the subject had a very high degree of sensitivity;
- 1995 – Poland – verify the legality of the activity, budgetary, administrative and strategic aspects, without pursuing the efficiency of the services; access to necessary information was left to the “discretion” of intelligence agencies;
- 1995 – Norway – mainly verify the legality of the activity of intelligence services, including from the perspective of human rights, with full access to the necessary information, regardless of the level of classification.

## The joint venture for improving intelligence transparency – a three-layered framework

Building on the above sections, this chapter aims at drawing a first set of criteria for designing a framework for improving the intelligence transparency practice, while taking into consideration all essential elements for this kind of joint venture, as presented in Figure 1.



**Figure 1:** A three-layered framework for improving intelligence transparency

### The first layer

The first layer of this framework, the nucleus, is of course represented by the intelligence services and agencies. Their audiences should be comprised of all possible stakeholders, while the level of transparency should be layered depending on a series of standards. Leaning on the need to protect and hold a high level of security of their missions, the first standard for transparency that we propose is establishing and communicating categories of data and information that are not intended to be made public – national security information, intelligence requirements, sources, methods and means.

The second standard of transparency refers to the channel for display. While for specialized stakeholders there are pre-set roles that handle the transparency (e.g. for oversight bodies – top management, for media – public information office) there must be an open channel of communication, available to all direct and indirect stakeholders, at all times, and we propose as standard setting up the institution's own website (no matter the integration with other online platforms of eInitiatives), considering that the website is one of the best proxies for the level of transparency of a public entity.

Last, but not least, the third standard of transparency led and implemented by the intelligence community members is setting right-levelled classification of documents and information, so that it does not limit the access to public information without proper justifications.

### **The second layer**

The second layer of relevant actors for this framework is represented by stakeholders. For an intelligence community, the main stakeholders that we are interested in are the oversight committees (for oversight purposes, but also for mediating the relation with the executive and legislative bodies), followed by the media and the general public.

We consider the highest level of openness and transparency should be directed towards the above-mentioned category of stakeholders, and by highest we refer, if possible, depending on the country, to having full access to the necessary information, for oversight involves knowledge, understanding and direct impact on the activity of intelligence bodies. Subsequent to the process of transparency, from intelligence agencies towards the oversight committees, and considering the highest level of access, these committees must perform transparency and communication acts toward the other stakeholders – media and civil society, presenting guarantees that they have accomplished the mandate they were given. The information should contain at least the annual number of closed sessions that took place for oversight or connected purposes, where there have been identifications of irregularities and whether measures of correction have been implemented (while protecting the secrecy of information, measures

etc.), whether the assessed institutions had available all needed resources to comply with their legal responsibilities and whether corrections are needed.

Media is a type of stakeholder that carries out two functions: receiver and giver. On one hand it is receiver of narratives from official actors and also from off-the-record sources, narratives which are being transformed and passed on to the general public. The role of media in this framework emerged from the fact that even if we were to ignore, it would still be there. Narratives are being produced and published every day and it is only up to intelligence service whether they provide their own, to be considered and integrated.

The general public is the beneficiary of the intelligence activities and a stakeholder found at the end of the narrative chain. The public mandate given to other responsible bodies except the general public from direct actions and oversight, but the right should still be in place, offered by transparency measure by the other actors from the arena. Making all public information available is a form providing the general public with the chance to perform unofficial oversight over the intelligence community members.

### **The third layer**

The third layer of actors for this framework is represented by contributors. The contributors are those actors who can fill gaps with knowledge, understanding and legal background.

Knowledge and understanding of the intelligence system are of interest to all direct stakeholders, but also to indirect stakeholders, for processing public narratives. The contributors for filling these gaps are the academia, former practitioners (mostly involved in think-tanks and NGOs). On the other side, the legal context and background must be provided by the legislative branch of the state, as well as by the coordinator of the national intelligence community for each state, for a layered system of transparency measures who sets out the rules for the dissemination of information must be based on clear policies (legal provisions, standards, norms), so that transparency does not continue to depend on an arbitrary and unilateral decision of intelligence decision-makers.

## **Conclusions**

We shall start the conclusions by presenting the limits of this research. On one hand it was generated from the lack of perspective of practitioners of “secret” and on the other hand from the fact that this research is in an incipient phase and only presented a basic scheme for a possible framework for improving the intelligence transparency practice, leaving the door open for further research, for further contribution from all stakeholders and from academia, as source of integrating knowledge and understanding of the intelligence in plain sight.

Even so, we believe that the proposed framework presents novelty in the field of intelligence transparency because it can be used on so many different levels. It can be used by the legislative branch to develop coherent provisions which can help lining up intelligence, in a safely manner, with other governmental agencies; it can be used by the oversight bodies to look at the way the results of their work are being communicated, or not, to the initiators of the mandate – the general public, it can be used by media to better know how to ask proper question and how the best recipients of their question are, it can be used by the general public to create buzz, to own up to their most-unguessable rights.

In addition, we believe that this paper represents a step in the process of filling the gap between the actors and stakeholders of the intelligence field, starting with the most important and relevant ones, while leaving enough space for introducing other constants and variables in the scheme and building a most complex framework, not for improving, but for definitively defining the practice of intelligence transparency.

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