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Article

Civic Intelligence Oversight: Practitioners' Perspectives in France, Germany, and the UK

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Abstract

In recent years, various revelations about government malfeasances have highlighted the vulnerability of civil society actors who work on surveillance by intelligence agencies. Simultaneously, new technologies and overburdened state oversight bodies clarify how relevant citizen scrutiny of intelligence is. Both of these factors have led to the emergence of scrutiny by civil society actors as a research subject. This paper contributes to such scholarship by presenting data collected through surveys addressed at journalists and professionals from civil society organisations (CSOs) in France, Germany, and the UK to comparatively characterize the forms, scope, and constraints of the scrutiny they perform. Indicated differences across countries highlight variances in the practices of civic intelligence oversight. These variances indicate that there is room to manoeuvre for civic forms of holding intelligence agencies to account, counteracting the primacy of security and the secrecy of intelligence. Yet, similarities of civic oversight practitioners' perspectives across all three countries are also distinct and informative; in particular, across all three countries, journalists and CSO professionals who work on surveillance by intelligence agencies worry they are under surveillance themselves and express dissatisfaction with safeguards at work.

Introduction

Civic intelligence oversight did not attract much public attention prior to the revelations of Edward Snowden in 2013. Once the public learnt of the geographical scope and qualitative capacity of digital communication surveillance by the intelligence agencies of many democratic states, however, civil society and media representatives across different countries notably increased their efforts to debate and contest government surveillance publicly. They also challenged the suitability of legal frameworks for both surveillance by intelligence agencies and formal oversight mechanisms (Tréguer 2017). Civic actors who pursue oversight devoted resources towards activities such as investigative reporting, campaigning, policy advocacy, and strategic litigation. They also produced explanatory material about surveillance by intelligence agencies and helped to document, monitor, contest, and remedy misconduct of intelligence agencies.

We centre such oversight by civil society actors in our study with the objective to provide descriptive detail of the facilitation of civic oversight in different countries. We present data from surveys with practitioners of civic oversight in the UK, France, and Germany and compare their resources, activity, transnational scope, and perceived impact, as well as the protection and constraints of their work. Additionally, we

provide insights on their attitudes towards intelligence agencies and delegated oversight, that is, oversight usually mandated by the state.¹ We analyse two forms of civic oversight: first, media reporting on surveillance by intelligence agencies (media) and second, oversight practices of civil society organisations (CSOs) that engage in public campaigning, policy advocacy, and strategic litigation. We find differences across countries, for example concerning existing resources (time, funding, professionalization) and attitudes towards intelligence agencies. However, similarities reported are also rather distinct, in particular regarding a profound dissatisfaction across sectors of civic intelligence oversight (media reporting and CSO activity) with existing legal and operational safeguards at work.

The modalities of civic intelligence oversight and practitioners' experience of their contributions within institutional settings are still largely under researched (van Puyvelde 2013; Hastedt 2016). A notable exception to this is the comprehensive volume on intelligence elites and public accountability by Vian Bakir (2018). Here, Bakir (2018) systematizes the existing but fragmentary research on intelligence agencies and their relationship with civil society in different disciplines and introduces two case studies to research whether contemporary civil society can adequately hold intelligence agencies to account. We particularly align with Bakir's (2018) call for specifying and benchmarking accountability and want to contribute to a better understanding of civic oversight in practice with this study by identifying directional variances of civic oversight and its capacity across countries.

In oversight literature, typologies of intelligence oversight refer to civil society organisations and the media (Born and Mesevage 2012; Caparini and Cole 2008; European Union Agency for Fundamental Rights 2015; Council of Europe and the Commissioner for Human Rights 2015), yet they rarely provide a more comprehensive empirical analysis of these actors and the facilitation of their practices. Some scholars recognize that civic actors have proven to be relevant to the revelation of scandals and malfeasances (Johnson 2007) and that their work often prompts substantial legislative reforms (van Buuren 2014), yet most accounts of intelligence oversight still focus exclusively on the contributions of delegated institutions to intelligence oversight, such as parliamentary committees or judicial review bodies (Gill 2020; van Buuren 2014). Often, civic oversight is only briefly referred to in the larger context of oversight debates. As a result, we know little about the practice of civic oversight despite the various roles that media and civil society organisations play in holding intelligence agencies to account.

Against this, scholars of surveillance studies have, since the early 2000s, conceptualized the technological and social empowerment of members of civil society monitoring those that usually monitor them under the term "sousveillance" (Mann, Nolan, and Wellman 2003), which, narrowly defined, means "watching from below" (Mann and Ferenbok 2013: 19; see also Newell 2020). Sousveillance, through the analytical reversal of who watches and who is being watched, has proven very helpful in delineating and analysing power relations of surveillance, in assessing potential risks that come with the alignment of tools of domination and tools of resistance (Borradaile and Reeves 2020), and, more generally, in providing an arch for the analysis of watching the watchers from below in whatever capacity this happens. Building on and expanding the concept of sousveillance, Bakir (2015: 12) distinguishes constellations of unequal watching from arrangements where scrutiny of intelligence from civil society is actually robust (i.e., the "veillant panoptic assemblage" and "equiveillant panoptic assemblage").

Rather than describing citizen scrutiny as watching from below, in this paper, we conceptualize civic practices of scrutiny as on par with *delegated* practices of oversight. This reflects a non-exclusionary understanding of intelligence oversight that accounts for the functional equivalence of civic intelligence oversight next to delegated oversight in terms of its indispensability for democratic practice. For instance, despite doing so through very different modes, both civic and delegated intelligence oversight contribute to

¹ Such delegated oversight, in literature sometimes referred to as "traditional" oversight, is performed by bodies external to government that are bestowed with legal oversight mandates and powers by the state (e.g., the CNCTR in France or the UK-Rat in Germany).

the limitation of arbitrary power in democracies and when they do, civic oversight practitioners often act independently of delegated oversight.

This study contributes to both research focused on intelligence oversight and research on configurations of surveillance/sousveillance with a descriptive analysis of the modalities of civic forms of oversight. The comparative empirical approach to practitioners' perspectives underlines common characteristics of civic oversight, as well as highlights the variances in facilitation and constraints that practitioners experience in different countries. Next to identifying the practices of civic oversight comparatively and with descriptive detail, the identification of variances across countries serves to counter the argument that security concerns and secrecy arrangements deter and ultimately equalize the scope of democratic oversight.

The paper is structured as follows: First, we outline the definition and conceptualization of civic oversight that we use to identify the modalities of oversight with a specific emphasis on the practice-informed view of civic oversight practitioners. Second, we present methods used for the comparative identification of civic oversight practices. Next, we discuss the empirical data we gathered, which we present in four thematically clustered subsections. Last, we summarize our main findings, which indicate where the data interlink with current research on surveillance by intelligence agencies and name questions that emerge for further inquiry.

Modes of Civic Intelligence Oversight

The prevalent marginalization of civic practices in research and political discourse on intelligence oversight goes along with a liberal understanding of democratic oversight that puts an emphasis on balance, delegated expertise, and the integrity of state secrets (Kniep et al. 2023). A comprehensive understanding of democratic intelligence oversight, however, needs to account for the de facto productive and often more adversarial forms of civic oversight that ensure a participatory contestation of surveillance by intelligence agencies in the public sphere (Hillebrand 2012; van Buuren 2014). To identify the modalities of civic oversight, we therefore broadly define oversight as a set of practices that scrutinize, evaluate, contest, sanction, and publicize the activities of intelligence agencies with the goal of preventing future misconduct or discovering past misconduct. This definition is suited to incorporate plural understandings of the “democratic,” including concepts of a monitory democracy that limits arbitrary power through scrutiny, (neo-)republican understandings of freedom as a state of non-domination (Pettit 1999), and theories of critique as a social and emancipatory practice (Celikates 2009). Such a conceptualization of democratic principles, when applied to the oversight of surveillance by intelligence agencies, underlines the centrality of civic oversight activities both in relation to surveillance by intelligence agencies and to delegated oversight in democracies. We assume that social constellations are not permanent and that the scrutiny of surveillance has discernible effects.

Unlike formal review and authorisation bodies mandated by the state to perform certain oversight tasks, the media and CSOs performing civic intelligence oversight act without a formal mandate. They proactively invest efforts and resources to the field and, in many cases, prompt delegated bodies to act or to be established in the first place (Tréguer 2017). Conceptualizing freedom as non-domination, the proactive, unpredictable scrutiny implemented as civic oversight is by no means secondary to delegated oversight (Newell 2018). Instead, it is in its form indispensable and in its effect central to the democratic scrutiny of surveillance practices, including that of delegated oversight bodies (Caparini and Cole 2008; Kniep et al. 2023; Matei 2014). While we assume the centrality of civic oversight and its equivalence in necessity to delegated oversight, our survey leaves the exact theoretical location of civic oversight vis-à-vis intelligence agencies to those we survey. That means that we do not presuppose that restraint, equivalence, or a reversal of domination characterizes their experience of work vis-à-vis intelligence agencies. At the same time, we hope that findings on modalities of civic oversight feed back into the broader field of surveillance studies, specifically such work that theorizes implications of the configurations of power between citizens and intelligence agencies.

We distinguish two modes of civic intelligence oversight in this inquiry: media scrutiny and civil society scrutiny pursued by CSOs. Reporting by journalists on surveillance by intelligence agencies—their articles, interviews, and feature stories, as well as other media output—is referred to as media scrutiny. CSOs’ scrutiny of surveillance by intelligence agencies, that is, their strategic litigation, policy advocacy, and political campaigning, is referred to as civil society scrutiny. Next to these forms of democratic control, legal remedy afforded to individual citizens is certainly a further aspect of oversight, yet is beyond the scope of our survey-based investigation. We focus on civic oversight by media professionals and CSOs as two major modes of civic oversight with relatively high levels of organisation and professionalisation.

We research civic oversight by identifying data on the components presented in the figure below in our inquiry, which were derived from oversight literature, as well as regulatory papers and the standards set by the FRA European Union agency for fundamental rights (such as European Union Agency for Fundamental Rights 2015; Gill and Phythian 2018; Venice Commission 2015). Additionally, workshops with oversight practitioners contributed to the conceptualization of more practical components stressed by people who work in the field of oversight.

Civic Oversight

Media Scrutiny	Civil Society Scrutiny
Resources Scope of Media Reporting Protection Constraints Attitudes	Resources Scope of Campaigning Policy Advocacy Scope of Strategic Litigation Protection Constraints Attitudes

Table 1: *Civic Intelligence Oversight*

Table 1 shows components that are operationalised in the questionnaire we distributed. For CSOs, actors self-select into different professions (choosing primary occupations if they are engaged in more than one), before answering questions relating to their activity, the transnational scope of their activity, and their perceived impact. For media professionals, respondents are automatically directed to questions on similar indicators of their activity (also followed by the scope of their reporting, its transnational scope, and their perceived impact). Other components are symmetrically conceptualized (resources, protection, constraints, attitudes, and demographic characteristics), and all components are translated into several indicators. For example, the component resources for CSOs consists of indicators for human resources, expertise, financial resources, and freedom of information.²

A Comparative Approach to Civic Oversight

In order to identify practices of civic intelligence oversight, we present comparative research drawing on practitioners’ input of media scrutiny and civil society scrutiny. Practitioners of different countries describe, for example, their perceived impacts, experiences of interference, or, through few brief questions, their attitudes towards surveillance by intelligence agencies and towards delegated oversight. We opted for a comparison of three European democracies to illustrate the variances in scope that civic oversight can take even within similarly consolidated democracies, countering the argument that the room to manoeuvre in enabling and protecting civic oversight practices is ultimately pre-defined by security concerns.

² A comprehensive set of indicators and questions can be accessed at <https://guardint.org/>.

We selected France, Germany, and the UK as our units of an exploratory but comparative analysis of civic oversight because they have relatively comparable intelligence communities in size and activity. At the same time, the three countries have similar levels of democratic strength in areas other than security. For instance, on the Varieties of Democracy Index of 2021, the three countries score within the top 15% (Coppedge et al. 2022). Additionally, they score as follows within the three sub-indices of (1) electoral democracy, (2) liberal democracy, and (3) participatory democracy: the UK is assessed at (1) 0.86, (2) 0.79, and (3) 0.63; Germany at (1) 0.87, (2) 0.82, and (3) 0.63; France at (1) 0.87, (2) 0.79, and (3) 0.61 (Coppedge et al. 2022). Of course, one may take such rankings with a pinch of salt. Yet, for the purpose of our study, which is to identify the variances of scope to which civic intelligence oversight in different countries is enabled, it is helpful to have some directional indication that differences in intelligence oversight practice are unlikely correlated to overarching differences in democratic principles (such as freedom of speech or equality before the law). This helps to highlight differences in the structural conditions of the civic oversight of surveillance by intelligence agencies that exist *even* within democratic countries.

Methods

We chose standardised surveys as our main method of comparative inquiry as it allows a directional comparison of civic oversight practices between countries that gives an account of practitioners' perspectives. To facilitate comparison across countries, we not only gave a list of indicators for civic oversight practice but also conceptualized sets of answers in ranked form when a better understanding of the variations of capacity for civil oversight across countries would be helpful (for example, more or less sufficient legal protections of practitioners, etc.). While such a ranking of values is necessarily constructed and differences between values will be perceived to some extent differently by different individuals, we agree with Cartwright and Runhardt (2014: 274) on the use of attributing values for measurement when social sciences "do want to compare, both to see how things are changing in time and to see which social systems work better for reducing or enhancing the characteristics of societies that we care about."

For the conceptualization of civil oversight in its different forms, we supplemented literature reviews with workshops with practitioners of oversight. This allowed us to identify and discuss key practical indicators of civic intelligence oversight practice. We also invited a smaller subset of practitioners of delegated and civic oversight to discuss our evolving conceptualization and our inferential scheme at a later stage to ensure some consensus that what we were measuring was what is understood to be the capacity for civic oversight by academics as well as practitioners. Of course, such efforts for validity of a concept necessarily result in approximations. The operationalization went through three separate rounds of feedback and pre-testing, following revisions and reformulations with a view to further the survey's reliability, that is, increasing the precision of questions and answers asked so that there would be little variation in the understanding of answers and differences across values (of potential answers for respective questions).

Questionnaires for the exploration of civic oversight include largely symmetrical indicators for media and civil society representatives, except for specific questions in each survey that pertain only to one group and its professional context. For instance, the component protection for media professionals includes indicators of operational protection, legal protection, and the right to access, so that the existence and practicability of data subject access requests can be assessed, while for CSOs we only ask questions on operational and legal protection.

Participants for the survey were chosen based on their previous engagement in the scrutiny of intelligence. For media scrutiny, surveyed professionals have published repeatedly on issues related to surveillance by intelligence agencies within the past five years. Similarly, for the selection of civil society professionals, we surveyed those representatives of CSOs who engaged in civic intelligence practices such as campaigns, advocacy, or litigation at least once within the past five years. To identify suitable individuals, we conducted comprehensive searches in online databases for intelligence-related contributions and reviewed recent public events on the subject for professionals that met our criteria.

We contacted 324 individuals, out of which seventy-seven took the time to complete our surveys, which equates a response rate of 23.7%. Considering the sensitivity of the research topic and how highly specialized civic oversight actors often are, we consider this to be a low but acceptable response rate for an exploratory analysis, especially taking into account that response-rate bias is less likely in low-return-rate surveys if the surveys draw on persons with a strong group identity (Leslie 1972). Still, we find our results are specific to our study and analyse our data descriptively rather than providing causal inferences. Survey participants were almost evenly divided between media and civic society scrutiny professionals, and fairly evenly distributed within CSOs around policy advocacy, strategic litigation, and public campaigning.

The count of responses differs from question to question, as not every person was asked every question and we provided the option to skip questions. We therefore provide absolute numbers of underlying responses where helpful. We also produce results on the levels of expertise and experience as a further chance to review the sample on civic oversight.

The survey was conducted anonymously via open-source software. Based on anonymised data, we built an openly accessible website that visualises the responses to specific questions and allows for the exploration of our data specifically regarding commonalities and differences per country or professional sector.³ The objective is both to increase the transparency of the presented study and to provide open access data for further research on the topic.

Analysing Civic Oversight: Practitioners' Perspectives in Germany, France, and the UK

The results of our analysis are presented in five different segments that pertain to (1) resources of civic oversight, (2) the scope of activities and perceived impact, (3) the perceived effectiveness of operational and legal protection, (4) fear, suspicion and evidence of surveillance during oversight activities, and (5) attitudes towards intelligence agencies and delegated oversight institutions of civic oversight practitioners.

Resources

Sufficient resources for the practice of civic oversight are a key criterion for the facilitation of democratic scrutiny, be that reporting, strategic litigation, policy advocacy, or political campaigning. In our research, we find that participants in all three countries are knowledgeable and experienced regarding surveillance by intelligence agencies (see Table 2 and Figures 1 and 2).

Average years of experience (median)	11.6 years (10 years)
Average time spent working on surveillance by intelligence agencies per month (median)	4.1 days (3 days)
Percentage of respondents reporting sufficient or a great deal of funding	29.87%

³ The complete survey dataset can be found at the following link. Please always indicate the origin of the data when used in publications: <https://survey.guardint.org/?section=Overview>.

Employment status	67.6% full-time 14.9% freelance 13.5% part-time (>50%) 1.35% part-time (<50%) 1.35% other 1.35% prefer not to say
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Table 2: Self-assessment of resources by respondents; all countries, all professions

Given the high complexity and fast-paced advancements of surveillance measures and technologies, high levels of knowledge among civic oversight practitioners are critical for scrutiny. On average, our respondents reported close to twelve years of experience working on surveillance by intelligence agencies (Figure 1).

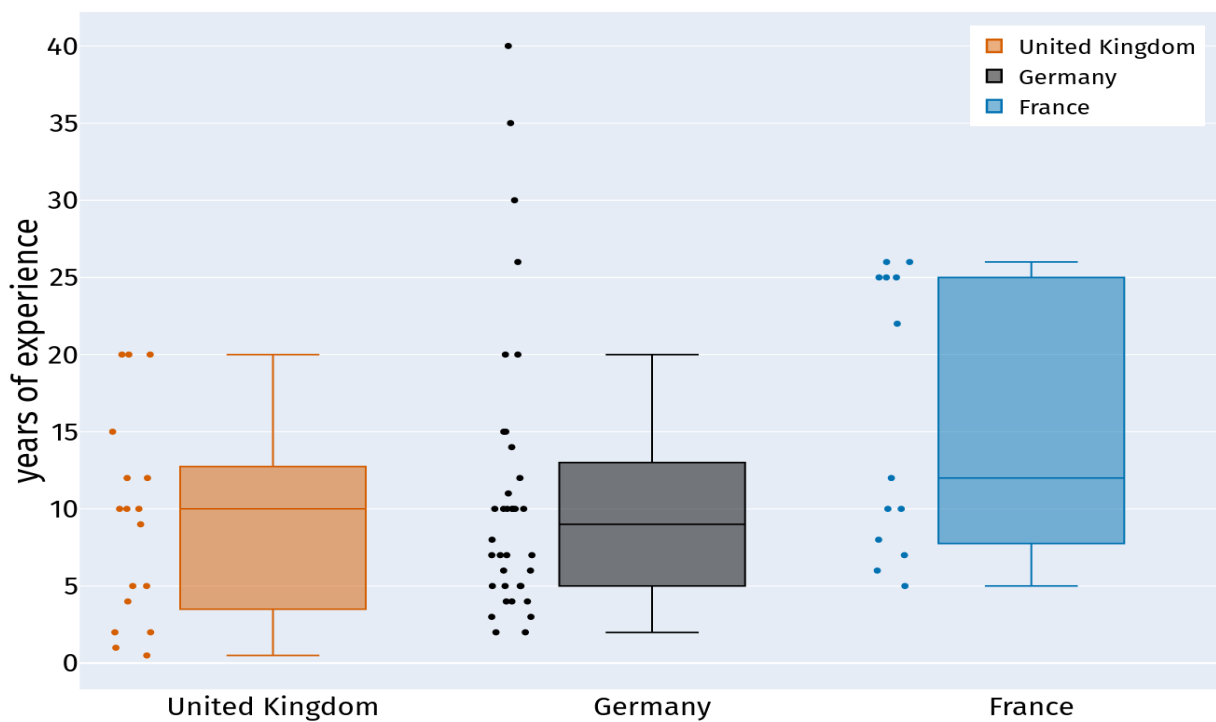


Figure 1: Years of experience working on surveillance by intelligence agencies, all professions

Practitioners we surveyed also reported a thorough understanding of not only political but also legal and technical aspects of surveillance by intelligence agencies. Yet relatively, they self-assessed lower levels of technical expertise compared to political and legal expertise (Figure 2).

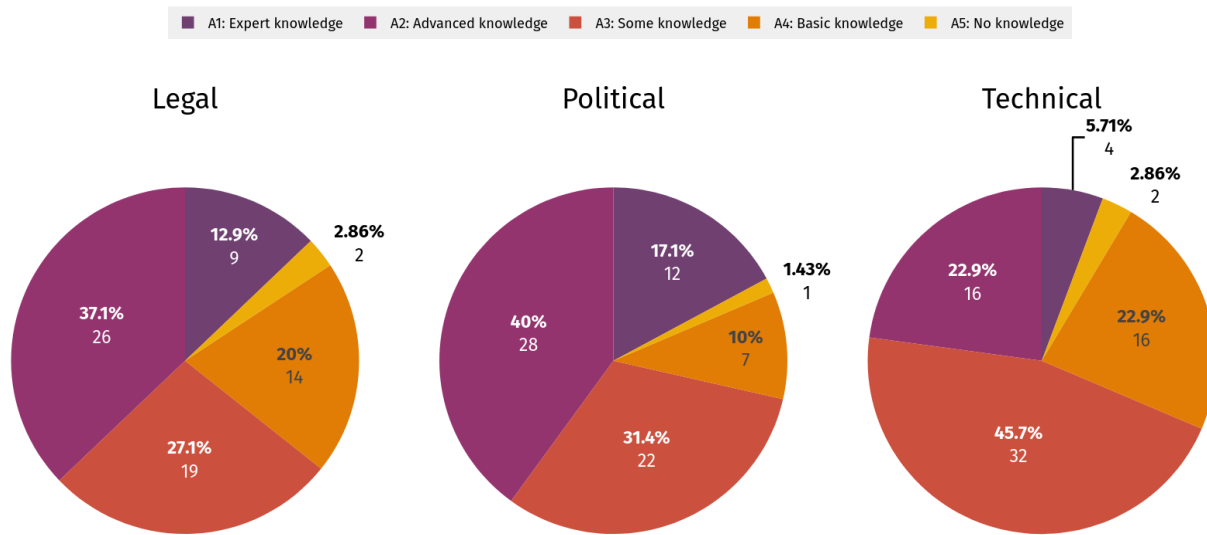


Figure 2: Self-assessment of expertise regarding legal, political, and technical aspects of surveillance by intelligence agencies; all countries, all professions

On financial resources, many of our respondents reported some issue with sufficient support and 13.5 % (9/67) state they have no funding readily available at all.

There are some differences indicated across countries: while a third of French and German respondents reported to have a great deal or sufficient funding, only a fifth of their UK colleagues reported the same. A similar tendency can be seen in the underlying data of only media professionals from the three countries: British respondents reported less available funds for their work on surveillance than their French and German counterparts did. When it comes to the funds available to CSOs' work on surveillance by intelligence agencies, German respondents reported better funding on average, followed by their British colleagues. In terms of funds available to CSOs, respondents of all countries indicated that private foundations and donations are the most important sources of income for them. Interestingly, we also learned that working on oversight and surveillance by intelligence agencies has had a positive impact on fundraising efforts for many respondents working at CSOs, with 40% saying their work on the subject is clearly beneficial concerning funding (only 10% claimed a constraining effect on fundraising efforts).

Scope of Activities and Perceived Impact

We asked civic oversight practitioners several questions regarding their activities to better understand the scope of their scrutiny and their perceived impact. For example, a point that is often raised regarding surveillance and delegated oversight is the disconnect between transnationally collaborative intelligence and formal oversight institutions that are specific to each state (Kniep 2022). For civic oversight, the configuration seems somewhat different given that practitioners often report a transnational scope in their work. The focus of activity seems to differ across countries and professions, as does the perception of impact reported.

Journalists surveyed said that topics they frequently report on include misconduct by intelligence agencies and policy debates and/or legislative reforms; less often, they report on oversight failures, oversight interventions, and national security risks; and only rarely do they report on successful intelligence operations. For CSOs, respondents who work in political campaigning said that they most often find media

contributions to initiate some of their work, followed by public events, CSO publications, and petitions or open letters.

We identify the prevalence of a transnational scope of civic oversight, with respondents often highlighting either a transnational angle in their work or collaborations with professionals from other countries. Three-quarters of media respondents said that they at least sometimes cover surveillance by intelligence agencies from a transnational angle, and around a third of them at least sometimes collaborate with colleagues covering other countries (a majority of them for investigative projects). A transnational scope of work is similarly evident in data for CSO activities, including strategic litigation, where most respondents reported they sometimes or often collaborate with colleagues in other countries. These indicators for the transnational scope of civic oversight of surveillance by intelligence agencies are helpful when we think about the location of media and CSO scrutiny vis-à-vis “the state,” underlining continuously shifting configurations of not only surveillance but also civic oversight.

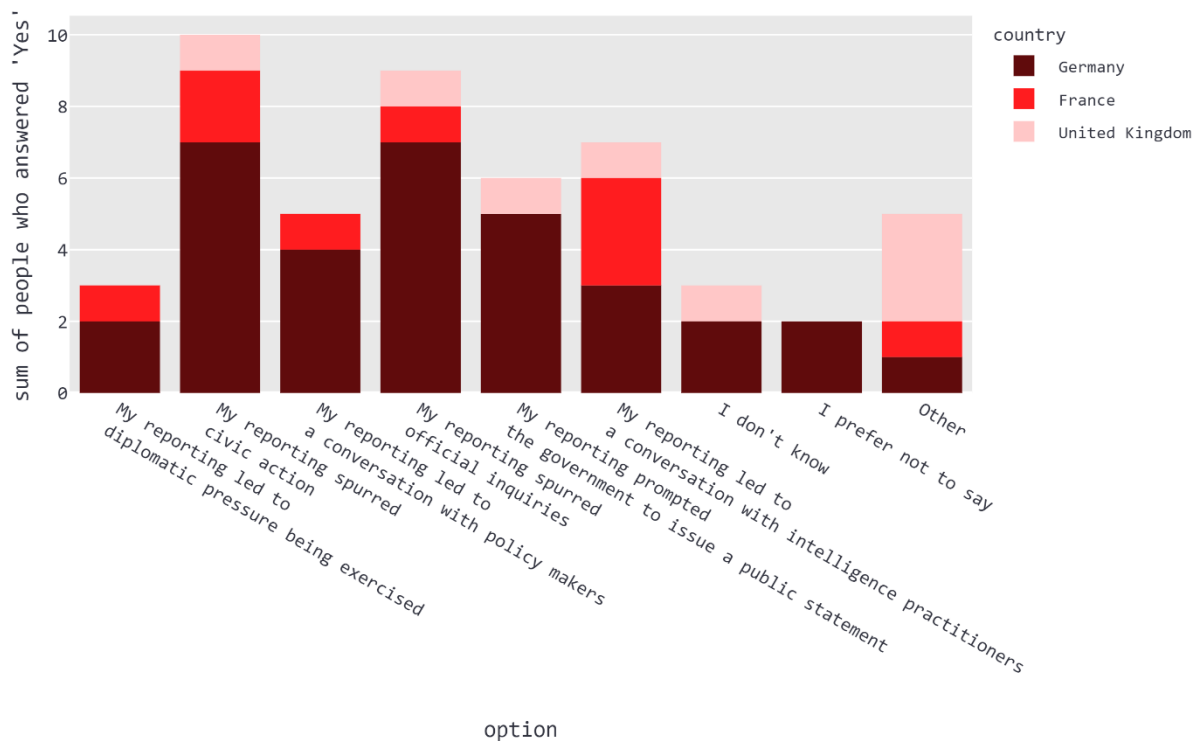


Figure 3: Perceived impact of media reporting about surveillance by intelligence agencies; all countries, by profession

The perceived impact of reporting on intelligence agencies was mixed, with a relatively higher number of people responding that their reporting spurred civic action or official inquiries compared to other possible contributions such as conversations with policy makers (Figure 3). Cross-references of different forms of civic oversight are visible when public campaigners said their work not only helped increase public awareness but also created media attention. For CSOs, people engaged in policy advocacy and strategic litigation said that their work leads to increased public awareness; some strategic litigators additionally answered that their work has had influence on prevalent case law. Drawing from the people who took part in the study, it seems the impact of different avenues of scrutiny are often intertwined given the cross-references.

Effectiveness of Operational and Legal Protection

By and large, a sizable proportion of survey participants stated that they do not believe that their countries' legal safeguards protect them adequately. Almost 60% of respondents to the question (31/53) stated that existent legal protections in their country are insufficient to protect them from surveillance.

This draws our attention to the question of if operational means of protection—e.g., the privacy-enhancing communication tools such as TOR or encrypted messengers that are increasingly prevalent among civil society groups (Dencik and Hintz 2017)—are regarded as effective substitutes for inadequate legal protections. Almost all our respondents (>95%) reported using End-to-End encrypted communication channels to protect their data, and a majority of respondents said they have partaken in digital security training. Around half of respondents in the UK and Germany indicated that some operational protection measures are provided to them by their employers, but none of the respondents from France said they are.

When asked to rank the importance of the different technical tools they use to protect their communication and data, E2E are in sum ranked first, two-factor authentication second, and encrypted hardware third. This illustrates the high importance of E2E encrypted communications to civic oversight: encrypted messengers and devices are seen as vital tools for work that is focused on surveillance by intelligence agencies.

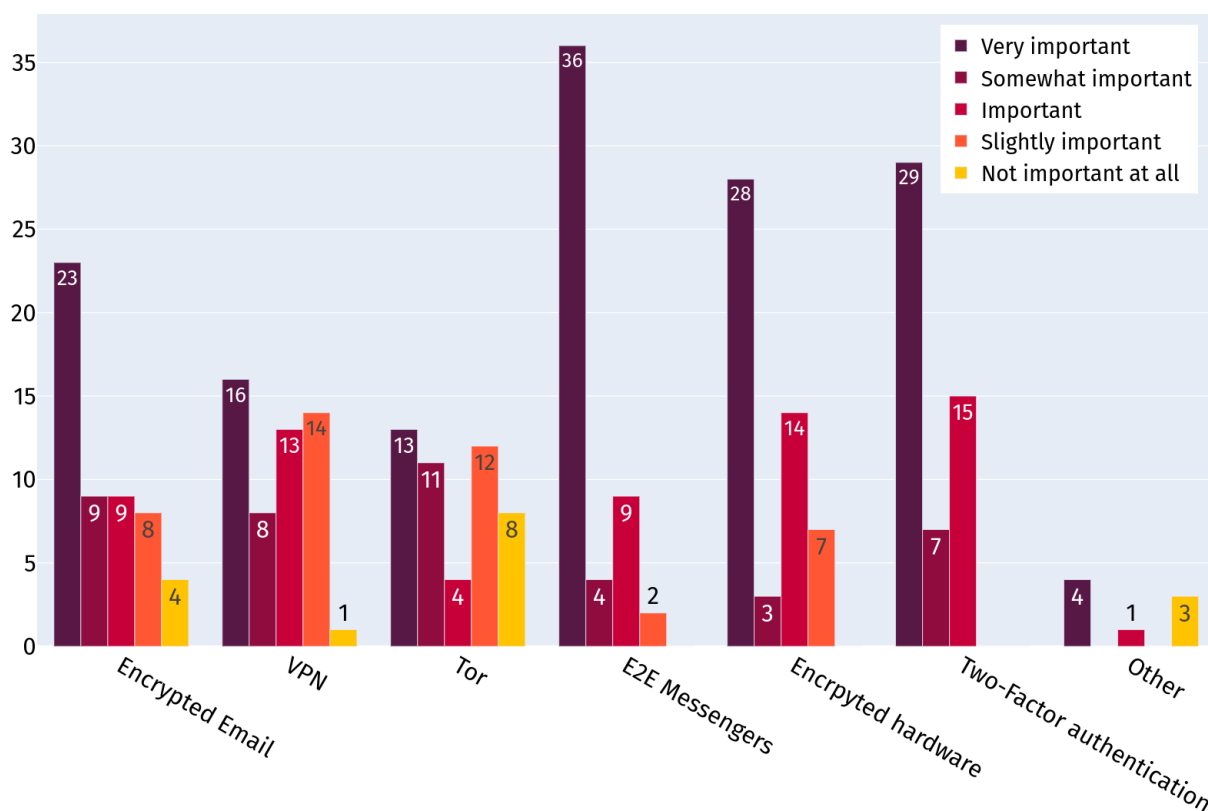


Figure 4: Perceived importance of different tools for operational protection; all countries, all professions

When asked about their level of confidence in the protection offered by technological tools, only one of fifty-five respondents indicated that they have full confidence in the protection offered, while a majority (39/55) opted for the statement that declared “Technological tools help to protect my identity to some extent, but an attacker with sufficient power may eventually be able to bypass my technological safeguards.” Overall, the distributions of answers show that a large majority of participants stick to a rather sober attitude towards the levels of protection offered by technological tools. In fact, as has been shown time and time again, intelligence agencies and private surveillance contractors will often find a way to access protected data and do not shy away from intrusive methods—the German government, for example, used the spyware Pegasus without informing the responsible parliamentary control committee (Reuter 2021).

German correspondents—both working in media and at CSOs—consistently ranked the methods of protection we listed in the questionnaire as more important than their colleagues from the UK and France. Given that German respondents did not report a greater percentage of proven or suspected surveillance (see surveillance at work) and Germany does not have a more permissive legal framework, this might have to do with differences in their generally more sceptical attitudes towards intelligence agencies. On the flipside, journalists and CSO representatives from the UK consistently expressed more trust towards intelligence agencies in our data. They were also less concerned with technical safeguards not working as intended, perhaps because they have higher confidence that intelligence agencies will not abuse their powers towards civil society professionals (see attitudes), while German and French respondents were more worried about adequate protection and back doors.

Surveillance at Work

As highlighted by recent revelations around the state-backed use of Pegasus, intelligence agencies and other security agencies collect communications of individuals, including journalists, and entire organisations, sometimes even at the source (Rueckert 2021). While some studies indicate that journalists and CSO professionals who work on surveillance by intelligence agencies feel particularly at risk of being monitored (Dittmer 2020; Moßbrucker 2019; Mills 2019), this has not yet been comparatively explored. We highlight civic oversight practitioners' concern for their own communications, those of their organisations or their sources, and the sufficiency of regulations. Answers reveal profound uncertainty among respondents about the safety of their communications and a strong dissatisfaction with current legal regulations.

One third of all CSO respondents said that they often or always have reason to be concerned about surveillance of their own or their organisations' activities. Given that the mere suspicion of being under surveillance can negatively influence a person's behaviour and lead to so-called chilling effects or self-censorship (Penney 2017; Stoycheff et al. 2019), this perceived threat should not be underestimated. CSO representatives from the UK expressed the least concern about surveillance of their activities, and German and French respondents are quite similar to one another in their responses. CSO respondents from all three countries expressed little confidence in the existing legal protection against surveillance in their country. However, there are some notable differences: “only” half of all British respondents from CSOs described the legal protection as insufficient, while more than two thirds of German and all French respondents chose that option.

In addition to the surveillance of their own communications, we also asked journalists if they felt they had reason to be concerned about the protection of their sources, and quite a few respondents (11/27) said they always or often worry about that. This parallels the results from another question of our survey, where media representatives were asked whether they find the legal protections against surveillance of their sources in their country adequate. Almost half of all respondents from all three countries said they find legal safeguards inadequate.

The concern that they may be under surveillance articulated by a large proportion of respondents appears to not be unfounded. When asked whether they believe that they or their organisation have been under surveillance in the past five years, 10% (5 of 50) of all respondents said that they have evidence of being subjected to surveillance by intelligence agencies. We are not able to verify these accounts, but if true, this is a surprisingly high, especially considering that the survey respondents are exclusively members of civil society and the media, which—according to legislation—can rarely if ever be formally authorised targets of government surveillance. This has recently been affirmed in a ruling of the German constitutional court on the adequacy of journalists' protection, in which the court underlined the necessity of journalists' protection when they work not only within but also outside of the country (Bundesverfassungsgericht 2020). Of course, governments and their intelligence agencies often adopt rather broad interpretations of legal restrictions and requirements for their surveillance activities (Biermann 2016; Goulding 2020; Johnston Hawke 2020).

While they may not possess concrete evidence, 16/50 of all respondents suspected that they have been subjected to surveillance by intelligence agencies over the past five years, and 15/50 of all respondents said

they do not know whether they have been under surveillance. The absence of evidence in most suspected cases is not surprising, as in France and the UK there are no legal obligations to inform those affected by surveillance of this measure at any time. By contrast, under German surveillance legislation, individuals must be notified about the collection of their personal data once a targeted surveillance measure ends; yet if this is implemented in practice, it is difficult to review.

British civil society respondents, in particular, reported far less suspicion let alone proof of being under surveillance than their colleagues in France or Germany. Only 2/10 said that they have either evidence or suspicion of being under surveillance, while 7/11 of German civil society respondents reported suspicion or evidence thereof. Country affiliation appeared differently in responses from media professionals in our survey. However, overall response rates to these questions per country *and* per profession are few.

Evidently, a large proportion of our survey respondents worry about the risk of surveillance. At the same time, most do not feel adequately protected by legal safeguards against surveillance. This finding ties into other studies in the field in which possible chilling effects and the ineffectiveness of existing protections have been reported in interviews (Lashmar 2017). At the same time, research finds that, even in light of self-censorship, oversight by media professionals remains decisive because of the particular strengths of journalists, such as expertise and the capacity to initiate public debate (Hillebrand 2012). While there are some similarities, responses reveal differences between respondents from the three countries. German and French respondents were more concerned about possible surveillance and more likely to report evidence or suspicion of surveillance than their British counterparts. This may relate to general perceptions and trust put into intelligence agencies in respective countries, or reforms of intelligence legislation such as changes post-Snowden in UK legislation. Questions on attitudes and previous surveys (Krumm et al. 2019: 25) indicate that Germans are much more sceptical of their intelligence agencies than the British, which may to some extent explain differences regarding suspicion of surveillance at work.

Attitudes towards Intelligence and Oversight

How adversarial do civic oversight practitioners position themselves vis-a-vis intelligence and how do they assess the existing oversight landscape of their country? This final section discusses the attitudes of the respondents towards intelligence agencies and their trust in different oversight institutions. The survey included the presentation of four different statements about intelligence agencies. Respondents indicated by choice the one statement that best represents their personal stance.

More than a third of all respondents opted for an answer describing the intelligence agencies as “necessary and legitimate.” This balanced attitude towards intelligence agencies was most prevalent in respondents from the UK, followed by France and Germany. German respondents were rather critical of their intelligence agencies: 6/26 considered them incompatible with democratic values and called for their abolition. In contrast, the idea of abolishing intelligence agencies is absent among the French and British practitioners of civic oversight who participated in the survey.

The respondents were also asked to select the three most important goals of intelligence oversight from a list of seven possible options: ensuring the rule of law, protecting civil liberties, ensuring the effectiveness of intelligence, ensuring the legitimacy of intelligence, building trust in intelligence, enabling public contestation, and enabling critique of intelligence agencies, or prefer not to say. Across all three countries, civil liberties, rule of law, and critique of intelligence agencies came first. The only notable exception was British journalists, who ranked “effectiveness of intelligence” as one of the two most important goals of oversight. This was not ranked as highly by any other group in Britain, France, or Germany, with journalists from Germany not choosing it once.

Apart from the attitude of our respondents towards intelligence agencies, we measured the trust they place in different oversight actors to either enable public debate, contest surveillance, or enforce compliance. The

following actors are named as options: civil society organisations (CSO) or the media,⁴ data protection authorities, judicial oversight bodies, independent expert bodies, parliamentary oversight bodies, and audit courts. Survey respondents ranked each actor according to the role they attribute to them when it comes to meeting either objective.

For respondents' choice of actors that *enable public debate about surveillance by intelligence agencies*, media representatives selected civil society organisations as their first choice while CSOs selected the media.

It is noteworthy that respondents did not view parliamentary oversight as particularly relevant to enabling public debate, although this is often regarded as one of its key functions. This underlines a discrepancy between the importance attributed to parliamentary oversight in oversight literature and the meagre importance that civic oversight experts attribute to it in practice (Davis, Garvey, and Wilhelm 2021; Gill 2020).

Respondents also ranked oversight actors according to the trust they place in them *to contest surveillance*. Aggregating all survey participants' rankings, CSOs and the media again rank first, followed by judicial oversight bodies. CSO representatives in our survey had more trust in judicial oversight bodies to contest surveillance, whereas media representatives placed their faith firstly in CSOs to contest surveillance. UK respondents from all professions, irrespective of the UK's tradition of judicial oversight, only ranked judicial oversight in third place, after CSOs and expert bodies. In Germany—which has only recently created a fully-fledged judicial oversight body for one aspect of intelligence surveillance (Vieth-Ditlmann and Wetzling 2021), it ranks at the top of the list, followed by data protection authorities and CSOs and the media. German respondents overall place relatively high trust in procedural safeguards such as judicial oversight bodies, possibly due to recent court decisions.

It is most notable that a majority of respondents from the UK, France, and Germany placed their faith in CSOs (if they were journalists), media reporting (if they were CSO professionals), and judicial oversight bodies (overall) to spark public debate and contest surveillance. Evidently, the necessity of civic oversight for the contestation of surveillance by intelligence agencies is not only appreciated in more recent literature but also in practice.

Conclusion

The data presented in this paper provide a first systematic and comparative exploration of civic oversight from the perspectives of its practitioners: media and CSO representatives dedicated to surveillance by intelligence agencies in Germany, France, and the United Kingdom. With the results, we demarginalize and illustrate civic intelligence oversight as a concept and practice that has become an increasingly important part of how democratic societies respond to and oversee digital surveillance. The survey of civic intelligence oversight practitioners enables us to gain and share insights on the resources, scope of activity, operational and legal protection, fear of surveillance, and attitudes of civic intelligence oversight across different countries.

In summary, there are four main empirical findings of this study. The first is that in all three countries, we were able to identify a specialised group of civic actors who regularly and mostly professionally engage in the scrutiny of surveillance by intelligence agencies based on several years of experience and substantial knowledge in the field. Yet, only a minority reported sufficient funding, with differences between countries. Only a third of French and German respondents reported having sufficient funds over the past five years, and less than a quarter of their UK colleagues reported the same.

⁴ Media representatives could choose CSOs, and CSO representatives could choose media; neither group was able to choose itself.

A second finding concerns the predicament that those civic actors who engage in oversight of surveillance simultaneously find themselves at a particular risk of becoming the subject of surveillance themselves. Our data show that widespread distrust in the legal and technical safeguards against government surveillance, rather than a lack of financial resources, is seen as the main constraint for civic intelligence oversight in all three European democracies. This is particularly the case for respondents from Germany and France, who expressed not only a much higher dissatisfaction with the status quo than their colleagues from the UK but also indicated more often that they either suspected or have evidence for their surveillance. Technical tools that protect from surveillance were widely used by the surveyed group of practitioners yet cannot be seen as a way out of the surveillance-predicament, as these tools were not regarded to reliably protect their data and communications from surveillance. The interlink of higher chances of surveillance and little trust in legal and technical safeguards likely has implications for the overall configuration of civic oversight and intelligence agencies.

Third, the study has shown a predominantly constructive or reformist attitude of civic intelligence practitioners towards intelligence agencies and their oversight. To question the legitimacy of the existence of intelligence agencies remains a German exception among practitioners surveyed. The majority of all respondents see intelligence agencies as necessary and legitimate in a democratic society.

Finally, the country differences found in this study show that civic intelligence oversight is a research subject where variances between states matter and indicate that scrutiny can be enabled to a lesser or greater extent—an under-researched phenomenon that needs to be further qualitatively and quantitatively explored. The insights presented in this article draw on standardised surveys in three Western democracies involving a relatively small size of highly specialized practitioners per country and per profession. While descriptive claims about civic intelligence oversight can be made, causal inferences cannot be drawn from the variables (for example, on a possible nexus of constraints and perceived effectiveness). Further studies could broaden the knowledge about differences in civic oversight capacity by contrasting more (democratic and non-democratic) countries, or they could deepen the understanding of the subject, studying implications of critique and transformation when those who oversee intelligence agencies are themselves subject to surveillance.

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