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A European Intelligence Service? Potentials and Limits of Intelligence Cooperation at EU Level

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In the wake of terrorist attacks politicians frequently demand closer intelligence cooperation within the European Union, even asking for the establishment of a European intelligence service. Intelligence activities, however, lie at the heart of state sovereignty. How can European integration work in this highly sensitive policy area? What types of intelligence cooperation exist at EU level? And is a European intelligence service a viable option?

France, Belgium, Germany, Britain – for more than two years now, Member States at the centre of the European Union have repeatedly been targets of terrorist attacks. Every new attack proves how urgently we need European cooperation in the area of intelligence. Sensitive information about suspects must be shared and planned attacks must be uncovered in time. Owing to the transnational structures of terrorist organisations, the information required for this can only be generated through cooperation and cross-border collection and evaluation of intelligence.

Closer cooperation and even the establishment of a supranational intelligence service therefore appear to make sense in political as well as practical terms. The inherent position of intelligence services as a key element of the national state and the dictates associated with this (such as the protection of confidential sources), however, create political and legal obstacles for cooperation at EU level.

Background – European Policy and Law

Abolishing border controls as a step towards achieving an Area of Freedom, Security and Justice was identified early on as an important factor encouraging criminal activity within the European Union. Ever since the terrorist attacks of 11 September 2001, if not earlier, politicians have attached crucial importance to international intelligence cooperation in combatting terrorism. This has been a constant factor in EU foreign and security policy programmes. The current *EU Global Strategy* underlines the necessity of timely information sharing and situational awareness, based on which defence decisions can be taken: “In security terms, terrorism, hybrid threats and organised crime know no borders. Member State efforts should [...] be more joined-up: cooperation between our law enforcement, judicial and intelligence services must be strengthened. [...] We must feed and coordinate intelligence extracted from European databases, and put [...] big data analysis at the service of deeper situational awareness.”¹

¹ European External Action Service (2016): Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy.

The relevant regulatory areas “Area of Freedom, Security and Justice” (Title V of the Treaty on the Functioning of the European Union, TFEU) and “General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy” (Title V of the Treaty on European Union, TEU) in the Treaty of Lisbon nevertheless make no reference to intelligence cooperation, let alone the establishment of an independent EU intelligence service. It should be noted, however, that Article 72 of the TFEU explicitly states that Title V does “not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security”. Article 73 of the TFEU adds that Member States are free “to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security”. While Member States are thus not explicitly forbidden to cooperate at the intelligence level, there is no European legal basis for the transfer of powers to a European level.

Forms of Integrated Cooperation at EU Level

Based on expressions of political will and within the clear limits of EU law, various forms of intelligence cooperation have emerged, distinguished by their EU-integrated and non-integrated approaches. Integrated cooperation is conducted by bodies established at EU level for the common collection and sharing of information. Non-integrated cooperation is mostly informal cooperation between intelligence services in bilateral and/or multilateral coalitions. EU-Integrated bodies are first of all those fulfilling a general security or strategic function. The *Office of the High Representative of the Union for Foreign Affairs and Security Policy*, to which the European External Action Service (EEAS) is subordinate, the *EU counter-terrorism coordinator*, who supports the work of the Council of the European Union in the area of counter-terrorism, and the Commissioner for the *Security Union* established in 2016 are worth mentioning in this context.

In addition, three intelligence bodies exist within the structure of the European Union: the *European Union Military Staff Intelligence Directorate* (EUMS INT), the *European Union Intelligence and Situation Centre* (IntCen), and the *European Union Satellite Centre* (SatCen). SatCen was founded in 1991 in parallel with the Common Foreign and Security Policy (CFSP) of the European Union and is the largest quasi-intelligence agency at EU level. It is under the supervision of the EEAS and receives its commissions from IntCen, the Military Staff and the Member States. It is the only EU body to generate original intelligence data based on commercially available satellite images for the preparation of common situation estimates. It supports EU operations as part of the Common Security and Defence Policy (CSDP) and FRONTEX as well as international organisations such as NATO, UN or OSCE.

IntCen, the situation centre, originated in 1999, when along with the CSDP an open source intelligence analysis centre was established. Today, IntCen is a working unit of the EEAS with approximately 100 personnel, which deals with matters of internal security and counter-terrorism. Its mission is to gather and evaluate data obtained from national domestic and foreign intelligence services as well as from internal EU bodies. The results, political and strategic analyses, are submitted to the High Representative and the Council of the European Union, among others, to use in their decision-making processes for EU measures as part of the CFSP. In addition, it serves as a centre of communication, maintaining close contact with EU leaders, EU departments worldwide, EU Member States, and NATO as well as other international organisations. Even though it has been called the “intelligence hub” of the EEAS, the IntCen cannot be categorised as a European intelligence service, since its work and thus its products depend on the willingness of EU Member States to provide information.

The EUMS INT is the military intelligence unit of the European Union. About 40 personnel in Brussels provide military situation estimates to the Military Staff and the Military Committee of the European Union to aid the decision-making and planning processes for both civilian missions and military operations.

IntCen and EUMS INT have been part of the *Single Intelligence Analysis Capacity* (SIAC) since 2007. The Implementation Plan on Security and Defence under the EU *Global Strategy* from 14 November 2016 describes SIAC as follows: “Improving CSDP responsiveness requires enhanced civil/military intelligence to support anticipation and situational awareness, through the Single Intelligence Analysis Capacity (SIAC) as the main European hub for strategic information, early warning and comprehensive analysis”.

The supranational agency *Europol* is an institutional pillar of today’s European security architecture. Even though Europol has no authority in intelligence matters, one of its main functions is to promote police cooperation among EU Member States through information sharing. With its annual Terrorism Situation and Trend Report (TESAT), Europol makes an important contribution to identifying terrorist threats and developing counter-strategies.

Forms of International Cooperation

Besides EU-integrated intelligence structures, requirement-oriented coalitions exist between EU Member States which are based on bilateral or multilateral cooperation structures. Owing to their flexibility and independence, but also to their ability to involve a large number of players on an equal footing, these informal intelligence coalitions are considered more effective.

The *Club de Berne* has existed since 1971 and consists of the chiefs of all intelligence services in the European Union, plus those of Norway and Switzerland. It is an informal body whose purpose is information sharing. It has no organisational substructure such as a fixed secretariat. Its presidency rotates along with the presidency of the Council of the EU. Depending on the field of policy in question (for example counter-espionage, counter-terrorism, proliferation of weapons of mass destruction), different experts from the participating countries take part in this biannual, confidential information sharing forum.

The *Counter Terrorist Group* (CTG), originally a working group of the Club de Berne, was created in response to the events of September 11 in order to consolidate counter-terrorism cooperation. In 2016, it was developed into a permanent cooperation platform of national security services in The Hague, in which all EU Member States are represented. The work of the CTG is based on data provided by national intelligence services. It is used to generate threat analyses provided to the EU Commission and the High Representative for the Common Foreign and Security Policy, among others. Extensive sharing of counter-terrorism situation pictures and analyses is conducted with IntCen and Europol. The CTG does not, however, limit itself to strategic work but also provides a forum for intelligence experts to share information on terrorist threats and to facilitate operational cooperation.

Bilateral relations in intelligence cooperation are much like multilateral cooperation – direct and requirement-oriented. They are generally considered the best-working instrument from an intelligence perspective. Based on a continually growing relationship of trust, this format offers the possibility of cooperating at the operational level as well. While such agreements at a bilateral or multilateral level may be more flexible and allow closer cooperation, they lack transparency as well as democratic legitimacy. Despite this considerable flaw, however, they should, owing to their structural functionality, at least in this sense be part of the considerations regarding cooperation at EU level.

Suggestions for the Improvement of Intelligence Cooperation

1) Enhance cooperation among existing European bodies

The focus of future developments should be on the optimisation of existing bodies such as IntCen, CTG and Europol in terms of cooperation among them and with the Member States. Increasing their effectiveness would not only demonstrate their added value more clearly to the members but would also consolidate the foundation of trust shared by the Member States, thus increasing their overall willingness to cooperate. To this end, it would be advisable to create a transnational *Committee* of politicians and security experts and to examine how the areas of activity of the existing bodies might be more clearly specified and what procedural and organisational changes could be made to their structure and method of operation in order to improve and streamline cooperation.

2) Transfer national resources

Another prerequisite for close and efficient cooperation among Member States is increased national support for EU intelligence structures with financial and technical resources as well as personnel. In particular, based on national standards and employing qualified IT experts from the Member States, it will be important to make use of innovations in information and communication technologies and to foster the role of EU bodies. In the ongoing competition for the scarce resource of IT personnel, viable concepts must be developed for both sides, the Union and the Member States.

3) Intelligence Council

The creation of the CTG as an intelligence platform and cooperation forum has, in principle, been the right step, since it is to cooperate closely with national criminal investigation offices and with Europol. In addition, it would be important to establish an *Intelligence Council*, in which high-ranking representatives of various security agencies would be able to share viewpoints on prearranged key subjects. This would make a concerted, more strategic approach possible and, consequently, more targeted methods of operation.

4) Data supply and data sharing

In the area of security policy the European Union has additive bodies, which means that they are not intended to replace, but to support the relevant structures in the Member States. One deficit lies in that existing EU bodies that require intelligence data cannot obtain these to a sufficient extent. It is thus necessary to enhance the technical infrastructure, particularly between SIAC, EU's policy makers and the Member States. A prerequisite for this is the mutual availability of relevant electronic data among national services. This does not entail automatic access to data from foreign services. A system based on keyword searches would be conceivable, however, which would make it possible to search for certain persons or subjects in the database and find the service in possession of the information. The service in question and owner of the data could then be contacted and decide whether or not to divulge the information. Currently, several national intelligence services are simultaneously analysing open source intelligence data, which anyone has access to and which is not subject to any protection. A division of labour, at least in crucial areas, would save time and money. Then results would have to be made available to the other services and the IntCen.

Assessments and prospects

Threats to international security will continue to exist and affect all Member States of the European Union – albeit not to the same extent. A common European security policy will have to find a response. Relevant decisions to be taken by the EU in the areas of foreign, security and defence policy must be safeguarded through reliable situation assessments created on the basis of intelligence collected.

With the establishment of the EEAS and the integrated IntCen, the European Union has been given a stronger role in the analysis of threats to both internal and external security. The EU thus to some extent possesses integrated intelligence cooperation structures. Even though national authorities appear to be considerably less dependent on EU structures than vice versa, it should be noted that these structures and their products benefit both the EU and its Member States.

It is also true, however, that intelligence activities at EU level are only considered and accepted as complementary to national security measures, without replacing them. Closer cooperation can be expected to continue to take place in coalitions of small numbers of Member States that are willing and, more importantly, able to share confidential information with selected partners. The format that intelligence cooperation in Europe will take in the medium run thus seems obvious – being one of mostly informal, bilateral or multi-lateral cooperation based on national legislation.

Recent terrorist attacks and resulting political appeals, on the other hand, are a clear indication that there is a need for improving intelligence information sharing and coordination at a European level. A necessary security debate about the future of cooperative solutions between EU Member States as well as deeper integration towards a *Security Union* may eventually provide the required impetus to present the concept of a European intelligence service in a new light, however far-fetched it may have seemed before.

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