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Editorial

Towards Intelligence Cooperation in the EU?

Ramses A. WESSEL^{*} & Viktor SZÉP^{**}

Recent and current developments in international security (the Russian invasion of Ukraine, the more prominent security presence of China) have drawn renewed attention to the European Union's abilities to strengthen its foreign and security policy. Despite years of hesitance on the side of the EU Member States, one aspect of that policy – intelligence cooperation – seems to become less of a taboo issue. Indeed, 'seems', because if there is one area that is difficult to assess academically, it would be intelligence cooperation within the EU. By their very nature, intelligence authorities – irrespective whether they are at national or EU level – seek to keep their information and their channels of communication secured. Although the EU's Common Foreign and Security Policy (CFSP) would greatly benefit from more shared resources and capabilities,¹ Member States have often been concerned about exposing methods and sources, being deceived or losing national autonomy in intelligence matters. The lack of trust in the relevant EU bodies as well as in fellow Member States explains the dominance of the individual Member States rather than the collective EU in intelligence matters.² Most of the competences and capabilities to collect and analyse sensitive pieces of information are kept by EU capitals and are considered central in the maintenance of national security. Sharing requires mutual trust and a similar understanding of the main

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¹ See for instance, V. Szép & R. A. Wessel, *Mapping the Current Legal Basis and Governance Structures of the EU's CFSP*, ENGAGE Working Paper Series, No. 5 (Dec. 2021).

² S. Blockmans, C. Hillion & P. Vimont, *From Self-Doubt to Self-Assurance: The European External Action Service as the Indispensable Support for a Geopolitical EU*, CEPS, SIEPS, FES Report (29 Jan. 2021), <https://www.ceps.eu/ceps-publications/from-self-doubt-to-self-assurance/> (accessed 22 Aug. 2022).

security threats. Given the differences between Member States in terms of their national approaches to security and defence, their relations with third states, their historical perspectives on security challenges and their intelligence traditions and cultures, it is already particularly difficult to harmonize twenty-seven views on matters related to foreign, security and defence policy. It will come as no surprise that this harmonization is even more difficult when sensitive intelligence information is concerned.³ This is all the more so since the EU institutions each operate their own systems and much of intra-European External Action Service (EEAS) messaging is not encrypted.⁴

Yet, with the strengthening of CFSP by the Lisbon Treaty some steps have been taken to further strengthen intelligence cooperation. While the creation of intelligence structures within the EU has always represented a significant challenge, the benefits are also clear and include the collection of additional information – contributing to gaining a better situational awareness on ongoing or potential crisis – and a reduction of costs related to intelligence gathering. With this in mind, the EU has developed a number of capabilities to collect and analyse information, including the potential to gather imagery and geospatial intelligence (EU Satellite Centre), information on international crime (Europol⁵ and Frontex), cyberthreats (CERT-EU,⁶ ENISA⁷), open source and social media analysis (EU Joint Research Centre and EU Intelligence Analysis Centre, INTCEN) or information on third states' activities (using the more than 140 EU Delegations). INTCEN and the EU Military Staff (EUMS) also support EU foreign, security and defence policymaking through the so-called 'deliverables' from Member States,⁸ or through providing intelligence information on a voluntary basis.

From a legal perspective, competences on intelligence activities in the EU are largely in the hands of Member States. Article 4(2) TEU provides that 'national security remains the sole responsibility of each Member State'. In addition, Article 72 TFEU provides 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 TFEU further adds that it is 'open to Member States to organize between themselves and under their responsibility such forms of cooperation

³ We use the term intelligence as a general feature to refer to a broad range of activities performed to reach information superiority. According to the type of information collected, it is possible to include Signal intelligence (SIGINT), Open-source intelligence (OSINT), Human intelligence (HUMINT), Imagery intelligence (IMINT), Geospatial intelligence (GEOINT), or Measurement and signature intelligence (MASINT).

⁴ Blockmans, Hillion & Vimont, *supra* n. 2, at 22.

⁵ Including EUROPOL's European Counter Terrorism Centre (ECTC).

⁶ The Computer Emergency Response Team for the EU institutions, bodies and agencies; <https://cert.europa.eu/>; (accessed 22 Aug. 2022).

⁷ The European Union Agency for Cybersecurity; <https://www.enisa.europa.eu/>; (accessed 22 Aug. 2022).

⁸ G. Conrad, *Situational Awareness for EU Decision-Making: The Next Decade*, 26(1) Eur. Foreign Aff. Rev. 62–63 (2021).

and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security'. Indeed, as a former Counter-Terrorism Coordinator confirmed: '[y]ou can't get closer to the heart of national sovereignty than national security and intelligence services'.⁹

Hence, to cooperate in this field, a secure management of relevant and/or classified information is particularly important to reduce the risk of possible security breaches for Member States. At the moment, no specific rules exist at EU level; the securitization of information merely follows the basic principles and minimum standards set in the Council Decision 2013/488/EU on the protection of classified information.¹⁰

What can the EU do in terms of intelligence cooperation? It is clear that it is not engaged in 'spycraft' in the sense that it does not gather secret information held by other states. In general, the EU leans towards 'soft intelligence' and relies on open sources of information (e.g., social media, diplomatic reports, etc.). For 'hard intelligence', whereby highly skilled agents are involved in covert actions, the EU lacks a competence. If hard intelligence 'deliverables' are nevertheless received by the EU from Member States, these must be properly secured, classified and protected following the above-mentioned rules on classified information. 'Human intelligence', as a form of open or covered action to possess information from other persons or groups, is not conducted by the EU. During a EEAS mission to Libya in early 2011, some staff members of INTCEN (named SITCEN until 2012) were on location. The former director of INTCEN, Ilkka Salmi, denied the allegations that Centre's staff members took operational related actions and described the presence of INTCEN as only technical support for satellite phones and related services. Director Salmi reiterated at later stages that INTCEN 'does not have any intelligence officers anywhere around the world. No operations'.¹¹

It is of course hard to check statements like these, but for the most part the EU indeed seems to rely on various voluntary contributions from Member States.¹² Policy integration is therefore still largely lacking and for a long period any further integration was also not deemed necessary or viable. In the mid-2010s, the former INTCEN director said that 'for the moment I do not see real need nor will on the part of the Member States to take any steps towards that kind of integration'.¹³ Or,

⁹ *Gijs de Vries on terrorism, Islam and democracy*, EurActiv (4 Mar. 2005), <https://www.euractiv.com/section/security/interview/gijs-de-vries-on-terrorism-islam-and-democracy/> (accessed 22 Aug. 2022).

¹⁰ *Council Decision of 23 September 2013 on the Security Rules for Protecting EU Classified Information*, OJ EU 2013/488/EU (2013).

¹¹ A. Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community* 68–77, 78 (Palgrave 2016).

¹² *Ibid.*, at 68.

¹³ J.-M. Palacios, *On the Road to a European Intelligence Agency?*, 33(3) *Int'l J. Intelligence & CounterIntelligence* 483–491 at 485 (2020).

as an EU diplomat more recently confirmed, '[t]here's not much appetite for [EU intelligence sharing] since we have difficulties to agree on a common perception and or categorization of threats'.¹⁴

Yet, despite reservations from Member States and the fear that sensitive data could be misused, the EU has experienced a considerable progress in building an intelligence community within its institutional framework. After all, as Björn Müller-Wille argued, 'sharing knowledge is a first step towards harmonizing views, formulating and implementing common policies, and exploiting potential synergies in the fight against new threats'.¹⁵ Indeed, the demands for more EU cooperation in this field also results from the increased number of transnational challenges that can be tackled successfully if information and resources are shared in a well-organized and secure structure.¹⁶ The recent boost in EU security cooperation also calls for more intelligence sharing: 'the fact that the EU formulates and implements its own security policy means that a credible EU intelligence structure has to be put in place to support this security policy'.¹⁷ This is not a new idea and it was already argued almost thirty years ago that if the EU were to acquire its own foreign policy, it would need, among other things, a single intelligence service.¹⁸ The conditions for setting-up a successful international intelligence cooperation can also easily be found in the existing literature. At the top of the list is a set of common interests: '[c]lose allies routinely exchange intelligence through various bilateral and multilateral means. But the depth and breadth of these exchanges very much depend on their sharing a common perception of a threat or sets of interests'.¹⁹ Different intelligence cultures or the lack of trust may complicate or impede (effective) intelligence cooperation.

It seems, however, that these ideas have started to materialize. In accordance with the EU's objective to play an increased role in global affairs, one does observe a transformation in EU intelligence cooperation, especially after the entry into force of the Lisbon Treaty. INTCEN and the Intelligence

¹⁴ EurActiv, *EU Should Advance Foreign Intelligence-Gathering Capacity, EU Lawmaker Says* (21 Jan. 2022), <https://www.euractiv.com/section/justice-home-affairs/news/eu-should-advance-foreign-intelligence-gathering-eu-lawmaker-says/>

¹⁵ B. Müller-Wille, *For Our Eyes Only? Shaping an Intelligence Community Within the EU*, EUISS Occasional Papers No 50, 13 (2004), <https://www.iss.europa.eu/sites/default/files/EUISSFiles/occ50.pdf>

¹⁶ B. Fägersten, *European Intelligence cCooperation*, in *The Future of Intelligence: Challenges in the 21st Century* 94–113 at 94 (I. Duyvesteyn, B. De Jong & J. Van Reijn eds, Routledge 2014).

¹⁷ E. R. Hertzberger, *Counter-Terrorism Intelligence Cooperation in the European Union* 12 (UNICRI Report 2007), <https://digitallibrary.un.org/record/784267>; (accessed 22 Aug. 2022)

¹⁸ C. Hill, *The Capability-Expectations Gap, or Conceptualizing Europe's International Role*, 31(3) J. Common Mkt. Stud. 305–328 at 317 (1993).

¹⁹ S. Lefebvre, *The Difficulties and Dilemmas of International Intelligence Cooperation*, 16(4) Int'l J. Intelligence & CounterIntelligence 527–542 at 529 (2003).

Directorate of the EUMS in the EEAS (EUMS INT), nowadays operate under the auspices of the Single Intelligence Analysis Capacity (SIAC) in the EEAS, which represents a clear sign of integration efforts. And, also within the context of the Permanent Structured Cooperation (PESCO), new cyber projects have been set up, such as CRRT (Cyber Rapid Response Teams and Mutual Assistance in Cybersecurity). The reasons behind these efforts are numerous. Individual information-gathering is relatively costly and sometimes Member States might not have the necessary resources to collect intelligence on all topics, which forms an incentive to cooperate at EU level.²⁰ Also, the effectiveness and credibility of the CFSP cannot be guaranteed without proper information gathering and analysis among EU Member States.²¹ In particular in the area of justice and home affairs, issues ranging from criminal intelligence early warning to situational assessment of territorial security have been incorporated in the EU. Especially since 11 September 2001, when terrorist activities were increasingly combined with cross-border crime, EU Member States had strong incentives to increase intelligence cooperation. In the face of these shared threats, multilateral cooperation in intelligence matters nonetheless remained a challenge despite regular meetings between counter terrorism units.²²

Access to sensitive pieces of information is therefore among the main reasons to engage in intelligence sharing and cooperation, as it constitutes a way to gain an advantage. Information superiority can lead to more influence at the international level and may also contribute to conflict prevention. Cooperation with other like-minded states can potentially also be economically beneficial: the price of expensive technologies (such as satellites) may be reduced by a joint acquisition of GEOINT and duplication of capacities may be reduced.

Things do indeed seem to be on the move. The willingness to increase intelligence cooperation among EU Member States to reach higher levels of situational awareness and perform better strategic foresight, was identified in the Strategic Compass, adopted by the Council in March 2022.²³ A better sharing of intelligence among Member States and other non-EU countries and international organizations would also benefit a higher success rate of CSDP missions and operations. Furthermore, the European Commission seems to be committed to further

²⁰ H. Dijkstra & S. Vanhoonaeker, *The Changing Politics of Information in European Foreign Policy*, 33(5) J. Eur. Integration 541–558 at 544 (2011).

²¹ Gruszczak, *supra* n. 8, at 151.

²² C. Hill, *Renationalizing or Regrouping? EU Foreign Policy Since 11 September 2001*, 42(1) J. Common Mkt. Stud. 143–163 at 150 (2004).

²³ *A Strategic Compass for Security and Defence – For a European Union That Protects Its Citizens, Values and Interests and Contributes to International Peace and Security*, <https://data.consilium.europa.eu/doc/document/ST-7371-2022-INIT/en/pdf> (2022); (accessed 22 Aug. 2022).

strengthening EU powers in this area. In her 2021 State of the Union speech, President Ursula von der Leyen talked about the necessity to reinforce EU intelligence structures:

we need to build the foundation for collective decision-making – this is what I call situational awareness. We fall short if Member States active in the same region, do not share their information on the European level. It is vital that we improve intelligence cooperation. But this is not just about intelligence in the narrow sense. It is about bringing together the knowledge from all services and all sources. From space to police trainers, from open source to development agencies.²⁴

Similarly, further integration of EU intelligence structures is promoted by some members of the European Parliament. Following President von der Leyen's State of the Union speech, MEP Sánchez Amor recently advocated to develop the EU's own foreign intelligence services and argued that the Joint Situational Awareness Centre proposed by President von der Leyen may indeed contribute to overcome certain suspicions among Member States. MEP Sánchez Amor has also been working on a pilot project proposal that would allow the Union to increase its information gathering capacity for diplomatic purposes.²⁵

One could argue that the existence of current arrangements – INTCEN, EU MS INT, etc. – are already a success given that the EU was initially not created to share sensitive pieces of information between the Member States. At the same time, short- and medium-term security threats – e.g., Russia (the invasion of its neighbourhood or espionage in EU Member States), China (through foreign direct investments or its influence on new technologies such as 5G) – incentivize Member States to further integrate intelligence structures due to increased shared interests. It has become clearer that there are increasingly more areas of shared interests where the threat of non-cooperation comes at a higher price compared to more sharing of relevant information among partners and allies. The lack of a shared culture, history, threat perception and interests that has often impeded an effective multilateral cooperation in intelligence matters gradually seems to be losing its relevance.

²⁴ European Commission, *State of the Union Address by President von der Leyen* (2021), https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701; (accessed 22 Aug. 2022).

²⁵ EurActiv, *supra* n. 11.