EU INTELLIGENCE COOPERATION – NEW DANGERS, OLD PROBLEMS

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Abstract: Today, national security services of EU member states are faced with a situation in which they must preserve their own integrity but at the same time elevate intelligence cooperation in response to increasingly global threats and an increasingly global array of accessible data. The main obstacle to the development of intelligence cooperation at the Union level is the lack of trust—both of member states towards the Union, and among the member states themselves. On the other hand, external threats have always exerted a cohesive influence on this aspect of member state cooperation. In order to successfully balance these two tendencies, such cooperation should be

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based on common interests. Furthermore, this cooperation should not be too formal, and it should be regulated either by national laws or bilateral/multilateral agreements. The intelligence cooperation of the Union member states within the Union should not be formed by taking over the rights of member states as guaranteed by Union law, but rather within existing forms of cooperation.

Keywords: intelligence cooperation, national security, Common Security and Defence Policy, lack of trust

Introduction

Back in 2005, in his speech, the then EU Counter-Terrorism Coordinator Gijs de Vries stated that one 'can't get closer to the heart of national sovereignty than national security and intelligence services' (Szép, Sabatino, Wessel, 2022, p. 8; EurActiv, 2005). In this context, intelligence cooperation is the most sensitive and contentious part of European security cooperation (Tuinier, 2025, p. 132), as a component of the Common Security and Defence Policy (hereinafter: CSDP), which itself represents an area in which the member states of the Union are least willing to delegate its competence.[1] Today, national intelligence services of EU member states are faced with a situation in which they must preserve their own integrity but at the same time develop elevate intelligence cooperation in response to

[1] When this paper refers to 'European intelligence cooperation', it exclusively denotes cooperation at the level of the European Union.

increasingly global threats and an increasingly global array of accessible data.

The key issues of intelligence cooperation among the member states of the Union are not significantly different from the problems of intelligence cooperation in general. Given that national security represents a part of the sovereignty of each state, member states of the Union will not relinquish it. In that regard, the thesis of the paper is that the intelligence cooperation of the Union's member states within the Union should not be formed by assuming the rights of member states as guaranteed by Union law, but rather within existing forms of cooperation.

After the introductory considerations, the main problems of intelligence cooperation as a concept will be presented, as well as factors that could provide a foundation for successful cooperation. Subsequently, the paper will try to apply these conclusions to intelligence cooperation within the EU (Lonardo, 2023, p. 125). The main problem of the CSDP and the Common Foreign and Security Policy (hereinafter: CFSP) as a whole is the fact that citizens, and consequently the Member states, do not show the same level of loyalty and identification with the Union as they do with their own states and its institutions (Tiilikainen, 1998, p. 22). In this sense, Allott calls the CFSP a technocratic illusion (Allott, 1998. p. 218).

Thus, it seems logical that the member states in the CFSP area want to maintain a high degree of sovereignty. The very existence of this form of interstate cooperation represents a limitation of the sovereignty of the member states (Lapaš, 2009, p. 273). A member state will be

willing to sacrifice part of its sovereignty for the benefit of the Union, to the extent that it is connected to the Union in terms of political legitimacy. The consequence is kind of soft law character of CFSP (Schmidt, 2009, p. 258; Gorgiladze, 2024, p. 47).

Although this applies to all member states, the degree of readiness to cede this part of sovereignty and to achieve some form of intelligence cooperation will differ from state to state. In the environment of unanimity that is a characteristic of the CFSP and CSDP, the different levels of readiness of the member states in the above sense will be an obstacle to making important decisions in the field of intelligence and/or security cooperation. It can therefore be stated that the inhibiting factor in the development of the CSDP lies in its insufficient political legitimacy (Jehin, 2013, p. 106) resulting from the natural tendency of states to retain as much of their own sovereignty as possible.

In such circumstances, there is a constant overreliance on NATO, as a defeat of the idea of forming self-sufficient European defense forces rather than relying on the US (Lapaš, 2009, p. 291; Burgoon, Van Der Duin, Nicoli, 2023, p. 1). Cooperation with NATO is an unquestionable reality when it comes to the functioning of the CSDP and the CFSP as a whole (Sweeney, Winn, 2022, p. 195; Strategic Compass for Security and Defense – for a European Union that protects its citizens, values and interests and contributes to international peace and security, hereinafter: Strategic Compass). In this sense, the Strategic Compass from 2023, also emphasizes the expansion of the strategic partnership, political dialogue and cooperation with NATO in all agreed areas of interaction as a strategic goal (Strategic

Compass, p. 44). However, cooperation and partnership must not be confused with dependence. In this regard, former European Commission President Juncker, in his speech on September 14, 2016, emphasized the need to establish a common defense force and a security headquarters for the European Union in order to face current security threats, as well as the need to reduce dependence on NATO (Strategic Compass).

National security, or national security and intelligence services, represent the core of national sovereignty. In this regard, the entire presented issue is even more pronounced in the area of national security, which ultimately resulted in a judicial conflict between the member states and the Union before the Court of Justice of the European Union (hereinafter: CJEU).

The last sentence of Article 4(2) of the TEU is *sedes materiae* for every discusion of national security in the context of the EU law. This provisions states: 'In particular, national security remains the sole responsibility of each member state.' The aforementioned rule is a clear reflection of the position of the member states (Faraguna, 2016, p. 571), which are, after all, the 'masters of the Treaty'.

In the case *European Commission vs Republic of Austria*, Austria had argued that 'security policy is an essential element of State sovereignty and that it is for the Member states to define their essential security interests and to determine whether security measures are necessary, the Member states having wide discretion in that regard'.[2] The CJEU's case law however

[2] *European Commission vs Republic of Austria*, C-187/16, ECLI:EIN:C:2018:194, 20.3.2018., para 57.

demonstrates a looser interpretation of this provision. In its *Privacy International* and *La Quadrature du Net* cases, CJEU stated that 'the mere fact that a national measure has been taken for the purpose of protecting national security cannot render EU law inapplicable and exempt the member states from their obligation to comply with that law.'[3] By stating this, CJEU has granted itself the power to assess the compliance and national security of the member states with EU law.

The usurpation of competence in this sense would not only be contrary to the will of the member states and to EU law, specifically Article 4(1) and Article 5 TEU. Article 4, in addition to the aforementioned provision in paragraph 2, in paragraph 1 stipulates that the member states retain competences not conferred on the Union by the Treaties, while Article 5(2) stipulates as follows: 'Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the member states in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the member states.'

In addition, it is also contrary to international law, specifically the Vienna Convention on the Law of Treaties (hereinafter: VCLT)[4], which, in accordance with its Article 5, applies to both the TEU and the Treaty

[3] *Privacy International v Secretary of State for Foreign and Commonwealth Affairs and others*, C-623/17, 6.10.2020. ECLI:EIN:C:2020:790, para 44. and *La Quadrature du Net and others v Premier ministre and others and Ordre des barreaux francophones et germanophone and others v Conseil des ministres*, C-511/18, C-512/18 i C-520/18, 6.10.2020. ECLI:EIN:C:2020:791, para 99.

[4] Vienna Convention on the Law of Treaties, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en

on the Functioning of the European Union (hereinafter: TFEU).[5]

Article 31(1) of the VCLT provides that treaties shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaties in their context and in the light of their object and purpose. This 'principle of interpretation' is in accordance with subjective as well as teleological approach to treaty interpretation (Crnić-Grotić, 2002, p. 116), and the same article was also referred to by the CJEU.[6]

In this sense, the 'ordinary meaning of the term' is the basis for any interpretation of the text (Beck, 2016, p. 491). The ordinary meaning of the term 'in particular' in the last sentence of Article 4(2) TEU indicates the exceptional importance of the national security exemption from EU, more than in any other area otherwise reserved to the member states, the fact that was completely ignored by CJEU in its case law (Novak, 2021, p. 144).

Article 73 of the TFEU provides: 'It shall be open to Member states 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.' This is a

[5] Case C-386/08, *Firma Brita GmbH v Hauptzollamt Hamburg-Hafen*, ECLI:EIN:C:2010:91, para 42., case C-162/96, *A. Racke GmbH & Co. v Hauptzollamt Mainz*, ECLI:EIN:C:1998:293, para 49., Opinion C-621/18, *Andy Wightman and others Secretary of State for Exiting the European Union*, ECLI:EIN:C:2018:978, para 79. Differently in case T-27/03 SP *SpA and Others v Commission of the European Communities*,, ECLI:EIN:T:2007:317,., para 58.

[6] E. g. case C-268/99, *Aldona Malgorzata Jany and others v Staatssecretaris van Justitie*, , ECLI:EIN:C:2001:616, para 35., case C-416/96, *Nour Eddline El-Yassini v Secretary of State for Home Department*, ECLI:EIN:C:1999:107. para 47., etc

logical consequence and natural continuation of the provision of Article 4(2) of the TEU. Member states are left free to establish and organise any cooperation between their authorities responsible for national security. The above-mentioned case-law of the CJEU, although it has not explicitly ruled on this TFEU Article, clearly demonstrates its view that this freedom is not unlimited. (Peers, 2011, p. 56).

The member state's resistence to an overly expansive form of intelligence cooperation is based on Union's insufficient political legitimacy in the political consciousness of member states and their desire to retain sovereignty in particularly sensitive areas. Such a position is also embodied in the relevant provisions of primary EU law, such as Article 4(2) of the TEU. After all, decisions within the CFSP, as well as any other policy, European as well as national, are produced by elected authorities. The government is elected by the citizens. In the event of a concrete threat to their existence, they will primarily expect protection from their own authorities, and in this sense, the concern for national security is primarily on their member state (Müller-Wille , 2004, p. 35.; Buleš, 2016.).

The CJEU, on the other hand, has shown distrust towards member states through its case law, not following the case law of the European Court of Human Rights (hereinafter: the ECtHR). Thus, although the ECtHR, like the CJEU, held that invoking national security cannot release a member state from its obligations in terms of the obligation to respect human rights and fundamental freedoms, it was aware of the importance of the need for national security to remain within the

domain of each state, i.e. within the limits of its discretion (Novak, 2021, p. 145).[7]

EU Intelligence Cooperation – Current Circumstances and Future Development

It is undeniable that calls for increased intelligence cooperation at the Union level become louder after security incidents, terrorist attacks or any events that cause insecurity among the population (Gruszczak, 2016, p. 4; Fägersten, 2016; Estevens. 2020, p. 93., Tuinier, 2025, p. 120). Ultimately, the creation of the CSDP, CFSP and the Union itself was prompted by the World War II, or the desire to prevent such a catastrophe on the European continent in the future. In this sense, the current state of the war in Ukraine acted as an integration factor in terms of intelligence cooperation.

Even though these common interests cannot completely eliminate mistrust, they can strongly foster collaboration. Still, such threats—despite the mutual defense clause of Article 42(7) TEU or the solidarity clause of Article 222 TFEU (Rudolf, 2014; Autio, 2024)—will not have the same stimulating effect across the entire Union. States geographically closer to the threat or those affected directly, by, e.g. a terrorist attack, will be more motivated to engage in cooperation. In any

[7] E.g.. *Klass and others v Germany*. 5029/71, 6. 9. 1978., para 48. i 49., *Weber i Saravia v Germany*, 54934/00, 29. 6. 2006., para 106., *Kennedy v UK*, 26839/05, 18. 5. 2010., para 154., *Roman Zakharov v Russia*, 47143/06 4. 12. 2015., para 232. *Chahal v UK*, 22414/93, 15. 11. 1996., para 131., A i ostali protiv Ujedinjenog Kraljevstva, br. 3455/05 od 19. 2. 2009., para 210. *Centrum for rattvisa v Sweden*, predmet 35252/08, 19. 6. 2018. para 112. i 113., *Big Brother Watch and others v UK*, 58170/13, 62322/14 i 24960/15, 13. 9. 2018. para 320.

case, intelligence cooperation will occur naturally when integration offers sufficient advantages (Becher, 1998, p. 3; Tuinier, Zaalberg, Rietjens, 2023, p. 391), especially if it fulfills the basic condition of such cooperation—reciprocity based on a *quid pro quo* principle (Tuinier, Zaalberg, Rietjens, 2023, p. 389).

According to Eurobarometer the defense cooperation of the member states, in 2023 and 2024, is supported by as many as 80% of the citizens of the Union (Chihaia, M, 2024; European Commission, Defense Industry and Space, Eurobarometer shows public support to defense policy and industry). Such stable support for the CSDP (Burgoon, Van Der Duin, Nicoli, 2023, p. 2) is very likely a consequence of the invasion of Ukraine as a new security threat, and precisely such threats have always been the biggest impetus for the development of the CSDP and the CSDP and intelligence cooperation.

Back in April 2013, High Representative of the Union for Foreign Affairs and Security Policy, Ms. Ashton, in response to a specific Dutch query, stated that there were no plans to create a 'European intelligence service', referring to Article 73 TFEU.[8] The same was confirmed in January 2014 by Ms. Reding in her response on behalf of the Commission (Gruszczak, 2016, p. 275, 276).[9] The

[8] European Parliament (2013b, December 18). Answer given by High Representative/Vice-President Ashton on behalf of the Commission (25 April 2013) to the question for written answer E-001928/13 to the Commission (Vice-President/High Representative) from Laurence J.A.J. Stassen (NI) (22 February 2013). Offi cial Journal of the European Union, C 371 E,
https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOC_2013_371_E_0001_01

[9] European Parliament (2014b, March 25). Answer given by Mrs Reding on behalf of the Commission (10 January 2014) to the question for written answer E-012611/13 to the Commission Laurence J.A.J. Stassen (NI) (7 November 2013). Offi cial Journal of the

European Union's Global Strategy for Foreign and Security Policy also advocates strengthening intelligence cooperation and data exchange between EU member states as a security factor (Žutić, Čehulić Vukadinović, 2017, p. 97), without mentioning some kind of EU security or intelligence agency[10].

Russian aggression against Ukraine once again created an environment in which the security aspect became more important. Whithin the framework of the 'geopolitical awakening' (Gorgiladze, 2024, p. 45) of the European Union, in March 2022, the Strategic Compass for Security and Defense - for the European Union, which protects its citizens, values and interests and contributes to international peace and security (hereinafter: Strategic Compass) was adopted (Novak, 2025, p. 237). The Strategic Compass states that the Union must significantly increase its capacities and readiness to act, strengthen resilience and ensure solidarity and mutual aid, and that the newly emerging political situation has called into question the Union's ability to promote its vision and defend its interests (Strategic Compass, 2).

It also stresses that 'the EU must become faster and more capable and effective in its ability to decide and act' (Strategic Compass, p. 13) and that 'we need a quantum leap forward to develop a stronger and more capable European Union that acts as a security provider' (Strategic Compass, p. 6). In this context and with the

European Union, C 86 E. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2014:086E:FULL

[10] A Global Strategy for the European Union's Foreign and Security Policyhttps://www.eeas.europa.eu/eeas/global-strategy-european-unions-foreign-and-security-policy_en

aim of ‘moving closer to a common strategic culture’, the Strategic Compass aims to strengthen the role of the EU’s Single Intelligence Analysis Centre (SIAC) ‘as a single-entry point for strategic intelligence contributions from member states’ civilian and military intelligence and security services’ (Strategic Compass, p. 21). In this way, the Strategic Compass emphasizes that the exchange of strategic intelligence will be facilitated so that the Union can better respond to the challenges it faces and provide better services to decision-makers across all EU institutions and Member states. Although the concept of a European intelligence service is not mentioned, it is clear that the importance of more intensive intelligence cooperation between member states and their national services with SIAC as the institutional face of this cooperation is recognized. But in fact, the Strategic Compass once again remains on calling for intelligence cooperation without more concrete developments (Tuinier, 2025, p. 134).

In July 2024, in his answer to a parliamentary question on behalf of the Commission, Mr Johansson reiterated that the Commission did not intend to establish a European Intelligence Agency, while pointing to existing forms of cooperation.[11]

However, *Niinisto* report, i.e. the report 'Safer Together Strengthening Europe’s Civilian and Military Preparedness and Readiness' prepared by the special advisor of the President of the European Commision and former Finnish president Sauli Niinistö highlights intelligence cooperation as a 'key recommendation' (Kähkönen, A.-M., Forsberg, 2024). In particular, it calls

[11] Answer given by Ms Johansson on behalf of the European Commission, https://polit-x.de/de/documents/18983557/

for a creation of 'a fully-fledged intelligence cooperation service at the EU level that can serve both the strategic and operational needs of policy planning decision-making without emulating the tasks of Member states' national intelligence organisations, including in respect of their role in intelligence gathering '.[12] This should not be a new, but rather an upgrade of existing intelligence structures, an approach that was also welcomed by Commission President Von der Leyen in her speech of 1 November 2024 (see also Bilgi, 2016, p. 65, otherwise Nomikos, 2007).[13] In this regard, the need to strengthen SIAC and its components, the EU Intelligence and Analysis Centre (EU INTCEN) and the EU Military Staff[14] was reiterated by formalising existing and creating new forms of cooperation within existing structures.[15] It is emphasized that the creation of such a service must not have the aim of interfering with member state's 'prerogative on national security.[16]

According to the Niinistö Report, further intelligence integration should naturally occur within the SIAC framework (Tuinier, 2025, p. 136) and rely on the development of OSINT (Politi, 1998, p. 5).

Joint motion for a Resolution on the white paper on the future of European defence from March 2025 again maintains a more restrained approach. It highlights 'a

[12] Niinisto report, str. 23., https://commission.europa.eu/document/5bb2881f-9e29-42f2-8b77-8739b19d047c_en
[13] https://www.youtube.com/watch?v=Drex9oK3geI
[14] Niinisto report, str. 112., https://commission.europa.eu/document/5bb2881f-9e29-42f2-8b77-8739b19d047c_en
[15] Niinisto report, str. 112., https://commission.europa.eu/document/5bb2881f-9e29-42f2-8b77-8739b19d047c_en
[16] Niinisto report, str. 112., https://commission.europa.eu/document/5bb2881f-9e29-42f2-8b77-8739b19d047c_en

shift in US foreign policy as the Trump administration is proposing the normalisation of ties with Russia and it is becoming increasingly clear that Europe needs to strengthen its security and defence to be able to help Ukraine to defend itself.'[17] Also, the European Parliament 'underlines, in this regard, the importance of closer cooperation on information and intelligence sharing, military mobility, security and defence initiatives, crisis management, cyber defence, hybrid threats, foreign information manipulation and interference and in jointly addressing shared threats'.[18] Nevertheless, it 'notes that the above is without prejudice to the specific character of the security and defence policy of certain member states.'[19]

Instead of a conclusion

Today, it would still be unrealistic to discuss the formation of some kind of an EU intelligence agency (Estevens, 2020, p. 102; Bigli, 2016, 64; Becher, 1998, p. 3). Nevertheless, intelligence cooperation, specifically among member state services, is undoubtedly of vital importance for European security. Ultimately, any form of intelligence cooperation rests in the hands of the member states (Gruszczak, 2016, p. 53, 89). The political circumstances will force EU member states to find the best solutions for intelligence cooperation at the EU level that will satisfy their specific interests and at

[17] Joint motion for a Resolution on the white paper on the future of European defence https://www.europarl.europa.eu/doceo/document/RC-10-2025-0146_HR.html t. D.
[18] Joint motion for a Resolution on the white paper on the future of European defence https://www.europarl.europa.eu/doceo/document/RC-10-2025-0146_HR.html t.55.
[19] Joint motion for a Resolution on the white paper on the future of European defence https://www.europarl.europa.eu/doceo/document/RC-10-2025-0146_HR.html t. 77.

the same time represent an adequate response to those same circumstances.

Indeed, instead of new forms of cooperation, it seems optimal to develop INTCEN. Established by the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU), Article 4, paragraph 3, sub (a), 'the Centre works on open-source material, military and non-military intelligence from several Member states and diplomatic reports.' (Gruszczak, 2016, p. 86). Self-evident shared interests of the services of the member states result in the exchange of data on a voluntary basis (Gruszczak, 2016, p. 157). Such an informal form of cooperation is sufficient protection in the event of backsliding regarding human rights protection by a member state. Other member states can reduce the intensity of cooperation, and the INTCEN itself can also take this into account when exchanging data with such a state. As such, it already corresponds to the above-mentioned points.

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List of abbreviations

CDSP - Common Security and Defence Policy
CJEU - Court of Justice of the European Union
CFSP - Common Foreign and Security Policy
ECtHR - European Court of Human Rights
EU INTCEN - EU Intelligence and Analysis Centre
SIAC - Single Intelligence Analysis Centre
TEU - Treaty on European Union
TFEU - Treaty on the Functioning of the European Union
VCLT- Vienna Convention on the Law of Treaties