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European Intelligence Co-operation – Failing Part of the CFSP and ESDP?

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The tragic events in Madrid in March this year have initiated a discussion about the poor state of the European counter-terrorism co-operation. Alongside this discussion, an idea to create a European Intelligence Agency has arisen. Being submitted this time by the Belgium Prime Minister, this scheme is the most extreme panacea for the insufficient co-operation and exchange of intelligence in the EU. However, it seems that to ascribe this issue only to counter-terrorism prevention is misleading and is also making it difficult to define matters of the European intelligence co-operation in its right place and context, namely as an indispensable mechanism for creating and conducting Common Foreign and Security Policy (CFSP) as well as European Security and Defence Policy (ESDP).

Not only against terrorists

The anti-terrorist co-operation and prevention in Europe is being critically assessed. The imperfect flow of intelligence to Europol, highlighted in the Declaration of the European Council on 25 March 2004, as well as the lack of co-operation between agencies, is the result of omnipresent difficulties in the co-operation among intelligence services. Even national intelligence, security services and police forces are part of this phenomenon. Moreover, the issue of the insufficient exchange of intelligence confirms a well-known fact that foreign, defence and security policy is one of the weakest points among integration policies.

Is then the idea to create European intelligence unreal? Do politicians, by criticising or supporting this idea, simplify on purpose or unconsciously this issue by putting it into a form of 'for' or 'against' a European Intelligence Agency (EIA) or a "European CIA" as it is referred to by media? For it is important to differentiate mechanisms of the intelligence co-operation, the co-operation or even the integration, in particular in the field of analyses and evaluations, from a creation of a formal European structure engaged in its own intelligence tasks, especially operational ones. One should not undergo the pressure of the present moment as well as the pressure of the current events and reduce the whole issue only to a co-ordination in the fight against terrorism and the exchange of intelligence on this subject. This is only one of the

undoubtedly important aspects of much wider area, namely that of the European integration in the field of foreign and defence policy or at least the co-ordination of the European politics in this field. This has proved to be very difficult, in particular since the Iraqi crisis.

What is then essential to develop a common foreign and defence policy of the European Union on the assumption that this should be a natural process to be crowned with the standardization of national interests of individual Member States in this area? What is necessary is the feeling of community of interests and threats. This feeling is still, according to various analyses, non-existent in the majority of the European capitals. Therefore a key to this problem could lie within a different approach to the scale and the nature of threats in individual states. It could also lie in different views formed on the basis of varied evaluations and information. Bjorn Muller-Wille, who conducts researches in this field, accurately pointed out that 'exchanging knowledge is a first step to negotiate views, to form and implement common policies and to make use of possible synergies in the fight against threats'¹. Similar expressions can be found in the European Security Strategy, developed by the EU High Representative for the CFSP, Javier Solana: 'common assessment of threats is the basis for common actions and this requires improvement in the exchange of intelligence information among Members States and partners'². Moreover, the emphasis is put, as in the discussion over the CFSP and ESDP, on the prevention of conflicts and the prevention and management of crises. This emphasis also stresses the role of gathering, analysing and passing on to decision-makers adequate and timely information, also intelligence information, in the established mechanisms³.

As information usually comes from various branches of intelligence, to standardise evaluations and information, which are passed on to the European elite, is an indispensable condition to form a European defence identity and a foreign policy. Furthermore, one should free oneself from the dependence on American intelligence

¹Bjorn Muller-Wille, "For our eyes only? Shaping an intelligence community within the EU"; EU Institute for Security Studies, 2004, p. 13.

²European Security Strategy, December 12th, 2003.

³Hans-Georg Ehrhart – 'What model for CFSP?' Chaillot Paper nr 55, Institute for Security Studies, EU, Paris, Oct 2002, pp. 28-39

technology and should create one's own, namely a European telecommunication and satellite intelligence structure. It was only in the aftermath of the real terrorist threat and the problem with exchanging information on the topic of concern that an idea to formalise the intelligence co-operation and to create the next European agency has arouse.

It is also necessary to mention that the lack of intelligence co-operation on national levels causes obstacles in the closer integration of intelligence actions, security services and police forces on the EU's level. There is no common European pattern to organise and co-ordinate security services and intelligence. Not only do these services have different rights and tasks but also various formal statuses. Some of them form independent agencies and departments subordinated to ministry of home or foreign affairs, ministry of justice, defence ministry as civil or military secret services, information and operational services centralised or even decentralised as in the case with the Federal Office for the Protection of the Constitution (Germany). Formal and informal co-operation and the exchange of information among these services also vary as well as the co-ordination of their tasks by superior authorities. Moreover, prior to the terrorist attack on New York there had been a tendency in the EU to limit the scope of information gathered and stored by national services. This as well as the access and the interference in police and administrative databases, such as, for example, the Schengen Information System, by secret services was to be restricted. These tendencies were influenced by organisations protecting civil liberties. Although, in the EU this approach has changed after September 11th, 2001, these issues still stir controversy among defenders of civil liberties, such as, for instance, Statewatch activists⁴. A problem arouses, namely that of a possibility to avoid by those services certain national restrictions on gathering a variety of data and transmitting them to European databases. Without standardising these issues, it will be difficult to talk about a full co-ordination of services, which have different formal powers on the EU's level. On the other hand, it should be underlined that in the aftermath of September 11th, 2001, the majority of states have undertaken clear

⁴ Reservations raised by defenders of civil liberties refer to a doubtful legal basis allowing secret services to access databases of SIS; on the basis of Art. 99.3 of the Schengen Convention, a possibility to observe persons and vehicles (pointed by adequate authorities) by secret services is, according to the Statewatch, a motion to allow secret services to access complete SIS resources; in: Statewatch News online: 'SIS II takes ominous shape – SIS set to become the UE's „Big Brother” database' – www.statewatch.org/nwes/2002/apr/01sis.htm.

efforts to broaden powers of their secret services and to better co-ordinate their actions⁵.

Co-operation without publicity

It would be hard to expect that the European integration in the second pillar was to begin with intelligence services, their secret mechanisms and products, as these are the most guarded services and are the highest attribute of state's sovereignty. For instance, it would be hard to expect that prior to the creation of a post of an EU foreign affairs minister, foresighted in the European Constitution, a European intelligence agency will be called into being. Yet another argument, apart from a logical one, is that such a caution is a result of the experience that has shown the effectiveness of the informal co-operation. This in turn has allowed maintaining full sovereignty, or at least a sense of it, in formal and legal respects. Since the 1970s European secret services have co-operated in the following working groups: in the TREVI group, Kilowatt group and so-called 'Club of Bern', in the framework of NATO, in the framework of bilateral relations among those agencies as well as with the US services and finally within the confines of the developing communitarian mechanisms. This co-operation encompassed both security services and lesser-disclosed intelligence services. One can question whether this 'Club of Bern' method of co-operation is more effective taking into consideration a common criticism of the co-operation of European secret services in the aftermath of the Madrid bombings. However, this method was also implemented in the framework of the European Council's Counter-Terrorism Working Group (TWG)⁶ and is clearly supported by the new Counter-Terrorism Coordinator Gijs de Vries and Secretary-General Javier Solana, as they proposed to create a consecutive terrorism working group encompassing only members of security services from the EU Member States⁷.

⁵ 'Secret services' new rights in the fight against terrorism', the analysis of the Internal Security Agency, abw.gov.pl/Terroryzm/Uzupelnienia/wy_bip.htm

⁶ Council of the EU, Counter-Terrorism Coordinator – 'Provisional findings of the two 'peer evaluation' mechanisms affecting the Union's fight against terrorism", 26/05/2004, p. 7.; Council of the EU, Counter-Terrorism Coordinator – 'Working structures of the Council in terrorism matters – Options paper', 25/05/2004, p. 2.

⁷ Javier Solana – Summary of remarks, JHA Council 8 June 2004, SO159/04; Council of the EU, Counter-Terrorism Coordinator – 'Working structures of the Council in terrorism matters – Opinions Paper', 25.05.2004, p. 5

⁸ JHA Council conclusions, 20.09.2001.

Beginnings of the EU

It is also not true that the European Union itself does not currently possess mechanisms of the exchange of intelligence information; to say plainly the beginnings of such an agency. First of all, not only classical information of political, economic or military intelligence but also, especially in the anti-terrorism and anti-criminal context, information of so-called criminal intelligence and, moreover, issues belonging to the third pillar i.e. Justice and Home Affairs (JHA) are rated as intelligence information by the majority of analysts. Such flow of information gathered on a national level by police forces reaches or should reach Europol or databases of the Schengen Information System (SIS). It seems that in this field the situation is relatively the best taking all sorts of intelligence co-operation into account. It is also due to the fact that a political factor in this field of criminal co-operation is non-significant.

In the framework of JHA, there is yet another form of co-operation of this sort of services. In the aftermath of September 11th attacks, secret services in particular security and national intelligence, were integrated into the EU counter-terrorism mechanisms⁸. In the EU Member States these services are often connected in one way or another with police forces. After September 11th, 2001, co-ordinating authorities or bodies which link flows of intelligence and police information were created almost everywhere⁹.

As far as 'traditional' intelligence is concerned the situation is better than it appears to be, according to alarming media reports in the aftermath of the Madrid bombings. Better does not, however, mean good. The already existing and developing EU paraintelligence structures, such as, for example, the Intelligence Division of the EU military staff and the EU's Joint Situation Centre (SITCEN), are in the initial stage¹⁰. So are similar mechanisms in the field of CFSP and ESDP. According to the conclusions of the EU summit on 25 March 2004, it was announced that a role played

⁹ British NSIS, a prototype of the Polish National Centre of Criminal Information (KCIK), is playing at the moment a role of the interface between police and security services, MI5 Peter Chalk, William Rosenau – 'Confronting the "Enemy Within" – Security Intelligence, the Police and Counter-terrorism in Four Democracies', RAND Corporation 2003, p. 12

¹⁰ Ulrich Schnerckener – 'EU Crisis Management in Macedonia'.

by the SITCEN would be broadened in the field of the assessments of threats¹¹. Also Javier Solana and Gijs de Viers proposed to extend the SITCEN by representatives of secret services of the EU Member States. Such an organisation in turn would be capable of creating complete analyses and assessments of threats to internal and external security of the EU, in particular in the field of terrorism¹².

For and against ‘the European Union’s CIA’

The various forms of co-operation so far, also these within the European Union, have been based on the major secret services. Owing to this fact, it is not surprising that small states, deprived of their own effective intelligence services, which would be capable of recognising and neutralising terrorist threats, are insisting on the creation of European intelligence. Those small countries are also not satisfied with the present co-operation with the states that have such services.

The countries with effective intelligence services, such as the so-called “Big Five” (Italy, Great Britain, Germany, France and Spain) which together with the Netherlands and Sweden participate in the SITCEN, are against revolutionary changes in the present system of the intelligence co-operation in the EU. The appointment of the Counter-Terrorism Coordinator has perhaps not been a breakthrough in the European co-operation against terrorism owing to the unsolved matters in the co-operation between police services placed in the third pillar (JHA) and intelligence co-operating within the framework of CFSP (the second pillar) and units of Secretariat General, described below, and the EU military staff. However, the appointment of such a person responsible for counter-terrorism issues can help to create certain mechanisms; a common intelligence policy of Members States is the case in point.

¹¹ The European Council Declaration on Combating Terrorism, 25.03.2004, Annex I, Objective 7. According to Bjorn Muller-Wille the thing is to create the Counter-Terrorist Department in the framework of the SITCEN that would double the staff – Bjorn Muller-Wille – ‘Building a European intelligence community in response to terrorism’ – European Security Review, p. 13

¹² Brussels’ European Council 17-18.06.2004 – ‘Presidency Conclusions’, p. 3; Javier Solana – Summary of remarks, JHA Council 08.06.2004, SO159/04; Council of the EU, Counter-Terrorism Coordinator – Working structures of the Council in terrorism matters – Options paper’, 25.05.2005 p.4

Good, old ideas?

In the situation of general obstruction of the most important European governments or their national intelligence agencies towards the creation of EU's intelligence agency, it is worth going back to certain ideas from before March 11, 2004.

Individual European countries are not capable, for practical, i.e. logistical and financial, reasons, of having comprehensive intelligence which would be built on the model of intelligence of the world's superpowers, and which would allow them to react better to threats of the present, globalised world, from terrorism do economic crises¹³. Since this is the case, a logical solution would be to create a European Common Intelligence Policy (ECIP) as a 'technical' background for Common Foreign and Security Policy (CFSP)¹⁴. To 'Europeanise' national intelligence should remain a necessary condition to fulfil this goal. This would resemble the process of "Europeanising' foreign policies of Member States, described by literature¹⁵. It can be stated by analogy that the process of "Europeanising' intelligence is the process of foreign policy change at the national level originated by the adaptation pressures and the new opportunities and challenges generated by the European integration process. Terrorism is just such a challenge and threat, which can, in the foreseeable future, afflict Member States for the very reason of just being a member state rather than for its national politics.

Yet another condition is to transform the currently existing structures, in particular the EU's Joint Situation Centre (SITCEN) in the General Secretariat, into a centre co-ordinating the exchange of intelligence and, in this sense, work of security services of Europe of 25, not of the seven Member States of the EU as it was the case until now. This alteration would be extremely important in the context of a general threat for CFSP and ESDP of creating a sort of European directorate. This is applicable in case

¹³ Alessandro Politi – 'Why is a European intelligence necessary?' – Chaillot Papers34, ISS of WEU, 1998, p. 3.

¹⁴ WUE Defence Committee Report from 1996 ('European Intelligence Policy', Doc. 1517, WEU Assembly, Paris 13.05.1996.

¹⁵ Jordi Vaquer and Fanes defines after J.I. Torreblanci, 'Europeanising' of foreign policy 'as the process of foreign policy change at the national level originated by the adaptation pressures and the new opportunities generated by the European integration process' – Jordi Vaquer and Fanes – 'The candidate countries' foreign policies on the eve of enlargement', in; 'Beyond enlargement: The new members and the new frontiers of the enlarged EU', Institut Universitari d'Estudis Europeus, 2002, p. 56.

of both traditional foreign policy of so-called “Big Three”¹⁶ (i.e. France, Germany and Great Britain) as well as of intelligence co-operation of so-called “Big Five” (Italy, Great Britain, Germany, France and Spain). In this context, one should assume a negative outcome of the Madrid meeting of this group on 22 March 2004 devoted to the co-ordination of intelligence actions, where intelligence services of smaller states and candidates countries, in particular that of Poland, were excluded despite various protests. This was rather an act of deliberate conspicuousness of the “Big Five” in response to a proposal to tighten and disseminate European intelligence exchange as well as to create a European Intelligence Agency¹⁷. Again, as in the case with CFSP, a European Common Intelligence Agency would provide, especially smaller countries, with an opportunity to protect better their national interests, for example in the wake of a terrorist threat. This regularity is confirmed by the fact that such small countries as Belgium, Austria and Greece are especially in favour of creating a European Intelligence Agency¹⁸.

The next step in the process of ‘Europeanising’ intelligence and in creating a European Common Intelligence Policy would be to distribute tasks according to operational and information capacities of a given national service. For instance, French intelligence has been traditionally interested in Africa, Spain in South America¹⁹, while new Member States are to some extent experienced with both the former USSR countries as well as the Balkans and the Middle East. Finally, it would also be possible to make a wider use by the Union’s analytical and intelligence units of the following: information and non-governmental analyses as well as research centres, private, scientific and related to economics, which relay upon Open Source Intelligence (OSINT)²⁰.

¹⁶ Dr. Simon Duke – ‘The Enlarged EU and the CFSP’, CSM, Warsaw 2004, p.5

¹⁷ ‘Spain’s Disclosure a Leap in Intelligence Sharing’ – Stratfor, 23.03.2004.

¹⁸ Dr. John M. Nomikos presents in details the Greek standpoint in this matter, e.g. in ‘European Union Intelligence Policy: A Greek Perspective’, Research Institute for European and American Studies, Athens 2004.

¹⁹ ‘The new challenges facing European intelligence – reply to the annual report of the Council’ – Assembly of Western European Union. The Interim European Security and Defence Assembly. Report of the Defence Committee, 04.06.2002, Document A/1775, p.11.

Dilemmas concerning the three pillars

Islamic terrorism has imposed a threat which forms the basis for a discussion over the intelligence co-operation and co-ordination. This context also forces to question the traditional division into an internal and external security as well as the division into security and intelligence services. This is especially relevant in the EU, which is characterised by the pillar division and policies, and where there are obstacles in the co-operation among individual areas.

Not only does this concern the European security policy itself but also its instruments, including information. A 'new security dilemma' implies a complete change in traditional sources of threats and actors as well as methods of creating a security policy in the age of globalisation. For the sake of solving this dilemma, the traditional way of perceiving the security and defence policy, with its clear definitions of interests, threats and execution instruments, is useless²¹.

Similarly, the way of organising the European security structures in the way that it is relevant to traditional threats of the 20th century and the Cold War is an anachronism in the fight against cross-boarder terrorism of Al-Kaida. Since a terrorist threat can come both from external as well as internal sources in a given country or the European Union on the whole, it is suggested that the fight against terrorism should be conducted according to the nature of a real danger rather than to the traditional territorial and national indicators²².

Poland

As far as Poland is concerned, it is justified to question a formal and practical level of preparation of our security services for the European integration in the field of collecting, processing and transferring intelligence information. Unfortunately, the answer is negative due to partially understandable reasons: general caution concerning Atlantic and pro-American Polish national security policy in the face of any initiatives that could even potentially violate the Polish independence. Every

²¹ Hans-Georg Ehrhart – 'What model for CFSP?' Chaillot Paper nr 55, Institute for Security Studies, EU, Paris, Oct 2002, pp. 14-18

²² in: Daniel Keohane, Adam Townsend – 'A Joined-up EU Security Policy' – CER Bulletin, Issue 33, Centre for European Reform, December 2003.

proposal supported by France in the field of security was traditionally perceived as being anti-American or anti-NATO. Consequently, ESDP and even CFSP were unfortunately treated in a similar manner in Poland²³. Hence, the caution towards ESDP²⁴. As a result, in Poland less importance was attached perhaps towards the intelligence co-operation within the EU and the WEU as well as NATO, the more so because Poland used not to be a rightful member of the two first organisations. What is more, in the period and scope of the accession negotiations CFSP did not play a significant role and this chapter was usually being closed as one of the first chapters in the negotiations²⁵. What was also noticed by foreign observers was the claim laid by Poland to be treated as a big country²⁶, not to mention the declared in 2003 ambitions to become a quasi superpower. Consequently, Poland was to a smaller degree interested in making the foreign policy increasingly more common. In my opinion, this has been a false diagnosis and Poland as a country relatively weak to impose pressure on the international arena, although geographically 'big', should rather be interested in developing CFSP, ESDP as well as in developing similar processes in the field of intelligence co-operation.

On the other hand, it is questionable whether, regarding the above mentioned 'special relations' with the USA, Poland is the most welcomed partner for information exchange and the European integration, especially for such intelligence services as French or German. Additionally, in case of the new Member States, the EU can face a problem with credibility and 'tightness' of their secret services, in particular in the context of the threat of infiltration by the former KGB allies.

Regardless of general political, strategic or even psychological conditions, what is of great significance is the capacity of Polish services to co-operate or integrate. In

²³ A broader view in: Olaf Osica – 'European Common Security and and Defence Policy from the Polish perspective' - CSM 2001.

²⁴ Jordi Vaquer and Fanes – in 'The candidate countries' foreign policies on the eve of enlargement', in; „Beyond enlargement: The new members and the new frontiers of the enlarged EU', Institut Universitari d'Estudis Europeus, 2002, p. 68.

²⁵ Dr. Simon Duke – 'The Enlarged EU and the CFSP', CSM, Warsaw, 2004, p. 2.

²⁶ Jordi Vaquer and Fanes – in 'The candidate countries' foreign policies on the eve of enlargement', in; 'Beyond enlargement: The new members and the new frontiers of the enlarged EU', Institut Universitari d'Estudis Europeus, 2002, p. 55, notices that: 'The candidates for the next enlargement of the EU are mostly small countries. Poland alone resists such a definition, and even Poland, once it becomes a member of the EU, is likely to be a "second-rank" state'.

2002 the division of the Office of State Protection (UOP) into two agencies – intelligence and national security – would have had a minor significance if effective mechanisms of co-ordination and the exchange of information with other services (financial, police and military ones) had been created. What is worse is the fact that there are no clear divisions of competences of individual units while management in this field is extremely unclear and vague. Also clear-cut structures responsible for co-ordination are not defined²⁷. This is especially visible with regard to such a threat as terrorism, which exists beyond borders and requires the co-operation of various agencies. Until now in the early stages of the development of European intelligence, the above-mentioned situation is not threatening. While some states face similar problems, still others, which own national intelligence co-ordinating structures, are quite cautious towards the process of integration within the framework of the EU.

At any point in time this situation can, however, change and it would be worth to have Poland prepared for such integration, so that the level of participation in this process by Polish services would be the result of a political decision, not the one imposed by structural or technical limitations.

July 20, 2004

²⁷ Council of Ministers, Regulation nr 79 from 12 September 2003 does not define rules, scope and the course of the co-operation and detailed division of powers among the Internal Security Agency (ABW), the Foreign Intelligence Agency and the Military Information Services.

Center for International Relations

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The founder and president of the Center for International Relations is Mr Janusz Reiter.

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