Concerted high politics in the absence of angels?
European intelligence governance and democratic accountability

By
Thorsten Wetzling

Abstract
This paper’s principal aim is to shed critical light on a recent trend to delegate previously strictly state-level intelligence competences to the European Union level. Albeit far from the creation of a European Union Intelligence Agency (EIA), recent developments in European security politics point to increased international collaboration among national intelligence and security services and, less visibly, to the creation of integrated intelligence capabilities at the European Union level. Widely seen as necessary to counter international terrorism and organised crime, European intelligence collaboration practices can nonetheless be greatly at odds with standard rules of democratic government as they ought to be adhered to by all EU member states.
The text begins by introducing the concept of democratic intelligence governance. This serves two purposes: It provides a normative yardstick later to be juxtaposed against actual intelligence collaboration practices and structures the often confusing account of actors involved in this emerging policy field. It then focuses on national executives as the central actor group in the quest for greater European intelligence cooperation and points to a puzzling imbalance between two seemingly equally important policy goals: Whereas national governments are by and large keen to promote European intelligence cooperation, they have been far less forthcoming to establish a comparable system of international intelligence control next to it. Being interested in both outspoken and less outspoken motivations for action, or - as the case may be - for non-action on the governments’ part, the author then introduces a research plan designed to better account for governments’ behaviour in this field. In so doing, the text stresses the practical relevance of more democratic accountability in an increasingly interconnected European political sphere.

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Introduction

The involvement, if not to say the outright ‘politicisation’ of British and US-American intelligence services before, during and after the war in Iraq in 2003 has received heightened attention by the media, citizens, scholars and policy-makers alike. It provides a suitable illustration of an underlying problem that affects even established democracies: Have policy-makers misused intelligence? Have the intelligence agencies worked within their mandate or have they transgressed the rule of law? How much influence should parliament and the public generally have over the decisions that are being implemented behind closed doors? A priori, these and similar questions are crucial for an understanding of intelligence governance in national entities and have been addressed at length by various national congressional and juridical inquiries. At the outset one could look at the ‘politicisation’ of intelligence in Britain and the US and say that this is deplorable but common practice in most countries. Seen in this light any attempt to create or to lobby for instances of greater democratic control for European intelligence cooperation might therefore appear to be immature if not downright naive. Even in

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1 The Hutton Inquiry in the United Kingdom as well as the 9/11 Commission in the USA spring to mind as the most prominent recent examples. However, such investigations are not limited to these two countries, nor are they an entirely new phenomenon. Indeed, most modern democracies (let alone democratising states) have witnessed minor or major intelligence scandals. Gradually throughout the last three decades, this has created and consolidated national parliamentary intelligence oversight systems. Ian Leigh, ‘More Closely Watching the Spies: Three decades of Experiences’ in: Ian Leigh, Hans Born and Loch K. Johnson (eds.), Who’s watching the spies? Establishing Intelligence Service Accountability, (Dulles, VA: Potomac Books, Inc., 2005).
light of the recent crisis over the constitution for the European Union, this position is flawed and ignores existing realities. This article illustrates how European Intelligence cooperation is increasing and indicates why this deserves to be critically assessed. More concretely, the text will focus on the rationale for intelligence cooperation by the two most influential actors, i.e. national executives and national intelligence services. Obviously governmental behaviour differs over time and place, but it should be kept in mind that official motives for action can, and have been, mixed with less nobler incentives. It should thus not automatically be assumed that European governments and intelligence services cooperate only for the benefit of European security. Rather, analysts ought to scrutinise recent developments in this field. The text turns first to the concept of democratic intelligence governance in order to structure the ensuing scrutiny.

The Democratic Governance of Intelligence

Depending on the architecture of national intelligence systems and the foreign policy goals of a nation, a plethora of formally and informally accredited actors including private agencies and think tanks assist the intelligence apparatus in its decision-making. Having said this, the focus of this study lies predominantly on the two central actors without whom no such apparatus could be maintained in the first place. Intelligence agencies are of direct service to democratic national governments: the agencies provide the information and analysis which helps the government in the pursuit of its central task to serve the popular sovereign by providing internal and external security. Given the history of intelligence services in authoritarian regimes, the crucial importance of information and the secrecy with which most agencies operate, questions inevitably arise: How close should information providers stand to their political masters? How can both information provider and receiver be independently scrutinised in order to prevent manifold sources of political abuse.

Perhaps it helps when intelligence services are seen first and foremost as government institutions. In a democracy, all government institutions act on behalf of the people. They ought to respect, and be held accountable to, predictable, open and enlightened policy and decision-making. Therefore their actions must be judged vis-à-vis their contribution to the public good, whether they uphold the rule of law and whether they apply transparent processes that enable the national civil society to educate and, when possible, to participate in the policy generation. To ensure that these rules of democratic government are being respected, elected representatives of the people, in most cases parliamentarians, perform accountability procedures. If done efficiently, they ensure democratic practices which are the prerequisite for the trust in and respect for state institutions by the people. Especially for intelligence services, the goal must be to insulate the services from abuse. Information holders within the services or within the executive enjoy great influence and political power. Democracies are not per se immune from the politicisation of intelligence services by rent-seeking members of the executive or from illicit influences on the executive by members of the intelligence services. Despite the need for secrecy, a few members of the parliament or persons appointed by parliamentarians must be admitted to ‘the ring of secrecy’. When intelligence services spy on foreign or domestic organisations, foreigners or nationals or, in extreme cases, export illicit interrogation practices to overseas, they break international and national laws. It might also be that the tax-payer’s money is inappropriately spent, or worse, used for different purposes than originally budgeted for. While all this is true and ought to be prevented by effective oversight, respect must also be paid to the

\[\text{\footnotesize For a very recent example, see: Dana Priest, CIA Holds Terror Suspects in Secret Prisons, The Washington Post, 02 November 2005}\]
rightful needs of the intelligence community. In light of the crucial information that intelligence services hold for a nation’s security and given the drastic value-decrease if this information is released into the public realm, intelligence oversight requires accountability provisions that protect vital secrets. Overseers admitted to the ring of secrecy must be prevented by law from leaking information to unauthorised sources. This is essential to warrant long-term cooperation of the services with the parliamentary oversight body. The services themselves also have an interest to be seen as legitimate governmental institution and it cannot be the goal to isolate them from democratic governance. The main goal must be to ensure the adherence to democratic rules whilst allowing the services sufficient room for maintaining the secrecy needed to perform their legitimate function, namely to protect a nation from existing or potential threats.

Most western democracies, with the notable exception of France\(^3\), created parliamentary intelligence oversight committees which perform the bulk of the important job to oversee the services. However, one should not think of intelligence abuse as originating mainly from the intelligence services. Intelligence services are often merely the instrument by which the executive has engaged in illicit practices. Moreover, in case of intelligence scandals it happened all too often that the executive has denied its direct involvement.\(^4\) What is needed, therefore, are sufficient control powers by parliament and other independent organs that hold both the executive and the intelligence services accountable. By legislation most Western democracies have, since the 1970’s, begun to establish comprehensive mechanisms to hold both intelligence services and the executive’s use of intelligence accountable. Scholars have studied these laws and often refer to the concept of \textit{democratic intelligence governance} as a tool to point to good practice in a field traditionally known for notorious rights’ abuses and mismanagement. Democratic intelligence governance can be said to include five actor groups: (a) the intelligence services, (b) the executive, (c) the legislative, (d) the judiciary and (e) civil society organisations.

An important difference exists between \textit{government} and \textit{governance}. “Governance is more encompassing than government; it helps to grapple with the complex reality of the contemporary world in which governments are still central actors in domestic and international affairs though they increasingly are seen to share authority with non-state actors on multiple level of interaction.”\(^5\) With respect to the five actor group involved in the democratic governance of intelligence, each has a central task in steering the system clear from abuse: The intelligence services restrain themselves by means of internal control (whistleblower regulations, training of employees in accordance with a legislated code of conduct), the executive performs executive control, i.e. giving direction to intelligence services, including tasking, prioritising and making resources available. The parliament oversees the services by passing intelligence laws (that define and regulate the services and their control), by adopting the corresponding budgetary

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\(^4\) A prominent example is \textit{l'affaire Rainbow Warrior} where the French Secret Services detonated a bomb on board of the Greenpeace vessel. It was revealed only years after President Mitterrand’s death that the order to sink the Greenpeace boat came from the very top. Yet, the in the direct aftermath of this tragic event, the French President led an investigation committee that resulted in the sacking of the agency head and the defence minister but which cleared the President from any charges. Douglas Porch, \textit{The French Secret Services: From the Dreyfus Affair to the Gulf War}, (London: Macmillan, 1995).

appropriations and by questioning decision-makers in special hearings. In addition, the judicative is tasked to monitor the use of the agencies’ special powers (such as surveillance and interrogation practices) and to adjudicate wrong-doings. Last but not least, civil society organisations may curtail the functioning of intelligence services by giving an alternative view (think tanks), disclosing scandals and crises (media) or by raising complaints concerning wrong-doing (citizens). The table below makes the aforementioned concept more explicit.

### Table 1: Key elements of the democratic intelligence governance

<table>
<thead>
<tr>
<th>Good Governance</th>
<th>National Intelligence Sector</th>
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<tr>
<td>- equity</td>
<td>Intelligence and secret services:</td>
</tr>
<tr>
<td>- participation</td>
<td>external, internal, military and criminal intelligence services</td>
</tr>
<tr>
<td>- pluralism</td>
<td>The executive:</td>
</tr>
<tr>
<td>- partnership</td>
<td>president, prime minister, national security advisory bodies, ministries, financial management bodies</td>
</tr>
<tr>
<td>- transparency</td>
<td>The legislature:</td>
</tr>
<tr>
<td>- accountability</td>
<td>parliamentary oversight bodies, complaint commissions</td>
</tr>
<tr>
<td>- rule of law</td>
<td>Justice and law enforcement institutions:</td>
</tr>
<tr>
<td>- human rights</td>
<td>judiciary, justice ministries, criminal investigation and prosecution service, human rights commissions and ombudspersons, correctional services</td>
</tr>
<tr>
<td>- effectiveness</td>
<td>customary and traditional justice systems</td>
</tr>
<tr>
<td>- efficiency</td>
<td>Non-statutory civil society groups and organisations:</td>
</tr>
<tr>
<td>- responsiveness</td>
<td>professional groups, the media research organisations, advocacy organisations, non-governmental organisations, think tanks, community groups.</td>
</tr>
<tr>
<td>- sustainability</td>
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</table>

Of course, national democracies vary with respect to the detailed regulations in their systems of intelligence control. One can discern differences especially when comparing intelligence control systems between parliamentary and presidential democracies. Additional studies in this field also point out that it takes more than comprehensive intelligence laws to possess an effective and democratic system of intelligence control - what is often lacking, especially among parliamentarians, is the right attitude necessary for detecting possible shortcomings in the system.

### Towards European intelligence governance?

Whilst the previous section was devoted to a general framework for the conceptualisation of intelligence control on the national level, the main focus of this text is the cooperation among sovereign nation states in this field. To what different extents does European intelligence cooperation exist? Would it be possible to apply the concept of democratic intelligence governance to this fragile construct? Who are the players in this game, who controls them?

According to many scholars, ‘intelligence has become a crucial factor in foreign policy, as well as in collective security and defence.’ Whereas intelligence sharing has always been appreciated by policy makers, it is remarkable how much politicians have of late emphasised the need for

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7 This refers to the different competences of parliament in either system which can be expressed with respect to reporting requirements, appointment powers, budgetary powers they may or may not have.


9 Some authors refer to intelligence as the second oldest profession in history, see Philip Knightley, ‘The Second Oldest Profession: Spies and Spying in the 20th Century’, (New York: W.W. Norton, 1988)
intelligence collaboration since 9/11. This development must, of course, be brought in relation to the fact that intelligence services are uniquely positioned at the forefront of a state’s defence against (an altered conception of) threats to national, and perhaps European security. When compared with traditional military threat scenarios in the decades that proceeded the fall of the Berlin Wall, many of today’s main security threats such as international terrorism, international organised crime, and proliferation of weapons of mass destruction can not be met with the same deterrence strategies that worked with the traditional foes to national security. Threats like international terrorism for example tend not to originate from the traditional corridors of power of other nation-states but from a variety of differently organised and widely dispersed non-state actors.

Notwithstanding that most security threats stemming from non-state actors are anything but new, they have surely gained in prominence. This is due to the effective usage of globalisation’s advantages (among others faster communication and global transportation networks which defy national borders) by individuals and groups committed to cause maximal harm to liberal democracies. Political analysts rightly speak about a proliferation of actors in an increasingly ‘multi-dimensional security concept’ involving states and non-state actors, legal and illegal players. As a reaction to the rise of these threats, governments in Europe (and elsewhere) increasingly felt the need to come together and pool at least some of their resources.

As per intelligence cooperation one can briefly point to the sharing of information and the building of secure communication networks with foreign intelligence partners. By itself this entails a veritable challenge for bureaucracies trained to leave only a ‘light footprint’ and which traditionally place great emphasis on ‘source protection’ vis-à-vis third parties.

“The general public is largely unaware of the organised complicity [...] between European intelligence and security services based on instantaneous safe communication network – the Internet before its time – which has now become institutionalised. So said Prefect Bernard Gerard [...] thus revealing the existence of a fairly extensive cooperation in one limited area. Fora have thus been established to deal with specific subjects by bringing together the intelligence services of different countries. Such groups are known to a greater or lesser extent. Although there are frequent references to them in the literature within the public domain, it is rare to find a description of their precise membership or organisation.”

Informal or formal intelligence sharing agreements between states have for a long time provided the necessary ‘ties that bind’, but this has never been done with a view to establish an

10 Despite the many charges that can be brought against Saddam Hussein, one charge which so far has often been attempted to be made but never successfully proven addresses the potential link between Saddam and Al Qaida.
11 The United Kingdom, Italy, Spain and Germany are democracies that share decade-long experience in counter-terrorism.
14 Notorious for their intelligence cooperation have been the so-called UKUSA countries (the United Kingdom, U.S.A., Canada, Australia and New Zealand) which is reflected in Jeffrey T. Richelson and Desmond Ball, ‘The Ties that Bind’, (Boston: Unwin Hyman, 1985). For a very recent feature story on the cooperation of national intelligence services, see Dana Priest, ‘Help from France Key in Covert Operations’, The Washington Post, 03 July
integrated intelligence capacity. Yet this has been recently discussed (and as we shall see implemented) with different degrees of seriousness in European Union politics.\textsuperscript{15} We note: intelligence cooperation among sovereign nations has a long history; integrated intelligence capacity-building for a supranational organisation would be a novum.

At the outset, numerous seemingly insurmountable doubts can be listed as to why sovereign European nations will not arrive at creating a European Union Intelligence Agency that engaged fully in the intelligence circle of direction, collection, analysis and dissemination. First, experience shows that joint intelligence actions have been hampered by nations emphasising national sovereignty over intelligence sharing. Second, as some bigger European countries benefit from close intelligence ties with non-EU member states (US-UK connection in particular) they might fear to spoil this privileged access to information by cooperating more intensely among European partners. Third, the conservative nature of intelligence agencies (their notorious bias towards foreign intelligence services with whom they have not cooperated) coupled with the bureaucratic lethargy of the EU decision-making, one might think, would result, at best, in negligible progress towards integrated European intelligence cooperation\textsuperscript{16}. Doubtlessly, these arguments could be expanded upon but my point is a different one. Irrespective of these doubts, European intelligence cooperation is unfolding before our eyes – and to a greater extend than assumed by many.

What the author has in mind is the cooperation of sovereign European nations in the direction, collection, analysis and dissemination of intelligence under the auspices of the European Union. It is here that we can denote a notable trend towards greater integration. In the following, this will be illustrated with regard to the second pillar of European Union, i.e. the member states’ cooperation in security and defence matters. This excludes cooperation within activities subsumed under the third pillar of the European Union, justice and home affairs\textsuperscript{17}.

Following the treaty of Amsterdam and Nice, the EU increased its pace with regard to the creation of an integrated European Defence and Security Policy (EDSP). It should be no surprise then that the creation of a European Military Staff and the movement towards the creation of a rapid response force makes it also necessary to establish an independent intelligence structure next to these developments. This would take on the task of an early warning system and could support eventual military operation (even if limited to the pursuit of humanitarian tasks). In fact a three-fold approach towards the development of a European intelligence structure has been initiated by the Western European Union (WEU) during the 1990’s. Today, the WEU is a partially dormant organisation (with the EU High Representative for the Common Foreign and Security policy presiding over the organisation). Most of the WEU institutions are already under (or in the process of merging under) the institutional umbrella of the EU. Among the incorporated WEU institutions, the following three organisations make up for the bulk of the EU’s intelligence capacities in the security and defence realm: The European Union Satellite Centre (EUSC), the Intelligence Division of the European Union Military Staff (INTDIV) and the European Union Situation Centre (SITCEN).

\textsuperscript{15} John M. Nomikos, A European Intelligence Service for Confronting Terrorism’, \textit{International Journal of Intelligence and Counterintelligence}, Vol. 18, pp. 191-203, 2005
\textsuperscript{16} The arguments are taken from John M. Nomikos, A European Intelligence Service, op. cit., pp. 196-197.
\textsuperscript{17} Hence EUROPOL and the common European arrest warrant will not be subject to further review in this article.
As per EUSC, one could indeed point to it “as the first truly European intelligence capacity”\(^\text{18}\) with 68 employees and five different departments which is mainly tasked with imagery surveillance over ESDP relevant crisis and to work as an early warning unit. The EUSC is located in Torrejon, Spain and is obliged to purchase imagery material as it does not yet possess of its own satellite equipment. The EUSC responds to the EU High Representative for the Common Foreign and Security Policy who receives requests for imagery intelligence from European Union institutions and member states alike. Unlike its WEU predecessor, the EUSC has introduced a priority lists whereby the request from EU institutions take precedence over demands by member states or other international organisations (NATO, UN).\(^\text{19}\) It also adheres to its own form of secret classification.

With regard to INTDIV it must be said that this is the EU’s principal tool to exchange and analyse military intelligence that is of relevance for the ESDP. About 30 military intelligence staffers from all member states of the EU work at INTDIV in an attempt to create a coherent picture about the military capacities and threats stemming from actors involved in conflicts where the EU is already or plans to be present.

Lastly, the SITCEN has been promoted under High Representative Solana as the principal centre for the EU intelligence architecture. Here all information and intelligence from all accessible sources come together and will be integrated into an all-source intelligence report that goes to primary ESDP decision-makers. The core of this unit is its analysis department which employs seconded national intelligence agents from the UK, France, Germany, Spain, Italy, Sweden and the Netherlands whose are appointed by the EU High Representative. As Anna Daun has demonstrated\(^\text{20}\), with the SITCEN at the center stage of EU intelligence one can begin to discern a fully institutionalised process within the framework of the European Council which reflects all steps in the previously quoted intelligence cycle albeit with a limited remit. According to Anne Daun, the EU therefore possesses a ‘genuine’ foreign intelligence capacity. The following table makes her argument more explicit.

**Table 2: A complete intelligence cycle within the institutional framework of the EU:**

<table>
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<tr>
<th>Direction:</th>
<th>The High Representative and the Political and Security Committee formulate a framework of important goals and targets among which SITCEN chooses priority objectives which will be summarised in the so-called “Watchlist”.</th>
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<tr>
<td>Collection:</td>
<td>For all objectives in the Watchlist, the SITCEN gathers information and intelligence from all sources available to it. This includes open source intelligence as well as intelligence provided by member states (often with high source protection). However, this includes increasingly also information provided by the EU’s own institutions. For instance the EU Commission has 142 delegations in foreign countries which can be contacted, personal involved in current ESDP civil and military operations, EUSC and the EU Monitoring Missions. In the former Republic of</td>
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Yugoslavia alone the EU deployed around 400 Monitors who operate openly (wearing a white coat) but which often report codified information to the SITCEN. This represents an expanded form of EU human intelligence.

**Analysis:**
The SITCEN then work with the collected intelligence and produce so-called all-source intelligence reports.

**Dissemination:**
These reports are classified and disseminated among key decision-makers in the pursuit of ESDP (i.e. High Representative for Common Foreign and Security Policy, the Political and Security Committee, the early warning unit, the EU Military Committee (EUMC) and the EU Military Staff (EUMS), member state governments, the general direction for international relations at the European Commission.

**Source:** Anna Daun, op. cit., pp. 141-143.

With regard to the EU intelligence cycle, it needs to be said that it focuses mainly on imagery intelligence and that the EU Monitors can only be partly seen as true vehicles for the collection of human intelligence. What is more, the EU does not have the authority or the necessary consensus to engage in wire-tapping activities let alone covert operations. This said it is important to reflect on the European Council and the European Commission as the two EU forums which seem to be the top directing institutions in this activity. The European Council is the principal decision-making body of the Community and is composed of the ministers of the 25 EU member states. The European Commission is responsible for formulating the specific policies of the EU and its recommendations must ultimately be decided by the Council. Members of the Commission are nominated by the individual governments, but the European Council has to approve the commission members. The constitutional set-up and the catalogue of competences for both the European Council and the European Commission demonstrates the lasting influence (if not to say ownership) of national governments over these institutions. This will be borne in mind when we turn to the motifs for intelligence cooperation under the auspices of the EU.

Another measure to grasp the scope of intelligence cooperation by EU member states but not necessarily under the framework of the EU is by approaching it from the angle of different intelligence functions and/or different intelligence sources that apply to national intelligence. This would mean to distinguish on the European level between existing forms of intelligence cooperation geared to provide European decision-makers with military intelligence, security intelligence, criminal intelligence, external or foreign intelligence by using one or more of such sources as human intelligence, imagery intelligence, signals intelligence and open-source intelligence. In so doing, one can start mapping joint intelligence cooperation under the institutional umbrellas of international organisations such NATO, Western European Union.

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21 This list is adapted from Björn Müller-Wille who also provides brief explanation for each of the terms used “criminal intelligence (fight against serious and organized crime, aims at producing evidence that can result in conviction in a court of law);-security intelligence (surveys threats against governmental functions, it is engaged amongst other things into surveying counter-espionage, left-right wing extremism and terrorism); military intelligence (collects information on actual and potential activities of foreign military forces within and outside its territory); external intelligence (focuses on the developments in foreign countries, it supports decision-making on foreign policy in general and produces situation assessment, often the result of cross-agency cooperation, less detailed and easier to share, supports political rather than operational decision making)”, Björn Müller-Wille, For our eyes only, op. cit., p. 6.
(WEU) as well as more informal multi/bi-lateral information sharing agreements in (long standing or newly established) informal groups such as the ‘UKUSA Agreement signatories, the Club of Berne, the Kilowatt Group, the Trevi Group, and the Middle European Conference’.

Irrespective of how we approach intelligence cooperation, a trend towards greater activity in this regard, it is hoped, has been sufficiently documented. Yet, as previously discussed, good governance of intelligence requires next to the efficient provision of intelligence also democratic control, transparent rules and accountability provisions. Given the portfolio of intelligence enhancement initiatives beyond the national intelligence level, can one also project the previously introduced five pillars of intelligence control onto the European level? In other words, which are the institutions that govern the democratic control of intelligence cooperation and what exactly is their brief?

As it is often the case with sensitive information material obtained by foreign partners, national parliaments more often than not find themselves outside of the loop. If asked, governments tend to cite bilateral obligations and issues of mutual trust in their justification for withholding potential information. The widely used argument in defence of insufficiently overseen practices states that it is in the parliaments’ and national interest not to be too closely informed. This is because crucial information from foreign intelligence partners to national security services might be withheld with increasing parliamentary oversight due to the fear that the source might be leaked to the public.

But how could such a European intelligence control system look like? It would be interesting to depict for each pillar of the ‘intelligence control’ concept the appropriate body or group of bodies. As per the internal control, one might study whether the different bodies of intelligence cooperation possess codified ‘codes of conduct’. Also do the respective national parliaments or the European parliament possess the sufficient competences let alone information to effectively perform oversight functions on matters arising from intelligence cooperation? Not less important would be to assess the role of the European Court of Justice and (if the European Union accedes to the ECHR) the European Court of Human Rights in reviewing the legality of actions undertaken by the bodies of intelligence cooperation. Likewise one should shed critical light on the way a minister or head of state directs the activities of intelligence cooperation activities. With regard to counter-terrorism related intelligence cooperation, one might be interested in the work and responsibilities of Mr. Gijs de Vries, who has been appointed by the European Council to become the first European Counter-Terrorism Coordinator. This job was created as a means of the European Council to endorse “the efforts of Secretary-General/High Representative Solana to integrate, within the Council Secretariat, an intelligence capacity on all aspects of the terrorist threat”.

Last but not least one should take also into account the often-neglected watchdog

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powers of civil society institutions - in what way have they initiated or contributed to an informed European-wide debate on the subject matter?

**Approaching the puzzle**

Irrespective of the fact that European governments attach different importance to the enhancement of intelligence capacities at the European level, the historical importance of the general willingness of sovereign nation states to cooperate deeply in defence and security matters, is often held against stark defenders of the realist school of thought in international politics. Surely cunning realists will fathom a suitable response yet the question ought to be asked: Why do executives voluntarily commit themselves to something that is in stark contrast to their proclaimed interest ever since 1648, i.e. the primary goal to exert maximal control over their sovereign right to exercise coercion? David Held delivers a very straight-forward account for this notable shift in governmental decision-making.

“For the first time in history, the one thing that did most to give modern nation-states a focus and a purpose, that is, national security, and that has been at the very heart of modern statehood as understood from Hobbes onwards, can now be realised effectively only if nation-states come together and pool resources, technology, intelligence, power and authority.”25

According to Held’s modern interpretation of Weberian thought, security and intelligence cooperation can be depicted as *conditio sine qua non* for contemporary governments aspiring to maintain the undisputed legitimate authority to hold power. This reasoning might be influenced by Fritz Scharpf who has widely written on questions of democratic legitimacy. “When we speak of democratic legitimacy, we refer to arguments that justify the exercise of governing authority that is the authority to adopt collectively binding decisions and to implement these decisions with resources taken from the members of the collectivity and by resort to the state’s monopoly on legitimate coercion. [...] As interdependence increases, the nation-state finds its range of policy options exogenously constrained, and some previously legitimated policies become less effective, more costly, or downright unfeasible – which must be counted as a loss of democratic self-determination even if new options are added to the policy repertoire. It is true, however, that constraints do not rule out choice, and it may be possible to achieve former (or newly agreed upon) policy objectives by means of new policy instruments [and] in that event output legitimacy may be maintained”.26

The reader might also think that some states cooperate more than others and that one can hardly speak of ‘voluntariness’ but of necessity in the sense that, at least in the realm of security and defence, states have not proactively engaged in this resource pooling behaviour but have simply chosen the lesser evil alternative to the gradual erosion of state power in the face of ‘new threats’. In support this view, one might add that it were countries like Austria, Belgium and Greece which lobbied for an European Intelligence Agency in Brussels, surely not the United Kingdom, France and Germany.27 Seen this way, traditional realist power politics, seemed not to have left the European stage: governments are here to stay and they might have changed their

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tactics but they operate according to the same rent-seeking, profit-maximising rationale that has always characterised their conduct.

As such, the previous explanations seem insufficient inasmuch as they are not yet embedded in an interesting research agenda. The next section aims to overcome this shortcoming and draws upon (the lack) of democratic intelligence control at the European level as a potential explanation for governmental behaviour. In so doing it draws on additional, less obvious, frameworks that could explain governments’ attitudes with respect to the increasing trend towards integrated European intelligence cooperation. It also introduces a methodology to examine the salience of these additional explanations.

**Hidden agendas for European intelligence cooperation?**

Even in the face of growing intelligence cooperation under the auspices of the EU, a system of international intelligence control is at best, in very poor shape, and at worst never to be realised. Studying the resoluteness of European executives to improve the blatantly inferior means of international intelligence control could indeed become very insightful for the following reasons: Working with the assumption that national governments have rushed to establish greater intelligence cooperation in the aftermath of 9/11, would it not also be in the interest of accountability promoting executives to establish alongside such intelligence cooperation means and institutions of international control? Notwithstanding the fact that some national systems of intelligence control in Europe might be far from the democratic standards found in other European countries, one might ask whether national executives pursue a ‘hidden’ agenda in promoting intelligence cooperation. This agenda could be read, to use Beate Kohler-Koch’s parlance, as an ‘exit-option’ to overcome the inherent constraints of national systems of intelligence control by delegating the authority to make concerted intelligence decisions to a wider range of international arenas, which lack (and due to executives decision making at high-level negotiations will continue to lack) the constraints that governments face at the national level.

Different systems can produce different types of constraints but generally some governments might perceive reporting requirements, the need for complete and transparent budgeting, disclosure of classified information to parliamentarians etc., as counterproductive to effective intelligence operations. When facing the difficult task to weigh national security against democracy and the rule of law, some governments might give undue preference to the former. Given the complexity of intelligence cooperation and the lack of common knowledge about the scope of this cooperation let alone control facilities on the international stage, national executives might use these factors to their advantage.

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28 In this regard Andrzej Zyburtowicz’s observation on the Polish intelligence services is insightful: “One could hardly say that the move from a closed and repressive apparatus toward a democratically accountable government service is completed. It is increasingly often asserted that Poland does not have an intelligence policy that is truly in the interest of society”. Andrzej Zyburtowicz, “An unresolved game: The role of the Intelligence Services in the nascent Polish democracy”, in: Who’s watching the spies, op. cit., p 155.

29 Beate Kohler-Koch, (2005), European Governance and systems integration, European Governance Papers (EurGov) No. C-05.01.

A working hypothesis

The above can be rephrased into a working hypothesis about a causal relationship between the proper functioning of national intelligence control systems on the one hand, and executive support for or against specific types of intelligence cooperation agreements on the European level on the other hand.

Governments facing strong domestic constraints on its intelligence services management (independent variable) are more likely to create and to delegate competences to institutions of European intelligence cooperation (dependent variable).\(^{31}\)

When using ‘domestic constraints’, the author mainly points to accountability provisions at the national level. Accountability is “a relationship between two sets of persons (or more often) organisations in which the former agree to keep the latter informed, to offer them explanations for decisions made, and to submit to any predetermined sanctions that they may impose. The latter, meanwhile, are subject to the command of the former, must provide required information, explain obedience or disobedience to the commands thereof, and accept the consequences for things done or left undone.”\(^{32}\) It is extraordinarily difficult to measure accountability, Philippe Schmitter referred to it as ‘measuring that which eludes measurement’. Although he has not given up fine-tuning his indicators for the measurement of possible indicators he acknowledges: “One should expect that the relation of many of these variables to accountability will be anything but linear or incremental. Officials may be so accessible that they do not make a decision in time to solve the problem. Representatives may mobilise their followers and, thereby, raise expectations to unrealistic heights. Thus when trying to fit the nominal scores generated above into a single scheme of evaluation, one should attend to the likelihood that there will be curvilinear or perhaps parabolic relationships with the quality of democracy”\(^{33}\)

Irrespective of this warning, one can imagine to approach the question of how to gather sufficient and meaningful data by inventing a score-card which depicts the sum of all democratic restraints to various national governments with regard to their management of the intelligence services. Let us assume, the study would focus on six different European Union member states, this alone would leave the author with the study of half a dozen different systems of national intelligence control. Here is how points could be distributed on such a score-card: Whereas the government might appoint the Director-General of the national intelligence services in country x, the national intelligence law of country y might stipulate that the parliamentary oversight commission might have the last word in the appointment of senior intelligence officials. Likewise whereas the Hungarian Act of National Security Services mentions para Section 11 that “the minister shall determine in writing the topical tasks of the services”, a Slovakian law might leave this entirely up to the discretion of the Minister – needless to say it is of course much more difficult to deny responsibility for written orders than oral ones. This search for score-point indicators could go on for many pages to come, therefore please consider only one last example that could be spun around what Jean-Paul Brodeur, Peter Gill and Denis Töllborg have called the ‘need-to-know

\(^{31}\) This presupposes, of course, that the European level hosts comparatively less rigid democratic controls than a national system.


\(^{33}\) Ibid.
principle’.

Similar to the strategy adopted by terrorist networks, intelligence services, too, try to minimise the risk of undue infiltration by providing individual intelligence staffers only with sufficient ‘operational’ knowledge, i.e. the bare minimum of information necessary to perform a specific tasks. The issue is also taken up by Born and Leigh who caution against the application of ‘plausible deniability’ “in situations where a government is held ransom after a national citizen has been kidnapped. In these situations, governments tend to discard the option to enter in direct negotiations with terrorists […] yet they also do not want to be seen as being indifferent to the fate of the kidnapped person. Often some sort of instruction is given to the members of the secret service who, on behalf of the government, get in contact with the hostage-takers. In these situations […] state officials [ought] to be held accountable for their action” – again, it would be very telling to see to what extent this is foreseen in national control systems.

Admittedly, the approach sketched above needs more structure and appears too arbitrarily drawn in order to be translated into a feasible research project. Yet recent studies on national systems of intelligence control have made an important first step that could be used (and perhaps refined) in an attempt to find out more about international intelligence control. The author might also limit the data sets to selected countries that allow sufficient variation between presidential and parliamentary forms of government, established democracies and post-communist democracies, adversarial versus common law legal systems. What would be novel about the suggested approach is not only the valuable score point comparison (valuable in as much as it might help to harmonise the standards of intelligence control in Europe) but also to bring this in relation with a governments’ position on different types of international intelligence cooperation. In addition it might permit the author to single out particular powerful restraints on the governments’ management of intelligence that might have stirred ‘internationalisation of intelligence cooperation’ more than others have. Even intra-sectoral restraints (i.e. different ways by which a parliament may hold the executive accountable) might be tested against each other.

The ‘new raison d’état paradigm and the ‘collusive delegation’ thesis

At the beginning the paper hinted to the timeliness of a study on intelligence cooperation – in the remaining section it will be argued that the proposed methodology could also be used to test the salience of a relatively new school of thought in International Relations.

Undeniably, the manifest or assumed negative side-effects attributable to inter-democratic institutions draw not only the attention of the present author. A wide range of scholarly writing is devoted to the numerous facets of the ‘democratic deficit’ in Europe. As the reforms of the European Union were slowest in security affairs, it is only understandable that theories of European integration have only recently been applied to this field. Few academic inquiries have been undertaken that looked more closely on the power status of executives vis-à-vis the rest of the society before and after international institutional reform in the security arena. A reason for this ‘black hole’ is most probably vested in the fact that “international cooperation is usually seen as the way governments attempt to solve problems on behalf of their societies when

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36 Notice how the careful phrasing of these sentences. Comparisons between different score points for different pillars of intelligence control in the selected case studies might also have little analytical value. A social democratic government in Germany might react to democratic constraints completely different than a conservative government in Austria, etc.
unilateral action is insufficient”37. Few persons have started to think from a different premise that could be summarised in the following manner: “governments, far from being faithful agents to societal groups, pursue their own goals and are prepared to collude with other governments against their own societies if this helps them to attain those goals”.38

It is of course one thing to stipulate that “governments are interested in increasing their autonomy vis-à-vis other actors in the domestic political arena and self-binding intergovernmental co-operation, which conventional wisdom mainly associates with a loss of state autonomy, may contribute to an overall gain of the autonomy of national governments”39 and quite another to provide empirically oriented political research capable to ‘inspire hypothesis that can be weighed against the evidence’ – this is what Mathias Koenig-Archibugi set out to do in order to “overcome the basic problem of any conspiracy theory”– and for good or bad this paper is no different here –“ [namely that] the proof of its truth consists precisely in the fact that (if uncovered conspiracy is successful) no evidence can be found”.40 As a possible means to study the salience of the ‘collusive delegation’ thesis, the author offers a specific form of regression analysis to grasp its explanatory power vis-à-vis the CFSP. Without going into detail the rough methodology suggested in this paper could also work with similar methods once the score measuring the “firmness of national intelligence cooperation” have been sufficiently collected. It might prove to be of added value to the growing literature on the new raison d’état in two ways: First it expands the focus to a sub-field of security politics and might thus increase its robustness. Second, the proposed structured approach (the five pillars of intelligence control) might also lead to interesting findings on what type of democratic restraints have proven to be particularly ‘tough’ on governments, and should therefore be supported in all those countries which lack them.

**Conclusion**

Arguably the chapter has fulfilled only some of its premises. It focused on intelligence cooperation and demonstrated that even when seen from different conceptual angles, ‘intelligence cooperation’ among sovereign European nation state is no longer a rare fact of European politics. Quite the contrary, the new millennium has witnessed a new impetus towards joint counter-terrorism and general security initiatives that involved national intelligence services. Next to multilateral or bilateral intelligence sharing agreements, intelligence cooperation has also taken a more integrated form. Reference has been made to intelligence activities within the second pillar (security and defence affairs) of the European Union. Drawing on Anna Daun’s findings, it has been illustrated how despite numerous institutional and political obstacles, the EU intelligence triangle based on EUSC, INTDIV and SITCEN can now be seen as performing a genuine intelligence cycle.

The text has also introduced the concept of democratic intelligence governance in order to demonstrate how progress is lacking with respect to creating better instances of international intelligence control that would only distantly resemble the described accountability and transparency standards. Given this mismatch between international intelligence cooperation and

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39 Ibid., p. 336.
40 Mathias Koenig-Archibugi, op. cit., p. 159.
international intelligence control it seemed necessary to inquire about the motifs for action among national executives. Especially the privileged position of national executives to direct and prioritise intelligence services at home and to decide about intelligence cooperation within the framework of the European Union has caused the author to look more critically at the underlying reasons for intelligence cooperation. While the concept of state sovereignty might itself be said to be in transition, the author focused more on the thesis that “governments are interested in increasing their autonomy vis-à-vis other actors in the domestic political arena and self-binding intergovernmental co-operation, which conventional wisdom mainly associates with a loss of state autonomy, may contribute to an overall gain of the autonomy of national governments” (Wolf). Given the governmental behaviour in our field of interest, this thesis might indeed constitute a workable research agenda for the future. Admittedly here is where the text needs further conceptual strength. The introduced possible research methodology (score-card) lacks coherence and precision. In this regard the author turns anxiously to further research and critical comments from interested readers.
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