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## Introduction

The term intelligence refers to the process of collecting, analysing, evaluating, and presenting information to decision-makers to prevent tactical or strategic disruptions (Şeniz, 2015). Specifically, military intelligence is a component of intelligence with its own rules, procedures and intelligence tools. It refers to military threats, armed violence and military operations involving States and non-state actors in traditional armed conflicts as well as in asymmetric warfare. Intelligence has long been part of tactical and operational command and control in order to reduce the uncertainties of the battlefield, which Carl von Clausewitz referred to as the “fog of war”, and to assist military decision-makers in making effective decisions. Intelligence was initially conceived to provide information and analysis to assist the commander in making more effective decisions during conflicts (Rolington, 2013). Nowadays, military intelligence aims to study potential or actual adversaries and identify the risks or dangers in operational areas. Primarily, it aims to support the chain of command at strategic, operational and tactical levels, involving both political institutions and military staff. Military intelligence in the EU is linked to the Common Defence and Security Policy (CSDP) and reflects the ideological construction of the EU's identity and international action (Gruszczak, 2023).

Intelligence has always been crucial in government strategy, particularly during the Cold War. However, a paradigm shift occurred with the terrorist attacks of 11 September 2001, the attacks in Madrid in 2004 and London in 2005 (Cross, 2023). These attacks created a more unstable security environment in which the role of intelligence became crucial, requiring closer collaboration between states and increasing the need for cooperation between their intelligence and security services (Şeniz, 2015). It is more important than ever to gain a deeper understanding of both the nature of the intelligence process and its significance for national and international security (Scott & Jackson, 2004). The interdependence between national security policies and international security cooperation is becoming increasingly apparent, particularly in the context of early warning, situational awareness, threat assessment and risk analysis. For these methods to be effective, it is essential that they are based on reliable, accurate and precise data and information. So, given the quantity and diversity of information available, it is necessary to adapt and process information in line with political requirements and decision-making procedures. Intelligence now forms a central part of today's security policies, with the potential to significantly impact a government's ability to resist threats and dangers (Gruszczak, 2016).

These events created alliances between states in the field of intelligence either bilateral like the UK-US alliance or multilateral, including NATO Member States like the UK-USA agreement for cooperation in signals intelligence. The European Union also encouraged agreements among its Member States and developed its own intelligence bodies such as Europol, the EU Intelligence and Situation Centre (EU INTCEN), and the European Union Satellite Centre (EU SATCEN) (Şeniz, 2015). This paper explores the role of the European Union Military Staff (EUMS) within the EU's military intelligence structure and its legal implications.

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## The Development of Military Intelligence in the European Union

The Western European Union (henceforth WEU), an international organisation and military alliance, was established as the successor to the 1948 Western Union by the 1954 Modified Treaty of Brussels (MTB). The WEU was founded by six Member States of the European Economic Community (EEC): France, the Federal Republic of Germany, Italy, Belgium, the Netherlands, Luxembourg and the United Kingdom, which joined the EEC in 1973. These countries were also all members of the Western bloc during the Cold War and members of NATO. The WEU Council was the executive body of the collaboration between the Parties created by Article 8 of the Treaty. The WEU Assembly was created by Article 9 of the Treaty, composed of members of the national parliaments of the Parties, as well as members of the Consultative Assembly of the Council of Europe, and had no decision-making powers. It was the place where most of the important declarations and decisions on European security and defence issues were taken. The WEU can be considered the foundation that enabled the development of an effective European defence and laid the foundations for European military intelligence. The MTB included a mutual defence commitment in Article V, similar to the one adopted by the Allies in NATO's Washington Treaty.

The WEU went through a period of dormancy in the late 1950s. With its initial transitional tasks completed, the WEU struggled to find a distinct role between NATO and the European Communities (EC) limited to civilian ambitions (Bailes & Messervy-Whiting, 2011). Indeed, some Member States of the European Communities (EC) opposed to extend the European Communities' European Political Cooperation (EPC) to security and defence issues (Extraordinary Council of ministers, 1984). The EPC was first proposed in the Davignon report published in October 1970 which was thereafter officially codified in the Single European Act of 1986 and did not include elements on the EC defence integration (Office for Official Publications of the European Communities, 1970).

The WEU became active again in the mid-1980s, at a time when Euro-Atlantic relations were evolving. The United States were concerned about threats from outside Europe, such as terrorist attacks and Washington, in particular the US Congress, wanted to share the burden more effectively by strengthening the "European pillar" in NATO (Bailes & Messervy-Whiting, 2011). It was against this backdrop that in 1984, the Rome Declaration was adopted and sketched the lines for WEU's political reanimation and its institutional reform. Proclaiming the values of peace, deterrence, and stability through dialogue and cooperation, the Member States agreed to improve cooperation on security issues and to promote consensus (Bailes & Messervy-Whiting, 2011). The WEU Member States adopted the "Platform on European Security Interests", at the WEU Ministerial Council at The Hague in October 1987, stating their purpose to integrate security and defence into the future European Union (WEU, 1987).

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Then, the Declaration adopted at the Petersburg Summit in June 1992 by the WEU Council of Ministers, called on WEU Member States to contribute to common military actions through the “Petersberg Task” including humanitarian, peacekeeping and peacemaking tasks (WEU, 1992, II.4). It established a Planning Cell to support the WEU’s missions and operations (WEU, 1992, II.1). The WEU Assembly emphasised the importance of collaborating with the national agencies of the Member States and NATO by implementing specific agreements aimed at strengthening the WEU’s operational and planning capabilities (Schlaman, 1994, II.6 & 7).

In 1994, the Permanent Council established a fact-finding mission to investigate the potential for a WEU intelligence structure. The report put forward the proposal of establishing two distinct organs, one within the Planning Cell and the other within the Secretariat. The first would be responsible for classified intelligence received from states, the other for open-source material. This separation was due to the desire to reserve only classified sources for the Member States of the WEU as a military structure and open sources for distribution to the 28 Member States of the European Community. This report would have an impact on intelligence within the WEU, but also herald the future division between civil and military intelligence within the future European Union (Becher et.al, 1998).

In an important strategic document named the “European Security: A Common Concept of the 27 WEU Countries” of 1995, the WEU Council of Ministers recognised the need “to develop an intelligence processing capability which are decisive for the conduct of operations in complex, shifting politico-military environments” (Extraordinary Council of ministers, 1995, point 175). The document set up the Intelligence Section and the Situation Centre within the Planning Cell in charge to plan and conduct the Petersburg operations (Extraordinary Council of ministers, 1995, point 168). The Situation Centre was responsible for producing intelligence summaries in the WEU, collecting data only from open sources (Open Source Intelligence) at the time, whereas the Intelligence Section relied on classified information from Member States (Gruszczak, 2023). The actual contribution of these intelligence units to the WEU’s operational capabilities has been rather limited and has not dispelled doubts about specific requirements of the fledgling European defence cooperation (Gruszczak, 2023). In its conclusion on the further steps that could be taken in the operational and in the institutional field, the Extraordinary Council of Ministers stated that the WEU should continue to develop capabilities in the field of military intelligence in the objective of the eventual framing of a common defence policy (Extraordinary Council of ministers, 1995, points 93 & 97).

The Franco-British Declaration on European Defence stated that “the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises”, as part of a common defence policy was one of the factors accelerating EU military and defence cooperation (Joint Declaration on European Defence, 1998, point 2). The declaration also announced the future Treaty of Amsterdam, which would be the responsibility of the European Council to decide on the progressive framing of a common defence policy within the CFSP (Joint Declaration on European Defence, 1998, point 1).

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In 1999, the Treaty of Amsterdam (1997) entered into force and incorporated the “Petersberg Tasks” into the EU framework (Treaty of Amsterdam, 1999, Article 17(2)). The Treaty of Amsterdam states that the EU’s “Common Foreign and Security Policy (CFSP) shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy” and fosters “closer institutional relations between the WEU and the EU with a view to the possibility of integrating the WEU into the Union” (Treaty of Amsterdam, 1997, Article 17). According to Article 18(3), the Treaty established the position of High Representative for Common Foreign and Security Policy so that the EU could speak with “one face and one voice” on foreign policy matters (EEAS, 2022; Treaty of Amsterdam, 1997, Article 18(3)). The Treaty of Amsterdam condemned WEU “to death”, because the emerging concept of the ESDP destroyed its *raison d’être* as a political and operational entity. The transfer of the roles of the WEU Council, its committees, the Military Committee and the Planning Cell would be handled by the corresponding EU bodies. This transition of institutions took place smoothly, step by step, to ensure that the transition was managed in accordance with the EU’s wishes and that a minimum of institutional coverage was maintained for the residual element of WEU (Bailes & Messervy-Whiting, 2011).

After the Amsterdam Treaty came into force, the Cologne European Council of 3 and 4 June 1999, declared that decision-making and action capacity for the “Petersburg Tasks” would be transferred from the WEU to the EU in order to strengthen the common European security and defence policy, (Cologne European Council, 1999, §5). The European Council declared that the Union must have the capacity for autonomous action backed up by credible military forces, the means to decide to use them and the readiness to do so in order to respond to international crises, without prejudice to actions undertaken by NATO (Cologne European Council, 1999, §2). At the Helsinki European Council in December 1999, based on the guidelines established at the Cologne European Council, it was agreed to develop new political and military bodies and structures at EU level within the European Council structures (Helsinki European Council, 1999; Gruszczak, 2023). The Helsinki Headline Goal was a military capability target set for 2003 during this European Council with the aim of developing European Rapid Reaction Force. Thus, the Member States had to be able by 2003 “to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000-60,000 persons capable of the full range of Petersberg tasks” as set out in the Article 17(2) of the Amsterdam Treaty (Helsinki European Council, 1999, point 28).

The WEU Council of Ministers, meeting in Marseille on 13 November 2000, agreed to begin transferring WEU competences to the EU until the WEU’s activities ceased completely and laid down the “residual” character of WEU (WEU, 2000, §4).

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The Treaty of Nice (2001) confirmed the reconstitution of the Satellite Centre and Institute of Security Studies as EU agencies as provided for in Articles 6 and 7 of the Marseille Declaration. The Treaty of Nice established permanent political and military structures and integrated the crisis management functions of the WEU into the European Union. Furthermore, it amended Article 17 of the Treaty of the European Union by removing the provisions defining the relations between the Union and the WEU (Treaty of Nice, 2001, Article 2). Furthermore, the Treaty established the Political and Security Committee (PSC) “to monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative” (Treaty of Nice, 2001, Article 5). Finally, the WEU Council, its committees, the Military Committee and the Planning Cell were replaced by the European Union Military Committee (EUMC) and the EUMS, based on the strengthening of the CFSP and in particular the common European policy on security and defence provided for in Article 17 of the Treaty of Nice (Bailes & Messervy-Whiting, 2011; Council of the European Union 2001/79/CFSP, 2001; Council of the European Union 2001/80/CFS, 2001). By this point, with the exception of the residual Secretariat, only the WEU Assembly was remaining from the entire former WEU structure (Bailes & Messervy-Whiting, 2011).

In the Statement of the Presidency of the Permanent Council of the WEU on behalf of the High Contracting Parties to the Modified Brussels Treaty (2010), Member states announced that the last organs, staffs and activities of the institution would be terminated by 30 June 2011 (WEU, 2010). In order to facilitate the process, all of the Member States (Belgium, France, Germany, Greece, Italy, Luxembourg, Netherlands, Spain, Portugal and the United Kingdom) had already completed the necessary procedures to withdraw from the Modified Brussels Treaty of 1954 (Bailes & Messervy-Whiting, 2011). Then, the 2007 Treaty of Lisbon, which entered into force in 2009, incorporated the WEU defence obligations into the EU policy framework committing EU Member States to a common defence.

In addition, the Treaty of Lisbon (2007) states that the European Council appoints the High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) that also chairs the Foreign Affairs Council and is one of the Vice-Presidents of the European Commission responsible to put into effect the CFSP (Consolidated version of the Treaty on European Union, 2007, Art.27). Article 27 of the Treaty of Lisbon also introduces the European External Action Service (EEAS), under the direction of the HR/VP, which is the EU institutional body that constitutes the diplomatic service of the European Union (Gruszczak, 2023).

EU military intelligence is closely linked to the development of the EU’s common foreign and defence policy. Driven by treaties and declarations, the EU gradually built a military intelligence structure to support its CSDP objectives.

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The European Union Military Staff (EUMS), established by the European Council in 2001, is a key body providing military support and monitoring all CSDP operations. Its role is essential to the functioning of the security and defence policy and the structure of the EUMS was mainly inspired by NATO structures (Szép, Sabatino & Wessel, 2022). The EUMS is the military component of the EEAS under the supervision of the HR/VP. The EUMS works under the authority of the European Union Military Committee (EUMC), implementing its decisions and supporting it in situation assessment and the military aspects of strategic planning (Şeniz, 2015). The role of the EUMS is to provide early warning, situation assessment, strategic planning, communication and information systems, concept development, training and education, and support for partnerships (The EUMS, 2022).

The 2009 Lisbon Treaty reform had a significant impact on the structure of European military intelligence. With the new organisation, under the aegis of the EEAS, the EU needed solid support in terms of threat prevention, early warning, situation assessment and operational reconnaissance. In its Internal Security Strategy (ISS) adopted in early 2010, the European Council defined the objectives and threats facing Europe today such as serious and organised crime, terrorism, cybercrime, border security and natural or man-made disasters (Council of the European Union, General Secretariat of the Council, 2010; Rhinard, 2014).

The Intelligence Division of the EUMS (INTDIV) created in 2005 was the focal point for the exchange of military intelligence at EU level (Müller-Wille, 2004; Council of the European Union, 2005). The INTDIV contributed to the EUMS's early warning capabilities, planning, crisis response planning and assessment for operations and exercises (David, 2021; EUMS, 2022). Initially, INTDIV only had access to OSINT, so to remedy this, the national military intelligence agencies had set up a voluntary data flow system. In other words, INTDIV had to send a request to the national agencies to access information through an encrypted channel. However, the choice was up to its agencies to disclose information to INTDIV depending on the nature and urgency of the threat (Gruszczak, 2016). INTDIV became the Intelligence Directorate (EUMS INT) in 2008 (Council of the European Union, 2008). Then, on 1 January 2011, the EUMS was transferred to the new EEAS (Council of the European Union, 2010). INTDIV started to operate on civilian objectives, including risk analysis, conflict probability estimations (CPE) and strategic knowledge management (Gruszczak, 2016).

The EUMS is organised into three branches: intelligence policy, intelligence requirements and intelligence production. First, the Policy Branch develops intelligence concepts and contributes to the planning of EU military activities. Every year, a meeting is held between the heads of military intelligence of each country to exchange views between the military intelligence services and the EUMS (Ehrenhauser, 2011). Secondly, the Requirements Branch assists in collecting information from national military intelligence services. The EUMS INT does not collect its own intelligence. It relies on the contributions of the Member States in the form of classified information. The Production Branch regularly publishes intelligence assessments and briefs on specific topics. Furthermore, it ensures that intelligence production meets the needs of EU institutions and bodies and it works closely with the Analysis Centre (INTCEN) (David, 2021; Gruszczak, 2016, p. 104-106).

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## The EUMS's Cooperation with INTCEN

INTCEN is the exclusive civilian intelligence function of the EU, providing in-depth analysis for EU decision-makers (EEAS, 2015). Its remit includes intelligence analysis, early warning and situational awareness for the HR and the Political and Security Committee (PSC). It is the only point of entry for classified information from the civilian intelligence services of the Member States. INTCEN also supports and assists the President of the European Council and the President of the European Commission in exercising their respective functions in external relations (EEAS, 2015).

Since 2007, ITCEN and EUMS INT have formed the Single Intelligence Analysis Capacity (SIAC). The Implementation Plan on Security and Defence under the EU Global Strategy of 14 November 2016 describes SIAC as follows: "Improving CSDP responsiveness requires enhanced civil/military intelligence to support anticipation and situational awareness, through the Single Intelligence Analysis Capacity as the main European hub for strategic information, early warning and comprehensive analysis" (Implementation Plan on Security and Defence, 2016, §33; Seyfried, 2017). SIAC requests finished intelligence products from member states, which are then combined with information from the EEAS and the European Commission to produce joint reports (Fägersten, 2014, p. 97). Subsequently, the joint reports are transferred to all Member States, the EEAS and the European Council (Political and Security Committee, 2017, p. 14).

Despite the establishment of SIAC, doubts persist about the effectiveness of the INTCEN and EUMS INT pairing. The differences between civilian and military structures and objectives have led to persistent coordination problems. Thus, former intelligence officers have criticised the SIAC for failing to achieve a complete merger, resulting in a duplication of effort to do the same tasks, the overlapping of functions and responsibilities, and an increase of the cost (Szép et al., 2022). However, enhancing the merging of the two agencies would provide added value in terms of the quality of the final product, resolve existing coordination problems and prevent the two agencies from working on the same thing (Szép et al., 2022).

In 2022, the European Council adopted the Strategic Compass, a comprehensive plan to strengthen the EU's security and defence policy by 2030 which focuses on enhancing the EU's intelligence capabilities (Council of the European Union, 2022). The Strategic Compass is not a legally binding document, but a strategic framework that sets forth strategic guidelines for future actions. It provides the strategic political direction for the EU in defence and security matters within the CSDP. For instance, in the context of Russia's invasion of Ukraine and other major geostrategic changes, the Compass aims to strengthen the EU's capacity to anticipate, deter and react to current and emerging threats and challenges, implementing the EU's decision to reinforce its intelligence analysis capabilities (Council of the European Union, 2022).



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For that purpose, the Member States commit to “boost the EU SIAC framework to enhance the EU’s situational awareness and strategic foresight, building on the Early Warning System and horizon scanning mechanism” (Council of the European Union, 2022, p.12). This will bring the Member States closer together on a common strategy and improve the EU’s ability to act decisively in crises and to defend its security and its citizens (Szép et al., 2022; Council of the EU, 2022).

## **The Question of Sovereignty**

Access to sensitive information is one of the key reasons for participating in information sharing and intelligence cooperation. The EU, aspiring to be an actor in global affairs, had to strengthen its intelligence cooperation, especially after the entry into force of the Lisbon Treaty (Implementation Plan on Security and Defence, 2016). Gathering information individually is relatively costly, and Member States may not have the resources to collect intelligence on all subjects, which encourages them to cooperate at EU level. Moreover, the efficacy and legitimacy of the CFSP are contingent upon the acquisition and examination of accurate information by EU Member States (Szép et al., 2022).

The Lisbon Treaty’s Area of freedom, security, and justice and “General provisions on the Union’s external action and specific provisions on the common foreign and security policy” (Title V of the Treaty on the European Union, TEU) do not mention intelligence cooperation, let alone an independent EU intelligence service. However, Article 72 TFEU expressly establishes that Title V “shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security”. Article 73 TFEU adds that Member States are free “to organise among themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the relevant departments of their administrations responsible for safeguarding national security”.

While this does not expressly ban Member States from collaborating in intelligence matters, there is no European legal foundation for transferring authority to the European level (Seyfried, 2019). The security and defence of the EU depends on the willingness of the Member States and the effectiveness of their collaboration. States agree to collaborate when the sharing of intelligence is in line with their own security interests and there are no obstacles to sharing. Thus, it seems that when it comes to sharing intelligence the rules and agreements between EU Member States on intelligence sharing are less important than the security interests of each country.

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Article 4.2 of TEU states that the EU “shall respect essential State functions [of its Member States], including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State”. This means that, when it comes to sharing intelligence, Member States invoke Article 4.2 TEU to avoid sharing certain information that could compromise their national security or give other states an advantage (Gruszczak, 2022). The reluctance to share is also due to concern that shared intelligence may reach hostile states outside the EU (Szép et al., 2022).

As mentioned above, EUMS INT receives information directly from the military intelligence services of the Member States. Sometimes, EUMS INT processes sensitive information provided by the Member States. National intelligence agencies need to secure their communication systems because a leak of information would compromise the national interests of Member States as well as hamper the ability of EU agencies to carry out their missions (Gruszczak, 2023).

## **Conclusion**

The evolution and development of EU military intelligence involving the EUMS’ role reflect the EU’s aspiration to assume a more prominent role in international security. This development has occurred in parallel with the growing integration of European defence under the Lisbon Treaty and the CSDP. The EUMS is a central part of EU military intelligence. Working directly with the Member States and other EU agencies such as INTCEN within SIAC, the EUMS is an integral part of the EU intelligence structure responsible for implementing the CSDP and achieving the objectives set out in the Strategic Compass 2022.

However, military intelligence cooperation in the EU’s CSDP is still politically dependent on Member States’ intelligence contributions. While EU military agencies work to incorporate national intelligence with open-source and EU-owned data, their contributions, while limited, are critical for Member State decision-makers.

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