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COMMON? SECURITY? POLICY?*
MAPPING THE FIELD OF EU INTERNAL SECURITY AGENCIES

Many relevant criticisms have been raised concerning what we call the European Common External and Security Policy. Various articles have addressed how differences among member states make common action impossible, and why the EU cannot act and react in foreign affairs questions. There appears to be little improvement despite the huge number of experts and public servants working on the field.

The same can be said—with different emphasis—of the field of internal security. Interdependency in internal and judicial cooperation, border guard, police and gendarme organizations, in the fight against money laundering and terrorism, and protecting financial interest of the Communities can all result in fruitful cooperation. Still, the complexity of institutional frameworks seemingly does not help to reach the common target of creating a "zone of justice, liberty and security".

This incapacity must obviously have several causes. The book on "The Field of the EU Internal Security Agencies" published in the "Collection Cultures & Conflits" series seeks to present institutional and interpersonal reasons with sociological means. To be more precise, it represents a stage towards mapping the sociologically perceived, complex field of internal security. The ongoing research is part of the *Challenge Program*—which is an EU Sixth Framework Program on the changing faces of liberty and security in the European Union with the participation of some two dozen European universities.

The research draws on an impressive number of interviews and surveys. The present volume contains three papers based essentially on the data thus collected. The first, longest study was written by four experts from Paris. They start by perceiving the internal security agencies, the inter-institutional and interpersonal network as a sociological *field* in the Bourdieusian sense. They analyze the borders, internal actors, and relations of this field. The result is summarized as a folded map attached to the back cover showing the many actors, relations and the high complexity of the European internal security cooperation. (The illustrative graph can be downloaded from the project's homepage: http://www.libertysecurity.org/article1670.html)

The word 'field', appearing in the title of the book and the paper, is the keyword of the study, the basis for analyzing the collected empirical data. The sociological approach is a genuine novelty for those who have become used to the ordinary formal presentation of the EU institutions. Here the reader can get palpable description, the kind of picture that is evident for those who work in the organization but which is rarely available to outsiders: the interests, tensions and struggles of the individual and institutional actors that can have a great impact on their everyday work. Surveys mapping these connections are common in the private sector, companies use the acquired (confidential) information for improving their decision making. The present case is just the opposite: the results can be accessed publicly and everybody can draw conclusions from them, but their application in practice is far from certain due to lack of political will.

The study does not claim to give a complete overview, rather, it can be considered as a panorama from a smaller mountaintop on the way to a higher peak: it is built on the results of previous papers, and reviews what remains to be done. (It is probably due to this interim nature that there is a confusion in the graphs presented in the first study. The second paper contains repetitive sections, and the annex refers to a diagram that is not included in the book.)

The annex to the first study maps the geographical limits of the field under analysis, with a great emphasis on the transatlantic influence and the lack of stable principles in the cooperation (which is merely a result of the differences between the member states' relation to the US). No doubt the paper is a French work, criticizing these (American, transat-

lantic) influences on the internal organization of the EU. In the conclusion, the authors insist on relations being unilateral and question the legal basis for the data flow: as if the basic rights that prevail in other situations were somehow neglected in this case. (Readers may remember the polemic on the EU-US passenger data transfer.) The research clearly confirms the unilateralist nature of the relations: it is reflected in the institutional framework and the appointment policy. Even transatlantists tend to mention a lack of reciprocity in the structure of the organizations specialized in cooperation. According to the authors, this transatlantic influence could not be so serious without the internal division and the rivalry among institutions.

The US insisting on a 'war on terror' and the Europeans mentioning a 'fight against terrorism' show the different principles applied: a military centered aspect in the former case, and a more 'politicized' approach in the latter. Still, the dissent often heard from politicians (like Chirac, Schröder or Zapatero) does not block the seamless cooperation at bureaucratic level, especially if it comes to security. The authors perceive a general trend of security experts 'colonizing' foreign affairs, while this impact is less significant the other way around (external relations logic in security policy).

As for the sociological means, the struggle of institutions for power can be described as a 'social game' in the Bourdieusian field for human and material resources—like pushing one's own classifications on actual security threats through. In this social game, databases are considered as informational capital—which is a disquieting statement, given the spread of illiberal security solutions. Intelligence is becoming more and more important, its logic prevailing in more and more areas, showing a dangerous trend mainly in criminal law.

Drawing this inference, the study clearly states that institutional logic often dominates over professional principles, and the founding circumstances of an institution can be more important than formal relations *per se*. The logics of the pillars and a certain consensus can be more decisive than the targets officially set for an agency. Experts tend to agree on the importance of individual observation of subjects, of technical solutions and of main security challenges, but usually disagree on how to classify threats and what are the desired solutions. One might ask how institutions could agree on a common view, given the individual experts' highly dissenting opinions.

Reviewing inter-institutional and interpersonal relations, the paper studies both everyday connections and formalized cooperation. Several ex-amples support the observation that smooth cooperation cannot be taken for granted even if personal relations are strong. Seeking for a tangible explanation, the authors apply the notions of 'trust' and 'distrust' (as used by Luhmann or Fukuyama for instance). The presence or absence of trust can compensate for the lack of formal relations or can ruin efforts to build formal relations. (This can be seen in the trivial example where Europol and Eurojust could not agree in which office a common meeting should be held.)

Formal relations can on the other hand help informal relations to evolve. As building formal relations in the case of Europol would require the amendment of the founding convention, being a complicated and uncertain process, informal relations become substantial. Apart from inter-institutional relations, personal contacts can also play an important role. Personal impacts are indispensable to understand the cooperation between the Commission, the Parliament and OLAF to establish the post of the European public prosecutor: the actors involved were Germans, and their political relations in Germany became decisive.

We can conclude that informal-interpersonal and formal-legal relations are in constant interaction, the latter having short term effects, the former prevailing in the long run.

Technological development also has a great influence on the analyzed field. The growing preponderance of IT solutions can, from a sociological perspective, diminish the role of institutional and personal relations. The automated access to data—using technological interface in place of a human interface—reduces the role of trust among actors.

The annexes try to 'scan' the activities linked to security experts' field of work, interactions with foreign affairs, with the UN and the US (or, in the latter case, the lack of bilateral interactions), cooperation in criminal law, risk analysis and anti-terrorist diplomacy. (It is also due to counter-terrorist legislation, American influence, and the measures taken against money laundering, that financial institutions, regarding the data provided to intelligence, almost became part of the public sphere, and of the administration.)

The study gives a cross section on what courses, conflicts and relations are the determining factors in the future of European integration. After reviewing the jungle of conflicting interests, a pro-European reader can only conclude that even cumbersome cooperations are better than nothing, ie. the lack of agencies and the ad hoc cooperation of member states' national institutions.

As the authors state, the paper is far from gaining its final form, and at this phase of the ongoing research, it remains to be decided whether the separate 'field of European security agencies' (as advanced in the title) does exist or is just a compilation of national 'fields', without substantive value-added. The area has belonged to the Community pillar since the Amsterdam Treaty but unanimity is required to make decisions, which shows clearly the duality and paradox of the field. Despite the communitarian framework, decision making is rather a diplomatic conciliation of national decisions, implying uncertainty and lack of transparency accordingly.

The study written by an other expert from Paris, *Antoine Mégie*, explores the field of European judicial cooperation with the above mentioned methodology, presenting the institutional and individual actors, without treating institutions as black boxes. Informality plays an important role in this field, too. The author's starting point is that it is everyday practice that forms European integration. That's why one should look at the effect of the social and institutional environment on the individual and also at how personal strategies and institutional role affect the actor in judicial cooperation. The author considers that the conflicts among competent national institutions prevail at European level, and the use of the 'diplomatic toolkit' characterizes the field due to the requirement of unanimity. One can easily go as far as to conclude that a separate European field is still inexistent, but it is important not to underestimate the role of this cooperation, as it has significant impact eg. in criminal law.

The main conflict in the field is that between the national and community interests (between the Council and the Commission), though we can find examples of cooperation as well: ministry staff often refers to papers from the Commission and from a personal perspective the Commission is considered as a possible way to specialization.

According to the study, judges can have two kinds of attitude towards integration. Most consider the Union as a foreign institution far away that simply does not seem relevant to their everyday work. A few, however participate actively in the cooperation, though collective action (through judicial organizations) is more likely than individual. Linguistic and legal knowledge as well as personal experience can all have important impact on judges' attitude; personal relations are far more important in this area than formal connections.

One of the negative effects of informality is the marginalization of the human rights approach: consider the negative message of legal solutions lagging

behind the practice of police cooperation. (Though this is not surprising seeing the preponderance of police institutions in the integration. We have to add that at European level in general, the situation is usually better.) National judges are supposed to have an important role in the judicial cooperation, but as we can see they tend to think in national terms, neglecting transborder cooperation as they are used to work autonomously, due to the specificities of their job.

The author concludes that informal and incidental processes are typical, institutional conflicts usually overrule the logic of harmonization, and these conflicts have a substantial impact on the actual outcome. The study mentions the example of Eurojust, the foundation of which was an intergovernmental response to the much more ambitious project of a European public prosecutor from the Commission. The institution thus created is—due to its intergovernmental logic—opposed to an institution based on supranational logic like OLAF. It is usually fallacious to emphasize the cooperation between the two institutions regarding the actual result of the interoperability: despite the often intersecting professional careers, bilateral relations had almost no real achievement. Putting this into numbers it means 11 cases transferred in 2005, and in 7 cases (out of the 11, according to Eurojust where the cases were transferred to) there was no chance for cooperation due to the short deadline. A member of the Europol staff adds that, in spite of the 1994 bilateral agreement on cooperation (which does not make collaboration mandatory), there is no real interaction between the two institutions due to ongoing rivalry.

The situation can be best described with an extract from an interview with a Europol employee: "we rarely cooperate with Eurojust. Last time we invited a judge from Eurojust and he didn't say a word throughout. He took notes, but we didn't get any useful information from him. For us this was not useful at all, but no doubt he collected some information. Everything depends on the judge. If we know and trust each other, the cooperation is much easier." cooperation is also typically more likely to happen between those from the same country. The relations between judges, prosecutors and police also reflect national differences in hierarchical or coordinative relations, which can in turn result in misunderstandings among people with distinct backgrounds.

Apart from the variety of institutional objectives, the struggles for legitimacy can be blamed for conflicts and making cooperation more difficult. Due to the prevailing informality, the institutional frame-

work and thus the working conditions, are in constant flux. As a result of this interaction among dynamic interest fields, the institutions tend to protect their own interests, legitimacy and independence. This intensifies mistrust, which can easily make cooperation impossible. In this context, sharing information, which is the basis of cooperation in criminal affairs, means an important loss of power, weakening positions in the legitimacy struggle. (Here we could add that the principle of data protection can occasionally benefit from this.) Only stable and mandatory regulation, based on common interests can bring solutions, and maybe some non-legal measures, though, as we have seen, good personal relations alone may not help in some cases.

The author gives an insight into the institutional logic of everyday work: the institutional strategies followed in the uncertain environment remind the reader of what Max Weber wrote about the likely degeneration of bureaucracies. In this respect, even collecting information can be seen as a proof of how useful the institution itself is. This underlines the importance of basic rights and of a data protection approach, as its principles could ensure that our data is used only in compliance with original and limited purposes, thus preventing information from being taken hostage in inter-institutional conflicts.

The third study in the book, written by *Philippe Bonditti*, reviews the series of small steps in the interaction between the inner logics of information technology and intelligence, a trend that endangers the predominance of certain basic rights. The appearance of biometric data in the security toolkit strengthens the idea of solving security problems through technological development. This logic prescribes the ongoing building of databases, assuring their compatibility and interoperability, thus connecting all the available data. The author demonstrates the working of this logic with the examples of European databases and the recently introduced ID card in the United Kingdom. The biometric identification that was originally introduced in the field of migration control will affect all the citizens of the state or of the EU, and we remain with less and less guarantee for the separation of databases. The huge amount of data gained from both the population and foreigners can be used for risk analysis, leading to measures being taken on a probability basis. So we can see technological trends that require new answers from both criminal law and data protection perspective.

Helping to find new answers by giving a perspective—thus can be summarized the aim of all three studies. It is important to see *how* the objectives fail to be met even in spite of appropriate legal framework and provided resources. The objectives have to be transmitted to the personal level, to that of everyday work, to a single meeting of two experts with different national and institutional backgrounds. And this is how this book can help: by providing a radically different, non-legal perspective, avoiding the repeated references to political and formal declarations, focusing on what is here and now, giving a faithful picture of the actual situation—and, as Stendhal put it, one cannot blame the mirror for what it shows.

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