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The Legal Basis for the Protection of European Union Classified Information – Selected Current and Historical Aspects

Abstract: The protection of classified information within the European Union has obtained specific features in the context of the historical development. Frequent changes as well as the ambiguity of further development of the EU and its security policy fundamentally determined the possibilities of developing the field of EU classified information. Those changes can be negatively perceived mainly in the context of the security environment and new security challenges. Slovak security authorities have been forced to accept a new approach to the protection of classified information. However, the protection of EU classified information in practical activities of security authorities depends directly on the ability to absorb and implement EU Security Policy and specific rules for the protection of classified information. A substantial prerequisite for proper application and the ability to share classified information is to understand the common values, rules and complexity of EU security standards. The article presents a comprehensive overview of the development and present state of EU classified information, analyses possible problems of application practice of security authorities and suggests effective solutions.

Keywords: protection of EU classified information, security authorities, classification of information, security interests

Introduction

The protection of classified information of the European Union (hereinafter referred to as "the EU") is a direct result of the historical evolution on the European territory. The ambiguity of the European integration and its immanent goals, different attitudes, interests and legal environment of member states influence the institutional and legal environment of the EU, including classified information protection. The changing security environment and new security challenges put unprecedented pressure on security as such, including the security of the system for classified information protection (hereinafter referred to as "the CIP"). Attitudes and intentions of respective member states, of various lobbying groups and politicians, of authorities and EU institutions are not homogeneous, which causes the agreeing to different compromises and alternative solutions with a direct influence on security authorities.

Security, and in particular information security, has not always been a primary concern. It has gradually become an integral part of the work of individual EU bodies and institutions with a substantial impact on the activities of the member states' security authorities.

The founding of the EU and the integration process of member states into the EU significantly affected the functioning of EU security mechanisms and member state's security authorities. One of the reasons is the fact that the integration process resulted directly in the limitation and transfer of some exclusive powers of EU member states in favour of the EU. Gradually, the security of member states and the implementation of their security interests became an integral part of security measures within the EU[1]. While participating in the activities of EU authorities and of emerging security structures, the member states thus directly ensure the consistency and coordination of their national ("internal") measures with the measures being taken within the EU. The manner in which the member states can bring their "internal" steps into accord with the steps adopted within the EU also determines the general efficiency of the common EU system for security and information protection. EU CIP

[1]Details in Provisions on the common security and defense policy, Article 42 of the Treaty on European Union.

is seen as an integral part of the EU information management policy. It has been evolved gradually up to its current form when, in general terms, it covers all the information emerging as a result of EU activities. In principle, it distinguishes three categories of EU information – public information, information with limited access (known as 'LIMITE UE') and classified information.

A basic legal framework is formed by Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter referred to as "the Regulation"). The Regulation deals with the exceptions concerning the access of the public to information as well as with the procedure enabling this access. It is set in the system that all documents are accessible to the public. Nevertheless, there is some space for exceptions that enable to protect some interests of the EU and member states according to specific measures. If necessary, authorities (i.e. EU authorities) are entitled to protect their internal processes, for example, management processes, consultations and negotiations in order to preserve their ability to perform tasks. The Regulation describes explicitly neither the information categories, nor the manner of their protection. However, the Regulation creates a basic prerequisite for limiting public access to information under certain conditions that are further worked up in Article 4 thereof[2]. The general framework defined in that way is used by various EU institutions, agencies and structures of the EU for establishing the rules for information protection as a counterweight to the general access of the public to EU information.

At the time of the accession of the Slovak Republic to the EU, the situation of CIP was, in retrospect, different[3]. The continuous growth of exchanged information and requirements for its protection has resulted in constant adaption of systems for information protection, even with regard to practical needs and security changes. The objective is to achieve adequate security, taking into account the basic requirements for information protection, such as authenticity, accessibility, confidentiality, integrity and non-repudiation within the whole EU and particularly within members states security authorities uniformly. This goal is quite difficult to reach because possible solutions are determined by such factors as economic, security and political situations. The need to coordinate and unify diverse security interests of respective member states has a substantial influence as well. From this perspective, probably the most significant challenge is to harmonise the member states' security interests within the EU. Moreover, there are system differences, including the relationship of "old" versus "new" member states, resulting from the nature of the European integration. As regards the CIP system, the countries which were the founders of the EU and "incorporated" some attributes of their own systems for information protection into the EU CIP system enjoy a complementary advantage. For new member states' security authorities, the situation is different as they enforce new requirements, often with unrecognized

[2]For example, if its disclosure violates the protection of the public interest including public security, defence and military matters, international relations, financial, monetary or economic policies of the Community or of any member state, also privacy and integrity of a person, particularly in accordance with the Community legislation regarding the protection of personal data. The above also applies to access to a document drawn up by an authority for internal use or received by an authority, which relates to a case when the authority has not reached a decision. It shall be refused if the disclosure of the document seriously undermines the authority's decision unless the public interest for its disclosure prevails.

[3]For more details, see Brvnišťan, M., Polak, P.: Development of Protection of Classified Information in the Slovak Republic, In Legal Horizon, 92/2009, No. 3, pp. 262-288.

consequences[4]. To be thorough, there have been finally not only changes resulting from the changes of the security environment but also requirements resulting from organizational changes, from changes and development of the legal and institutional environment as a part of the EU internal development.

Accordingly, we will therefore focus on the analysis of the current EU CIP system, which seems to be uniform and consistent, but in reality, it is a complex and comprehensive system consisting of a number of subsystems. These subsystems were created in a certain phase of the European integration and their basis has gradually changed and evolved in line with the interests of member states. In assessing the possibilities of further development of the EU CIP system in relation to possible further EU integration, we will concentrate primarily on the description of the relationship of "EU development versus EU member states' interests" and its coherence. The implementation of the member states' interests will be a determinative factor to understand the development of the CIP system as well as its current status and also a tool to outline possible development in the future directly influencing security authorities' practical activities.

1 LEGAL BASIS AND DEVELOPMENT OF THE EU CLASSIFIED INFORMATION PROTECTION SYSTEM

The origins of the current EU CIP system can be associated with the post-war situation in Europe and with the security and economic interests of European countries. However, particularly the security interests of individual countries had to be protected, which was closely connected with the protection and distribution of important, usually classified information. The CIP field was designed only as a consequence of gradual integration steps of emerging a multinational union and of seeking common interests. Conditions for the creation of the EU we are living in today were not provided from the very beginning also with regard to a not-quite-clear aim of the European integration. The aim was only taking shape, step by step. The signing of the Charter of the United Nations in 1945 being a new guarantee to ensure the security and peaceful coexistence of nations in the world, the development of international cooperation and the creation of a forum to address problems of economic, security and social importance[5] is considered a foundation base of the future European integration. The Charter of the United Nations determined conditions for creating collective defence[6]. Another step heading towards the European integration can be the conclusion of the Brussels Treaty[7] in 1948 to ensure not only economic but also defence and security interests through collective defence as provided by the Charter of the United Nations. The Brussels Treaty, in effect, consisted of a system of mutual bilateral agreements. The Western European Union (hereinafter referred to as "the WEU") was the first organization of the military and

[4]For more details see: Development of systems for protection of classified EU and NATO information, Brvnišťan, M.: The protection of classified information in the spectrum of historical development, Printing office of the Ministry of Interior of the Slovak Republic, Bratislava 2013, p. 65.

[5]The Charter of the United Nations (UN), signed in San Francisco on 26 June 1945 at the conclusion of the United Nations Conference on International Organization, came into force on 24 October 1945.

[6]Articles 51 to 54 of Chapter VIII of the UN Charter constitute the necessary legal framework for the creation of individual or collective self-defence under which it is possible to conclude regional security agreements (the author's note).

[7]The Brussels Treaty, also called the Treaty of the Western Union, was signed on 17 March 1948 by five countries – Belgium, Luxembourg, the Netherlands, France and Great Britain. In 1954 new countries – Germany and Italy – joined the organization. In the meanwhile, it was renamed the Western European Union. The European Defence Community: A History, The Macmillan Press Ltd. 1980, p.14.

political nature whose aim was to integrate common interests. The founding of the WEU is considered to be the first obvious step in European integration. At the same time it can be said that it represents a significant step in creating the various communities of nations in the European territory in order to achieve certain objectives, in particular, those of defence. The Treaty itself required the formation of supranational bodies – e.g. the Committee of the Western European Union and other supporting and executive bodies[8]. Therefore, the WEU had a principal impact on creating security authorities and security policies of the later integration groupings. It should also be noted that the differences of opinions and interests of "strong" states gradually led to the processes which underlay the founding of the North Atlantic Treaty Organization [9] (hereinafter referred to as "NATO"). Regarding that background, it is possible to observe the influence of countries that had ambitions to be the "key players" (e.g. France and the United Kingdom) in the European territory. At the same time, the foundations for and the future of European defence and security there were laid in terms of the implementation of security interests. In principle, there was a division in the implementation of economic, security and defence interests where European integration proceeded mainly with regard to economic and commercial interests, and the interests of common defence and security were conducted by NATO. The WEU played an important role[10]. In the field of security, it served as a basis for the creation of the NATO security system. In a similar way it "served" in relation to the emergence of the European Communities. The USA's support of the formation of the WEU and the subsequent founding of NATO, the integration of security and other WEU bodies into NATO, are transparent and identifiable. These facts are obvious as to the process of building security authorities because it was explicitly stated by NATO officials that the NATO security system would be based on the WEU security system[11].

The CIP field at this stage comprised a system of mutual bilateral and multilateral agreements on the mutual exchange and protection of classified information. Individual countries still had very different interests, and therefore information emerging in connection with the implementation of their interests was protected by different and mutually incompatible systems of classification. That fact, however, soon began to change. The need for deeper economic and commercial cooperation exerted pressure on deepening European integration. The next step was the establishment of the European Communities. The European

[8]See Article 8 of the Treaty establishing the Western European Union and compare with Article 1 in connection with Article 7 of the Brussels Treaty, which assumed the creation of the Consultative Council to ensure the performance of the provisions of the Treaty, The European Defence Community: A History, The Macmillan Press Ltd. 1980, p. 16.

[9] The North Atlantic Treaty Organization – NATO (in French: L'Organisation du Traité de l'Atlantique Nord – OTAN) or simply "the Alliance". The organization was founded on 4 April 1949 by signing the so-called Washington Treaty, which led to the founding of a security organization of Western democratic states in response to the post-war situation in Europe. The Washington Treaty was signed in April 1949 by twelve countries: the USA, Canada, the United Kingdom, France, Portugal, Belgium, Luxembourg, the Netherlands, Denmark, Norway, Iceland and Italy. Turkey and Greece joined NATO in 1952, the Federal Republic of Germany joined it in 1955 after obtaining full sovereignty and Spain joined it in 1982. Poland, Hungary and the Czech Republic joined it in 1999. In 2004, during the largest wave of the NATO enlargement so far, the countries of Central and Eastern Europe: Lithuania, Latvia, Estonia, Romania, Bulgaria, Slovenia and Slovakia joined the organisation. For more details see https://en.wikipedia.org/wiki/NATO, 2009.

[10] It is often stated that the WEU served as a kind of European pillar of NATO (the author's note).

[11]The statement of Lt. Col. G. E. Gordon during the meeting of the Permanent Unit of the NATO Military Committee, 18 November 1949, the NATO archive, Record of the meeting – SG 007/49.

Coal and Steel Community (the Montan Union)[12] was established as the first. The aim of the community was a mutual solidarity of states and the delegation of competencies concerning the common interest. Regarding the institutional point of view, the formation of the community required the creation of common institutions such as the High Authority – the European Commission, a Common Assembly – the European Parliament, the Special Council composed of Ministers – the Council of the European Union, the Court of Justice – the European Court of Justice[13]. The information protection was addressed in Article 47 of the Montan Union Treaty: the High Authority (the Commission) was entitled to obtain information necessary to perform its tasks; it was considered as an official secret. It mainly included the reports concerning enterprises, business relationships and prices. Article 16 also stipulates that "the High Authority (the Commission) shall take all appropriate measures of an internal nature to assure the functioning of its services". The last sentence of that Article states that "the High Authority (the Commission) shall adopt rules of procedure to ensure its functioning and that of its services, under the conditions set out in this Treaty". Those Treaty provisions which also indirectly created conditions for CIP can be considered as fundamental elements for building the system for information protection within the current EU.

The next step of European integration was the establishment of the European Economic Community (hereinafter referred to as "the EEC") and the European Atomic Energy Community – Euratom (hereinafter referred to as "the EAEC") [14]. Economic cooperation expanded from the field of coal and steel to the economy as a whole. In fact, it caused the unification of the member states' interests in the field of economic integration.

The founding of the EEC sparked off closer cooperation in the economic field and it also contributed to close cooperation of the authorities of the European Communities[15]. The CIP field in the EEC Treaty was not particularly solved, however, Article 207, Paragraph 3, states that "the Council shall adopt its rules of procedure. It shall incorporate the conditions for public access to Council documents". Article 218 of the Treaty deals with the Commission's negotiations. Paragraph 1 thereof stipulates that "the Council and the Commission shall consult each other on methods of cooperation and find the solutions by mutual agreement" and Paragraph 2 states that "the Commission shall adopt its rules of procedure so that both the Commission itself and its departments shall function in accordance with the provisions of this Treaty"[16]. Though these conditions were not explicitly laid down for adjusting the CIP field, they helped to get over a certain period.

The founding of the EAEC had a substantial influence on the security area and the CIP field. The implementation of common interests in the field of energy independence, in the field of research concerning nuclear energy and in the development of nuclear industry was

[12] The Agreement was signed on 18 April 1951. The validity of the contract was limited in time to 50 years. History of EU, www.weu.int/history.htm, 2008, the author's note: the legal succession of the European Coal and Steel Community based on the Council Decision of 19 July 2002 passed to the European Community, OJ L of 23 July 2002.

[13] See Title II, Article 7 of the Treaty establishing the European Coal and Steel Community.

[14] The above mentioned was implemented under contracts drawn up by the intergovernmental committee established by the decision taken on the meeting of the ministers of the member states of the Montan Union, the so-called Messina conclusion. Kľučka, J., Mazak, J., et al., Principles of European Law, Iura Edition 2004, p. 18.

[15] Later on, under the Maastricht Treaty of 1993, the EEC was renamed the European Community (the word "economic" was dropped) and incorporated into the first pillar out of the three pillars forming the base of the EU. www.wikipedia.com/history/EU/htm.3, 2015.

[16] The Treaty establishing the European Community, Consolidated version, OJ C 325 of 24 December 2002.

the principal idea agreed on by future member states[17]. In terms of the CIP field there was a need for the mutual exchange of specific and highly sensitive information which was generally considered as classified within particular countries. Sharing such information and establishing responsible institutions of the Community are presupposed by the Founding EAEC Treaty[18], which can also be considered as a core of the measures for the emergence of the CIP field within the Communities. Based on the EAEC Treaty (Articles No. 24, 25 and 217)[19] the European Council on the proposal of the European Commission adopted Directive (Euratom) No. 3[20] implementing the above mentioned articles of the Founding EAEC Treaty that defined the bases of the CIP field by creating a necessary security structure and security authorities headed by the Security Office of the European Commission. That case concerned only information obtained by the EAEC or exchanged between the member states in compliance with the EAEC Treaty. Such information was called "Euratom classified information" (abbreviated as "ECI")[21]. Security classification comprises different levels of protection of common European interests. Thus, the security classification level referred to as Eura-Top Secret says that "unauthorized disclosure of the information would have extremely serious consequences for the defence interests of one or more member states" or the security classification level referred to as Eura-Confidential says that "unauthorized disclosure of the information would harm the defence interests of one or more member states". Obviously, the security classification levels defined like this have a number of interesting consequences. Firstly, there is a certain contradiction with the EAEC scope that does not primarily include defensive interests. The above may be due to the transposition of the WEU security system with its defence and economic targets. Secondly, the definitions of the security classification levels provide consequences for one or more member states and not for the Community of countries (for the EU as such), which probably reflects the member states' attitude to the common CIP, as it is in principle replaced with CIP systems of respective member states. Thirdly, an attitude to the protection of common interests in such a sensitive area as the common defence is expressed there. That situation was caused by tending towards the implementation of common defence interests within NATO[22]. Nevertheless, this Directive applies unchanged even today! Other classified information of the member states did not have, in terms of the EAEC, any legal framework. If such information was exchanged, it was done on the basis of bilateral agreements between the member states. So the mutual bilateral agreements created a framework that covered the exchange of classified information in the coming period.

[17] However, there appeared views of building their own atomic forces because countries like France and Great Britain did not want to rely on protection only by means of the "nuclear umbrella" of the USA, NATO history, www.members.tripod.com, 2008.

[18] Article 24 of the Treaty establishing Euratom.

[19] Article 24 refers to the protection of information that the Community acquires as a result of research and the disclosure of which could be harmful to the interests of the member states, thus such information is subject to protection by a security system; also in paragraph 1 it is proposed to adopt security regulations that will determine the security gradings; Article 25 lays down the principles of communication between the Commission and the member states and the compliance with the security gradings; Article 217 says that the adoption of the necessary regulations should be carried out within a period of six months after the date of the entry into force of the Treaty.

[20] Directive (Euratom) No. 3, OJ L 17/58 of 6 October 1958.

[21] Article 1, Paragraph 1 of the Directive Euratom No. 3, which implements Article 24 of the Treaty establishing The European Atomic Energy Community.

[22] For more details see Brvnišťan, M .: The Protection of Classified Information in the Spectrum of Historical Development, Printing office of the Ministry of Interior of the Slovak Republic, Bratislava 2013, p. 55.

The next step in unifying the EU was a merger of multiple structures and institutions of the Communities. The unification was carried out under the Treaty of Brussels[23] of 4 August 1965 (also called the Merger Treaty), which caused the unification and creation of one Council and one Commission. As to the CIP field that step led to the creation of conditions for a wider use of the provisions of the Directive Euratom No. 3 and of competencies of the Commission security authorities within the Communities. Signing the Single European Act[24] in February 1986 resulted in a change of the founding treaties. For example, that Act addressed the area of border lines as well as a single market and brought an increase of the European Communities' competences. It resulted in the deepening of common interests, though the CIP field was not covered that time.

The deepening of common European interests, however, continued. Another step was the signing of the Treaty on European Union (the Maastricht Treaty)[25]. The founding of the EU caused the deepening of integration mainly in the fields of economic cooperation, the common foreign and security policy as well as justice and interior cooperation which constitute the pillars of the EU. The first pillar, composed of the European Communities, was based on the supranational concept. It practically means that the powers that originally belonged to a sovereign state are performed by another entity – by institutions of the European Communities. The above demonstrates the utmost unification of the member states' interests. By contrast, the other two pillars of the EU were based on an intergovernmental cooperation of the member states where the decisions were made by consensus. The powers were not executed individually but jointly by the member states[26].

The security itself and the security issue have been the subject of mutual cross-border cooperation wherein the parts of the current basic comprehension of CIP within the EU can be found. Although the intention of the Maastricht Treaty was to add competencies to the security field, foreign policy and military areas, many countries found these areas too sensitive to be managed by control mechanisms of the European Communities. There were dissenting voices that if such competences had been given to the European Communities, they could have threatened the power and independence of the member states in the decision-making process. Therefore, the member states reserved the right to these competences. As stated above, CIP as a system was not explicitly addressed in the Maastricht Treaty, hence it can be concluded that there was no interest either in individual adjustment of this field or in its direct definition. It was probably connected with the extent of integration, which is in terms of CIP clear only in the first pillar. In other two pillars it is not possible to identify something like a common interest that could be protected by common rules; on the contrary these facts are a matter for respective member states.

The period after the founding of the EU is characterized by efforts for the improvement and removal of deficiencies that caused problems in the practical use of the provisions of the Maastricht Treaty. Since the Maastricht Treaty, even more contracts governing the functioning of the EU have been concluded. Based on the conclusions of the intergovernmental conference in 1996 in Italy (Turin) the Treaty of Amsterdam[27] was signed on 2 October 1997. It revised the founding treaties and removed some of the deficiencies of

[23] The Treaty of Brussels, OJ 152 of 13 July 1967.
[24] The Single European Act, OJ L 196 of 29 June 1997
[25] The Treaty (the Treaty on European Union) was signed on 7 February 1992 in Maastricht, the Netherlands, after the negotiations between the countries of the European Communities, 9 December 1991, OJ C 191 of 19 July 1992.
[26] Kľučka, J., Mazák, J., et al., Principles of European Law, Iura Edition 2004, pp. 23-24.
[27] The Treaty of Amsterdam, OJ C 340 of 10 October 1997.

the institutional system. There was also a transfer of certain powers from the third pillar to the first one (immigration policy). Afterwards, in compliance with the conclusions of the intergovernmental conference organized in France (Nice) on 26 October 2001, the Treaty of Nice[28] was signed. It deals almost exclusively with institutional issues also in relation to the expected wider EU enlargement.

Documents as the Treaty establishing a Constitution for Europe[29] and the Treaty of Lisbon[30] were to bring fundamental changes. According to Article 1 of the Treaty of Lisbon the Union is based on two founding treaties with the same legal force – the Treaty on European Union and the Treaty on the Functioning of the European Union. However, despite the fundamental changes of the institutional functioning and of the "extent of integration" they did not touch the system of information protection; they did not state other than already mentioned principles and provisions of the previous treaties.

The way how the CIP field is currently defined is without doubt the result of the turbulent development of the EU on the one hand, but on the other hand it is the result of the not-quite-real comprehension of the scope and objectives of this field. The final system has indeed undisputed ambitions to be comprehensive and effective but with respect to its structure, binding and excessive complexity, it does not meet such requirements.

2 PRESENT STATE OF THE SYSTEM FOR PROTECTION OF EU CLASSIFIED I NFORMATION

As mentioned in the previous section, the system for the EU CIP did not develop symmetrically and up to now it has not fully reflected the requirements corresponding to the extent of European integration. Its foundations come from the very beginning of European integration when the objectives were not clearly defined, hence the system for the EU CIP does not correspond with the present state. It is obvious that the extent of the implementation of common interests of respective member states through the EU has not yet reached the level to create pressure sufficient to define a common, single European CIP system.

1 Decision of the Council of the European Union of 23 September 2013, no. 2013 (488) EU adopting the Council's security directives. The decision was based on:

Article 240 (3) of the Treaty on the Functioning of the EU (the Council can adopt internal rules)

Article 24 of the Council Decision of 1 December 2009, 2009/937 / EU adopting the Council's Rules of Procedure.

2 Commission Decision of 13 March 2015 2015/444 / EU, Euratom on security regulations for the protection of EU classified information. The Commission's decision was taken with regard to:

The Treaty on the Functioning of the European Union, and in particular Article 249 thereof (the Commission may adopt internal rules)

[28] The Treaty of Nice, OJ C 80 of 10 March 2001.

[29] The Treaty establishing a Constitution for Europe, OJ C 310 of 16 December 2004. The Treaty was not approved in the ratification process and therefore it did not come into force.

[30] The Treaty of Lisbon (also known as the Reform Treaty), which amends the Treaty on European Union and the Treaty establishing the European Community, OJ C 306 17 December 2007, came into force on 1 December 2009.

The Treaty establishing the European Atomic Energy Community, and in particular Article 106 thereof,

Protocol No. 7 on the Privileges and Immunities of the European Union annexed to the Treaties, and in particular Article 18 thereof.

3 Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 19 April 2013 no. 2013 / C 190/01 on the security rules of the EEAS (hereinafter referred to as "the EEAS Decision"). The EEAS Decision was adopted with regard to:

Council Decision No. 2010/427 / EU of 26 July 2010 on the organization and functioning of the European External Action Service (EEAS),

Opinion of the Committee referred to in Article 96 of the High Representative of the Union for Foreign Affairs and Security Policy of 15 June 2011 on the security rules of the EEAS.

4 Council Decision of 30 November 2009 adopting the rules on confidentiality of Europol information no. 2009/968 / JHA

This decision directly illustrates the complexity of relations within the EU. It is not unique and forms an integral part of EU information protection rules directly influencing security authorities in the member states. Similarly rules on the protection of information (including classified information) by other EU institutions and agencies are adopted, set up in different, often non-standard ways, and often with a not-quite-clear commitment to the member countries' security authorities.

For example, the European Parliament (European Parliament Decision No 2011 / C 190/02 on rules governing the handling of confidential information by the European Parliament), ESA – European Space Agency, FRONTEX – European Agency for the Management of Operational Cooperation at the External Borders of the Member States, EDA European Defence Agency and others.

The Council Decision on the confidentiality of Europol information has been adopted in accordance with Article 40 of the Council Decision establishing the Europol Convention dealing with the exchange of classified information relating to the activities of Europol. It should be noted that the Council decision on the establishment of Europol (Europol became an agency of the Council, an entity funded by the EU's general budget) abolished in the first place its non-standard status as a separate EU organization. Secondly, this simplified the legislative process for adopting Europol's functioning rules, their binding and enforceability towards, for example, the member states as they are issued as Council decisions.

In the context of the rules on the protection of classified information, it is clear that Europol must apply the Council's general rules set out in Council Decision No. 2013 (488) EU although it has retained some autonomy in certain information protection features, including classified information.

As the comprehensive overview of the development of the EU CIP rules demonstrates, the development has resulted in a mutually conditioned and interconnected system of rules, especially among EU institutions. However, it is not harmonized with the interests of the member states and practical needs of the respective security authorities. When we look closer at the issue, it seems clear that classified information is protected by a relatively comprehensive system of regulations issued by various entities separately, for example, by the Council of the EU, the Commission or the European External Action Service with different binding force applicable to the member states. Furthermore, there are agreements on the mutual protection of classified information concluded between these entities. It should be noted that in terms of the development of the EU and of the CIP system the only comprehensive document is Directive No. 3 (Euratom) setting down the rules for a specific

area of classified nuclear information. This Directive has had binding force up to now. There is not any other consistent regulation applicable to the EU CIP field. Up to the first wider European integration of new countries in 2001, the CIP field had been adjusted only within the internal regulations of European institutions, without any relation to the member states. The member states in fact provided the EU CIP within their national rules and mutual interstate agreements. At the same time they concluded security agreements on the EU CIP with the EU Council. Thereby, there was created a legal status allowing the member states to protect EU classified information by national systems. The EU CIP system had thus been set up until the first big EU enlargement in 2001 when the requirement to codify EU CIP rules arose, especially in relation to the member states. Such step was conditioned not only by the requirements of "new member states" to clearly define the rules that needed to be approximated, but it was also in compliance with the progressing extent of European integration and the integration of the member states' interests. The member states' willingness to implement and thereafter protect national interests through the EU has increased. Therefore, we are currently witnessing a progressive search for the most appropriate and complex solution which will provide a suitable comprehensive legal framework and whose binding force will not be open to doubt.

Nowadays, the EU has achieved the legal framework through the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union[31]. Although this case admittedly means an undoubted contribution, it is clear that ultimately it is only a refinement of the current status of the CIP system, particularly of the legal binding force towards the member states.

It should be noted that under this Agreement, for the first time in EU history, the possibility of a mutual exchange of EU classified information between the member states and its security authorities has been recognized! It has also established the legal framework for the exchange of national classified information within the EU CIP system (if the information is marked accordingly). In terms of the benefits, it is probably the most substantial step in the EU CIP system and in comprehension of its tasks, it will provide, as far as possible, a necessary legal environment for the effective exchange of classified information within the EU. In terms of building a unified EU CIP system it is however necessary to take more substantial steps related mainly to the willingness of the member states to share common interests and protect them by a common and consistent EU CIP system. Achieving this goal cannot be expected without other major changes that can be named by a common factor – deepening European integration. However, this is subject to wider social, security and political changes.

Nowadays, under pressure of the changing security situation and economic factors, it is possible to notice the diversity of challenges and tendencies coming from the highest political representatives of the member states. Their targets are aimed at building common European capabilities especially in the field of common defence and security, commercial and economic interests. Although such requirements have always been here, it is evidently a new view of the deepening of European integration, however, as to the quality, it is on a new level. A possible limiting factor for further EU integration will be most likely, as in the past, the inability or unwillingness of the member states to integrate their national security interests. If

[31] The Agreement between the Member States of the European Union meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union of 8 July 2011. It was ratified by all EU member states and came into force on 1 December 2015.

the interests of the member states implemented at the EU level exceeded gradually the interests of the member states implemented at the level of the member states, there would be, in our view, sufficient pressure on changes in the EU CIP system. From the current perspective, this could mean, for example, the definition of the existence of EU information and its protection via a classification regime (as a part of the protecting of the implementation of common interests) in the basic EU treaties. Regarding the manner of protecting EU security interests and thus EU information via the security classification levels in the CIP system as known today, it is obvious that it is different from the definition of e.g. the security classification levels pursuant to Directive Euratom No. 3. According to currently applicable rules of the EU Council on security rules for protecting EU classified information, the security classification level in relation to the protection of the interests is defined as follows: "Top Secret – information or material the unauthorized disclosure of which could cause exceptionally grave prejudice to the essential interests of the EU or of one or more member states"[32]. When speaking of the implementation of interests it is apparent that there has been a significant progress as the protection is primarily provided to information concerning the interests of the EU and subsequently, at the same level, the member states' interests. This change is fundamental in terms of progress towards the perception of the EU and the implementation of its security interests.

CONCLUSION

The development of the EU CIP system was undoubtedly conditioned by vague and time-limited partial targets of European integration. Its direct influence on the activities of security authorities has not yet been properly understood. A different alternative and quick solutions often adopted under pressure from political decisions have contributed to today's complicated, fragmented and inefficient implication of the EU CIP system by security authorities.

Improving the legal environment for the protection all EU information in the same manner across the whole EU faces obstacles nowadays. Sharing and exchanging classified information within the activities of security authorities is facing a complex of new challenges. The most important step in order to improve the understanding of the EU CIP system is to incorporate it into the education system. Then it is possible to improve practical effectiveness of the application of the EU CIP system in the activities of security authorities.

However, it is necessary to accept that the deficiencies of the EU CIP system are present. The absence of the amendment of EU information protection on the level of the founding treaties can be considered as the most important obstacle. Thus, a key building element for the establishment of a unified EU CIP system is missing whereas the consequences are much broader. The solution is taking shape in the context of several negotiated statements of the member states' representatives on the possible deepening of EU integration, namely in the field of common security, in the building of joint armed forces, intelligence and police forces. They represent direct responses to changes in the security and economic situation of the EU. We advocate that the further strengthening of European security is not feasible, from a long-term perspective, without further integration in the field of security.

Inconsistent reliance on NATO in the questions of security is disadvantageous and does not contribute to the required pressure on the unequivocal routing of the EU in the field

[32] For more details see The Council Decision of 23 September 2013 on the security rules for protecting EU classified information 2013/488/EU.

of common security with a direct influence on the activities of security authorities. Such prevarication gradually creates enormous pressure on existing security mechanisms including CIP which are constantly seeking the opportunities for development, but these have already been exhausted on the current integration level. Nevertheless, the solution is quite simple; it is related to the willingness of the member states to deepen and unify their security interests and implement them within the EU.

EU interests and the manner of their protection also through the CIP system and respective security classification levels directly require interconnection and integration of the member states' security interests. We maintain the position that, with respect to the security authorities and their ability to protect the interests of the EU through the CIP system, such steps are expectable in the near future.

Bibliography

BRVNIŠŤAN, M.: On Some Issues of Information Protection in the Slovak Republic, In Judicial Review no. 11/2007, pp. 1467-1473

BRVNIŠŤAN, M.: The Protection of Classified Information in the Spectrum of Historical Development, Printing office of the Ministry of Interior of the Slovak Republic, Bratislava 2013, 160 p., ISBN 978-80-8054-561-1

BRVNIŠŤAN, M., POLAK, P.: Development of Protection of Classified Information in the Slovak Republic, In Legal horizon, 92/2009, No. 3, pp. 262-288

FURSDON, E.: The European Defence Community: A History, The Macmillan Press LTD, 1980, 360 p., ISBN 0-333-26198-4

KĽUČKA, J., MAZÁK, J., et al. Principles of European Law, Iura Edition 2004, pp. 23-24.

Act No. 215/2004 Coll. on the Protection of Classified information and on Amendments to Certain Acts

The Treaty on European Union, a consolidated version applicable on 1 December 2009, OJ C115, 9 May 2008

Council Decision of 23 September 2013 on the security rules for protecting EU classified information, no. (2013/488/EU), OJ L 274/1 of 15 October 2013

Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 15 June 2011 on the security rules of the European External Action Service, no. (2011/ C 304/05), C 304/7

Commission Decision of 13 March 2015 on the security rules for protecting EU classified information, no. (2015/444/EC, ECSC, Euratom), OJ L 72/53

Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43

The Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union, 8 July 2011, no. (2011/C 202/05), C 202/13

The Treaty establishing the European Atomic Energy Community (Euratom), signed in Rome on 25 March 1957, www.europa.eu, 2015

The Treaty on European Union (TEU), signed in Maastricht on 27 February1992, consolidated in force on 01 December 2009, OJ C115, 9 May 2008, www.europa.eu, 2015

The Treaty establishing a Constitution for Europe – the text approved by the Convention, 28 February 2002, www.europa.eu, 2015

The Treaty on the Functioning of the European Union, consolidated version in force on 12 January 2009, OJ C326, 26 October 2012, www.europa.eu, 2015

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