

Does setting priorities mean 'to lose'?

The point of view of the Belgian Standing Intelligence Agencies Review Committee

The review of the intelligence services is so complex and time-consuming that choices have to be made in Belgium as in other countries.

There is a proverb in Belgium that says 'to choose is to lose'. Whoever has to choose between three possibilities, necessarily loses two of them. Does that also apply when a choice has to be made in review subjects, which should or should not be tackled, extensively or cursorily, immediately or subsequently? In other words, does setting priorities mean 'to lose'? Certainly not. At least not when priorities are set or choices made conscientiously, according to a correct identification of the issues, and in the light of the organisation's purpose.

What is the purpose of the Belgian review body? I could summarize it as follows: (firstly) to proceed, on its own initiative or at the request of third parties (secondly) to investigate how (thirdly) the two Belgian intelligence services and the fusion centre act, have acted or want to act and, if (fourthly) dysfunctions are detected, (and finally) to see how to remedy the situation by making recommendations.

I will explain briefly the various elements of this definition, because they are decisive in determining whether an investigation will or will not be initiated.

1. Our Committee "may" initiate investigations on its own initiative, but it "must" carry out an investigation if it is asked to do so by Parliament or by the minister of Justice, the minister of Defence or the minister of the Interior. The emphasis is on 'must', as the Committee has no room for assessment here. If need be, we can decide to conduct the investigation in lesser depth or to adjourn it, but not conducting the investigation is not an option. The same applies to complaints from citizens. Except when we are clearly dealing with a storyteller, the complaint must be investigated. This was of paramount importance to the legislator and rightly so. It will reinforce the citizens' trust in a service that operates secretly if an independent review body can confirm on the basis of an investigation that everything was done according to the rules. This obligation nonetheless limits our ability to make choices.

The Committee naturally has control over the investigations that it wants to conduct itself. Here, we are guided by an 'opportunity assessment.' It cannot be denied that the question of opportunity, which often has a negative undertone, rears its head. But such an exercise needs in no way be improper, for it is no guesswork or politically inspired choice. The assessment is based on a consideration of important internal and external factors. One such external factor is the 'overburdening' of the reviewee. An internal factor may consist of serious problems coming to light in the services or 'gaps' in our knowledge on how they operate.

2. The second element of the definition is pretty straightforward: the Committee carries out investigations. These investigations can be descriptive or assume the form of an audit; they can be reactive or prospective; they can be extensive or very brief. But the exercise always comes down to describing the situation 'as is' as accurately as possible. The Committee's investigations are fact-finding missions. In certain matters,

it is by no means easy to bring the truth to light. But the degree of difficulty is in no way a criterion for not investigating an issue. The Committee has moreover been vested with extensive investigative powers by the legislator: we go into the field, interrogate the members of the services (where necessary under oath), can examine and even seize every document, call in experts, etcetera. These powers prove the importance attached to the democratic control of the secret services in Belgium.

3. That brings me to the third element of our definition. The Committee can only tackle the activities of the two Belgian intelligence services and the fusion centre. The Committee may not pass judgement on the way in which the minister of Defence, for instance, maintains his authority over 'his' military intelligence service. This is a matter whether the Committee is competent for this or that request. It does not concern setting priorities. But yes our Committee has carried out investigations in the past, at the request of third parties that flirt with the boundaries of competence. I mention this to make it clear that the pressure exerted by certain authorities can sometimes be high.

4. Element four. As already mentioned, each investigation will describe the situation 'as is'. The next step is necessarily to compare the 'as is' situation with the 'should be' situation, taking into account basic civil rights, compliance with the law in the large sense of the term, the operating effectiveness and efficiency of the three services, the way in which they coordinate their activities, etcetera. The task of the Belgian review body is very broad in this respect, by comparison with the remit of our counterparts in other countries. In most cases, it will be 'respect for basic civil rights' and 'efficiency and effectiveness' that is addressed in the investigations because the legislator found these two criteria to be essential.

5. Finally, the Committee has to make recommendations. These recommendations are not intended only for Parliament, but for every decision-making level that can play a significant role in remedying any flaws, such as the Government, the various competent ministers or the boards of directors of the services themselves.

The ultimate aim is therefore to make recommendations in order to remove the detected flaws for the future. The aim is therefore *not* to establish any criminal or disciplinary responsibilities, nor to point to any political responsibilities. The latter task is the remit of Parliament, which can hold a debate pursuant to the results of our investigations.

These five elements, ladies and gentlemen, constitute the framework within which the Belgian review body has to function, and thus underpins the decision to initiate an investigation or not.

Yet the possibility for the Committee to set priorities must be put into perspective from the outset. As already mentioned, our Committee has no choice as to whether or not to carry out certain investigations: every request from Parliament or a competent minister must be honoured. I also wish to point out - once again - that 'requests' from citizens must in theory also result in the initiation of an investigation. And such individual complaints are not always very interesting. What, for example, are we to make of an employee of an intelligence service who fails to win promotion and complaining about it? Our Committee tries to broach such requests within a broader

scope. But let's be honest: if the Committee could set its own priorities, no investigation would have been initiated here, since there are more urgent matters at hand. Yet such investigations of complaints naturally consume a certain amount of resources.

The bulk of our time is nonetheless devoted to conducting investigations at the request of Parliament or of a minister. I include here the investigations initiated by the Committee to anticipate the certain request for an investigation by one of the authorities. These usually concern matters brought to light by the media in which Belgian or foreign intelligence services were involved. If Parliament should, for any reason whatsoever, want to see quick results in a certain investigation, then it becomes particularly difficult for the Committee to go against these wishes. Allow me to elaborate.

After 9/11 and the subsequent terror attacks, the demand for and the deployment of more intelligence resources entailed that citizens became both more aware of and more critical about how the intelligence services function. Intelligence services are in fact encroaching more and more often in their life, particularly in their privacy. For the media and the politicians, intelligence services are therefore more and more often subject of interest or even scrutiny. Review bodies, and all the more so those with a parliamentary link, obviously do not escape this demand and the pressure that goes with it. The watchdog stays in favour and enjoys credibility only for as long as it remains alert to signals from its environment. And this is not without importance, because the existence of a review body in a democratic legal system is an increasingly important factor for the palatability of the existence of intelligence services and the methods that they use. It is therefore understandable that, in considering concrete priorities, external elements will often take precedence, such as negating or even avoiding insinuations about a cover-up. Another obvious factor is urgency. Belgium is no exception here. But is this problematic?

As a result of all this, the more thematic investigations initiated by the Committee on its own initiative often end up on the backburner of the agenda. I am thinking of investigations into the information management in our intelligence services or the role that they play in the fight against proliferation, sectarian organisations, organised crime or Islamist extremism. Only in this latter investigation there was perceptible external pressure to obtain results fast.

By way of conclusion, I will explain briefly these investigations to which the Committee is at present according top priority, and on which I may comment. Barring a new incident that is splashed in the media – which is always possible – the Committee will in the coming months focus almost exclusively on a performance audit of State Security, on the so-called B-file, and on the so-called 'reserved dossiers'.

1. The performance audit has been initiated at the request of the minister of Justice with the support of the Parliament. The audit comprises the leadership of the organisation, the performance of information management, the information flow processes, and customer satisfaction. I need not convince you of the fact that this performance audit is a very labour-intensive activity, one that absorbs a great deal of investigating resources. But you can also understand that the Committee cannot possibly set a lower priority to such an investigation. First, it is connected with the

demand for additional powers for the services. But even more important perhaps, is the fact that the assessment of these various essential aspects of the functioning of the service concern the legitimacy of its very existence.

2. Secondly, there is the so-called B-file. This is the case of a Moroccan Belgian currently on trial in Morocco for terrorist activities. According to reports in newspapers, he is said to have also committed various murders in Belgium. But these reports also state that he was an informer of the State Security... Parliament obviously wishes to know whether our intelligence services proceeded in a careful and professional manner in such a delicate case. The legitimacy of the services is therefore on the agenda in this case as well. For some media have depicted them as 'bunglers'. And they are not in a position to defend themselves...

3. The last investigation concerns what are known as the State Security 'reserved dossiers'. These are personal files on individuals with a political mandate, which thus acquire a special status. The investigation was initiated by the Committee, but you will understand that a number of members of parliament await the results with more than ordinary interest. They are worried, in fact, about possible abuses and as you know in intelligence matters conspiracy theories are usually not far away either. This investigation is extremely important - and thus a matter of priority - because there must be no doubt as to the political neutrality of our civil intelligence service.

As you have noted, we do not rely on a tripartite approach of product, procedure and resources in setting our priorities. This is not an easy path to take in a system where our agenda is largely dictated by third parties. But we do not consider this to be negative or annoying. We actually try to broach these three elements insofar as possible in all our investigations, regardless of the party at whose request it was initiated.

M. Peter De Smet
Board Member
Rue de la Loi 52
1040 Brussels
Belgium
www.comiteri.be
E-mail info@comiteri.be
Tel. ++ 32 2 286 28 11
Fax. ++ 32 2 286 29 99