

Integration Trends of EU Internal Security and Law Enforcement: How Legal, Technological and Operational Advancements Matter

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Abstract: *Rising concerns about the spread of cross-border criminal networks and transnational terrorism have transformed the international security arena into a more diverse, fragmented, diffused, less visible and hardly predictable one. Thus, (in)security is more mobile and remote than some decades ago. The establishment of an integrated European security area requires efforts to develop common standards and joint practices in terms of harmonisation of legal systems, advanced integration of security measures and tools, coherence of procedures and shared operational methods of law enforcement. The article discusses the main integration trends, challenges and options of internal security reforms in the European Union (EU) from legal, technological and operational advancement perspectives. It is argued that some harmonisation of criminal law as sharing and pooling of sovereignty has been achieved on the supranational level. The approach of supra-territoriality development is proposed in terms of shared security space management, where enhanced functional needs towards discursive coherence by copulative regulations and technological measures can be innovated to overcome some obstacles in the EU's security integration and achieve further operational success.*

Keywords: *European Union, integration, internal security, law enforcement, sovereignty*

1. Introduction

A turbulent decade, which followed the adoption of European Security Strategy (ESS)—*A Secure Europe in a Better World*—by the European Council on 12 December 2003, confirmed that the continuous spread of asymmetric post-9/11 threats and challenges consists of transnational terrorism, proliferation, diffusion of regional conflicts, state failures, growth of maritime piracy, and the rise of serious cross-border organised crime. Thus, the contemporary security picture is more diverse, fragmented, less visible and more difficult to predict than the conventional one from the familiar Cold War era. This has been the period when non-state actors with unconventional means have gradually grown their abilities to strike more unexpectedly and in a wider scope than ever before. From the European and its regional security perspective, the prospects and possibilities of asymmetric threats from hardly predictable sources have been a growing concern, currently characterised by massive migration flows with its side effects of illegal trafficking and terrorist infiltration. All of these fast-growing uncertainties in combination with sudden shocks are challenging the conceptualisation of further security developments and regional (dis)integration in an era of networked globalisation.

The development of European Union's role as a security actor could be characterised by circumstances that during the post-9/11 decade between 2003 and 2014 the EU has carried out some 30 different civilian missions and military operations beyond its borders. Since 2007, the EU has also been able to carry out some rapid-response operations by two concurrent single battle groups, with 1,500 soldiers each (EUROPA Foreign and Security Policy, 2016). Institutionally, the Lisbon Treaty (2009) strengthened foreign and security policy area by establishing a post of EU High Representative for Foreign Affairs and Security Policy and European External Action Service (EEAS) for management of EU's diplomatic corps. In parallel, the EU Home Affairs policy domain additionally covers a wide range of topics such as migration, asylum, and internal security fields, including issues related to both legal and irregular migration, readmission and return, and such as the fight against organised crime, radicalisation and terrorism, police cooperation and the management of external borders. These EU activities include the external dimension by cooperation ties with several third countries (see European Commission DG Migration and Home Affairs, 2016) and express some important functionalities of EU's foreign policy (see Bickerton, 2010). There are also the fields such as energy and environmental policy, food safety, civil and vital infrastructure protection, crisis management initiatives, various development and humanitarian aid issues, as well as some

other related EU-level cooperation areas having increasing importance from the Union's multi-dimensional and comprehensive security perspective.

Since contemporary security challenges are mostly cross-border and cross-sectorial, no single state is effectively able to respond to these threats only on its own. Asymmetric security developments after 9/11, London, Madrid, Brussels and Paris attacks, have been pushed the EU to be more pro-active, coherent, capable and extra-territorial, building security in neighbourhood, as well as to assure its respect to democratic values and strategic ties with its foreign partners. Unfortunately, large amount of these *inside-out* efforts have not been successful as the EU's capability to secure its external borders under serious external pressures evoked by mass immigration flows is highly questionable, and sustainability of the Schengen free movement area is currently in danger. Thus, the questions about future conditions and trends of the EU's security integration are mainly the complex issue of how to build trust between the EU Member States (MS) and cooperate effectively in terms of fighting transnational organised crime, illegal immigration and preventing further spread of radicalism and terrorism. With these challenges, the 'first line' of European security starts far beyond its external borders and has *outside-in* projections. From this perspective, the functionalities of the EU security domain need to be reshaped and understood as an intricate process rather than a state of affairs.

As an indication to further *externalisation* of EU security domain (see Balzacq, 2009), it is assumed that conflict and threat prevention cannot start too early, requiring a comprehensive doctrine with a mixture of unconventional instruments, where the neighbourhood policy measures also play an important role as security providers but not only in terms of 'soft security'. Europe should be able to define, together with global developments and regional powers, and drive concerted initiatives, and also share the approach of 'responsible power' (see de Vasconcelos, 2009, pp. 5–6) with strong representation in multilateral institutions and security efforts. By the adoption of the ESS (2003), the EU declared its ambitious goal to be able to sustain several peace activities simultaneously, adding particular value by developing civil-military operations with stronger diplomatic capability. Hence, the European internal security and law enforcement domain also starts from abroad and it is partly *remote* in character. Within the security integration, some value-based normative approaches with a mix of strategic challenges and adaptation are in many aspects institutional, as also stated by the Treaty on The Functioning of the European Union (TFEU). In the current context, enhanced cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU *Frontex*, the European Police Office *Europol*, the

judicial cooperation agency *Eurojust*, and other relevant bodies should be called for in need to develop further coherence and share operational ‘lessons learned’ as a process of advanced trust-building to move on towards European strategic culture.

A request to achieve the common strategic culture that “fosters early, rapid, and when necessary, robust intervention” has also appeared in the EU’s rhetoric after the adoption of the ESS more than a decade ago. At the same time, some critical approaches have risen to study challenging transnational security cooperation and measures of cross-border law enforcement in the framework of international relations and the EU’s security integration perspective (see, among others, Anderson, 1989; Liang, 1992; Anderson *et al.*, 1995; Sheptycki, 2000; Buzan & Wæver, 2003; Mitsilegas *et al.*, 2003; Deflem, 2004; Walker, 2004; Savage, 2007; Burgess, 2009; Mabee, 2009; Kaunert, 2010; Kaunert & Léonard, 2010; Merlingen, 2012; Loik & Smith, 2015; Loik *et al.*, 2016). Turbulent events near EU’s eastern borders (Georgia, Ukraine), southern borders (Libya, Egypt) and in the Middle East, especially in Syria, point out the growing need for faster progress to secure external borders and make a point of the external dimension of the Union’s internal security. Hence, the comparative analyses about the conditions, measures and development trends of the EU internal security and law enforcement integration are methodologically set out from the applied perspective of ‘security community’ logic. From the basis of security integrative approaches, the article discusses if and how some aspects of the wishful system which effectively combines the European sources for common safety have been developed within the EU during the last decades, and which are the estimated trends and challenges for the coming years to overcome some obstacles of further advanced internal security and law enforcement integration.

2. The political, technological and operational aspects of EU security integration

2.1 Towards a supranational level of security competences

The post-Cold War security interdependence has weakened the states’ capacity to provide for their safety in a traditional way due to interrelated transnational *mobile* threats such as large-scale terrorism or cyberattacks. The deepening processes of globalisation have empowered dangerous non-state actors, such as al-Qaeda or ISIS terrorist networks, which have become significant global security actors (see Diez *et al.*, 2006; also Merlingen, 2012, p. 18). To meet the

increasingly complex security challenges, close systematic European police and law enforcement cooperation has been developed in the EU since the early 1990s. Various security events and external shocks have exerted significant impact on the dynamics of international security cooperation by intensifying cross-border and transnational policing, the development of common anti-terrorism measures, and accelerating the internal security-oriented institution-building at the EU level (see, among others, Jones, 2007; Kaunert, 2010; Schroeder, 2011; Kaunert & Léonard, 2013), as well as facilitating extended transnational exchange of information between law enforcement authorities.

Serious cross-border organised crime, turbulent immigration flows, the spread of radicalism and political violence, smuggling of illegal commodities and human being, etc. puts extra functional pressure on governments to widen and deepen transnational cooperation. At the same time, some critical debates regarding states' sovereignty and enhancement of security cooperation at the EU level have emerged (see, among others, Bigo, 2008a; 2008b), since the security competences have been carefully guarded features of traditional (realist) understanding of unshared sovereignty. Although the dynamic position of a state as an international subject and its role as an ultimate security guarantee becomes increasingly complex and challenging. Hence, the security should be understood in relation to socio-economic and demographic developments in both regional and global arenas (see also Buzan & Wæver, 2003), where networked trans-border interactions cause the abolishment of traditional boundaries. The gradual steps towards enhanced security cooperation within the EU indicate the rise of functional pressure and formation of security community's structure (see Adler & Barnett, 1998) to resolve any conflictive issues by cooperative means. The latter consist of a development of appropriate EU legislative and supranational framework as well as designing of common security measures and tools.

For cooperative reasons, one of the main characteristics of the EU internal security and law enforcement domain during the recent decade have been developments towards harmonisation of criminal justice for more coherent fight against serious cross-border organised crime (see Loik & Smith, 2015). Hence, the establishment of minimum normative rules at the EU level regarding necessary elements of a criminal offence and sanctions for some serious organised cross-border criminal activities according to the TFEU (Article 83) has become one of the central issues of law enforcement concern. Respective EU initiatives for directives against trafficking in human beings, fight against the sexual exploitation of children, and cybercrime represent some important steps towards further integration of criminal justice. Since the TFEU came into force

on 1 December 2009, the European Parliament and the Council may establish cooperative measures on supranational level regarding

- the collection, storage, processing, analysis and exchange of information;
- support for the training of staff and cooperation on the exchange of staff on equipment and on research into crime detection;
- common investigative techniques in relation to the detection of serious forms of organised crime. (Article 87, TFEU)

As further important institutional step of the so-called *Lisbonisation process* to adapt and implement features of the Treaty of Lisbon, a special standing committee COSI¹ has been set up within the Council of the EU in order to ensure that operational cooperation on internal security that contributes to the coordination between EU Member States is promoted and strengthened within the European Union. In addition, supranational agencies such as Europol and Eurojust should be further developed for enhanced operational cooperation to fight against cross-border organised crime, as well as safeguard the external dimension of EU's security according to the TFEU principles. The Eurojust (see the legal framework and mandate, Eurojust, 2016) has a mission to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more EU Member States or requiring a prosecution on common bases, as well as on the bases of operations conducted and information, supplied by authorities from the MS and by the Europol (see the legal framework and mandate, Europol, 2016a). Revisions made by the Lisbon Treaty strengthen the competence and positions of the Eurojust even more; also, the establishment of European Public Prosecutor Office is legally provided (Article 86, TFEU) in order to more effectively combat crimes against EU's financial interests.²

¹ The COSI (in French *Comité permanent de sécurité intérieure*) or the Standing Committee on Internal Security, established by Article 71 of the TFEU. The COSI (successor to the previous Article 36 of the Committee) is composed by members of the competent ministries, assisted by the permanent representatives of the EU MS and by the Secretariat of the Council. The COSI's objective is to promote and strengthen the coordination of operational actions of the EU MS in the field of internal security (OJ L52). The COSI, as well as the Political and Security Committee (PSC) must also assist the Council about the *solidarity clause* (Article 222, TFEU).

² The Council shall act unanimously after obtaining the consent of the European Parliament. In the absence of unanimity within the Council of the EU, a group of at least nine EU MS may request that the draft regulation be referred to the European Council. In case of disagreement, and if at least nine EU MS still wish to establish enhanced cooperation, they shall notify the European Parliament, the Council and the Commission accordingly about the draft proposal.

The TFEU also initiates some new integrative advancements, which could be seen as important steps towards deeper political unification of European internal security and law enforcement area, strengthening also some powers of the EU-level security agencies. One of the indicators of deeper integration is a *mutual defence clause* (Article 222, TFEU), which extends significantly European competences and responsibilities in fight against transnational terrorism and conflict prevention. In parallel, it shall be open for EU Member States to organise between themselves under their responsibility any additional forms of security cooperation and coordination (see Article 73, TFEU) as they deem appropriate between competent departments of their administrations responsible for national security. As for preventing and combating terrorism and related activities, the Treaty of Lisbon also establishes that the European Parliament and the Council (see Article 75, TFEU) shall define a framework for measures with regard to capital movements and transactions, such as the freezing of funds, financial assets or economic gains belonging to, owned or held by persons, legal bodies, groups or non-state entities. By the described legislative steps, one could recognise several aspirations towards the building of security competences on supranational level.

2.2 Technological integration of security tools

Security of fast-developing ICT networks is vital for the functioning of infrastructure and information society, recognised by a Digital Agenda for Europe 2020 (see EC, 2010a) and Cybersecurity Strategy for the European Union (2013) addressing policy issues related to measures against cybercrime to guarantee safer internet and privacy protection in cyberspace. The high-tech European Cybercrime Centre EC3 at Europol (2016b) already plays on the EU level an important analytical and coordinating role in fight against cybercrime. There is also the European Network and Information Security Agency (ENISA), the European Information Sharing and Alert System (EISAS), and interface with a network of national Computer Emergency Response Teams (CERT), the focal points in EU's fight against cybercrime under operational development since 2012 (see also EC, 2010b) and responsible for safer internet traffic. The ENISA and interface with a network of governmental Computer Emergency Response Teams supposed to act as the focal points in rapid response and fight against cybercrime.³ These national and EU-level security initiatives should work

³ It was estimated that the EU MS and EU institutions should have well-functioning CERTs by 2013/2014. The EU MS, in cooperation with the ENISA and other relevant bodies, should also develop national contingency plans and organise both national and European-level regular exercises in incident response and disaster recovery.

closely with relevant private sector and industry actors to achieve their goals from the technological aspect and innovate compatible security tools.

The transnational and cross-border nature of criminal networks calls for enhanced joint measures and operations involving police, customs, border guards, intelligence community and other judicial authorities in EU MS, working alongside with the Eurojust, Europol, Frontex and other relevant agencies. Such interoperable law enforcement activities, including Joint Investigation Teams (JIT), should be operational where necessary at short notice, as well as to ensure effective implementation of the European Arrest Warrant (EAW) and other cooperative instruments. The importance of ensuring the efficiency of large-scale information systems, such as SIS (Schengen Information System), VIS (Visa Information System), EURODAC (European *Dactyloscopie*—the fingerprint database for the Dublin Regulation to examine asylum seekers), CIS (Customs Information System), FIDE (Customs File Identification Database), and other sensitive data exchange, as well as data protection measures, are central ICT tools for securing both the internal and external dimension of the EU's security. In addition, the Name Records of passengers on flights entering or leaving the territory of the EU (Entry/Exit and PNR system) is under fast development and is planned to be operational within the EU during the coming years. The main challenge for both policy-makers and implementing professional community has become how to use supranational legislative measures and technological toolbox in an integrative manner to achieve further operational success.

As discussed, the European Union has developed some resources to implement cross-border policing and border guarding with immigration management by enhanced use of innovative technology tools for border checks and information exchange by advanced generation of the Schengen Information System (SIS), the Entry/Exit System (see EC, 2016) and the registered traveller programme,⁴ as well as by enhanced use of new technology tools for sea border surveillance. The European External Border Surveillance System EUROSUR (see EC, 2008) with the support of the Global Monitoring for Environment and Security system GMES could be good examples of the establishment of mechanisms to share operational information related to border surveillance with the Frontex agency at tactical, operational and strategic levels. The EUROSUR has also advanced

⁴ According to the Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011.

potential to make use of new technologies developed through the EU-funded research projects and activities, such as satellite imagery to detect and track targets at the maritime border. In parallel, the EU should continue to map the critical infrastructure and plan measures to protect those assets, including energy production, transmission systems and transport services in cooperation with some proper NATO's capabilities in critical infrastructure protection purposes where necessary. Interoperability and optimal cross-usage of various European security resources with empowered combination of technological innovations has become another challenge for policy-makers and professional improvers.

The Early Warning System at Europol for incidents related to CBRN materials as an important counter-terrorism measure is also in an intensive developing phase. In addition to close coordination with the EU Member States, it should involve some appropriate public–private partnership approach.⁵ There is also a functional need to take some advanced steps to develop a regime for aviation and maritime security based on continuous assessment of cross-border threats and risks. Additionally, there is a need to take into account the results in security research by making use of EU programs such as Galileo and the GMES initiative on European earth observation, for instance. As hence realised, there are several indications that rapid technological developments and integration of cooperative security tools have taken place during the last years in the EU's security and law enforcement domain. What the development area needs, in parallel with expeditious technological innovations, is more coherent risk analyses and avoidance of inappropriate duplication in similar functions. The Common Risk Management Framework (CRMF), implemented mainly by customs' authorities, entails continuous screening of electronic pre-arrival/departure trade data to identify the risk of security and safety threats to the European Union and its inhabitants, as an exemplary case of EU-level risk management initiatives (see EC, 2014). Similarly, the referenced 'solidarity clause' needs to be placed into operational capabilities' and common practices' framework according to Article 222 of the Lisbon Treaty, which introduces the legal obligation on the EU and its Member States to assist each other when some MS is the target of a terrorist attack or some event of disaster. These tasks call for advanced capacity-building and well-coordinated resource management at both the EU and national level to achieve functioning operational readiness.

⁵ Note that European Public–Private Partnership for Resilience (EP3R) program is intended to further develop some innovative instruments to improve safety, including protection of critical infrastructure. The EP3R should also involve relevant international partners to strengthen the global risk management of IT networks.

2.3 Reinforcement of cross-border operational links

The European Union is recently facing the greatest contemporary migration crisis that thoroughly tests and likely changes its current internal security system. The challenge of mass immigration, including that of cross-border organised human trafficking, is far from being new to the EU, but the dramatically increased pressure is becoming a source of radicalism and increasing violence. The spread of cross-border organised crime and terrorism requires innovative approaches for effective counter-activities. To continue with activities initiated by the Hague Program and to set new development goals for the EU internal security and law enforcement, the so-called future groups were formed already in 2007 to compile a follow-up program that would lay down strategic guidelines for the period of 2010–2015. The following Stockholm Program (2010) covered all the important topics of the EU JHA/AFSJ as the fundamental rights protection, right to travel freely, data protection, border and visa issues, asylum and migration policies, internal security, European police cooperation, fighting against terrorism, management of major accidents, judicial cooperation in civil and criminal matters, and cyber security as a new topic. The Stockholm Program also set a specific goal to start using new technologies in the area of internal security and moved forward with the developments of the ICT systems, especially focused on successful completion of the SIS's next generation to reinforce cross-border operational links.

In the area of trafficking in human beings, the European Commission appointed already in December 2010 its Anti-Trafficking Coordinator to strengthen cooperation both in and outside of the EU. The first implementation report on strengthening the EU's external dimension on action against trafficking in human beings was adopted in June 2011. A Directive on preventing and combating trafficking in human beings and protecting its victims was adopted previously in April 2011. In the area of counter-terrorism, initiatives were taken regarding the implementation of the EU Action Plan on Radicalisation and Recruitment, including setting up the Radicalisation Awareness Network (RAN) for wider monitoring of serious radicalisation trends. In this context, it is also important to link up the various national and EU-level situation awareness centres and reinforce connections between sector-specific early warning and crisis cooperation functions, including those for health, civil protection, nuclear risk monitoring and terrorism. These arrangements should assist the improvement of operational links with EU agencies and the European External Action Service (EEAS), including the Situation Centre, and enable better information sharing as estimated, including joint EU threat and risk assessment reports. In line with the

disaster response strategy, the EU should also establish a European Emergency Response Capacity based on pre-committed Member States' assets on call for urgent EU operations on short notice, if needed.

To tackle with illegal immigration, it is important to enhance control on EU external borders, ensure effective implementation of readmission agreements, lay down sanctions for criminal cells organising illegal immigration and smuggling, as well as for operators creating demand by using illegal immigrant labour from countries of origin. The ongoing migration crisis in Europe has clearly highlighted the need for more proactive cooperation between the EU internal security, law enforcement and intelligence agencies. Operational cooperation should be shifted deeper forward in the external dimension and innovate the security institutions' comprehensive capabilities. It is also an opportunity for better application of the EEAS to strengthen the contribution of the EU delegations in combating illegal immigration. Further strengthening of the Frontex in managing joint operations and the use of EU-level Rapid Border Intervention Teams (RABIT) and their resources in the prevention of turbulent illegal immigration appeared to be crucial.⁶ The planned additional measures such as the European Patrol Network (EPN) and the Central Record of Available Technical Equipment (CRATE) for better mutual assistance between the EU Member States to reach some more interoperable border management is an even more paramount target than before for European cooperation and empowerment of cross-border operational links.

The EU's efforts to integrate internal security and law enforcement cooperation depend on the willingness and resources of the Member States. Reflecting some possible developments after *Brexit*, one should note that valuable expertise produced by the British internal security and law enforcement agencies has been a vital part of EU's counter-terrorism policy and transnational fight against organised crime. After the Brexit referendum, a number of analysts urged to weigh in depth its political-economic consequences to the European Union's future and implications for the unity of the United Kingdom (UK). At the same time, as also stressed by Cilluffo and Cardash (2016), potential security effects of the Brexit are just as important to highlight. One should agree that

⁶ One of the main objectives since the Stockholm Program has been the establishment of a Common European Asylum System (CEAS). The so far applied Dublin system is under increasing political pressure. The European Asylum Support Office (established in 2010) became operational in June 2011. Several other initiatives to strengthen the border management have also been launched, such as the Regulation amending the Frontex Regulation, measures for cooperation between Frontex and European Asylum Support Office (EASO). The Visa Information System (VIS) has started its operations in October 2011.

potential security risks consist in some ongoing operational issues such as data exchange but also in more far-reaching questions about future law enforcement and intelligence cooperation between the UK, EU and other relevant partners. During the process, the institutions should possibly redefine and revise where necessary their internal security approach and carefully analyse through some of the critical resolutions to avoid fragmentations in cooperation, especially in data management, implementation on the EAW and mandate to participate in the Joint Investigation Teams.

3. EU security integration as ‘the art of the possible’ around national interests

3.1 Sharing and pooling of sovereignty

The neo-realist approach that states are still the main prominent actors in the high-security policy area as sovereign actors in an anarchical international environment without any higher authority to look after their security is still there in the highly competitive international arena, as also demonstrated by the Brexit referendum. This *reality* creates uncertainty about the intentions of others, and thus makes the international realm a pragmatic *self-help system*, which Europe has tried to overcome after WWII. The balance-of-power⁷ in the struggle for primacy as the key issue in realist international and security policy is somehow refreshed by the asymmetric security options seeking for the first responders and strengthening the national ‘fortress’ in the growing global uncertainty. The cooperation dilemma still appears together with the question whether national sovereignty can be pooled and, if so, will it create some additional value in terms of ‘joint security’ around the table of the European Union’s decision making. According to the initial definitions of sovereignty (Hobbes, Grotius), it cannot be shared without losing it, and the only calculation that remains is about what the state gets in satisfying exchange for deeper security integration within the EU. The Schengen free movement area has been one of the tangible EU profits to motivate further investments to integrated cross-border law enforcement cooperation so far, but it has been set back by the ongoing migration crisis and the spread of transnational terrorism.

Thus, one of the main questions that rises (see also Veebel, 2012) is whether a

⁷ There are two major ways in which states could *balance*: (i) internal balancing and (ii) external balancing. The former occurs as states grow their capabilities by increasing economy or military spending. External balancing occurs as states enter into alliances (Waltz, 1979, pp. 132–133; see also Waltz, 2001), e.g., NATO or the EU.

state would share its sovereignty to receive in return some ‘common sovereignty’, shared equally by others, and to what extent would it be able to influence this kind of ‘joint sovereignty’ in its security interests. The contemporary approach to sharing and pooling sovereignty accepts that sovereignty can be shared, but diverges in the question whether it is based on a realist ‘zero-sum game’ or a ‘win-win’ principle. In both cases, the major Member States supposed to *win* more from cooperation, as their ability to benefit from shared sovereignty is larger due to their political and administrative capacities. On the other hand, the minor and mid-sized Member States could benefit from the EU’s resource delivery and division of professional labour in security domain. According to this logic, the security cooperation and integration is mainly based on the precondition that countries are motivated to share some of their traditional sovereign sphere in accordance with their national security interests.

From the perspective of a *balanced multi-polarity* one takes the position that international institutions offer some ‘balancing’ power not only in relations with non-members but could also balance some more powerful actors within supranational institutions. This logic is also observable in the context of EU security governance’s outlook (see also Kirchner, 2006; Kirchner & Sperling, 2007). In this context, we should also refresh the argument of *defensive realism* (see, among others, Kaufmann & Kaufmann, 1998; Walt, 1998) as a variation of understanding states as independent rational players, and predicting that international anarchy causes permanent worries about security threats. The intergovernmental model here is quite sceptical about advanced integration between states. Intergovernmental cooperation also tends to reflect more interests of major MS, which tend not to have EU’s external land border. As a result, dissensions may appear in the practical governance of border security, which is mainly implemented by remotely located Member States. The future of EU’s security cooperation from the intergovernmental perspective mainly depends on the motivation of Member States to continuously integrate their capabilities into security community logic under EU’s coordinative umbrella.

3.2 Supraterritorial centre building

Taking the (neo)functionalist approach, one should focus on the common interests and needs shared by states within a process of integration triggered by the shift of traditional state sovereignty (see Rosamond, 2000). The functions which interlink authority with needs and pressures, international expertise, diffused technology, etc., provide a kind of supraterritorial concept of authority where the main goals and criteria of policymaking are welfare and stability in a fluid

society, and the achieved progress becomes the main legitimising aspect during transnational policy implementation. One of the innovations and advantages of (neo)functional cooperation understanding is that policymaking, agenda-setting and policy implementation develop better in the hands of supranational institutions, which are not composed according to direct public voting but are mainly based on recognised expertise. Such expertise-based institutions and agencies have a growing role to play in transnational agenda setting, creation of regulations, implementation, management, control and evaluation. Their competence and privileges have been gradually growing during the headway of the EU's integration process.

Thereafter, functionally integrated EU Member States experience increasing momentum for further steps of *spillover* in related areas. Integration may also be resisted—as in the recent case of Brexit—but it becomes harder to stop it to progress in general (see the original concepts by Haas, 1958; 1964). While neo-realism focuses on the balance of powers within the EU and beyond that, the liberal-functional approach centres on areas of EU's pragmatic interest (see Moravcsik, 1998), and thus takes beneficial positions to security domain where integrative effect can be seen as a useful cooperative option from the Member States' perspective. One may follow the logic of pragmatic integration arguments also by the calculations of cost effectiveness of the Schengen cooperation as an example. Moreover, there are two kinds of spillover—functional and political—leading to the creation of supranational modes of governance. Thus, the deeper the integration and interdependence advances, the more motivated stakeholders become for further integration because of its estimated benefits. Hence, the (neo) functional union can only be based on perceived equal integration and useful harmonisation levels, at which all Member States follow the same rules and regulations, have the same rights and obligations. The main complicating aspect of supranational cooperation in this case is that it needs a consensual impulse by the MS who delegate parts of their original legitimacy up to supranational institutions. The latter is especially complicated in high policy domains as foreign and security affairs.

The functional theory (see Mitrany, 1966; 1976), as one of the original institutional approaches suggests that *functional agencies* should organise the needs of cooperation between competing states. The (neo)functionalism and the communitarian method (originally advanced by J. Monnet) stressed the importance of supranationality where the international bodies should mediate and manage conflicting interests of the states. In the international arena, the concept of *institution* has been used also interchangeably with *regime*, defined by Krasner (1982) as an explicit or implicit set of principles, norms, rules,

and decision-making procedures to manage various expectations and power positions. Neo-institutional aspects of European integration (see, among others, Aspinwal & Schneider, 2003; Pollack, 2005) often characterise the process as 'Brusselisation' of policymaking (see Merlingen, 2012, p. 11). This metaphor for centralisation with the growing importance of Brussels-based representatives and supranational EU institutions is also one of the key variables enabling to create values by institutional input where integration would be achieved by continuous and centrally led regulative harmonisation, standardisation and management of implementation. Legal harmonisation, achieved by joint regulations on the supranational level and enhanced cooperation between national lawmakers should thus produce a coherent and integrated legal space for further advantageous security cooperation. The process in general could be characterised as a supraterritorial centre-building in terms of territorially merged and shared security space as the Schengen area, where enhanced functional needs and cooperation pragmatism produce regulative harmonisation and discursive coherence, governed in centrally organised supranational mode.

3.3 Construction of discursive coherence

Decision making and policy choices in the supranational institutional environment are normally framed by detailed regulations, procedures, norms, values and political compromises that prefer rational, predictable, continuing and less risky options and choices. The constructivist understanding that social knowledge is 'constructed' through interactive (discursive) practices, becoming a reality only through inter-subjective socialisation⁸ and constructed understanding, as well as humans who allow this constructed perception to influence their social thinking and political actions (*The Concise Oxford Dictionary of Politics*, 2009, p. 117), refers to seeking to explain structure (agency) and the constraints (opportunities) for a change towards integration in a particular context. The question about *how* far particular actors can go in identity transformation is mainly a question of power and the 'art of the possible' (see Dixon, 2012, pp. 113–114), which is also loaded by certain contexts and 'windows of opportunity'. Thus, the constructivist approaches underlie the importance of common development

⁸ Sociological and historical institutionalism, and the *Europeanisation* framework are commonly used constructivist perspectives for understanding the formation (*construction*) and institutionalisation of EU-level practices, and regulations integration with the functioning of national policymaking process (see Radaelli, 2000; also 2003; 2009) by shaping the interests, values, identities and their interpretations as the main organising factors. Constructivist approaches (Adler, 1997, p. 324; also Merlingen, 2012, pp. 9–10) hence stress the importance of social norms, beliefs, ideas, values and identities in collective interactions and integration.

of the best practices, social learning, shared values and identity building for a successful integration process.

Learning and training as the *soft* bases of transnational transfer for further developments and integration of the EU's internal security and law enforcement, achieved a prominent place after the acceptance of the Stockholm Program (for the period of 2010–2014), EU Internal Security Strategy (ISS), and adoption of the TFEU with its substantial reforms on EU Justice and Home Affairs (JHA). The following Treaty of Lisbon opened the way for a promotion of more concerted action in the EU's internal security and law enforcement cooperation. The Stockholm Program suggests that common police training can foster a law enforcement culture by offering the so-called European Training Schemes (ETS/ LETS)⁹ at the initial stage, highlighting the perceived importance of shared learning and lesson drawing among the highly inter-dependent security actors as are the EU Member States. The Stockholm Program also required that training on EU-related issues should be made accessible in a systematic manner for all JHA professionals within the EU, as well as stated that the EU and aspects of international cooperation should be part of national law enforcement curricula (Loik *et al.*, 2016). The European Police College (CEPOL)¹⁰ and Frontex as EU JHA agencies were placed as key institutional actors ensuring the *European dimension* in such a professional training and learning.

From the constructivist security perspective, it could be expected that educational and training cooperation continue to acquire increasingly important attention as a possibility to integrate more closely various policing, law enforcement and intelligence cultures of the EU Member States, as part of the ongoing process of *Lisbonisation* of the EU JHA/AFSJ, and gradually forming the European security community. The constructivist perspective also holds that intra-EU, as well as trans-Atlantic relations, are characterised by the absence of traditional inter-state security concerns because these relations take place in the same value-based security community. This approach challenges the neorealist assumption by arguing that the causal powers attributed to *structure* by neorealism are, in fact, not given but constructed by social practices (see Wendt, 1992; 1999), which could be the bases of coherence building in accordance with the security

⁹ The European Training Schemes' (ETS) approach was later widened and renamed as the Law Enforcement Training Schemes (LETS).

¹⁰ CEPOL (in French *Collège Européen de Police*) brings together senior police officers across Europe with an aim to encourage cross-border cooperation in fight against crime and maintenance of public security. Established as an EU agency in 2005 by the Council Decision 2005/681/JHA, the CEPOL operates as a networked agency where the common training activities are implemented mainly by the Member States, mainly at national senior law enforcement training institutions.

community's development logic. The constructivists see also identities and interests as the result of ideas and their social construction, thus the meanings of the ideas, objects and actors are given by social interaction (see also Finnemore, 1996; Zehfuss, 2002). In this context, Schimmelfennig and Sedelmeier (2004, p. 667) point out that the core integrative aspects are conceptually followed by a social learning model, where actors probably choose the most appropriate or legitimate cooperative option.

To summarise the comparatively analysed security integrative approaches, one could argue that high functional and public expectations to combat effectively cross-border organised crime, terrorism, and additionally secure the external dimension of EU's security, require further cooperative advancements and removal of barriers between the Member States. This includes political, legal-regulative, technological, cultural and institutional dimensions, as well as successful construction of a common security area and development of joint discursive practices. Needful cooperation and security community building misfits in practice if there is a lack of understanding regarding the common challenges, objectives, values and principles for improving international trust and effective transnational coordination in the framework of 'more capable, more coherent and more active' strategic culture, as agreed by the European Security Strategy and the following efforts towards better secured Europe.

4. Conclusion: towards deeper security integration?

The turbulent global context in which security threats for Europe emerge reflects political, societal, economic and technology developments that bind states together in closer ways than ever before, enabling also rapid proliferation, diffusion of threats and the spread of cross-border crises, such as illegal mass immigration or terrorist activities. Transnational organised crime takes a variety of flexible forms and even minor fragmented observations may be local reflections of an existence of some global criminal network. From the perspective of security community logic the article analysed and discussed the focus of EU's security domain on advanced harmonisation and operationalisation of common instruments, and intensifying the use of integrative security tools in recent years. Since the launch of the European Security Strategy (ESS) and adoption of the TFEU, the main efforts in this respect include the EU policy on strengthening the planning cycle in fight against serious and organised cross-border crime and cross-institutionally coordinated border management.

The security integration in the EU after the ESS and the subsequent developments are a good example that the Member States are no longer committed to upholding their traditional sovereignty but are generally ready to share it for greater problem-solving capacity, through institutionalised security cooperation with established EU bodies on the supranational level if applicable to their domestic interests. In parallel, the Member States are also demanding whether supranational level is incapable of meeting their security needs and expectations, as several border closings in the Schengen area have demonstrated during the migration crisis. Thus, the neorealist security understanding is still valid in intergovernmental terms but should also be refreshed in terms of functional supraterritoriality approach, where constructive understanding of a common security culture develops in parallel with legislative and institutional security integration, pushed forward also by technological security tools to advance cross-border operational capabilities. The EU's legal policy and ICT instruments are planned to create an advanced framework and opportunities for a more rapid exchange of information and joint operational capabilities between competent security authorities to reinforce cross-border and transnational operational links.

As a precondition for security integration, the EU has made some efforts to harmonise different national criminal law and traditions of the Member States, framing a common approach to asylum, immigration and external border protection. For advanced security integration, there is also a mix of challenges and dilemmas to be resolved, mainly from common identity-building and institutional perspectives. The post-9/11 period and steps made by the EU strategies include the implementation of the EAW, rather radical measures to attack and freeze terrorists' financing, the fast development of surveillance systems and databases with mutual legal assistance agreements and intelligence sharing. Some of these measures are aimed to strengthen the turbulent external dimension of European security. From the integration perspective, it is also important to note that the European Parliament and Council of the EU may establish minimum rules concerning the definitions of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimension by the TFEU. Based on developments in organised crime, the Council of the EU may act unanimously to adopt a decision identifying other areas of crime after obtaining the European Parliament's consent. The latter means that the list of areas of advanced harmonisation is neither exhaustive nor final. If the approximation of criminal laws and regulations of the MS proves essential to ensure the implementation of the EU policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions. According to the TFEU, it has

also enabled to establish and implement enhanced security cooperation between the EU Member States.

Due to the abandonment of the former pillars, the legal framework of EU's security policy has been transformed and forms of cooperation have further developed towards a supranational shift in competences. One of the central indicators of deeper security integration by the TFEU is the mutual defence clause (Article 222), which extends the EU's potential and responsibilities in fight against terrorism and conflict-prevention missions. The judicial cooperation in criminal affairs is based on the principle of mutual recognition of judgments and judicial decisions, including the approximation of the laws and regulations of the Member States. In criminal affairs, the European Parliament and the Council of the EU, acting under co-decision procedure, are able to adopt measures to lay down the rules and procedures to ensure recognition of all forms of judgments and judicial decisions throughout the EU, prevent and settle conflicts of jurisdiction between the Member States, as well as to establish a European Public Prosecutors Office. In addition, the EU has several options and resources to organise and support trainings of the judiciary and judicial staff and facilitate cooperation between judicial or equivalent authorities in relation to proceedings in criminal affairs and law enforcement. One may realise that the learning tools are equally estimated to promote more coherent discursive practices and common administrative capacities with the cultivation of a security community within the European Union.

As to the policy level, the EU turns quite a lot of attention to the development of trust and common culture to make some real operational progress in the European security space. From a liberal perspective, the cooperation is mainly motivated by the belief that it will produce cumulative growth and progress for all stakeholders involved. The central value of the liberal cooperation model is voluntarism where the participating sides cannot be forced to join or develop common policy goals against their will. Under this principle, every policy change in the EU needs support by the Member States, especially in high policy areas such as security and law enforcement affairs. A compromise has been found in a *bridging clause*, which allows using qualified majority voting in most of the EU policy areas according to the Lisbon Treaty's amendments, but there exists a risk of fragmented implementation and multi-speed integration between the Member States. The TFEU also initiates some new integrative processes, which can be evaluated as spilling over steps for deeper political unification within the security domain, such as strengthening the powers of its security agencies, which coordinate and develop enhanced cooperation between national authorities.

As the article analysed and discussed, the effectiveness of the implementation of common instruments should be the EU's priority for further construction of the security community. The outcome evaluation indicates that harmonising measures in support of the ICT tools are not working well without a sufficient level of institutional assistance and accommodation of common discursive practices, applied also to joint risk analysis, criminal investigations and operations, as well as exchanging of relevant intelligence data. In sum, transnational security challenges could be effectively countered by a flexible and well-coordinated cross-border cooperation between internal security and law enforcement authorities permanently working together. These authorities should be properly educated, trained in a cooperative manner and have a sufficient level of mutual trust and common understanding about the main threats and risks they are facing together. From a wider theoretical perspective, a comprehensive view to functional and constructive aspects should enrich the security community understanding. The appropriateness of professional action rather than bargaining, persuasion rather than coercion, and a common understanding how to deal with functional pressures and meet security challenges in a cooperative manner characterises the processes of advanced rule transfer and integrative strategic adaptation in support with legislative and technological measures to achieve operational success.

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