

## *Editorial*



# Police Cooperation in the European Union, Supported by Strengthening the EU Internal Security's External Dimension

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## 1 Introduction

Even with the most recent changes adopted by the Lisbon Treaty, EU member states retained their sovereignty in police cooperation policies where none of the (executive) police powers<sup>1</sup> have been granted to the EU by the Treaty

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<sup>1</sup> It is important to mention that the Europol has the power to invite member states to start an investigation, to support offer analytical support to a member state on the spot and enrich the analytical ability of the member state in criminal investigation (Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA). Also, the Europol may monitor the internet and inform the member state and online service providers about referrals on violent extremist online content materials or other kinds of web contents which imply potential elements of a criminal offence (Europol's European Union Internet Referral Unit – EU IRU – has assessed and processed for the purpose of referral towards concerned internet service providers over 11000 messages across some 31 online platforms in 8 languages. The content had been put out by criminals to spread violent extremist online content materials. 91.4% of the total content has been successfully removed from the platforms by the social media and online service providers.). For more, see: <https://www.europol.europa.eu/newsroom/news/europol-internet-referral-unit-one-year>.

on the European Union and the Treaty on the Functioning of the European Union. The EU implements its powers by the principles of subsidiarity and proportionality, which means that the EU operates in areas where goals are more easily achieved at the Union level than at the national or regional levels. Police cooperation within the EU represents a package of political, legislative, organisational, systemic, and operational measures. Powers and duties are divided between EU institutions and agencies, on the one hand, and its member states and competent authorities on the other. We cannot overlook that the fact that EU police cooperation has a complex system of rules and actions that require competent bodies to have a broad knowledge of the EU acquis, national legislations, and the legislations of individual states that directly participate.

The development of police cooperation in the past quarter century went in the direction of continuous improvement of the exchange of police information and data collected in pre-trial criminal proceedings, as well as analytical support to the competent authorities of the member states, but not in the direction of transferring investigative and police powers to the authorities of other member states or EU institutions. The trend of EU police cooperation will go further in the direction of simplifying the rules and access to information, raising interoperability of the systems, efficient use of existing systems and bottom-up approach, thereby achieving better quality instruments of cooperation. This is something that is clearly needed, because of the need which has been mentioned at the conference on preparing the Stockholm Programme shows<sup>2</sup> the key acquisition achievement of the EU is the Committee on Internal Security (COSI),<sup>3</sup> whose task is to coordinate the actions of the competent authorities of member states, including the field of police cooperation. Because of this challenging task, the eyes of member states and EU institutions and agencies are focused on this committee. Whether police cooperation can continue to successfully develop at the EU level will depend largely on the performance of this committee and adopted measures that will ensure greater protection for EU citizens. The development of the EU Policy Cycle<sup>4</sup>

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2 Stockholm Programme – An open and secure Europe serving and protecting citizens (Official Journal C 115 of 4 May 2010).

3 Article 71 of the Treaty on the Functioning of the European Union (TFEU) establishes a Standing Committee on Internal Security (COSI) within the Council. COSI is composed of members of the competent national ministries who are assisted by the permanent representatives to the European Union of the EU countries in Brussels and by the Secretariat of the Council.

4 The Council Conclusions of 8 and 9 November 2010 on “The Creation and implementation of an EU Policy Cycle for organised and serious international crime” in order to tackle the most important criminal threats in a coherent and methodological manner through optimum

with common EU operational priorities in the fight against serious and organised crime, monitoring and steering of this process, which includes cooperation with third countries and partners, presents a considerable development in police cooperation. At the preparation of the new multi-annual program for the harmonious development of the area of freedom, security, and justice, this question will inevitably arise: How many powers and actions for ensuring internal security will member states continue to transfer to the EU? Currently, there is no single answer to this question. So far, neither the European Agenda for Security nor a renewed Internal Security Strategy changed the geometry of powers between the Union and the Member States.

Recent problems related to terrorism and violent extremism, misuse of the internet and dilemmas about security threats in Europe, brought about strengthening the EU security policies in criminal matters, especially preventing and countering, violent extremism, terrorism and serious crime including immigration.

Police cooperation in the EU is a constant process that develops proportionately with changes in the social environment in EU member states and beyond. From the time when the Treaty on the European Union was signed in Maastricht on 7 February 1992, and entered into force on November 1, 1993 until now, we have witnessed the continuous strengthening of cooperation in justice and home affairs in the member states and the institutions of the EU. In the meantime, EU member states agreed to only limited police cooperation, which has been largely left to multilateral international cooperation. In the Treaty of Amsterdam, which was signed on 2 October 1997 and came into force on 1 May 1999, policies have been established regarding three aspects: freedom, security, and justice. Thus, the Treaty of Amsterdam introduced the concepts of "area of freedom, security, and justice" instead of the concepts of "justice and home affairs." The concept of freedom indicates a common policy of free movement, an asylum system, and legal immigration in the EU; the concept of justice indicates EU policies on justice matters, and the concept of security denotes common policies on crime and terrorism. As pointed out by the European Council in Tampere, Finland on 15–16 October 1999, the aim was to combine the freedom of movement within the EU with a high level of security and legal guarantees for all. With the Treaty of Lisbon, which was signed on 13 December 2007, and came into force on 1 December 2009, the EU took a step forward to further strengthen police cooperation. Furthermore, agencies,

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cooperation between the relevant services of the Member States, EU Institutions and EU Agencies as well as relevant third countries and organizations.

institutions, and working groups of the EU were also given more power under the Lisbon Treaty to improve police cooperation.<sup>5</sup> Another change that has greatly affected the field of police cooperation in the EU is the Treaty of Amsterdam which transferred the Schengen acquis within the framework of the Union acquis. Schengen is usually associated only with the abolition of border controls at internal borders between member states. However, the Schengen acquis also defines measures in the field of police cooperation that strengthens cooperation between police forces of the EU member states after the abolition of internal borders, with the aim of successful suppression of serious crime. Recent immigration challenges and the setting-up of a temporary control on some internal borders have raised the question of efficiency of the Schengen acquis which is under a revision.<sup>6</sup>

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<sup>5</sup> *Supra*, note 3.

<sup>6</sup> On 21 December 2016 the European Commission put forward three proposals aiming to reinforce the Schengen Information System (SIS) to better fight terrorism and cross-border crime: a proposal for a regulation of the European Parliament and of the Council on the establishment, operation and use of the SIS in the field of police cooperation and judicial cooperation in criminal matters, a proposal for a regulation on the establishment, operation and use of the SIS in the field of border checks and a proposal for a regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals. The main changes proposed by the Commission are: (a) to improve the security and accessibility of the system by providing for uniform requirements for officers on the ground on how to process SIS data in a secure way and ensure business-continuity for end-users; (b) to strengthen data protection by introducing additional safeguards to ensure that the collection and processing of and access to data is limited to what is strictly necessary, in full respect of EU legislation and fundamental rights, including the right to effective remedies; (c) to improve information sharing and cooperation between the Member States, notably through the introduction of a new alert category on 'unknown wanted persons' and full access rights for Europol; (d) to help combat terrorism by introducing the obligation to create a SIS alert in cases related to terrorist offences and a new 'inquiry check' to help authorities gather essential information; (e) to better protect children by allowing authorities to issue, in addition to alerts for missing children, preventive alerts for children who are at high risk of abduction; (f) to contribute to the effective enforcement of entry bans for third-country nationals at the external border by making their introduction in the SIS compulsory; (g) to improve the enforcement of return decisions issued to irregularly staying third-country nationals by introducing a new alert category for return decisions; (h) to make more effective use of data such as facial imaging and palm prints to identify persons entering the Schengen area; and (i) to strengthen the support for prevention and investigation of theft and counterfeiting by providing for alerts to be issued on a wider range of stolen and falsified goods and documents.

## 2 Police Cooperation in the European Union

Although police cooperation to combat serious crime is vitally important, the necessary instruments and measures of cooperation cannot avoid the area of judicial cooperation. An important part of the EU acquis for the suppression of crime is represented by the European Convention on Mutual Assistance in Criminal Matters of 2000<sup>7</sup> and the Protocol to the Convention of 2001,<sup>8</sup> which provide some forms of cooperation between law enforcement agencies. The connection of police and judicial cooperation could be seen in the fact that in the first stages of a member state's request for legal assistance, requests may fall within the framework of international legal assistance, and in the implementation phase, in the field of police cooperation, as well.

Police cooperation is based on direct bilateral and multilateral cooperation between the competent law enforcement authorities of the member states, where the competent authorities should more efficiently support each other in preventing, detecting or investigating criminal offences.<sup>9</sup> In general, instruments of direct cooperation can be divided into an exchange of information and data, and operational measures for the prevention, detection, and investigation of criminal offences.

### 2.1 *Information and Data Exchange*

Because of well-developed transport infrastructures, abolished controls at internal borders, and a highly information-oriented society, it is urgent for the EU countries law enforcement agencies to quickly and efficiently exchange data and information necessary to effectively combat crime. Law enforcement agencies should respond quickly, and they must have timely access to as much information as possible about criminal offences and their perpetrators, methods of operation, information on victims, used vehicles, and so on. Therefore,

7 Council Act of 29 May 2000 establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, in accordance with Article 34 of the Treaty on the European Union (2000/C 197/01) (OJ C 197, 12 July 2000, p. 1).

8 Protocol to the Convention by the Council under Article 34 of the Treaty on the European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21 November, 2001, pp. 2–8).

9 Member states support each other in the criminal investigation via the Europol and with its analytic support. The effective policing in the EU is hampered by the absence of Europol right to conduct police powers or at least to access Member States' databases with information and criminal intelligence on crime and criminals in the EU member states on the basis the on the hit-no-hit basis. Therefore, it can be understood as an EU police information and support hub with a limited capacity.

the EU countries are continuing to further develop mechanisms to allow implementation of the principle of availability, which has already been defined in a previous multi-annual EU plan, the so-called Hague Programme,<sup>10</sup> which is also mentioned in the Stockholm Programme. These programs formulate an innovative approach to the cross-border exchange of information for the detection and prosecution of criminal offences.

## 2.2 *Operational Measures*

Operational measures and forms of international police cooperation are not only limited to the exchange of information and data for detection and prosecution of criminal offences, but include other forms of cooperation that, due to the tactics and methods of work, require joint work of one or more competent authorities of several member states. EU member states are familiar with various forms of such work, which are defined in national legislation, bilateral and multilateral international treaties, or the EU acquis. These forms include cooperation in joint investigation teams, mixed patrols, joint operations, working groups, monitoring of controlled deliveries, participation in the protection of witnesses, cross-border hot pursuit, cross-border tracking, and support measures in emergencies, natural disasters, or disasters caused by human.

### 2.2.1 Joint Investigation Teams

A joint investigation team (JIT) is an operational measure of judicial and police cooperation, which is set up for specific purposes and for a defined period under an agreement between two or more member states and/or other parties. Compared with other forms of international judicial or police cooperation in the field of law enforcement and justice, for example, parallel investigations of a specific member state or several member states or other countries, the advantages of this form of cooperation are as follows:

- (i) Ability to share information directly between JIT members without the need for formal requests.
- (ii) Ability to request investigative measures between team members directly, dispensing with the need for letters rogatory. This also applies to requests for coercive measures.

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<sup>10</sup> The Hague Programme: Strengthening freedom, security and justice in the European Union (OJ C 53, 3 March 2005, p. 1) and Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198, 12 August 2005, p. 1).

- (iii) The ability for members to be present at house searches, interviews, and the like in all jurisdictions covered, helping to overcome language barriers in interviews and so on.
- (iv) Ability to coordinate efforts on the spot and for the informal exchange of specialised knowledge.<sup>11</sup>

The establishment of a JIT is usually proposed for investigating serious forms of crime. However, in deciding to establish the team, it is necessary to check the national legislation and operational instructions to ascertain whether there is a threshold depending on the seriousness of criminal offences or any other selection criteria. The proposing country can invite Eurojust and Europol to participate, which in particular cases enables the support of information and analytical systems, and the participating countries have available the financial resources for the implementation of investigative procedures. Members of the JIT carry out their tasks under the direction of the head of the investigation and must follow the conditions set by their bodies in a separate agreement on the establishment of a JIT between the competent authorities of the countries. Depending on national legislation in the countries, the legal basis is in the form of an international legal instrument, bilateral and/or multilateral agreement, or domestic law (e.g., laws governing criminal procedure). There are two documents at the EU level; the Convention on Mutual Assistance in Criminal Matters and the Council Framework Decision on JITs<sup>12</sup> that determine the rules and conditions for the establishment and operation of this measure.

#### 2.2.2 Cooperation in Covert Measures

The scope of work in criminal proceedings can have various forms. It requires statutory conditions to be met and the implementation of various covert criminal investigations. The implementation of covert actions in cases of cross-border crime and organised crime, where the members of criminal groups come from different countries, is an essential part of criminal proceedings. Such forms of cooperation can be performed with cross-border surveillance, controlled deliveries, and the use of undercover agents. EU countries can regulate this form of cooperation based on the Convention on Mutual Assistance in Criminal Matters of 2000, or based on bilateral and multilateral

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11 Joint Investigation Teams Manual, Council document 15790/1/11 REV 1 COPEN 281 EUROJUST 163 ENFOPOL 370 EJM 137 GENVAL 110 ENFOCUSTOM 127.

12 Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, June 20, 2002).

treaties. The Schengen acquis regulates police cooperation in cross-border observation and tracking. The Schengen Convention (1990) provides that:

Member states may implement cross-border surveillance or tracking in cases when they, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence shall be authorised to continue their surveillance in the territory of another Contracting Party where the latter has authorised cross-border surveillance in response to a request for assistance made in advance. Where, for particularly urgent reasons, prior authorisation cannot be requested from the other Contracting Party, the officers carrying out the surveillance shall be authorised to continue beyond the border, but the member state must as soon as possible inform the other state (Article 40).

In the international treaties, countries can of course adapt this form of cooperation to their bilateral and multilateral relations or needs of cooperation.

The Convention on Mutual Assistance in Criminal Matters of 2000 regulates the areas of controlled deliveries but does so in the context of legal assistance in criminal matters so that direct police cooperation in this area is not covered by another EU act. The definition of cooperation in controlled deliveries depends on the national provisions or bilateral and multilateral treaties.

Other arrangements are further defined in bilateral agreements or as part of implementing the agreements between the member states. The only EU legal framework on the use of undercover agents in another member state is established by the Convention on Mutual Assistance in Criminal Matters of 2000. Police cooperation in this field is thus established among police forces based on bilateral and multilateral treaties. The EU has no uniform legal framework for the implementation of these forms of police cooperation. By signing international treaties, the member states agree that each state, on its national territory, allows the operation of undercover agents of the contracting party, if this is necessary for the successful detection of the offence that was committed or is being prepared on the territory of the contracting party, if the discovery of the criminal offence is not possible without the undercover agent, or if it is much more difficult because of that.

The same legal framework between member states is also used for cooperation on witness protection. Through the competent authorities during the criminal proceeding, two member states apply for a relocation of witnesses, victims, injured parties, defendants, and the related protected persons from the territory of one party to the territory of the other and provide protection



even after that. This is all defined by competent authorities in bilateral and multilateral agreements.

### 2.2.3 Cross-border Hot Pursuit

The Schengen Convention (1990) defines the implementation of pursuits:

The competent authority carrying out hot pursuit to the territory of another country must send previous notice to this country, and in some cases, it may inform it later. The country in which the competent authority of another country continues the pursuit must assume the pursuit as soon as possible; the competent authority of the other country at the request of the country where the pursuit is taking place immediately terminates the pursuit. This will require concerted action by the competent authorities of both countries because the legal framework does not allow the arrest by the competent pursuing authority of another country. (Article 40)

Notwithstanding the preceding, the countries may agree otherwise due to bilateral interests. In the framework of the international treaty, they can set limits or upgrade cross-border pursuit, allow tracking for reasons of public security, or define limits in space.

### 2.2.4 Joint Patrols

Operational police cooperation in the EU member states is also encouraged by police actions, such as joint patrols, which are also called mixed patrols. This is the typical method of policing, where officers from two or more countries together implement police actions, and they are introduced to maintain public order and security as well as to prevent criminal offences. Police officers who can collaborate in actions on the territory of another member state are predetermined. The legal basis for the creation of such forms of joint work is usually in bilateral and multilateral treaties, which also define other conditions of cooperation.

The powers of a police officer in the host country are defined in the national legislation of individual countries. A common framework defining the powers that shall be performed does not exist. Even in a smaller circle of countries, such as found in the Prüm Treaty (which is more famous for the automated exchange of DNA profiles and other databases), or at the level of the EU, member states could not agree on broader powers. In the field of operational cooperation and the typical forms of common policing, the EU went further only with the transfer of the Prüm Treaty into the EU acquis by Decisions

2008/615/JHA<sup>13</sup> and 2008/616/JHA.<sup>14</sup> Both decisions were adjusted regarding content and adopted during the Slovenian EU Council Presidency. Both contain typical forms of police cooperation, which are otherwise present only in bilateral and multilateral treaties, and this also applies to joint patrols.

#### 2.2.5 Help at Mass Gatherings, Disasters, and Serious Accidents and

##### Measures to Respond to Crisis Situations in Cases of Terrorist Acts

Similarly, with joint or mixed patrols, the member states can also more easily define the modalities of their participation and the legal basis in bilateral and multilateral treaties rather than at the level of the union. More forms of bilateral cooperation adapted to more specific needs of policing have been developed between countries. The strengthening of police cooperation within the Union, based on the above-mentioned decisions 2008/615/JHA and 2008/616/JHA, also promotes the purposes of preventing criminal offences and maintaining public order and safety at mass gatherings, similar major events, disasters, and emergencies by informing, coordinating police actions, and dispatching officers, specialists, advisers, and the available equipment. A specific form of cooperation exists between special units for emergency situations. In 2008, the member states adopted a decision 2008/617/JHA,<sup>15</sup> which provides for cooperation between specific units in human-made crisis situations that constitute a serious direct threat to persons, property, infrastructure, or institutions, in the case of hostage taking, kidnapping, and similar incidents. Crisis situations are defined as situations in which the competent authorities of a member state have reasonable grounds to believe that there is a criminal offence presenting a serious direct physical threat to persons, property, infrastructure or institutions in that member state, such as those situations referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. (Council Decision 2008/617/JHA, 2008, Article 2b). The concrete implementation depends on the national laws of the country that requested assistance as well as of the country that is requested.

<sup>13</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6 August 2008, p. 1).

<sup>14</sup> Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border co-operation, particularly in combating terrorism and cross-border crime (OJ L 210, 6 August 2008, p. 12).

<sup>15</sup> Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the member states of the European Union in crisis situations (OJ L 210, 6 August 2008, p. 73).

### 3 On Strengthening the EU Internal Security by Building the External Security Capacity in the Regions That Can Affect the EU Internal Security

Since criminal organisations and individuals are becoming more interconnected and cooperative at the international level but also financially and politically stronger, and the changing criminal landscape, using a “crime-as-a-service” business model which better follows criminal profits and where criminals are coming together as service providers to support project-based criminal endeavours. This approach requires an integrative response of internal security in the EU as well as of other regions and third countries affecting considerably the internal security of the EU.

Terrorism, violent extremism, hybrid threats and serious and organised crime know no borders and require the EU to be a responsible global stakeholder by strengthening relationships and building broad partnerships with states in surrounding regions, regional bodies, international organisations, civil society and the private sector. The Global Strategy also encourages promoting the development of human rights compliant-anti-terrorism cooperation with regions including North Africa, the Middle East, the Western Balkans and Turkey, among others, including issues such as the countering of violent extremism and radicalization.

The Council’s conclusions of 17 October 2016 on the EU Global Strategy, which mention that the High Representative and the Commission, in cooperation with the member states, will move forward on “optimising synergies and ensuring coherence between policy responses to challenges straddling the internal and external policies of the Union. The Council highlights in this regard the urgent need to focus on migration as well as counter-terrorism and hybrid threats and the need to support member states in this regard”.<sup>16</sup>

The Council’s conclusions on the development of the renewed Internal Security Strategy of 4–5 December 2014 and on the renewed European Union Internal Security Strategy 2015–2020, which acknowledge the growing links between the European Union internal and external security and stress the importance of an integrative, complementary and coherent approach towards key third countries and partners on security aspects of mutual interest.

The Council’s conclusions on strengthening the EU internal security’s external dimension in the Western Balkans including via the Integrative Internal

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<sup>16</sup> The Council conclusions on implementing the EU global strategy in the area of security and defence, adopted on 14 November 2016.

Security Governance (IISG),<sup>17</sup> presents the first concrete action of the EU in strengthening the EU internal security's external dimension, which aims to improve the efficiency of cross-border police cooperation in the fight against serious crime.

The Integrative Internal Security Governance for the Western Balkans establishes a close cooperation between representatives of existing relevant structures in the region, representatives of the EU, and of other international partners who will jointly develop and implement a set of common priorities in the following three areas: (a) prevention of violent extremism and fight against terrorism; (b) fight against serious and organised crime; and (c) border security. This approach is planned to considerably reduce duplication and overlapping efforts of various international stakeholders in third countries and regions which affect the internal security of the EU, and create synergies as well as to further develop the efficiency of international police cooperation and actions against serious and organised crime.

#### 4 Concluding Remarks

EU policing is confronted by more new challenges as the society changes, especially concerning Europe's changing criminal landscape, where mobile serious and organised crime groups use a "crime-as-a-service" business model and trade in diversified commodities requiring strengthening of the EU internal security's external dimension. An idea to strengthen EU security includes both dimensions – the internal and external which need more mutual trust and political support for police cooperation on the EU side, and enhanced cooperation with third countries and other international partners within the external dimension of the EU internal security.

A limited trust between member states' law enforcement authorities, as well as limited trust in the EU institutions and agencies still exist. Besides, efficient cooperation among EU member states and the development of a partnership with countries and institutions outside and beyond the EU should be more synergetic, coordinated and complimentary to boost the efficiency and effectiveness in following joint priorities.

On a larger scale, cooperation of the member states should be further developed to improve the implementation of operational actions of police forces, especially in the field of the serious crime which already consists of the multi-annual strategic plans (MASP) and operational action plans (OAP).

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<sup>17</sup> Adopted by the Council at its 3508th meeting held on 8 December 2016.

To conclude, the EU documents emphasise police cooperation in the field of serious crime. It is necessary not only to focus on criminal investigation, but also to develop local strategies for the provision of safety and security, especially safety partnerships<sup>18</sup> because in the final instance, international and national security threats have consequences for local communities, particularly regarding preventing and countering violent extremism and radicalisation. As the effects of European police cooperation have not been thoroughly studied and evaluated, I believe that this is an important challenge for researchers and European policy makers in the field of formal social control.

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<sup>18</sup> For more, see E. Devroe, A. Edwards and P. Ponsaers (eds), *Policing European Metropolises: The Politics of Security in City-Regions*. (Milton Park: Routledge, 2017).

