

Liberty and Security in the development of the Area of Freedom, Security and Justice

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Police cooperation in the fight against organised crime has become increasingly important in the European Union (EU). Not only requires the abolishment of internal borders in the Schengen area compensatory measures for the (perceived) security loss, but a perceived transnationalisation of serious and organised crime are seen to warrant closer cooperation in the EU and beyond among law enforcement agencies.

The third pillar of the EU (here understood as police and judicial cooperation in criminal matters) has been one of the most dynamic areas in the recent fifteen years. In the 1980s policy making in this area was purely intergovernmental and took place in close contact with law enforcement practitioners . Since the treaties of Maastricht and Amsterdam, this informal and non-binding cooperation has become increasingly formalised and more binding . While the development of policy-making in the EU and developments on the national level have been closely monitored , there are almost no detailed accounts of the effect the increasingly codified set of rules on the EU level about what the police ought to do and how they are supposed to do it has on the rules on the national level .

EU level policy is seen to be oriented toward the provision of security, while insufficiently paying attention to the liberty aspect in the development of the area of freedom, security and justice (AFSJ) . On the national level, authors have voiced concern about reduced civil liberties and extended law enforcement powers which are designed to provide a sense of security in a world perceived to be dangerous and though which the ability to control police are significantly reduced . In the fight against terrorism, this development has exacerbated. Some attribute this development towards more security to international (especially EU) agreements. They see a transposition of the security orientation on that level contributing to lower civil liberty protection on the national level .

In the light of the characteristics of the EU institutional framework, we can expect either a transposition of the security-orientation onto the national level or a dampening effect of national civil liberties protection mechanisms. Either way, the relationship between civil liberties and security on the national level will be affected by the development of the European regulatory framework in police and internal security matters. Still, the literature remains silent on these top-down effects in third pillar areas. My research project aims to fill this gap and presents a qualitative-controlled approach to analysing civil liberties and security in national police policy under the influence of the EU policy-making. It answers the question:

Does growing EU policy-making against organised crime have a discernible impact on the relationship between security and civil liberties in national policy?

Why should the EU matter for national police policy?

One of the major criticisms levied against third pillar policy-making is the tendency to adopt non-binding measures, thus contributing to the lack success of cross-border police cooperation, and the lack of ratification and implementation. While this criticism is true for the Maastricht period, data shows that under the Amsterdam treaty decision-making in justice and home affairs has become increasingly binding. Police cooperation has moved to centre stage in the third pillar and the events at the Council and G8 meetings in Goteborg and Genova as well as the attacks in the US 2001 has led to a surge in policy-making in the EU.

The burgeoning literature on Europeanisation has shown that the institutional framework on the European level influences national policy structures. In the section above I have argued that the nature of the institutional framework of European police cooperation shows characteristics which make the application of this explanatory concept possible.

Europeanisation shall be defined as 'a redirection of policies and/or practices and/or preferences in the domestic arena towards those advanced by dominant EU level actors/institutions'. It is conceptualized as a situation, when changes have occurred and Europe is incorporated in the logic of national policy-making. So I focus in my analysis on the Europeanisation of policy.

Europeanisation occurs either (1) when European measures are transposed directly into national law, (2) when the outcome of the political process on the national level is connected to

decisions taken on the EU level or (3) when the outcome of policy-making is a traceable reaction to developments on the EU level. These steps increase in analytical complexity. The dominant understanding of Europeanisation is top-down as analysed by and . When a country implements EU measures the policy concerned is Europeanised. Complying with EU measures does not necessarily lead to an approximation across member state policies nor need we observe a change in every national policy at every point in time. In the process of European integration (or uploading) structures, policies and norms of some member states are more directly replicated at the EU level, while other member states experience policy misfit . In the former cases, the transposition of EU measures does not lead to changes. The situation still deserves the attribute 'europeanised', as Europeanisation can only heuristically be differentiated between downloading and uploading, which are in reality inextricably linked. However, it is unlikely to find no effect on any policy field over time. When analysing a policy field over a period of time, there should be effects in every country. The possible results of Europeanisation are absorption (transposition + no misfit), change (transposition + misfit) or inertia (no transposition). This is not to say that an approximation will invariably take place. But there will be changes in different member states in the area of police cooperation and this change might be attributable to developments in the EU, and the changes will affect the relationship between security and liberty.

An alternative mechanism, which is particularly important in intergovernmental areas where top-down forces are not so powerful and thus needs to be controlled for, is horizontal policy transfer . This helps to differentiate Europeanisation from similar developments across countries which do not originate on the EU level, but are 'cross-loaded' from another member state or even a state from outside the EU. But cross-loading does not exclude the development of similarly structured EU policies, as there is no reason to assume that cross-loading is not at the same time accompanied by uploading of these emerging trends to the EU level . There is not enough space in the current chapter.

Civil Liberties and Security

For the analysis of the relationship between the EU and the national policy structures in police policy, I use the proxies of civil liberty and security to assess whether changes occurred

that could be attributed to the EU. Those two are central dimensions of the policy field and can be used as indicators for the development of third pillar policies.

Civil liberties encompass the substantive civil liberties relevant in police policy and actors and mechanisms of control. Security is understood as the extension of law enforcement competences and methods.

For the empirical analysis of policy changes I identified indicators, which were derived from the literature on the police and the state, and applied them to the sources. For liberty they are:

- “*Judicial Control*”, an actor-focussed variable, assessing the competences of parliament, courts, executive agents (including the police proper) and civil society (including individuals) to control the activity of the policy, especially where it impacts on civil liberties,
- “*Legislative Control*”, which focuses on process matters and asks whether and when there are mechanisms to control the impact of law enforcement measures on civil liberties, and
- “*Substantive civil liberties*”, encompassing freedom of the person, freedom of movement and informational self-determination/privacy as these rights are most likely to be affected by police activities.

And for security the three indicators are:

- “*Tasks*”, focussing on substantive tasks of law enforcement agencies, e.g. when incriminating particular actions;
- “*Methods*”, looking at the operational methods the agents are entitled to use in order to fulfil their tasks, and
- “*Structure*”, concerning changes in structures which are seen to affect the ability of the police to provide security.

The conjecture is, that EU police policy extends the competences of law enforcement, while reducing protection and protection mechanisms for civil liberty.

Whether the regulatory framework fulfils these intentions, does not play a role in the analysis. In that respect the approach falls short of assessing the 'real' protection of civil liberties. It doesn't matter if control instances really work or if the extension of competences does lead to a higher level of security. The dependent variables consider political purpose, not problem-solving capacity.

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