Chapter Four

Enhancing the accountability and transparency of transnational police cooperation within the European Union

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Abstract

The EU's development of advanced instruments and processes of police cooperation on both policy and operational fronts presents new challenges and opportunities for conventional approaches to police accountability and transparency. Although no substantive mention is made of police accountability under Title V of the Lisbon Treaty 2009, it can be expected that the EU's common transnational measures draw upon, reconcile and enhance Member State approaches to police accountability which are rooted in long-standing constitutional, legal and administrative traditions and values. This chapter will consider whether and to what extent various Member State norms on police accountability and transparency are informing the concept, design and operation of the EU policing regime and vice versa. More particularly, it will recommend the development of a new ethos of 'transnational police accountability' which should guide and shape EU policy-making in this area.

Introduction

Police accountability has become a central tenet of public policing in liberal constitutional democracies. Police accountability, as a concept, is considered to be integral to the democratic ideal because, like the democratic political process, it demands and should facilitate a boundless capacity to require information, answers and accounts from an explanatory and cooperative police force (Marshall, 1978). The democratic ideal is that everything should ultimately be made available for public scrutiny unless it is specifically in the public's best interest for the government, or a police force, to withhold it (Patten Commission, 1999). Democratic policing also demands transparency. Transparency reflects the opening up of police work to public scrutiny through the publication of operational policy, investigation reports and statistics on public policing (Kilpatrick, 2018). It should not

be the job of academics, reporters or non-governmental organizations to find the pertinent information; it should be made available to the public openly, willingly and systematically so they may judge the quality of policing for themselves (ibid). One UK Judge, the late Lord Bingham, succinctly stated that:

> Sometimes, inevitably, those involved in the conduct of government, as in any other walk of life, are guilty of error, incompetence, misbehaviour, dereliction of duty, even dishonesty and malpractice. Those concerned may very strongly wish that the facts relating to such matters are not made public… Experience however shows, in this country and elsewhere, that publicity is a powerful disinfectant. Where abuses are exposed, they can be remedied. (*R v Shayler* [2002] UKHL 11, para 21)

The relatively fulsome disclosure of reports and inquiries concerning policing matters, followed by an informed debate, is considered to be a fundamental ingredient for the proper functioning of the public police so that problems and concerns can be aired, discussed and subsequently solved (Walsh, 1998). This process of disclosure and debate is not only important for amending police conduct but it is also crucial for placating social fears, anxieties and alarm about rising crime or police performance (Loader and Walker, 2007). However, this chapter will argue that a lot of basic material about the conduct of cross-border and transnational policing within the EU is not being disclosed and debated. Who decides what EU-level material to gather, release and withhold in the best interest of the public appears to be an issue which has not been fully addressed.

Integral to the ethos of disclosure and debate is also the possibility or expectation of securing redress for harm done. The idea of police accountability is intrinsically concerned with the establishment and functioning of multiple processes and procedures through which police policies, strategies, practices, acts and omissions can be questioned with a view to securing redress for harm done or to effect reform (Walsh, 2009). A complaint about police conduct may, for example, demand only a simple explanation from a police officer, or it could go to the very heart of the management ethos of a police department, requiring institutional reform. A complaint may result in the dismissal of a police officer for gross misconduct or it may require the amendment or introduction of new procedural or behavioural standards against which they can be held accountable. Different types of complaint or inquiry may ultimately require different considerations and outcomes and may be expressed in an array of different

environments (Manning, 1977; Bayley, 1985). To echo Kleinig's (1996) eloquent observation, police accountability should be thought of not only as a normative demand that can be made but also structurally as a condition that exists. To give structure and form to the demand for police accountability, many jurisdictions have developed a number of structures and processes which form a broader architecture or assemblage of accountability in an effort to realize police accountability in practice and satisfy the various forms that it may take. The array of mechanisms of police accountability has grown to include codes of procedure, practice and ethics; human rights duties and prohibitions; internal managerial processes; external civilian oversight; government-appointed inspectors; local political governance; parliamentary scrutiny; and the civil and criminal courts in various jurisdictions, amongst other structures and processes.

Since the processes used to hold officers to account for the quality of their individual actions and the processes used to hold agencies accountable for the quality of service can be quite different to one another, a complainant may utilize one mechanism and not another in an effort to realize a particular form of redress (Walker, 2005; Reiner and Spencer, 1993). However, as it is not always readily apparent to the complainant, or from the nature of the complaint, which mechanism is most suitable to their needs, the reality is that there is often an array of sometimes overlapping procedures and methods which can be employed to render an individual police officer and the police organization as a whole answerable to other persons and bodies located both inside and outside of the organization (Walsh and Conway, 2011). Nevertheless, the ability of these structures and processes to consistently deliver accountability across each of the various dimensions in principle and in practice is considered to be fundamental to concepts of justice, police legitimacy and the 'public good' in liberal constitutional democracies (Reiner, 1985; Loader and Walker, 2007; Foucault, 2009).

Unfortunately, as a result of its inherent complexity, research indicates that no jurisdiction appears to be satisfied that it has established adequate structures and processes to comprehensively deliver police accountability in practice (Reiner, 1995; Manning, 2010). Although many government ministers and police chiefs occasionally claim that they are 'high on accountability' and point to various mechanisms that they maintain, in many cases the rhetoric does not match the reality; and quantity does not invariably equate to quality (Mawby, 2002, 64). Due in part to the perceived complexity of the subject matter, rather than inquire into the institutional and operational condition of police accountability in practice,

policy-makers, police practitioners and even academics have displayed a tendency to use the term as a flattering but largely abstract adjective to colour their commentaries on various dimensions of police work, rather than subject the distinct mechanisms to substantive scrutiny (Lustgarten, 1986; Manning, 2010). Lustgarten (1986) observed that 'police accountability' is routinely employed as little more than a 'weasel word' to imply the degree of control over the police that the public and its political representatives enjoy and, occasionally, to imply the degree of control that they ultimately desire. The difficulty of examining the condition of police accountability is that the structures and processes of police accountability can be so numerous, varied and disparate, that they are difficult to consider as a whole or analyse contemporaneously.

Nevertheless, the importance attached to police accountability in liberal constitutional democracies suggests that its realization, and an appreciation of its complexities, should arguably form an integral part of any transnational policing project. It could involve, for instance, the harmonization (and enhancement) of different Member State approaches to police accountability, which are generally rooted in distinct constitutional, legal and administrative traditions and cultural norms. It could involve, for example, a boundless capacity to require information, answers and accounts from explanatory and cooperative police forces, and strive to make everything available for public scrutiny unless it is specifically in the public's best interest for things to be withheld. It could also strive to ensure that police officers and wider policing organizations are held accountable for their performance in police operations of a transnational nature.

The EU legislative and policy measures which were introduced in the 1990s and 2000s pursuant to the Maastricht (1993), Amsterdam (1999), Nice (2003) and Lisbon (2009) Treaties represented a major transformation and acceleration of EU involvement, and even governmental interest, in matters of cross-border police cooperation within a remarkably short space of time. Dozens of measures were introduced which reshaped and redefined the transnational policing environment, not least the establishment of Europol (1998), Eurojust (2002), the EAW (2002) and Joint Investigation Teams (JITs) (2002). The relentless and unprecedented development of procedural instruments and frameworks for police cooperation appeared to suggest that constitutional, legal, administrative and cultural differences which had traditionally shaped, defined and limited the conduct of cross-border policing across the individual Member States had been reconciled. Although no specific mention of 'police

accountability' was made in the treaty establishing the EU competency in matters concerning police cooperation (Maastricht Treaty Title VI, Article K.1), nor in the subsequent Amsterdam, Nice or Lisbon Treaties, it could be anticipated that the ethos and problems of police accountability at the national level had been considered and addressed (to some degree).

The chapter will commence with a snapshot of the condition of cross-border police cooperation in the Member States from a transparency and accountability perspective. It will then draw upon a number of reports on transnational policing published by Europol as a case study to consider whether and to what extent various Member State norms on police accountability and transparency are informing its form and functions and vice versa. The chapter will also examine the practical relationship of various other EU instruments to the domestic arrangements and practices for cross-border police cooperation on the ground, and present proposals for legislative and administrative reforms which could enhance cross-border police cooperation in the EU from a transparency and accountability perspective. More particularly, it will recommend the development of a new ethos of 'transnational police accountability' which could guide and shape EU policy-making in the future.

<u>Why question the accountability and transparency of cross-border policing?</u>
Although EU involvement in the field of police cooperation has led to the creation of numerous structures and processes which have benefitted many cross-border operations in a variety of ways (see Sheptycki, 2002a; Collinson, 2017; Strange, 2018; and the chapter by Pearson), a perusal of news reports in recent years would suggest that the quality and accountability of transnational policing remains low. Within the United Kingdom, for instance, the Independent Anti-Slavery Commissioner (IASC) (2017), established pursuant to the Modern Slavery Act 2015, found serious flaws with the recording and investigation of modern slavery, which frequently has cross-border dimensions to it. Separately, in respect to child sexual exploitation, one senior British police official reported that thousands of suspected paedophiles were escaping justice because law enforcement simply could not cope with the sheer number of offences they were encountering, some of which emanated from abroad (Evans, 2014a). Similarly, in the prevention and countering of cybercrimes, for which cross-border investigations and the systematic sharing of information are of the utmost importance to ensure time-critical responses to help negate attacks as well as to secure evidence, effective international law enforcement cooperation is still difficult to achieve

(Sanderson, 2018). Her Majesty's Inspectorate of Constabulary (HMIC) (2014) found that many police forces across England and Wales were failing to properly investigate cybercrimes. Comparable issues were identified regarding drug-consumption and drug-trafficking, with the UK currently ranked in the top 20 countries in the world for the consumption of cocaine by volume (UNODC, 2017). Although many of these issues relate particularly to a debilitating lack of resources, the reports do little to allay fears that long-standing and systemic problems such as inter-agency rivalry, the languid sharing of information, jurisdictional conflict or practitioner disinterest or distrust have not been addressed (Aldrich 2004; Hufnagel & McCartney 2017). It would appear, at least on face value, that police forces are not yet pursuing cross-border police cooperation as part of their normal duties and routines (Lavorgna 2018; Paquet-Clouston et al., 2018).

Problems around the conduct and management of police officers are also evident in a litany of cases. One UK-based investigation into a £40m fraud, which affected the multinational corporation AB InBev, collapsed after the judge described the evidence as 'half investigated' (Evans, 2014b). It emerged that more than 200 bank accounts associated with the fraud had not been investigated and that material was both misleading and missing, leading the judge to describe the actions of the investigating officers as negligent (ibid). In numerous other cases, police officers were criticized for breaking basic laws on convert surveillance, for failing to apply for appropriate warrants in the investigation of alleged money launderers, and for using trainee officers to improperly seize crucial evidence (Evans, 2015). Although these problems have been uncovered within cases and investigations at both local and national levels within the UK, the logical corollary is that such malpractice is likely affecting investigations of a transnational nature also. By questioning the accountability and transparency of transnational policing, poor police practices and police corruption and scandals may be uncovered.

Sub-standard police cooperation is also evident in Northern Ireland. In the last seven years, the police forces on both sides of the land border, the Police Service of Northern Ireland (PSNI) and An Garda Síochána, terminated police chases at the border on more than 40 occasions, thereby allowing suspects to escape (Campbell, 2016). The 'hot pursuit' provisions of the Schengen Convention 1990 (Article 41) do not apply at the Irish land border, which means that the police officers in pursuit can do little other than notify their foreign counterparts by phone or radio in the hope that they will apprehend the individual(s) on the other side. Although the two police forces were able to coordinate a small number of

arrests, the statistics indicated that successful coordination between the two forces in recent years failed to occur in the vast majority of cases (Campbell, 2016). It does not appear that any substantive efforts have been made to address the inherent weaknesses.

Such issues are not unique to the UK. Although mechanisms such as the Schengen Information System (SIS-II) (2013) are designed to alert foreign authorities to transient and suspected criminals, lapses in intelligence-sharing on the continent have undermined crucial operations. One of the individuals suspected of involvement in the terror attacks in Paris in November 2015 was stopped at a gendarmerie checkpoint at the Franco-Belgian border in the hours following the attacks but was allowed to continue his journey (Brunsden, 2016). Although a check of the SIS was carried out at the time, the police in Paris had not yet updated the system despite being in possession of a contract from a Belgian car rental agency in the suspect's name, which they had found shortly after the attack in the glove compartment of a car abandoned in front of the Bataclan theatre (Marlowe, 2016). The gendarmes stopped and checked the identity of the suspected attacker and the men who had driven to Paris to collect him, allowing all of them to continue (ibid). Another deficiency was evident in the investigation of a separate individual involved in the same attack. A suspect was known by the Belgian authorities to be in Athens when they assaulted the cell he was a member of in Belgium, yet they failed to notify the Greek authorities before the assault, allowing him to escape unimpeded (ibid).

Police corruption has also affected the investigation of offences with a cross-border dimension. 'Operation Tiberius', headed by a senior officer of the London Metropolitan Police in 2002, found that organized criminals had infiltrated the police organization to 'endemic' levels (Harper, 2014). The report of the operation, leaked to the *Independent* newspaper in 2014, found that dozens of detectives had been bribed to provide criminals with access to confidential databases; obtain live intelligence on criminal investigations; provide specialist knowledge of surveillance and undercover techniques; and even to take part in drug trafficking and money laundering (ibid). Sensitive intelligence regarding live criminal investigations had reportedly been leaked to organized crime networks, resulting in failed prosecutions and the targeting of highly sensitive police witnesses. A number of police officers were even involved in the destruction of crucial surveillance logs relating to a drug trafficking operation. (ibid).

It can be expected that relevant EU mechanisms were concerned about and responsive to such developments. The next section of the chapter will proceed to examine whether and to what extent various EU instruments have served to improve the quality of police accountability and cooperation in such instances. It will focus specifically on Europol, as it is the EU's main instrument for police cooperation, functioning as the fulcrum of the EU policing regime (Fijnaut, 2004; Europol, 2017d). Most importantly, Europol is itself considered to be one of the 'most accountable' and regulated policing organizations and information systems in the world, defined by its rigid security protocols, data protection processes and parliamentary oversight (Den Boer, 2002: 58-60).

Europol and the transparency and accountability of cross-border policing

On face value, Europol would appear to be the EU agency most appropriate and able to identify problems, patterns and misconduct relating to cross-border police cooperation. The European Parliament (2017) describes Europol as 'the main instrument for police cooperation … a central plank of the broader European internal security architecture', while Europol (2017d) considers itself to be the 'epicentre' of the EU policing project. In practice, the intelligence agency serves as the 'information hub' at the heart of the European criminal intelligence model (Brady, 2008; Occhipinti, 2015). It is designed primarily around a 'hub-and-spoke' structure (Brady, 2008). Approximately 220 liaison officers from participating states act as 'spokes', sharing information directly with each other, supported by a 'hub' of circa 130 Europol analysts and almost 300 specialists employed at a headquarters in The Hague (Europol, 2017c: 12, 73). The analysts and specialists are primarily responsible for storing and collating information about offences, offenders, suspects and other key crime-related data, which they receive from the participating states and generate independently, on a system known as the Europol Information System (EIS). The information is subsequently collated, scanned and investigated, using a process known as the Europol Analysis System (EAS) to detect links and trends which might otherwise be missed by locally focused regional and national police forces, and then shared with them (Europol 2017c). Information and intelligence are disseminated by way of bulletins, email messages on the Secure Information Exchange Network Application (SIENA) system, and periodic reports. Liaison officers can also log onto the EIS directly.

In recent years, Europol has made successful and valuable contributions to the transnational policing field, not least in areas of drug-related organized crime, trafficking in human beings,

the facilitation of irregular immigration, child sexual exploitation, financial crime, intellectual property crime, cybercrimes, and terrorism (van Duyne and Vander Beken, 2009; Rozee et al., 2013; Christou, 2018). Its successes can be attributed, in part, to a concerted effort to develop its resources, capabilities and expertise so that it can tackle 'polycriminality' across the EU area (Europol, 2017c). Drug trafficking, for example, is one of the primary areas of 'polycriminality' since it is not only the favoured activity of the majority of organized crime groups in the EU but it is often accompanied by interests in trafficking of human beings, migrant smuggling, excise fraud and cybercrimes (Europol, 2017c: 15; Lavorgna, 2014a). Similarly, terrorist plots are increasingly being financed through crimes such as drug-dealing, robberies, counterfeiting and loan fraud (Europol, 2017b: 12).

To address the growing problem of polycriminality, Europol has developed and facilitated the growth of numerous specialized units, centres, platforms and monitoring apparatus to address emerging threats. These include a European Counter Terrorism Centre (ECTC), a European Migrant Smuggling Centre (EMSC), and a European Cybercrime Centre (EC3), amongst others. Launched in January 2013, EC3, for example, was designed to strengthen law enforcement response to cybercrimes in the EU by collating intelligence, stimulating faster reactions to online crimes and advising police forces on how to improve their operational and analytical capacity at the national and local levels. The various centres work closely together, focusing on overlapping problems such as critical infrastructure hacking, online child sexual exploitation and online identity theft, amongst other offences. The analysts, specialists and liaison officers who engage with these constructs are typically highly influential experts on international criminality who not only help to give direction to Europol's activities but can shape and influence the participation of their domestic police forces and security services (Rijken and Vermeulen, 2006; Lemieux, 2010). Europol's officials have been described as knowledge brokers, fixers, facilitators and even a form of global police, even though their work is almost entirely intelligence or knowledge-based (Nadelmann, 1993; Bowling and Sheptycki, 2012).

Crucially, the centres and platforms appear to be filling long-standing gaps in Europe's security assemblage. Crimes such as Internet-related child sexual exploitation, transnational payment fraud and migrant smuggling were traditionally poorly understood and addressed by local police forces, allowing Europol to quickly develop a significant degree of unrivalled expertise and oversight (Décary-Hétu and Giommoni, 2017; Europol. 2017c). Its ability to

stimulate, support and coordinate a significant volume of cross-border police cooperation is evident from a perusal of the four main reports which it publishes periodically: the *Europol Review*, the *Serious and Organized crime Threat Assessment* (SOCTA), the *Internet Organized crime Threat Assessment* (IOCTA) and the *Terrorism Situation and Trend Report* (TESAT). The reports typically contain an overview of recent activities and developments in their respective areas and provide a forward-looking assessment of emerging threats.

The SOCTA 2017, for example, describes the use of a Joint Investigation Team (JIT), composed of French, Belgian and Dutch investigators, and officials from Eurojust (which facilitates cooperation between judicial authorities, such as prosecutors and magistrates) and Europol, to intercept a number of 'couriers' who travelled across Europe gathering cash from drug dealers before transporting it to Belgium, the Netherlands, the Middle East and Morocco (Europol, 2017a). Another case study involved the dismantling of a Greece-based group which was providing irregular migrants with forged 'breeder documents', such as birth certificates and work contracts, so that they could apply for genuine identity documents, driving licences, visas and residence permits in the EU (Europol, 2017a, 21). Several highly publicized operations also occurred in the area of cybercrimes. For instance, in late 2016 Europol and law enforcement authorities from Australia, Belgium, France, Hungary, Lithuania, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, the United Kingdom and the United States carried out a coordinated 'action week' to counter Distributed Denial of Service (DDoS) cyber-attacks. The operation led to 34 arrests (IOCTA, 2017e). Europol's Cybercrime Centre (EC3) helped the countries in their efforts to identify suspects in the EU and beyond, hosted operational meetings, collated intelligence and provided analytical support. Separately, 'Operation Daylight' targeted online networks responsible for distributing child sexual exploitation material (CSEM), leading to 207 new criminal investigations being opened and 75 arrests (Europol, 2017c: 43). Other highly publicised operations included the dismantling of several global cybercriminal networks and cybercrime-as-a-service 'sharing economies' (Europol, 2017c).

In the field of counter-terrorism or 'high policing' (Brodeur, 1983, 1999), Europol's involvement in 'Operation Fraternité' was widely publicized within its most recent reports. The operation resulted in the deployment of multiple 'mobile offices' or 'mobile teams' of Europol analysts and specialists to France in the aftermath of the 2015 terrorist attacks in Paris, leading to the generation of over a thousand new lines of enquiry, more than 80

analysis reports and a significant increase in the number of files uploaded to the EIS database (new targets, associates, foreign terrorist fighters and phone data, for example) (Europol 2017c: 30-3). The operation also oversaw the submission of numerous requests to US authorities, pursuant to Article 10 of the EU-US Terrorist Finance Tracking Programme (TFTP) Agreement 2010, which allowed the specialists to track terrorist money flows and identify and map whole cells of local operatives and their financiers (Europol, 2017c: 30-3).

Europol's added value is well reflected in the various reports. The SOCTA, IOCTA and TESAT identify not only emerging trends and developments in organized crime, cybercrime and terrorism, but also Europol's successes in countering them. Europol's added value is also well exemplified by the fact that domestic police forces would not only struggle to organize such taskforces independently, but they would generally be unable to finance such endeavours. Detective bureaux are increasingly expected to present a financial 'business case' before commencing large investigations, even where convictions are highly likely (Ayling et al., 2009). The financial resources which Europol has available to spend on such taskforces and joint operations (problematically, the amount available is not clearly outlined in Europol's annual reports or final annual accounts) is considered to be crucial for stimulating and sustaining resource intensive cross-border investigations (Bakker and Powderly, 2011). Europol's reported successes would also appear to have had the desired (albeit indirect) effect of increasing the pressure on police forces to participate with it for fear of a public backlash if they fail to share crucial pieces of information or 'join the dots' because of simple inertia or ineptitude, culminating in terrorist attacks and serious organized crimes which could otherwise have been prevented (Gill, 2006).

Europol's increasing popularity with participating police forces, productivity and effectiveness is further evident in its ever-improving performance statistics. In 2016, more than 46,000 cases were initiated through Europol, almost 870,000 operational messages were exchanged and almost 1.5m searches of the EIS were performed by circa 7000 users (Europol, 2017c: 68-70). These figures dwarf the c. 12,000 cases initiated and 147,345 EIS searches recorded in 2010 (Europol, 2010). Not only are police forces increasingly engaging with Europol but in 2016 its Platform for Experts (EPE), which contains representatives from private industry and academia, who are encouraged to share best practice and non-personal data on crime, reached 10,000 members from 85 countries (Europol 2017c). User satisfaction

of Europol's facilities was, according to a 2016 survey, at 72.5 percent overall, reportedly an all-time high (Europol, 2017c: 11).

The sheer number of case studies outlined within the reports makes it abundantly clear that Europol has purpose. It would be all but impossible for individual Member States to comprehensively dismantle international organized crime groups on their own and they would struggle to do so in cooperation with other Member States without the synergies created and support provided by the transnational agency. Moreover, some international criminal networks engaged in 'special interest' crimes, such as the trade in fraudulent documents on the 'Darknet' or the trafficking of endangered wildlife, might otherwise be able to act with impunity since such crimes are often of marginal interest to domestic police forces (Lavorgna, 2014b; Europol, 2017c).

The reality of transnational police cooperation within the EU

Although Europol's reports highlight a number of major successes, the reality on the ground would suggest that they also hide a number of weaknesses and problems from public scrutiny. The case studies are eye-catching and considerably important, but the reports contain little more than a select number of prominent crime types and 'headline' cases which arguably give the reader the impression of wholesale success. The reports are invariably written in a lively and accessible style and contain some useful and informative diagrams but there are almost no details about the health of transnational policing more broadly. The *Europol Review* (2017c: 14), for instance, states that circa 5000 International Organized crime Groups (IOCs) are under investigation in the Member States and that 7 out of 10 groups are typically active in more than three countries, but it makes no mention of where they are located and whether some countries are affected to a greater extent than others.

In addition, although Member States have long been criticized for failing to participate in JITs and for failing to send sufficiently high-quality or timely information to Europol (Gerspacher and Lemieux, 2010; Vermeulen, 2010), there is no attempt to differentiate between the successes or failures of individual Member States. The Europol Regulation requires the Member States' Europol National Units (ENU) to supply Europol with the information and intelligence necessary for it to carry out its tasks, but some countries such as Germany are well known for providing large volumes of intelligence whereas others have a reputation for uploading short, low-grade and highly sanitised reports, containing information

which is often out-of-date (Guille, 2010; Bures, 2016). This variation is quality is reportedly due in part to the fact that some Member States prefer to rely upon domestic criminal intelligence analysts and detectives, which are one step removed from their Europol National Units (ENUs), to prepare their daily intelligence uploads to Europol. The domestic analysts and detectives screen case information because they cannot only ensure that information is relevant and timely, but they can judge what information could breach data protection laws or prejudice ongoing investigations, prosecutions or state security. Such information can be filtered out of the intelligence upload and retained by the domestic police force. As a result, Europol's analysts are often required to send requests for information to the ENU on a case-by-case basis in order to build Europol's intelligence files and threat assessments (Fijnaut and Paoli, 2004). The variation in the levels and quality of cooperation and the apparent lack of trust in the integrity of its systems, which these processes amount to, go unaddressed in the various reports.

Not only do the reports make no clear effort to provide transparency or to embarrass poor-performing police forces into action, where the reports do mention specific countries Europol is often unable to show improvements over time. This is particularly acute with regard to two of Europol's priority areas: drug and human trafficking by North African gangs operating in the Mediterranean, and synthetic drug production in the Netherlands. These have been priority crime areas ever since Europol published its first organized crime threat assessments in the mid-2000s (Brady, 2008). Despite the establishment and enhancement of centres, platforms and databases in the interim, Europol (2017a: 36-40) reported that cannabis resin continues to be trafficked in large quantities from Morocco to the EU, while Dutch organized crime groups continue to produce 'great quantities' of MDMA and amphetamine. Most surprisingly, clear plans for addressing these issues were absent from the reports. Moreover, where improvements could be shown, such as the reduction of cross-Mediterranean migration to Italy from 181,436 in 2016 to 102,942 in 2017, no clear explanation for the reduction or improvement was given (Europol, 2017c: 18-9). In fact, Europol has been criticized for encouraging the deployment of c. 200 counter-terrorism officers and investigators to 'hotspot' countries most affected by illegal migration. The use of counter-terrorism officers to carry out pre-visa checks, absent of targeted intelligence, is considered to be an overzealous law enforcement response to more complex economic and social problems (Ventrella, 2017).

Of particular concern is the fact that the reports do not attempt to address the significant volume of cross-border cooperation which takes place across the EU area which Europol is not directly involved with, particularly in the area of serious and organized crime. Although the co-location of liaison officers, analysts and specialists at Europol headquarters offers novel opportunities for collaboration, it is not the only location where cooperation can take place. Many Member States maintain a very small liaison bureau at Europol headquarters in The Hague in comparison to the number of liaison officers and detectives they send on secondment to embassies and foreign police forces throughout Europe. Ireland, for example, typically sends no more than three senior detectives to its liaison bureau at Europol at any one time but maintains liaison officers in The Hague, Paris and Madrid (Donohoe, 2004: 12; Callinan, 2012). These 'bilateral' liaison officers frequently oversee terrorism-related surveillance operations and controlled deliveries of drug consignments into Ireland from the continental mainland and vice versa. Moreover, detectives frequently travel across the Irish border to hold informal meetings with their foreign counterparts to discuss border criminality and develop joint strategies on a case by case basis, sometimes crossing the border numerous times a month to share intelligence and coordinate cross-border investigations (Dunn et al., 2002; Sheptycki, 2002a; Walsh, 2011a). Pursuant to these meetings, parallel investigations into shootings, bank robberies, currency counterfeiting, fuel smuggling, car thefts, gun-running, drug trafficking, human trafficking and terrorist bombings are conducted (Walsh, 2003; Smithwick, 2013; Conway, 2014). At the Irish land border, where the border-crossing provisions of the Schengen Convention do not apply, rather than going through the often impractical and bureaucratic process of submitting and securing a 'mutual assistance' letter of request for the purposes of a short meeting, officers ordinarily cross the border as a civilian without any police powers or immunities.

Quite remarkably, the reports make no specific mention of the nature, extent and outcomes of intensive cross-border policing practices at land borders within the EU, whether in Ireland, France, Spain, Schleswig-Holstein in Southern Denmark or within the 'Euregio Maas-Rhein' which encompasses parts of the Netherlands, Belgium and Germany (Kruize and Langhoff, 2002; Fijnaut and Spapens, 2010). The use of innovative taskforces and joint motorway patrols on the E6 from Norway to Sweden or the use of Joint Hit Teams (JHTs) on the roads from the Netherlands to Belgium and Germany are completely unaddressed (Gammelgard, 2001; Spapens, 2010; Felsen, 2012). There is no attempt to monitor the regular but haphazard conduct of cross-border policing at the Irish land border, the Danish border, the Netherlands

border or anywhere else in Europe. In the absence of appropriate mechanisms and communicative devices, the number of parallel or joint investigations established or the number of requests sent and complied with in any one year remains unknown. Substantive and dedicated mechanisms that require operational police officers, and the institutions to which they belong, to explain, justify and answer for their conduct, particularly in a cross-border context, simply do not exist at the EU level. Misconduct by police officers engaged in investigations or operations with a cross-border dimension has been left almost exclusively as a matter for the domestic systems to deal with.

Comparable weaknesses are also evident within the counter-terrorism field. On face value, Europol's reporting on terrorism is more informative than its reporting on organized crime. The TESAT provides an overview of emerging groups engaged in jihadist terrorism, ethno-national terrorism, left-wing and anarchist terrorism, right-wing terrorism and single-issue terrorism, and contains situation reports on key problem countries such as Syria, Libya and Northern Ireland (Europol, 2017b). Not only does the TESAT contain some 'headline' cases but it outlines the number of attacks, number of foiled attacks, arrest and conviction rates by country, and the recruitment, communication and explosive methods used by terrorists, amongst other phenomena (Europol, 2017b). The report also contains country comparisons which show, for instance, that in 2016 the UK reported three times more failed, foiled and completed attacks than France (76 to 23), many of which were recorded in Northern Ireland (Europol, 2017b: 10). Furthermore, the 2017 report outlined that a counter-terrorism version of SIENA, known as CT-SIENA, was recently established as a secure and user-friendly point-to-point connection between all participant counter-terrorism authorities in the EU Member States and other partners (Europol, 2017c: 68-70).

However, like the SOCTA, the TESAT hides the fact that counter-terrorism units typically do not view Europol as the pre-eminent transnational network in their field (Den Boer, 2015). Rather than relying on Europol, counter-terrorism units frequently use more informal networks such as the Club de Berne Counter Terrorism Group (CTG), established in 2002 as a secretive forum to facilitate the exchange of intelligence between European intelligence agencies and counter-terrorism units (Deflem, 2010; Den Boer, 2010). Counter-terrorism units and security services will typically 'cocoon' their hard-won and prized intelligence and share it only with people who they implicitly trust when there is a demonstrable added-value (Anderson, 1989, 2002; Raab, 1994; Fägersten, 2010; Den Boer, 2015; Jansson, 2016;

Hufnagel and McCartney, 2017). The misappropriation of information and intelligence by corrupt police officers or system hacks represent a real risk to the success of major ongoing criminal investigations (Fijnaut, 2002). Moreover, the unintentional dissemination or storage of intelligence has the potential to jeopardize informers, undercover officers, policing techniques and prosecutions.

Unfortunately, the Europol reports do not make any attempt to provide an overview of such processes or allude to the fact that the volume of data that reaches Europol remains relatively low (Bures, 2016). Another striking aspect of the Europol reports is the somewhat cryptic mentioning of Europol's role in many of the case studies. The SOCTA, IOCTA and TESAT frequently state that operations are 'supported by Europol' and 'in close cooperation with Europol' but there is almost no mention of what this support entailed, whether it was the simple exchange of information through Europol, the linking of information held within Europol's databases, a parallel investigation with real-time analytical and specialist support from Europol or the establishment of a formal JIT (Europol, 2017a: 40-1). Moreover, a simple examination of Europol's own statistics raises more questions than it answers. Although Europol reported that it had contributed to the arrest of 600 organized crime suspects in 2017, only 98 of the arrests were for drug-trafficking, even though the majority of international organized crime networks were reportedly involved in drug-related crime (Europol, 2017c: 66). Similarly, only 15 percent of the messages exchanged through SIENA related to drug-trafficking, and fewer still related to terrorism (Europol, 2017c: 69). The vast majority of Europol-related arrests pertained instead to financial crimes, such as payment card fraud (Europol, 2018: 66). Financial crime is an integral and important crime area since it is a major facilitator of most other forms of serious and organized crime, but this does not negate its responsibility to establish and enhance more effective forms of police cooperation across other areas.

Europol's impact is also questionable in light of the fact that only five percent of the new cases opened in 2016-17 were initiated by Europol itself, with almost all of the remaining cases coming from Member States, which typically act as the 'driver' of subsequent operations (Europol 2017c: 69; Brady, 2008). Instead of enhancing the quality, transparency and accountability of police operations across Europe, Europol's reports would appear to be hiding the true extent of its impact and, by extension, shielding Member State police forces from scrutiny. The reports make no substantive attempt to discuss or analyse cross-border

operations which were unsuccessful or whether police deviance, misconduct or more mundane procedural problems affected operational outcomes. Despite discussing the successes of the investigation into the 2015 terrorist attacks at some length, the TE-SAT did not mention the issues of poor investigative practice and cooperation which allowed one individual to escape France on the night of the attack. Similarly, although the extent of police corruption and negligence at the national level would suggest that cross-border operations may be replete with deficiencies and injustices, there is no mention of the possibility of abuse of authority, neglect of duty or discreditable conduct in the transnational policing field. Equally, there is no clear overview of whether and to what extent investigations stalled or failed to get off the ground because police officers naively or negligently omitted to share crucial intelligence and information. There is no way of telling whether any failures were attributable to cultural barriers, mismanagement or the breaking of agreements. Nor does there appear to be any appreciation of whether wrongful arrests were executed because incorrect information was uploaded to the EIS or Schengen Information System (SIS-II), which can conceivably happen, especially in cases of identity theft.

Europol's support of various 'joint action' events and taskforces is equally questionable from a transparency and accountability perspective. One 'joint action week' from 17 to 23 November 2016, which formed part of 'Operation Pandora', for example, targeted criminal networks involved in the theft and trafficking of cultural goods from conflict zones (Europol, 2017c: 15-17). The operation involved 15 Member States' police forces and border agencies, three non-EU countries, Interpol, UNESCO and the World Customs Organisation, resulting in the seizure of 3561 works of art and cultural goods and the initiation of 92 new investigations. Separately, two Joint Action Days (JADs) were organized in February and April 2017 to identify and remove online terrorist content in collaboration with the EU's Internet Referral Unit (Europol, 2017c). Although, the events would appear on face value to be huge successes, it is unclear whether they even met their initial objectives or whether the two-day or week-long event and their successes were the culmination of a multi-year investigation by a much smaller number of dedicated police units. The EU has been criticized in the past for encouraging police forces to engage in large-scale operations for the purposes of garnering good publicity over and above operational necessity (Rijken and Vermeulen, 2006).

The 'joint action' events may even be an attempt to innovate around, or eschew, formal JITs. The JIT instrument was initially disliked by Member State police officers and prosecutors who struggled to communicate their operational needs and negotiate detailed agreements with multiple foreign counterparts (Rijken and Vermeulen, 2006; Block, 2012). Europol has also long been criticized for not publishing details of the number and nature of the JITs which it has been involved in, which is arguably attributable to the fact that so few Europol-related JITs have been established over the past two decades (Spapens, 2011). JITs are used by Member States across the EU, but they are usually Member State-driven, involve only two or three Participating States, and often consist of the same small pool of users (see chapter by Olley). Europol's involvement in them, and its employment of one of its key tools, is largely unclear. Similar problems are evident with Europol's recent penchant for taskforces. A Joint Cybercrime Action Taskforce (J-CAT), for example, was established to allow greater flexibility in the cross-border investigation of cybercrimes, partly by encouraging officers to collaborate outside of formal Europol meetings and 'joint action' events (Christou, 2018). Although, flexible and evolving operational arrangements such as J-CAT are proving relatively successful in the fight against cybercrimes since they allow participants to avoid the pitfalls of bureaucracy, it raises important issues of transparency and accountability. Little is known about their membership and day-to-day activities (Christou, 2018).

Furthermore, the reports do not contain details of misconduct of any kind within Europol itself. Although Europol's analysts and specialists enjoy immunity from prosecution, which can be waived by the Europol Director on a case by case basis, it is highly unlikely that they remain error-free. The European Parliament's (2018: 3) Committee on Civil Liberties, Justice and Home Affairs (LIBE) recently welcomed 'the pro-active communication of a Europol ethics package to its staff', consisting of an updated version of Europol's code of conduct, as well as guidelines to all staff on the handling of gifts, conflicts of interest, and whistleblowing arrangements, but there was no explanation as to why an updated code of conduct was needed in the first place (see Europol, 2017f).

The absence of other forms of transnational police accountability
Operating alongside Europol, numerous other EU agencies have an interest in EU police cooperation but none of them seem to pursue or deliver police accountability as a strategic objective either. The Standing Committee on Operational Cooperation on Internal Security (COSI), for example, is required to 'promote', 'strengthen' and 'facilitate the coordination' of

operational cooperation in the area of internal security pursuant to Article 71 TFEU, but it is not concerned with the general procedural oversight of police officers on the ground. The Member State representatives and advisors who sit on the committee are largely concerned with submitting regular reports to the Council which outline whether and to what extent EU agencies such as Europol, Eurojust and Frontex are meeting their objectives and are cooperating with one another in line with the relevant treaties and legal frameworks.

The European Parliament is similarly inert in respect to police accountability. The Parliament proclaims that it is 'the only directly elected European institution, which is responsible for scrutiny and democratic oversight' and is 'a fully-fledged institutional actor in the field of security policies, and is therefore entitled to participate actively in determining the features and priorities of the Internal Security Strategy … and in evaluating those instruments' (European Parliament, 2012, para. 7). In recent years, the Parliament has rejected numerous proposals on the basis that Europol's data protection safeguards were not robust enough, but it has done little to address wider issues (Hillebrand, 2011). Its resolution on the 'European Agenda on Security' in 2015, for instance, called for 'strong and effective parliamentary and judicial oversight' and 'proper democratic oversight and accountability' at the EU and national levels and 'greater use of the existing instruments and databases' (EU Parliament, 2015). However, these resolutions refer almost exclusively to the EU's own mechanisms, rather than the condition of transnational policing more broadly. Its approach is well reflected in the 2015 Agenda which 'stresses the importance of JITs to investigate specific cases of a cross-border nature and calls on the Member States to use this successful tool more regularly' (European Parliament, 2015, para 19). The Parliament did not allude to, or acknowledge, their inherent weaknesses or Europol's increasing preference for JADs.

The European Parliament's constituent Committee on Civil Liberties, Justice and Home Affair (LIBE) is arguably equally guilty of failing to look beyond the EU's own measures. Functioning more like a quasi-inspectorate, its activities in the policing field largely concern the financial scrutiny of Europol's activities and the auditing of centres such as EC3 in the interests of efficiency (European Parliament, 2018). Neither the European Parliament nor the LIBE Committee functions as a citizen complaints body about matters regarding Europol or transnational policing more broadly (Jansson, 2016). MEPs can ask questions about police cooperation and the functioning of Europol but research indicates that they, ironically, have a tendency to direct their questions to the EU Commission, rather than risk burdening

Europol's management team with 'accountability overload' (Morten and Trondal, 2017). Instead of acting as a counterbalance to national parliaments, which are very much focused on national matters and frequently 'have no interest [in] … or do not prioritise the area of police co-operation' (Hillebrand, 2011), the EU Parliament appears to have similarly shunned responsibility for scrutinizing the condition of police cooperation more broadly.

The Schengen Convention, and, more particularly, its associated provisions for hot pursuit and cross-border surveillance, are also light on mechanisms for police accountability. For instance, when a police officer proceeds with a hot pursuit into the territory of another Participating State, the foreign police officer must contact the domestic police force at the earliest possible opportunity and follow any and all instructions of the local police commanders. The foreign officers must identify themselves, avoid entering private homes without the local police and compile a post facto report outlining the exigencies and nature of the pursuit and submit it to the domestic force. More particularly, s. 41 – s. 43 of the Schengen Convention provides that in the event of injury or property damage, officers operating in the territory of another are to be regarded as officers of that State with respect to offences committed against them or by them. Payments made pursuant to civil claims arising from harm caused by a visiting officer should, however, be reimbursed by the officer's home State (ibid). However, the Schengen Convention does not mention the issue of more minor disciplinary infractions such as dishonesty, discourtesy and disobeying orders either. Participant States are expected to deal with such issues internally. Instances of minor misconduct should be reported in the post-operation report which is routinely exchanged between commanders and be dealt with by the errant police officer's domestic police force (Home Office Circular 53/2002). The onus would thereafter be on the officer's line manager, professional standards departments or complaints apparatus to instigate disciplinary action. This simple and straightforward ethos would appear to pervade both the Schengen policing measures and Europol's approach to cross-border police cooperation.

Unfortunately, the Schengen processes and Europol's reporting appears to take almost no account of the possibility of internal maladministration, mismanagement, institutional loyalty or inertia, issues which have long affected internal police complaints departments (see Banton, 1964; Skolnick, 1966; Wilson, 1968; Bittner, 1970; Roebuck and Barker, 1974; Sherman, 1977; Muir, 1977; Punch, 1983; Goldsmith, 1991; Stenning, 1995; Waddington, 1999). It would be surprising if policy-makers at the EU level were not aware of the possible

presence of such systemic factors, which could seriously compromise the ability of various mechanisms to establish the truth and deliver accountability and transparency in practice. Many of these tendencies continue to shape and define the conduct of modern public policing, yet they are not reflected with any seriousness in the EU measures. The EU has not made any real effort to recognize and address such issues by establishing transnational versions of the external and independent mechanisms of police accountability which can be found within various Member States. This may be due to the fact that mechanisms of police accountability at the national level remain in a weak and contested state within various jurisdictions, such as Ireland, England and Wales (Goldsmith and Lewis, 2000; Walker, 2005; Walsh, 2009; Punch, 2009; Savage, 2013; McDaniel 2018a), but it may equally raise the EU's moral obligation to do so.

Recommendations for reform

The available evidence would suggest that the Lisbon Treaty objective of 'establishing police cooperation' is being pursued by the EU regime at the expense of police accountability; almost as if the two outcomes are mutually exclusive. EU measures such as Europol may appear at face value to be comprehensive and effective but there is ultimately a serious mismatch between the condition of transnational policing as expressed in Europol reports and EU parliamentary agendas and the reality on the ground. One of the most pressing concerns from an accountability and transparency perspective is that the EU continues to promote 'marquee constructs', such as Europol, while leaving a vast field of investigative cooperation largely unregulated, disjointed and opaque. It is of grave concern that policy-making bodies such as the Justice and Home Affairs (JHA) Council and the European Parliament, as well as police advisors, police chiefs, intelligence directors and a whole host of EU agencies, rely upon Europol's reports and threat assessments to guide their strategic decision-making and priorities (Mounier, 2009; Europol 2017a). Instead of playing a crucial role in raising awareness of the changing nature of criminal activities and the effects that these have on distinct communities in Europe, and the concomitant strategies being pursued by relevant law enforcement authorities, the EU publications give the reader a considerably misguided idea and image of the condition of cross-border policing in Europe. Without a clear and integrated picture of the transnational policing field, police practitioners and policy-makers may not be able to develop structures, processes and instruments to address the issues through a coordinated approach at either the national or transnational levels.

It is submitted that the Lisbon Treaty itself is part of the problem for it prioritizes the operational objective of 'establishing' police cooperation over and above the accountability of the police officers engaged in it. Police accountability is not mentioned as a treaty objective, and thus there is little reason for policy-makers, civil servants and technocrats to prioritize it in practice. By eschewing the qualities of police accountability, they can still fulfil their remit. The problematics of police accountability are being addressed only when secondary legislation requires it, as is the case with Europol. The same is largely true of the Court of Justice of the European Union (CJEU) which is able to adjudicate on the quality of an EU policing instrument in terms of transparency and accountability only when such attributes are circumscribed within the legal instrument itself. For it to be able to consider the quality of a legal instrument from a transparency and accountability perspective, i.e. whether Europol should be reporting upon and remedying the conduct of police cooperation more generally, it would usually require the standards to have treaty status. Instead of establishing a broader architecture of transparency and accountability, which facilitates different forms of accountability for different situations and issues, the EU's scattergun approach means that a measure of accountability appears to be present in some agencies and instruments but not in others.

Even in the absence of treaty status or a clarification of the EU's competencies in the policing field, there is nothing preventing Europol or any other relevant EU body from conducting regular inquiries into the condition of cross-border police cooperation within the Union and publishing sanitised versions of their findings for the public to see. In addition, Europol's original convention structure had rendered the organization awkward to manage in the 1990s due in part to the need for the unanimous approval of all EU countries represented on Europol's management board before simple administrative decisions could be made, but the new Europol Regulation 2016, which completed the 'Lisbonisation' of Europol (Hillebrand, 2011), has greatly enhanced Europol's ability to innovate and makes it much easier for Europol to 'unleash' its ability to rapidly set up specialized units, centres and monitoring apparatus in response to emerging threats in the future (Europol, 2017c: 75). Its rapid evolution as the 'central plank' of the EU policing project means that it can now use its influence and 'actorness' to raise issues, make innovative suggestions and reach agreements at a policy level (Occhipinti, 2015). However, there is no evidence to indicate that Europol has (or will) innovate in line with this chapter's recommendations. The Europol Director recently thanked the European Parliament, Council of the European Union and the European

Commission for placing their trust in a reformed and stronger Europol (Europol, 2017d), yet under Europol's stewardship, the transnational policing field is arguably more identifiable by its glaring 'black spots' than any possible claims to transparency and accountability.

As a result, the solution lies most likely in the introduction of new powers of oversight and accountability and new institutions to wield them. Such institutions do not necessarily need to determine whether there is sufficient evidence to warrant referring a case to a police chief or prosecutor for possible disciplinary or criminal charges, or to make a final determination on any disputed facts. At the outset, they could simply strive to bring issues to public attention so that they can be aired and debated. If Europol or other EU agencies can illuminate the condition of police accountability in the context of cross-border cooperation, it may ultimately become clearer that an altogether different oversight body should be established, entrusted with the primary responsibility of investigating complaints of corruption, abuse and neglect by police officers in the discharge of their cross-border policing activities and duties. However, any attempt to do so would need to avoid the creation of structures and processes of accountability which are so complex and diffuse that police officers are overburdened with onerous, overlapping and possibly futile procedures, at both the national and transnational levels, that they ultimately sap their resources, interest and motivation to engage in cross-border cooperation.

The creation of an agency of oversight must also be carefully designed so that police officers are not allowed to hide behind the shields of 'operational independence' or 'police discretion' (Walsh, 1998; McDaniel, 2018b). Police inspectorates and external police complaints bodies on the national level have a tendency to be reluctant to second guess a police decision to arrest one person, or a decision not to arrest another person, in a situation where arrest was an option (Walsh, 2018). This can frustrate the process of accountability and the legitimacy of public policing, especially where investigative actions or outcomes may suggest police bias or neglect in the exercise of operational decision-making and discretion (Walsh, 2018). Furthermore, an appropriate oversight body would need to be bestowed with sufficient power and scope to widen inquiries or liaise with other oversight agencies where issues extend to possible inter-agency misconduct or neglect, particularly with respect to cooperation between Europol and Eurojust, amongst other agencies. A sufficiently wide scope should be provided so that inquiries can consider whether problems lie simply with the acts or omissions of

individual members of a police force, or whether there are broader issues with policy or organizational factors, the law or the wider criminal justice system.

Furthermore, the EU could consider introducing transnational codes of conduct and ethics to ensure that cross-border information sharing, investigation planning and police operations are being conducted according to clear standards at local, regional and transnational levels. The mere application of a code of ethics, the introduction of a duty to publish clear and accurate reports, and the establishment of agencies of oversight and enforcement could greatly enhance the transparency and accountability of cross-border policing. There appears to be nothing to suggest that the pursuit and delivery of police accountability at the EU level cannot be achieved through the introduction of legal standards and organizations to enforce them, in a similar fashion to basic human rights protections. Bayley's (1985) extensive comparative research suggests that although there is considerable variety across police forces around the world, ranging from armed to unarmed, centralized to decentralized, and authoritarian to democratic, amongst other attributes, the same basic mechanisms for ensuring police accountability should apply. Europol, because it is already well positioned to report upon the condition of police accountability, should be one of the agencies to provide 'vertical' accountability and governance (Den Boer et al., 2008), but it must not be the only one. By no means is the chapter advocating that the EU or Europol should adopt a single and strict 'principal-agent' or 'vertical' model of accountability, as these models have long been found to be inadequate on their own in a policing context (Sheptycki, 2002b; Morten and Trondal, 2017). Reviews should be carried out and lessons learned from experiences at the national level. An array of procedures and methods need to be employed to render individual police officers and regional, national and international police organizations answerable to other persons and bodies located both inside and outside of the relevant organizations (Walsh and Conway, 2011).

Conclusion

The question of whether and to what extent transnational investigations are failing due to mistakes, inertia, resource constraints or police corruption do not appear to be known at any EU policy level. The 'low visibility' which permeates the transnational policing field means that civilians, victims and NGOs may be unable to bring legal challenges and 'public interest' cases where a cross-border investigation is flawed or inadequate (Loader and Walker, 2007; Harfield, 2011; Walsh, 2011b). Nevertheless, within this vast untended expanse, the EU

institutions and parliament continue to pursue policies which satisfy institutional priorities in cross-border law enforcement at the expense of transparency and accountability. As Manning (2010) argues, the simple fact that a State practices a brand of democratic political government does not simply translate to the existence of a 'democratic police'. It is the nature, form and effectiveness of the extant processes of police accountability that ultimately determines whether a police force can be considered to be democratic in the final analysis (Punch, 2009). The EU clearly needs to do much more to hold police forces to account for the quality of their cooperation. EU policy-makers need to extend their gaze beyond the Europol, Schengen and JIT measures to ensure that police officers are systematically conducting themselves ethically, lawfully and transparently when engaging in both formal and informal modes of cooperation.

Unfortunately, the 'event-driven' nature and history of the EU's security agenda indicates that it is more likely that reforms will only be introduced once they are forced upon it, most likely by way of scandal (Carrapico and Barrinha, 2017). In the interim, the EU appears to be interested only in stepping up the extent of cooperation rather than the transparency and accountability of it. The European Information Exchange Model (EIXM) continues to incorporate new databases to facilitate automated cross-border searches of national and national indexes on a hit/no hit basis, while Europol's access to them is growing (Occhipinti, 2015; Monar, 2017; Europol, 2017c). National databases containing fingerprints, DNA samples, vehicle registrations, credit card transactions, travel records and Passenger Name Records (PNR) and novel transnational databases such as the European Criminal Records Information Exchange System (ECRIS) and a pilot European Police Record Index System (EPRIS) are increasingly being interconnected and exploited (Hillebrand, 2011; Vermeulen, 2012). These synergies, allied to Europol's expertise and resources and the oversight of the European Parliament, can bring 'added value' to the policing and intelligence fields but such innovations are not sufficient in and of themselves. The 'need to share' mentality which the EU propounds in its policing project is not matched by a comparable mentality when it comes to the weaknesses and narrow focus of its extant mechanisms and institutions for police accountability and transparency. Without a more concerted approach to the problem of police accountability and transparency at the transnational level, we will continue to lack adequate benchmarks, standards and baselines from which to figure out what works and what does not work and why. Instead of focusing almost exclusively on the accountability of the transnational policing institutions which it has created, the EU needs to develop an ethos of

'transnational police accountability' which captures the reality of transnational policing on the ground.

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