Theorizing Internal Security Cooperation in the European Union

Edited by

Raphael Bossong
and Mark Rhinard

**Theorizing Internal Security Cooperation
in the European Union**

Theorizing Internal Security Cooperation in the European Union

Edited by
Raphael Bossong and Mark Rhinard

Contents

Contents

List of Figures and Table

List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
CEPOL	European Police College
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
COREPER	Committee of Permanent Representatives
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
COSI	Internal Security Committee
CS	Copenhagen School
CSDP	Common Security and Defence Policy
EASO	European Asylum Support Office
EAW	European Arrest Warrant
EC	European Communities
EC3	European Cybercrime Centre
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEC	European Economic Community
EP	European Parliament
EPP	European People's Party
EPP-ED	European People's Party–European Democrats
EU	European Union
EU-LISA	Agency for the Management of Large Scale IT Systems
EURODAC	European Dactyloscopy Database
EUROJUST	The European Union's Judicial Cooperation Unit
EUROPOL	European Police Office
FIU	Financial Information Unit
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders

List of Abbreviations

GDP	Gross Domestic Product
HUM-INT	Human Intelligence
IGC	Intergovernmental Conference
IPS	International Political Sociology
IR	International Relations
JHA	Justice and Home Affairs
LIBE	Committee on Civil Liberties and Justice and Home Affairs
MEP	Member of European Parliament
NATO	North Atlantic Treaty Organization
PARIS	Political Anthropological Research of International Sociology
PES	Party of European Socialists
QMV	Qualified Majority Voting
RFID	Radio Frequency Identification
SCIFA	Strategic Committee on Immigrations, Frontiers and Asylum
SIG-INT	Signals Intelligence
SIS	Schengen Information System
SOCTA	Serious and Organised Crime Threat Assessment
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TFTP	Terrorist Finance Tracking Programme
TREVI	Working group on Terrorism, Radicalism, Extremism and International Violence
VIS	Visa Information System
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Offices on Drugs and Crime
UNSC	United Nations Security Council
US	United States

Author Biographies

Didier Bigo is Professor at King's College London, Department of War Studies, and Research Professor of International Relations at Sciences-Po Paris. He is a leading scholar in the field of critical security studies, Director of the Center for the Study of Conflicts, Liberty and Security, editor of the journal *Cultures & Conflits* and co-founder of the journal *International Political Sociology*.

Thierry Balzacq is Professor and Tocqueville Chair in International Relations at the University of Namur. He is also the Scientific Director of the Institute for Strategic Research, the French Ministry of Defense research center. He conducts research in the fields of security theories, IR, and EU security policies.

Raphael Bossong is Lecturer at the Europe University Viadrina. His research focuses on EU internal security policy, crisis management, and security governance. His recent publications include *European Civil Security Governance* (with H. Hegemann; 2015, Palgrave Macmillan) and *Explaining EU Internal Security Cooperation* (with M. Rhinard; 2014, Routledge).

Dora Kostakopoulou is Professor of European Union Law, European Integration and Public Policy at Warwick University, and a member of the editorial board of *Citizenship Studies*. Her research interests range across European public law, free movement of persons and European Union citizenship, the Area of Freedom, Security and Justice, citizenship, multiculturalism, and integration.

Sandra Lavenex is Professor of European and International Politics at the University of Geneva and regular visiting professor at the College of Europe (Natolin Campus). Her research centres on modes of governance and public policy in the EU and in international politics.

Valsamis Mitsilegas is Professor of European Criminal Law, Director of the Criminal Justice Centre and Head of the Department of Law at Queen Mary University of London. From 2001 to 2005 he served as legal adviser to the House of Lords European Union Committee. His research interests and expertise lie in the fields of European criminal law; migration, asylum and borders; security and human rights; and legal responses to transnational crime.

Jörg Monar is a Professor and Rector of the College of Europe. He is the author of over two hundred articles and books on the political and institutional development of the EU, EU Justice and Home Affairs and EU external relations. He is also a founding editor of the *European Foreign Affairs Review* and has been a consultant for numerous national and European political institutions.

Author Biographies

Arne Niemann is Professor of International Politics at the Department of Political Science of the Johannes Gutenberg University Mainz, Germany. He is co-director of the Jean Monnet Centre of Excellence 'Europe in Global Dialogue', which is jointly hosted at the Technical University Darmstadt and the Johannes Gutenberg University Mainz. His research focuses on European Union politics and policies, including the area of Justice and Home Affairs.

Ariadna Ripoll Servent is a Junior Professor of Political Science at the University of Bamberg. Her research focuses on EU institutions, decision-making processes, and EU internal security policies. Her latest publications include *Policy Change in the Area of Freedom, Security and Justice* (with Florian Trauner; 2015, Routledge) and *Institutional and Policy Change in the European Parliament—Deciding on Freedom, Security and Justice* (2015, Palgrave MacMillan).

Mark Rhinard is Professor of International Relations at Stockholm University and Senior Research Fellow at the Swedish Institute of International Affairs. His research examines international cooperation on complex threats, with a special interest in the European Union. His recent works include *The European Commission* (with Neill Nugent; 2015, Palgrave) and *Explaining EU Internal Security Cooperation* (with Raphael Bossong; 2014, Routledge).

Part I
Introduction

1

Alternative Perspectives on Internal Security Cooperation in the European Union

Setting the Scene

Raphael Bossong and Mark Rhinard

1.1 Introduction

Initiated almost four decades ago, European Union cooperation in the field of internal security can now be counted amongst the most established areas of European integration. Since 1975, when EU member states embarked on cooperation via the TREVI intergovernmental framework, progress has been slow but steady.[1] The 1992 Maastricht Treaty proved a watershed moment by drawing Justice and Home Affairs (JHA) formally into the EU's institutional framework, and the 1999 Amsterdam Treaty subjected many aspects of JHA, by then retitled—and given a normative goal—as the 'Area of Freedom, Security and Justice' (AFSJ), to the Community Method of decision-making. Subsequent policy frameworks, including the Tampere, Hague, and Stockholm programmes, set the agenda for cooperation as the 2010 Lisbon Treaty incorporated the remaining issues into the Community Method and built new institutional structures for cooperation. Even an 'EU Internal Security Strategy' has surfaced. The road has not been smooth or automatic: some countries have decided to 'opt out' of some elements of internal security, implementation gaps remain, and the 2015 refugee crisis in the Southern Mediterranean—the worse of its kind in post-war Europe—revealed serious cooperation problems. But the field has evolved empirically to the point that it can be considered an established and central field of European integration.

Academically, scholars were slow to follow suit, seeing cooperation in this field as arcane in content and unique in relation to other fields—the 'stuff' of

lawyers and policing experts, it might be said. Yet the 1990s witnessed a mushrooming of interest as internal security cooperation 'normalized' because of empirical developments and in a gradual acceptance of research on this topic by conferences, publishers, and academic departments. The number of books and articles has increased, as has the number of graduate students focused on various elements of internal security cooperation. Naturally, much of the early scholarship in the field was empirical and descriptive in nature: mapping developments, describing trends, highlighting problems. The last few years have seen a move towards more developed, advanced applications of theory, which produce new insights but which also raise central questions as regards the state of theorizing: Where do we stand? What has been accomplished? Where might the field be going?

These questions animate the content of this volume. While encouraged by growing theoretical developments in the field, we are concerned about fragmentation. As our mapping exercise below shows, a number of fascinating but fairly narrow agendas have developed in relative isolation from one another. Some degree of isolation is normal. In the social sciences, research does not take place in a perfectly coherent stream of inquiry, and nor should it: precision and empirical accuracy require specialization. Yet theoretical diversity in this field is particularly pronounced, not only because it remains a fairly new field but also because it attracts scholars from many disciplines. Overly isolated agendas inhibit our ability to draw out general and cumulative insights in a complex field and preclude any benefits that might derive from theoretical dialogue. As this research field continues to mature, the time is right for theoretical reflection and consolidation. By drawing together the main theoretical and conceptual approaches currently in use, assessing their utility and identifying areas for dialogue, we aim at two goals. First, we hope to encourage further theorizing and a conscious reflection of theoretical positions and links to other developments in the research field. Second, we provide new scholars entering the field with a theoretical primer, helpful for signposting existing approaches and illuminating pathways for future work.

This is the first volume of its type to bring together the field's top theory-oriented scholars in the field of EU internal security cooperation. Divided into three sections, the book has a structure that reflects its goal. The first section provides an introduction to the book along with a timeline of developments in EU internal security cooperation. Both chapters make the case that the field has reached a point at which theoretical reflection is required. The second section includes chapters on different theories and conceptual approaches used in this burgeoning field, authored by their leading proponents. Each chapter presents an approach, discusses how it is typically applied, illustrates the points using a short empirical example, and concludes with a discussion of relationships with other theories. The third section concludes the volume,

reviewing the contributions and highlighting areas in which theoretical dialogue and complementarity might be most productive.

This introductory chapter sets the scene for the subsequent discussion by defining terms, laying bare our assumptions, and delimiting our approach. We first describe how we define 'internal security', what we mean by 'theory', and what theories in this field are generally aimed at explaining. We then sketch research developments in the field from its early beginnings to the current diverse menu of approaches and agendas, organized in terms of their respective attention to the politics, polity, or policy aspects related to internal security cooperation. We then describe the structure of the book in more detail and introduce the chapters.

1.2 Theorizing Internal Security in the EU

The title of this book requires some untangling if we are to specify our focus and avoid misunderstandings. The first term likely to attract attention is 'internal security', a concept known in French and German parlance but lacking a functional equivalent in other languages. In the EU, internal security coexists in the institutional lexicon, past and present, alongside 'Justice and Home Affairs', 'Third Pillar', 'Police and Judicial Cooperation in Criminal Matters', and the 'Area of Freedom, Security and Justice'. Our pragmatic definition of internal security corresponds most closely with the latter term, officially used to denote the collection of policies focused on security, rights, and the free movement of people.[2] Concretely, this means border security, police matters, customs questions, and criminal justice. Some issues, such as civil protection, are not formally part of the EU's AFSJ but clearly seem to be part of any definition of internal security. The deeper normative and conceptual meanings and criticisms that can and have been raised in regard to the notion of internal security in contemporary Western societies are manifold (Loader and Walker, 2007), but cannot be pursued further here.[3]

Another complex term used in this volume is 'theory'. What is our definition of theory? And what role do we see theory playing in analysis? This book pushes no ontological, epistemological, or methodological agenda. We do not argue for objectivist or positivist research, for instance, nor do we counsel that theory testing is somehow more valuable than theory development. As intended by our use of the word 'theorizing', this book hopes to encourage a conscious, yet open-minded, approach to the use and evolution of theories. It seeks to stimulate reflections on their underlying assumptions, main alternatives and implications for the area of study as a whole. This leads us to a tripartite definition of three types of theory, each associated with a different kind of question. The first is explanatory theory, which asks why certain

things happen. An example from AFSJ might include: why has internal security cooperation proceeded in a certain pattern? Or, why is implementation difficult in certain policy areas of AFSJ? Theory used to answer such questions may involve causal or non-causal (e.g. constitutive) explanations for certain outcomes.

A second type of theory asks what we should do, or what should we be doing. This is normative or prescriptive theory, and in the field of AFSJ could include: what should be the proper balance of rule of law versus the pursuit of security? A third type is interpretative theory, oriented to finding meaning. An example from AFJS might be: what is the meaning of 'security' and how are different conceptions deployed in language and action? These different kinds of theories allow us to not only allow for variation but also to bridge the oft-described gap between 'theoretical approaches' and what might be better described as 'conceptual approaches', the latter usually taking an interpretive perspective that highlights previously unknown or neglected aspects of a certain phenomenon.[4]

No matter which type is used, a theory consists of a number of assumptions, a set of definitions and concepts, and an explicitly described area of applicability. This last consideration leads us to a second question. If this is a book about 'theory in AFSJ', what particular area of AFSJ are we speaking of? Here we are torn by contending desires to encourage research questions of many shapes and sizes while still allowing for theoretical dialogue. On the one hand, the field of AFSJ is still relatively new and demands investigations of its many intriguing aspects, from national adaption to overlapping cognitive frameworks, and from member state power plays to the proliferation of certain speech acts. On the other hand, a common—even if general—'area of applicability' would enhance our ability to compare and contrast different theories and to understand where they may be complementary or contradictory in enlightening our understanding of certain phenomena. To bridge these concerns, we take the position that the theories discussed in this volume address, in one way or another, *the emergence and dynamics of cooperation on internal security issues in the European Union.*

With three different kinds of theory outlined, and a loose specification of the object of theorizing in this book, we are left with one more caveat. That caveat relates to the fact that theories incorporate assumptions about actors, structures, institutions, processes, and relations between these four basic components. We cannot hope—nor do we desire—that all the contributions to this volume share core assumptions. Theoretical approaches are useful precisely because they prioritize and highlight different aspects of phenomena to be studied. Indeed, the mapping exercise that follows this section demonstrates the numerous possible uses of theory and assumptions underlying each. Our goal is to trace the many small, medium, and large veins of

theoretical work taking place, not only to set the scene for subsequent chapters but also as a mapping exercise to build awareness and to encourage scholars to be more explicit about their own theoretical perspectives and assumptions.

1.3 Development of the Field

There are many ways to map theoretical developments in a research field. None of them are perfect. This chapter will organize developments not in terms of their theoretical origins but in terms of their general focus: the politics, polity, or policies of internal security cooperation. We complement the mapping exercise with an introduction covering the early days of research in the field and a concluding discussion of the cross-cutting research agenda focused on the 'external dimension' of EU internal security cooperation.

1.3.1 *Early Days*

The first main analytical puzzle in the field of EU internal security cooperation was the growth of cooperation per se in this sensitive field. Theories associated with international relations and classical integration theory would not necessarily have predicted the steady pace of cooperation, since internal security was traditionally assumed to be one of the remaining core areas of national sovereignty (Knelangen, 2000). Yet integration theory did provide the kernel of at least one early explanation for cooperation in the field of internal security: spillover. Researchers used neofunctionalist perspectives to explain practitioners' justification for cooperation within the context of functionalist spillover. By this logic, the creation of the single market (especially its reinvigoration in the mid-1980s with the Single European Act) generated the impetus for the abolition of internal border controls (i.e. the Schengen agreement), which, in turn, called for common standards of external border security and for 'compensatory' measures taken cooperatively by police and customs officials (Cullen, 1996; Lobkowicz, 2001). Cooperation usually deepened following periodic crises, each of which appeared to underline the salience and necessity of joining forces (Monar, 2001). In so far as there were delays and setbacks to cooperation, those could be accounted for with reference to remaining sovereignty concerns and the mobilization of counter-interests (Guyomarch, 1995), as has been done in contemporary versions of neofunctionalism in order to address the critique that such approaches have an overly teleological and optimistic view of the European integration process.

At the same time, a more critical perspective on the development of internal security cooperation in Europe developed. This approach shined light on the

rather hidden actions of security professionals and practitioners to exploit the opportunities for transnational cooperation that the European level provided (Bigo, 1992; Lodge, 1992; Bunyan, 1993; Bigo, 1994). Originally, this cooperation did not relate directly to the EU but rather originated in a bewildering array of specialized working groups, such as the Police Working Group on Terrorism, and informal venues, such as the Club of Berne. Over time, however, police networks came increasingly to be associated via the integration of the so-called TREVI groups and the Schengen framework into the EU framework. Beyond the issue of regular border security and customs, the activities of 'high policing' (Brodeur, 1983)—mainly the fight against terrorism and later against the increasingly accepted concept of 'organized crime'—were critical to the formation of these transnational professional networks at several political and professional levels (Benyon, 1996).

While these transnational cooperation explanations did not exclude functionalist arguments, its proponents mainly accentuated discursive threat constructions and the formation of unaccountable structures for agenda-setting and information exchange in the European setting (den Boer and Walker, 1993). Thus, there were suspicions of attempts by security professionals to 'shift up' security measures that were opposed at the national level (Guiraudon, 2000)—and assumptions of a broad (though not total) convergence of security interests between transnational elites, based on common world views or bureaucratically defined interests. This argument proved especially popular in analyses of migration and asylum policy, both of which could be interpreted as more restrictive, 'securitized' and repressive in the EU compared to many national regimes (den Boer, 1998; Huysmans, 2000). A related perspective looked less at actor incentives and more at structural trends, such as broad moves to 'modernize' police action through centralized structures, technological solutions, and task specialization (Aden, 1998). These trends were rationalized by arguments of functional efficiency but had the effect of generating elite cadres of officials with less control and oversight by democratic institutions.

The two agendas of neofunctionalism and critical sociological theory continue to structure the field and are often set at odds to one another (although they share various points in common, a theme we return to in the conclusion). A wider range of theoretically informed scholarship, however, has emerged in recent years, looking at a variety of different research questions. In this respect, the research field of EU internal security cooperation has evolved in a way not unlike more traditional EU policy fields. Starting with the analysis of historical origins and cooperation patterns, scholars eventually moved beyond these questions to study more specific dynamics, including but not limited to policymaking dynamics, policy effects, implementation and compliance, governance within individual subfields, and so on. Furthermore,

the growth of internal security cooperation in the EU attracted scholars from a growing number of related disciplines, such as criminology, law, ethnography, and public administration, each with their own distinct concerns and questions.

A discussion of this literature requires selectivity while still emphasizing diversity; after all, the goal of this volume is to give readers a wider and more inclusive perspective on the diverse literature available. For the sake of clarity, we categorize this work according to its focus on the familiar categories of politics, polity, and policy, but we are aware that some works cited below span those boundaries.

1.3.2 *Focus on Politics*

Generally speaking, research on politics explores the 'who gets what, when, and how' of internal security cooperation: the relevant (political) actors, their motivations and constraints, and the resulting interactive dynamics that shape outcomes. What separates internal security research from broader EU research is an emphasis on the remarkable speed at which the politics of cooperation came together to drive developments—which thus requires special explanation. Incremental, functionalist explanations demanded updating and revision, while on the critical side, the very speed of developments had undesirable implications for transparency, accountability, and the overall balance between norms.

Critical analyses of EU internal security evolved in close association with the field of critical security studies, which gained particular weight after the events of September 11 (Collective, 2006; Bigo et al., 2008). Numerous authors, drawing on French political and sociological theory, developed more explicit theoretical linkages to the work of Foucault and Bourdieu in order to contribute to the growing literature on securitization (Bigo, 2002; Huysmans, 2004; Berling, 2012). They demonstrated that the allocation of power and the trajectory of cooperation have been influenced not only by authoritative speech acts but also by the constitutive nature of security practice and lower-level ('less-than-existential') security discourses (Balzacq, 2008). The sociological notion of a contested 'field' of internal security, populated by various institutional and professionally defined actors, has also been fleshed out in empirical research (Bigo, 2008; Berenskoetter, 2012). Other, less explicitly critical, analyses of the construction of authority in EU criminal justice cooperation have drawn on related thinking from political sociology (Mégie, 2014).

More mainstream political science studies focused on how the respective EU institutions managed to assert themselves as players in the field of internal security cooperation, using theories drawn from public policy analysis or