# Introduction to the special issue on police accountability in Europe

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# INTRODUCTION TO THE SPECIAL ISSUE ON POLICE ACCOUNTABILITY IN EUROPE

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This Introduction contextualises and overviews articles published in this special issue of *Policing and Society*. These articles were originally presented at a symposium entitled: "Policing and Accountability in Europe: Designing European Police Networks", held at the European Institute of Public Administration in Maastricht in September 2001. In democracies, the operational performance of the police is always accompanied by the quest to account for them. In this Introduction I argue that, given the nature of the Third Pillar arrangements for the governance of police co-operation in Europe, the most natural way to achieve police accountability in the European context is through national parliaments. This is not a position with which all scholars in this field agree. Therefore, this special issue of *Policing and Society* contains some lively debate. Contributions include articles by Erwin Muller on police accountability in the Netherlands; Willy Bruggerman on the accountability of Europol; Monica den Boer, Ian Loader and Neil Walker on aspects of supranational policing in Europe and their various views of the attendant shortcomings of its accountability mechanisms (and appropriate remedies); and lastly an account of the 'policing field' by James Sheptycki which demonstrates how fragmented and variable policing is and thus how far our discussions about the accountability of policing need to extend. This special issue of *Policing and Society* contributes to the challenge to define a research programme that would analyse the main characteristics of the accountability issue in the transnational context of the contemporary European Union and beyond.

*Keywords:* Police accountability; Transnational policing; Third Pillar; Police co-operation

## INTRODUCTION

The articles published in this special issue of *Policing and Society* were originally presented at a symposium held at the European Institute of Public Administration in Maastricht.[1] The symposium was entitled: "Policing and Accountability in Europe: Designing European Police Networks" and it was held on September 27–28, 2001. The theme of transnational police accountability in Europe has been under discussion since the conclusion of the Schengen Agreement in 1985 and has come to the fore several times since: at the occasion of the signing of the Schengen Implementing Convention in 1990, with the signing of the Maastricht Treaty on European Union in 1992, the Europol Convention in 1995, the Amsterdam Treaty on European

[1]For further information about EIPA, see their website: www.eipa.nl

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Union in 1997, and the signing of the Convention on Mutual Assistance in Criminal Matters in 2000. It is fitting that *Policing and Society* and the European Institute of Public Administration examine these issues and keep the debate and discussion going in the present period. The ambition of the Member States of the European Union, and the EU itself, to give cross-border police co-operation a more operational capacity has gained momentum in the wake of the Tampere Summit in 1999 and the attacks in the USA on 11 September 2001. Accompanying this drive have been new calls for the accountability of such cross-border policing. This is only natural in an area of the world that prides itself on maintaining democratic principles and institutions. In democracies, the operational performance of the police is always accompanied by the quest to account for them. This is so not least because performance of the policing task may involve the employment of more or less infringing competences and hence puts pressure on citizens' rights.

Police co-operation in the context of the Third Pillar of the EU Treaty and the questions concerning accountability that follow need to be properly understood. It is too easy to fall back on lazy recipes for the democratic control of policing which do not correspond with the nature of police co-operation elaborated within the context of the Third Pillar (in particular Europol) or incorporated within it (Schengen). Two matters are of great importance here. First, operational powers have not been transferred. Second, police co-operation is still largely intergovernmental in nature and the increased involvement of the European Commission and the European Parliament in these matters does not alter that fact. Therefore, in practice, national authorities are still fully responsible for the police co-operation which takes place within this framework. This means that public police organisations can be called to account for their actions by their own national parliaments, and in criminal cases, by their own judges. In my view, if we loose sight of these facts, mistakenly arguing as if police co-operation in Europe concerns a kind of supranational policing, then we necessarily create confusion.

Allow me to argue my point of view concisely. We can observe that neither Europol itself nor the Europol staff, have operational powers. Under the terms of the Amsterdam Treaty, Europol is merely allowed to participate in operational co-operation between EU Member States in a supportive capacity; there are no autonomous legal powers whatsoever. To the extent that the national police services co-operate via their units and liaison officers, this type of co-operation still fully resides under the competence of national judicial and/or administrative authorities. These authorities supervise the performance of Europol through their representatives on the Management Board, who can be called to account by their respective national parliaments through the offices of the relevant ministers. Similarly, the operational powers which are included in the Schengen Implementing Convention – cross-border pursuit, cross-border surveillance and controlled delivery – are not entrusted with a kind of Schengen police, but can only be exercised by members of national police services. Such occurrences continue to reside under the competence of the national judicial and administrative authorities. In abstract and concrete terms, it is formally clear where responsibilities for international police co-operation within the territory of the European Union are located, and to which authorities police services and police officials have to account for their actions in this regard.

However, there is more than formality at stake. This point of view is the translation of the classical continental vision on the position of the police in a democratic

constitutional state. According to this doctrine, there can be no room for an independent police, including and especially in operational terms (in countries where such a police force exists we speak about a police state). The lack of independence of a democratic police is expressed first of all in its subordination to the administrative, judicial and, possibly, military authorities. This emerges from the fact that the police are generally accountable (albeit indirectly through relevant Ministers) to a Parliament, and in specific criminal cases directly to the judge. Arguably, this should not be thrown overboard too quickly and not merely because otherwise we would produce the appearance of the frightful image of a police state. Even if there is no immediate fear for the emergence of a police state, if we loose sight of the intergovernmental nature of police co-operation in Europe, it rapidly becomes unclear to whom police are accountable for their organisation, functioning and activities.

## An Overview of the Articles

Having made these preliminary remarks and observations, I now move to the task of briefly introducing the contributions to this special issue of *Policing and Society*. We start, appropriately in my view, at the national level with the contribution by Erwin Muller about "Policing and Accountability in the Netherlands". This article demonstrates that in a country where an exceptional amount of attention is paid to the democratic embedding of the police within the framework of the state, practice tends to differ significantly from theory. This is so because, on the one hand, the relevant institutions function quite differently than what is being expected from them in an abstract sense. On the other hand, it is also the case because the confrontation between the formal framework and societal reality exposes deficiencies in the framework thereby stimulating the development of alternative forms of control, such as the creation of compliance offices and the emergence of professional peer evaluation. Do these findings imply that the classical point of view regarding the position of the police in the democratic constitutional state should be abandoned? Such a conclusion would be too hasty. We should not forget that there are substantial differences in police organisation in the Member States of the European Union. Primarily, Muller's findings demonstrate the need for differentiation in the furbishing of police systems and that these systems ought to be flexible to the extent that they are adaptable to the dynamics of society within which they function.

Moving to the European level, in his contribution "Policing and Accountability in a Dynamic European Context", Willy Bruggeman outlines a number of general policy developments currently taking place within and around the Third Pillar. This overview demonstrates the extent to which the policing policy development and implementation correlates with the general evolution of the European Union, in particular with the policy on crime which is systematically being built by the European Council. In the second part of his contribution, Bruggerman addresses the current situation concerning Europol from the point of view of accountability. The result of his analysis, which is that Europol is probably controlled more stringently than many national police services, may sound surprising but makes sense to those who have expert knowledge of the control mechanisms which have been built into the Europol Convention.

Having said this, and *a fortiori*, even still Bruggeman leaves out of his discussion the national (administrative and legal) mechanisms for the control of police operations

in the European territory. As I indicated above, these continue to be just as important as the Third Pillar arrangements. Hence, the opinion of the European Parliament, that there is a democratic deficit, should in my view be seriously questioned. This does not imply that the parliamentary control on Europol should not be subject to improvement. One of the interesting ways in which this could be done, as long as the Third Pillar remains un-federalised, is also reiterated by Bruggeman: the development of an interparliamentary body of information and negotiation, called Parlopol. At least as important is his reference to a future situation in which Europol officials will really – albeit in a supportive role – be able to take part in multinational criminal investigations. Justifiably he raises the question whether this new situation should not give rise to stronger accountability measures. This would be possible, for instance when it concerns the option not to have to testify before a national court (Article 32 Europol Convention). These regulations concerning immunity and privileges may have to be limited when it concerns operations in the relevant criminal investigations. I myself am doubtful about giving Eurojust a mandate to exercise authority over Europol. One of the reasons for my doubt is that it could give rise to serious conflicts between the members of Eurojust and the national magistrates, with all the consequences for the conduct of criminal investigations.

In her contribution "Towards an Accountability Regime for an Emerging European Policing Governance", Monica den Boer first sketches a number of current developments which she regards as relevant for the issue of accountability in relation to police co-operation within the European Union. Those who compare my introductory remarks with this reconstruction of the situation will notice important differences of view. Whereas Den Boer describes the situation as one which includes (far-reaching) operational powers for European police bodies, my opinion is that (except OLAF, but this body remains outside the discussion pursued here) we have not arrived at such a situation. This difference in our opinions has important consequences for our idea of what should happen in the near future. Where she argues in favour of a strengthening of European mechanisms of control, I would favour the intensification of the existing national means of control in cross-border policing. To me this seems to be more suitable to the intergovernmental character of this co-operation, but I think it will also be more beneficial to the effectiveness of such control. The greater the distance at which control of operational activity is being organised, the less effective it will be. This does not mean that I am not supportive of some of her other proposals, in particular her observations about the need to reinforce European citizens' trust in international police co-operation. But how can this be achieved? The legitimacy of Europol depends to an important extent on the way in which the national parliaments and judicial authorities exercise their controlling tasks. If they exercise this control in an insufficient manner, Europol cannot simply compensate for that. But what Europol could do – without falling prey to G-men type public relations strategies – is to increase the openness about the role which it has played in the preparation and performance of large multinational investigations. It almost goes without saying that, in order to prevent conflicts, this would have to take place in close consultation with the relevant national police forces.

In his contribution "Governing European Policing", Ian Loader completely identifies with those who claim that there is a significant democratic deficit with regard to police co-operation within Europe. On the basis of what I said previously, it will be clear that I do not share this point of view. Where he argues that the national

parliaments are neglectful I would instead point to two specific examples where they clearly are not. The special committee on European police and judicial matters within the Italian Parliament, and the thorough way in which the Dutch Minister of Justice has to account before Parliament about the points of view which he will defend in the Justice and Home Affairs Council of the European Union fly in the face of suggestions that national parliaments cannot or do not uphold their duties in this domain. What I do appreciate about this article is the very question how governance concerning police co-operation in Europe and/or the European Union can be organised in an integrated, transparent and effective manner at all levels. This is indeed an important question to ask because the police accountability framework in the EU has the appearance, certainly for outsiders, of a multi-headed monster. I have already provided my preferred answer to this question: ensure that responsibility for police co-operation does not become fragmented between numerous national and international organisations, and instead locate it unambiguously within the existing mandated national authorities. Putting to one side what I see as limitations to his point of view, what I like very much is that Loader demands that we pay attention to the powers – the "dangers" – which seem to continuously push international police co-operation forward: organised crime, terrorism, illegal immigration. Are these problems not exaggerated too much in order to further consolidate this type of co-operation and eventually make it supranational? One repeatedly gets the impression that this is indeed what happens. We all too often lose sight of the fact that international police co-operation, which to a certain extent is clearly necessary, can only be effective if all the police systems in the EU member states are sufficiently furnished to tackle policing problems. Without a doubt, more (comparative) empirical research concerning the nature of the international police mission in Europe is required.

In his contribution "Policing and the Supranational", Neil Walker defends the surprising thesis that a number of the accountability problems with which national police systems cope could be conquered by means of a transition to a more supranational organisation of policing in the European Union. The issue he has in mind pertains to the paradox of the police function that the employment of coercive means by police organisations is meant to guarantee a safe society, but simultaneously also undermines that very same objective. He rightly refers to the fact that the state can be involved in two, sometimes contradictory, capacities in exercising the police function. On the one hand, the police is the interested party in the context of a certain security policy, whereas on the other, the police has to organise a security policy which enjoys a certain level of democratic legitimacy. In doing so, he shifts attention to an issue which is very often marginalised in the discussion. This concerns the role played by the police organisation in the transfer and enforcement of certain norms and values in society, and the way in which the police receives compensation for this in the form of public legitimacy and continuing co-operation by the population in the performance of its task. Walker argues that these problems will be overcome via the supranationalisation of policing. He argues that this can be solved because there are no established political or professional elites at the European level which can develop and implement a one-sided security policy. In addition, there is a more open administrative–political framework within which policy can be developed, and that security policy is less explicitly linked to certain political opinions and interests. But Walker is not naïve and of course takes account of the possibility that policing policy with regard to certain urgent security interests, such as the issue of immigration,

may still be subject to colonisation by certain power coalitions at European level. On this point, the contribution dovetails neatly with Loader's concerns mentioned above.

In "Accountability across the Policing Field", James Sheptycki goes beyond the specifics of the evolution of police co-operation in Europe and the questions raised regarding the accountability of police in Europe. Instead, he discusses the complex issue of authority over the *policing* (note the difference with 'police') in the contemporary period. In defining the policing field, he makes three analytic distinctions, between "public and private policing", "high and low policing" and "policing territory and policing suspect populations". On the basis of this tryptich, he demonstrates how fragmented and variable policing is and thus how far our discussions about the accountability of policing need to extend. Policing includes both international private security firms which locally secure factory buildings and national secret services which gather intelligence at a global scale and much else besides. The question which he raises in connection with his sketch of the policing field may be rhetorical but is certainly right: how immense is the task to control in a democratic manner these developments globally, or even within a region such as Europe? His answer is that this cannot merely take place through national political authorities, but that other bodies and means are also required in a complementary manner, such as transnational governmental and non-governmental organisations, ethical codes and academic research. I would not want to rule out these additional possibilities, but again in my view – it probably starts to become boring to the reader – the importance of national political authorities ought not to be underestimated. In well-administered states political authorities are at least responsible for a proper control of their intelligence services and for regulating the way in which private security firms are allowed to operate. This may be different in countries which are in a state of (civil) war, or which, for whatever reasons, suffer from an economic crisis. This does not change the fact that, seen globally, the policing field *as a whole* raises complex accountability problems for which it is difficult to identify simple and unequivocal formulae.

## CONCLUSION

This overview of the contributions to this issue really shows the complexity, magnitude and relevance of the accountability problems in the field of policing. In this way, this special issue of *Policing and Society* contributes to the challenge to define a research programme that would analyse the main characteristics of the accountability issue. In order to be realistic and successful, such a programme could only be developed and executed by an international research group of people who are very familiar with police questions on a national and international level. These discussions will likely continue long into the future as more research is done on topics relevant to transnational policing.