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Öberg, Jacob

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PO Box 117  
221 00 Lund  
+46 46-222 00 00

# Guest editorial: EU agencies in transnational criminal enforcement: From a coordinated approach to an integrated EU criminal justice

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Jacob Öberg\* 

## Abstract

The articles in this special issue consider the institutional foundations of the Union's criminal policy – a highly critical question for the future development of the Area of Freedom, Security and Justice. The ratification of the Lisbon Treaty and the subsequent legal and political developments have entailed an unprecedented reinforcement of the powers of the EU's criminal justice agencies Europol, Eurojust and, recently, the establishment of a novel criminal justice body – the European Public Prosecutor's Office. On the basis of the Treaty mandate, the EU legislator has adopted important reforms such as the EPPO Regulation, and new Europol and Eurojust regulations. In light of these developments, this special issue explores via a multi-disciplinary investigation the extent to which the increased competences of the EU and the stronger presence of EU criminal justice agencies have transformed EU criminal law from an 'intergovernmental' regime to a 'supranational' and 'integrated' framework. We expect that this special issue will enhance further debate on EU criminal justice agencies, encourage novel paths to bridge the boundaries between disciplinary epistemic communities in the study of EU criminal justice and more broadly contribute to an advanced understanding of the role of law in social and political integration.

## Keywords

EU criminal justice, supranationalism, intergovernmentalism, EU criminal justice agencies, multidisciplinary research, EU criminal law, EU criminal policy, integration theories, EU competences, EU constitutional law

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\*Örebro University, Örebro, Sweden

## Corresponding author:

Jacob Öberg, Örebro University, Fakultetsgatan 1, 702 81 Örebro, Sweden.  
E-mail: jacob.oberg@oru.se

## I. Introduction: Background, context and aims of this special issue

The idea of this special issue can be traced back to June 2017 where the editor, together with three other fellow scholars, co-organized a large multidisciplinary conference on EU criminal justice at Leiden University. Based on the discussions at the conference and the subsequent work in turning these debates into an edited volume,<sup>1</sup> he contemplated the idea of further exploring EU criminal justice agencies from a cross-disciplinary perspective. These experiences suggested that a dry doctrinal EU legal analysis would not be sufficient to appreciate the complexity of the remarkable legal and political developments of EU criminal justice agencies during the last 30 years.<sup>2</sup> Based on these insights, the editor decided to organize a two-day international symposium on transnational criminal enforcement by EU criminal justice agencies, held at the Law Faculty of Lund University on 17–18 October 2019. The intense, complex and rewarding discussions among EU lawyers, criminal lawyers, political scientists and criminologists at this symposium constitute the basis for this special issue.

The articles in this special issue consider the *institutional* foundations of the European Union's criminal policy – a highly topical and critical question for the future development of the EU's Area of Freedom, Security and Justice (AFSJ). The ratification of the Lisbon Treaty and the subsequent legal and political developments have entailed an unprecedented reinforcement of the powers of the Union's criminal justice agencies: Europol, Eurojust and, recently, the establishment of a novel EU criminal justice body – the European Public Prosecutor's Office (EPPO). The transformation of the former third pillar to the AFSJ suggests that these agencies now partly operate inside the traditional 'supranational'<sup>3</sup> decision-making structure.<sup>4</sup> The expansion of qualified majority voting in the Council and enhanced powers for the Commission, the European Parliament and the Court of Justice as well as the extension of direct effect to EU acts in this area substantiate this proposition.<sup>5</sup> The most important reform in the Lisbon Treaty is that EU criminal justice agencies were conferred with a clear mandate to engage in the fight against transnational crime. The Lisbon Treaty opened up new possibilities for strengthening the role of Eurojust,<sup>6</sup> conferred wider powers to Europol to reinforce its institutional capacity,<sup>7</sup> and provided a legal basis for establishing an EPPO with the power to directly prosecute crimes committed against the EU's financial interests.<sup>8</sup> On the basis of the novel Treaty mandate and a strong political will, the EU legislator has adopted

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1. J. Ouwerkerk et al. (eds.), *The Future of EU Criminal Justice – Policy and Practice: Legal and Criminological Perspectives* (Brill Publishers, 2019).

2. See C. Kaunert, J. Occhipinti and S. Leonard (eds.), *Justice and Home Affairs Agencies in the European Union* (Routledge, 2014) for a previous inspiring study.

3. See in particular W. Sandholtz and A. Stone Sweet, *European Integration and Supranational Governance* (Oxford University Press, 2004) and the discussion in C.J. Bickerton, D. Hodson and U. Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press, 2015), p. 43 on the definitions of 'supranationalism' and 'intergovernmentalism'.

4. Article 85(1) TFEU; Article 88(2) TFEU.

5. S. Peers, 'Mission Accomplished? EU Justice and Home Affairs Law after the Treaty of Lisbon', 48 *Common Market Law Review* (2011), p. 692.

6. Article 85 TFEU.

7. Article 88 TFEU.

8. Article 86 TFEU.

important reforms such as the EPPO Regulation,<sup>9</sup> a new Europol Regulation<sup>10</sup> and a new Eurojust Regulation.<sup>11</sup>

In light of these developments, this special issue explores – via a multi-disciplinary investigation – the extent to which the increased competences of the EU and the stronger internal and external presence of EU criminal justice agencies have transformed EU criminal law from an ‘intergovernmental’,<sup>12</sup> and ‘cooperative’ regime to a ‘supranational’ and ‘integrated’ framework.<sup>13</sup>

## 2. Theoretical framework for studying EU criminal justice agencies

The aim of this special issue is to make two distinctive contributions to the literature. First, it argues that the prominent evolution of EU criminal justice agencies described above justifies an endeavour to revisit the general legal and political debate on EU integration. This literature is premised on the observation that institutional and legal factors largely condition political and economic integration processes.<sup>14</sup> Nonetheless, it is not a straightforward task to employ one of the traditional integration theories to explain this development. Theories such as federalism,<sup>15</sup> neo-functionalism<sup>16</sup> and new governance theories<sup>17</sup> have been used to account for several features of EU integration, also in the field of EU criminal justice.<sup>18</sup> The special issue posits that the evolution of EU criminal justice agencies is appositely analysed in the perennial battleground between

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9. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) [2017] OJ L 283/1.
  10. Europol Regulation: Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA [2016] OJ L 135/53. See also Commission, ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol’s cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol’s role on research and innovation’, COM(2020) 796 final.
  11. Regulation (EU) 2018/1727 of the European Parliament and the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA [2018] OJ L 295/138.
  12. See the seminal piece by A. Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Cornell University Press, 1998) and C.J. Bickerton, D. Hodson and U. Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* for a recent and revised approach to intergovernmentalism.
  13. J. Monar, ‘Eurojust and the European Public Prosecutor Perspective: From Cooperation to Integration in EU Criminal Justice?’, 14 *Perspectives on European Politics and Society* (2013), p. 339, advances this claim.
  14. See L. Lindberg, *The Political Dynamics of European Economic Integration* (Stanford University Press, 1963); E. Haas, *The Uniting of Europe: Political, Social, and Economical Forces, 1950–1957* (University of Notre Dame Press, 1958) for seminal works on the forces of EU integration.
  15. M. Burgess (ed.), ‘Federalism and the European Union’, 26(4) Special Issue of *Publius: The Journal of Federalism* (1996), p. 1.
  16. See L. Lindberg, *The Political Dynamics of European Economic Integration*; E. Haas, *The Uniting of Europe: Political, Social, and Economical Forces, 1950–1957* for early studies on functionalism and A. Niemann and P.C. Schmitter, ‘Neofunctionalism’, in A. Wiener and T. Diez, *European Integration Theory* (Oxford University Press, 2009), for a revised approach to neo-functionalism.
  17. M. Jachtenfuchs, ‘The Governance Approach to European Integration’, 39 *Journal of Common Market Studies* (2001), p. 245.
  18. C. Kaunert, J. Occhipinti and S. Leonard (eds.), *Supranational Governance of Europe’s Area of Freedom, Security and Justice* (Routledge, 2016).

intergovernmentalism<sup>19</sup> and supranationalism.<sup>20</sup> The contributions in the special issue juxtapose the standard supranational paradigm and the theory of ‘new intergovernmentalism’<sup>21</sup> for this purpose, and analyse the design, developments in law, policy and governance of EU criminal justice agencies in light of the general literature of EU integration.

The hallmarks of the supranationalist school are ‘integration through law’<sup>22</sup>, delegation of powers to supranational institutions and the ‘Community’ method through which the Member States can be bound against their will. The theories of new intergovernmentalism partly reject the supranational framework in explaining the ‘integration paradox’ post-Maastricht. This paradox is that Member States have pursued integration in the post-Maastricht period at an unparalleled speed whilst resisting the significant transfer of decision-making power to the supranational levels of the Parliament, the Commission and the Court of Justice.<sup>23</sup>

One of the key assumptions of the special issue – contesting the predictions on new intergovernmentalism – is that ‘integration through law’, whilst challenged by the post-Maastricht developments in EU policy, still has an explanatory value in accounting for the evolution of EU criminal justice agencies. First, as a result of the adoption of the Lisbon Treaty the Community method has been made the central legislative mode for developing and reinforcing the mandate of Eurojust and Europol. Moreover, the powers delegated to the supranational EU institutions from the Member States are significant, as they determine the mode, operation, design, budget and structure of those agencies.<sup>24</sup> The enforcement powers which have been delegated to Europol, Eurojust and the EPPO are also such as are associated with the core areas of State sovereignty: policing powers, law enforcement and prosecution competences.<sup>25</sup> The establishment of the EPPO, in particular, suggests an important transformation of the ‘enforcement’ paradigm according to which the EU legal order relies on Member States for implementation of EU law. An increasingly independent day-to-day role of EU criminal justice agencies, beyond the control of the Member States and their potential vetoes, further undermines the case for intergovernmentalism. This stronger supranational presence is not only derived from a formal competence to shape EU criminal enforcement but also from informal influence exercised by Eurojust and Europol on national criminal justice authorities.<sup>26</sup>

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19. S. Hoffmann ‘Obstinate or Obsolete? The Fate of the Nation State and the Case of Western Europe’, 95 *Daedalus* (1966), p. 862; A. Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*.
20. J. Weiler, ‘The Community System: The Dual Character of Supranationalism’, *Yearbook of European Law* (1981), p. 267; P. Pescatore, *Law of Integration* (Springer, 1974, English translation); W. Sandholtz and A. Stone Sweet, *European Integration and Supranational Governance*.
21. See C.J. Bickerton, D. Hodson and U. Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*.
22. See M. Cappelletti, M. Secombe and J. Weiler, *Integration Through Law: Europe and the American Federal Experience* (De Gruyter, 1986); L. Azoulay, ‘“Integration Through Law” and Us’, 14 *International Journal of Constitutional Law* (2016), p. 449.
23. C.J. Bickerton, D. Hodson and U. Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*, p. 1.
24. Articles 85 and 88 TFEU.
25. See Judgment of Federal Constitutional Court of 30 June 2009, *Lisbon judgment*, Case 2 BvE 2/08, 5/08, 2 BvR 1010/08, 1022/08, 1259/08, 182/09 (2009), para. 252, 355; L. Besselink, ‘Sovereignty, Criminal Law and the New European Context’, in P. Alldridge and C. Brants (eds.), *Personal Autonomy, the Private Sphere and Criminal Law: A Comparative Study* (Hart Publishing, 2001), p. 101 for an outline of such a sovereignty discourse.
26. J.D. Occhipinti, ‘Still Moving Toward a European FBI? Re-Examining the Politics of EU Police Cooperation, Intelligence and National Security’, 30 *Intelligence and National Security* (2015), p. 238; M. Busuioac, D. Curtin and M.

However, integration in this area is still somewhere between supranationalism and intergovernmentalism. Coherent with the hypothesis of new intergovernmentalism, integration has taken place in this area through *de novo* bodies (rather than through Parliament and the Commission), allowing for a greater degree of Member State control.<sup>27</sup> An examination of the way in which EU criminal justice agencies are managed reinforces certain intergovernmental features of their governance structure. Whilst originally conceived as expert bodies who coordinate the work of the Member States, it has been suggested that their mandate and operations have been politicized, particularly in light of the fact that the management boards of Europol and Eurojust are made up of mini-Council formations.<sup>28</sup> The general supranational mode of decision-making is also challenged by national vetoes for certain sensitive issues in this area, including operational police cooperation,<sup>29</sup> operation of law enforcement in foreign jurisdictions<sup>30</sup> as well as the decision to create the EPPO.<sup>31</sup>

On balance, the special issue, however, argues that the new reform perspectives of Eurojust, Europol and the EPPO indicate a shift from a rationale of ‘cooperation’ to one of ‘integration’ of national criminal justice systems. It tentatively suggests that this transformation has, to a certain degree, already taken place and will be deepened by collective Member State decisions along functional lines coherent with the traditional integration theories.<sup>32</sup> Whilst the Member States may, on the face of it, be in control of this development, the more independent workings of these EU criminal justice agencies and their stronger legal mandate is bound to reshape our current view of EU criminal justice as a Member State-managed policy field.<sup>33</sup>

The second point to be made about this collection of articles relates to a multi-disciplinary<sup>34</sup> perspective (law, criminology and political science) as a means of carrying out the above analysis. We observe that there is a disconnection between legal, sociological and political analyses of the development of EU criminal justice agencies, which has arguably led to an incomplete and one-dimensional understanding of this question. A review of the legal literature suggests that the development of EU criminal justice agencies has been addressed mainly from a dogmatic perspective focusing on giving a precise account of this evolution and reflecting on the constraints that

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Groenleer, ‘Agency Growth between Autonomy and Accountability: The European Police Office as a “Living Institution”’, 18 *Journal of European Public Policy* (2011), p. 858; Monar, 14 *Perspectives on European Politics and Society* (2013), p. 343.

27. C.J. Bickerton, D. Hodson and U. Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*, p. 41.

28. S. Wolff, ‘Integrating in Justice and Home Affairs A Case of New Intergovernmentalism Par Excellence?’, in C.J. Bickerton, D. Hodson, and U. Puetter (eds.), *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press, 2015) pp. 140.

29. Article 87(3) TFEU.

30. Article 89 TFEU.

31. Article 86(1) TFEU.

32. See L. Lindberg, *The Political Dynamics of European Economic Integration*; E. Haas, *The Uniting of Europe: Political, Social, and Economical Forces, 1950–1957*.

33. See J.D. Occhipinti, 30 *Intelligence and National Security* (2015), p. 234; Monar, 14 *Perspectives on European Politics and Society* (2013), p. 343.

34. The idea of this special issue has been to use knowledge from other disciplines to further research within each respective academic field rather than engaging in truly inter-disciplinary research which combines methods from different disciplines. See L. Solumn, ‘Interdisciplinarity, Multidisciplinarity, and the Future of the Legal Academy’ *Legal Theory Blog* (2008) for the conceptual distinction.

should be imposed on the operations of those agencies.<sup>35</sup> Although there are several important contributions in the field of political science that endeavour to analyse EU criminal justice agencies,<sup>36</sup> those accounts are detached from a rigorous legal analysis. We contend that the wider development of EU criminal justice agencies is too important to be confined to debates among EU law scholars and criminal lawyers. This issue should instead be addressed through a holistic examination of the current legal, political and sociological conditions for the evolution in EU criminal policy.

This special issue combines analytical approaches rooted in political science and criminology with more normative approaches based on legal doctrine. We envisage that political scientists can make sense of and provide insights into the political context and the driving forces of the pre- and post-Lisbon development of EU criminal justice agencies.<sup>37</sup> EU lawyers and criminal lawyers may, in their turn, examine the extent to which lessons from political science may be employed to analyse and evaluate the possible transformation from a 'cooperative' to an 'integrated' criminal justice system in the EU.<sup>38</sup> The individual contributions endeavour to link together the legal structures and developments with the wider context of integration as a contentious issue in the field of EU criminal policy.<sup>39</sup> Collectively, they analyse the extent to which the operation of law, the management of EU criminal justice agencies and the informal practices of those agencies may further advance EU integration.<sup>40</sup> We thus contend that a more contextualized view of the legal developments is indispensable for an enhanced understanding of the institutional, legal and political dynamics of integration in the field of EU criminal justice since the Lisbon Treaty.

### 3. Structure and overview of the special issue

The special issue is organized organically in three different parts.

The first part, 'Delegation of powers, decision-making and supranationalism' reports on the evolving legal framework (and policies) with reference to EU criminal justice agencies. It analyses past and current developments, with particular reference to the powers transferred to Europol and the EPPO. It also examines the legal structure, decision-making framework and management of the EU criminal justice agencies to appreciate the direction of their future developments. Jacob

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35. S. Peers, *EU Justice and Home Affairs Law: Volume II: EU Criminal Law, Policing, and Civil Law* (Oxford University Press, 2016), chapters 6 and 7; V. Mitsilegas, *EU Criminal Law After Lisbon: Rights, Trust and the Transformation of Justice in Europe* (Hart Publishing, 2016), chapter 4.

36. See e.g. C. Kaunert, 'Europol and EU Counter-Terrorism: International Security Actorness in the External Dimension', 33 *Studies in Conflict and Terrorism* (2010), p. 652; M. Busuioic, D. Curtin and M. Groenleer, 18 *Journal of European Public Policy* (2011), p. 848; M. Groenleer and M. Busuioic 'Beyond Design: The Evolution of Europol and Eurojust', 14 (2013) *Perspectives on European Politics and Society*, p. 285; C. Kaunert, J. Occhipinti and S. Leonard (eds.) *Justice and Home Affairs Agencies in the European Union*; J. Occhipinti, 30 *Intelligence and National Security* (2015), p. 234; Monar, 14 *Perspectives on European Politics and Society* (2013).

37. See Kaunert and Leonard's article in this special issue.

38. See Öberg's article; Harding and Öberg's article and Wade's article in this special issue.

39. See in particular Miettinen and Lingenfelter's article in this special issue.

40. These propositions are overall in line with the argument made by Cardwell and Hervey as well as Joerges on the role of law within the paradigm of new intergovernmentalism: P. Cardwell and T. Hervey, 'The Roles of Law in a New Intergovernmentalist European Union', in C.J. Bickerton, D. Hodson and U. Puetter (eds.), *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*, p. 74; C. Joerges, 'Taking the Law Seriously: On Political Science and the Role of Law in the Process of European Integration', 2 *European Law Journal* (1996) p. 105.

Öberg's article critically examines the powers of the EPPO. He observes that the Office (among policymakers and commentators) appears to be a hallmark of the transformation of EU criminal law from an intergovernmental paradigm to a strong federal and supranational polity. Öberg discusses the scope, nature and limits to the powers of the EPPO, as well as its operating structure in light of Article 86 TFEU and the recently adopted EPPO Regulation. It departs from the basic assumption that the EPPO stands in the midst of supranationalism and intergovernmentalism. Whilst the EPPO is envisaged to be independent of the Member States, the Office's multifaceted and vertical structure means that Member States are able to direct, to some extent, its activities. The article argues, however, that a general assessment of the Office's operational and strategic direction and the type of powers it enjoys makes it distinctive as the most 'integrated' and 'supranational' EU agency. The article by Samuli Miettinen and Kerttuli Lingenfelter turns its attention to Europol and its gradually evolving powers. They observe that – in the three decades since it was established in the context of a secretive and technocratic intergovernmental organization – Europol has evolved into a European Union agency with some, albeit limited, supranational capacities. The article overviews the gradual legal development of Europol's powers and discusses the obstacles to creating a European federal police force. Limits to powers and accountability continue to frame discussions on the EU's operational criminal justice powers. While many EU agencies can lay claim to embryonic supranational enforcement agency, the EU Member States have closely-guarded operational and prosecutorial enforcement powers. This guardedness still shows, especially in EU criminal justice agencies' reliance on intergovernmental structures, such as colleges of national members, and mutually recognized but ultimately national decisions and judgments. Through the lens of its history, the article examines how and what kind of balance has been struck between accountability and competences in the current state of evolution toward Europol's potential supranational authority.

The second part of the special issue, 'Law, policy and governance in relation to EU criminal justice agencies', presents a political science and historical perspective; this should necessarily inform any critical legal analysis, which would otherwise remain dry and descriptive. This includes a discussion of the policies and philosophy underlying the internal and external governance of those agencies, as well as the formal and informal practice of EU criminal justice agencies in promoting further integration. Harding's and Öberg's article takes a holistic perspective and addresses supranational governance of EU criminal justice agencies from the perspective of the various agencies of policy and rulemaking in the field of EU criminal law. The article explores the evolution of the field of policy and law-making now packaged conveniently under the heading 'EU criminal law', from the perspective of those actors and institutions who have contributed to this impressive legal development. In the discussion the article proposes the Platonic analogy of the 'ship of fools' (Plato, *Republic*, Book VI) as an explanatory tool. The ship's captain is the guiding spirit of criminal law, but the crew of the ship, who have the power to take control, have diverse interests and ideas about how the ship should be taken to sea and navigated. The article addresses thematically and chronologically the development of EU criminal law by means of this framework. Subsequently it discusses the extent to which the 'ship of fools' analogy is relevant to the evolution of EU criminal justice agencies, and to the emergence of a European Public Prosecutor. Underlying this discussion is the uneasy sense that the true pilot of EU criminal law has been displaced, in particular by the 'instrumental' pilots of securitization and effectiveness. Thomas Elholm continues the discussion on a more 'philosophical' note by discussing in his article the Union's general inspirational idea of creating a 'common sense of justice' and the implications of this ambition for the development of the European Public Prosecutor. When the Commission presented its vision of



an area of justice, it declared that the ‘ambition is to give citizens a common sense of justice throughout the Union’. Although a sense of justice seems to be something psychological and emotional, it also seems almost inevitably to promote EU integration. The article discusses the various roles that the EPPO may have in contributing to a common sense of justice and in particular the EPPO’s objective of achieving a Union-wide coherent practice on prosecution and penalty levels. Elholm analyses critically whether this practice – by mediating between the different ‘common’ senses of justice in each Member State – is capable of contributing to a common sense of justice. Christian Kaunert and Sarah Leonard examine in their turn the extent to which – if at all – the development of Europol’s external relations over time has contributed to the integration of EU policing and criminal justice. More precisely, with reference to the academic debates on ‘intergovernmentalism’ and ‘supranationalism’, it examines the extent to and the ways in which the growth in Europol’s external relations has indicated a move away from intergovernmentalism towards more supranationalism in the EU’s policing and criminal justice cooperation. It does so by systematically examining the development of Europol’s external relations over time using a continuum ranging from ‘intergovernmentalism’ to ‘supranationalism’ as ideal-types. The article shows that the balance between intergovernmental and supranational features in the governance of Europol’s external relations has changed over time as the latter have been gradually reinforced. Starting from a position close to the intergovernmental pole of the continuum, Europol has moved significantly towards the supranational pole, especially after the Europol Regulation began to apply in 2017.

The final part, ‘The implications of supranational governance of EU criminal justice agencies from a rights-based perspective’, offers a contextual legal analysis of the key fundamental rights concerns of the EU criminal justice agencies’ extended mandate to develop operation-oriented cooperation. This is the other side of the coin to competence and enforcement and will put the matter into the context of the acknowledged tension between security and justice inherent in the AFSJ. Valsamis Mitsilegas’ article examines the challenges that the establishment of the European Public Prosecutor’s Office poses for the rule of law – a question which has been underexplored in the policy and academic debate on the establishment of the EPPO, which focused largely on questions of structure and powers of the EPPO and the battle between intergovernmental and supranational visions of European prosecution. The implications of the finally adopted legal framework on the EPPO will be examined primarily from the perspective of the rule of law as related to EPPO investigations and prosecutions and their consequences for affected individuals – in terms of legal certainty and foreseeability, protection from executive arbitrariness, effective judicial protection and defence rights. The article undertakes a rule of law audit of the EPPO by focusing on three key elements of its legal architecture – the competence of the EPPO, applicable law and judicial review – and the interaction between EU and national levels of investigation and prosecution that the EPPO Regulation envisages. The analysis aims to cast light on the current rule of law deficit in a hybrid system of European prosecution located somewhere between cooperation and integration. Marianne Wade concludes this special issue by offering in her article a critique of the current structure of the EPPO from a victim rights perspective. She observes that the creation of the EPPO revolutionizes the institutional set-up of EU criminal justice by creating a supranational body to address the enforcement gaps identified in the protection of the financial interests of the EU. Unsurprisingly, this breakthrough has met with resistance from the Member States, which have directed their scepticism into the structural, procedural and substantive provisions for this new office. However, by tying the EPPO to national law in a plethora of instances, they have created a body which primarily addresses serious financial crimes within the framework


of domestic criminal justice systems. But these approaches are heavily marked by a pragmatic concept of actuarial justice, with negotiation and plea-bargaining as the dominant practices across Europe. Article 40 of the EPPO Regulation ensures that there is scope for such practice to be adopted for cases falling within the EPPO's competence. Highlighting the problems associated with prosecutorial deal-making, the article reflects upon the appropriateness of adopting such practice for the EPPO. It tentatively argues that a more honest recognition of the supranational nature of the EPPO and of the type of victimization it seeks to address might have instigated a productive dialogue ensuring the EPPO's work is framed with reference to serving a community and securing victim protection. The latter would have constituted a significant step towards ensuring the EPPO's work is legitimate in the eyes of the EU citizens it seeks to serve and protect from victimization.

On a concluding note, we expect that this special issue will contribute to further debate and research on EU criminal justice agencies and more broadly to an advanced understanding of the role of law in economic, social and political integration. In addition, we hope that this collective endeavour will suggest and encourage novel paths to bridge the boundaries between national and disciplinary epistemic communities in the study of EU criminal justice, which in turn might trigger original research questions, areas of research and refreshing research collaborations.<sup>41</sup>

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### ORCID iD

Jacob Öberg  <https://orcid.org/0000-0002-0293-9199>

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41. For such broad multidisciplinary enquiries in the field of EU criminal justice, see R. Colson and S. Field (eds.), *EU Criminal Justice and the Challenges of Legal Diversity* (Cambridge University Press, 2016); Ouwerkerk et al., *The Future of EU Criminal Justice – Policy and Practice: Legal and Criminological Perspectives*.