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Cooperation among Security Agencies in the European Union: Europeanisation of Public Administrations in just another Variation?

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Abstract

Over the past decades, multiple forms of administrative coordination and cooperation have emerged in the European Union. The old doctrine claiming that the European Union is primarily a norm-setting institution, while administrative implementation is left to the member states has been overhauled by a more complex empirical reality. This paper asks to what extent cooperation among security agencies fits into the patterns of Europeanisation observed in other public administrations. It shows that for police cooperation, horizontal forms of cooperation among the member states' police agencies are still predominant, while centralised agencies rather provide services for the use by the member states' police agencies on a predominantly voluntary basis.

Key words: European Administrative Space; patterns of administrative cooperation; police cooperation; Area of Freedom, Security and Justice

1. *Introduction*

Over the past decades, police and intelligence agencies have developed multiple forms of formal and informal cooperation in the European Union. This includes approaches varying from informal meetings and networks to *Police and Customs Cooperation Centres* in boarder regions, centralised databases and institutions such as the European Union's law enforcement agency *Europol* and *CEPOL*, the *EU Agency of Law Enforcement and Training*.

In parallel, the old doctrine claiming that the European Union is primarily a norm-setting institution, while administrative implementation is left to the member states has been overhauled by a more complex empirical reality. Numerous variations of vertical and horizontal, coercive and voluntary coordination and cooperation among the member states' administrations can be observed. Public administration, public policy and legal scholars have analysed this trend.

This paper explores to what extent cooperation among security agencies fits into the patterns of Europeanisation observed in other public administrations. The paper is based on the hypothesis that cooperation among security agencies fits into the patterns observed in other public administrations as long as the cooperation is predominantly related to bureaucratic issues, such as the transfer of evidence. However, secrecy and informality are considered more important for cooperation among security agencies when compared to cooperation between public administrations beyond the security field.

2. Theoretical approaches: Europeanisation, networks and the European administrative space

The scholarly debate on the *Europeanisation* of public administration is part of a broader discussion on Europeanisation in general that has developed in a number of disciplines since the 1990s. It mainly focuses on patterns of interaction between the EU and the domestic

level within the EU multilevel system. There is no single definition for what *Europeanisation* means. In political and administrative science, Europeanisation studies mostly look at the impact of EU rules on policies, politics and public administrations in member states (e.g. Goetz 2006, 473).

Some studies look at the horizontal dimensions of cooperation among the member states' public administrations, others rather examine patterns of cooperation between European and domestic administrative actors (e.g. Benz, Corcaci & Doser 2016). The theoretical approaches used to explain patterns of administrative cooperation in the EU also vary alongside the observations made in specific cases. Studies that focus on the numerous committees and working groups in which representatives from the member states' public administrations coordinate their work often conceive these structures as *networks* (e.g. Hustedt, Wonka et al. 2014, 193 ff.). Research that focuses on the interdependence between European and domestic administrations rather use *multilevel governance* approaches (e.g. Benz, Corcaci & Doser 2016; Benz 2015, referring to Marks & Hooghe 2001).

Another stream of theoretical debate has emerged in relation to the question of how the general trend towards Europeanisation of public administration might be characterised. Different terms and metaphors have been introduced into this debate. The term *integrated administration* (used by Hofmann & Türk 2006, 583 ff.) refers to the general theory of European integration, highlighting that the establishment of administrative coordination and cooperation is often a step towards more coherent and integrated institutional settings. The term *European administrative space* refers to the geographic dimension. Scholars using this term have shown that the member states' public administrations converge in some respect, while at the same time a broad diversity in how the member states administrate themselves persists (e.g. Heidbreder 2011; Trondal & Peters 2013). Against this backdrop, there are some doubts as to whether or not the current state of administrative cooperation in the EU can already be characterised as a *European administrative system* (term used by Bauer & Trondal 2015). A system would probably require much further developed structures and institutions – while the real world of administrative coordination and cooperation in the EU is still based on a broad variety of patterns and institutional approaches. Due to the fragmented character and the fast evolution of administrative cooperation in Europe, the administrative coordination and cooperation infrastructure that has been established so far will likely remain an emerging and unsettled system for a while (cf. Bauer & Trondal 2015, S. 6).

3. Patterns of coordination in the European administrative space

Administrative coordination and cooperation within the EU multilevel system empirically consists of a broad variety of patterns. Typically each policy-specific need for coordination among the member states' and European administrative actors leads to a new institutional setting. The establishment of EU agencies as specified types of semi-autonomous EU administrative bodies has contributed to a certain harmonisation of the EU's administrative infrastructure beyond the European Commission. However, the way in which these agencies

are involved in day to day cooperation with administrations from the member states varies from case to case (cf. Egeberg, Martens & Trondal 2015). In parallel, member states have established structures for the coordination of their work in in a number of policy areas wherein supra-national EU institutions are not involved at all (cf. Benz 2015, 38 ff.).

The distinction between vertical and horizontal coordination is crucial for an analytical understanding of these empirical phenomena. Vertical forms of coordination have some similarities with hierarchical top-down structures as they can typically be observed in public administrations: superior administrations (e.g. government departments) supervising lower administrations that belong to their jurisdiction, and superiors who supervise the administrators working under their responsibility. In the European administrative space, such hierarchical structures can typically be observed where EU institutions perform their role of supervising member states' administrations in their implementation of binding EU rules. The implementation of hierarchical rules may force member states to enact far-reaching administrative reforms. In some cases, this even leads to questioning long-standing path dependencies, well established doctrines of administrative law and specific administrative traditions of the member states (cf. Aden 2015c on the German case). This vertical-hierarchical form of Europeanisation is particularly strong where the European Commission makes use of the right to supervise the correct implementation and application of EU law and to open infringement proceedings against member states in order to force them to comply with EU law (Articles 256 and 258 TFEU). This institutionalises a quasi-hierarchical dependency of the member states' administrations which are forced to implement EU law in the way defined by the European Commission. Top-down requirements in binding EU law in some cases also force member states to establish new administrative bodies that deal with the tasks conferred to them. Additionally, member states with a tradition of decentralised administrative structures are sometimes forced to establish a single point of contact for EU cooperation projects.

By contrast, the various patterns of horizontal administrative cooperation in the EU are much less characterised by hierarchical dependencies, when compared to vertical cooperation structures. In a number of cases, the establishment of an infrastructure for horizontal administrative coordination is even foreseen by binding EU law, e.g. for the cooperation of relevant national administrations in the *Body of European Regulators for Electronic Communications (BEREC)*, established by Regulation (EC) no. 1211/2009. However, in this case, EU law only determines the establishment of this coordination body and the participation of the relevant national administrations as binding for member states. By contrast, EU law only defines the tasks for this cooperation very generally. How the member states coordinate their regulatory approaches is predominantly left to the administrators involved in the coordination process.

Horizontal administrative coordination based on a general framework established by EU law can be distinguished from coordination among administrative actors on a purely voluntary basis. One example of a voluntary approach is the *European Public Administration Network* (EUPAN) established to promote cooperation among the member states' administrations (cf. www.eupan.eu; also Heidbreder 2011, 717 f.). Voluntary horizontal cooperation also predominates where the EU has only limited authority to establish binding rules, e.g. for

social policy. In these cases, specific forms of horizontal, mostly administrative cooperation have been established in the framework of the *Open Method of Coordination*, involving specialists delegated by member states – mostly by the relevant public administrations – and the European Commission (for example Social Protection Committee 2016). Policy learning and the exchange of ideas and experiences characterise this form of horizontal cooperation which may lead to identifying best practice examples.

Even institutions that are independent from hierarchical supervision in the member states coordinate their activities on a voluntary basis in specific institutional settings, e.g. the Courts of Auditors (cf. Aden 2015b). The General Data Protection Regulation passed in 2016 (Regulation (EU) no. 2016/679) established obligations for the member states' data protection authorities – independent from their governments – to coordinate the implementation of the Regulation in specific horizontal cooperation settings.

4. *Pattern of Police Cooperation in the EU*

Since the beginning of the 20th century already, structures for informal administrative coordination had been established in order to deal with forms of cross-border crime, for example, people who had fled from their home country after committing a criminal offense. During the 1970s, police agencies in Western Europe and beyond started to coordinate their work in specific semi-informal bodies, in order to combat politically motivated terrorism and other threats perceived at that time (cf. Bigo 1996). Therefore, horizontal administrative cooperation was already a regular practice in this field – much earlier than in some other European policy and also much earlier than the establishment of police cooperation as an official EU policy in the 1990s (vgl. Fijnaut 2010 und 2015; Harlow & Rawlings 2014, 245 ff.).

Internal security, however, has always been perceived as a core element of national sovereignty by most European states. This explains why cooperation among the member states' security agencies was established by the Treaty of Maastricht as a core element of the intergovernmental institutional architecture of the three EU pillars. Supranational institutions, especially the European Commission and the Court of Justice, were circumvented by this strategy. However, once the *Area of Freedom, Security and Justice* had been established by the Treaty of Amsterdam, the EU institutions gained influence. But this influence remained limited. Even those legal acts from the former third pillar that, in their wording, claimed to be binding for member states were poorly implemented, as the European Commission did not have the option to use infringement proceedings in this field prior to the Treaty of Lisbon (cf. Aden 2015a).

Many characteristics of police cooperation in the EU still go back to the path dependency initiated with the establishment of intergovernmental institutional settings. These particularities continue to impact the predominant patterns of police cooperation. Compared to other EU policies, as for example, agriculture or environmental protection, where the European Commission has the option to influence the implementation of EU law by domestic public administrations - and has vertical-hierarchical instruments for this purpose - police cooperation is still characterised by horizontal patterns that are mostly less binding for the member states. Even though this has been changing since the Treaty of Lisbon entered into

force in 2009, many police officials still prefer an institutional framework for cooperation in which EU institutions are not involved, especially for operative cooperation in criminal investigation cases.

Another particularity of police cooperation – compared to other forms of cooperation among public administrations in the EU – is related to the hybrid position of police agencies as administrative and judicial actors. On the one hand, police agencies are typical public administrations – with hierarchical decision-making and bureaucratic routines. On the other hand, in all EU countries, police agencies fulfil tasks within their criminal justice systems, as they detect and investigate criminal offenses. Trans-border police cooperation is in great part related to criminal investigation. Therefore, administrative cooperation in the field of criminal investigation is characterised by the specific needs of criminal justice systems, especially in gaining evidence that can be legally used in criminal procedures in a rule of law system (cf. Aden 2006, 343 f.).

4.1 Centralised administrative structures for police cooperation: the EU-as service provider

Even today, the governments of some EU member states claim that internal security issues are core elements of their national sovereignty, and are therefore reluctant to cooperate. Nevertheless, the EU has developed some centralised infrastructures for cooperation over the past decades.

A core element is *Europol,* the EU agency for cooperation in criminal investigation, based at The Hague (Netherlands). In the 1990s, Europol was established as a separate international body by an international public law treaty. In 2009, while still under the third pillar regime, Europol was attributed the status of an official EU agency by Council Decision 2009/371/JHA. Since it's establishment, Europol has been part of the broader EU system, but enjoys a relevant degree of autonomy. Regulation (EU) 2016/794 which has now replaced the third pillar Council Decision underlines Europol's support function: "Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy […]" (Article 3 (1)). In the typology of multilevel administration, this is close to what has been described as cooperative coordination (cf. Benz 2015, 38). Even under the binding Europol regulation the member states make use of this support on a voluntary basis.

Each member state must establish a "national unit, which shall be the liaison body between Europol and the competent authorities of that Member State" (Article 7). This shows that police cooperation also includes vertical-hierarchical elements that force member states to adapt their police institutions in order to enable them to take part in European cooperation. For member states such as Germany where policing tasks are (semi-)decentralised (cf. Aden 2017), this meant that a centralised unit had to be established at the central level, in Germany at the Federal Criminal Police Office *(Bundeskriminalamt),* in order to bundle cooperation between the various German State and federal police forces on the one hand, and Europol on the other. However, there is an ongoing debate on enabling decentralised

units to exchange information directly with Europol in order to facilitate everyday cooperation.

At the same time, Europol serves as a platform for horizontal cooperation among police forces from the member states. The liaison officers that police agencies from the member states send to Europol are a core element of this function. One of their tasks is to organise information sharing between Europol and the police agencies from their home country. This is an element of vertical, but mostly non-hierarchical cooperation. Beyond this task, they also exchange information related to investigation cases directly with the liaison officers from other member states. Therefore they play an important role for horizontal cooperation among the member states' police agencies. The exchange of liaison officers has revealed itself as an effective practice and therefore has become a standard instrument for cooperation among security agencies in Europe and world-wide (cf. den Boer & Block (Hrsg.) 2013).

The supervisory bodies that have been established for Europol are a variation of mixed horizontal and vertical administrative cooperation (cf. Harlow & Rawlings 2014, S. 257 f.). Europol's management board is now, according to Regulation (EU) 2016/794 composed of one representative from each Member State and one representative of the Commission (Article 10). With this new regulation, the European Data Protection Supervisor (EDPS) has been attributed the task of monitoring Europol's data processing in cooperation with the national supervisory authorities (Articles 43-45) – another form of mixed vertical and horizontal administrative cooperation.

The centralised databases introduced for AFSJ cooperation over the past decades (cf. Boehm 2012, 259ff. for an overview) can be classified as centralised administrative structures delivering services for the member states' administrations. As for Europol, the member states are obliged to establish a central unit that filters data relevant for trans-border cooperation and enters it into the databases. The most important database of this type is the *Schengen Information System* (SIS) established in the 1990s. The member states' law enforcement and immigration authorities enter data into this database, especially information related to wanted criminals or stolen goods. The information entered into the SIS may also be related to the refusal of entry for individuals – mostly used for implementing a restrictive immigration policy. The SIS is linked to national police information systems. This means that police checks in any Schengen country can lead to a "hit", indicating that a person or good is sought for by a police agency somewhere in Europe, or that immigration authorities have decided to refuse entry to this said person. Further proceedings, i.e. extradition, will then have to be managed on a bi-lateral basis by the police agencies and the judicial authorities of both countries.

In 2012, the management of the "second generation" SIS and other AFSJ databases was attributed to a then newly created separate EU agency: eu-LISA, the EU *Agency for the operational management of Large-Scale IT Systems in the area of freedom, security and justice,* located in Tallinn (Estonia - headquarters), Strasbourg (France – IT infrastructure) und Sankt Johann (Austria). So far, beyond the SIS, eu-LISA manages the fingerprint database *Eurodac* and the *Visa Information System* (VIS).

Frontex, the highly contested *European Border and Coast Guard Agency*, is also based on a mixed vertical and horizontal variation of administrative cooperation. Frontex organises joint operations carried out by border and coast guard forces delegated by member states. Regulation (EU) 2016/1624 which now governs the agency's work, defines Frontex as an institution that shares responsibilities with relevant member states administrations: "The European Border and Coast Guard Agency [...] and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, shall constitute the European Border and Coast Guard" (Article 3 (1).

As a result, centralised administrative structures for police cooperation in the EU until now have only had limited vertical-hierarchical top-down power enabling them to force the member states' security agencies to cooperate. 'Thus far, the centralised administrative capacities established at EU level rather offer services which member states are principally free to make use of.

4.2 Network-based cooperation – predominance of de-centralised administrations

Due to the path dependency initiated by the intergovernmental structure that has characterised police cooperation since its early days, it is not surprising that cooperation networks are particularly important in this field. They enable police agencies to cooperate without an international institution that steers this process. Already in the 1990s, Didier Bigo (1996, 329 ff.) characterised the emerging institutions of police cooperation in Europe as networks *(réseaux)*. Some of these networks have been institutionalised in specific ways, others are purely informal.

Some European police networks also include centralised elements at EU level. CEPOL, the European Police Academy *(Collège Européen de Police)* established in 2000 for the further education of police officers at leadership level, is such a case (cf. Jaschke 2015, 123 on the role of this institution). Since 2015, CEPOL is an EU agency, legally based on Regulation (EU) 2015/2219. The CEPOL staff, formerly based in Bramshill (UK) and since 2014 in Budapest (Hungary), organises training programmes for police leaders. This agency functions as a network in a double sense: On the one hand, CEPOL coordinates a network of the member states' training institutions for law enforcement officials at leadership level: "CEPOL shall bring together a network of Member State training institutes for law enforcement officials and shall liaise with a single national unit in each Member State functioning within the network" (Article 3 (3) Regulation (EU) 2015/2219). Here again, EU law forces member states to adapt their administrative structures in order to facilitate cooperation. On the other hand, CEPOL facilitates networking among police leaders from different EU countries who meet at the events organised by the agency. This informal variation of a network can be used by participants for contacting colleagues whom they met at CEPOL events, when they should need a contact in the colleague's home country for an investigation. This kind of informal networking among administrators meeting at cooperation events is a general side function of any form of horizontal administrative cooperation among the EU member states.

The now circa 40 *Police and Customs Cooperation Centres* (PCCC) that have been established in the border regions between the Schengen countries since the 1990s are another specific variation of horizontal police cooperation (cf. Gruszczak 2016). They are established by bi- or multilateral agreements concluded between the neighbouring countries cooperating in the centres. EU institutions are usually not involved. Police and customs administrations from the neighbouring countries usually share an office building within the border region in order to coordinate trans-border cases under the same roof. Due to the daily work in the same building, the PCCCs can be classified as a particularly strong variation of network-based horizontal administrative cooperation.

Informal networks already characterised the early stages of police cooperation in Europe (cf. Fijnaut 2015). Nowadays, the role of informal police cooperation networks has become more differentiated, due to the establishment of formal institutions such as the EU agencies working in the AFSJ area. A major part of the tasks fulfilled by informal networks in the early days of police cooperation have since been transferred to more institutionalised settings which are integrated into the official EU system and therefore more transparent and accountable. In some cases, informal networks have nevertheless been maintained for specific tasks and issues. This is for example the case of the informal *Police Working Group on Terrorism* (PWGT) established in the late 1970s (cf. Bundesregierung 2013, S. 2; Cordeel 2010). The fact that this informal working group has been maintained may be interpreted as an expression of mistrust in the official EU agencies and their ability to coordinate anti-terrorism cooperation effectively.

The *European Police Chief Task Force* (PCTF) established in 2000, following a recommendation made in the Tampere programme (1999), is another network for the coordination of horizontal cooperation among police agencies from member states. Jelle van Buuren (2012) has used the term "runaway bureaucracy" for the trend of attributing coordination tasks to autonomous administrative networks. This term correctly highlights that transnational police networks strengthen the autonomy of police leaders in relation to governments and parliaments (cf. Aden 2014b on this debate).

With the establishment of EU agencies for AFSJ issues, personal networks of police officers involved in international cooperation have gained importance as well, e.g. among liaison officers (cf. den Boer & Block (eds.) 2013), among senior officers trained by CEPOL and among officers delegated to the numerous European and international working groups.

5. Predominance of information, secrecy and the needs of criminal justice

So far, this paper has discussed patterns of police cooperation that are specific to the numerous agencies and working groups that have been established for this type of administrative cooperation in Europe over the past decades. Generally, they fit well into the typology of patterns that can be observed when public administrations cooperate in Europe and beyond.

However, three specific patterns maintain police cooperation as a specific case in the broader context of an emerging European administrative space: the crucial role of information, the secrecy governing many forms of police cooperation together with a high degree of informality, and finally the orientation of police cooperation towards the needs of criminal investigation.

Information and knowledge sharing is an important aim for any kind of cooperation and coordination among public administrations (cf. Aden 2014a, 58 f.). Public administrators share professional knowledge and experience when they cooperate. This can contribute to improving the quality of administrative work. However, the role of information for police cooperation is characterised by an additional factor. Information is at the core of police work, not only for criminal investigation, but also for preventive tasks. For criminal investigation, the availability of information in the form of evidence that can be used before the courts is crucial for the outcome of criminal proceedings.

A major part of police information is kept secret, mainly for two reasons. (1) Police knowledge is often related to sensitive information about the private life of suspects – and already the information that someone is suspected to have committed a crime can have a negative impact upon the individual's reputation. Therefore, privacy and data protection are human rights. Thus, criminal investigators have to keep their knowledge confidential as long as there is no clear evidence that the individual really has committed a crime.

And (2) the collection and sharing of police information is mostly based on tactical use of the information that is already available. In investigative interviews, police officers will not disclose to a suspect or a witness all the information that they already have in order to test the credibility of a deposition and to use the effect of surprise. If suspects would know, what information criminal investigators already have, they might destroy evidence and attempt to distract the police with false information. The tactical use of information in criminal investigation also impacts cooperation with other police agencies within the same country or abroad. Only if police officers find that it makes sense tactically to disclose information to other agencies – and only if they trust their colleagues, will they share information. Information sharing will barely be successful if those police officers who possess information do not trust that their colleagues will not share the information with unauthorised persons, for example, other criminals. Therefore trust is closely related to police integrity. Only if police officers have institutional trust in the integrity of the other police agency and personal trust in the police officers involved, will they share information (cf. Aden 2014a and 2016 on the different types of trust among police agencies and police officers).

Within the EU multilevel system the trend towards comparable (minimum) standards for policing facilitates cooperation, even for the exchange of highly sensitive and confidential information. Nevertheless, considerable differences between police agencies in the EU, their tasks, their legal authority and their policing style persist, e.g. related to the separation or non-separation of police and secret service functions, the vulnerability to corruption, and to the level of respect for professional standards. The attempt to trigger or even to force horizontal cooperation by vertical steering instruments such as EU law can therefore only be successful if they are embedded in strategies aimed at strengthening the professional

standards and trustworthiness of police agencies in all EU countries. The "principle of availability" established more than ten years ago by the "Swedish initiative", claiming that police agencies should share information with agencies from other EU countries under the same conditions as they do with agencies from their own countries will therefore probably remain purely theoretical as long as professional standards for policing have not been raised to a high level everywhere in Europe (cf. Böse 2007; Aden 2014a und 2016).

These specific patterns maintain police cooperation as significantly different from other fields of administrative cooperation in the EU multilevel system.

6. *Police cooperation in the European administrative space: conclusion and outlook*

The patterns that can be observed for police cooperation in Europe show a number of parallels with patterns of coordination and cooperation that have been developed and observed for other fields of trans-border administrative cooperation in the EU. This can partly be explained by the specific challenges of administrative coordination and cooperation in the EU multilevel governance setting. The involvement of actors from several administrative levels and from different member states creates a significant need of coordination. Nevertheless, police cooperation still remains a specific case in the European administrative space. Due to the development of police cooperation as an intergovernmental policy, horizontal cooperation is more important for police cooperation compared to other fields of administrative cooperation in the EU. Despite the establishment of several EU agencies for the AFSJ, the influence of these agencies on police cooperation is still limited in practice and mostly related to services provided to the member states' agencies, e.g the administration of centralised databases such as the *Schengen Information System*. When domestic police agencies make use of these services, it is still largely voluntary– and therefore depends upon preferences defined by the member states' governments and police leadership.

However, there are also developments that hint at a stronger and more binding EU influence on horizontal police cooperation more probable in the future. The "weak" legal instruments established under the former third pillar are slowly but surely being replaced by EU law passed by the European Parliament and the Council. Europol, Frontex, CEPOL and eu-LISA are now EU agencies and therefore less intergovernmental than they were in the past.

Finally, the terrorist attacks committed in Paris, Nice, Brussels, Berlin, London, Stockholm and other places in Europe in the past few years have triggered intensified horizontal and vertical cooperation and coordination among police agencies in Europe and beyond and may lead to enhanced obligations for the member states' police agencies where cooperation has remained rather voluntary thus far. Terrorist attacks, i.e. those committed in the US on 11 September 2001, have led to a reconsideration of the performance of security agencies and of their cooperation (cf. Balzacq & Léonard 2013; Bossong 2013). The legal and technical instruments for policing will probably be further harmonized in this process, for example those related to criminal offenses committed by terrorist groups. As a major part of policing is

dependent upon domestic criminal law, more harmonisation in this field would readily facilitate cooperation.

However, further harmonisation will not completely replace the specific patterns of police cooperation that make it different from other areas of administrative cooperation in the EU. Police cooperation will continue to be strongly linked to the exchange of highly sensitive and confidential information. Informal networks will probably continue to exist where police (and secret service) leaders do not trust all their colleagues in other member states who might take notice of the information shared by official EU "channels". Therefore it does not seem probable that informal cooperation will be replaced by centralised steering by EU institutions in the near future.

The evolving cooperation among police agencies therefore remains an interesting field for further trans-disciplinary research into the emerging European administrative space.

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