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This is an author-produced version of a paper published in:

British Journal of Criminology

Citation for the published paper:

Engdahl, O. and Larsson, B. (2016) Duties to distrust: the decentring of economic and white-collar crime policing in Sweden, *British Journal of Criminology,* 56 (3) 515-536.

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DUTIES TO DISTRUST: THE DECENTRING OF ECONOMIC AND WHITE-COLLAR CRIME POLICING IN SWEDEN

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Abstract
This article examines a general trend towards the 'decentring' of the policing of economic and white-collar crime in Sweden in recent decades. As a theoretical point of departure, we discuss how the 'decentred policing' concept can link the theoretical approaches of regulation and policing studies. We then analyse five empirical cases in which private actors have been given duties and incentives to report others' crimes, in order to give a detailed account of the expansion and effects of the decentring of business and finance policing. The five cases concern the policing of bankruptcy crimes, money laundering, company management crimes, market abuse and insider dealings, and illegal cartels. The article ends by discussing some possible causes and consequences of this tendency.

Keywords: decentred policing, private policing, regulation, crime reporting, white-collar crime

Introduction

In modern criminal justice, the responsibility to police crime is centred in the state (Zedner 2006). In Sweden, only the police, customs authorities and tax authorities have a general duty to detect and report suspected offences to the prosecutors who are to investigate the suspicions with help of police. Several other non-police governmental agencies have some limited reporting and investigative duties, and individual citizens have the right but no general duty to detect or report crime (Jareborg 2001; cf. Levi 1987: 125ff.; 2010).[1] In business and finance, many actors even have incentives not to dis- close or report crimes and offences committed by employees, customers or principals to avoid reputational damage or because of the principle of confidentiality (Alexander 2005; Williams 2005; Faravel-Garrigues et al. 2011; Meerts 2014).

Against this background, it is notable that a great many private employees in business and finance today are not only encouraged but legally required to report crime and illegality detected in their daily work. In Sweden alone, the number of private actors with a duty to report money laundering exceeds 10,000. Even auditors and lawyers must report crime committed by their clients. These professional intermediaries are thus no longer only agents for the principals contracting them but also for the state, which thereby penetrates business relationships previously considered private and confidential.

This development might be considered 'old news' as it has been pointed out that 'the long-established assumption that the state is always and exclusively the authority responsible for crime control' has been giving way to the view that civil society has and should be given the

[1] There are some exceptions to this principle: Citizens who neglect to report knowledge of serious ongoing crimes may be tried for complicity if they had the opportunity to report the crimes without danger to themselves or their nearest. Another exception applies to guardians who are obliged to endeavour to prevent children from committing crimes. A third exception is set forth in a safeguard clause in the Social Services Act, a clause stating that employees whose activities affect children and youth must notify the municipal social welfare board to intervene to protect children. This obligation applies when crime can be revealed at such a stage that its completion can be prevented. This duty today applies to a large number of professionals engaged in social services, health care, schools and childcare (Socialstyrelsen 2004).

responsibility to cooperate with the state to control crime and illegality (Garland 2001: 126; cf. Loader 2000). However, discussion of such 'responsibilization' and the development of 'private policing' and 'public–private partnerships' in policing seldom touches on the existence of legally prescribed duties for private actors to perform policing functions. In addition, compared with analyses of the tendency towards private or plural policing in other areas (e.g. Loader 2000; Button 2002; Crawford 2006; Bradley and Sedgwick 2009), as yet relatively little research addresses the areas of business and finance (cf. Faravel-Garrigues et al. 2011). The considerable research into white-collar and economic crime mostly discusses only certain aspects of these tendencies. Numerous studies treat the regulation and control of white-collar and economic crime in the Nordic countries (e.g. Lindgren 2002; Alvesalo 2003; Korsell 2003; Larsson 2005), as well as in Canada, the United Kingdom, the United States, and elsewhere (e.g. Stretesky 2006; Levi 2008; Friedrichs 2009; Williams 2012); most such studies, however, emphasize the state. Other studies concentrate on the purely private side of the policing of crime and irregularities (e.g. Schneider 2006; Boatright 2007; Meerts 2014). Little research considers the relationship between state and private actors. The existent research tends to concentrate on individual cases of the development of state-organized private policing in relation to fraud (Levi 1987, 2008), money laundering (e.g. Hall 1995; Levi 2008; Egan 2010; Favarel-Garrigues et al. 2011; Svedberg Helgesson 2011; Hörnqvist 2014), illegal cartels (Morgan 2008) and the company auditor role (Larsson 2005a; 2005b). Few studies discuss the general tendency we identify here—i.e. the 'decentring' of the policing of white-collar and economic crime and irregularities in several business and finance areas.

This article examines five cases in which policing functions have been extended to private financial and business actors in Sweden, a development conceptualized as the 'decentring' of policing, since it is neither purely private nor purely state centred (cf. Black 2001; Larsson and Engdahl 2012): (1) the expansion of reporting requirements for Swedish bankruptcy administrators since the 1980s; (2) legal measures of 1994 requiring the detection of money laundering; (3) the requirement, since 1999, that company auditors report crime; (4) the 2005 law on market abuse in relation to trade in financial instruments and (5) the 2002 introduction of a leniency programme in regulating illegal cartels. Unlike the other cases, the last programme does not target criminal but rather administrative offences, encompassing no reporting duties but rather incentives to report. Even so, it concerns the decentring of policing because it illustrates the recently noted tendency to enact regulations through which 'a company is offered an economic incentive to report its [and others'] administrative, civil and criminal violations to the proper authorities' (Stretesky 2006: 672).

This article presents these five cases in order to trace the overall development of this decentring of policing, considering why it is occurring and its outcomes and con- sequences. Although the empirical focus is Sweden, we believe that our treatment advances the understanding of this development more generally, not least, because certain aspects of it are related to international developments, particularly in the European Union (EU).

The article is organized as follows. The next section is a conceptual discussion of the tendency towards the decentring of regulation and policing. Thereafter follows an analysis of the five cases, thematically focusing on (1) the background and enactment of the regulations; (2) their content and form; (c) their subsequent development and extension; (d) the critiques of the regulations and (e) their practical applications and effects in terms of the number of reported crimes. This analysis is based on previous research and on preparatory governmental inquiries, public reports, legislation, and public statistics on the number of crimes reported to

public authorities. The paper ends with a concluding discussion ‘connecting the dots’ and presenting an overview of the tendency discerned in the five cases, and of its causes and consequences. In addition, in this section we also discuss the contributions our approach might make to the research fields of regulation, policing and white-collar crime-control studies

Decentring of Policing: Conceptual Issues and Tendencies

When applied to financial and business activities, the concept of ‘decentred policing’ relates both to the re-regulation policies of recent decades and to the changes in law enforcement described in terms of private or ‘plural’ policing. As is well known today, the concept of deregulation, often discussed in relation to neoliberally inspired policies of the 1980s and 1990s, is somewhat misleading. As noted by Cerny (1993: 52), ‘“deregulation” really means the attempt by the state to impose upon market actors—and upon itself—new market oriented rules’. In most cases, there was actually a process of economic ‘re-regulation’, i.e. politically intervening regulations were replaced with a new set of market-constituting regulations. In many countries what was called deregulation even resulted in more complex regulatory systems with more rules and supervisory functions than before (Levi-Faur 2005; cf. Shapiro 1987).

This still ongoing displacement of regulation and control has been conceptualized as the rise of ‘regulatory capitalism’ (Levi-Faur 2005; Braithwaite 2008), a ‘new regulatory state’ (Braithwaite 2000; cf. Majone 1997), or even a ‘post-regulatory state’ (Black 2001). The outcome is not the ideal free market of neoliberalism, but a pluralistic regulatory system combining various actors, organizations and regulations, i.e. state control, hybrid- and co-regulation, as well as pure self-regulatory processes and private systems of control (Clarke 2000; Jordana and Levi-Faur 2004). Much of this re-regulation has entailed the increased involvement of private actors in setting rules and in monitoring and even enforcing new regulations (Larsson and Engdahl 2012). This displacement may therefore be seen as a ‘decentring of regulation’, defined by Black as ‘a shift (and recognitions of such a shift) in the locus and activity of “regulating” from the state to other, multiple, locations’ (Black 2001: 112). This decentring has been accomplished through a distribution of responsibility for the development and supervision of regulation to market actors, though often in cooperation with government authorities.

The policing aspect of the concept of decentred policing relates to research into law enforcement. In this area, there is ongoing discussion of the expansion of ‘private policing’ performed, e.g. by the security industry and via citizen initiatives. More sim- plistically, this expansion is said to have shifted the balance between public and private policing (Button 2002). However, this tendency has also been seen as part of a more complex transformation towards ‘plural policing’ that dissolves or blurs the distinction between private and public by shaping hybrid constellations or private–public partnerships (cf. Levi 2010). The result of this is a composite structure of layers of policing working not only through the state but also beyond it (commercially), below it (via citizen initiatives) and above it (supranationally) (Loader 2000). The effect is not a simple tipping of the balance in policing from the public towards the private but is much more complex: ‘In certain areas, state intervention is being withdrawn, in other areas it is redrawn, and in still other areas it is being extended’ (Crawford 2006: 471).

As noted by Gill (2002) and Hörnqvist (2014), there is little communication between these two research areas (cf. Gill 2013; Williams 2005). Research into regulation seldom addresses

policing, and policing studies take little interest in business regulation (Gill 2002). One reason might be that the 'regulation' concept is mainly used for describing attempts to constrain and govern economic activities, business and markets (Black 2001: 132f.; Croall 2003: 45). Some even claim that the concept should be applied only to practices concerning administrative and bureaucratic rules (Levi-Faur 2010). The concept of 'policing', on the other hand, has mainly been applied to the enforcement of legislative or judicial rules, particularly in relation to public order and crime (Gill 2013).

Gill (2002) tries to bridge this gap by stating that 'policing' is really analogous to 'social and economic regulation'. Although such an attempt at collapsing the distinction seems less than useful, we nevertheless believe that there are gains in bringing these two research strands closer together. Conceptually, this could be done using a definition that 'regulation' designates activities by which an organization influences or controls other organizations' or individuals' operations through a combination of a goal component (i.e. policy/rule making), a monitoring component (i.e. supervision and policing) and a realignment/enforcement component (Crawford 2006; cf. Hood et al. 1999; Levi-Faur 2010). Thereby, policing may be used as a central concept in approaching practices of monitoring compliance and deviance, irrespective of the legal construc- tion of the rules. In fact, this might nuance discussion of the expansion of decentred 'hybrid-' and 'co-regulation' following the de/re-regulation of economies: Whereas most such discussion has treated the decentring of the whole complex of rule setting, monitoring and enforcement, this conceptual elaboration also enables the inclusion of cases in which only part of the regulatory activity is decentred: the policy-making/rule setting, the monitoring/policing or the enforcement parts.

Policing Crime in Bankruptcies

Although we introduced the decentring of the policing of economic crime and illegalities as a recent development, one of our cases foreshadows this phenomenon. This is an exceptional case, however, relative to those that follow, as it deals with 'dying' companies and not ongoing businesses. Just as liquidators, insolvency practitioners, and receivers/trustees in bankruptcy in many countries are obliged to inform the authorities of crimes, so are Swedish bankruptcy administrators (Konkursförvaltare)—and they are outdone only by the tax authorities in the number of reports sent to prosecutors.

As early as 1921, the bankruptcy act required that bankruptcy administrators notify the bankruptcy judge if they had reasonable grounds to suspect crime. This obligation only applied to crimes against the creditors, and the judge was responsible to report to the prosecutor (Govt. 1978/1979: 105, 177–179). In connection with renewed public interest in 'economic crime' in the late 1970s and early 1980s, however, the bankruptcy administrators' role in detecting economic crime was reconsidered (Govt. 1978/1979: 105, 154; Korsell 2003: 52ff.). Bankruptcy administrators were criticized for treating crime too leniently, and it was suggested that their contribution could be improved by making them report other crimes as well and by giving them the task of managing bankruptcies in small companies. Such bankruptcies had so far been managed in a simplified procedure by a trustee who was not obliged to report crime. Because almost 75 per cent of all bankruptcies involved such small companies, and investigations sug- gested that crimes against creditors could be suspected in half of them, this reform was thought to have brought many reports to prosecutor attention (Govt. 1978/79: 105, 150ff.).

Several reforms in the 1980s strengthened the bankruptcy administrators' policing function. They became obliged to report crimes directly to the public prosecutor, and this responsibility

was extended to include tax offenses and offenses relating to the new possibility of sentencing individuals to a ban from engaging in commercial activities. Moreover, the level of suspicion at which a report was to be submitted was lowered. Whereas the 1921 law prescribed that a report be made in cases of ‘reasonable suspicion’, subsequent legislation stated that a report be made even when it ‘may be suspected’ (Korsell 2003: 53). The 1980’s reforms also made it mandatory to appoint administrators for bankruptcies of small companies. In addition, the bankruptcy administrators were given a more independent status. The new regulation stipulated that bankruptcy administrators primarily be privately practising attorneys/lawyers (Govt. 1978/79: 105, 79f.). The organization of supervision was also changed in that it was shifted from the bankruptcy judge to the enforcement authorities, who were better placed to enforce compliance with the duty to report crime.

In the 1970s, the proposals to strengthen the reporting duties of bankruptcy administrators were dismissed on the basis that they could interfere with their main responsibilities. The only acceptable reason for bankruptcy administrators to investigate crime was said to be if that was in the interest of the creditors (Govt. 1978/79: 105, 178; cf. Levi 1987: 125f.). However, when the duty was strengthened in the 1980s, no strong objections were raised—not even by the legal profession from which bankruptcy administrators were from then on to be appointed (Korsell 2003: 67). As will be shown in the cases to come, this stands in strong contrast to the criticism levelled against giving legal professionals and auditors duties to report other crimes.

An interview study of bankruptcy administrators from the early 2000s demonstrates that they did not consider themselves ‘bookkeeping police’, despite their duty to report crime. Their main task was still to represent the creditors and produce good results for them, and some stated that they were not paid to investigate crime unless it could enrich the bankruptcy estate. Therefore, the crime that most interested them was ‘looting’, but accounting wrongdoing was said to be reported to the extent that ‘they stumble upon it’ (Korsell 2003: 78). However, the number of reported accounting frauds rose sharply after the 1980 legal reform, and in the 2000s, bankruptcy administrators provided about a third of incoming reports to the Swedish Economic Crimes Authority (SECA) (Korsell 2003: 54ff., 129). As shown in Table 1, in the early 2000s, many of their reports included notifications of possible crimes entailing a ban from engaging in commercial activities. Such reports, however, have decreased over the past decade.

Table 1 Number of reports from bankruptcy administrators to SECA regarding suspected crime, 1998–2013

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Reports to SECA	3073	2567	2081	1632	1090	2849	2875	3026	2868	2480	2455	2618	2689	2869
Reports of suspicions relating to the ban from engaging in commercial activities					246	255	208	122	114	73	75	55	50	58

Sources: Kronofogden (2012), SECA (2004) and (personal communication).

Although bankruptcy administrators’ duty to report crime is not a new element of Swedish law, their policing function has been strengthened since the early 1980s. In summary, this has been done by extending the range of crimes they must report, including small company bankruptcies in their reporting duties; shortening the time elapsed between detection and

reporting; lowering the degree of suspicion that necessitates reporting and establishing a more direct reporting route to the public prosecutor. This extension of responsibilities since the 1970s has occurred against the background of bankruptcy administrators' increasingly being considered important actors to mobilize in the public interest to combat economic crime (Lindgren 2002). Although interview studies indicate that bankruptcy trustees may practise a certain amount of 'creative compliance' in relation to this duty, statistics indicate that they account for a considerable proportion of reported economic crime (SECA 2012: 7).

Policing Money Laundering

The first reporting duty regarding ongoing economic activities was introduced in the 1994 Act on Measures against Money Laundering, in direct response to the European Money Laundering Directive. The concern was that capital movement and freedom to provide financial services in the unified European market could be used for criminal activities, and the Directive was designed to prevent member countries from protecting their financial systems by adopting national measures incompatible with the completion of the European internal market (SOU 1997: 33).

Sweden's 1994 Money Laundering Act made it a criminal offense to participate in transactions involving assets stemming from criminal activities. The Act required that banks, life insurance companies, and other securities and credit companies under the supervision of the Swedish Financial Supervisory Authority (FSA) report contact with assets suspected to have come from criminal activities. In this, the law abrogates the confidentiality of bank secrecy legislation. In addition, the law called for additional policing functions, in that the above companies were now to investigate their clients to ensure that their money was 'white', mandated in 'know your customer' regulations (cf. Sharman 2011). This implies that the customer's identity must be established and that questions must be asked regarding his/her background and the purpose of the transaction. A new unit in the National Police Board, i.e. the Financial Intelligence Unit (FIU), was set up to receive, record and follow up notifications of suspected money laundering, while the FSA was responsible for supervising compliance.

Since 1994, this responsibility has successively been extended to include other businesses, such as currency exchange companies (1997); insurance brokers (1999); companies handling payment transfers (2001); lawyers and other independent legal professionals, casinos and dealers in antiques, art and scrap (2005); and auditors, accountants and tax advisers, as well as dealers and auctioneers in all goods in cases involving cash payments above EUR 15,000 (2009). The rationale for these extensions was that money launderers were thought to have moved on to alternative methods, involving companies outside the financial sector. Furthermore, the responsibility has been intensified since 2009, with the specification that notifications must be submitted 'without delay' and 'at one's own initiative' (Govt. 2008/09: 70, 113). In 2014, a new paragraph was added to the Money Laundering Act stating that a person laundering money from crimes committed by him/herself can be convicted of money laundering. Previously, only persons laundering others' criminal profits could be convicted of money laundering.

The Money Laundering Act has been controversial, and three issues have received particular attention. The first is its vagueness regarding what is to be reported and the attendant risks of over- and under-reporting (Brå 2011: 46; Finanspolisen 2015). The companies affected pointed out that it 'places too much responsibility on the individual officers in banks and companies to make qualified legal assessments' and that there is no feedback on the outcome

of their notifications from the FIU (Govt. 2008/09: 70, 127f.). As a result, in 2009 the Act was amended with a requirement that suspicious transactions should be analysed before reporting to prevent 'perfunctory reporting' of transactions that only at first glance seem suspicious.

A second criticism, levelled internationally as well, is that the added duties will dam- age relationships with clients. The duties are said to transform banks 'from dignified institutions of caution and discretion that uphold the trust of their customers into institutions that play an activist role in fighting crime and that owe greater loyalty to the government than to their depositors' (Hall 1995: 679; cf. Faravel-Garrigues et al. 2011). In particular, assigning lawyers the duty to report aroused protests in Sweden (Govt. 2008/09: 70, 124ff.). The lawyers' professional organization stated that the law makes them into 'informers' and 'spies' and that the law runs counter to the core values of the legal profession.

Another criticism concerns the discomfort that professionals may experience when examining customers. Customers may believe that the professionals cast suspicion on them and cause trouble, with a risk that employees may lose customers or even face harassment (cf. Hall 1995: 679). Industry associations and trade unions have claimed that this threatens financial market employees (Govt. 2008/09: 70, 129); for this reason, these parties have suggested requiring businesses to take 'all measures necessary to protect employees from being exposed to threats or hostile action due to reporting suspicions' (Govt. 2008/09: 70, 129f.).

Today, well over 10,000 employees are covered by this duty to 'police' money laundering, and the number of reports now often exceeds 10,000 per year in Sweden. As shown in Figure 1, the legislation did not result in that many reports in the first years after its enactment, explaining why politicians and authorities saw a need to extend the duty to more actors.

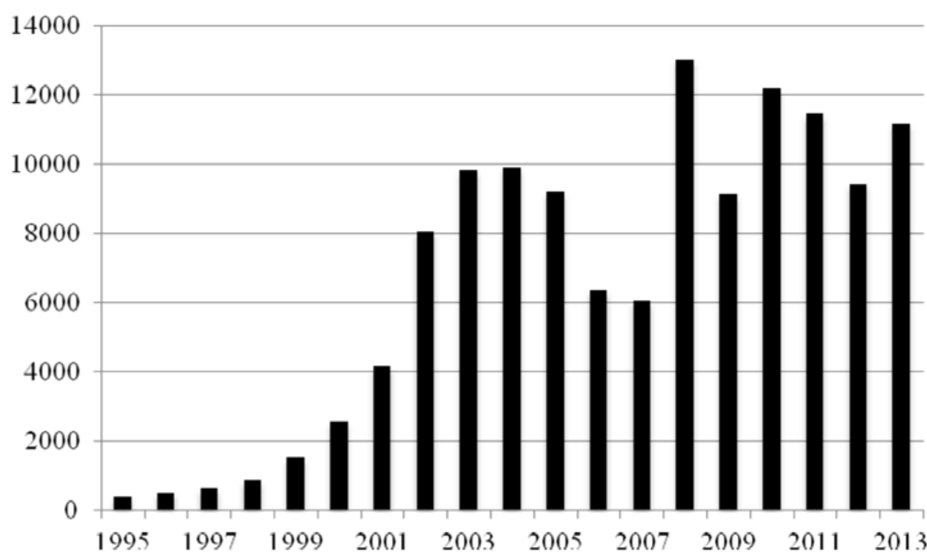

Fig. 1 Total number of reports to the FSA regarding suspected money laundering, 1995–2014.
Sources: SECA (2004), Finanspolisen (2015).

However, when broken down by industry (Table 2), we see that the increase in reports was not really caused by this expansion, because most reports still come from the companies

covered by the original 1994 regulation. A more reasonable interpretation of the slow increase in reporting numbers is that it took several years before the new responsibilities fully impacted the operative routines of private companies. Notably, the FSA has emphasized the importance of this law by imposing high fines on some companies for having inadequate systems for detecting and reporting suspicious transactions. The best-known case occurred in 2008 when the FSA warned one of the major foreign exchange firms and imposed a fine of SEK 50 million (approximately GBP 4 million) (FSA 2008).

Table 2. Reports to the FSA regarding suspected money laundering.

	2000	2001	2002	2003	…	2008	2009	2010	2011	2012
Supervisory authorities						0	0	0	6	4
Banks (1994)	577	777	611	765		7232	3275	4005	6493	5074
Credit/finance companies (1994)						10	57	1 339	1 308	1 128
Currency exchange (1997)	1785	3227	7338	8820		4177	3680	2792	1623	1066
Insurance brokers/realtors (1999)						2	15	39	83	40
Payment transfer comp. (2001)	0	51	92	221		1452	1749	3721	1636	1917
Casinos (2005)						145	322	297	292	331
Lawyers /legal prof. (2005)						0	3	1	0	7
Dealers in antiques, art, jewellery, cars, scrap etc. (2005/2009)						22	12	14	13	14
Auditors/tax advisers (2009)						2	9	9	7	8
Other (e.g. police, offshore, and casinos before 2005)	198	100	39	26		7	15	1	0	0
Total	2560	4155	8080	9832		13048	9137	12218	11461	9436

Sources: SECA (2004), Finanspolisen (2014).

To conclude, over several decades, the duty to report suspected money laundering has been expanded to permeate almost all customer–employee relationships in the financial area and in cash-based businesses as well. The legislation, which initially targeted core actors in banking and finance, today encompasses a wide range of businesses and professions. This transformation is fundamental not only in breadth but also in depth, because the legal reforms have given rise to extensive procedures and training and to new record-keeping responsibilities for companies. The company–customer relationship, once a private one shrouded in confidentiality and secrecy, has been transformed. Private companies and professionals are not only absolved of the obligation to maintain secrecy when police require it but must actively investigate and report suspected crimes to police.

Policing Company Management Crime

Although fraud detection was considered an important task when the external auditing of joint stock companies was institutionalized in late nineteenth-century Sweden, these auditors had no duty to report crime until the last year of the twentieth century. Previously, auditors were to notify company management, which had a right, not a duty, to report crime. The auditor's role in preventing crime, however, has become a persistent theme since economic crime entered the political agenda in the mid-1970s (Lindgren 2002). Several public inquiries suggested that auditors could be used to prevent and detect crime, both by extending statutory auditing to small companies (previously unencumbered by such requirements) and by giving auditors the right or duty to inform co-auditors, bankruptcy managers and legal authorities of crime (Larsson 2005a).

In 1999, external auditors were given a legal obligation to report to the public prosecutor crimes conducted by managing directors or company board members (Larsson 2005b). The

primary purpose was to prevent illegal competition and to secure the interests of stockholders and other parties with interests in the corporation. A secondary purpose was that crimes would be detected and reported at an earlier stage than if reported only by trustees in bankruptcy or by crime-controlling agencies. Auditors' professional confidentiality had previously prohibited them from reporting crime, unless such information was requested by a prosecutor conducting a preliminary investigation (Govt. 1997/98: 99, 1998/99: 19).

The regulation obliges auditors to report serious crimes harming the company or its interested parties if committed by managing directors or board members; these crimes include fraud, swindling, money laundering, embezzlement, breach of trust, crimes against creditors, bribery/corruption and tax crimes. Crimes committed by employees were excluded from the legislation, because they were less important to dis- close to shareholders. If suspecting any of the above offenses, the auditor must inform the board, resign and report to the public prosecutor within four weeks. The obligation applies at a low level of suspicion. The legislation prescribes that an auditor shall report cases in which it 'may be suspected' that a crime has been committed. However, the regulation prescribes only a 'passive' duty to report crimes of which the auditor becomes aware during the regular audit. It is not the duty of the auditor to 'actively' detect crimes, as in the case of investigations specifically targeting money laundering. In addition, the auditor is released from the duty if the crime is insignificant or if the company board reports or rectifies the crime within two weeks of the auditor's admonition (Larsson 2005a).

Unlike the other cases, this duty has not been expanded, but rather indirectly contracted since its enactment, because a legal change in late 2010 excluded small companies from the statutory requirement for external auditing (Govt. 2009/10: 204). In effect, approximately 72 per cent of Swedish joint stock companies were thereby excluded from such requirements, though most of them still appoint external auditors to whom this duty to report applies.

During much of the twentieth century, crime-control tasks were rejected by the auditing profession as part of an 'expectations gap' between the tasks the auditors can and should perform, and what the general public and the state expect them to do. The proposals to employ auditors in economic crime control that first emerged in the 1970s were criticized by the profession, which argued that the task would inevitably under- mine the trustful client relationships necessary to conduct audits (Larsson 2005a). Such critical views were also raised in connection with the duty to report crime that was eventually established in 1999. There was a risk that auditors would be seen as 'representatives of government agencies', 'police officers' or 'counterparties' rather than as dialogue partners of management, undermining their existing crime-prevention work. In addition, the reporting requirement was said to introduce elements external to auditors' natural competences, i.e. making criminal law judgments (Larsson 2005b).

Interview studies and surveys demonstrate that this criticism gradually decreased after the enactment of the requirement in 1999. There are several reasons for this. The first is the 'responsive' aspect of the duty. By giving the auditors an opportunity for constructive dialogue and rectification from the company side, the requirement changed the client relationship less than was feared. Second, the requirement had a less negative effect on client trust than expected, partly because of a lack of knowledge in corporations and partly because many believed that auditing already encompassed crime detection and reporting. Third, the profession had an interest in rapidly renormalizing practice to restore credibility and trust. This was done both by downplaying the significance of the legislation and by simply not

informing clients about it. In the extreme, this was a strategy of 'creative compliance' that diminished the effects of the legislation. Some statements from interviews and surveys may be interpreted accordingly: that one cannot accept the low level of suspicion at which the duty comes into force; that confidentiality comes first; and that the duty to report 'is sleeping quietly' (Larsson 2005a).

The few existing statistics regarding this duty to report crime indicate that the initial effect was meagre if one simply counts the number of reports to the prosecutor (Table 3). However, the effect of the regulations obviously increased over the years, at least until the 2010 law released small joint stock companies from the requirement to appoint external auditors. In the years around 2005–2006, external auditors provided around 5 per cent of the incoming reports of suspected crimes to SECA. The preventive effects of the law, or the number of cases in which boards report or 'rectify' crime themselves, are unknown. In conclusion, the duty of external company auditors to report crimes was a new element in Swedish law. Its effectiveness in providing reports to authorities might have been less than expected partly because of 'creative compliance' from parts of the profession. However, research demonstrates that there is widespread 'responsive' utilization of the duty, which may have crime-prevention effects: there has been an increasing focus on crime and irregularities in auditors' work, and many make extended controls and inform clients of the duty to enforce a reminder (Larsson 2005a). Unlike most of the other cases, however, this duty has not been extended over time, but rather was contracted by the 2010 legal change making it voluntary for small joint stock companies to appoint external auditors.

Table 3. Reports of suspected crime from company auditors to SECA.

Year	1999	…	2003	2004	2005	2006
Number of reports from auditors to SECA	17*		41	101	229	321
% of total number of reports to SECA			1.1%	2.4%	5.5%	4%
Total number of reports to SECA			3737	4145	4130	5025

Source: SECA annual reports, 2003–2006; * 1999 = SECA (2000), based on a retrospective survey of prosecutors.

Policing Insider Trading and Market Manipulation

Insider trading has been regulated since the 1970s in Sweden, though it was only in the mid-1980s that a direct prohibition was first introduced. The legislation aimed to prevent insiders from trading securities based on information that is not publicly known and prescribed that authorized securities markets organize a monitoring system to enable investigation of insider dealing, market manipulation and abuse. The legislation also gave the FSA the right to issue regulations. The FSA in turn required that stock exchanges and authorized marketplaces organizing trade in unlisted securities document their investigations of insider dealings, market manipulation and trade violating ethical conduct, and promptly submit these reports to the FSA.

The above regulation did not include any requirement that individual market actors—i.e. securities companies and traders—should report suspicions, but such a requirement was introduced in the 2005 Market Abuse Act. This legislation was an out- growth of the EU Market Abuse Directive (Govt. 2004/05: 142) and implied a radical extension of the duty to report suspicions regarding insider dealings. The background was a 1990's action plan from

the European Commission to integrate the EU's financial services markets by 2005. The Market Abuse Directive was part of the measures taken to create uniform regulations with similar sanctions in all member states. However, it was optional for member states to choose whether sanctions should be regulated by administrative or criminal law. In Sweden, criminal law regulation was chosen.

The Swedish Market Abuse Act obliges securities institutions, credit institutions, stock exchanges and other authorized marketplaces to report to the FSA any transactions related to insider dealing or market manipulation. The obligation applies only to suspicions concerning transactions actually carried out. As in previous cases, the principle of confidentiality is abrogated at a low degree of suspicion. In this case, however, the actors are required to report to the supervisory authority, the FSA, which in turn sends the information to the SECA prosecutor for criminal investigation purposes.

Even before the 2005 Act, the industry warned that major problems were expected unless the responsibility covered only suspicions based on 'strong and convincing reasons' (Govt. 2004/05: 142, 93f.). Subsequent criticisms reiterated this and followed similar lines of argument as in the cases of money laundering and the auditor's duty to report crime. The market abuse reporting duty was said to be inconsistent with Swedish legal tradition, as it forces market actors to 'squeal' (Govt. 2004/05: 142, 94). Criticism was also voiced concerning the difficulty of determining when an obligation to report actually exists (Swedish Securities Dealers Association [SSDA] 2009). The 'signals' and 'patterns' enumerated as grounds for suspicion of crime were said to be too general, because they could occur for perfectly legitimate reasons. These difficulties have subsequently been confirmed when the FSA has reported violations of the reporting duty. In 2006, the FSA emphasized the importance of the new law by reporting to the prosecutor four cases of violations of the obligation to report. In its rulings, the court noted that uncertainties regarding the key concepts 'without delay', 'likely' and 'manipulation' make it difficult to comply with the legal requirements (e.g. Stockholm District Court [SDC] 2008).

Because of this vagueness, both the industry association, the Swedish Securities Dealers Association (SSDA), and the FSA have proposed an amendment replacing criminal sanctions with administrative sanctions in cases of non-compliance. That would create an opportunity for the FSA to specify through administrative regulations the kinds of transactions to be reported. Both organizations agree that the current system is 'ineffective' because the prescribed low degree of suspicion in combination with legal vagueness makes it 'difficult for the individual to assess how certain actions will be judged by the courts' and for the companies covered to 'create an organization with adequate routines and guidelines to fulfil the legal requirements' (SSDA 2009: 3). As shown in Table 4, there has been a sharp increase in the number of insider dealing cases investigated by the FSA since the 2005 Act. The number of reported suspicions has actually increased around 16-fold since the early 2000s, all this increase coming from private market actors. The Table 4 also shows that the FSA has reported a total of six cases of violations of the obligation to report from 2005 to 2014.

To conclude, although some monitoring and disclosure elements were introduced in connection with the insider trading regulation of the 1980s, those were relatively passive. With the EU-driven legislation of 2005, however, a much more elaborate and expanded decentring of policing was introduced, not least since Sweden chose to enact the EU Market Abuse Directive through criminal law. Judging from the reporting statistics, this duty has significantly affected the number of suspicions reported to the supervisory authority (FSA)

and handled over to the SECA prosecutors.

Table 4. Number of suspected insider dealings reported to the FS, 1998-2014.

Year	*-98*	*-99*	*-00*	*-01*	*-02*	*-03*	*-04*	*-05*	*-06*	*-07*	*-08*	*-09*	*-10*	*-11*	*-12*	*-13*	*-14*
Insider dealing	3	3	8	3	8	15	15	30	60	129	110	98	118	108	111	164	201
Market manipulation	0	4	6	2	5	6	1	9	33	60	190	161	129	193	221	164	115
Unauthorized disclosure of inside information	–	–	–	2	3	1	3	2	2	2	4	1	2	1	1	3	3
Failure to report	–	–	–	–	–	–	–	–	4	0	0	2	0	0	0	0	0
Total number of suspicions	3	7	14	7	16	22	19	41	99	191	304	262	249	302	333	332	319

Source: FSA.

Policing Illegal Cartels

The last presented case represents another kind of decentred policing, constructed not as a duty to report crime, but rather as a 'leniency programme' incentivizing companies to self-report illegal cartels. Today such programmes exist in all EU member states, and the EU competition network has published a Model Leniency Programme in order to align national programmes (Morgan 2008; SOU 2013: 89). When introduced in Sweden in 2002, this strategy of fighting illegality and crime by offering reduced sanctions was drastically new, because the Swedish legal tradition offers no possibility of turning 'state's evidence' or of 'plea bargaining'.[2] The EU leniency programmes construe cartelization as a civil rather than criminal offence, and the Swedish leniency system was made possible by the decriminalization of cartel offences in 1993, meaning that illegal cartels were sanctioned only through administrative fines from then on. This reform was made against the backdrop of the perceived ineffectiveness of the existing criminal law system and differences from the EU competition legislation with which Sweden aimed to align itself.

Before 1999, cartels had been a low priority of the Swedish Competition Authority (SCA), and the idea of a leniency programme was proposed against the backdrop of several exposed cartels in the plastic pipe, petrol and asphalt businesses around 2000. These had created massive costs for consumers and taxpayers because they were related to public procurements, and the SCA sued the involved companies for far larger administrative fines than ever before imposed in Swedish cartel cases (Simonsson 2005; SOU 2013: 95f.). In 2001, a government inquiry commission appointed by the Social Democratic government proposed a programme for the 'reduction or waiver of the competition damage penalty' (SOU 2001). The proposal was inspired by leniency pro- grammes in the United States and Canada, where they were integrated into criminal law. However, the commission also noted the existence of similar programmes based on administrative law in some European countries and suggested that such programmes were in line with the future direction of the EU, because the European Commission had already established such a programme in 1996 (Morgan 2008).

The Swedish leniency programme introduced in mid-2002 was intended to counter- act the formation of cartels and make it easier to investigate existing ones. The programme is constructed so that only the first company to self-report a cartel to the SCA may receive

[2] However, there is a possibility in criminal law for offenders who self-report their crimes to be granted reduced sentences.

immunity from fines. The notifying persons may also be released from the risk of a 'ban from engaging in commercial activities', which is an individual criminal sanction. However, the other companies in the cartel may apply for 20–50 per cent reduced fines depending on the order in which they come forward, providing that they cooperate in supplying detailed information on the illegal cartel, its members and contacts, as well as documents from cartel meetings. Interesting features are that companies may make a first contact anonymously to obtain information on the possibility of obtaining immunity and that those notifying the authorities will be informed beforehand when a 'dawn raid' will occur.

The main criticism of the leniency programme concerns whether this legal strategy fits the Swedish tradition. Some argue that it would be better to recriminalize illegal cartels if they are really to be seen as a major offence. Others claim that the programme recalls the possibility in other legal traditions of turning 'state's evidence' and that such legal constructions have been rejected by previous government inquiry commissions because they could let offenders 'buy' freedom by informing on others. The possibility of recriminalizing cartels was rejected by the 2001 commission, which doubted that criminal penalties would be more effective than existing competition damage penal- ties. The commission believed that it would be legally difficult to create such a penal provision because of the principle of ne bis in idem (i.e. the same act cannot be punished twice) and that it would be difficult to impose individual sentences. In addition, it was thought that recriminalization would counteract the effectiveness of the leniency programme, hampering EU collaboration on anti-competition, which is based on administrative law (SOU 2001: 21).

Because the programme's preventive effects cannot be estimated, programme effects can be measured only in terms of actual applications for lenience. From 2007 to 2011, the SCA received 24 such applications, nine concerning national offenses and the rest concerning trans-border offences relating to the EU competition regulation. Of these 24 applications, 17 led to investigations of competition infringements. In all, the Swedish leniency programme has led to only four convictions since its 2002 introduction. As noted in official reports, however, the programme also is thought to have had a preventive effect in that fewer cartels have been created (SOU 2013: 121ff.).

In conclusion, the leniency programme illustrates the overall tendency to decentre the policing of economic crime and irregularities, because it includes not obligations but only incentives to report one's own—and others'—illegal activities. Although the regulation is state controlled, it is constructed so that the actors themselves monitor illegal infringement, thus encompassing an element of decentred policing. Its central mechanism is to create distrust between the participants and potential participants of illegal cartels, giving them the possibility to gain from cooperating with authorities.

Discussion and Conclusions

The five cases analysed here all exemplify the 'decentring of policing' of crime and illegalities in business and finance, i.e. they all entail extension of the policing function from state authorities to private actors such as companies, employees and professional intermediaries. We find it reasonable to speak of this decentring as a general policing tendency in recent decades. This development is not isolated, but part of the wider trend towards the 'decentred regulation' of business and finance, creating a pluralistic regulatory system combining various actors, organizations and regulations through combinations of state control, hybrid- and co-regulation, enforced self-regulation and pure self-regulatory processes (e.g. Majone 1997; Clarke 2000; Black 2001; Levi-Faur 2005; Braithwaite 2008; 2010;

Larsson and Engdahl 2012).

The problem with discussing this decentring in terms of 're-regulation', however, is that it understates the underlying complexity of this decentring, although not to the same degree as the older discussion of 'de-regulation' often did. To rephrase Crawford's (2006: 471) statement regarding the complexity of 'plural policing', one must acknowledge that 're-regulation' includes instances in which state presence is not only being withdrawn but also in which it is being redrawn and even extended. By analytically distinguishing between the three major components of 'regulation'—i.e. rule set- ting, monitoring/policing, and enforcement—we can conceptualize how the state can both withdraw and extend its oversight at the same time. Whereas the decentring of rule setting and enforcement may be depicted as at least partly a withdrawal of the state, through the transfer of responsibilities to private actors, the decentring of policing analysed here instead points in the direction of an extension of the state. This is because the state keeps its rule setting and sanctioning role in these cases, transferring only the policing role to private actors and doing so through state (and supra-state) regulation.[3]

Besides contributing a more nuanced approach to regulation studies, our study also contributes empirically and theoretically to policing studies and economic crime research. That the policing of business and financial crime and illegalities is over- looked in policing research is problematic if our results also apply to other countries, in that great legal experimentation is occurring in state attempts to 'decentre' policing in these areas. In fact, we find little overall discussion in plural policing research of instances of the state actively recruiting private policing actors by legally assigning them duties to report. Thereby, our study also introduces a new element into policing studies, i.e. state initiatives to give private actors legal responsibilities to report others' crime and wrongdoing. When the law is used in such a way, we demonstrate that it is not always reasonable to draw a clear distinction between such state activities that governmentality scholars conceptualize as 'responsibilization'—activities often described as 'persuasive', 'encouraging', 'activating' or 'supportive' rather than legally enforced— and the 'older' forms of sovereign state power residing in the right to punish (Loader 2000; Garland 2001). In most cases studied here, the state assigns actors a responsibility that is to be backed up by legal sanctions against those who do not accept it.

As concerns economic crime research, our approach indicates that the distance between regulatory approaches and crime-control approaches is not always as great as is often assumed—i.e. that the former are based on self-regulation, persuasion and compliance of experts or professionals, whereas the latter are based on deterrence and punishment (cf. Croall 2003; Simpson 2002). Most nuanced discussions of these two approaches actually state that 'the contrast between regulatory enforcement and policing is overdrawn' (Croall 2003: 43) and that the preferred, and even actual, strategies are in fact 'mixed' (cf. Gill 2002: 535). Not uncommonly, Braithwaite's enforcement pyramid is referred to as both a theoretical and practical solution to this supposed distance between regulatory and crime-control strategies (Ayres and Braithwaite 1992). The cases analysed here illustrate that there is actually regulation (i.e. duties to report) that targets criminal activities, as well as offences against administrative regulation. In addition, our approach emphasizes what may be said to

[3] We believe that this particular kind of re-regulation has often been overlooked in regulation studies. For example, in one of the most systematic discussions of possible combinations or hybrids of state and private (civil) regulatory designs, the one focused on here—in which only the monitoring/policing function is privatized, but rule setting and enforcement stay with the state—is not mentioned (Levi-Faur 2010: 27).

be a horizontal aspect of Braithwaite's enforcement pyramid. Once again, by analytically distinguishing between rule setting, monitoring/policing and enforcement/sanctioning, we can discuss how administrative regulation and even civil law sanctions may be used to export duties to police and report criminal law offences.

Above all, we demonstrate that re-regulation may involve the extension of state capabilities, though at a distance, though paradoxically by legally drawing private actors closer to the interest sphere of the state (cf. Braithwaite 2008; Croall 2003; Larsson and Engdahl 2012; Garland 2001; Loader 2000). Many studies of enforced and pure self- regulation consider instances of self-reporting and self-control. As the present cases illustrate, we also find instances in which private actors are given incentives and duties to report the crimes or illegalities of other parties, including clients, customers and competitors. As such, this decentring of policing serves to 'institutionalize distrust' (between internal actors) in order to acculturate trust in the involved markets (from external actors) (Shapiro 1987; Braithwaite 1998). This is potentially an efficient and effective way to control and prevent economic crime, because it draws third-party actors into policing economic crime and irregularities. As pointed out by Felson (1995: 64) in his discussion of capable guardians, 'crime is most readily discouraged when people have the staff and assigned responsibility and a clear focus on places or settings'. The changes we have described here imply just that. Professionals whom one might call 'the place managers' of the financial sector have been mandated to act as guardians and have been assigned a responsibility to monitor potential offenders and victims or targets of crime in their daily running of these places. These actors, who are forced to assume the costs of policing, possess specialized knowledge of business transactions and can prevent and detect crime at earlier stages than can authorities. In these cases, the state focuses on—and, in the leniency programme, actually creates—'soft targets' to regulate, i.e. targets who, unlike 'hard targets', have little to lose from the regulation and policing compared with the 'hard targets' involved in or benefitting from crime and illegality (cf. Fisse and Braithwaite 1993: 218–221). With the scale and structure of these changes in mind, it seems plausible that we are witnessing a radical change in the opportunity structure of white-collar crime in the financial sector (cf. Benson et al. 2009).

Regarding the consequences of this decentring, several matters should be noted and subject to further research. First, the risk that professional intermediaries may lose client trust or status by becoming 'informers' seems slight, as such worries have often decreased post-legislation. Actual threats in connection with the control of money laundering may still be a problem, though. Second, duties and incentives to report have produced many reports that the authorities must investigate further. Although this reporting was explicitly intended, the reporting quality varies. As well, there might be over-reporting, against the background of legal vagueness, coupled with 'creative compliance' and under-reporting from certain actors (cf. Faravel-Garrigues et al. 2011; Korsell 2003: 78). Third, the crime-prevention effects of these regulations are difficult to estimate, though evidence suggests crime prevention in at least some cases (Larsson 2005a). In addition, irrespective of crime-prevention effects, there may be a spill-over effect in that the institutionalization of distrust is required in order to acculturate public and market actor confidence in business and finance (cf. Braithwaite 1998; Shapiro 1987).

Finally, we turn to what might explain this decentring of the policing of economic crime and illegality. At least four overlapping developments may have helped drive this decentring. The first one specifically concerns the Swedish context, whereas the other three relate to more general developments. First, in some cases, specific interest in economic crime in Sweden has

played a part. The Social Democratic governments' strong policy emphasis on economic crime from the late 1970s to 2000—with some disruptions during intermittent centreright government periods—laid a foundation for expanding bankruptcy administrators' and auditors' duties to report crime (Lindgren 2002; Larsson 2005a). The potential to use these intermediaries was elaborated on by several governmental inquiry commissions drawing attention to preventing and detecting economic crime. This context also influenced the introduction of a leniency programme for cartels before this was required by the EU (Larsson and Engdahl 2012). Important in this context is that economic crime was conceptualized as 'victimless', i.e. lacking complainants, and therefore detected mainly through investigation. As it is difficult for police to 'patrol companies', drawing professional intermediaries and private actors into policing was seen as a viable way to supplement the ongoing expansion and diversification of state authorities responsible for preventing and controlling economic crime (cf. Lindgren 2002).

Second, the above problem is related to a more general late-twentieth-century development, in that the number of 'ordinary' citizens drawn into financial markets has increased radically. Following several scandals and crises on the financial and stock markets, and relating to cartelization, a political need arose—often also acknowledged by market actors—to re-regulate and strengthen the monitoring of these markets (cf. Braithwaite 2008; Levi 2008: 531; cf. Shapiro 1987; Larsson and Engdahl 2012). This development is more general than the Swedish case, but obviously affected Sweden, as illustrated by the appointment of a governmental inquiry commission in the early 2000s to restore trust and confidence in business. This commission was created in reaction to scandals and crises of the late 1990s and resulted in the establishment of a corporate conduct code similar to British and US codes (Jonnergård and Larsson-Olaison 2010). Another self-regulation aiming to restore trust was the creation of a licence for brokers, dealers and other employees in the securities industry, developed by the SSDA and in operation since 2001 (Engdahl 2014).

Third, and closely connected to the above two developments, the de/re-regulation of markets created a need to monitor activities on 'liberated' markets to ensure that they were not being manipulated, otherwise they would not deliver the desired efficiency (cf. Braithwaite 2008; Larsson and Engdahl 2012). As the markets were not 'liberated' purely by deregulation, 'advanced liberal engineering' techniques were needed to create efficient and well-functioning markets. The policing of crime and illegality is obvious in such re-regulation (Larsson et al. 2012: 12ff., 264ff.). As discussed by several researchers, there is no contradiction between 'liberalism' and a sharpened focus on criminal control, or in the possibility of both the market and state growing stronger (Levi-Faur 2005; Braithwaite 2008). The duties and incentives to report crime analysed here exemplify the 'responsibilization' connected to market liberalization, in that they extend the reach of state agencies by legally regulating the responsibility of private actors—a development enabling both the governing and policing of the economy 'at a distance' (cf. Garland 2001: 124).

Fourth, another reason why this development is not uniquely Swedish is its connection to EU directives and the project of creating integrated and harmonized markets in Europe, by reducing national legal constructions that hinder European market integration and competition. This implies repeating points two and three above, but we might find another background to the development of decentred policing by more closely examining the construction of the EU. As Moran (2001) notes, the EU is assuming the character of a regulatory state partly because of its lack of certain 'ordinary' state characteristics. Notably, the EU must strive to achieve its policies indirectly via member states while leaving some leeway for

different legal constructions. The most effective means to do that is through general regulation that pushes the costs and implementation down to the national level or—as in the present cases—even further down, to private actors (cf. Faravel-Garrigues et al. 2011).

This leads us to the discussion of the interconnectedness and tension between the national, EU and global levels of rule setting, monitoring/policing and enforcement/ sanctioning. Although some claim that globalization, Europeanization and even national re-regulation in Sweden are best depicted as processes of neoliberalization through which market principles are strengthened and the state rolled back, we must also acknowledge that there is a parallel process of the globalization and Europeanization of regulations (Levi-Faur 2005). Although a tension between economic liberalization and state regulation does exist, it is much more complex than it appears in simple political depictions, and it is important to see that what is called 'the regulatory' or 'post-regulatory' state is actually embedded in the wider structures of 'regulatory capitalism' at the EU and global levels. This process is extremely complex, as 'statist regulation co- evolves with civil regulation; national regulation expands with international and global regulation; private regulation co-evolves and expands with public regulation; voluntary regulations expand with coercive ones; and the market itself is used or mobilized as a regulatory mechanism' (Levi-Faur 2010: 24). In this process, state regulation and policing is truly withdrawn from certain areas. That, however, seems not to be the case when it comes to the policing of economic crime; on the contrary, state control has not only been redrawn but actually extended far into the sphere of companies and professionals.

Acknowledgements
The authors would like to thank the participants at the workshop in the Policing Network-meeting at Lund University in 2013; the criminology seminar at the University of Gothenburg in 2014; and the 'Central market makers'-session at the Score International Conference on Organizing Markets in Stockholm 2014. Our gratitude goes particularly to Malin Åkerström, David Wästerfors, Sven-Åke Lindgren, Abby Peterson, Gabriel Söderberg.

Funding
The article was partly written as part of the research project 'Crime Prevention in the Financial Markets', funded by the Swedish Research Council (Vetenskapsrådet), grant no. 2007-2179.

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