EU Counter-terrorism's Gradual Institutionalisation: Information-sharing and Cooperation in Law Enforcement and Intelligence Post-2015

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Declaration

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Acknowledgements

Table of Contents

List of Abbreviations

3/11	Madrid terrorist attack, 11 March 2004
7/7	London terrorist attack, 7 July 2005
9/11	New York and Washington terrorist attack, 11 September 2011
AFSJ	Area of Freedom, Security and Justice
CBRN	Chemical, biological, radiological and nuclear weapons
CCTV	Closed-circuit television
CEPOL	European Union Agency for Law Enforcement Training (formerly European Police College)
CFSP	Common Foreign and Security Policy (of the European Union)
CGI	Directorate of International Police Cooperation (of Belgium)
CI	Constructivist institutionalism
CIA	Central Intelligence Agency
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
COTER	Working Party on Terrorism - International Aspects
CSDP	Common Security and Defence Policy (of the European Union)
CT	Counter-terrorism
CTG	Counter-Terrorism Group
CTTF	Counter Terrorism Task Force (of Europol)
CUTA	Coordination Unit for Threat Analysis
CVE	Countering Violent Extremism
DG	Directorate General
DG HOME	Directorate General Migration and Home Affairs
DGSI	The General Directorate for Internal Security (French: Direction générale de la sécurité intérieure; French intelligence agency)
DJSOC/Terro	Central Counter-Terrorism unit of the Belgium Federal Police (Unité centrale anti-terrorisme de la police fédérale)
EASO	European Asylum Support Office
EAW	European Arrest Warrant
EBCG	European Border and Coast Guard
ECRIS	European Criminal Records Information System
ECRIS-TCN	European Criminal Records Information System for Third-Country Nationals
ECTC	European Counter-Terrorism Centre
EDPS	European Data Protection Supervisor
EEAS	European External Action Service
EEC	European Economic Community
EES	Entry-Exit System
EIS	Europol Information Systems
ENISA	European Union Agency for Cybersecurity (formerly European Network and Information Security Agency)
EP	European Parliament
ETA	Euskadi Ta Askatasuna, separatist group
ETIAS	European Travel Information and Authorization System
EU	European Union
EU CT	European Union counter-terrorism
EU CTC	European Union Counter-terrorism Coordinator

EU INTCEN/SITCEN	European Union Intelligence and Situation Centre (formerly Joint Situation Center)
EU IRU	European Union Internet Referral Unit
eu-LISA	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Eurodac	European Dactyloscopy
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FAC	Foreign Affairs Council
FBI	Federal Bureau of Investigation
FIU	Financial Intelligence Unit
FRA	European Union Agency for Fundamental Rights
Frontex	European Agency for the Management of Operational Cooperation at the External Borders (from the French "Frontières extérieures" for "external borders")
FTF	Foreign Terrorist Fighter
G11	Group of Eleven
G6	Group of Six
GISS	General Intelligence and Security Service
HI	Historical institutionalism
HUMINT	Human Intelligence
IED	Improvised Explosive Device
IRA	Irish Republican Army
IS / ISIL	Islamic State/ Islamic State of Iraq and the Levant
IT	Information Technology
JHA	Justice and Home Affairs
JIB	Joint Information Box
JIT	Joint Investigation Team
JLS DG	Directorate General Justice Freedom and Security
LIBE	European Parliament's Committee on Civil Liberties, Justice and Home Affairs
LTF	Local TaskForces (in Belgium)
MENA	Middle East and North Africa
MEP	Member of European Parliament
MI5	Military Intelligence, Section 5, the UK domestic counter-intelligence and security agency
MS	Member States
NATO	North Atlantic Treaty Organisation
PNR	Passenger Name Records
PoA	Plan of Action
PWGT	Police Working Group on Terrorism
RAF	Red Army Faction
RAID	Recherche, Assistance, Intervention, Dissuasion ("Search, Assistance, Intervention, Deterrence"), elite tactical unit of the French National Police
RAN	EU Radicalisation Awareness Network
SIENA	Europol's Secure Information Exchange Network Application
SIRENE	Supplementary Information Request at the National Entries (to SIS-II)
SIS-II	Second Generation Schengen Information System

SOCA	Serious Organised Crime Agency (of the UK)
SOCMINT	Social Media Intelligence
SSCAT	Syria Strategic Communications Advisory Team
STIB-MIVB	Société des Transports Intercommunaux de Bruxelles (or Maatschappij voor het Intercommunaal Vervoer te Brussel), transport company for Brussels
TATP	Triacetone triperoxide
TCN	Third-country national
TERR	The European Parliament's Special Committee on Terrorism
TE-SAT	Trend and Situation Awareness (Europol Reports)
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TREVI	Terrorisme, Radicalisme, Extrémisme et Violence Internationale, former intergovernmental forum of ministries of justice/ interior officials
TWG	Terrorism Working Group (of the Council of the EU)
TWP	Working Party on Terrorism (of the Council of the EU)
UK	United Kingdom
UN	United Nations
US	United States
VIS	Visa Information System
VPN	Virtual private network
VSSE	State Security Service (of Belgium)
WG	Working Group

List of Figures

List of Tables

Abstract

Christine Andreeva

EU Counter-terrorism's Gradual Institutionalisation: Information-sharing and Cooperation in Law Enforcement and Intelligence Post-2015

EU counter-terrorism is a hybrid policy that, despite its incremental, exogenous-shock-driven integration, has evolved from de facto intergovernmental governance to gradually heading towards harmonisation. As terrorism is not an EU competence, policy-making in the area was for many years short-term and reactive instead of driven by strategically coordinated prevention and response. Despite the bodies and mechanisms in place to facilitate information-sharing and operational cooperation, until 2015 the latter were lacking to such an extent as to cause gaps in governance and operational inefficiency, including decreased capacity for prevention and response. This study focuses on the necessity, unparalleled in any other EU policy area, for operational cross-border cooperation and information exchange.

This text explores the aftermath of two critical junctures in EU counter-terrorism brought about by two sets of terrorist attacks – in Madrid (2004) and London (2005), as well as in Paris (November 2015) and Brussels (2016). This analysis is carried out through the lens of a dual theoretical framework – historical institutionalism (HI) and constructivist institutionalism (CI) – which is novel to the field of EU counter-terrorism, wherein HI has previously been applied to the policy's scholarly analysis, however a combination of the two theoretical branches has not been utilised in this area thus far. This thesis analyses the consequences of these junctures for the development of EU counter-terrorism by enquiring into the conditions and circumstances for institutionalisation of the policy and examining its added value to national efforts. The study demonstrates the increased efficiency of cross-border and inter-agency coordination in EU counter-terrorism since 2015 due to improved institutional design and legislative frameworks, leading to further policy integration.

Introduction

As terrorism is not an EU competence, policy-making in this domain until 2015 was short-term and reactive instead of driven by strategically coordinated prevention and response. Despite the bodies and mechanisms in place to facilitate information-sharing and operational cooperation, until 2015 the latter was lacking to such an extent as to cause gaps in governance and operational inefficiency, including decreased capacity for prevention and response. This PhD project analyses the aftermath of two critical junctures in EU counter-terrorism brought about by two sets of terrorist attacks – in Madrid (2004) and London (2005), as well as in Paris (November 2015) and Brussels (2016). The analysis of the consequences of these junctures for the development of EU counter-terrorism will enquire into the conditions and circumstances for institutionalisation of the policy and will examine its added value to national efforts. The study demonstrates the increased efficiency of cross-border and inter-agency coordination in the EU's counter-terrorism policy since 2015, due to improved institutional design and legislative frameworks, leading to further policy integration.

This dissertation asks one of the key questions when it comes to the study of EU CT: what drives the policy's institutionalisation? Can the Paris-Brussels attacks of 2015-2016 be considered to have engendered a substantial institutionalisation of EU CT? If so what were the factors that contributed therein and can they be expected to have a lasting effect on the policy? Finally: why did previous critical junctures in EU CT fail to produce the same institutionalisation effects on the policy?

This study seeks to answer the above questions through the examination of *EU CT policy institutionalisation.* It focuses on information exchange, which can be seen as a proxy for the policy's development (as it is considered among the most difficult elements of CT to institutionalise)*.* The main causal factor on EU CT institutionalisation established and validated by academic literature thus far, is *high threat perception* (usually caused by terrorist attacks). This thesis will demonstrate the causal potential of two more factors, previously underappreciated in the literature: the *perception of EU added value* and the *perception of terrorism as an EU issue.* The perception of EU added value can be affected through an increased understanding of EU tools, while the perception of terrorism as an EU issue can be stimulated by inter-actor and inter-agency trust.

Contextualising within the theoretical framework of this thesis, high threat perception is impacted by historical institutionalism dynamics: attacks, shock, reactive political impulses, expressions of solidarity, etc. However, the two new factors discussed in this thesis, perception of EU added value and perception of terrorism as an EU issue are

explained by cognitive ideational dynamics, the subject of explanation for constructivist institutionalism. The empirical account put forward by this study demonstrates that such new ideational dynamics did not develop during the Madrid-London juncture in EU CT information management, or at least they failed to generate a positive feedback from MS which would have made institutionalisation possible. The fact that they developed during the Paris-Brussels juncture caused the decisive change, as they incurred positive feedback loops, convincing EU MS to go further with institutionalisation. Nevertheless, the period preceding the Paris-Brussels juncture demonstrates that ideational shifts (the subject of constructivist institutionalism's explanations) are not individually sufficient either to incur a paradigm shift, in the absence of a critical juncture.

This thesis scrutinises the issues delineated above through the analysis of two comparative case studies, which will present empirical material new to the field of EU CT. The first case study examines the 2004 Madrid and 2005 London attacks, while the second case will investigate the November 2015 Paris and 2016 Brussels attacks. Those will be analysed through an original theoretical approach combining two branches of institutional theory (historical and constructivist institutionalism), while focusing on a key characteristic of the policy area: the inherent (and unparalleled in any other EU policy) cross-border element of internal security (Monar, 2014, p.33). As a policy within that domain, counter-terrorism is a prime example of a field, the sheer functioning of which is contingent on cross-border governance and information exchange, conditional itself on such factors as well-tailored legislation, trust and interoperability between national authorities and mutual accountability. The argument of added value of EU internal security cooperation, as conducive to cross-border operability, is thus commonsensical and easily deductible, nevertheless this thesis will aim to complement this hypothesis with rigorous theoretical and empirical basis, in order to prove its validity.

Overview of EU counter-terrorism information exchange institutionalisation: policy developments from 1958 to 2018

This section will introduce the topic by reviewing the evolution of EU counter-terrorism policy. The latter has experienced a multitude of policy developments with various degrees of importance. As this thesis will focus on policy developments since the 2015 Paris attacks, this overview will look first at developments until that critical juncture, and will subsequently examine progress since then.

Counter-terrorism institutionalisation before 2015

Several key periods in EU CT development can be outlined, each demarcated by a critical juncture: the 1970s and domestic terrorism (1970-1992); the 9/11 attacks and the rise of international jihadist terrorism (2001-2004); terrorist attacks in Europe – Madrid and London (2004-2008); a surge in organised and lone-actor attacks in Europe (2015-present).

The first two decades of European integration saw practically no policy developments outside of economy- and trade-related policy areas, while security was out of the EEC's[1] remit, which was conceived exclusively as an economic bloc, aimed at increasing prosperity from collective economic activity. In the 1970s, issues with terrorism in Europe started to motivate member states (MS) to work together and enhance their institutional cooperation in the Area of Freedom, Security and Justice. The first coordination body – the TREVI group - was created, as a negotiation group at the level of Ministers of the Interior and National Police Chiefs, which was meant to provide a platform for intra-national law enforcement cooperation. The EEC, torn between concerns of domestic terrorism and the desire to complete the Single Market, requiring an open-border space, set up the Schengen Agreement in 1985. The Schengen Framework included the Schengen Information System (SIS), which saw several reforms in the 1990s and 2000s and was later complemented by the Visa Information System (VIS) and agencies assisting its operationality, such as eu-LISA, established in 2011, when the SIS system was renewed, and responsible for the operational management of IT-systems such as Eurodac, SIS-II and VIS.

In the 1990s there was little incentive to propose integration in EU counter-terrorism policy. A more important concern for the Union was completing the common market and its adjacent policies. This initiative, together with the pending far-reaching enlargement triggered the setup of a number of EU agencies. Europol, Eurojust, and later Frontex were conceived particularly in the context of enlargement concerns, mainly on organised crime and protection of external borders. Europol, initially conceived as a measure to control organised crime, began works as the Europol Drugs Unit before the 1995 Europol Convention came into force, and through the latter gained some counter-terrorism tasks. Eurojust was conceived with the 1999 Tampere Council Conclusions (later to become The Tampere Programme). The body was meant to ensure judicial cooperation and coherence, particularly in cases of cross-border jurisdiction and became operational following Council Decision 2002/187/JHA.

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[1] European Economic Community.

in 1992 the Maastricht Treaty established the three-pillar structure of the EU. All policy areas that were considered contributive to the Single market were placed under the first, "community" pillar, where they would face not only an integrationist urge from the EU institutions, but also more simplified decision-making. The second and third pillars respectively were designated to the two areas of "special status" – external and internal security (i.e. CFSP[2] and JHA[3]). Further integration in those was implicitly almost off limits – even though the EU could issue positions, strategies and other political guidelines, it had no formal authority or autonomy. Both pillars were faltered by special legislative procedures, unanimity rules and national sovereignty reflexes.

This status quo was challenged after the 9/11 New York attack in 2001. This attack gave the EU the compulsion to show political actorness, not only out of transatlantic solidarity, but also considering that, for the first time Europe felt at risk of international terrorism, which seemed indiscriminate, brutal and more difficult to contain than domestic terrorism. In a reactive impulse, framework decisions, institutional developments, political statements and strategies came out of the until then dormant EU CT. The common threat perception quickly translated into common political and legislative action, some of which rather ambitious for the immature development stage of the policy, having an endogenously significant impact on its functioning. The 2001 Action Plan on Combating Terrorism (SN/140/01) was the first to set common guidelines on the overall aims of the de facto newly established EU policy: "enhancing police and judicial cooperation, developing international legal instruments, putting an end to the funding of terrorism, strengthening air security and coordinating the European Union's global action". While those seem generic at first glance, they enunciate some ambitious policy harmonisation objectives and provide necessary mandates to several actors to become involved in a number of CT sub-branches of policy. With the 2002 Framework Decision on Terrorism, the EU not only became the first international organization to adopt a common definition of terrorism, but also attempted an initial harmonisation of the sentencing of terrorist related crimes. The two documents contributed to the first EU legal instrument created with CT as its main motivator, and in fact surpassing the level of EU coherence expected – the European Arrest Warrant (EAW), harmonising the European extradition processes, on the basis of mutual recognition of judicial decisions and the common definition to terrorist offences on the territory of the Union (Council Decision 2002/584/JHA).

The 2003 European Security Strategy, drafted in the context of the 9/11 attacks and the 2003 Iraq invasion was the first to call coordinated European response to the threat of terrorism "indispensable" (Council of the EU, 2003). The 9/11 attacks brought incentive

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[2] Common Foreign Security Policy.
[3] Justice and Home Affairs.

for the establishment of a number of coordinating mechanisms such as the Prüm Decision – a 2003 initiative on police cooperation, which was likely influenced by the attacks and the discovery of a secret cell of 9/11 operatives in Germany. The framework initially remained voluntary and outside the EU's remit, however, since Council Decision 2008/615/JHA it is officially part of the EU acquis. The EU further set up its own terrorist list in 2001, through the 2001 Council Common Position 931/CFSP.

This policy-making impetus subsided due to a lower and asymmetrical threat perception, until the first major international terrorist incident in Europe since the 1970s – the Madrid train bombings of 11 March 2004, followed just over a year later by the 7 July 2005 London bombings. Both the Madrid 2004 and London 2005 terrorist attacks were perpetrated by Al Qaeda but executed by European nationals, thus bringing radicalisation as a topic for EU counter-terrorism the first time with the launch of the EU Strategy for Combating Radicalisation and Recruitment in November 2005. The 2005 EU Counter-terrorism Strategy (Council of the EU, 2005c) spelled out a strategic approach based on the British CT model, segregating the policy area into operational fields and describing the EU actors to be involved in each of those.

Meanwhile, in the context of the same critical juncture, and shortly after The Hague Programme was introduced, setting priorities to be pursued in EU CT, the post of a European Counter-Terrorism Coordinator (EU CTC) was introduced with the 2004 Declaration on Terrorism. While the EU CTC's post is exclusively created with the purpose of coordination among institutional bodies, it is not rooted in a legal basis, thus the position is itself one of policy oversight and not of policy-making as it is not mandated with the proposal or discussion of legislative documents – the role is rather one of "overview of all the instruments at the Union's disposal" (European Commission, 2010).

Availing of the policy impetus, the EU Intelligence and Situation Centre (EU INTCEN, formerly SitCen) was set up as an intelligence sub-body of the European External Action Service (EEAS), under the authority of the EU's High Representative. Its loose setup was delineated in 1999, as one of the first instruments of the Common Security and Defence Policy (CSDP) and it was used for the first time after the 9/11 attacks. However, it ultimately became operational in 2005, after a Commission Communication calling for greater cooperation on prevention of terrorist acts (European Commission, 2005b).

As the 2007 Lisbon Treaty abolished the former pillar system, the policy was formally moved to the Community competences, which was until then open only to policies contributing to the completion of the Single Market. As a result, the JHA Council, consisting of the Ministers of the Interior, still the main decision-making body on CT issues, now co-legislates with the EP, while the latter has acquired oversight on the EU agencies in this policy area.

Legislation adopted between 2001 and 2008 was considered sufficient as a legal framework for the initial stages of EU CT. The remaining EU framework documents in this domain have either revised older dossiers or have introduced marginal strategic and operational updates. Most documents, legislative or otherwise between 2008 and 2015 were evaluation, progress and implementation reports, revision of key legislative files and cooperation agreements with third countries.

Counter-terrorism institutionalisation after 2015

While Argomaniz (2009) describes three phases of development of EU CT: "post-9/11", "post-Madrid" and "post-London", a new contextually significant phase has emerged since – the post-Paris phase. Until early 2015 EU governments and institutions did not consider terrorism to be amongst their top political priorities, even in the backdrop of the unforeseen sophistication of methodology displayed by the Islamic State (IS). Issues of radicalisation, home-grown terrorism and the susceptibility of soft targets around Europe were underestimated until the January 2015 "Charlie Hebdo" attack in Paris. Later attacks in Paris in November 2015 and Brussels in 2016 further contributed to the realisation of vulnerabilities and simultaneously carried indisputable impetus for legislative and normative proposals brought forward by the Commission and promptly adopted by the Council and Parliament as co-legislators, thus serving as testament of the approval of national authorities as well.

The first framework document on CT in 2015 was the European Agenda on Security, officially an upgraded version of the EU Internal Security Strategy of 2010. The document was initiated after the January 2015 Charlie Hebdo attacks and was adopted in April 2015 (European Commission, 2015a). Its first implementation package was passed one day after November 2015 Paris attacks. Except for exceptional timing, the document had a pioneering vision for EU coherence across the various policy domains of interest to the pursuit of counter-terrorism and migration policies.

The November 2015 Paris attacks preceded a myriad of conveniently timed legislative proposals. Only a day after the incident, the Commission proposed a revision of the Firearms Directive; two weeks later a revision proposal of the Directive on Combating Terrorism came through together with an Action Plan against illicit trafficking in and use of firearms and explosives. Barely a month later, the new European Counter Terrorism Centre (ECTC) was launched at Europol and a month after that the Action Plan for strengthening the fight against terrorist financing was adopted (European Commission, 2016b). A wave of reactions of MS solidarity was further prompted by French President

Hollande's first-ever triggering of Art.42.7. TEU, also known as the EU's mutual defence clause. It is important to note that Hollande opted for the EU as a channel of this plea, over NATO and the UN, which arguably provide stronger security guarantees in such occasions, while he also decided on the mutual defence clause over the solidarity clause (Art.222. TFEU), specifically designed for cases of terrorist attacks against MS.

The Brussels attacks of March 2016 brought a further momentum of legislative and normative EU proposals, particularly stemming from the Commission. Three weeks after the attacks, on 20 April, the Commission presented a *Communication on paving the way towards an effective and genuine Security Union*, the strategic document setting up the Security Union announced the day after the attack (European Commission, 2016c). A few months later, on 16 September 2016 the Bratislava Declaration and Roadmap were adopted, calling on the EU's support for MS in fighting terrorism, and days later, on 19 September, Sir Julian King was appointed Security Union Commissioner (ironically, an appointment that was doomed from the start, just three months following the Brexit vote). A highly ambitious political project, the Security Union has affected the speed, quality and inclusiveness of consecutive EU legislation proposals in this domain. Regular Progress Reports published by the Commission ensured continuity by delineating headway on specific dossiers and reporting concrete timeframes for those still in the pipelines.

Proposals have focused on terrorist financing, online content and radicalisation, access to firearms and explosives, forging of identity documents, and most of all, on databases and interoperability. Legislation on the financing of terrorism has focused on stricter control of large cash flows and freezing of assets, while latter documents have proposed further access of national authorities to bank records. The controversial Fifth Anti-Money Laundering Directive, expected to provide enhanced access of Financial Intelligence Units (FIUs) to data, including from central banks, was adopted through compromise (European Commission, 2018c). Several pieces of legislation on the process of obtaining firearms, explosives and chemical substances have been introduced as well. The Brussels attacks were further considered the main motivator for the ultimate adoption of the Passenger Name Records (PNR) Package on 21 April 2016 – a piece of legislation that had been stuck in the EU pipelines for over a decade and that had once been vetoed by the EP, was suddenly agreed upon in a matter of weeks under immense political pressure (Council of the EU and European Parliament, 2016a). By March 2017, the Directive on Combating Terrorism was adopted (Council of the EU and European Parliament, 2017), criminalising terrorism-related offences, such as travelling abroad from/to or within the EU to commit a terrorist act or for training purposes. The heretofore absence of those legal provisions was claimed to have contributed to the ease of

organisation of both the Paris and Brussels attacks, involving the same Belgian ISIL cell and having been executed just four months from each other.

The first EU targeted efforts towards cybersecurity and against radicalization also appeared during this critical juncture. Effectuated by July and October 2015 respectively, an Internet Referral Unit (EU IRU) was established at Europol and an EU Radicalisation Awareness Network (RAN) Centre of Excellence was launched, with the aim of connecting national practitioners and developing best practices. By December 2015 an EU Internet Forum was set up as well, targeting terrorist content and hate speech online, while Europol was mandated to conclude EU-NATO and EU-third countries agreements on cyber security cooperation (European Commission, 2018c). On 1 March 2018, the Commission presented the *Recommendation on measures to effectively tackle illegal content online*, targeted at online service providers in the pursuit of terrorist content, representing an effective case of lobbying by the supranational body towards private actors, which are likely reluctant to pro-actively contribute to such efforts (European Commission, 2018a). Perhaps the most significant effort to date has been on the interoperability between databases and bodies tasked with collecting and sharing various types of information relevant to the prevention of terrorist incidents and pursuit of perpetrators. Such measures have included increase of mandates, upgrades of databases, increased funding for agencies, etc. Proposals for the strengthening of mandates of Europol, ENISA and eu-LISA[4] have been passed (European Commission, 2018c). Due to the combined effects of the migration crisis and the increased number of terrorist attacks on European soil, in the timeframe between 2016-2018, the Commission has introduced proposals for the revision of all databases relevant for CT: the European Criminal Records Information System (ECRIS), the Prüm Framework for operational police cooperation, the Schengen Information System (SIS), the Visa Information System (VIS) and Eurodac. The Commission further enacted measures aiming at interoperability between the various stakeholders and databases on terrorism. With a view that "[a]ll centralised EU information systems for security, border and migration management should become interoperable" (European Commission, 2017c) and following the comprehensive report of a mandated High Level Expert Group on Information Systems and Interoperability, the Commission launched a Proposal on Interoperability in 2017, adopted in 2019 after parallel Council and Parliament consultations. Further security measures were proposed on 17 April 2018 (European Commission, 2018f), in a legislative package including proposals on improving the gathering of electronic evidence (European Commission 2018i and 2018j); a proposal for a Directive to grant law enforcement officers direct access to bank records (European

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[4] The European Agency for operational management of large-scale IT Systems in the area of freedom, security and justice.

Commission, 2018e); a proposal for an upgraded Regulation on strengthening the restrictions of access to explosives and derivative substances (European Commission, 2015b and 2018d); and a proposal for a Regulation on strengthening the security of identity documents of EU residents and their family members (European Commission, (2018h).

While attacks in Nice in July 2016, Berlin in December 2016, Manchester in May 2017, London in June 2017, and Barcelona in August 2017 can be considered to have further contributed to the political momentum of EU-proposed and MS-endorsed measures, the combined effect of the Paris and Brussels attacks in 2015-2016 have had a more ostensible critical juncture effect, opening the window of opportunity for policy institutionalisation. Harmonisation legislation, the setup of the Security Union, and empowerment of EU agencies, have collectively established the hitherto strongest reform framework of the policy area. The EU and its institutions have introduced, negotiated and adopted a larger amount of legislation and targeted measures in CT in the 2015-2018 period than they have over the previous 40 years of the policy's existence, which reaffirms the heightened security threat perception as a causal factor for EU CT institutionalisation progress.

These attacks have been described as "a turning point, a game changer, a catalyst" for the policy's development and the structures involved (Interview n.4). The "quality of the shift after 2015 has been different" than the one in 2004-2005 (Interview n.39). While the threat was already being felt in 2014 (especially after ISIL took Mosul), the critical juncture opened with the Charlie Hebdo attack, while the November Paris attack catalysed the shift of paradigm (Interview n.4). Through common work on CT cases (both in prevention and investigation) MS learned the added value of EU tools, because they began to use them more (e.g. SIS-II, Europol, Eurojust, etc.), they learned how they work, and will likely continue to use them (Interview n.2). The lasting effect will depend on the political climate, however according to practitioners, "the terrorist threat will not go away, therefore institutional reactions should remain too, even improve further" (Interview n.4).

One of the empirical questions that this thesis aimed to address was what particularly changed in 2015 – MS' perception of the EU's added value in CT, due to their increased usage of its tools, or the EU's approach to delivering added value, focusing on national needs and not pushing for centralisation or formal structures? The simple answer is that both have changed – many MS were compelled to use EU tools and bodies in the aftermath of attacks, and were able to see the added value in human and financial resources, expertise gained, time saved, etc. (Interview n.21). What inherently follows from this statement is a chicken-egg dilemma on the directionality of causation that

cannot fully be resolved. It seems that, in terms of transnational operational cooperation and delegation of tasks to the EU, a chain of events followed in the aftermath of the Paris attacks in November 2015. Probably the most significant of those was the partial delegation of the investigation to Europol by the Paris Prosecutor in charge. Whether the French leadership was trying to avoid accountability on national level by resorting to Europol's help or not would be difficult to determine, and is out of scope for this thesis. Nevertheless, this action unleashed a chain of events that made the EU seem like a desirable option for CT cooperation. Firstly, it had both a symbolical and an operational significance for Europol and the EU CT apparatus as a whole – it showed goodwill on the part of an old and experienced intelligence agency to share the data and credit on the post-attack pursuit and investigations, but it also gave Europol the chance to gain experience in such investigations and develop a "lessons learned" expertise. Secondly, this instance rolled out into a spillover of EU tools used and added value perceived, which broke the vicious cycle of MS not perceiving the potential benefit of an EU role in CT and not delegating it further mandates therein. These developments will be further discussed in the empirical chapters of this thesis.

Key concepts

This sub-section supplies an overview of the core concepts used in this thesis, including the author's specific conceptualisation of these, where there is more than one approach.

Institutionalisation implies the functionality of a system and its ability to function independently from its constitutive actors (in this case MS). A system is not only composed of material, ontologically "real" institutions, it also consists of the institutional actors and policy entrepreneurs therein, and of a set of instruments and tools set up to serve the system in its tasks. It is also composed of agents (in this case national CT practitioners) – the "workers" of the system – it affects the functionality of the system whether they are reluctant participants, who might sabotage some of its elements, or eager participants, who find value and importance in the system and are willing to develop it further. As a system matures, it acquires more and more functional elements (including institutions, agents and instruments), which in time should enable it to function independently from the constitutive actors and deliver added value to the governance of the domain in which it operates.

Harmonisation consists of the measures that incur legal approximation of MS' national legislation on a given policy. It involves the establishment of common measures, which introduce collective standards of compliance, incur responsibilities on institutional actors and practitioners, and provide for punitive mechanisms. It should also provide sanctions

for non-compliant actors, who have subscribed to these measures. Examples of harmonising measures are the Framework Decision (later Directive) on combating terrorism, the Firearms Directive, the Regulations on explosive precursors, the Regulation on extremist online content, as well as measures on transport security. Harmonisation is a necessary prerequisite for institutionalisation, nevertheless, it is only one of its elements.

Convergence is the functional approximation of national policies and approaches in a given policy context. If convergence has occurred, then when observing national systems (even without observing the supranational one) significant similarities should be found in policy approaches, the organisation of governance, even in the institutional structures involved and in the practices employed by policy practitioners. Convergence can be loosely used as a synonym for integration, nevertheless integration is used in a misguided way in the EU context. Until the EU becomes a federal entity, policies cannot be expected to be fully integrated, as the constitutive actors of the EU (its MS) are still independent, sovereign nations, therefore they could not fully delegate a national policy or resource to the Union. Convergence is a sign of a successful integration process, it implies the incorporation of collective governance, common principles, shared approaches and inter-actor/ inter-agency cooperation across the EU's MS.

Policy entrepreneurs are a necessary element for a system's institutionalisation; essentially the promoters and leaders of institutionalisation processes. They are very familiar with the policy area that the system is occupied with, however they are also aware of the system's shortcomings and are motivated to ensure that its governance gaps are closed. Policy entrepreneurs are politically adept and cognisant of the system's constitutive actors and their priorities and red lines, and they may incorporate game theory tactics to co-opt their support for necessary reforms and legislation that contribute to the system's functionality. This may include action in politically opportune moments (e.g. critical junctures), naming-and-shaming strategies, horse-trading negotiation tactics, and the advancement of garbage-can models of governance (e.g. preparing proposals in advance, in order to have available options for the opportune times of heightened political will for change).

As systems may exhibit various degrees of institutionalisation, **modest and substantial institutionalisation** refer to their stages of maturity, as well as their level of independence from constitutive actors. Thus, if a system is completely dependent on its constitutive actors (in this case national authorities and practitioners) for their contribution to the system's functioning, (in this case in terms of resources, data, political will, etc.), then this system is likely only institutionalised to a modest degree. Even in the presence of its own instruments and institutions, it is unable to fulfil its function independently of its

agents' active participation. Conversely, it should be expected that a substantially institutionalised system may function as a governance structure on its own: its institutional actors and intrinsic instruments should be able to provide independent contributions and should not be paralyzed in circumstances of low political will from agents. Such a system should be able to produce its own products (in this case data collection and statistics, threat assessments, trend analyses, prevention, etc.), and should have institutional agents, who are able to fulfil their function according to their own political will. Thus, a system crowded with institutional actors and social agents and endowed with functional tasks is not necessarily substantially institutionalised, if these elements have unclear or overlapping mandates, or are not well implemented or utilised. In such a case, the system is not able to perform its function, therefore despite the presence of institutional or functional elements, they do not contrite to the system fulfilling its purpose. Such a system will be referred to as a modestly institutionalised one. This thesis provides a relative and descriptive definition of the degrees of institutionalisation, as corresponding to the author's definitions, and will not provide a numerical scale or a measuring device therein. "Modest" and "substantial" are referents of the author's framework and do not imply finality, or an exact measurement of the process of institutionalisation.

Critical junctures are events that shake up a system and demonstrate its inability to fulfil its original tasks, either due to a change in the context and circumstances of the system, or due to previous lack of awareness on its inability to fulfil its tasks. A critical juncture is usually brought on by an exogenous to the system event (in this case usually a terrorist attack), which in turn puts the system to the test and exposes its incapability to execute its originally defined function. A critical juncture then is usually followed by a flurry of political and functional discussions on upgrading the system's functionality, followed further by multiple governance and legislative proposals. Usually a critical juncture concludes by shifting the system to a new "path" (enabled by its new instruments adopted during the critical juncture), which then becomes fixed itself, hence making it resistant to change until the next critical juncture occurs. Therefore, critical junctures are almost always followed by periods of path dependence.

Paradigm shifts (it is argued in this thesis) are not to be seen as a synonym for critical junctures. While critical junctures usually bring policy and institutional change, they do not necessarily shift the system's paradigm. The system's paradigm is characterised by the conceptions and perceptions on the system's function and use, and the practices involved therein. Thus, for example, the paradigm of EU CT used to be that the Union is only to provide a supplementary function of facilitating cooperation between the exclusively national responses to terrorism in the Union; it was then not expected to have

an executive function and neither were all of its institutions and instruments. It will be argued in this thesis that, as a result of the critical juncture of the 2015-2016 Paris – Brussels attacks, EU CT shifted to a different paradigm, where counter-terrorism is no longer exclusively a national prerogative, but instead it necessarily involves cross-border operational cooperation and a fusion of operational resources (including both EU and national apparatuses, and practitioners across borders and professional sectors). Such a shift in perception and behaviour from both the constitutive actors of the system (EU MS) and its operational agents (CT practitioners) is conceptualised here as a paradigm shift for EU CT, and is speculated as likely to contribute to the lasting effects of the Paris-Brussels critical juncture.

Elements of institutionalisation, as defined in this study

This sub-section outlines the five constitutive elements of institutionalisation, as defined by the author for the purposes of the study. They will later serve as comparative devices among the periods of EU CT development examined by this thesis.

Occhipinti (2013, p.174-180) evaluates the EU CT's apparatus in 2013, particularly in terms of information-sharing. The five pillars he bases his analysis on will be borrowed here as criteria for the institutionalisation of EU CT information-sharing, while they are provided a slightly different interpretation by the current author.

➢ *Policy*

This includes all the legislation, instruments, mandates, standards and procedures adopted by the EU on CT, particularly as regard to information-sharing, thus the latter's legislative framework. It therefore addresses the mechanisms of negative integration, i.e. removing legal barriers and impediments to common action and systematic information exchange in the EU. It enables the harmonisation of national legislation, by approximating MS' legal frameworks and creating a level playing field for all MS. Examples include the European Arrest Warrant, the Framework Decision (now Directive) on combating terrorism, PNR, e Firearms Directive, the Regulations on explosive precursors, the Regulation on extremist online content, etc.

➢ *Governance*

This implies the leadership and oversight provided to EU CT information-sharing by the institutions and policy entrepreneurs involved. It helps determine the degree of independence of the system (EU CT) from its constitutive actors (the MS). It involves the analysis of mandates and de facto powers of institutional actors, as well as the examination of the work of policy entrepreneurs involved in promoting and developing EU information-sharing. Examples include the role of the Commission, the setup of the

Security Union, the role of the EU CTC, the influence of the Europol Director, the operational roles and mandates of the EU agencies, and occasionally proactive Council Presidencies.

> *Technology*

It incorporates the technical infrastructures necessary for the functioning of EU information-exchange: large-scale IT systems and their functioning, the technical capability to connect datapoints and information systems through "common standards for organising data" (Occhipinti, 2013, p.177). It examines the ability to use data effectively and efficiently, to cross-reference it across data banks; it analyses the access granted to various actors to different types of data, and the extent of data compartmentalisation. It also looks at technical difficulties in the application of these measures at MS level. Examples include the setup of various databases: SIS-II, VIS, EIS, SIENA, Prum, Entry-Exit System, etc., as well as the process of embedding interoperability in the EU acquis.

> *Economics*

This pillar is occupied with the political-economic context, as well as the degree of political will to advance measures in EU CT, and specifically in information-sharing. The title should not imply solely the financial aspect of politics, although the latter is a good indicator of political will, as the measures involved are usually expensive and require the allocation of additional resources, which is only possible in periods of high political prioritisation. It deals with threat perception, as well as the high-level political dynamics, which provide the context for low or high degrees of prioritisation of the domain. Examples include not only the financing of expensive instruments, but also slow and uneven implementation, as well as quick and motivated decision-making on consequential measures (such as in the case of the EAW, EU IRU, interoperability, EIS and SIS-II?).

> *Culture*

This pillar is where this thesis will aim to make the most significant empirical contribution. It refers to this domain's policy practitioners, their organisational, professional and sectoral culture, their will to work together and to share with each other cross-border and cross-agency. It includes the topic of mutual trust and perceptions on EU added value in this domain. The practitioners in question (low–to-medium level) include intelligence, law enforcement, judiciary and other analysts pertaining to CT, which all make up the bulk of the interviewees for this study. Examples of topics covered in this pillar are the lack of trust across sectors and borders, the lack of confidence in Europol, the sudden increase in usage of SIS-II and EIS after 2015, etc. While this might involve the treatment of subjective observations and perceptions (albeit triangulated), there are some tangible

sources that substantiate such data, e.g. independent evaluations and reports, as well as official statistics on the (changes in the) use of various EU databases and information-sharing instruments.

Structure of the study

The first chapter of this thesis will examine the academic literature on EU CT actorness and institutionalisation. It will discuss the empirical and theoretical advancements in the discipline and will identify the gap therein to be filled by this study. Chapter II will explain the theoretical and methodological choices made for this study and how their combination is beneficial for addressing its research questions. It will justify the validity of institutional theory in the study of EU CT, while arguing that its historical variant (HI) is insufficient to fully examine its institutionalisation. The chapter will also map out the methods used to collect and analyse the primary data of this study, and it will explain why expert interviews were considered reliable datapoints for the examination of the thesis' findings.

The following four chapters lay out the empirical material that this thesis puts forward. Chapter III investigates the case study of the Madrid-London attacks aftermath, and is intended to serve as a yardstick for EU CT institutionalisation (as until 2015 it was the most significant critical juncture for the policy's development). Chapter IV discusses the interim period of EU CT development: the timeframe of 2007-2015. This timeline will be demonstred to have been characterised by path dependence, while it will be argued that despite the continued efforts of policy entrepreneurs, the system did not progress to further institutionalisation, largely due to the lack of political will and perceived necessity to have a fully functional EU CT appararus.

Chapter V examines the direct aftermath of the Paris-Brussels attacks in terms of EU governance. It is built around the same pillars as Chapter III, in order to ensure a rigorous comparative analysis. It lays out legislative, policy and practice innovations directly impacted by the critical juncture, and discusses their importance for EU CT institutionalisation. Chapter VI then analyses the medium- to long-term consequences of the critical juncture on EU CT and argues that the significance and impact of these on the policy's institutionalisation warrants the consideration of this event a paradigm shift in its development. The Conclusion underlines the project's core finding that critical junctures alone are not sufficient to cause EU CT institutionalisation, however the combination of a critical juncture *and* an ideational shift in the aftermath of the 2015-2016 Paris and Brussels attacks, has shifted the EU counter-terrorism paradigm, leading to a

substantial institutionalisation. The thesis concludes by offering policy recommendations and opening avenues for further research.

Chapter I. Situating the current study in the literature of institutionalisation of EU counter-terrorism

This chapter scrutinises scholarly interpretations of EU CT's institutionalisation. It distinguishes between empirically and theoretically focused studies. Within the empirical work, it draws upon the schema applied by Bossong and Rhinard (2016, p.8) to examine studies in this policy area by dividing them according to the focus of their analysis: politics, polity and policy. Within the theoretical work, it identifies a number of approaches, which largely fit in two categories – integrationist and governance theories. Each of those generalised groupings includes a wide variety of academic and theoretical approaches, which will be examined in terms of their contribution to EU CT scholarship. The chapter then explores the academic contributions to the information-exchange sub-field of EU counter-terrorism and concludes by demarcating the focus of this study. The purpose of this chapter is to demonstrate the lack of academic studies investigating the causal effects on EU CT institutionalisation of two new factors proposed by this thesis: the perception of CT as an EU issue and the perception of the EU's added value in CT. This study will then aim to fill this gap epistemologically, as well as empirically, through the analysis of a novel case study – that of the Paris-Brussels attacks.

Of the many studies covering EU CT policy and its general domain of internal security, some have focused on empirical material, either through inductive approaches or strong hypotheses, while others have relied on solid theoretical frameworks as sources of explanation of certain policy developments. It is important to note that an absolute segregation of the two orientations is neither possible nor necessary, thus many studies may belong to both approaches. Nevertheless, for the purposes of this chapter it is considered preferable to present studies with different orientation separately, as they have yielded different findings, and divergent overall conclusions for the field of study.

Empirical focus of studies – polity, policy, politics

To make sense of the empirical work on EU CT, Bossong and Rhinard (ibid.) segregate studies in this policy area into three focus areas: politics, polity and policy.[5] Studies focusing on the first aspect stem mainly from political science approaches, including critical security studies, security cooperation and institutional theory and aim to unearth the dynamics involved in the field's development, stemming from both discourse and

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[5] Building on Kingdon's 1995 "multiple streams framework".

(inter-)institutional drivers. Polity-driven studies investigate the "constitutional implications of the field for the nature and direction of the EU as a polity", thus aiming for external validity to the wider study of European integration. Finally, policy studies analyse dynamics particular to the various branches of JHA – migration, counter-terrorism, organised crime and their sub-branches (ibid., p.9-15).

Polity: The EU's actorness

Scholarly analysis on the *Polity* aspect of CT focuses on the normative research on the EU as a guarantor of the security of citizens, thus examining the actorness of the EU in this policy domain (Waever, 1995; Waever, 1996.), while also applying critical approaches with concern of a "Fortress Europe" (Bigo, 2001; Huysmans, Dobson et al. 2006, etc.). Authors have looked at the architecture of JHA cooperation from various angles, including gaps and overlaps (Rittberger, 2014), decision-making processes (Balzacq and Hadfield, 2012, Gaisbauer, 2013), political dynamics and practices (Adler-Nissen, 2009), etc. Some legal scholars have investigated perspectives of authority (Fletcher, 2009; McCartney 2013), while others have questioned the legitimacy and efficiency of the new internal security order of the EU – a hybridization of national and supranational jurisdiction, contributive to implementation issues (see for example, Guild, 2004; Mitsilegas, 2006; Eckes and Konstadinides, 2011; Herlin-Karnell, 2012, etc.).

Monar (2015) attempts to qualify the EU CT machinery, measuring it against indicators for international actorness: 'opportunity', 'presence' and 'capability'. Although MS have clearly been avoiding mandating capability to the EU level, Monar finds that EU CT has manifested enough of an independent structure within the three indicators to be considered an international CT actor in its own right. To him, the policy has high convergence potential, hitherto hindered by lack of adequate mandate, institutional complexity, implementation deficits, incoherence between national and EU policy-making and, most importantly, high justification threshold for common action in the domain (ibid.). Bossong considers the EU a CT actor in its own right due to shared security standards and regulations, a mutually accepted definition of terrorism and judicial harmonisation, the mutual defence clause against a terrorist attack (Art.222 TFEU) and common institutional structures (Bossong, 2013b, p.177-8). He considers, however, that the EU has issues of collective response, due to the fact that aggregate issues "require the pooling of resources, they are costly, open to free-riding and partially beset by crowding or rivalry of consumption" (the latter including soft consumption such as information-sharing and taking credit for investigation breakthroughs). Thus bodies involved in EU CT exhibit clear preference towards "loose coordination networks that are

not open to consistent exploitation by non-contributing states" and "non-binding mechanisms [in] collective action" (ibid.).

Brattberg and Rhinard (2012) conduct their own study of the EU's global actorness in counter-terrorism, stepping upon the original framework (Sjöstedt, 1977) of "opportunity, presence, capability", in order to build their own, based on the understanding of the EU's policy-making and potential for influence. Their 4C indicator analysis of "context", "coherence", "capabilities" and "consistency" results in the conclusion that, although it has the instruments and potential, "the EU is best characterised as emerging, but not yet complete actor in the area of counter-terrorism." Monar believes that, despite only being granted a "subsidiary function" in this domain, the EU has managed to contribute its own level of governance (Monar, 2013, p.201). He cites several instruments through which the Union has established itself as an internal security actor in its own right: the overarching strategic guideline documents, the common (independent) threat assessments by Europol and INTCEN, as well as specific policy tools and mechanisms such as the EAW, the post of the EU CTC, FIUs and terrorist lists. Nevertheless, operational issues such as slow or inadequate implementation, low interoperability and the general lack of operational mandate of EU institutions and agencies, make even more institutional actors fully dependent on national intelligence voluntarily provided by MS, thus making their existence futile.

Bossong and Hegemann (2018, p.25) however warn that "legal communitarization does not lead to an eradication of complex and often informal governance arrangements", rather such are likely to persist in the pursuit of common EU policy responses, whereupon the EU remains a regulatory actor, which "may have formal powers of legislation but is otherwise highly limited in terms of direct administrative capacity or general authority to induce compliance" (ibid., p.24). The pressure on the EU to legitimise its stakeholder role in internal security has resulted in the empowerment of agencies as a more flexible and indirect channel of authority, one that does not forsake sovereignty, nevertheless raising accountability concerns (ibid.; Kaunert et al., 2013, Lavenex, 2006; Santos Vara, 2018). At the same time, while Europol and Eurojust have wide-ranging information resources, they have not achieved much in stimulating an information-exchange and policy cooperation culture amongst national authorities (Bossong, 2013b, p.178, cf. Bures, 2008; Bures, 2010).

Wittendorp (2016) calls on to Foucault's concept of *governmentality* to scrutinise processes and practices of EU governance and to question whether the avenues of integration are appropriate or feasible in some policies, pointing to a "disjuncture between stated objectives of EU policies and goals reached". This futility is then explained through the ineffectiveness and rigidity of EU policy instruments, which fail to

address political issues when approaching terrorism, presenting it instead as a "solvable" problem, to be addressed by better coordination. According to Wittendorp, this approach is particularly complicit in the "(re)production of insecurity", and as such is qualified by him as a governmentality practice i.e. the political leadership constructing a wrongful perception of a political issue in the population, in order for the latter to be convinced that the problem is being kept under control by the former (in this case by simple coordination tactics).

The connection between threat perception and counter-terrorism responses in Europe was examined by Meyer in his 2009 study, wherein he demonstrates the heterogenous threat perceptions among EU MS, arguing that those briefly converged after the 9/11 attacks and the subsequent Madrid and London bombings, whereas after the immediate risk subsided, so did the common threat perception. Developing further the argument of Pedahzur and Ranstorp (2001), Meyer points out a causality between high terrorist risk perception (and experience of terrorism) and effective implementation. His concluding observation is that with declining threat perception in the absence of terrorist attacks, the degree of implementation drops too, leading to substantial delays (Meyer, 2009, p.660-664).

While most scholars argue that EU counter-terrorism policy is reactive and event-driven, Wiener (2008, p.202) warns of an opposite effect – she argues that crises can have a diverging effect on national perceptions and approaches, as "a situation of crisis raises the stakes for understanding meanings based on social institutions", thus causing nations to seek solutions in different channels. Subsequently she claims that the power of the EU is not in the "normative power Europe" approach but instead in the "United in Diversity" one, i.e. EU institutions should seek to broker compromise between national perceptions, norms, values and responses, instead of trying to generate homogenised ones.

Policy: harmonisation measures in CT sub-fields

Policy analysis in EU counter-terrorism include studies of the various pertinent policy branches and sub-branches, while some analyses focus on specific policy aspects. Studies on general policy aspects, such as implementation and interoperability are pertinent, while some scholars with specialised knowledge have provided a number of within-sectoral studies of counter-terrorism (Bures, 2010; Argomaniz, 2012; Argomaniz, 2015; Den Boer, 2015; Conway, 2007; Kaunert, Léonard and McKenzie, 2012). Many of the policy studies in EU counter-terrorism deal with threat perception, identified by

multiple scholars as a causal factor driving integration in the domain. The bureaucratic responses to several major terrorist attacks and threats in Europe are in fact considered to have produced the entire EU CT apparatus. As Meyer (2009) observes, the common threat perception following a terrorist incident is not only a sufficient, but perhaps the main driver of policy-making in the domain. Political and media pressure, public opinion and panic have all proven to be effective policy drivers as in times of failure the EU is an easy scapegoat. This situation of blame transfers, pressure and insecurity creates the need for a quick and visible response by policy-makers, which is often manifested in transferring ahead the difficult dossiers stuck for years "in the pipelines" of EU decision-making.

In fact, the 9/11 attacks and the policy reactions they provoked formally launch the EU's counter-terrorism policy and initiated certain integrationist policy reflexes observed by scholars from different contextual angles. Monar (2014) notes that the largest Western terrorist incident marked for the EU a "distinctive move from 'soft' to 'hard' governance by way of a greater use of binding legal instruments[…] that is 'framework decisions' and 'decisions'". Even though Monar (ibid.) draws that conclusion reflecting on counter-terrorism policy, he recognizes that binding regulations did become prominent in other adjacent fields as well, such as judicial cooperation and criminal law harmonization. He also delineates the impulse for institution-building following the attacks, perhaps the EU's most inherent reflex in times of crisis (ibid.).

Monar (2014, p.197-199) observes that, as terror threats in Europe serve as a wake-up call to the infertility of national counter-terror efforts against international terrorism, MS' governments realise the insufficiency of closed home affairs policies and gradually open up to enhanced cooperation not only between themselves, but also with third countries. In efforts towards what is termed by Monar as "the externalization of EU internal security governance", the EU has mandated Europol in concluding data sharing, mutual legal assistance, and counter-terrorism assistance agreements with more than 20 countries (ibid., p.199). Nevertheless, these sporadic impulses of policy activity are considered reactive and short-lived and are usually detached from a long-term strategic and operational vision that a well-functioning common policy requires. Scholars in the field of internal security governance are almost unanimous: "this decisive influence proved to be temporary, depending heavily on the evolution of terrorist threat perceptions" (ibid.).

Scholars have applied different approaches in studying the degree of integration and efficiency of EU CT, wherein a wide range of studies have examined the so-called "implementation deficit" (Argomaniz, 2010; Monar, 2015; Bures, 2006). As Monar puts it in his review of EU CT measures adopted in the aftermath of the Charlie Hebdo attack in Paris in January 2015, "it again became clear that the main challenge for the EU was

not the absence of counter-terrorism mechanisms and instruments – of which plenty had already been agreed upon after previous terrorist emergencies – but their effective use and implementation" (Monar, 2015, p.145). Bures labels EU CT "a paper tiger" for having numerous harmonisation initiatives "on paper", which due to "the absence of pro-integration thinking in the area of Justice and Home Affairs" fail to become effective EU-wide measures, owing to slow and inefficient implementation (Bures, 2006, p.57).

Several scholars carried out comprehensive studies on the implementation of CT measures across EU MS, in order to determine whether implementation is truly the "Achilles heel in EU counter-terrorism" (Argomaniz, 2010, p.297). Argomaniz engages in a comparative analysis of legislation transposition, critically investigating the reasons behind delays, attempting to establish causality between those and national administrative capacity of particular MS. He concludes that threat perceptions and proximity between national and proposed EU legislation, while important factors, fail to provide a universally valid explanation for implementation delays, arguing for a "more nuanced understanding of the problem". Argomaniz calls attention to administrative and structural factors such as size and efficiency of national administration, cultural norms, corruption, type and stability of governments, etc. Nohrstedt and Hansén (2009) also engage in a study on the implementation of CT legislation across MS, focusing on five instruments. Their findings indicate that high political pressure is causally related to implementation pace and efficiency, while path dependency and membership of the EU are not, contrary to findings of other scholars. The authors also emphasise the importance of EU institutions as policy and convergence entrepreneurs in EU CT, despite national sovereignty impulses across MS.

Finally, some highly specialised studies have provided an informative, in-depth understanding of narrow aspects of EU CT, such as terrorism financing (Bures, 2015), radicalisation (Bakker, 2015; Conway, 2007), police cooperation and intelligence gathering (Occhipinti, 2015; den Boer, 2008; den Boer and Wiegand, 2015; Gruszczak, 2016), protection of critical infrastructure (Argomaniz, 2015), border control (Léonard, 2015) and many more.

Politics: EU institutions' actorness and EU MS attitudes to integration

Studies examining the *Politics* aspects of internal security often focus on political actors, events and normative theoretical frameworks. A variety of scholars (Bigo, 2008; Huysmans, 2004; Balzacq, 2008; Kaunert and Léonard, 2019; Wittendorp, 2016) provide a critical view to the securitisation of the overarching field of EU internal security,

whereupon that is used as a rather effective instrument for policy entrepreneurship by both EU and national opinion-shapers alike. Kaunert and Léonard (2019), nevertheless, demonstrate that EU decision-makers used the collective securitisation of MS as a device in achieving substantial institutionalisation of CT. Some authors in the field of EU internal security and CT have conceptualised a new variable for this domain – based on the premise of securitisation (non-security political issues are treated as security-risk ones), *politicisation* refers to policy areas that see a shift from bureaucratic governance to a (high-level) political one. De Wilde et. al. (2016, p.5) single out politicisation as a crucial limitation to policy preference approximation, whereupon it depends on the importance and imminence of an issue, the schism of views on it (usually explained by opposing political ideologies) and the involvement of the publics in that debate. Rooted in both functionalism and supply-demand theories, their analysis is based on differentiated integration theory, which explains the varying degrees of policy integration among EU MS (cf. Bures, 2018, p. 161). Some authors (e.g. Leuffen et al. 2012, p.34-36) theorise that such integration will depend on the relationship between the demand of common policy by MS (thus its added value to national governance, explained further by ideas, interests and interdependencies), while the supply side considers the convergence of these interests and preferences, as well as the institutional setup and mandates available in the latter. Thus, the differentiated integration of EU CT is considered to be due to low preference convergence, resulting from high but uneven politicisation across MS and unimpactful supranational agents (Bures, 2018, p.162; cf. De Wilde et al., 2016, p.5). Despite wide-ranging politicisation concerns amongst scholars - including apprehension of the regular engagement of top levels of governance, such as the European Council - preference for "more flexible and softer governance arrangements" persists (Bossong and Hegemann, 2018, p.23).

Many studies investigate institutional roles in JHA policy-making (Monar, 2013; Kaunert et al., 2013; Kaunert, 2007; Occhipinti, 2016) including in policy entrepreneurship: the Commission in stimulating agendas and policy proposals (Kaunert, 2010; Caviedes, 2016; Bossong 2012), the Council Secretariat in encouraging shared understanding and consensus (Kaunert and Della Giovanna, 2010), the Parliament (Ripoll Servent, 2015; Trauner, 2012), the Court of Justice through its fiduciary responsibilities (Mitsilegas, 2016; Kaunert and Léonard 2012), etc. Scholars have researched the roles of these bodies as interest- and opinion-shapers, lobbying for and interpreting dossiers (e.g. European Arrest Warrant, Anti-Money Laundering and Terrorist Financing Directives, etc.), (cf. Bures, 2018; Monar, 2001; Kaunert, 2010; Occhipinti, 2016). Monar (2001, p.747) further indicates the Council of Europe, the TREVI Group and the Schengen space as "laboratories of integration", impacting the initial formulation of an EU CT policy, circumventing sovereignty and other political constraints. Some authors focus on shared

discourse and the role therein for epistemic communities (Cross, 2011), or on policy-making mechanisms, such as negative integration and "soft" coordination (Lavenex and Wagner, 2007). Other authors analyse specific aspects of governance, aiming to infer wider causality for the policy field. Multiple researchers have asserted that under political pressure and short timeframes, policy agents often reach for available dossiers lingering in the pipelines, whether or not they are fully relevant to the situation at stake, in a reactive approach and often in the pursuit of the easy passage of difficult dossiers (Bossong, 2012; Argomaniz, 2015).

Monar (2014) infers that the principle of subsidiarity is conveniently used as a motive to avoid integration in fields close to national sovereign functions such as internal and external security, where EU action needs to pass a higher threshold of convincing added value in order to be considered. This logic has nevertheless become rather outdated as the EU has implemented such binding mechanisms as a common monetary policy, a single market and most importantly an open-border space, providing for free flow of peoples, goods and services. In the backdrop of these, the subsidiarity clause seems much more a convenient excuse and integration brake, rather than a sensible legal provision. The open border space has created security vacuums due to the lack of integrated security policies and insufficient interoperability, leading to mistrust, finger-pointing and blame-shifting between MS, whereupon in an atmosphere of volatile security and growing Euroscepticism, the most natural national instinct seems to be to close borders and drive away from integration. The neo-liberal values that drove integrationist urges in the 1990s-2000s are instead replaced by a state of insecurity, bringing forward closed and inward-looking national approaches, and blame-shifting reflexes of national leaders to the EU level.

A multitude of scholars have examined the *communitaurization* effects of the Lisbon Treaty on JHA policies. Initially only intended to extend to police and judicial (non-binding) cooperation, JHA's integration was taken further through the 2007 Lisbon Treaty, which was meant to deepen integration between the "old" 15 MS and 12 newly acceded ones. Abolishing the pillar structure was an ambitious goal as it was meant to open the door for integration of more policies, which were until then barred from further harmonisation. Notably the fields of foreign and security policy and JHA were metaphorically "freed" from their pillar boundaries. Trauner and Servent (2016) investigate the impact of post-Lisbon institutional change on policy convergence in the JHA, concluding that the Council has tended to hold higher leverage in the area, thus undermining supranational institutions' influence and policy entrepreneurship.

In their 2016 analysis, Léonard and Kaunert, emphasise the importance of the EU's internal security agendas and the current strategic deficit in that aspect. The ambitious and comprehensive Tampere, Hague and Stockholm programmes were followed by broad, yet short guidelines in 2014 that did not provide a programme for policy development or a strategic vision, but merely instructions for better implementation of existent instruments and legislation (Léonard and Kaunert, 2016, p.144-146).

Maricut (2016) provides a thought-provoking analysis of the Council and European Council's governance in JHA, even after the adoption of the Lisbon Treaty. She considers that the central role attributed to various Council formations, including the Heads of State and Government, in new EU policy fields, is merely a political strategy of governments maintaining the upper hand over internal security governance, "in order to prevent loss of national sovereignty in sensitive policy areas". In her view, while the Commission and Parliament drive integration processes forward, the Council configurations encourage policy and operational coordination, simultaneously maintaining the competence on national level and preserving the centrality of governments as decision-makers. With policy-making mandated to Council configurations of seconded experts, the integrationist approach is undermined and discussions are maintained at technical level.

Finally, according to Bures (2018, p.161), EU discourse has also changed and helped shape policy outcomes: "Since the threat was publicly framed as transnational, national governments rapidly agreed on the need for coordinated European action". Yet, Bures recognises the fluidity of that discourse – as high threat perception is an established causal mechanism for CT policy output, outside of those margins, typically chronologically defined by terrorist attacks, as the threat level subsides, so does policy output. What is not clear yet is if the newly shaped discourse on the European nature of terrorism after the 2015-2016 attacks in EU MS will decline too with the ultimately expected decrease in threat perception across MS. Some authors have already speculated on that: Ripoll Servent and Kostakopoulu (2016), through constructivist institutionalism and transformation of discursive landscapes and Rhinard (2010) via analysis of "strategic framing". As Bures further notes, "many EU MSs' politicians prefer to present to the general public the failures of EU policies rather than their successes", which he sees as conducive to the lack of popularity of the enhanced role and capacity of EU CT, which he estimates as "greater than is commonly understood" (ibid., p.165), thus demonstrating the correlation between discourse and policy perception.

Theoretical approaches to the study of EU counter-terrorism

Despite the many important empirically-driven studies in EU CT, theoretically-focused research is predominant in this area. Research has spanned across theoretical families – IR scholarship, integration theories, public policy approaches, comparative politics, as well as more recent interest in securitisation/politicisation. This section divides the theoretical scholarship into two categories, those owing their origin to integrationist theories, and those stemming from governance and public policy approaches. While studies in both categories contain a variety of methodologies and conclusions, the research questions they pose could largely be grouped together along these two lines of systematization.

Integrationist Approaches

Neofunctionalism has remained "one of the more obvious choices for analysis" in the field of EU JHA, to which counter-terrorism is pertinent (Niemann, 2016, p.129). Intrinsic elements of neofunctionalism are still widely used, including in sectoral studies (Ibid., p.141, cf. Sassen, 2008; Den Boer, 1997). The evolution from a completely intergovernmental policy-making to the current hybrid regime has invoked functional logic, particularly causal connections between the Single Market, the Schengen Agreement and the integration of JHA policies (Niemann, 2008 and Richardson, 2012; Kaunert 2009 and 2010). A multitude of studies use intrinsic elements of neofunctionalist logic even if not explicitly stated as a theoretical framework. According to Niemann (2016, p.138) the validity strength for neofunctionalist logic in a case of JHA policy is dictated by the initial integration intention for the policy, and the functional connection with the current issue (in the case of CT that is increased number of attacks), while the availability of options other than integration can be intervening variables in this causal equation.

Most scholars consensually describe the EU CT machinery as having moved (albeit incrementally) into the realms of supranationalisation and as having the structure, mechanisms, legislation and institutions in place to potentially move forward to deeper integration (Monar, 2014, Maricut, 2016, Knelangen, 2001; Müller, 2003, etc.). Cross (2007, p.95) even considers a European Homeland Security feasible, through the stimuli provided by epistemic communities and a possible "redefinition of the notion of sovereignty itself".

Scholars have attempted to build different explanatory theoretical frameworks to establish causation in the study of EU integration processes. One such study is carried

by Occhipinti, where he theorises about the clusters of factors impacting EU police cooperation. His revised framework (2015) indicates two clusters of factors impacting supranationalism in police cooperation across the EU. As a first cluster he analyses the interests of key actors, whereupon certain dynamics can manifest as "interest shapers" in both a positive and a negative direction: what he calls "the spilllover-enlargement effect", and "crises and shocks" would both have positive effects on integrationist tendencies, while concerns for national sovereignty, subsidiarity and democracy would each play their negative role on such dynamics (Occhipinti, 2016, p.51-61). The second cluster Occhipinti denotes is "institutional dynamics". Drawing on several academic theories, he establishes three principal dynamics that affect supranationalism: "policy and institutional entrepreneurs" according to him tend to impact integrationist urges positively, while "bureaucratic resistance" tends to stumble progress. Finally, path dependency has a significant effect on supranationalism, yet that effect could have either a positive or a negative sign, depending on the general trend (e.g. federalism or Euro-scepticism) (Ibid.).

Monar (2014), considers several institutional developments to be indicative of the Europeanisation of internal governance, namely the co-decision mandate acquired by the Parliament (a pro-integrationist institution), the centrality of European agencies in policy-making and operational implementation (Europol, Eurojust, etc.), as well as political guidance and policy impetus provided on several occasions by the European Council. He establishes that as the EU has some legal, policy, financial and external cooperation initiatives independently from MS, it can thus be qualified as an internal security actor, albeit without operational capacity. He concludes that the EU's internal security governance, which he describes as "an advanced institutionalized system of cooperation and coordination between national governance frameworks constructed around a core of common instruments and procedures with a cross-border reach", indeed has the potential of developing to the degree of changing the balance between MS and the EU as policy-drivers (ibid., p.208).

Niemann argues that "neofunctionalism goes beyond mainstream intergovernmentalist conceptualizations of JHA as a purely state-dominated (or government-dominated) process and highlights the involvement of non-state/non-governmental actors across different levels", while simultaneously it "struggles to account for the limits of European integration", including the "disconnect between high-level political agreement and lower-level stagnation on operational cooperation" (Niemann, 2016, p.145). According to Bossong and Rhinard, from a theoretical point of view, the field of internal security is dominated by neofunctionalist argumentation and constructivist logic (or what they group as "critical sociological theory") (Bossong and Rhinard, 2016, p.8). With the stagnation

of integration in the domain, scholars came to the understanding that neofunctionalism logic was not universally valid for the explanation of JHA evolution, and moved on instead to the analysis of post-structuralist and discursive dynamics shaping its policy-making.

Intergovernmentalist perspectives, still present in JHA studies, are "isolated" according to Bossong and Rhinard.[6] Some scholars, sceptical of integrationist and neofunctionalist approaches critique convergence theories, undertake realist and state-centric approaches to argue against the harmonisation of fields running close to national sovereignty, such as internal and external security (Wittendorp, 2016; Wiener, 1999). Others analyse specific policy instruments and institutional developments, in order to prove that convergence is not consistent. O'Brien (2016) observes several national approaches on tackling terrorism, collecting intelligence, as well as in the treatment of Muslim immigrants, and concludes his analysis by claiming that not only have EU CT (and adjacent) policies not converged, they lack "policy coherence and normative consensus". As EU CT is indeed not harmonised, national discretion is to be expected, especially in terms of the use of intelligence, and social policies and integration.

While some opinion-shapers in both scholarly and political discourse are quick to attribute instances of integration resistance to the failure of international liberal institutionalism, and the renewed focus on national sovereignty, this seems as too oversimplified an explanation to be universally valid. Firstly, policy and legislation harmonisation have kept a relatively steady pace over the past 70 years, including in periods of integration fatigue and Euroscepticism – something that is affirmed by the EU's legislative activities between 2016-2019 (passing pro-integrationist legislation in the most Eurosceptic era the Union has faced to date). Secondly, the aforementioned hypothesis does not account for the fact that some policies face less integration resistance and harmonise further than others. Similarly, policies with low level of convergence have also faced surges of pro-integrationist development, sometimes to a degree unforeseen by academic and political analysts alike. It is for these reasons that scholars have been analysing EU policies, attempting to formulate a theory or deduct a causal mechanism to help explain the logic of EU institutional and integrational dynamics and their effect on policy convergence or lack thereof.

Some authors have chosen the method of country analysis and comparison in order to process-trace integration and policy convergence between MS and investigate policy preferences in counter-terrorism. Den Boer and Wiegand (2016) engage in comprehensive theoretical analysis between Spain, France, the UK, Germany, Italy and

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[6] Ibid., p.11.

the Netherlands and the way they have adapted EU legislation into their domestic policy frameworks. They conclude that although EU policies and mechanisms have had a "converging influence" on national policy-making, it has in fact been limited, causing "bubbles of convergence" (Den Boer and Wiegand, 2016, p.207). Impacted by path dependence, CT has not reached "deep integration", rather Den Boer and Wiegand term it as "selective convergence" with further integration potential, depending on future impetus (ibid., p.209).

The study of the EU has transferred from an IR theoretical approach to a governance/comparative politics one (Rosamond, 2000, p.106-107; Hix, 1998, p.38). Public Policy approaches are not only a preferred approach to theoretical research in recent EU internal security literature, but can offer important insight and explanatory potential over multi-actor cooperation dynamics (ibid.). Rhinard (2010) considers public policy strands suitable for addressing research questions in EU JHA, such as the degree of *communautarization* of the domain, research on the impact of ideas on policy-making, of actors on institutional changes and of actors on the institutionalisation of policy. Governance perspectives are useful in understanding and analysing the complexity of internal security governance and the preference for specific governance networks, which surpasses the analytical value of functionalist integration accounts, which tend to assume straightforward harmonisation logic in EU policy-making (Bossong and Hegemann, 2018, p.26).

Governance Approaches

<u>EU Governance</u>

The turn to governance in EU studies, including in internal security policies stems from the two core assumptions of the governance approach: 1) the complex policy-making setup, involving multiple actors at different levels and 2) the changing nature of governing and increased involvement of public scrutiny, opinion-shapers and interest groups, thus making governance more accountable to the public, while also increasing concerns on efficiency and legitimacy of policies (Bossong and Lavenex, 2016, p.86). Globalisation and European integration, as well as the use of the Internet and social networks, are all societal factors that have contributed to this transformation. The reorientation of EU studies from integrationist debates to governance analyses has not only excluded the deadlocked deliberations on the triggers and directionality of integration, but also refocused the academic discussion towards governance gaps, such as decision-making efficiency or the necessity of cooperation between different actors (Ibid., p.91).

According to Bossong and Lavenex (Ibid., p.90), governance approaches can be widely subdivided according to two different ontological conceptions: a problem-solving perspective (driven by the requirements of the market and efficiency or productivity indicators) and a critical approach (concerned with socio-political norms and the perceptions driven by those; also focused on the bias and accountability of institutions). In the field of EU internal security, the later perspective is more commonly used in scholarly analysis.

Governance research in the field of JHA often focuses on the effects of negative integration (i.e. removal of hindrances to harmonisation, including mutual recognition, deregulation and soft governance measures). Trauner and Ripoll Servent (2015) demonstrate that while the Lisbon Treaty attempted to pursue more positive integration by empowering supranational actors, that ambition has largely remained unfulfilled, while Lavenex and Wagner (2007) expose the prioritised negative integration resulting in weakening domestic legal safeguards and human rights clauses. Whereas some authors remain optimistic about the integration impulse pursued with the treaty change (Bossong, 2008 and 2014; Monar 2014; Kaunert and Léonard, 2012; Schröder, 2011; Den Boer et al., 2008), most scholars agree that, as the Lisbon Treaty failed to formalise CT cooperation, the policy-making process remains largely transgovernmental, manifested further by the setup of coordination bodies and their lack of mandate – e.g. COSI, Europol, Frontex, Eurojust (Bures, 2012; Hillebrand, 2012).

Several studies have investigated elements of EU internal security and counter-terrorism governance, aiming for external validity to the directionality of integration of the entire domain. Cross (2007) looks at epistemic communities as a way to not only prove the beginning of internal security integration in Europe, but also to emphasise the role of the former in policy-making. She claims that epistemic communities "develop shared causal beliefs" and use their "knowledge- and expertise-driven collective identity to try to develop and legitimate policy alternatives", and to stimulate political will from the governance elite for proactive, problem-solving policy-making. Thus, the academic community can be considered an integral part of Europe's internal security epistemic community, and academic contributions to this field are potentially useful and constructive for the evolution of this policy field, especially considering its non-mature, fluid and easily influenced status. In a liberalist-constructivist analysis she determines that "even the strongest areas of intergovernmentalism have growing supranational aspects" and predicts that international and transnational actors will have increasing influence on policy-making. Even though this evaluation has proven somewhat true, it has lost some of its validity in an environment of growing internal and external insecurity, leading MS to inward-looking politics and opening the door to protectionist and

nationalistic attitudes. Bossong further uses epistemic communities too to explain their potential effect on EU-level legislation after the 9/11 attacks (Bossong, 2007 and 2013). The scientific- and expert-based input of epistemic communities is needed now more than ever in the field of EU internal security, where political questions of uncertainty are translated into strong populist statements, instead of policy.

In terms of studies of inter-agency cooperation in EU CT, one of the more sophisticated theoretical approaches is undertaken by Bossong (2013), in partial replication of the original application of public goods theory to international CT efforts executed by Enders and Sandler (2006, p.134-159). They stipulate that global CT is a pure public good, characterised by free-ride of weak actors on strong ones' actions, while "weakest link effects" incentivise cooperation (the contingency of countries with weaker security apparatuses being a more likely terrorist target), which is why international institutions or political hegemons usually become de facto watchdogs of mutual compliance to international rule-regimes (ibid.). Bossong, contrasting the former authors' conclusions, is optimistic for the EU as a potential avenue for international CT cooperation, however he subdivides such cooperation's likeliness according to three types of activity: weaker links, aggregate efforts and better shots (Bossong, 2013b, p.170). He considers that the EU has achieved a great deal in minimising weaker links, which in his typology include judicial harmonisation (or mutual recognition) and protection of critical infrastructure and soft targets – as he points out, the field is rich in institutionalisation potential, which reassures actors against free-riding and helps prevent weak links (Ibid., p.174-5). Better shot goods are defined by Bossong as the opposite to weakest links – they are efforts that can benefit all participants equally, regardless of the initiator or main operative – such are for example important arrests of key targets or mutually beneficial scientific research programmes (Ibid., p.174-5). Aggregate goods of EU CT, as pointed out by Bossong (Ibid., p.171-2) are commonly accumulated or used resources such as intelligence information, databases, threat assessments, collective response capabilities, including budgetary resources. Yet this is the area where Bossong sees the most difficulties in cooperation.

Bossong considers the EU a potentially effective actor in collective security: he points out that MS interactions are "highly frequent, institutionalised and information rich, which lowers the risk of cheating", while "asymmetric costs and benefits of member states […] have been effectively balanced over time" (Ibid., p.173; cf. Dorussen et al., 2009, p.791). The potential issues for coordinating structures stem from the number and diversity of members (making preference convergence close to impossible), technical difficulties caused by unanimity requirements and long-term decision-making and implementation procedures (increasing the costs of using the EU as a policy-making avenue), as well as

the nature of information gathering and sharing in the field (as the secrecy and high reward of information in CT may cause bilateral or non-member channels to be preferred over official EU ones) (Bossong, 2013b, p.174). Bossong considers that "the EU's lack of hard mechanisms for enforcing compliance of all member states did not lead to an outright cooperation failure", which he exemplifies by the introduction of the EAW (and so by default the common definition of terrorism and attempted harmonisation of sentencing for terrorist offences), the introduction of the EU CTC, etc. (ibid., p.176).

Mini-lateral governance and transgovernmentalism

An important hindrance of effective cooperation, as noted by multiple scholars, is the networked nature of information gathering and sharing, wherein actors have a myriad of channels to choose from in their coordination efforts, and the EU ones are usually the least preferred. What Bossong calls "mini-lateral cooperation" (ibid.) is termed by others as general policy network approach, explaining "clubbiness" of privileged networks (Den Boer et al. 2008), whereupon agents prefer small, elite confidential groupings for the sharing and coordination of resources over the formal, inflexible and rigid EU channels. Network analysis approaches are focused on the analysis of "dense, overlapping and multi-level governance networks" and "continuously shifting policy arrangements and coordination networks that do not respect the formal institutional and legal set-up of the European Union" (Bossong and Hegemann, 2018, p.24). Preference for various clusters of cooperation have been investigated by numerous scholars, including binational police coordination (Gruszczak, 2016), informal expert networks, confidential high-level closed forums (as in the case of CT coordination prior to the November 2017 Paris attacks), and many more. Network studies scholars are further concerned with inter-agency competition over jurisdiction, sensitive information, investigative breakthroughs, etc. (among national and EU bodies, including agencies such as Europol and Eurojust), gaps and overlaps in governance, inter-agency mistrust and confidentiality constraints, as well as issues of accountability, considering the clandestine nature of most network configurations. The Advocacy Coalition Framework is often used to explain the effect of similarly-minded groups of experts, incrementally effectuating policy changes in JHA (Bossong, 2007; Bossong and Rhinard, 2013; Ripoll Servent and Trauner, 2014), while research also demonstrates the instability of such networks, considered to be due to the unstable hegemony of dominant agents in JHA policy-making.

As noted further by Bures, bilateral, epistemic and transgovernmental networks are still the preferred avenues of communication and information exchange in CT (Bures, 2018, p.166, 164). The complex networked character of intelligence and security networks may favour more secure, informal channels of information exchange, however those

necessarily undermine official, institutional networks, which tend to have better accountability mechanisms, designed to track both ineffectiveness and abuse of power. This so-called "venue-shopping" is discussed by a number of authors (Bures, 2018, Den Boer, 2015, and others) as a problematic factor for the legitimisation of EU CT, both internally and externally, and has contributed to widespread concerns over data collection and individual privacy breaches, specifically from CT instruments. Furthermore, as Bossong and Hegemann note "[t]he EU should serve as a leading venue if not the only venue for the development of security governance", especially on issues such as counter-terrorism, which sways between internal and external security, between high politics and the judiciary (Bossong and Hegemann, 2018, p.25). The difficulty in establishing formal channels of communication and intelligence-sharing is also to a significant degree due to the secretive nature of the information at stake and the sources providing it. As asserted by Den Boer, Hillebrand and Nölke, CT data is mostly shared through informal (bilateral) channels of communication, which "tend to be preferred to formal bureaucratic structures because of their flexibility and directness", while the authors alert of their ability to "undermine the potential of formally established agencies, such as Europol and Eurojust, which work through national and centrally coordinated channels of information and intelligence" (Den Boer, Hillebrand and Nölke, 2008, p.101). The scholars further warn that particularly this secretive and informal nature of bilateral channels risks eroding the "democratic, legal and social legitimacy" and accountability of intelligence-sharing in Europe.

Transgovernmentalism, commonly understood as "the supposed partial independence of network participants from political leadership", is an approach in EU JHA policy-making, which "allows for international cooperation beyond formal political constraints", while on the other hand "raises critical questions of accountability" (Bossong and Hegemann, 2018, p.23; Guiraudon, 2000; Lavenex and Wagner, 2007). Pertinent to this notion, a common angle to the study of EU internal security governance is that of the so-called intensive transgovernmentalism, as coined by Wallace (2000, p.33), aiming to explain policy-making that relies on "interaction between the relevant national policy-makers, and with relatively little involvement by the EU institutions". Thus, this approach does not preclude integration, but rather focuses on transgovernmental transactions as a backbone of policy-making in those areas, whereupon that might or might not lead to general integration tendencies. The theoretical approach is reminiscent of complex interdependence, as it stands between the classical neofunctionalist and intergovernmentalist explanations: it argues that increased transactions occur in security policies, however formal integration and its resultant competence transfer to the supranational level have not occurred. Transactions occur through cross-border low-level policy networks and "accentuates the polycentric and increasingly complex nature"

of this domain's policy-making, while avoiding the traditional contrast between supranational and intergovernmental governance (Bossong and Lavenex, 2016, p. 87). Instead it focuses on "the role of horizontal coordination among national actors based on the mutual recognition of national rules and laws, in contrast to vertical integration based on legal harmonization and the replacement of domestic through common supranational policies" (Ibid., p.92). This approach has characterised cooperation and preconditioned integration in the field of the EU's internal security ever since its genesis, as those idiosyncratic "operational and pragmatic modes of cooperation, which often take the form of non-binding agreements and recommendations […] can also take on more direct tasks and responsibilities" that would be more difficult to operationalise through EU governance (ibid.). Thus integration (where there is such) is non-formal, flexible and organised according to geographic functional lines.

A novel approach stemming from the intensive transgovernmentalism tradition explores the roles of transgovernmental networks (TGNs) in EU policy-making. TGNs are the government-affiliated equivalent of epistemic communities – an informal transnational grouping of government experts, centred around functional tasks. As TGNs offer "flexibility, speed and low sovereignty costs" they have become a common avenue to international cooperation on sensitive topics (Eilstrup-Sangiovanni, 2007, p.1). Similarly to epistemic communities, they arise out of policy uncertainty and issue complexity as well as due to "functional interdependence" and "functional equivalency" (i.e. the approximation of governance systems across borders due to interdependence and resultant cooperation) (Ibid., p.7, 20). Nevertheless, as Eilstrup-Sangiovanni establishes, TGNs hide risks of foreshadowing the traditional channels of cooperation, as they provide no guarantee of implementation and accountability, while the voluntary membership precludes horizontal integration and can be potentially divisive (Ibid., p.3-7).

While pragmatic, this type of integration makes for patchy governance where roles are unclear and actors avoid accountability by attributing it to systemic flaws (Den Boer, Hillebrand and Nölke, 2008; Walsh, 2006; Eilstrup-Sangiovanni, 2007). The lack of binding commitments and symmetric information-sharing and data exchange create gaps that usually fail under the test of exogenous shocks. Such was the case with the migrant crisis and the increase of terrorist attacks in Europe – both began in 2015 and faced underdeveloped governance structures and instruments, while the easy fallacy of assuming a causal link between the two became a commonplace argument for opinion-shapers. This is where transgovernmentalism arguments become insufficient and more classical integration theories become relevant again. The bottom-up approach contributes to even further complexity of actors involved (institutional, political and private

ones) and precludes common or even symmetric strategizing and coordination of national resources dedicated to particular policy instruments. It further does not contribute to interoperability and opens up questions of effectiveness and legitimacy of measures as many of those are agreed upon clandestinely. As Bossong and Lavenex sum it up "security governance provides an exploratory tool for highlighting an increasing diversification of actors and objectives for security cooperation" (Bossong and Lavenex, 2016, p.99).

Governance approaches offer a soberer and more pragmatic, non-deterministic approach to EU studies, focusing on increase in transnational transactions and their confidence-building capacity between relevant communities. While all these theories focus on multi-agency in European policy-making and the resultant multi-level governance, their validity stems from the lack of grand theory claims, thus contrasting to the intergovernmentalist and neofunctionalist approaches. Nevertheless, some of their inherent premises such as technocratic integration through increased international transactions on lower level decision-making, provoked by agency interdependence, are in fact based on the premises of the former two. Finally, while the governance perspective is theoretically appropriate for the analysis of EU internal security, including CT, the main difficulty with such an approach is its necessary reliance on empirical material, which in this policy area is difficult to obtain, especially in high volumes and with indisputable reliability.

In-depth analysis of information-sharing: intelligence and law enforcement cooperation

Multiple authors have delved deeper into the dynamics and idiosyncrasies underpinning intelligence and police cooperation, as well as information-sharing in the EU. Such sectoral studies demand a deep understanding of the domain, which most authors obtained through expert interviews reaching smilar empirical findings, albeit wrapping those in diverse theoretical packages, focusing on different implications to the practice of CT in the EU. One of the overlapping findings in this sub-field of academic analysis is the low level of intelligence-sharing on EU and multilateral levels, despite the otherwise ample amount of exchange within the EU (Gruszczak, 2016; Müller-Wille, 2004; Svendsen, 2011; Fägersten, 2010; Walsh, 2006; Lander, 2004, etc.). The majority of information-sharing occurs at bilateral or clandestine levels, often ad hoc groupings, functionally hypothesised differently among authors – Gruszczak's (2016) functionalist

account conceptualises them as "hubs of intelligence" according to intelligence functions, while Svendsen (2011) describes a process of "regionalisation of intelligence".

Gruszczak (2016) stipulates that the EU's intelligence is organised in the shape of networked hubs, according to areas of competence. He believes that CT institutional design provides an appropriate structure for the function that EU bodies have been mandated to perform – they enable intelligence-sharing and independent assessments, but only to a degree, because "the patterns of isomorphism enforced by state actors tend to weaken transnational ties, limit network agility and reduce information flows as well as intelligence output" (Gruszczak, 2016, p.278). Essentially, the EU has put the strategic structures necessary in place, in accordance with its mandate (structural constraints in the design come from mandate and restrictions to the policy's integration); thus the structures are perfectly capable to add value, if MS could be convinced of their utility and begin using them accordingly, allowing them to add value.

Svendsen (2011) notes that "overall in Europe there is the development of an ever-more complex web consisting of a plethora of variously overlapping international intelligence liaison arrangements", however, in their complementarity, these channels can be considered to successfully provide an exhaustive function of intelligence coverage in Europe (Svendsen, 2011, p.186). While "the value of sustained cooperative intelligence efforts in the EU context is starkly obvious" (ibid., p.199) and "the whole is greater than the sum of its parts, and generally the overall 'system' that does currently exist appears to work substantially on that basis" (ibid., p.202, substantiated also by other authors, e.g. Fägersten, 2015), still certain levels of distrust prevent the EU structures in this domain from progressing.

In another article Gruszczak notes that "[t]he legal framework for cooperation of police and law enforcement services within the EU does not contain strong incentives for direct operational cooperation" and that "provisions on intelligence cooperation are fairly modest, but leave no doubt as to who is the major player in this field, i.e. the member states" (Gruszczak, 2013, p.32). He further finds that in one of the domains where the EU has the potential to make an impact – strategic intelligence – "the Union, through its agencies, has sought to provide as much support as possible, offering "intelligence precursors" for national law enforcement services involved, especially in cross-border, transnational operations against terrorism and organised crime", and yet "[t]he centre of gravity in the area of intelligence cooperation among EU member states has been concentrated rather on direct collaboration among the national services, quite often outside the framework of the EU" (Ibid., p.33).

Scholars, moreover, provide different (yet not mutually exclusive) explanations of the contributing factors therein. One of the obvious factors, is the concern over the confidentiality of intelligence findings and investigative breakthroughs – firstly, MS risk exposing and endangering their HUMINT resources,[7] and secondly, good intelligence data can be a powerful leverage in political negotisations and horse-trading. Thus MS would only share wholeheartedly when and if they also share the threat, as well as the otherness of the enemy. As a whole, the intelligence domain is dominated by national reflexes and sovereignty concerns - national interests and sensitivities rarely overlap, while MS have different experiences with terrorism, and the asymmetrical threat perception informs the asymmetrical national reactions and approaches (Occhipinti, 2013). Accountability over the provision of national security also lies with individual MS and their services (as per Art.71 on national prerogative over internal security), and being deemed responsible, they are unwilling to transfer responsibility to EU agencies like Europol, thus questioning its added value (Müller-Wille, 2008).

Law enforcement and intelligence agencies also maintain national loyalties, as per the nature of their work, which helps explain their secrecy reflex towards other nations or even agencies. In fact, Fägersten (2010), established the existence of "bureaucratic resistance" on lower levels of governance in such entities. He found that repeated (and deemed by him as genuine) calls from top levels of governance for increased cooperation and information-sharing met low compliance and resistance from agencies, due to organisational cultures and persisting internal loyalties that failed to shift (Fägersten, 2010). Fägersten demonstrated the validity of this hypothesis by examining the failure of Europol and the Council Decision obliging information-sharing to "deliver the cooperative synergy and intelligence fusion that member states had called for" (Ibid., p.510). Thus, he established that the "development in the field of intelligence cooperation is not exclusively the reflection of government preferences" (ibid., p.500).

Still, Fägersten (2016) qualifies the evolution of European intelligence cooperation since 2001 as "rather substantial" and notes that "the EU benefits from intelligence cooperation in support of internal security even if such cooperation is not attached to the Union nor focuses on supporting EU policy per se" (ibid., p.2). He further stipulates that the challenges of European intelligence cooperation can be grouped in four themes[8]:

➢ *Diverging preferences* – the economies of scale approach to intelligence is only applied when agencies perceive that this will further their own interests (or when these interests coincide with those of a partner agency). Furthermore, certain

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[7] Human intelligence, such as spies or undercover agents.
[8] Echoed to a large extent by Müller-Wille, 2004, p.15-19.

dynamics counterbalance these considerations, such as the concerns on exposing sources and jeopardising ongoing operations, especially those involving HUMINT. Another aspect of that logic that encourages secrecy is the "zero-sum logic prevailing in some fields of intelligence whereby certain information is more valuable if it is known by only one actor" (Ibid.).[9]

➢ *Power asymmetries* – the divergent experience and resources that MS have at their disposal in terms of intelligence creates asymmetric hierarchical relations, while it might also encourage certain bilateral relations in place of multilateral ones (something that is very evident in counter-terrorism).

➢ *Bureaucratic interests* – one of the peculiarities of the intelligence sector is that, while it is in theory part of the public sector accountable to the national government, it de facto operates rather independently, emancipated from the government's direct control. This causes the sector to carry a different set of loyalties: whereas it is still responsible for furthering or protecting the government's interests, it develops idiosyncratic institutional dynamics and internal loyalties that may eventually trump external loyalties to the national leadership.

➢ *Missing infrastructures* - except for technical infrastructures, such as databases, that may enable or facilitate sharing, "intelligence cooperation is facilitated by what can be called cooperative infrastructures. At a personal and organisational level, this means having a sufficient level of trust to allow actors to engage in cooperation" (ibid., p.3). This is furthermore, something that the EU can have a more significant role in – common trainings, exercises, seminars, and other common work experiences can all contribute to an enhanced trust, as well as understanding, between counterparts. In addition,

> "[h]aving rules and regulations in support of cooperation helps, too, even if this is neither necessary nor sufficient: rules meant to restrict information exchange tend to be breached, and rules meant to enforce cooperation tend to be ignored" (ibid.).

Nevertheless, the EU was not very successful at providing either of those before 2016, often not for the lack of trying. In another paper, Fägersten (2015, p.11) notes that:

> "trust and habits take time to develop but are crucial for effective intelligence cooperation. In contrast to many other policy fields, practice of cooperation usually precedes institutionalisation and formal

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[9] This thesis will demonstrate in further chapters that this inhibiting dynamic can manifest in intelligence agents' practices in subconscious manners too – due to the professional culture dictating that intelligence is better kept to oneself, even in situations where information-sharing offers clear (to the observer) added value, it often does not even occur to counterparts to engage in cooperation or sharing practices, as that is not usual modus operandi for them.

arrangements.[…] Building trust and habits is likely to be more effective over time than forcing cooperation by legal or highly formalized measures."

Another major issue affecting the lack of cooperation is the mistrust and lack of confidence between partners, both cross-border and cross-agency (Walsh 2006; Müller-Wille, 2004, p.15-19; Lander, 2004, Fägersten, 2015; Bures, 2011). Competition, turf wars and rivalry inform the mistrust between agencies horizontally, while overlapping and unclear mandates are usually the culprits on EU level, combined with pressure to deliver and competition for financial resources. Contention over sources and investigative leads, as well as dislike and inter-sector resentment are among the leading inter-agency issues, both within and across states. Animosity and disdain between police and intelligence in particular are among the more important sectoral issues in operational CT work and is something that will be discussed in the empirical chapters of this thesis (Müller-Wille, 2004, p.17-19; Bures, 2011, p.72).

Some scholars find that the institutional design of cooperative arrangements is important for trust-building and to mitigate divergent interests, as well as in overcoming cultural and strategic differences between MS, while it could help alleviate state sovereignty and information sensitivity issues too. It has also been found to be lacking (or at least insufficient) in EU institutional arrangements. Fägersten (2010; 2015, p.11) finds that "the overall development of the EU sets clear barriers for ambitious integration projects, particularly in contested areas such as intelligence", meaning that "EU intelligence will have to continue to function as a hybrid system with the bulk of classified information originating from member states". For him "the EU lacks a strong policy planning and strategic planning function – a function that usually works as a transmission between intelligence input and policy output" (Fägersten, 2015, p.10). This thesis will aim to show that this was partially remedied in the aftermath of the Paris–Brussels attacks. Fägersten (2010, p.515-6) finds that "well-functioning pre-existing arrangements outside the EU made the practitioners reluctant to move business to Brussels", and even when "the repeated calls for cooperation[…] were genuine", "policy makers clearly did not get what they asked for". His research demonstrates that

> "factors beyond governments' interests may have explanatory value also in the field of international intelligence cooperation. Unruly and unwilling bureaucrats may, for example, distort the link between state preferences and cooperative outcomes in the intelligence field. The result may very well be that states will in fact not get what they want." (Ibid., p.501)

Nevertheless, he also believes that "well-crafted arrangements have the possibility to mitigate bureaucratic resistance and thus enable cooperation even during unfavourable conditions", which is where the EU has a role to play (Ibid., p.519). Walsh (2006) further emphasises the issue of confidence-building between EU-mandated agencies and channels of communication, arguing that the absence of trust is the main reason for the lack of effective intelligence-sharing on EU level. He argues that (at the time of writing) "EU institutions simply are not designed to overcome this mistrust" (Walsh, 2006, p.639). He too proposes a notion on the possible effect of institutionalised arrangements on collaborative practices in information-sharing:

> "A great deal of research has shown that international institutions and agreements can help states overcome mistrust and engage in mutually beneficial cooperation.[…] Institutions can encourage co-operation even when the degree of trust between the states involved is not very high. They do so through two types of mechanisms. First, institutions can increase the costs of reneging on an agreement. For example, institutions often carefully define what actions constitute compliance and defection and lay out actions that states harmed by reneging can take in retaliation.[…] Second, institutions can also foster trust by creating specific allowances for states to monitor each other's compliance with agreements.[…] Applied to the issue of intelligence-sharing, institutions should encourage freer sharing by allowing receiving states to closely and directly analyse the intelligence they receive from senders." (Ibid., p.630)

For Walsh, EU MS have two options to choose from if they want to improve their intelligence exchange (and according to him they have "good reasons to want to engage in intelligence-sharing") (Ibid., p.638). One option, Walsh stipulates, would be "to strengthen significantly and centralize the EU's intelligence-sharing institutions", to monitor and sanction MS' compliance, which would likely require an overarching EU-led institutional authority (ibid., p.639). As Walsh predicts that most likely such a scenario is unrealistic, he suggests that the other option EU MS are left with is "to acknowledge the problem of mistrust and to drop the expectation that full sharing between all Member States is a realistic goal in the near future". For him that means focusing on "more decentralized sharing between sub-sets of Member States", grouped around MS with similar interests, who share high trust and might over time lead the way for increased EU-wide sharing by example and will lead to more institutionalisation practices. Walsh believes MS could start enhanced cooperation or create regional clusters with the intention of spillover, as boosting of EU structures open up more expectation that they can deliver with current level of trust and confidence between partners.

While Walsh is right about EU MS having to make tough choices if they want to improve their intelligence exchange and better anticipate terrorist activity on the continent (as well

as about adjusting expectations on the role the EU can play in that domain), to suggest that, safe for a centralised EU agency, the only other option for MS is to pursue a multi-speed Europe is a false equivalency. The multi-speed Europe approach has arguably contributed to the fragmented nature of information-sharing in the EU. National authorities following 20th century approaches of secrecy and mistrust, of only working bilaterally with old favourites and withholding information from perceived adversaries within the EU, are only a few of the dynamics symptomatic of the multi-speed Europe approach that led to the governance gaps, complicit in the development on certain jihadist terrorist groupings in the EU in the 2010s. This thesis intends to expose the problematic nature of these dynamics and will attempt to demonstrate that policy-makers and practitioners alike have found the errors in their ways through the critical juncture of the Paris-Brussels attacks, which has contributed to a paradigm shift in the perception of and approach to CT in the EU.

Müller-Wille (2008, p.70) supports the assertion that centralising intelligence through the EU would not yield positive results for cooperation practices:

> "The worst thing that could be done would be to establish a new European intelligence agency to support anti-terrorism operations. This would mean that the EU is made responsible for things it cannot do better than the Member States or, even worse, that it cannot do at all. Such an agency could not produce the required intelligence, thus failing to support decision-makers in counter- terrorism, but also make the EU look bad. The end result would simply be a transfer of blame for failures from the national to the EU level, not a solution to the terrorist threat."

Müller-Wille concludes that, by 2008, international terrorism seemed to have had little effect on EU intelligence cooperation, because "[w]hile the EU has responsibilities for some strategic decision-making, it does not play any significant operational or tactical role in the fight against terrorism" (ibid., p.69). Thus, despite the quantitative and qualitative increase in cross-border and cross-agency intelligence cooperation, little to no credit therein can be attributed to the EU. MS remain the masters of CT work and "most of the increased collaboration takes place outside the EU framework despite its established structures for intelligence co-operation", which seems to demonstrate the lack of utility of said framework in this regard (Ibid., p.49). Müller-Wille makes a functionalist argument as he "seeks to explain co-operation from an efficiency perspective, suggesting that co-operation will take place and thrive when customers and/or the intelligence agencies perceive that it improves the resulting intelligence product" and, even through an arguably unbiased utility perspective, finds that intelligence actors likely find no added value in EU-provided channels (Ibid., p.50). Utilising the most glaring example of Europol, he makes the argument that:

"Europol's centralized work does not replace, but merely complements a national service's own analysis[…] The simple reason is that no responsibilities have been transferred to Europol; it is there to support national services. Consequently, national services will be judged against, and held accountable for, their success in the fight against international terrorism. No national service can argue that it failed to foil a terrorist plot because Europol did not do its job accurately. Neither the government nor the public would accept such an explanation. Therefore, national services maintain the task of producing and providing national law enforcement authorities with accurate and complete intelligence. Hence, they cannot and will not rely on Europol's contribution." (Ibid., p.57)

This institutional design flaw thus results in the identity crisis of Europol and the "chicken-egg" dilemma of how to improve its added value. Europol was intended as a hub for information collection and sharing, however MS refused to confer such responsibilities onto it on several occasions, including in the aftermath of the 9/11 attacks, and of the 2004 Madrid bombings (Fägersten, 2010, p.506-507). In fact, at a time of a heightened threat perception and a public call for increased cooperation, MS sent out an unambiguous signal that thy were not interested in an increased role for Europol: they set up instead the Counter-Terrorism Group (CTG) as a sub-grouping of the intergovernmental intelligence cooperation channel of Club de Berne, where the majority of intelligence exchange in Europe occurs (ibid.). Another element of the problem is that "national agencies are both the main providers of intelligence to Europol and its main customers", meaning that the agency is seen by the intelligence sector as duplicating their efforts and giving them no incentives to share data (ibid.). Thus, "Europol represents but an optional bonus, of which the member states can avail themselves at free will", while more often than not "national agencies perceive information-sharing through Europol as an extra burden" (Müller-Wille, 2004, p.26; Bures, 2011, p.85).

Despite the fact that "Europol also has some potential […] to help harmonize the national policies of EU Member States on territorial security", cooperation with the agency remains voluntary and highly heterogeneous across MS, which leads to the body having a scattered overview of the threat at best (Bures, 2011, p.67). With MS reluctant to confer onto it a more central role in law enforcement and intelligence work, there is "no obvious solution to this dilemma" and "a decentralized approach to intelligence-sharing and analysis in support of counter-terrorist operations is likely to remain the norm" (Müller-Wille, 2008, p.58). This dynamic has created what was dubbed by Bures (2013) as the chicken-egg dilemma of Europol – the circular logic of not granting enough mandate, capability and responsibility to the agency, believing that it does not add value to national efforts, and respectively Europol not being able to add value due to the lack of an

independent capacity for analysis and data collection. Still, academics continue to believe that Europol has the potential to deliver added value to national CT efforts and remain puzzled by Europol's identity crisis:

> "Tasked to produce own analysis, Europol is more than an intelligence broker. By compiling and analysing the information from several states, Europol is expected to detect patterns, spot linkages between different criminal activities and draw conclusions that can be decisive in the fight against crime. In this sense, the output from Europol is hoped to represent more than the sum of the input." (Müller-Wille, 2004, p.26)

Another flaw of the EU CT apparatus (which has recently been mitigated) was that databases were non-interoperable, and non cross-border accessible (Müller-Wille, 2008). Issues with legislation implementation, as well as accountability and oversight concerns (especially with access and storing of data) for intelligence services slows down harmonisation and limits the scope of institutionalisation, thus making information exchange inflexible and asymmetrical. Instead of piling new (central) institutions on top of the institutional bricolage that already is EU CT policy, Müller-Wille propones the improvement and extension of mandate of the EU's existing agencies and regulatory framework and further enhancing information systems allowing for flexible sharing.

> "What can be and is being done at the European level, most notably through Europol, is to offer a platform that facilitates the exchange of information among national agencies. Rather than duplicating national assessment capabilities within a European agency, the EU can offer national experts the facilities and infrastructure that make co-operation easier and more efficient, thus offering better opportunities for co-operation and exchange of information than currently available through the established intelligence networks outside the EU structure." (Ibid., p.70)

Müller-Wille futher finds that an approach through regulation is "sensible and pragmatic", as in the adoption of Council Decision 2005/671/JHA, which formally obliged intelligence agencies to share relevant information with each other (ibid.). While such measures are likely to generate "meagre" results, as the services cannot be expected to share all intelligence across the board, they are still to be preferred to centralising, integrationist ones, specifically when considering practitioners' practices. This feeds into Fägersten's findings on bureaucratic resistance too – if practitioners find that measures are imposed top-down, especially ones incomprehensible or counter-intuitive to them, in terms of national security, they are less likely to comply. By the same token, arrangements set up from the bottom-up, such as Club de Berne and its subsidiary the CTG, have seen successful collaboration practices, even if through an *à la carte* approach.

Lander (2004) offers an insider's perspective into intelligence cooperation that supports these assumptions. He notes that "[c]ollaboration is not an end in itself", rather "[i]t is utility that drives collaboration" (Lander, 2004, p.484). Lander explains that intelligence agencies *do* exchange information when they deem necessary, and only partially and ad hoc against common adversaries. Operational collaboration would then only occur "where there is a pressing shared need that goes beyond the capacity or capability of one country to address" (Ibid., p.492). As intelligence agencies need to be "self-centered" in order to protect their national interests, Lander finds that "multilateral sharing is counter-cultural" (ibid.). Instead of regulating and institutionalising intelligence cooperation top-down, he supports the notion that the bottom-up approach of Club de Berne and CTG has worked well in the past and is likely to remain the norm in the future:

> "The value of these institutional arrangements lies, not critically in the information exchanged at meetings, though that has been valuable on some practical issues, but in the mutual confidence and understanding and the personal friendships that they bring. Without that institutional history much of the cross-border operational collaboration in Europe of the last twenty years would have been inconceivable, given the differences of approach, powers and competence of the various services". (Ibid., p.489)

Still Lander conditionally agrees that "many services can in principle see the possibility that routine sharing of building-block intelligence might add up to more than the sum of the parts" and agrees that it is "an idea whose time has probably come" (Ibid., p.492). However, factors such as the difference in data collection philosophies, the competition over (in)action between parties who shared intelligence, divergence and (mis)trust in each other's legislatures and legislation, as well as allies (both common and not) are all issues hampering a harmonized approach to intelligence sharing (Ibid., p.493). Nevertheless, Lander lays out some of the factors of a successful intelligence cooperative relationship, taking the UK and the US as a template. For him the crucial ingredients are a strong pre-existent political relationship, trust in each other's competence on intelligence collection and analysis, equally strong focus on intelligence within governance, and finally "long-standing institutional arrangements and the habits that flow from them" (ibid., p.484-8). The latter is arguably where the EU holds the strongest potential for impact in this domain.

Most authors agree that information exchange and police cooperation through the EU (including via Europol) can deliver added value to national efforts. Occhipinti (2013, p.155) notes that, instead of moving towards supranationalisation, the EU and its MS have been "largely focused on the construction of a new institutional infrastructure of

crime fighting and CT at the EU level, which is intended to facilitate collaboration, coordination and the exchange of information among the Member States' respective law enforcement and internal security authorities." He finds that this framework has been functional and is gradually being built, however the largest issue rightfully predicted by him is information-sharing:

> "Yet, most difficult of all will be the fashioning a new culture of information-sharing in the EU. Beyond the creation of new instruments, the notion that data and intelligence on transnational crime and terrorism ought to be shared internationally must be further developed among the law enforcement and security agencies of the EU if it is to achieve its stated goals on information-sharing." (Ibid., p.180)

Heinrich (2006) contributes his practitioners' perspective to CT through an editorial, proponing the centralization of EU intelligence, where he foresees budgets and even electronic and technical intelligence collection could be collectively delegated among various EU MS (Heinrich, 2006). Still, while he believes it is "obvious that pooling investigative resources in a pan-European effort to combat terrorism would yield better results", he acknowledges that

> "[p]erhaps it will take a new a threat, or a terrorist outrage that endangers Europeans' shared and common interests, to change the situation. That kind of pan-European attack is not yet on the horizon, but detecting threats before they become visible is, after all, the whole point of intelligence work."

Europe would come to learn that lesson in 2015. A 2018 editorial by the Wall Street Journal found that "Europe can no longer be described as soft on terrorism" (Hegghammer, 2018). EU MS were noted to have invested significant funds into CT, enhanced intelligence-sharing and "initiated a qualitative overhaul involving radical new measures that had previously been considered politically off-limits". While this new approach was described as "uneven" across MS, the editorial also pointed out that it was successful, due to the significant decrease in attacks and casualties by 2018 – "not because plotting has decreased, but because authorities are foiling more attempts" (Ibid.). These changes in the practice of CT in the EU, as well as the increasingly common approach to terrorism among MS, will be discussed in the empirical chapers of this thesis.

Conclusion

Of the many studies examining EU counter-terrorism, some have concentrated on empirical material, aiming to explain the inter-institutional dynamics of the policy, the roles of individual (networks of) actors as policy entrepreneurs, the political dynamics behind certain policy developments and the lack of others, and more generally analysing the overall role of the EU as a CT actor. A large amount of studies has used and developed theoretical frameworks to provide explanations for policy dynamics, where noteworthy is the shift from integrationist theories to governance and public policy ones, which ontologically approach the EU in its current state of integration, focusing on meso-levels of policy analysis, instead of attempting to answer systemic-level integration questions through grand theory approaches. Of these many studies, some have concentrated on empirical material, aiming to explain the inter-institutional dynamics of the policy, the roles of individual (networks of) actors as policy entrepreneurs, the political dynamics behind certain policy developments and the lack of others, and more generally analysing the overall role of the EU as a CT actor.

Regardless of the angle of analysis, the empirical issues in EU CT development outlined across the academic discipline largely coincide and can be summed up under eleven broad inferences. Firstly, EU CT *lacks a policy mandate:* in a domain so close to national sovereignty and political sensitivities, MS are reluctant to transfer competences to the EU. As MS still generally guide the process and draw the boundaries to integration, CT in the EU is characterised by a governance gap, induced by the EU's *lack of operational capability*. Even though institutions and legal instruments are in place, they almost exclusively operate through MS' voluntary (non-binding) contributions. The latter are, in turn, heterogeneous, due to MS' *different threat perceptions*, *incongruous national interests and distrust.* These hinder both formal and informal coordination on different levels of governance, specifically in cross-border and inter-agency operational work, as well as in the transfer of competence across various levels of policy. Due to the lack of operational and legal mandate for the EU in counter-terrorism, legislative acts usually take the form of Directives, thus leaving a *large discretion gap for national authorities*, sometimes resulting in uneven, laggard or problematic implementation. With the multiple levels of governance and a *complicated institutional-hierarchical structure, accountability is often ambiguous*, and is therefore strategically or discursively transferred between various actors (and levels of governance), thus leaving an accountability gap, as well as overlap. The policy field is subject of inter-agency competition and mistrust.

This malleability of accountability is then strategically used by actors to shape EU CT's development. *A secretive and strategically political field***,** EU CT is often the subject of

conflict of national interests and divergence of strategic and intelligence cultures. Intelligence communities operate in a clandestine matter to protect those interests as well as source anonymity and data confidentiality. The domain's evolution is exclusively *driven by external shocks*, events, crises and terrorist attacks that enable a common threat perception. Its institutionalisation is unlikely to advance in the absence of a symmetrical, horizontal, commonly perceived terrorist threat. In the absence of such shared perception, CT development tends to experience path dependence and *lack of political will* in decision-making and advancements in operational cooperation. Political will in the field only derives from palpable terrorist threat. In the absence of such, policy inertia settles in. Logically, in the circumstances of high terrorist threat, EU policy-makers take advantage of the status quo to pass new (or recycled old) measures.

Finally, MS encounter further issues and cultural idiosyncrasies on national level that complicate cooperation. While *some MS' security services and intelligence agencies are inexperienced with terrorism, others are small-scale, ineffective, underfunded and understaffed*. This in turn fuels their reluctance to share information and cooperate proactively, due to lack of resources. This follows from the fact that international (particularly jihadist) terrorism is *a relatively new issue for the EU*. The threat posed by the IS' terrorist campaign was of unforeseen proportions, including elements of domestic for the EU terrorist activity that were underestimated until then. The mechanisms in place at that point became ineffective and insufficient to tackle the scale of the problem. The rapid increase in threat perception led to *a reactive policy with no long-term strategy,* including no adequate mechanism for tackling root causes of radicalisation and infrastructure protection and no long-term perspectives on countering terrorism.

While these eleven idiosyncrasies of EU CT are confirmed and expanded by this thesis, there are two factors for the policy's institutionalisation, the causal power of which is not sufficiently discussed in academic literature. The first one is the *perception of terrorism as an EU issue* (both on political and on practitioner level). While this causal factor is somewhat related to a common EU threat perception, this study will empirically demonstrate that they are still distinct: during the Madrid-London critical juncture, the high threat perception failed to translate into a perception of terrorism as an EU issue, thus failing to profoundly institutionalise EU CT. The second causal factor is the *perception of EU added value in CT operational work* – an institutionalisation brake before the Paris-Brussels critical juncture. As will be demonstrated in this study, the latter was the decisive difference brought about by this juncture: as MS began using EU CT capabilities in operational work, their added value was realised and further expanded by new mandates and capacities.

While these two factors may exist in previous EU CT literature, their causal potential has not been discussed thus far, because, the first time that their causal effect on EU CT institutionalisation can be observed is in the aftermath of the Paris-Brussels attacks of 2015-2016. Hence, this study will contribute to the academic literature on EU CT in three ways: 1) through the postulation of two novel causal factors to its institutionalisation; 2) through the discussion of new empirical material via the case study of the Paris-Brussels attacks' aftermath; and 3) through a novel theoretical approach in the examination of EU CT institutionalisation. The latter will be examined in the following chapter, which will deliberate the theoretical and methodological choices made for this research project and how their combination is beneficial for the discussion of this study's research questions.

Chapter II. Institutionalist analysis of EU CT governance: the benefits of qualitative and constructivist approaches for historical explanations of institutionalisation

The main theoretical approach chosen for this thesis is historical institutionalism (HI), which will be supplemented by epistemological and methodological statements borrowed from constructivist institutionalism (CI), with the aim to conceptualise and explain the driving factors of institutional change in EU counter-terrorism. The first part of this chapter explains these theoretical choices and justify the mutual complementarity of the two branches in building a rigorous theoretical framework capable to explain the institutional changes in the policy under investigation.

The second part of this chapter discusses the methodological choices made for this thesis, describing the various methods applied in the data collection and analysis phases of this research project, and arguing for their complementarity. It also discusses the methodological benefits of comparative case studies, expert interviews, and the use of NVivo software for qualitative research, and will justify why these methods were selected to address the empirical questions the thesis puts forward.

Theoretical framework: the choice of new institutionalism

New institutionalism emerged in a post-behaviouralist era of political science research marking a return to the acknowledgement of structural effects on political outcomes. It originated in opposition to behaviouralism's epistemological claims, exclusively privileging social actors' agency, but also to structural functionalism, claiming that institutions mainly exist to fulfil a purpose or function (Thelen and Conran, 2016, p.2). "New" institutionalism is further epistemologically different from older institutional approaches, which treated institutions as material constructs, while the newer movement defines institutions more broadly and sociologically. March and Olsen (1984, p.738) pioneered an overarching explanation of neo-institutionalist approaches - while heterogeneous, they shared the ontological claim that institutions matter, thus marking the "return of institutions" to political science.

New institutionalism favours a structuralist epistemology, claiming that institutions have autonomous causal effects over political outcomes, by restricting agents' free will and framing political events (among others Fioretos et al. 2016, p.4). For March and Olsen (1984, p.739), the "claim of autonomy is necessary to establish that political institutions

are more than simple mirrors of social forces". Institutions thus "ordered political life through a variety of mechanisms that constituted actors and constrained their behaviour", including through routinized socialisation processes that shape shared cognitive frameworks or facilitate the formation of common preferences (Fioretos et al. 2016, p.4). Furthermore, institutions have an intrinsic perseverance: "structures persist, while individuals come and go" (Peters, 2000, p.5). Institutionalists believe that "structures (institutions) create greater regularity of human behavior than would otherwise exist and therefore enhance the explanatory and predictive capacity of the social sciences" (ibid.). Through empirical material they attempt to explore how "processes internal to political institutions, although possibly triggered by external events, affect the flow of history" (March and Olsen, 1984, p.739). What differs across neo-institutionalist variations then is the source and process of preference formation and the flexibility or "malleability" of institutions, thus determining the difficulty of change (Peters, 2000, p.6).

The choice of historical institutionalism (HI)

Historical institutionalism (HI) can be traced back to the works of Skocpol (1979), Hall (1986), and Katzenstein (1978), who argued that the organisation of power (e.g. the relations between state, capital and labour), impact policy choices and explains states' choice of certain strategies over others, and aimed to demonstrate how states might be limited in making those choices. Later works by Collier and Collier (1991), Ikenberry (1994) and further research by Hall (1993, 1996) helped cement this theoretical tradition. HI is rooted in the assumption that "historically constructed institutions (i.e. public policies and formal political institutions) create major constraints and opportunities that affect the behaviour of the actors involved in the policy-making process" (Béland, 2009, p.702). The theoretical tradition focuses on investigating "the impact of long-term institutional legacies on policy-making", while "taking into account the impact of previously enacted measures on policy development" (ibid.). Fioretos et al. (2016, p.2), define HI as "a research tradition that examines how temporal processes and events influence the origin and transformation of institutions that govern political and economic relations."

The seminal classification work on neo-institutionalism was a 1996 Hall and Taylor paper, which finds four distinctive features of HI. Firstly, HI scholars draw inspiration from structural functionalists on the organization of society as "an overall system of interacting parts" (ibid, p.6). Despite being considered structuralist, they aim to reconcile structure and agency and their approach does not necessarily undermine the role of individuals or social actors in political outcomes (Hay and Wincott, 1998; Farrell and Finnemore, 2016). Rather they bring attention to the way in which these actors' preferences may be shaped

or pre-framed by institutional settings, which inform norms and perceptions, or "cognitive frames" (Fioretos et al., 2016, p.7-8). Secondly, HI focuses on the power distribution effects of institutions – some actors receive asymmetrically designated powers at the expense of others, who lose leverage and decision-making power. Thirdly, institutions are "relatively persistent" and bound to path-dependent, historically-contextualised development. They condition "historical development along a set of paths", through interrupted "periods of continuity punctuated by 'critical junctures'", which sometimes produce unforeseen consequences (Ibid., p.9). Thus, the issue HI scholars face is to explain how institutions shape these developmental paths and what preconditions the critical junctures' effect on the change of path – can these be foreseen? According to Hall and Taylor, HI is not deterministic: it recognizes the multiplicity of factors that predetermine political outcomes. It simply emphasizes the way institutional settings have a causal impact by restricting agents' possible choices or shaping their preferences.

The evaluation of HI as a theoretical framework will thus follow the aforementioned four characteristics as the main epistemological features of the theory and the following sub-sections will analyse them individually.

Reconciliation of structure and agency

According to Hall and Taylor (1996, p.8), HI is "eclectic" – it combines what they call a "calculus approach" (centred around utility maximization of rational actors) and a "cultural approach" (focused on the normative and interpretive frameworks that shape these actors). They attempt to reconcile structure and agency, thus avoiding susceptibility to critique on structuralist grounds. Social agents still make rational, calculated choices, but the scope of those is institutionally pre-determined. HI thus

> "stresses the degree to which behaviour is not fully strategic but bounded by an individual's worldview. That is to say, without denying that human behaviour is rational or purposive, it emphasizes the extent to which individuals turn to established routines or familiar patterns of behaviour to attain their purposes." (Ibid.)

Despite being deemed "overly structuralist" by critics (Hay and Wincott, 1998, p.952), Hall and Taylor reiterate that "'institutionalists must remain structuralist" as their ontological foundations rest in the premise that institutions/structures shape human behaviour. For them, it is HI's goal to demonstrate and explain "how institutions can be constitutive of political agency" (Ibid., p.961). One of the ways this occurs, is via the institutional potential of power distribution, where one actor can gain asymmetrical authority at the expense of another (ibid.). Finally, Hall and Taylor defend the HI's

ambivalence of on the structure-agency debate, emphasising that this is where its strength lies. By not being determinist HI can analyse the importance of both institutions and social actors (ibid.). Hall clarifies that HI perceives individuals as rational agents, who nevertheless share or challenge each other's beliefs, based on their own structurally-conditioned views, and "driven by efforts to coordinate so as to secure more resources" (Hall, 2016, p.5). He further implies that agents are a product of their environment and "their actions cannot be explained without reference to multiple dimensions of the relations in which they are embedded" (Ibid., p.6).

Power distribution effect of institutions

The main subject of interest to historical institutionalists are institutions, which, are defined in broad, cognitive terms:

> (1) "the rules, norms, and practices that organise and constitute social relations, institutions were examined for their role in creating constraints and opportunities for political action, in distributing political power, and in shaping political preferences over time." (Fioretos et al., 2016, p.5)
> (2) "They can range from the rules of a constitutional order or the standard operating procedures of a bureaucracy to the conventions governing trade union behaviour or bank-firm relations. In general, historical institutionalists associate institutions with organizations and the rules or conventions promulgated by formal organization."(Hall and Taylor, 1996, p.6).

HI is concerned with "determining *how* and *when* institutions shape political developments" (Skocpol and Pierson, 2002, p.1, emphasis in original) and analysing "structural preconditions for particular outcomes" (Ibid., p.8-9). Scholars aim to explain "why institutions often persist after their original impetus is no longer present" and how they help shape "distributions of political authority" (Ibid., p.2). HI argues that institutional structures create the setting for agency to manifest itself, by "creating unintended openings for actors who trigger changes" (Ibid., p.12). According to Thelen, "institutions are important not just in how they constrain individual choice or affect individual strategies, but also in how they affect the articulation of interests, and particularly the articulation of *collective* interests" (Thelen, 2002, p.92, emphasis in original). Institutions help shape collective interests by defining political outcomes as being of common interest. Hall further points out that institutions and agents can be "mutually reinforcing", thus establishing a continuous cycle of impact between the two: social agents create the institutions, who strengthen and consolidate the former's position of power (as foreseen in their conception) (Hall, 2016b, p.14). An unforeseen consequence is that, should the agents *want* to initiate change of institutions, the latter would usually act as barriers

unless the status quo changes dramatically (thus explaining path dependence). For Hall (Ibid., p.14-15), institutions are likely to consolidate support and ensure stability through a varied set of mechanisms co-opting their constitutive actors' support.

Institutions are persistent and bound to temporal, historically contextual processes

HI's temporal explanation of political outcomes is built on the concepts of critical juncture and path dependence (Hall, 2016a, p.37-38). Collier and Collier (1991, p.29) pioneered the analysis of the explanatory potential of critical junctures. The concept was then developed further by historical institutionalists, who defined these as "moments when substantial institutional change takes place thereby creating a 'branching point' from which historical development moves onto a new path" (Hall and Taylor, 1996, p.10). For Capoccia and Kelemen (2007, p.348), critical junctures loosen structural constraints and create a "substantially heightened probability that agents' choices will affect the outcome of interest". For Thelen they establish "important institutional parameters that subsequently shape what is politically possible, even conceivable", thus warning of causal caution in their analysis:

> "[N]ot every environmental shift is destabilizing, and not every exogenous 'shock' brings about institutional breakdown. Therefore, in order to know which exogenous events or processes are likely to be politically consequential for particular institutions, we need to know something about what is sustaining these institutions in the first place. Institutions rest on a set of ideational and material foundations that, if shaken, open possibilities for change. But different institutions rest on different foundations, and so the processes that are likely to disrupt them will also be different, though predictable." (Thelen, 2002, p.99).

HI scholars posit that, in the absence of critical junctures, institutions settle in path dependence, described as being "based on the contention that positive feedback effects arising from the entrenched entitlements, coordination effects, or network externalities generated by institutions alter the attractiveness of the options facing political actors profoundly enough to foreclose some paths of political development, while making movement along others more likely" (Hall, 2016, p.38, cf. Mahoney, 2000; Pierson, 2004). HI's initial conception, usually referred to as *punctuated equilibrium*, (in reference to Krasner's 1984 pioneering work) is an infinite loop between "moments of critical juncture, when developments largely exogenous to institutions render those institutions more pliable, and intervening periods of stability, when the institutions established at critical junctures structure political outcomes" (Hall, 2016, p.10; cf. Collier and Collier, 1991; Capoccia and Keleman, 2007). Critical junctures are crucial for HI scholars, not only because they are the exogenous shocks, which open "the door for institutional

transformation" (Thelen and Conran, 2016, p.6), but also because they "may be initial markers of path dependent processes" (Fioretos et al., 2016). Critical junctures and path dependence thus go hand in hand, as the former provides explicit conditions for the investigation of causal mechanisms impacting political outcomes.

While the punctuated equilibrium model is its hallmark, HI's "second wave" (Hall, 2016, p.38) conceptualises gradual/incremental change instead (Streeck and Thelen, 2005; Mahoney and Thelen, 2010; Paler, 2005). While HI is often criticised for not explaining institutional change well, that is what they aim to demonstrate through critical junctures – institutions are not prone to change, *unless* a critical event drives them out of the path-dependent track. As Lowndes and Roberts note:

> "Explaining change has tended to rely on 'stop-go' models, notably through the concept of 'punctuated equilibrium'[…] While path dependency persists during 'normal' times, critical junctures emerge at moments of political upheaval which are typically stimulated by external shocks; during such periods, the costs of change versus continuity are reduced, and actors are able radically to reform the existing institutional framework." (Lowndes and Roberts, 2013**,** p.39-40)

Nevertheless, Skocpol recommends that HI scholars "trace sequences of outcomes over time, showing how earlier outcomes change the parameters for subsequent developments" (Skocpol, 1995, p.105-106). Skocpol and Pierson are sceptical of punctuated equilibrium models of institutionalisation, "[b]ecause some crucial social conditions may change only slowly" (Skocpol and Pierson, 2002, p.9). Thelen and Conran (2002) point out that some inherent limitations of institutional structures: the initial design (which may not be adequate to later institutional functions), the contestation of power and political compromises embedded in institutional existence, as well as time of existence (i.e. long-existent institutions likely experienced a multitude of unintended consequences in their development) (Thelen and Conran, 2002, p.8). They further elaborate that, due to those factors, institutional design will inevitably be "suboptimal" and "sticky" (ibid.).

Thelen and Conran (2016) pinpoint gradual institutional change theorised by HI scholars: displacement of rules, layering of rules (Schikler, 2001), drift in the impact of rules due to a shift in their strategic environment (Hacker, 2004) and conversion or changed application/redeployment of rules (Thelen, 2004). While displacement and drift may be exogenous, layering and conversion are endogenous to the institutional setting (Ibid., p.15-16). Drift occurs when the institution's environment changes and its design no longer responds to its expected functions, which makes change necessary (Ibid., p.15). Conversion occurs when asymmetric interpretation of the rules causes institutional

incoherence, where the focus is not on system efficiency, but on power distribution (Ibid., p.16-17). Layering ensues when social agents seek institutional change, while the institutional setting precludes drastic reform. In this model "change occurs through seemingly marginal amendments, revisions, or additions to existing institutions or rules that have downstream implications for how the original institutions operate" (Ibid., p.15). Layering is commonly used in EU policy-making, where rules are formulated "on the go", which often renders the institutional design inadequate, nevertheless radical institutional change would be too costly to implement, both politically and financially. While those models of incremental change offer valid inferences about institutional evolution, they do not necessarily replace punctuated equilibrium models, nor do they negate the latter's validity.

The critique of punctuated equilibrium models may be overstated, due to an exaggeration of the determinism, with which HI scholarship theorised path dependency. Early HI theorists never explicitly claimed that institutions are *completely* static in phases of path dependency, an assertion which has been read into their generalisation attempts for developmental paths of institutional structures. Rather they asserted that, outside politically-significant events, institutional frameworks are rather stable, due to the normative and rational frameworks they are built upon. Based on Weberian models of bureaucracy and institutions, this seems like an inherently logical assumption – institutional frames are always established (purposefully or subconsciously) with the goal of providing stability, or even shaping preferences. HI scholars are interested in the unintended consequences of those – once an institutional frame is formed it shapes cognition to such an extent that it is unlikely to forego a significant transformation, especially one going against its cognitive foundation, unless the latter is fundamentally challenged through an exogenous shock that renders that foundation (and the cognitive frames composing it) irrelevant, inapplicable or outdated. This is why those shocks are qualified by HI theorists as critical junctures – they are relatively short timeframes in which the institutional frame under investigation is likely to experience proportionally more (both in quantity and significance) reform that they are likely to undergo outside of those periods (in the so-called phases of path dependence) due to the lower threshold for reform. Thus, despite the contribution of gradual institutional change models to HI's development, the punctuated equilibrium model could still offer validity in its application to inertial institutional settings, particularly in international policy-making and in politically-sensitive domains, shaped by normative cognitive frames.

Avoiding determinism – multi-causality of arguments, intercurrence and agency

Later in their epistemological evolution, HI scholars emphasise the combined effect of institutions with other political and socioeconomic factors, including ideas and beliefs. HI recognises the effect of social agents on institutions, emphasising that rational actors' behaviour is pre-shaped by cognitive frameworks, while their preferences are constricted through institutionally justified or accepted filters. Thus, actors' rationality and choices are pre-framed by their institutional setting. According to Katznelson, HI "crosses the divide between structure and agency without[…] eliminat[ing] the heuristic distinction between the two" (Katznelson, 1997, p.104; Fioretos et al., 2016, p.7). This is where the theoretical approach offers potential to reconcile other epistemologies, as emphasised by scholars (Hall and Taylor, 1998, Farrell and Finnemore, 2016, etc.). In fact, HI has shifted towards the centrality of actor-agency, and towards the importance of ideas and discourse (King and Smith, 2005, Schmidt, 2008).

According to Hall, social actors' connections can be organised on three levels: institutional practices, shared cognitive frameworks and network relations (Hall, 2016, p.6-7). Institutional practices regularise the relationship between actors and institutions through an established set of rules (with or without sanctions) and rule-based systems, aimed at regulating behaviour. These help shape the shared cognitive networks of actors, i.e. collective perceptions of right and wrong (principled beliefs), their understanding of factors impacting socio-political outcomes (causal beliefs) and ultimately worldviews. Network relations include the communication channels, through which social actors interact and construct common knowledge. For Hall, those enable actors to form coalitions, as "actors reinterpret their interests in ways that allow them to join together behind a common project and then assemble the power resources necessary to ensure that the views of the coalition are addressed" (Ibid., p.11). This approach provides high explanatory potential for EU integration and policy-making.

HI's fluidity of the structure-agency debate drove the concept of intercurrence. The notion implies HI's multi-directional causality, the insecurity of the ruling order(s) and the fluidity of contingent orders, owing to the many levels of agency in political systems and the undeterminedness of dominance between those. With the many layers of authority, "the normal condition of the polity will be that of multiple, incongruous authorities operating simultaneously" (Orren and Skowronek, 2004, p.108), however this feature presents HI with the methodological challenge of establishing causality in the patchwork of actors and institutions mutually influencing each other. This is why HI scholars often introduce complementary approaches in order to facilitate the validation of causal relationships.

The choice of constructivist institutionalism (CI)

In the 2000s, a new branch emerged in institutional theory – constructivist institutionalism (CI). Rooted in the constructivist tradition, it understands institutions as a cognitively constructed sum of social perceptions, which could be altered by a competing set of perceptions and values. Cox justifies the use of constructivist logic in institutional theory, "because it specifies theoretically the path-shaping power of ideas and individual action to alter individual preferences and institutional configurations" (Cox, 2001, p.471). He explains that, while institutions' path dependence may be constraining to social actors, it is those actors and their cognitive/ideational frameworks that explain the shaping of those paths:

> "Path shaping serves as a cause for policy reform when actors change the conceptual discourse in an area of a policy, establishing new grounds for evaluating the legitimacy of policy proposals. The new social construction makes it easier to change institutions, in order to accommodate the policy reforms" (Ibid., p.474, cf. Torfing, 2001).

The structure of this sub-chapter will be based on the main epistemological claims of CI: (1) a constructivist over a materialist ontology, (2) the explanatory power of ideas, and (3) the epistemological ability of CI to explain change in contrast to static branches of institutionalism.

A constructivist institutionalism

CI has its roots in HI (Hay, 2006, p.60), however it advocates for greater attention to ideas, delineating the agency of social actors through ideology, cognitive frames, policy entrepreneurship, social discourse, and activism. Constructivism has been interpreted differently by different authors, explaining why CI's interpretations are epistemologically dissimilar, and even encounter ontological conflicts. Hay sought to find common ground, establishing an epistemological summary of CI's main postulates:

> "(1) A focus on the processes of institutionalisation, de-institutionalisation and re-institutionalisation rather than on institutions per se;
> (2) An understanding of actors' engagement with institutions as mediated ideationally (with institutionally situated actors orienting themselves towards their institutional environment through a series of subjective and inter-subjective understandings, cognitions and normative dispositions);
> (3) A characteristic focus on institutional change as politically contingent;
> (4) An understanding of actors' interests and normative orientations as socially constructed rather than materially given;

(5) A rejection of any presupposition of institutional equilibrium and an acute sensitivity to the importance both of moments of crisis and their political constitution (though, probabilistically, these may be infrequent, they are likely to prove enduring in their significance);

(6) An inductive approach to process tracing calling for a political anthropology of institutionally situated action and change." (Hay, 2016, p.526).

Hay claims that constructivism "*is* an institutionalism; for what differentiates social life (ontologically) from the realm of nature (at least from a constructivist stance) are institutions and the social constructions in and through which they are instantiated and reproduced" (Ibid., emphasis added). CI scholars prioritise agency, however they are not simply interested in ideas – they are concerned with "the institutional context in which and through which ideas are communicated" and with measuring the effect of those on (changing) institutional structures (Schmidt 2010, p.48 in Béland and Cox, 2010). Some CI authors suggest that "under conditions of uncertainty ideas behave like switches (or 'road maps') that funnel interests down in specific policy directions" (Ibid., p.52, cf. Goldstein, 1993), thus institutions can be understood as a collective framework of ideas, which could constrain or enable actors, or subject to a change of ideas, executed by their constitutive actors. This would mean that causality could be multidirectional – actors can impact institutions with their ideas, and institutions can then restrict actors' agency with the fixation of those ideas, whether they are still relevant or not.

The causal power of ideas

Ideas are the main causal mechanism provided by CI scholars in explaining change and stability. Despite the broad definitions of ideas, they are generally perceived as: 'causal "beliefs held by individuals or adopted by institutions that influence their attitudes and actions" (Béland and Cox, 2010, p.6). Ideas are conceptualised as "embedded in the design of institutions" (Ibid., p.8-9), they "provide elegant linkages between institutions and political processes" (Ibid., p.10). Ideas could "give meaning to actors' experience of the world" or by enabling them to handle complexity and uncertainty and justifying policy choices (Carstensen and Schmidt, 2016, p.322; cf. Wendt 1999, Blyth, 2002a, Schmidt, 2002). The power of ideas is conceptualized as "the constitution of intersubjective meaning structures that agents both draw in to give meaning to their material and social circumstances and battle over to affect what ideas and discourses are deemed viable" (Carstensen and Schmidt, 2016). One of the ways in which ideas influence power structures is referred to as "power in ideas", described as "when certain ideas enjoy authority in structuring thought or institutionalizing certain ideas at the expense of other

ideas" (Ibid., p.323). Thus ideas too can have structural qualities, much like institutions do – they are both primarily constituted and fixed by social actors, however they could have restraining or path dependent effects on actors' actions, whether those be considered unintended consequences or constraining structural properties. The two variables (ideas and institutions) can be claimed to be in a two-directional relationship – while ideas can affect institutions through "specific structures of meaning", the "institutional setup[…] enhances or diminishes the ability of actors to promote their ideas" (Ibid.).

Ideational frames are not new to institutional scholarship. HI scholars borrow the notion of "power in ideas", "when they consider the institutionalization of ideas in the rules that come to regulate the polity, or in the path dependencies by which ideational continuity appears as a defining characteristic of the trajectory of post-crisis institutions" (Ibid., p.332). Thus, ideas and institutions form the basis on which policy is formulated, as they constitute the "deeper-level ideational and institutional structures that actors draw upon" (Ibid., p.329). Once an ideational frame settles in an institutional setting, it becomes the normative background on which policy is built, and is "taken for granted", causing path-dependent thinking, as the vicious cycle of one policy choice leading to another can continue for a while. For CI, ideas are, however, "better seen as constantly evolving malleable structures subject to continual reconstructions by sentient agents who may unconsciously change them as they are using them" and are able to "develop slowly in an evolutionary manner through incremental steps" (ibid.). CI scholars thus perceive ideas as flexible, manipulable, frames of meaning. Whether through a critical juncture shifting the ideational mindset, or through gradual maturation of alternative ideas in adjustment to a changing setting, ideas have the potential to overcome path dependencies, by establishing a new path.

For Blyth (2002b, p.35) the causal effects of ideas work on five levels: "uncertainty reduction, coalition building, institutional contestation, institutional construction, and expectational coordination".[10] He discusses the causal role of ideas *during* times of change, positing that ideas affect the direction of change by "overcoming the barriers to collective action[…] by acting as coalition-building resources" (i.e. making cooperation seem necessary), by changing "the perception of existing political costs and benefits regarding alternative courses of action", through policy entrepreneurs who facilitate the re-construction of ideas, and by "providing an interpretive framework" for dealing with uncertainty, thus making sense out of paradigm shifts (Blyth, 2002b, p.37-38).

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[10] According to Hay (2006, p.56, footnote 1) the first discernible reference to ideational institutionalism is in Campbell and Pedersen's 2001 edited volume *The Rise of Neoliberalism and Institutional Analysis.*

For Hay (2006, p.63), whereas actors are "strategic, seeking to realise certain complex, contingent, and constantly changing goals" (through agency), "[t]hey do so in a context which favours certain strategies over others and must rely upon perceptions of that context" (via structures). In Hay's conceptualisation, this context is seen as a subject of struggles over meaning and of challenge by agents - change "is seen to reside in the relationship between actors and the context in which they find themselves, between institutional 'architects', institutionalized subjects and institutional environments" (Ibid., p.64).

In these ontological definitions, Hay intrinsically includes the causal effects of institutions – they are the "context" that "favours" certain outcomes and establishes "perceptions", the subject of struggles over meaning (ibid.). Implicitly, Hay does not claim agents' limitless free will: they are conscripted to frames of institutionalisation of perception of social action. Hay's approach indirectly welcomes engagement with structuralist approaches, as change is the product of the "interaction between strategic conduct and the strategic context within which it is conceived". He even embraces path dependence, admitting that "strategic choices made at a particular moment eliminate whole ranges of possibilities", while he caveats to pay attention also to "path-shaping institutional change, in which the institutional architecture is significantly reconfigured".[11] In an ontological summary, Hay proclaims that:

> "constructivist institutionalists emphasize not only institutional path dependence, but also ideational path dependence. In other words, it is not just institutions, but the very ideas on which they are predicated and which inform their design and development, that exert constraints on political autonomy"(Ibid., p.65).

Explaining change

As HI is considered incapable of investigating processes of change and reformulation, CI offers a look into this epistemological and methodological black box of institutional theory. Helping to understand how change occurs and, how actors choose one policy option over another, could be highly valuable to so-called static models of institutional analysis, such as HI.

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[11] Hay further emphasises that "if we are to understand path-shaping institutional change we must acknowledge the independent causal and constitutive role of ideas, since the developmental trajectory of a given regime or policy paradigm cannot be derived from the exhibited or latent contradictions of the old regime or policy paradigm. It is, instead, contingent upon the ideational contestation unleashed in the moment of crisis itself." (Ibid., p.68)

The reinterpretation and reformulation of policy paradigms (Hall, 1993) can become a reason for "agents to challenge existing institutional arrangements and the patterns of distribution they enshrine" (Blyth, 2001, p.4). Therefore, ideational variables come to the centre of analysis, as "ideological weapons" in the hands of agents, who construct a normative discourse, shaped through socio-political cognitive frames and discursive tools of narrative framing and value amplification, thus helping to effectuate change (Béland, 2009; Schmidt, 2002). Nevertheless, "enduring policy legacies can become strong obstacles to reform, even when reformers succeed in putting together a coherent set of new policy ideas" (Béland, 2009, p.709). This is an epistemological issue, which HI could potentially resolve, as its strength lies in investigating the timing of change and the potential of critical junctures to change the path of policy development. However, in order to achieve that, HI needs to understand critical junctures as cognitive and ideational events rather than politico-economic ones.

CI does not disagree with "critical junctures"; it just explains them as "moments of 'great transformation', in periods of uncertainty when agents' old institutions have failed and there is a perceived need for new ones" (Schmidt, et. al., 2011, p.109; cf. Blyth, 2002b). While HI authors focus on the crisis as the variable explaining change, CI ones concentrate on explaining the factors impacting the crisis, thus for them "such critical moments are objects of explanation, in which agents' constructive ideational and discursive engagement with events become the basis for future ideational (re)constructions and actions" (Ibid., p.108). Importantly, for CI ideational changes necessarily precede institutional ones, thus ideas are prior to institutions. CI scholars see paradigm shifts as caused by ideational ruptures, and not necessarily by political crises. Nevertheless, both theoretical convictions believe in the necessity of critical junctures:

> "[W]hen at a critical juncture a central actor 'signals' an idea that introduces a new cognitive model which leads other central actors who are part of the same belief system to deliberate about changing their own beliefs and, if in agreement, to shift their belief system such that they 'coordinate their future expectations[…] around new institutions'" (Schmidt, 2010, p.15., cf. Culpepper 2005, p.176).

Hay posits that "[p]aradigms are lenses in and through which sense-making takes place and interpretive ambiguities are resolved (or, at least, narrowed); change the paradigm and the process of sense-making changes too" (Hay, 2016, p.528). For him paradigms can both evolve and be "prone to more rapid change (in and through challenge and contestation)", as they are composed of a "variety of competing narratives and discourses which might in turn inform very different policy sets or responses" (ibid.). Paradigms are further discussed as "cognitive filters", through which political choices are perceived.

"Such inter-subjectively held ideas provide, in effect, cognitive templates or filters in and through which collective sense is made of social and political events; and these ideas are frequently embedded institutionally, in the sense that institutional contexts are typically arenas of social interaction in which particular forms of inter-subjective consensus (such as norms, standards, rules, conventions and paradigms) persist and are reproduced" (Hay, 2016, p.527).

However, Schmidt (2011, p.110) alerts to the analytical risk of critical junctures – "[t]he 'switching point' or critical juncture often appears so only in hindsight, looking back at a process that may be much more gradual or incremental". For Schmidt, the drawback is that this model "limits the importance of ideas and discourse to the period of uncertainty between the end of the old institutional 'game' and the beginning of the newly agreed institutional 'game,' with changing ideas at a critical moment" (ibid.). Hence it might be empirically difficult to pinpoint causality – does the idea shift the paradigm or does the critical juncture convince actors of a new idea's value? Epistemologically, this is one of CI's difficulties – conceptualising the transformative power of ideas and the circumstances under which they have causal effects.[12] This creates the necessity to slice up the process of change and explore its constitutive dynamics. In a dialectic manner, Hay (2006, p.65) admits that "institutional change does indeed occur in a context which is structured and facilitate[s] certain forms of intervention whilst militating against others" and calls for scholars to accumulate knowledge on the dynamic relationship between institutions and their constitutive agents, as the two impact each other. This is precisely the intersection point between the two theoretical approaches.

Why HI and CI together?

This study incorporates a combination of HI and CI, where the historical branch is the leading theoretical approach and the constructivist one is supplementary. This section will clarify why each of the approaches were chosen by outlining their respective epistemological shortcomings and gaps in tools for empirical analysis. The section will aim to demonstrate how each epistemology could benefit from elements of the other, as the theoretical gaps in each seems to be exactly where the other could contribute.

Authors have long advocated for synergies between institutionalism variants (Berman, 1998, Hall in Mahoney and Thelen, eds., 2009, Schmidt, 2010, Blyth, Helgadottir and Kring, 2016, etc.). According to Hall and Taylor (1996, p.17), the different branches individually deliver "a partial account of the forces at work" in an institutional setting, while

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[12] See section *Issues in CI and reasons for HI to be chosen as the leading theoretical approach in this thesis* below.

the "great deal of analytical common ground" between them has not been explored. Many institutionalists from HI and CI traditions have advocated for bridging those divides, offering engagement at different epistemological junctures in search of complementarity, with arguments of both academic rigour and contemporarization of older institutional epistemologies (Hay, 2006, eds.; Blyth, Helgadottir and Kring, 2016; Farrell and Finnemore 2016; Schmidt, 2010; etc.). Berman (1998) attempted to reformulate path dependence from a material, "real" institutional inertia to a cognitive one, resultant from the fixation and stickiness of ideas over time. Blyth (2002b) and McNamara (1998) postulated that ideas have a transformative potential at critical junctures when institutions are destabilised and face uncertainty. Schmidt (2002 and 2010) aimed to prove the insufficient explanatory power of exogenous shocks and path dependencies, attempting to bridge the importance of ideational structures in HI. Vail (2009) perceived the occurrences of layering and drift, as theorised by HI scholars, as expressions of ideational micro-level shifts, which precludes its predictability solely from material institutional setups. For Lieberman (2002) neither institutional nor ideational variables have sufficient explanatory power in the absence of the other. Jacobs (2008) argues that not accounting for ideational variables may lead to an omitted variable bias, where stability and continuity may be visible at first glance, while the reformulation of rules and norms due to institutional ambiguity may empower both dominant and disadvantaged agents.

To Farrell and Finnemore (2016), HI was designed to explain stable national institutionally-dependent dynamics, which have since undergone globalisation-empowered transformations, placing national institutions in a complex interplay with international or cross-border ones, making it impossible to predict their behaviours via path dependencies and critical junctures alone, and in the absence of a juxtaposition of ideas. Hall, argues that the (re-)interpretation acknowledged by HI scholars as conducive to institutional change, stems from the ideational cognitive frames of the actors involved (Hall, 2016; Hall and Thelen 2009). For Blyth, Helgadottir and Kring (2016, p.158-9), HI is not prepared to offer methodological tools for the analysis of ideational variables behind such cognitive schemes and their restructuration. For them, HI *needs* an ideational variable to be methodologically rigorous, and they remain optimistic of such symbiosis between the two theoretical traditions, not only because the body of academic work aiming to bridge these, but because "even the most materialist of positions implicitly rests upon a theory of ideas or cognition to explain change". In their assessment "a closer engagement is possible and warranted" between HI and ideas (Ibid., p.155).

Issues in HI – why is CI epistemologically complementary

In their comprehensive epistemological and methodological critique, Peters, Pierre and King (2005, p.1277) denote "two overarching and related problems" in HI:

> "[F]irst, the inability to incorporate adequately political change in the analytical framework; and, second, a failure to identify the political conflict and dissensus within what at the surface might appear to be stable, path-dependent time periods. Given those two characteristics policy change appears more dramatic and less explicable than it needs to be."

While the arguments of absence of agency and lack of explanation for conflict and change are ubiquitous in HI critique, the three authors look for the root epistemological causes of those problems and the resultant methodological shortcomings for the theory. They demarcate several issue areas that mutually underpin each other as HI shortcomings, and offer methodological resolutions for those (Ibid., p.1277-8).

Inability to account for agency, a missing ideational variable

For these authors, most of the issues in HI could be resolved with a source of agency injected into the theory, as "[i]t is not sufficient to say that patterns persist; to be effective a theory should be capable of linking outcomes with actors and the process that produced the outcomes" (ibid., p.1284). They consider it not only an epistemological flaw, but also an impediment to the establishment of causal connections – instead of investigating social dynamics and processes surrounding a change, HI scholars perceive the latter as a "black box", taking interest only in the periods before and after. The authors propose that "[t]he identification of the agent(s) becomes the means through which internal dissensus and inputs from the environment can be translated into change activity" (ibid., p.1285). Peters, Pierre and King (2005, p.1284, cf. Sabatier et. al., 1993) suggest that be inserted through an examination of ideational variables, as the cognitive frames that enable a change, as institutional/policy persistence is better understood as the perseverance of the "shared policy beliefs" they are built upon, which fix "dominant perceptions" to policy (ibid., p.1277-8).

Inability to explain political conflict (conflict over meaning)

Peters, Pierre and King consider that historical sequences are represented in HI as overly simplistic, rational events, where policy choices seem logical and straightforward

(ibid.). This leads to an inability to explain the conflicts over meaning that underpin the eventual change – be it a policy or institutional one. Thus, HI misses important micro-dynamics between individual agents (and between them and institutions), surrounding the struggle over meaning between contingent frames. If change can be perceived as a crisis in institutional stability, combined with a rupture of cognitive/ideational frames, then these micro-processes are the ones that might enable a theory to explain and predict change.

Inability to explain change

Related to the previous point, HI scholars are unable to foresee political conflict and changes in ideational constructs, which causes them to perceive change as an exogenously imposed "black box" of causality, which represents a drastic, unexplained rupture with the path-dependent status quo (ibid.). The punctuated equilibrium model exaggerates the contrast between change and stasis, where change is represented as sudden and unexplainable. Peters, Pierre and King, like other HI critics, do not dispute the validity of critical junctures as explanatory tools for the opening of windows of opportunity– rather they proclaim that HI needs to open the "black box" of institutional change and investigate the factors contributing and driving it. If not, HI should borrow from a theoretical framework that can.

These three arguments have been at the centre of HI critique, specifically by CI scholars, who note that HI is focused on "explaining continuity", often in a "historically deterministic or even mechanistic" way. For Schmidt (2010, p.3,5), HI approaches "do more to describe than to explain change but they also remain at a macro level of abstraction in which change can only be explained mechanistically". She explains that, in contrast to HI, CI looks at the timing of change, focusing on the micro-dynamics of the underlying processes and participating agents. For CI, critical junctures are "the objects of explanation, with attention focused on the transformational ideas" that become the basis for change, while also attempting to investigate which new ideas can become transformative and how that occurs (Ibid., p.2,5).

HI scholars have recommended more focus be put on ideas and actor preferences, yet no iteration of the theory offers an empirical opportunity to apply that. Farrell and Finnemore (2016) note that, as the political world becomes more institutionally complex through multi-level governance structures, the conditions for HI's validity may become non-operationalisable, due to its initial premise of state stability and political inertia. They encourage HI to reach for bridges to other types of institutionalism, advocating for HI

"engage more systematically with the role of norms and ideas" to "enhance understandings of the origin of state preferences and why cooperation takes different forms in the modern international system" (Fioretos et al., 2016, p.15; cf. Farrell and Finnemore, 2016, p.636). Therefore, HI could gain an empirical added value in explaining institutional change from ideational frameworks.

For Schmidt, HI fails to address agency, as it perceives actors as "defined by their roles in the structures" and treats their active role as "possible only during the critical junctures that punctuated the long periods of structurally deterministic dynamics" (Schmidt, 2010, p.9). She asserts that some institutional approaches "miss out on the complexities of human action and the context that gives clearer meaning to their actions" (ibid.). For CI, institutions are "not the neutral, formal structures external to actors" that HI conceptualises, but are "infused with cognitive and normative ideas" (Ibid., p.13). Thus, CI believes that agents are able to overpower the constraints imposed on them by institutional structures by (re)formulating their constitutive ideas (Ibid., p.14).

CI scholars further disagree with HI's conceptualisation of path dependence. Hay (2016, p.530) disputes notions of institutional equilibrium– for him concepts of self-stabilising institutions are "distorted" and "a simplifying analytical convenience". He believes that path dependences are "just as likely to be cumulatively destabilising as they are to be self-stabilising" (ibid.). Schmidt (2010, p.7) conceptualises those long periods of policy inactivity as the reprogramming of ideas about the policy, however those may be subtle and long-term, or may not have a palpable manifestation.

While HI focuses on exogenous shocks as a causal factor punctuating the equilibrium, CI has since demonstrated that institutional change, and the crisis provoking it, are just as likely to originate endogenously to the institution. In fact, crises that change cognitive frames and institutions are often endogenous – arising out of the revelation that the institutions in place are no longer capable to fulfil their task of reducing uncertainty, thus exposing the need to shift the paradigm as it no longer fits the system's and the agents' needs. While exogenous shocks can explain the opening of windows of opportunity for institutional change (or expose previously unknown uncertainties), they do not explain the change process itself, as the latter is a product of and conditional upon endogenous characteristics of those institutional frames – idiosyncrasies, cultural frames of perception, policy entrepreneurship and the authority of policy entrepreneurs, socio-political pressures, etc. That is why HI needs constructivist/ideational explanations of institutional change: CI brings the endogenous elements of change in the analysis and is able to explain their ideational structures (including actor preferences and strategic positions), while HI brings in institutional frames on ideas, showing the constraining or enabling properties of structural frameworks.

Marsh and other scholars have attempted to bring the two approaches together, while critiquing both and combining the most stable ontological claims of each, acknowledging the dialectical nature between their causal factors (institutions and ideas) (Marsh, Akram and Birkett, 2015, emphasis added). Unlike other ideational scholars, Béland (2009, p.701) does not argue for primacy of ideational variables – for him ideas do shape institutional change, but "do not constitute the only possible source of change", rather they "only become a decisive causal factor under specific institutional and political conditions", which HI is well-positioned to explain. Thus HI investigates the conditions for institutional and policy change, whereas CI explains the content, construction and execution of those changes. While those address different research questions, Béland warns that "[n]ot paying close attention to the construction of reform imperatives may obfuscate major aspects of the politics of policy change" (Ibid., p.704). It is thus deemed necessary for HI to engage at different levels of policy analysis and reformulation, in order to provide a rigorous and reliable explanation of institutional change – and to achieve that, it might benefit from the complementarity of ideational variables.

Ultimately, the main added value of CI to HI is the analysis of institutional change as "dynamic" instead of "automatic or mechanistic" (Schmidt, 2010). CI provides methodological and theoretically-sound tools to analyse the dynamics of change (and the actors involved) which has been a hindrance for institutional theories. This is also what makes CI compatible with them: it can provide supplementary analysis of micro-dynamics under a macro-institutional primary framework.

Issues in CI and reasons for HI to be chosen as the primary theoretical approach in this thesis

CI has been proposed by authors as an answer to the epistemological gaps of HI and is purposefully conceptualised to address those (Marsh, 2009; Hay, 2006; Blyth, 2002a, etc.). This could be conducted in two ways – as a constructive feedback opening avenues for collaboration and mutual addition, or as a sharp criticism, establishing one's approach in opposition to another. The fact that the CI school has focused on the second path does not preclude epistemological and even ontological compatibility of the two: from an unbiased perspective their mutual complementarity becomes apparent. HI is excellent at explaining stasis and impediments to institutional change and, while it is not able to explain change itself, it is adept at conceptualising the conditions in which change might occur. CI, contrastingly only explains change and yet it does acknowledge stasis, which it explains one-dimensionally by claiming it stems from the stable ideas and preferences of constitutive agents. Although CI scholars occasionally acknowledge

structural constraints before actors in their struggles for political change, they often omit the epistemological point that institutions constrain outcomes, which leaves them open to valid critique.

While it offers epistemological complementarity to HI, CI has ontological and methodological shortcomings, which make it unsuitable as a sole theoretical approach for this thesis. One of the main challenges facing CI is *establishing when ideas are powerful enough to have causal potential.* Blyth (2002b) speaks of ideas' transformative power, yet does not provide an epistemological explanation of when such transformations occur – when do ideas succeed in shifting cognitive structures and when do they not? It is clearly not simply about having a well-suited idea, otherwise institutions would be continuously in flux, with no meaning or cognitive frame ever being fixed – which constructivists seldom posit. The conditions of change and paradigm shifts are overlooked in constructivist analysis, posing questions about omitted variable bias (similarly as HI scholars being accused of omitting agency in institutional change). If both schools were willing to recognise the inability of their approaches to provide universal validity and absolutist explanations of social change, they could be mutually beneficial in both epistemological and empirical sense.

Blyth (2002b, p.23) refuses to accept that "the transformative role of ideas is limited at best", a conceptualisation compatible with HI explanations. He asserts that "if periods of third-order change involve ideas that are transformative of institutions themselves, then surely the power of such ideas is their ability to reinterpret existing practices and policies" (Ibid., p.22). While he is justified in his critique of HI's lack of attention to endogenous change, which could give ideas causal power, some theoretical humility would allow Blyth to recognise that the institutional conditions need to be conducive to change, otherwise the theory could be exposed to an endogeneity problem (ideas change the perception of ideas, which are then replaced by other ideas, thus ideas are both the causal factor and the outcome) (Hay, 2006; Marsh, 2009 and 2010; Checkel, 2004). Blyth alludes to "periods of institutional change" and "Knightian uncertainty", without discussing how/when those might come about, claiming that, to implement an institutional change, agents' ideas are already altered at the time of crisis (Blyth, 2002b, p.35, also Blyth, 2003). That is not irreconcilable with HI logic, which never claims randomness of policy choices in a critical juncture, it rather posits that critical junctures might change agents' perceptions and thus implement institutional change. Blyth is, nevertheless, adamant in claiming that ideational changes precede institutional ones, an inference which cannot have universal validity as it can be empirically disproven.

A resulting epistemological issue of CI is *how to reconcile institutional constraints on agents.* The "theoretical dilemma of how to explain how agents conditioned by the

institutions that limit their ideas are able to transform those very same institutions since they are caught within them" has not been conclusively resolved in CI epistemology (Schmidt, 2010, p.14). Attempts to settle this include arguing that institutions *are* ideas (ibid.), that institutions are practices that could structure or restrict meaning (Hay, 2006) or that ideas "take a life of their own" when incorporated in existing institutions (Berman, 1998). Another important question is, how to determine which type of agency prevails – that of institutional structures, or that of ideational actors. One of the better conceptualisations is delivered by Lieberman, who posits that "neither ideas nor institutions can rightly claim priority in an account that purports to explain significant political change" (Lieberman, 2002 and 2011, Lieberman and King, 2008).

> "So when does an idea's time come? The answer lies in the match between idea and moment. An idea's time arrives not simply because the idea is compelling on its own terms, but because opportune political circumstances favor it. At those moments when a political idea finds persuasive expression among actors whose institutional position gives them both the motive and the opportunity to translate it into policy-then, and only then, can we say that an idea has found a time." (Lieberman, 2002, p.709)

Lieberman's ontological viewpoint justifies the exploration of both structural and ideational variables in order to understand political change. For him both are prerequisites for effectuating change – an idea without a window of opportunity is unlikely to cause institutional transformation, and a critical juncture without a corresponding ideational metamorphosis (and the agents to carry it out) would likely not trigger socio-political change. To Lieberman the structure-agency relationship is not one of "ordered patterns of ideas or institutions in equilibrium, but of disjunction, friction, and overlap among ideational and institutional elements, none of which is sufficient but each of which is necessary for a more comprehensive explanation of an important episode of political change" (ibid.).

Furthermore, *the exaggerated refusal of materialism* in institutional analysis "seems to drive something of a wedge between the consideration of ideational and material factors in causal analysis", which has resulted in a counter-productive segregation of the two approaches, discouraging scholars from engaging. Hay (2006, p.72) acknowledges that crises and their adjacent narratives "have both material and ideational determinants", thus the difference between HI and CI is "at most one of emphasis", wherein opportunities for engagement still exist. While theoretically scholars have closed off some possibilities, empirically academics still reach for collaboration between HI and CI, between structuralist and postmodernist accounts of causality, between structure and agency. Hay's approach to reconciliation of those dualisms into duality (Marsh, 2009),

and in admitting CI scholarship's origins in and "considerable indebtedness" to HI's ontology, opens up roads of engagement (Hay, 2006, p.71).

Even strong CI critics condone a dialectical approach of materialism and constructivism, structure and agency, stasis and change. Pioneering constructivist authors Berger and Luckmann (1966) discuss institutions as both cognitive frames and as material, as they are seen as frameworks of behaviour, which actors institutionalise for themselves, only to become ontologically "real" through this socialization process. Berger and Luckmann (1966, p.70) conceptualise "habitualization", referring to practices that are repeated frequently enough to shape a "pattern which can then be reproduced". This habitualization process "makes it unnecessary for each situation to be defined anew", and institutionalization "occurs whenever there is a reciprocal typification of habitualized actions by types of actors" (Ibid., p.71-72). This conceptualisation clearly advocates the dialectical and mutually constitutive relationship between structure and agency – agents are the ones to (deliberately or sub-consciously) fix meanings around the patterns of social life, yet once those choices become institutionalised, and undergo "internalization" in collective consciousness and are transmitted through knowledge, then for agents the institutional world becomes "real in an ever more massive way and it can no longer be changed so readily[…], it becomes *the* world" (Ibid., p.77). While agents "remain capable of changing or abolishing it", "this reality in turn has power to shape the individual", whereas institutions also codify roles for the actors within (Ibid., p.76, 84, 89). Thus while constructivists claim that they "view institutions as established norms, routines, practices, etc., rather than the formal rules that are the elaboration of those practices" (Blyth, Helgadottir, Kring, 2016, p.147), the pioneering work on constructivism conceptualises institutions as ontologically real "facticities", which have structural properties. Berger and Luckmann further allude to the necessity of paradigm shifts for institutional change, as "[d]eviance from the institutionally 'programmed' courses of action become likely once the institutions have become realities divorced from their original relevance" (ibid.).

Marsh (2009, p.679) also "warns against the concomitant rejection of the importance of materialist factors in explaining stability and change" and reminds that the "relationship between the material and the ideational, like that between structure and agency, is dialectical, that is interactive and iterative". He argues that scholars who focus on the causal power of agency tend to see change as continuous and omnipresent, effectuated through ideas or discourse, while those who analyse (material) structures as underlying stability mechanisms logically focus on stasis and underemphasise change (Marsh, 2010, p.86). Marsh's ontological call is for academics to recognise the dialectical relationship between structure and agency and to acquiesce that "the relationship between stability and change is best viewed as a duality, not a dualism" (Ibid., also Marsh

and Furlong, 2002, Checkel, 2004). He is concerned that scholars on both the materialist and idealist side might underestimate or overemphasise the weight of certain variables to shape their ontological positions, assessing that CI scholars, "appear to privilege agency over structure, ideas over institutions and the ideational over the material", where this "emphasis on the role of the ideational at times seems to drive out a consideration of the material" (Marsh, 2010, p.92). Bell (2011) posits that dualism between change and stasis in institutional structures feeds into a dichotomy between agency and structure, causing an ontological rift between HI and CI. For him, there is "sequencing between change and stasis" and crises are understood as the dynamic that lifts up constraints on agency (ibid., p.890, cf. Katznelson, 2003). Crisis-induced institutional change is operated by agents, whose power of discretion is enhanced by the resultant political uncertainty, which may further cause "existing arrangements[..] [to] be seriously called into question" (Bell, 2011, p.897).

Another critique of CI concerns the *insufficient emphasis on institutions* as a causal factor for political outcomes. Bell (ibid., p.884) claims that CI exaggerates the emphasis on actors' causal power, which he considers "ironic", since institutionalism emerged in opposition to behaviouralism, which focused almost exclusively on human behaviour and ignored structural influences on political outcomes. To Bell, institutions have a crucial role as "arenas which 'frame the discourse'" or as "a 'meaning context', as providing 'background information'" (Ibid., p.889).

> "Institutions are thus ontologically prior to the individuals who populate them at any given time. The temporal dimension is important here. Institutions have properties that help structure thought and behaviour at one remove from the immediacy of thought or action by agents at any given point in time. Institutions can thus shape or sometimes even impose behaviour. This is what gives institutions causal properties and why, at bottom, we pursue 'institutional' analysis. By essentially eschewing a meaningful institutional analysis, recent constructivist or discursive institutionalists place almost all explanatory weight on agency and lose sight of institutions. In fact, they go further by eschewing a meaningful contextual analysis of agency and instead conflate agents with the ideational" (Ibid., p.891).

Why HI and CI are compatible and mutually reinforcing

Blyth, Helgadottir and Kring (2016, p.148) argue that HI and CI are epistemologically compatible, due to their shared focus on agents' interpretation, routinisation and socialisation practices. For them, what drove the two approaches apart were unhelpful tactics of scholarship on both sides, rooted in fixation on perceived ontological divides.

CI studies aimed to provide the missing endogenous explanation of change to HI, however the only way to offer such a contribution entailed disputing crucial elements HI, which was not perceived well by scholars (Ibid., 148-150). One of the divides was the initially material definition of institutions by HI, in contrast to the cognitive interpretation provided by ideas scholars; another was the insufficient explanation of change by HI. Both these divides have evolved in HI scholarship, as definitions of institutions have grown broader, and the difficulty in addressing change has been addressed (albeit unresolved safe for the incorporation of supplementary theoretical approaches). Ideational scholars, on the other hand, have come to acknowledge that ideas can be transformative – but only in certain conditions.

Some of the epistemological divides make a complete merger of the two theoretical approaches unimaginable. If institutions structure behaviour and preferences so radically, why and how do agents manage to effectuate institutional changes? Just as importantly, if ideational cognition trumps institutional explanatory power, why do institutions not change more frequently, to fit the ideational shifts experienced by their constitutive agents? While this epistemological puzzle seems unsurmountable, this may be due to the absolute terms and drastic opposition, through which it is often expressed. In modern day democratic systems, neither completely structured, institutionally restrained policy is a real possibility, nor completely unbridled free will of individual agents, which makes such opposition exaggerated and unproductive. Instead both approaches leave methodological gaps where they have a lot to gain from each other.

Historical and ideational institutional accounts could be mutually complementary. While HI is accused of being deterministic, CI is considered too voluntaristic - a challenge that can be avoided by embracing a more structuralist epistemology (Schmidt, 2010, p.60). Thus HI benefits by submerging agency in the analysis of structures, while CI becomes more concrete by introducing a structural element in the (inter-)agency analysis. Another weakness of CI is its lack of focus on power structures, an element rigorously examined in HI analysis ibid.). While stemming from divergent epistemological positions, both institutional theories reconcile claims of determinism by acknowledging the importance of unintended consequences – for HI that applies to unanticipated political outcomes, while in CI it concerns ideas being reformulated or wrongfully interpreted (Ibid., p.61). Sometimes, however, unintended consequences are gaps in the analytical framework, which is where the two approaches can contribute to each other's rigour. For example, an unintended political outcome could be due to a change in ideational construction, unaccounted for by HI, while CI's focus on communicative events at the expense of political ones could result in a methodological blind spot in critical junctures.

HI and CI do not disagree on the process of change - it could be a fast, unexpected paradigm shift, or a slow, predictable incremental change, constructed by many small-scale modification processes. What they disagree on is the source of agency due to the age-old structure-agency dichotomy. It could be concluded that the objects of explanation are different – HI is interested in the structural, institution-driven processes, explained by the institution becoming a coherent whole, more than the sum of its agents, while CI is concerned with the agents that become drivers of change and the ideational frames that motivate them. This is not an ontological dichotomy: it is a difference in empirical focus. The processes analysed might be the same, however an analysis utilising an HI or CI epistemology may yield different results, due to the different research questions posed. Nevertheless, the two approaches may be useful in uncovering each other's blind spots. HI scholars could admit that change is executed by actors, and its direction is a result of their ideational frames. CI scholars could note that agents' free will is constricted by institutional boundaries, thus an actor of any ideational conviction needs an appropriate institutional setting (or a rupture in the status quo) to realise a political change. Authors from both theoretical convictions have begun to reconcile those epistemological differences.[13]

The structure-agency interaction, instead of perceived as a linear function, where one has power over the other, is better seen as a *cycle*, which could be both vicious and virtuous. Individual actors are the ones, who create institutions - while driven by their structured political beliefs – and once institutions are established, they become stable over time – afterwards actors may decide to reform these structures – however they might be deterred, as institutions acquire actorness of their own and resists attempts to change. While agents may eventually succeed in reforming the institution (for which a critical juncture would be necessary), the new institutional setup will once again become stable – making it difficult for actors to change it again. This cycle is the reason why institutional reform is seldom drastic, actors rather try to represent it as such to appease an unsatisfied population and gain political legitimacy, but the institutional structure itself would usually allow reform in small-scale, through layering for example.

Rather than the often emphasised ontological divides, there seems to be an ontological *misunderstanding* between these theoretical schools. Definitions of institutions in HI are rather understood as structures of meaning, as policy paradigms established as cognitive frames, organising devices to help reduce uncertainty for social agents. Thus institutions

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[13] To take the example of this thesis: changes in EU CT policy have been initiated by critical junctures, i.e. terrorist attacks, realised or foiled. But the overall resistance to change (and the unimpressive scale of the changes until 2016), has been due to the ideational frame of "terrorism as a national prerogative, not an EU one". That frame was structured by agents, but implemented by the institutional structures – i.e. even when change was attempted, structures resisted cooperation.

can encompass micro- and macro-structures – it can be a national decision-making setting, or the perception of national security risks. Ideas, nevertheless, sound like the same causal mechanism – according to Blyth (2002b, p.32), "cognitive mechanisms", which he equates to ideas, "are important because without having ideas as to how the world is put together, it would be cognitively impossible for agents to act in that world in any meaningful sense". This could explain the dissensus on whether ideas or institutions should be primary – as both schools acknowledge the independent causal power of both – because essentially (to oversimplify it) they are discussing the same causal factor from different angles. This conflict is due to absolutist theorising (and perhaps academic stubbornness), wherein both schools have tried to explain the social world through totalizing accounts (claim as they might not to be grand theories), while each school has created epistemological gaps where the other one could provide an explanatory mechanism. The effort to have an all-encompassing theory of socio-political action has stood between the two schools and has caused theoretical bridges to be abandoned.

This thesis intentionally focuses on a structuralist epistemology, as it seems to capture best its research questions. In the structure- agency debate, this study emphasises the importance of structure on socio-political institutions, nevertheless it is not deterministic. While a structuralist inclination is logical considering the focus of this study, it does not see social agents as passive products of their structure: it perceives them as rationally-driven, active participants in their relevant structures. Nevertheless, the study is interested in how the structure predisposes – restricts or enables - them to fulfil their rationality. EU CT is a suitable case study in that context: across agency and borders, institutional and individual actors are rationally pursuing the same goal – preventing and reducing the likeliness of terrorist attacks. Removing the factor of heterogenic individual interest pursuit simplifies the objectives of this study and makes them more attainable – it aims to uncover how EU CT structures empower or constrain rational actors involved therein. Therefore, while recognising the agency of both structures and their constitutive social actors, this thesis is interested in EU CT's structural impact, whereupon the acts of individual social actors will only be investigated when impacted by structural functions.

Methodology

This study employed a qualitative methodology consisting of a theoretical hypothesis and the framework provided by two comparative case studies, while it was based on primary data collected through expert interviews and processed through research software NVivo. The theoretical-methodological connection is significant: the two case studies have the potential to confirm the validity of the theoretical model presented in the first part of this chapter, while the data collection was oriented at policy-makers and practitioners, who are best positioned to observe (and participate in) a cognitive shift, and consequently to explain the dynamics surrounding it. The following sections will describe and defend the methodological choices made for this study and the interconnections between those.

The choice of a qualitative research approach

A qualitative methodology was considered most appropriate for the research questions that this thesis puts forward. It aims to unearth causal factors that affect policy consolidation of EU CT, and to compare them to those that failed to generate such an effect. Therefore, by establishing a relationship between the object of explanation (EU CT policy institutionalisation) and the causal factors affecting it, and through the analysis of the processes linking them, the final objective will be to speculate on favourable conditions for EU CT's institutionalisation.

As argued by George and Bennett (2005, p.224-225), quantitative studies aim to establish a covariation between values of the independent and dependent variables, leading to inferences in the "component of causal explanation defined as causal effects", while case-study methods aim to investigate the "causal mechanism component of causal explanation". Therefore, to compare the two approaches[14] is erroneous, as they focus on different parts of causality, and, as argued by Mahoney (2010, p.131), they address different research questions. Whereas quantitative approaches seek to investigate the "effects of causes", qualitative case-study approaches are interested rather in determining the "causes of effects", i.e. establishing causal relationships between variables, whereupon the precise covariation measurement is less so the subject of research than the validation of causality (George and Bennett 2005, p. 224-225).

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[14] As notably done by King, Keohane and Verba; cf. Bennett and Elman.

Furthermore, a quantitative approach is not favoured for the analysis of legislative and political documents, as the discourses and cognitive frames produced by these are considered more indicative for the development of the policy than their numerical dimension, and are thus too significant to overlook. Hence one could expect to infer more from the discursive elements of framework documents and statements, rather than from their statistical significance. Furthermore, the subject of study would be challenging and counter-intuitive to quantify, as quantitative approaches can be counterproductive for the study of CT policies. To infer a quantifiability of CT efforts by measuring the cases of successful versus unsuccessful terrorist attacks is an inherently erroneous approach to the study of the field. In counter-terrorism terms one successful attack is one too many, while unsuccessful attempts are nearly impossible to measure, due to the sensitive and confidential nature of intelligence data.

Comparative case studies

The main analytical frame of this study is shaped by the investigation of two comparative case studies. For George and Bennett (2005, p.19), "[c]ase studies are generally strong precisely where statistical methods and formal models are weak". They postulate four advantages of case study analyses over quantitative ones: "potential for achieving high conceptual validity", "strong procedures for fostering new hypotheses" and variables, superiority in examining "the hypothesized role of causal mechanisms in the context of individual cases" and "capacity for addressing causal complexity" (ibid.).

> "Case studies allow a researcher to achieve high levels of conceptual validity, or to identify and measure the indicators that best represent the theoretical concepts the researcher intends to measure. Many of the variables that interest social scientists, such as democracy, power, political culture, state strength, and so on are notoriously difficult to measure.[…] Thus, researchers must carry out "contextualized comparison," which "self-consciously seeks to address the issue of equivalence by searching for analytically equivalent phenomena— even if expressed in substantively different terms—across different contexts." This requires a detailed consideration of contextual factors, which is extremely difficult to do in statistical studies but is common in case studies." (Ibid., p.19)

George and Benett note further that both structuralists such as historical institutionalists, and constructivist scholars may derive empirical value from the application of case study analisis, as it "can incorporate both material and ideational variables", while it can also be particularly fruitful when exploring "aspects of complex causality", such as those investigated by this study (Ibid., p.9-10). Furthermore, they clarify that, while the analysis

of a single case study and the comparative approach to a small-n sample size are methodolocally distinct, they can be epistemologically grouped together, as they draw inferences in similar ways (Ibid., p.18). Thus, while comparative case study analyses can be considered to add certain value to within-case methods, these are still largely grouped under the case-study category of causal inference, as it relies on the in-depth (and somewhat inductive) inquiry of a historically significant node of causality involving the variables at stake for the study. In a way, case studies are meant to represent a microscope-like view into a fraction of the development under investigation, where the causal effect of the variables examined are more obviously in causal relationships with each other, as compared to another moment in that development. Some of the arguments for spurious causality of case studies confound reliability with universal validity. If the variables under inspection are found to be causally impacting the object or development in question, it cannot be universally presumed that they always impact that development in the same way – instead what a case study aims to establish is that, in that moment in time, they did (or not) impact it in a way and that led to x, y, z consequences.

From a theoretical perspective, as Thelen (2002, p.95) posits, what drives middle-range theory (such as HI and CI) is the reliance on a profound and focused examination of a few well-selected illustrative case studies, which can be considered to unearth or explain causal connections. Thus, the combination of HI and within-case methods is intuitively mutually reinforcing for the establishment of causation. Furthermore, according to Thelen, HI too offers potential for high conceptual validity, due to the "[p]roximity to the empirical cases under investigation", which ensures the symmetrical validity of concepts in examination across the entire sample, thus "avoiding problems of causal heterogeneity" (i.e. when a number of causes are independently able of producing the same outcome) (ibid.).

Choice of case studies

George and Bennett aim to debunk the methodological myth that choosing cases on the basis of the variation in the dependent variable qualify as case selection bias. In fact, for them

> "in the early stages of a research program, selection on the dependent variable can serve the heuristic purpose of identifying the potential causal paths and variables leading to the dependent variable of interest. Later, the resulting causal model can be tested against cases in which there is variation on the dependent variable."(Ibid., p.23)

This thesis has selected for analysis two case studies of the institutionalisation of EU CT explained by the two critical junctures that define them: the opening of a window of opportunity by the 2004 Madrid and 2005 London terrorist attacks, and the policy juncture brought on by the 2015 Paris and 2016 Brussels attacks. This case selection provides a valid basis for the analysis of EU CT institutionalisation for several reasons:

- EU CT has only experienced a few critical junctures in its existence: 1) the 9/11 attacks that provoked its establishment; 2) the Madrid-London attacks that demonstrated the pragmatic necessity of an EU counter-terrorism policy; 3) the adoption of the Lisbon Treaty that symbolically (yet not practically) moved CT from an intergovernmental to a shared EU competence; and finally 4) the turning point brought on by the intensified terrorist activity in EU MS in the second half of the 2010s. Of these junctures, 2) and 4) have clearly had most institutionalisation effect on the policy (as both involved shocking large-scale attacks in EU MS), thus making them obvious candidates for case study analysis.

- For critical juncture 4), the 2015 Paris and 2016 Brussels attacks have been selected for analysis, as they represent not only the opening of the window of opportunity, but they also provoked a relatively intensive EU response, when compared to later attacks (Nice 2016, Berlin 2016, Barcelona 2017, London and Manchester 2017, etc.). Furthermore, from an empirical perspective it is important that the two attacks were interconnected and perpetrated by the same terrorist cell.

- Each case study discusses two attacks that occurred in a relatively short timeframe, in two separate MS, thus offering advantage in the comparative analysis, as the effect of neither of the four attacks can be analysed in isolation – these events can only be viewed in their compound causality, that is, the effects from the 2005 London attack are contingent on the 2004 Madrid one, as the 2016 Brussels attack's consequences are conditional on those of the 2015 Paris attack.

- Both junctures provoked a plethora of EU governance reactions: strategic and legislative documents, institutional upgrades, changes in the approach to information-sharing and management between MS, as well as harmonising measures, aiming at levelling the playing field for CT practitioners. These broad categories will be used as the pillars of the comparative analysis between the two junctures, wherein the aim would be to establish the more significant effect of the Paris-Brussels one on each category.

- As the cumulative effect of the two junctures represents the bulk of EU CT institutionalisation, this thesis will aim to extrapolate generalised findings on the policy's institutionalisation – as it analyses the two most important events in its development, contributing to its most significant institutionalisation processes, it is considered in a decent position to do so.

This thesis also reviews the interim period between the two critical junctures (2007-2015), in order to preclude analytical gaps in the examination of the effects of the critical junctures themselves on the institutionalisation and maturation of EU CT.

(Expert) interviewing process

Although this thesis has relied on an extensive literature review and desk research, the primary data it focuses on was obtained through in-depth expert interviews. Interviewing is one of the most prominent methods in qualitative social science as it:

> "provides access to the context of people's behavior and thereby provides a way for researchers to understand the meaning of that behavior. A basic assumption in in-depth interviewing research is that the meaning people make of their experience affects the way they carry out that experience." (Ibid., p.10)

Yet interviewing varies extensively across epistemologies and research questions. While some inquiries may be interested in the (inter-)subjective views and meanings within a narrow social group for a phenomenological study, this thesis considers the experts interviewed as reliable witnesses of an institutionalisation process. The reasons for this are driven by considerations of the inherent idiosyncrasies of the domain under investigation.

Terrorism and counter-terrorism are notoriously slippery subjects, in the sense that official documents and public discourses can seldom be reliably used as primary data. As a terrorist act is generally considered an attack against the state, with its citizen victims often used simply as a vehicle for delivering a political message, much of the post-attack attention and scrutiny is routinely directed at the state and its pertinent structures. This societal, media, and political pressure often leads to exaggerated, asymmetrical, misguided or covert reactions by political leaders and policy-makers. These in turn will have to be justified in the discourse adjacent to their implementation, as the public perception would have to be shaped a certain way, so as to guarantee the citizenry's agreement and loyalty to said measures. Additionally, in the case where an oversight, mistake or missed opportunity is found to have contributed to the incident, the political and policy leadership use discourse to variously justify their actions, distract the public, or avoid blame by scapegoating.

When the EU is considered, another factor is at play – the Commission or Council officials drafting official documents are aware of EU MS' reservations, aversions and red lines, therefore they would try to avoid the mention of these, or else they would use subliminal language, aiming to diminish the degree to which measures proposed could

be seen as consequential. This in turn affects the discourse on EU CT – both spoken and written. Furthermore, CT is a subject of national security, making it one of the most secretive subjects to study. This affects the access to data a researcher can obtain without a security clearance, especially when the terrorist acts in question are still under investigation (as the 2015 Paris and 2016 Brussels attacks), thus making empirical information concerning them highly confidential. Therefore, this study considers public discourse and official (including legislative) documents to not be reliable enough as primary empirical material for this thesis. This is why it approaches the practitioners executing CT on a daily basis as reliable witnesses to the evolution of EU CT in the past 15 years.

Finally, CT, to a larger degree than other policy domains, is shaped and dominated by practitioners. Intelligence officials and to a lesser extent police and judicial officials are the conductors of CT on national and, consequently EU level. As will be discussed in further chapters, in the aftermath of critical junctures before 2015, policy-makers made sweeping declarations on EU solidarity, cooperation and joined up action through EU agencies. However, as policy practitioners were not convinced of the necessity or added value of such change of approach, these ideas failed to become dominant or shift the paradigm. Specifically, intelligence officials have the potential to shape CT practices and attitudes, and those are not always congruent with the ones prescribed by political leadership, as they have a certain level of discretion rarely observed in public service. As such, they are a fundamental building block of CT's development, they witness and participate in its reforms and standstills. This is why, for the purposes of this study, practitioners were considered paramount participants, despite being harder to reach and recruit.

The author has collected 40 interviews from diverse (EU and national) policy-makers and practitioners of EU CT. The author has vigorously triangulated interview data with academic findings and official documents, and has treated interviewee claims critically, particularly in terms of their institutional affiliations. Still, occasionally the empirical chapters will present unsubstantiated interview data, which is necessary to either 1) convey the unique experiences of practitioners through anecdotal evidence, or 2) to reveal confidential "behind the scenes" dynamics of political negotiations and operational work, which are impossible to triangulate, due to their sensitive nature.

The interview process

The fieldwork for this thesis took place in two tranches: 13 November– 19 December 2018 and 22 March– 16 May 2019, while the three months in between were reserved for preliminary analysis of the findings and potential reassessment of the approach. Forty people were interviewed, with follow-up interviews organised with 3 of the participants, amounting to 43 interviews in total. The profile of the interviewees was incredibly diverse – not only were the 40 interviewees natives of 15 different EU MS, but more importantly they were (by design) highly representative of the CT field. As some of the interviewees were seconded staff or EU officials formerly working for national administrations, they were uniquely qualified to address the questions posed by this study. Eighteen of the interviewees were speaking from a national capacity, while 15 were formerly in such a function. Thirty-one of the interviewees were occupying an EU function at the time of the interview, while 6 were seconded officials, thus giving them a dual national-EU competence considered particularly valuable for this study. In terms of their narrow competences, 9 of the interviewees had some type of intelligence function (current, former or partial), while 15 had a law enforcement profile (either current or former). Three interviewees came from the judicial sector, 2 were diplomats, 1 was an academic, and 25 had a policy-maker profile (2 national, 20 at EU level, 3 former ones). As the study was targeting middle-level officials, 32 interviewees fell into that category, while 6 were higher level officials and only 2 were from the lower levels of governance.

As the participants were handed an informed consent form necessitating their signature (as required by DCU regulations), they were each asked to designate the work function they would be identified by in the output of the interviews. This was purposefully designed this way for two reasons: 1) to make the interviewee feel at ease upfront about their anonymity being guaranteed and 2) to *actually* guarantee their anonymity: as it might be difficult for a researcher to predict the size of the interviewee's unit (some departments consist of less than 10 employees), it was sensible to ask interviewees to determine the function they deemed broad enough to render them indistinguishable. This is also the method used to establish the profile of interviewees described in the previous paragraph. The majority of participants took this task seriously, and some, particularly those representing national administrations, did not want to be identified by their nationality, as that might have revealed anecdotal evidence of inter-institutional and inter-state relations and frictions. They were each also handed a personal copy of the informed consent form to keep (called a plain language statement by DCU regulations), in case of further arising questions.

In the follow-up of interviews, participants were sent draft notes taken during the face-to-face meeting, for their approval. Most did not have objections, however several returned corrections that were implemented and sent to them for further approval. It is important to note that interviewees were profusely reassured that they would not be recorded (including in some meetings digital devices being collected by the hosting institution upon arrival). Most participants acknowledged that, should the interviews have been recorded, they would have been reluctant to participate, or they would not have been as forthcoming. This made manual note-taking extremely important during meetings, with interviews transcribed within 24h to ensure the reliability of the notes taken. It is furthermore curious to note that many interviewees did open up at one point of the conversation, sharing details they did not want on record. In these situations, they would ask that the following statement not be recorded, which was always respected and the ending of the privy information provided was verified by asking if note-taking could resume.

The last two interviews took place over the phone due to an inability to travel at that stage. The remaining 41 interviews were conducted face-to-face, and an important factor enabling those meetings was the flexibility offered to participants. All meetings were fixed around their schedules and preferences (as some preferred to meet at their workplace and others opted for more informal settings, such as cafés). All meetings took place at the interviewees' city of residence, which required regular short-term travel around the EU, as meetings took place in Brussels, The Hague, Sofia, Tallinn, Budapest, London, Cologne, Mechelen (Belgium) and Venlo (the Netherlands).

Interviews took between 40 and 120 minutes, with an average interview length of 90 minutes – some interviewees had another engagement afterwards, which would cut the meeting short in less than an hour, and others were rather talkative and did not object to some open discussion at the end. The interviews were semi-structured, meaning that questions were prepared in advance for each interviewee, mainly to give the conversation a direction, and as a to-do list of topics to cover. However, the interviews were free-flowing and spontaneous, with questions serving merely to steer the conversation. As the participants were from such a wide variety of backgrounds, they were asked to share their individual experience of EU CT institutionalisation, the way their work has changed in amount and essence (as well as in their cooperation with counterparts), and finally the short- and long-term consequences of the 2015 Paris and 2016 Brussels attacks from their perspective and professional observations.

The most significant challenge was recruiting interviewees. With CT being as secretive as it is, and the Paris and Brussels attacks in particular being veiled in secrecy due to assumed and alleged intelligence and operational failures (as well as ongoing

investigations), both policy-makers and practitioners seemed rather reluctant to engage with academia on the subject. Still, there was a notable difference in approach between the (especially EU level) policy and operational staff: EU functionaries, both on the political and expert level were much more open and responsive to requests for interviews, whereas national, specifically operational staff ignored repeated e-mail requests, even when these were combined with a networking connection or a mutual acquaintance. For some interview targets it took an exchange of 10-20 e-mails for them to be convinced to participate in the study. Certainly their busy workloads should be taken into account, however it has to be noted that EU (or at least Brussels-bound) staff was much more open to engaging with academia on this topic. Policy-makers were, furthermore, more eager to discuss specific events than operational staff, which was to be expected due to the confidential information the latter deal with.

The recruitment process was intensive and extensive – through desk research targets were identified in particular institutional venues and detailed explanatory e-mail requests were sent to both the targeted staff and their administrative assistants. While several of the approached individuals refused the request after the exchange of several e-mails (either due to unavailability or perceived irrelevance of their current function to the study), most unfulfilled interviews were due to a lack of response to the initial e-mail request. Hundreds of e-mails were sent to various professionals and the majority went unanswered, whereas even when a positive initial response was received, the eventual scheduling and carrying out of an interview required extensive follow-up and reminder correspondence, as well as further convincing and flexibility as to the meeting arrangements. Meanwhile, the researcher attended tens of networking events in Brussels, where interview targets were directly approached and their contact information was obtained. This was immensely helpful on several occasions, where interview targets did not respond to written requests until the researcher met them and asked for their participation in person.

Another important factor in recruiting such interviewees was the use of contacts. Of the 40 interviewees, 19 were recruited through strong professional and personal connections who vied for the researcher, 13 were found through attendance at events (some of these overlapped), while only 10 were found through positive e-mail responses with assumed no prior knowledge of the researcher. Some interviewees were recruited as a spillover process of one interviewee recommending and attracting another from their own professional network, however the researcher overestimated that potential in this particular domain, as even when such initial promises were fulfilled by the original interviewee, they were rarely successful in recruiting another. Nevertheless, what was underestimated was the professional "bubble" that most of the interview targets (at least

those stationed in Brussels) had – on several occasions interviewees informed the researcher that they were aware of her study from colleagues in other departments who had either been interviewed or had dedicated staff for interviews. This unforeseen type of spillover through positive endorsement was, however, rather successful in influencing the consent of further interview targets. One of the important identified factors for this endorsement was the researcher's familiarity with the subject, including extensive knowledge on operational cooperation issues. Other factors were the genuine interest of the researcher, the respect and professionalism practitioners were treated with, and the rigorous and cautious approach to the preservation of their anonymity, which put them at ease.

Data processing with NVivo

As the data collection gathered a wealth of heterogeneous information, NVivo qualitative software was used in the processing of interview data and analysis of findings, with the aim of simplifying and streamlining the data organisation and categorisation.

> "The efficiencies afforded by software release some of the time used to simply 'manage' data and allow an increased focus on ways of examining the meaning of what is recorded. The computer's capacity for recording, sorting, matching and linking can be harnessed by researchers to assist in answering their research questions from the data, without losing access to the source data or contexts from which the data have come. In some instances, researchers reported that the software opened up new ways of seeing their data they missed when managing the information without software." (Bazeley and Jackson, 2013, p.2)

As NVivo was created for the uses of qualitative research, particularly in social science, it is believed that the use of computer software could bring rigour to qualitative data analysis (Ibid., p.3). Furthermore, it allows the researcher to avoid over-relying on his preconceived assumptions and hypotheses, by instead inductively discovering new and unexpected findings. It also allows him/her to check the reliability of the study's conclusions, by quantifying the number of datapoints that supports or refutes a given finding. Finally, it provides the opportunity to link datapoints and allows for "out of the box" thinking:

> "NVivo has tools for recording and linking ideas in many ways, and for searching and exploring the patterns of data and ideas. It is designed to remove rigid divisions between "data" and "interpretation" - if this is what the researcher wishes. It offers many ways of connecting the parts of a project, integrating reflection and recorded data." (Richards, 1999, p.4)

In order to familiarise herself with the use of NVivo and to learn how to use it for the purposes of this study, the researcher undertook two all-day training sessions on the software offered by DCU – in Autumn 2018 and in Autumn 2019. These included a series of exercises teaching researchers how to choose the tools necessary for their dataset and research questions, in order to best visualise data and extrapolate findings. Individualised feedback was also provided, thus helping researchers to design a personalised NVivo database.

As the data collected for this study was abundant and diverse, the first step was organising it in thematic categories. While time-consuming, this was quite straightforward: the interviews were read and statements were coded in 35 narrow descriptive topic folders (albeit statements could be coded in two separate topic folders simultaneously). Examples included "Commission's role", "On the nature of police and intelligence work", "On Europol", "Interoperability package", etc. This categorisation already helped to make substantiated findings emerge on concrete topics. When coded in these folders, data is quantified by the software, which indicates where the strongest findings of the study lie. They are grouped under "Files", referring to the number of interviews used as basis for each coding category, while the "References" grouping indicates how many statements or passages from interviews were taken for each of these. Rigour is increased by the fact that NVivo cannot duplicate data – thus if the researcher tries to insert a passage twice, the software will only save and count said passage once. The categories with most references in this first phase were: "2015 as a key change for EU CT" (with 184 references from 40 interviews), "On the nature of police and intelligence work" (173 references from 36 interviews), "Information-sharing" (165 references from 38 interviews) and "On Europol" (108 references from 32 interviewees).

In the second phase, these open-coded folders were grouped together according to relevance in four broad categories (according to the number of references): "Changes in EU role after 2015-2016 juncture", "Systemic issues", "2015 represented a Paradigm Shift" and "Lingering problems in EU CT". In a flow-chart manner, each category flowed into a number of sub-categories, for example the category "Changes in EU role after 2015-2016 juncture" contained four sub-categories: "Role of Agencies", "Legislative reform", "Use of databases and information-sharing as a whole" and "EU institutions role". These were often further sub-categorised, thus for example "Role of Agencies" was divided into sub-folders on each EU JHA agency. Sometimes these sub-categories were used to compare and quantify counter-evidence or opposing views, so as to judge the weight of such claims and exclude the possibility of subjectivity.

The third phase involved further organisation of the study's findings, wherein these were organised under two categories: "Short-term consequences of the critical juncture" and

"Long-term consequences demonstrating the shift of paradigm". Much like the last two empirical chapters of this thesis, these folders contained sub-sections determined to represent firstly an immediate reactionary outcome of the Paris-Brussels critical juncture, and subsequently its mature, lasting effects on the policy's institutionalisation. The short-term consequences were sub-categorised into "Use of databases and information-sharing increase", "Role of Agencies" and "Legislative reform", while the long-term effects were sub-divided into "Inter-agency relations have improved", "Information-sharing has increased, perceptions changed", EU institutions' roles enhanced; inter-institutional relations improved" and "Europe wasn't ready but has proven that it is adaptable".[15] Each of these groupings were composed of narrower sections, discussing specific topics.

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[15] A quotation formulated by two quotes of interviewees to this thesis, Interviews n.1 and 2.

Fig. 1. Overview of NVivo datapoints, as organised by the researcher.

The use of NVivo for the data processing and analysis of this study contributed not only to the more efficient organisation of data, but also to the rigour and reliability of its findings. Qualitative data is arguably more difficult to organise and streamline than quantitative data, as the latter is subject to explicit and implicit rules about the weight and reliability of findings, while the use of control variables and degrees of freedom is more straightforward, thus supposedly ensuring their validity. Despite the enormous strides made in qualitative social science, specifically in the past 30 years, qualitative research remains more abstract than statistical analysis, and as a result, findings can be more obscure and not self-evident. Hence NVivo can be considered a useful methodological tool in aid of qualitative analysis, and researchers in this branch of social science, especially when dealing with large amounts of heterogeneous data, are hereby advised to consider employing the software in the data processing stage of their research.

> "Qualitative research usually requires management of complexity. As you link, code, shape and model data, the software helps you to manage and synthesize your ideas. It offers a range of tools for pursuing new understandings and theories about the data and for constructing and testing answers to research questions." (Richards, 1999, p.4)

Conclusion

This chapter has explained the methodological choices made for this research project and has laid out the processes therein. It has, furthermore, demonstrated the explanatory value of HI and CI respectively, while advocating for their mutual complementarity. Each of the elements of the research design was aimed at rigour, and attention to detail was paramount, while findings were substantiated by multiple sources. The methods applied in the collection and analysis of data are considered to have contributed to each other's rigour and therefore to the reliability of the study's findings, while the theoretical framework chosen for this thesis is considered an appropriate explanatory device for these findings. The following four chapters will schematise findings into a case study juxtaposition of the Madrid-London and Paris Brussels attacks, wherein Chapter III and Chapter V were structured along the same pillars, so as to facilitate the comparative analysis.

Chapter III. Madrid and London attacks aftermath (2004-2005): modest institutionalisation of EU CT information exchange

This chapter describes and discusses the key developments in EU CT in response to the two major jihadist attacks on EU MSs in the early 2000s – Madrid in March 2004 and London in July 2005, merely 16 months later. The overviews of post-attack developments are structured largely according to the same categories: 1) key documents adopted, 2) institutional developments, 3) exchange of information (i.e. law enforcement and intelligence cooperation), and 4) the persistence of national approaches and intergovernmental preferences over EU institutions and instruments. When discussing the London attack aftermath, the argument on the persistence of national-led approaches to EU CT is discussed first instead of last, as it helps explain the majority of developments in that timeframe. It also emphasises that MS' politics and national political priorities prevailed over European solidarity in the aftermath of the 2005 London attack, whereas the 2004 Madrid attack in fact stimulated some concerted EU action. The chapter will focus on EU-level developments (and failures to galvanise political will on the EU level) over national ones, as the latter pertain to internal politics rather than development of EU-wide counter-terrorism. The purpose of this chapter is to examine the EU CT institutionalisation efforts during this critical juncture and to investigate why these were not successful in shifting the policy and its practice to a new paradigm, brought on by high common threat perception.

Madrid attack aftermath

During rush hour on 11 March 2004, exactly 2.5 years after 9/11, the deadliest ever terrorist attack on Spanish soil took place. Ten explosions were detonated aboard four Madrid commuter trains between 07:37 and 07:40 AM, leading to 191 killed and more than 2000 injured. A small cell of radical jihadis was found responsible, and while they were considered to have been at least inspired by al-Qaeda, no evidence of a direct operational link was found during investigations (Murado, 2014). Post-hoc the profile of the attackers has been viewed as similar to that of the 2005 London attackers – younger, "home-grown", "less educated and less financially well off, less ideological, and more prone to prior involvement in criminal activities" (Atran, 2008).[16] The Madrid attack was

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[16] As repressive measures by US and European financial institutions made terrorist funding more cumbersome, this was considered to have pushed terrorist and organised crime groups closer together, as evidenced already by the Madrid attack (Ibid.).

presumably meant to influence the Spanish general elections on 14 March 2004. It was initially announced by the leading government party as being of separatist nature, despite early indications of a jihadist involvement, thus the Irish Council Presidency did not consider it necessary to call an extraordinary EU Summit and EU institutions kept their distance (Bossong, 2013a, p.74). When it became clear it was an Islamist attack, there was a "coherent securitisation across Europe" (ibid.). Spanish conservatives lost the election and Spanish troops were quickly withdrawn from Iraq.

Key documents

The first tangible response to the Madrid attack was the Declaration on Combating Terrorism adopted by the European Council only two weeks after the incident. The Declaration finally acknowledged the implementation problems in the policy area, urging national authorities to remedy those swiftly. It further advised new measures to address operational cooperation and information exchange between national authorities, as well as between the latter and EU-level bodies, such as Europol and Eurojust. The document was drafted before the attack as an evaluation of the European Security Strategy's implementation and therefore was initially rather cautious (Ibid., p.77). The Declaration borrowed from the EU Antiterrorism Roadmap, particularly noting the delays in implementation of the EAW, as well as the necessity of better cooperation between MS and EU agencies, including more sharing of vital CT data.

While not a novel realisation, this was indeed the first time that such shortcomings were acknowledged as problematic and their fixing noted as a priority. The fact that the Declaration was discussed and endorsed by the European Council (solely Council configurations were empowered to operate in this domain at the time) reflects at least a broad political consensus that cooperation between national authorities and a role therein for the EU was potentially necessary to tackle the changing terrorist threat. The issues with EU CT were known before the Madrid attack too – only days prior, High Representative Javier Solana drafted an internal audit report on the EU's CT role (Keohane, 2005b, p.18; European Council, 2004a), discussing three major issues: poor/lagging implementation of agreed measures, insufficient resources for the EU to play a more significant part, and ineffective coordination between EU officials in law enforcement and foreign policy. Nevertheless, it took the attack to galvanise attention to these issues.

One of the symbolic innovations that came with the Declaration on Combating Terrorism was the Solidarity Clause (Art. 222 TFEU), providing that the EU "shall mobilise all the

instruments at its disposal, including the military resources made available by the Member States" to act in support of a MS affected by a terrorist attack.[17] While a solidarity clause had been in discussion during the Constitutional Treaty discussions (2002-2003), the Madrid attack affected its immediate adoption at the European Council following the attack (Myrdal and Rhinard, 2010). The Aznar government had been against the Constitutional Treaty thus the Solidarity Clause could not be agreed. This led to the double symbolism of the Declaration – it demonstrated solidarity against terrorism while simultaneously signalling openness towards more EU integration. Even though the Solidarity Clause has not been triggered to date, it represented an unprecedented political and security commitment at the time, demonstrating some sense of common threat among EU MS.

The Declaration was followed in June 2004 by a revised Plan of Action to Combat Terrorism (a revision of the PoA adopted in the aftermath of the 9/11 attacks) (Council of the EU, (2004a). The PoA seemed "impressive on paper", however without a strong mandate the EU could not achieve much (Keohane, 2005b, p.20). Furthermore, governments "still tend[ed] to see EU agreements, such as the common arrest warrant, as *useful rather than crucial* in their fight against terrorism" (Keohane, 2005a, p.37). The revision "clearly reflected the quantitative and non-incremental expansion of the EU's counter-terrorism agenda since the attacks on Madrid" (Bossong, 2013a, p.82). Except for reiterating old proposals as well as new ones from the Declaration, it put an emphasis on implementation, with a "scoreboard", indicating implementation laggards, in a naming-and-shaming tactic. The newly set-up EU CTC and the Council were to regularly review those. Ultimately however, the Action Plan ended up as a hollow base for CT measures as it lost the political support it had in the aftermath of the attack, becoming a sort-of summary of single-issue strategies and communications issued by the Commission over time (Ibid., p.90).

Nevertheless "this show of unity did not necessarily lead to new policy proposals or reform of the EU's fight against terrorism" as emphasis was put instead on implementation of existing measures over new ones (particularly institutional ones) (Ibid., p.75). Statewatch counted 57 proposed measures in the Declaration, 27 of which it considered to have been more oriented at "crime in general and surveillance", while the Plan of Action contained 129 measures across seven strategic objectives (Statewatch, 2004; Hayes and Jones, 2013). Still most of the highly ambitious objectives set out in

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[17] Or "the victim of a natural or man-made disaster" (Art. 222 TFEU).

these key documents were not eventually carried through, due to lack of consensus between EU MS.[18]

Institutions

Certainly the most important institutional innovation following the Madrid attack was the introduction of a new post of EU Counter-terrorism Coordinator (EU CTC). The post was intended as a device to enhance policy coordination among the various Council configurations and to monitor implementation of various measures in EU MS, where it seemed that, "the establishment of this post added visibility to EU efforts and further relevance to the increasing institutionalisation of terrorism" (Argomaniz 2009, p.159). The irony of the post of "Coordinator" being established under the Council comes from the misguided expectation for this post, which originated from a federal idea and at first glance seems to symbolise a supranational development, yet it could be interpreted as the opposite. Unlike the High Representative, the EU CTC was stationed at the General Secretariat of the Council, in the peripheral vision of national delegates, and potentially submissive to their will. This implied a desire by EU MS to control the process – not only does it take power away from the supranational Commission, it potentially diminishes the significance of implementation deficits as it assigns its monitoring to a post directly accountable to the Council. For Keohane the EU CTC "has virtually no powers, apart from that of persuasion" (Keohane, 2005b, p.18). He has no budget (valid until the time of writing), nor could he chair meetings or set agendas. He "audits the progress" on CT measures and tries to persuade governments to be compliant with implementation, yet he "cannot force the governments to act" (ibid.). In a framework as complex as the EU CT one, however, a true coordination ability for the EU CTC could have been granted and it might have been beneficial for the policy's coherence.

One of the institutional innovations following the Madrid attack was the extension of the mandate of the Joint Situation Centre (then known as SITCEN, and since 2011 known as EU INTCEN) to include a Counter-Terrorist Cell. The unit was tasked with producing intelligence analyses through data obtained via national security agencies and pre-assessed by them. It was thus another institutional innovation with misleading levels of ambition, as similar to other such initiatives in CT, it was and remains 100% dependent on national capabilities and the political will of agencies to work together and involve the EU in that (Interview n.3, 5). As such, instead of representing a genuine effort for EU CT

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[18] Some of these measures (e.g. interoperability, PNR, more operational powers for Europol and Eurojust, etc.) failed to pass at the time, yet they were legislated later on, in the 2015-2018 timeframe.

institutionalisation, it pays lip service to the cause, as without any operational capability, the EU "continues to depend heavily on the willingness of national authorities to provide them with the relevant information" (Monar, 2013, p.202).

SITCEN, an obvious choice for an increased mandate corresponding to the MS' desire to retain their independence on intelligence matters, was created as an insiders' club among the biggest and oldest MS agencies, who already knew and trusted each other. Instead of including all EU MS agencies, SITCEN "expanded by positive selection", where new members were integrated on an ad-hoc basis, through the utilitarian, functionalist logic of the insiders (Müller-Wille, 2008, p.62). In a bottom-up approach, similarly to the Club de Berne and its sub-body the CTG, intelligence agencies decided arbitrarily what to share with who and when, subject to no regulation, control, or the traditional EU naming-and-shaming approach. Nevertheless, the "'pre-cooked' nature of member states' contributions", representing "'sanitised' strategic, finished and processed intelligence", loaded with national assessment bias, meant that SITCEN was far from being an EU intelligence agency (Fägersten, 2016, p.9; Svendsen, 2013, p.195). For a long time, MS saw SITCEN as the only channel for sharing intelligence, and claimed that it was sufficient for their needs (Interview n.9).

Both the upgrade of SITCEN and the newly established post of the EU CTC were supposedly the answer to the Belgian-Austrian proposal for a European intelligence agency, made at the JHA Council in the aftermath of the Madrid attack. The unprecedented proposals for a "EU CIA" and a "EU FBI" were ultimately considered unrealistic, and swapped by Solana for the symbolic upgrade of SITCEN to serve as a terrorism threat assessment centre. What made the agency an "appealing" candidate for such an upgrade was its non-existent aspiration for a federal EU role in CT. This small agency was populated by a number of seconded national experts, of only the bigger, older EU MS, which not only guaranteed the trusted nature of the sharing process, but also guaranteed controlled potential expansion. Furthermore, the agency's mission was (and remains) the fusion of digested—as opposed to raw—national intelligence data, thus burdened with national considerations, and deprived of a degree of confidentiality. The lack of ambition for an operational role made SITCEN seem an attractive channel for "controlled cooperation" (Bossong, 2013a, p.78). In contrast to the sovereignty-instinct-triggering EU intelligence agency notion, the idea of handing another portfolio to the very limited SITCEN seemed like an easy way to avoid an overly integrationist narrative. Similarly, the creation of the office of the EU CTC was a strategic way to handle a much larger conversation. While declaring an overarching high-level post for CT policy, and naming it the same as his supposed US counterpart, EU MS gave the post little to no power.

As it was reported by media and academics at the time (Zimmermann, 2006, p.134, Browne and Watson, 2004) EU MS were divided on the idea of centralising intelligence efforts. Specifically, the biggest and most "muscular" MS from an intelligence capabilities perspective (i.e. the UK, France, Germany, Spain and Italy) were strongly opposed to the proposals for a EU-led intelligence agency and a strong EU leadership post in counter-terrorism. Thus, the cosmetic update of the SITCEN and the similarly symbolic post of the CTC originated as compromise counter-proposals to the original Belgo-Austrian proposal, thus illustrating a conspicuous case of a lowest-common-denominator negotiation. According to Argomaniz (2009, p.160), this substitution showed not only the preference for and emphasis on informal networks on cooperation, but it also demonstrated that "the impetus for change would not go as far as to force the supranationalisation of something as precious for member states as intelligence." As Zimmerman (2006, p.134) commented:

> "The office of the Union coordinator for counterterrorism is a political half-way house that is dangerously out of sync with the spirit of the aftermath of Madrid 2004. It also does not correspond with the cold logic of efficacious transnational counterterrorism; it may well be defeating the very purpose of the office of CT coordinator.[…] Thus, despite the fact that the CT coordinator's office is one of the most tangible results from the Union's post-9/11 and post-3/11 counterterrorism activities, its reception does not bode well for the future of an effective and robust counterterrorism response by the European Union."

Similarly, instead of increasing Europol's mandate, the symbolical re-activation of Europol's Counter Terrorism Task Force (CTTF) in October 2004 (following the Declaration on Combating Terrorism) was meant to address calls for a stronger role for the agency. According to Europol's Annual Report for 2004 (Europol, 2005), the agency supported investigations in 14 EU MS "at their request" and provided threat assessments and other strategic information. The report also claims that "compared to 2003 there was a substantial increase in the information flow through Europol" (ibid., p.9). Finally, the agency's 2004 report claimed that part of its work was "the further development of support tools at the EU-Level, for example the Rapid Alert System, the Bomb Disposal System and web-based initiatives" (ibid., p.10), however, according to Statewatch,

> "a Commission proposal in August 2002[…] to provide an extra € 3,036,800 for Europol to fund an 'EU Bomb Data Network,' a 'Communications Network for Special Intervention Units' and an 'Operational Control Centre' to deal with major terrorist incidents was rejected by the Member States in December 2002." (Statewatch, 2004, p.18; Bures, 2011, p.74).

The proposal would have further set up an "operations coordination centre within Europol to support Member States when conducting anti-terrorist operations or dealing with terrorist situations" (Fägersten, 2010, p.503) thus its withdrawal demonstrated unambiguously that MS were not interested in granting Europol such a role. As the second EU CTC, Gilles de Kerchove, pointed out, "[t]he intelligence community is not very eager to work with Europol" (House of Lords, 2008b). Many agencies perceived it as "an extra burden rather a value added" and some feared leaks of confidential operational data (Bures 2013, p.85; Interview n.11).

These predispositions towards the agency, as well as an opposition to sharing obligations, were manifested also in the Declaration on Combating Terrorism, where the mention of supplying Europol with more data was transformed over time. The draft version stated "Member States should consider it their duty to give the Europol Terrorism Task Force with all operational information, not just limited and filtered strategic and technical intelligence" (Statewatch, 2004). The final version of the document, on the other hand, merely reminded:

> "The European Council also calls on Member States to reinforce the role of Europol in the fight against terrorism by:[…]
>
> - ensuring that Europol is provided by Member States law enforcement authorities with all relevant criminal intelligence related to terrorism as soon as it is available." (European Council, 2004b, p.6)

Cognisant of the lack of trust and the antagonism towards obligatory data exchanges, EU policy-makers managed to push through a mechanism for flexible sharing at Europol. Europol's Information System (EIS), which after long deliberations and a political push after the Madrid attack was finally operational in 2005, is a database utilised by "Europol officials, Member State liaison officers, and seconded national experts stationed at Europol headquarters, as well as staff in the Europol National Units and in competent authorities in the Member States" in all of Europol's competence areas (europol.europa.eu, 2018). Officials can thus check information on suspected and convicted criminals and their networks, as well as objects of interest registered in any EU MS. Access to this data, as well as Europol's Analysis Work Files are limited to the relevant working group members, while control over the data, its dissemination and operational use remains with the national authority that originally provided it, in order to protect sources, but also the ownership and leverage of the national authority providing it (Occhipinti, 2013, p.167). This mechanism of flexible sharing has generally been praised by national authorities, as it was created with the practitioners in mind, still at this point the willingness to provide high-quality data was the main challenge before Europol's operational role (Interviews n.11, 14, 15, 16, 8, 9).

Yet the "persistence of nationality" in law enforcement and intelligence continued to undermine not only Europol's efforts to establish itself as a legitimate CT actor, but also most EU initiatives in the domain (Bures, 2011, p.74). Despite the number of tools at Europol's disposal, intended to make its output "more than the sum of the input", without executive power, the agency "remains but an optional bonus" (Müller-Wille, 2004, p.26) in a catalogue of measures that EU MS use *à la carte*. For Keohane (Keohane, 2005b, p.20; House of Lords, 2005), if Europol had been put in the centre of EU CT efforts some of the complexity could have been overcome. Yet it was clear at the time that Europol was not taken "seriously enough" and some intelligence services did not share information with the body. The agency was even left without a director for eight months (June 2004 – February 2005), while France and Germany solved a bilateral dispute over their proposed candidates for the post (Keohane, 2005b, p.20).

The debate on the added value of Europol also revealed a vicious cycle where, in order for it to obtain an upgraded mandate involving an operational capacity, it needed to prove that it could deliver a function that EU MS could not fulfil on their own; while in order for Europol to provide such value, it needed an operational capacity and executive power in order to obtain its own intelligence.

For Müller-Wille (2008, p.55), Europol can deliver an added value only if it fulfils one or more of three criteria:

> "– it produces something that national agencies are not able to produce;
>
> – it generates better intelligence than national agencies on their own, as, for example, a result of pooling expertise; and
>
> – it produces intelligence that no national agency is willing to produce, or, for political reasons is not acceptable."

While Europol does not produce its own intelligence, it does fulfil the second criteria of producing a pool of information that might not otherwise be available to national services. One of the systemic issues of Europol remains that "national agencies are both the main providers of intelligence to Europol and its main customers" (Ibid., p.57). As national services are ultimately the ones responsible for national security and accountable to citizens (something that could not be transferred to Europol), data collection and threat assessment are tasks that will remain a duty for law enforcement and intelligence authorities. Yet the *pooling* of the data collected and shared by (at the time) 25 services *is* a task that could in theory be delegated to Europol, that is if EU MS saw it as a preferable channel for such an exchange. However, national services prefer that their counterparts are informed ad-hoc, when they arbitrarily deem it necessary. This brings the question of whether Europol was purposefully designed into a vicious cycle, so as to preclude strengthening its mandate to such an extent, where it might be able to instruct

services on how to do their job. As pointed out in a peer evaluation by the EU CTC's office, for Europol to deliver value it needs to act as an information hub – a role repeatedly denied to it by EU MS:

> "added value also depends on various factors: the design and scope of the coordinating body, the definition of its role concerning the respective roles of law enforcement bodies and intelligence agencies. From this perspective a co-ordinating body cannot act as a steering committee but must act as a hub including permanent analysis of current situations at both intelligence and law enforcement level." (Council of the EU, EU Counter-Terrorism Coordinator, 2004)

Exchange of information

One of the areas where the limits of integration, and of the EU's potential role in CT, become quite evident, is the area of information exchange, including law enforcement and intelligence cooperation. This area, hitting close to sovereignty and national interests not necessarily compatible among MS, would remain for years to come an appropriate litmus test on the EU's role in CT, as well as on the trust and cooperation between its MS. The justification for closer cooperation among security services was evidenced by the fact that some of the Madrid attackers were known to Italian authorities, yet no international warning had been raised, while the French and Spanish authority failed to share vital operational information on the attack post-hoc (Fägersten, 2010, p.507). Furthermore, numerous political leaders, practitioners and academics were advocating for closer EU cooperation in intelligence and law enforcement work (Keohane, 2005a, p.15, and others).

In the first months after the attack, a data sharing agreement between Europol and Eurojust was adopted, while Europol's CTTF was reinstated (Bossong, 2013a, p.82). A SIS upgrade was initiated and the VIS setup was urged, having been discussed already prior to the attack. The Commission had lobbied for a criminal records exchange system since 2000, and reiterated it again after Madrid, discussing also measures for enhanced cooperation and data sharing with Europol and Eurojust. It further presented assessments of the state of affairs of police and judicial cooperation and argued for closer cooperation among governments, including DNA data exchange and interoperability (European Commission, 2004; Bossong, 2013a, p.84). In the end of 2004, EU interior ministers agreed on with a more efficient way of sharing criminal convictions, which would later become the ECRIS database (Bossong, 2013a, p.90).

The failure of other measures to gather traction, however, demonstrated that the threat, or at least its perception, were not symmetrically felt throughout the EU. In 2004 the EU's size increased by 10 MS, none of which had any experience with terrorism, while implementation problems with EU CT "cast doubt over the EU's possible contribution", resulting in reliance on intergovernmental channels (ibid., p.74). This period saw intensification of bilateral and "minilateral" cooperation on terrorism. An EU CTC evaluation noted that all EU MS "realise that a lack of international cooperation or the absence of a common policy in this area will have consequences in the medium or longer term for every Member State", while national intelligence services were "fully aware of the importance of international co-operation as an appropriate instrument to fight against terrorism internally" (Council of the EU, EU Counter-Terrorism Coordinator, 2004, p.7, 12). Nevertheless, where coordination and information exchange were enhanced, was between national authorities, often via bilateral channels, or through multilateral intergovernmental forums such as CTG and PWGT.[19] Despite various EU documents calling for "concerted European action",[20] governments mostly coordinated bilaterally, as agencies supposedly "loathe to share information with more than one government" (Keohane, 2005a, p.2). For Renard (2016, p.18), the inherent problem therein is that "enhanced bilateralism is not necessarily compatible with other 'lateralisms', as it can at times undermine regional integration processes or the building of an effective multilateral order". Bilateral cooperation was not only "generally considered as the most workable instrument" for information-sharing, but importantly it was believed to be *sufficient* for cooperation on international counter-terrorism (Interview n.18, also n.11, 16, 10, 13, 15, 17, 22, 2, 25), which is why most services invested in building bilateral partnerships where trust was implied, instead of engaging in larger multilateral fora, where officials would not know their counterparts well (Interview n.16, 19; Council of the EU, EU Counter-Terrorism Coordinator, 2004, p.7).

Within the intergovernmental intelligence coordination grouping known as the Club de Berne, the dedicated counter-terrorism cell set up post-9/11, the CTG, became the strongest channel of minilateral cooperation. While an indication of political will for European governments and security agencies to work together on CT, it was also an unambiguous rejection of the EU as a channel for such cooperation, and for intelligence work in general. According to Müller-Wille (2013), an agreement on exchange of information between the CTG and SITCEN/INTCEN was reached in 2004, which would in principle enable CT data to increasingly reach the EU.

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[19] Police Working Group on Terrorism (PWGT) – a police equivalent to the CTG, outside of EU structures, set up in 1979 (Club de Berne was set up in 1971).
[20] The 2003 European Security Strategy, (Council of the EU, 2003).

The G5 (later G6) group of interior ministers of the bigger EU MS was set up in May 2003, indicating the emergence of parallel intergovernmental channels prior to the Madrid attack (Bossong, 2013a, p.74). The existence and strong reliance on this channel shows that there were perhaps some common concerns or threat perceptions.[21] The G5 countries, i.e. those with the strongest intelligence services in Europe, strongly opposed the centralisation of intelligence at the EU level, allegedly fearing leaks (Interview n.11; Keohane, 2005a, p.31). The grouping met in the aftermath of Madrid and later agreed to set up a common terrorist watch list, something that could not be achieved on EU level (Bossong, 2013a, p.85).

Another example of an intergovernmental initiative is the Prüm framework, initiated in 2003, at first between Germany, France, Belgium and Luxembourg, and inspired by the Schengen agreement. For Bossong "flexible cooperation among a subset of member states was to demonstrate the feasibility and benefits of increased political cooperation to other, more sceptical member states" (ibid.). For him this strategy "worked surprisingly well" and gradually evolved onto more substantial measures, such as DNA, biometric and vehicle data exchange – measures foreseen by the Commission and proposed in the Declaration on Combating Terrorism.

The Prüm Framework cannot be considered a direct consequence of the Madrid and London attacks, despite its timing implying otherwise. The Prüm Treaty was signed as an intergovernmental agreement on 27 May 2005, following years of negotiations and preparatory acts, as a compensatory measure following the relaxation of border controls in the Schengen area (Walsch, 2008). The security framework was picked up by the EU and integrated into its *acquis* in 2008 through EU Council Decision 2008/615/JHA. Despite not having CT as an exclusive purpose but rather being broadly oriented at the cross-border pursuit of criminal activity, it has indeed become a staple in multilateral CT police cooperation, as it allows the cross-reference of DNA data, fingerprints and vehicle registrations. This type of data can become crucial evidence in CT investigations and criminal proceedings, however the slow process (where it can take up to 48h to exchange information between counterparts) has been lamented by national authorities as ineffective for hot pursuit and for operations where time is of the essence (Interview, n.32, 31). Prüm has been called "an effective laboratory for cooperation" (Monar, 2001), while Bossong claims that "it demonstrated the potential of common problem-solving among a smaller set of cooperation partners" while helping to "avoid difficult collective negotiations" (Bossong, 2013a, p.86). Yet, even when it was incorporated in EU *acquis*

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[21] While there are also other regional groupings that already existed at the time, such as the Salzburg Group, the Baltic Sea task force, etc.

and practice, it was not integrated in the catalogue of measures of the Action Plan on Combating Terrorism.

In 2004, the Commission attempted to advance an EU-led information-sharing model after an invitation from the European Council to contribute proposals in the area. The Declaration on Combating Terrorism instructed the Council to "examine measures" in areas such as cross-border hot pursuit, exchange of information on terrorism convictions and forensic material, as well as a simpler exchange of intelligence and police data between national authorities (European Council, 2004b). It further encouraged EU MS to make use of Europol and Eurojust instruments in their operational cooperation including by increased sharing of relevant data, and invited the Commission to bring forward proposals on the exchange of DNA, fingerprints and visa data, as well as on "enhanced interoperability between European databases and to explore the creation of synergies between existing and future information systems (SIS-II, VIS and Eurodac) in order to exploit their added value within their respective legal and technical frameworks in the prevention and fight against terrorism" (ibid.). The Commission responded to these calls for action with an assessment report of police and customs cooperation (European Commission, 2004) where it detailed its rationale and intention to foster a new approach to information-sharing. The 50-page document listed a number of ambitious overarching proposals, while at the same time demonstrating insight into the difficulties of sharing and the sensitivity of intelligence and policing data. The Communication boldly proposed far-reaching measures such as implementing interoperability of EU databases and centralising police and intelligence collection. It also proposed to establish Europol as a hub and overseer of CT work by transforming it "into a true center of counter-terrorism intelligence" by incorporating it into Club de Berne and CTG frameworks. The document could be seen as a potential precursor of the new multiannual programme for the development of AFSJ for the 2005-2010 period, which was imminent, thus it could be treated as a way for the Commission to "test the waters" for JHA evolution.

Against the background of all these proposals, Sweden simultaneously offered a more modest proposal on information-sharing, which aimed to simplify procedures and protocols when a request for a cross-border data exchange was made, yet it did not find rationale for obliging national authorities to share neither for automating any data exchange. The Commission followed up with several documents, including a 2 June 2004 assessment report on the Tampere programme and a 16 June 2004 Communication on "enhancing access to information by law enforcement agencies". The latter proposed the establishment of an "EU criminal intelligence" model, through a regime entitling fellow EU MS law enforcement bodies the same access to data upon

request as national authorities have.[22] Perhaps unsurprisingly, these grand proposals from the Commission on expanding EU duties in JHA were not warmly received by MS, and subsequently the Swedish proposal seemed an easy and inconsequential alternative. In addition, as Bossong (2013a, p.85) noted, since EU MS gave themselves almost a year to conclude the agreement, this in fact "undercut the dynamism and pertinence of these discussions".

The swap of an all-encompassing Commission proposal for institutionalisation of EU measures in police and intelligence, for a limited, prudent, national-driven proposal demonstrated clearly the lack of maturity of EU CT, even in the context of a high threat perception, only three months after a large-scale terrorist attack. It was an unambiguous "no" to the integration of EU CT, and it signalled eagerness to dampen any potential Commission entrepreneurship in this domain, by taking the lead on intergovernmental level. This intergovernmental reflex would remain a driver in EU CT development for years and would undermine a number of ambitious and, from a functionalist point of view, efficiency-oriented proposals for cooperation and harmonisation.

While the Swedish Framework Decision did introduce some alleviations aimed at expedited and facilitated information-exchange, many MS missed the implementation deadline for the legal act (December 2008) and problems persisted even after full implementation. Apart from the Decision's lax provisions allowing for deadline extensions, the persisting lack of clarity on some provisions became so problematic that the Council had to issue a set of guidelines specifying how national services were to use the new instrument in their exchange with counterparts, what type of information were to be shared, etc. (Council of the EU, 2006, Occhipinti, 2013, p.170; Doherty et al., 2015, p.27-28; van Ballegooij and Bakowski, 2018, p.48).

Eight days after the aforementioned Commission Proposal, the EU CTC presented a provisional findings report of a peer evaluation on the EU's CT role, in particular regarding intelligence and law enforcement cooperation (Council of the EU, EU Counter-Terrorism Coordinator, 2004). The report demonstrated an in-depth understanding of the underlying issues of cooperation and sharing in the two domains. The evaluation considered fundamental differences between the organisation of national security apparatuses and the resulting deep divergence of preferences and strategic cultures to be the main dividing line obstructing more constructive collaboration via EU structures. The report confirmed the exponential increase in international information-exchange, due to the realisation of the internationalisation of the threat following 9/11 and the Madrid attack (Ibid., p.3), however it detailed the widely heterogeneous nature of sharing

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[22] Which would be complemented by a coherent European data protection regime.

practices, where dividing lines on the basis of nationality, but also professional culture (police, intelligence, customs, etc.) determine widely diverging preferences on sharing channels, the volume and type of information shared, as well as the attitude towards EU instruments and bodies and their role in the exchange.

A telling example illustrating this finding was the perception of Europol: while some EU MS wanted to see it become a preferred channel for exchange of information, others wanted to grant it more operational roles, and a third group did not have a vested interest in a strong role for the body in intelligence and law enforcement work (Ibid., p.13). Furthermore, while "Europol is considered as a law enforcement body by security services, and thus not a partner for them", national law enforcement bodies "do not perceive the added value of Europol" (Ibid., p.8). EU MS were however unanimous on the necessity of the EIS, and were homogeneously against automated exchanges through that channel. They were also much more likely to use Interpol as a channel rather than Europol, and even though the use of liaison officers increased, it was implied that those exchanges usually did not go through Europol structures (which they considered too bureaucratic), but rather remained bilateral (Ibid., p.18-19). The report revealed also that some practitioners were not fully aware of Europol's mechanisms and available instruments.

The divergent preferences of EU MS, in combination with the "almost total lack of a clearly defined policy on the use of the various information exchange channels" gradually established by the EU, further translated to a situation where each MS had a preferred channel of communication and methodology of exchange, often shaped via organisational or cultural practices and not regulated or standardised in any way (observed both on national/bilateral and EU levels) (Ibid., p.17). This contributed to a compartmentalised information-sharing between services, even if the overall volume was substantially higher. It also increased the likelihood of information being missed or the value of certain data being underestimated.

The Swedish Framework Decision certainly was the answer to the Commission testing the waters on EU-led CT, and information-exchange in particular. Henceforth, proposals would become much more modest and circumscribed, including the next long-term programme for the AFSJ. In November 2004 the Dutch film director Theo van Gogh was murdered by a radical Islamic fundamentalist (Henley, 2004), which put Islamist terrorism back on the EU agenda, and reinforced the already strong impetus of the Dutch Presidency at the time (July-December 2004). The Presidency had pushed for increased CT cooperation and in particular improving the exchange of information. Subsequently the "principle of availability" was proposed by Dutch and Commission officials (Bossong, 2013a, p.89), meaning that

> "throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that State." (European Council, 2004b)

The seemingly ambitious initiative claimed that a high level of information exchange between law enforcement should be ensured and information should be made available albeit with several conditions:

> "— the exchange may only take place in order that legal tasks may be performed,
> — the integrity of the data to be exchanged must be guaranteed,
> — the need to protect sources of information and to secure the confidentiality of the data at all stages of the exchange, and subsequently,
> — common standards for access to the data and common technical standards must be applied,
> — supervision of respect for data protection, and appropriate control prior to and after the exchange must be ensured,
> — individuals must be protected from abuse of data and have the right to seek correction of incorrect data" (ibid.).

The Programme further made clear that this was not to involve new databases, however it implied interoperability of existing ones and access to at least some of them by Europol (ibid.). Yet, less could be achieved at that point as evidenced by the under-ambitious Hague Programme on the development of AFSJ, demonstrating the prevailing attitudes at the time: "persistent political resistance and lack of substance" (Bossong, 2013a, p.89). In many aspects The Hague agenda duplicated the June Action Plan on Combating Terrorism, while initiatives such as the "principle of availability" and new EU databases were further postponed for the future and tied to conditions, such as studies or impact assessments showing their added value (Council of the EU, 2004b, p.18-19). As interoperability and data access to Europol were narratives too federal for national authorities, the principle of availability would remain underdeveloped for years despite The Hague Programme declaring in strong terms that the European Council was:

> "convinced that strengthening freedom, security and justice requires an innovative approach to the cross-border exchange of law-enforcement information. The mere fact that information crosses borders should no longer be relevant". (ibid., p.7)

Summary: National-led CT prevails

For some observers, by June 2004, the EU CT response to the Madrid attack had concluded, and the outcome of the critical juncture that it opened was that "momentum for change was not as great as could have initially been expected" as MS "opted for the least intrusive options for institutional reform and undercut the most ambitious Commission proposals for information-sharing" (Bossong, 2013a, p.88). Despite the common framework put in place, the EU's role in CT continued to be very much dependent on the political will of MS. EU instruments and institutions remained merely a subsidiary to national efforts and as such were subdued to national preferences for cooperation, while their implementation and usage remained contingent on national legislative margins of discretion (Monar, 2013, p.207; van Ballegooij and Bakowski, 2018, p.48).

Insufficient trust between national services, between those and EU bodies and among EU agencies themselves remained an obstacle difficult to overcome and "a substantial barrier to full sharing in the EU" (Walsh, 2006, p.638; also Fägersten, 2010, p.517; Occhipinti, 2013, p.179; Bures, 2011, p.90). At this stage of EU CT development, the EU institutional design was not equipped to deliver much mitigation, as structures in place were not designed for confidence-building, offering little support or feedback to (even willing) MS (ibid.). While common training programmes, such as those developed by CEPOL were considered to increase inter-agency trust, these were largely underused, despite being systematically mentioned in EU stock-taking documents on CT (and CEPOL obtaining the status of an EU agency in 2005) (e.g. in the Stockholm Programme; Interview n.4). On intra-EU level, rivalry between EU agencies, due to unclear mandates and task division, as well as competition over budget increases, made for patchy and non-committed collaboration between key agencies such as Europol, SITCEN and Eurojust (Interview n.2, 30, Fägersten, 2010, p.512.).

The Commission's entrepreneurial role post-Madrid was chiefly manifested in attaching CT value to a number of miscellaneous dossiers that had until then been stuck in the EU pipeline. The vague language in these and other strategic and legislative files, opened up a large new area of involvement for the supranational body (Bossong, 2013a, p.79). The Commission had also pushed for what would later on become the interoperability of databases package,[23] as well as new databases on migrants and asylum seekers, and on criminal records. All of these would follow on later, but were refuted by MS at this stage of EU CT development. The Commission's role in this period has seen nuanced

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[23] Long-advocated by Germany as a good practice from the federal level of operations.

interpretations, where some observers believe that "it is after Madrid that the Commission truly came into its own as a policy entrepreneur" (Argomaniz, 2009, p.159), while others point out that it "often appeared as an executive agent of the European Council's agenda, submitting legislative proposals in line with the Action Plan largely decided upon by the Member States" (Monar, 2013, p.205). It is clear that EU MS made numerous attempts to push the Commission away from the driver's seat of EU CT governance. This was evidenced by the endorsement of the Swedish Framework Decision in place of the Commission proposal on the topic and the adoption of certain measures on minilateral intergovernmental level rather than through the EU framework (e.g. DNA and other data exchange through Prüm, terrorist lists and other similar measures through G5, etc.) as well as through the appointment of the EU CTC, who was tasked with monitoring implementation, traditionally the Commission's executive task (Keohane, 2005a, p.19).

Furthermore, the EU CTC answers directly to the Council and is appointed by the European Council, making him thus directly accountable to the Union's most intergovernmental body. It is important to note that in 2007, only two years after the London attack, there was a six-month delay in filling the position after Gijs De Vries resigned, reportedly lamenting insufficient authority of the post and ineffective cooperation with national services (Deutsche Welle, 2007). This event will be discussed in further detail in the next chapter.

The lack of a strategic overview and policy leadership could be attributed to purposeful limitation of the mandates of the leadership posts in EU CT. With the potential of much more targeted foresight and well-informed feedback, both the Europol Director and the EU CTC posts were likely pre-meditatively curbed in order to be subdued to national-led bodies such as the European Council and other Council configurations. The EU CTC, unlike other Coordinators in the EU framework, has no budget or power of initiative, and answers to the Council, while the Europol Director answers to the European Parliament. The two posts "possess neither the political authority, nor the political or professional clout to promote information-sharing effectively or resolve disputes" (Occhipinti, 2013, p.176; also Fägersten, 2016, p.10).

This intergovernmental nature of the decision-making in EU CT before the Lisbon Treaty (including at the time of the Madrid and, later, London attacks) could help explain the political, superficial and reactive response to terrorism at the time – the EU was not mandated to deliver much more than declarations of solidarity, common priorities and some rudimentary facilitation of coordination. While the Lisbon Treaty innovations in internal security were not motivated by terrorism (as the Treaty treats it no differently than other serious cross-border crime), (Monar, 2013, p.200) they did grant the EU, at

least in theory, a legislative and governance role to play, which it did not have at the time of the Madrid (and London) attacks. The changes brought to EU CT and the AFSJ as a whole will be examined in the next chapter.

London attack aftermath

The shock incurred by the Madrid bombings was supplemented by the attack on London's transport system 16 months later. Similar in tactics, it targeted London commuters in the morning rush hour. The coordinated detonation of three homemade IEDs[24] took place onboard London Underground trains, and the fourth on a double-decker bus an hour later, as passengers were being evacuated from tube stations. The attacks caused 52 deaths and more than 780 injuries (BBC, 2015). Despite initial accounts of unknown or even incidental affiliation to Al-Qaeda, the attackers are now known to have had "clear links to senior Al Qaeda commanders" from the Pakistan and Afghanistan branch (ibid., Hoffman, 2009).

The London bombings had a rather limited impact on the development of EU CT, particularly in comparison to the Madrid bombings, in part due to the Euroscepticism of the UK Presidency that held "office" in the aftermath (Bossong, 2013a, p.92). The end of 2004 and the beginning of 2005 were characterised by a "periodic slump" in EU CT (ibid.). The policy had lost some legitimacy, due to the unnecessarily intricate institutional framework in the making, the weak office of the EU CTC and the persisting implementation problems, as well as with the setup of biometric indicators in visas and travel documents and their application in the VIS (ibid., p.93). Moreover, mini-lateral initiatives such as the Prüm framework, overshadowed EU action on terrorism and organised crime by demonstrating the preference of EU MS towards smaller, bottom-up cooperation initiatives. In parallel to Commission proposals, G5 initiatives on the same topics were being discussed, e.g. on a new system for data exchange on terrorist suspects, as well as a common framework for monitoring online extremism (ibid.). Despite the continued failed/foiled terrorist plots in Europe, the policy lost some attention due to overshadowing political crises elsewhere taking priority.[25] Later on, attention was again shifted by the failure of the Constitutional Treaty to pass referenda in France and the Netherlands, which galvanised public and political attention on the future and legitimacy of the EU.

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[24] Improvised Explosive Devices.
[25] E.g. the 2004 deadly Indian ocean tsunami and the Iranian elections and proliferation talks in 2005.

National interests prevail: the case of the UK Presidency

The London attacks were followed by political reactions of solidarity and a narrative of European unity, as vocalised by UK Prime Minister Blair, German Chancellor Schröder, Spanish Prime Minister Zapatero, and EU JHA Commissioner Frattini (Bossong, 2013a, p.94). Against this backdrop, and in the context of rising "homegrown" radicalisation in Europe, one might have expected a window of opportunity to open up for EU CT policy, but that did not come to fruition.

Spain and the UK becoming targets of jihadist attacks reinforced the belief that the Iraq War was an underlying motivator for such attacks. Thus, some EU MS chose to treat the attack as a national problem for the UK and other states involved in the conflict. A clear demonstration of this was a public statement of the French counter-terrorism coordinator, claiming that flaws in UK foreign policy were among the reasons for the attacks (Ibid., p.95; Andreas and Nadelmann 2006, p.216). Two weeks following 7/7 there was a failed attack in London, bolstering such views further (ibid.).

The UK Presidency that coincided with the 7/7 attack had a discernible effect on the EU response. The main push by the Presidency was on the new framework decision on data retention, aimed at extending time limits, as well as the inclusion of biometric indicators in national ID cards, corresponding to the UK government's intention to introduce new ID cards for its citizens (Bossong, 2013a, p.97).

After the first JHA Council post-7/7, the UK Presidency called on governments to contribute ideas for the development of EU CT, thus implicitly pre-empting the influence of EU bodies, such as the Commission (ibid.). The national proposals were expressed through the Council's Terrorism Working Group (TWG), a grouping that did not deal with policy drafting but only with oversight and information exchange, thus explaining the restricted subsequent output.

Key documents

While the UK focused on the national response at first, Spain initiated the JHA extraordinary Council on 13 July, which came up with another modest solidarity declaration post-attack, which was not taken further to the General Affairs Council or to the EU Summit level (Ibid., p.95). It emphasised measures on financing of terrorism, the European Evidence Warrant and included a proposal by the Commission on intensified

exchange of information on terrorist offences, as well as some points on the necessity of stronger operational cooperation, such as better collaboration between EU MS, Europol and SITCEN. Towards the end of the Declaration, the Council declares its intention to scrutinise whether "the Union has the right framework for combating terrorism" by December 2005, again indicating the reluctance of MS to engage the EU in CT work (Council of the EU, 2005d, para 10).

The second half of 2005 was politically dominated by the rejection of the Constitutional Treaty and a growing frustration between Britain and France driven by fundamental disagreements on foreign policy and in particular the Iraq War, presumably making policy initiatives more difficult to pass due to difficulties garnering support (Bossong, 2013a, p.101). The UK called an informal EU Summit at Hampton Court, the main concern of which was ultimately not terrorism, but foreign policy and migration (ibid.). The EU Counter-Terrorism Strategy that followed, aimed to "provide a short and visual explanation of the EU's role in counter-terrorism, which is easily understandable by citizens across Europe" (Council of the EU, 2005d, para 4) and "seemed to meet a real need for a reformulation of the EU's counter-terrorism agenda" as the Action Plan had become too complex (Bossong, 2013a, p.102; Brady and Keohane, 2005, p.2).

The adoption of the EU Counter-Terrorism Strategy on 1 December 2005 was the most tangible consequence of the London attack. Except for its effort to systematise and consolidate EU efforts in CT, the document presumably attempted a more concentrated and contemplative vision, targeted towards specific threats, such as home-grown terrorism, which became evident as a threat through the London attack and was dealt with in this document for the first time. While the Strategy has been "praised for reflecting a greater understanding of the multi-dimensionality of the threat", there was nevertheless "little that is new in the document and the four pillars [were] essentially a reformulation of the seven strategic objectives present in the Council Declaration" (Argomaniz, 2009, p.161). As expected, the UK Presidency played a major role in driving the strategy forward.

The UK already had a text in mind as a template – their newly released national CT strategy from 2003, which became a direct model for the EU one, down to its four pillars – prevent, pursue, protect and respond (prevent, pursue, prepare and protect in the UK version). However, the UK strategy came under heavy scrutiny in late 2005, as a leaked assessment report called it "immature" and questioned its accountability and planning; it would later also be accused of bias and discrimination against ethnic Arabs living in the UK (Ibid.; cf. Browne and Watson, 2004; Wintour, 2005; Interview n.37). The EU strategy received no such critique, as it was considered not more than a symbolic – albeit clearer – restatement of goals and purpose, with important elements of a counter-terrorism

policy still missing, such as a common threat assessment component (Bossong, 2013a, p.103). The UK's original intention of replacing the Action Plan with the Strategy or to simplify the former did not succeed as the Plan's subsequent versions retained both old and new objectives in an "incoherent mix of ideas that could only be taken forward at the national level or where EU action was merely a remote possibility" (ibid.). Furthermore, the strategy did not develop the discussion of an EU crisis communication network, instead stating unequivocally that the creation of new EU institutions and channels of information-sharing should be avoided. Instead the structure the Union was left with was "too little to raise the EU's public profile in serious crises or terrorist attacks", while "in 2009 and 2010 EU member states experienced serious gaps and communication problems in relation to new terror warnings from the USA" (Ibid., p.104). Finally, according to some observers:

> "one could criticise the EU Counter-terrorism Strategy as a deliberate ploy by the UK Presidency to block or slow further legislative activity in the area of counter-terrorism. To keep the EU busy with symbolic documents rather than new proposals made sense from the Euro-sceptic perspective of the UK." (Bossong, 2013a, p.103)

Institutions

In contrast to the US response to international terrorism, "the European response did not involve a substantial strengthening" of its institutional core; neither Europol nor SITCEN saw significant upgrades despite the narrative following the two attacks (Edwards and Meyer, 2008, p.9). Even though the mandate of Europol was symbolically updated by the ratification of three new protocols in 2007, those diverged greatly from earlier Commission proposals for centralisation of law enforcement through the agency. The Protocols granted Europol the authority to participate in and manage Joint Investigation Teams (JITs) and to request that national authorities launch investigations. Although in the latter case, Europol cannot demand anything, it was presumed that the pressure of this "naming and shaming" tool would be sufficient to convince MS to be compliant. This resulted in informal requests, rather than formal ones, where it seems that Europol tended to avoid the latter (Occhipinti, 2015, p.236).

Despite EU MS resistance to a stronger Europol role, after two years of negotiations, the Council adopted a Decision that officially turned the body into an EU agency, as of 1 January 2010 (Council of the EU, 2009a). Despite the time-lag, replacing the "cumbersome" Europol Convention could be considered an indirect consequence of the critical juncture opened by the Madrid and London attacks, as it was an upgrade that the

Commission had lobbied for years, with some claims that it can be traced back to 2001, and its eventual adoption could be attributed to the Constitutional Treaty negotiations (Occhpinti, 2015, p.236, cf. De Moor and Vermeulen, 2010; Bures, 2011, p.90). The new mandate of Europol will be discussed in further detail in the next chapter.

Information exchange

As pointed out above, despite the higher volume of data exchanged and a noted cultural shift towards international sharing, "most of the increased cooperation takes place outside the EU framework, despite its established structures for intelligence cooperation" (Müller-Wille, 2008, p.49; also Bures, 2011, p.74; Occhipinti, 2013, p.179; Fägersten, 2016, p.69; Den Boer, 2008; Gruszczak, 2013, p.32). EU MS have even been known to withhold information from European bodies, such as Europol, with which the data shared remained "sparse" (Walsh, 2006, p.641; Bures, 2011, p.75). This dynamic continued to be observed post-London and beyond, as evidenced by a 2008 report by the EU Commission of the British House of Lords:

> "The raison d'être of Europol is the exchange of information for law enforcement purposes. It is a matter of particular concern that four fifths of the information exchanged by national liaison officers stationed at Europol is exchanged without actually going through Europol, and hence without being placed on Europol's database and without being accessible to Member States other than those directly involved" (House of Lords, 2008a).

A 20 September 2005 Decision (Council of the EU, 2005a) obliged national services to share key law enforcement data on terrorism with each other and with Europol (and relevant judicial information with Eurojust), in cases where it concerned two or more EU MS (ibid.). The Decision is a conspicuous example of the type of instrument the Madrid and London critical juncture generated – a strong narrative of solidarity and seemingly ambitious initiative supposedly meant to foster common CT work, clouded by crucial caveats. In this case the caveats are: 1) EU MS can refuse to share certain information under the pretext of national security considerations, if it is subject to an ongoing investigation or it might endanger human intelligence sources, and 2) since terrorism is by definition a matter of national security, there is no way to enforce such an obligation or to monitor its implementation. As a result, the legal act was "of limited practical value" as "compliance with the decision would remain unsatisfactory for years to come" (Fägersten, 2010, p.511; also Interviews n.8, 9, 18; van Ballegooij and Bakowski, 2018, p.48, 58). The obligation has had little impact on the practice of sharing, as it cannot force agencies to exchange classified information. Also, it is virtually impossible to

sanction violations, as it is unfeasible for the Commission or any independent body to judge whether the information withheld would potentially jeopardise ongoing investigations or human sources (Interviews n.8, 9, 18; Müller-Wille, 2008; van Ballegooij and Bakowski, 2018, p.58). While it is believed to enable speeding up of sharing procedures, by virtue of setting deadlines for exchanges, the Framework Decision could not compel agencies to share data that they normally would not (ibid.).

The Commission, however, clearly saw the Decision as a success and urged that a similar obligation on submitting data to Europol be imposed on intelligence services too; a proposal that gathered no support in the Council and had to be withdrawn (ibid.). The Commission aimed to establish Europol as a hub for information exchange via its national contact points in 2005; a proposal that triggered concerns over breach of the subsidiarity principle (Müller-Wille, 2008, p.66). The intelligence services' displeasure was publically expressed by the then MI5 Director: "If we splash [intelligence] around carelessly we shall soon have none of it" (Fägersten, 2010, p.511; FIdler, 2005). Instead the Council adopted a Framework Decision in 2006 that made a reference to Europol and included an obligation to share information especially between national authorities (Council of the EU, 2006).

Despite the low compliance, scholars and practitioners alike admit that such initiatives aid in fostering a shared professional culture and developing common habits, thus helping to convince practitioners of the value of cooperation (Fägersten, 2016, p.3; Lander, 2005). Later on, the Prüm framework would be extended to EU level, once its added value became clear (Council of the EU, 2006). While not a comprehensive coordination framework, it still indicates a "partial opening of the national law enforcement data systems towards each other", thus demonstrating an incremental improvement in attitudes towards information exchange and cross-border law enforcement (Monar, 2013, p.205).

Summary: 7/7 failed to open a critical juncture

Despite several tangible policy outcomes, which might be attributed to the pressure exerted by the UK Presidency at the time, the London attack is not considered by scholars to have opened further the window of opportunity for EU CT (Argomaniz, 2009, p.163). What it did instead was to extend and inform the critical juncture opened in the policy and European threat perceptions by the Madrid attack. It has thus been qualified by academics as a "*critical moment* […] that did not convert into a *juncture*" (Ibid., emphasis in original). Unlike the Madrid attack, the London one's window of opportunity

closed rather fast, and was followed by "political stagnation"; terrorism did not appear on the European Council's agenda for two years, while a number of measures proposed stayed on standby for years in the absence of political momentum (e.g. PNR, the CBRN package, interoperability, etc.).

Another illustration of this argument is the failure of the Commission to pass the *passerelle* clause (Art.48 TEU), which would allow switching to ordinary legislative procedure in JHA (thus empowering the Parliament) and substituting unanimity with qualified majority voting (thus enabling easier compromise) in specific policy areas that normally have a special status (Ibid.). Frattini, JHA Commissioner at the time, had proposed enacting the clause in May 2006 for the sake of more efficiency in CT decision-making, however seven months later, 14 out of 25 JHA ministers voted the proposal down (Smyth, 2006). While some reports indicate that the unequivocal "no" might have been related to discussions on the EU Constitution, it was still a palpable indication that MS were not ready to take CT further, despite the context of the disrupted August 2006 terrorist plot to use liquid explosives on transatlantic flights originating from Heathrow airport (Argomaniz, 2009, p.163). In the post-London period it became clear that foiled terrorist plots fail to open the type of window of opportunity for institutionalisation that the shock of a successful attack, and the resulting public pressure, can generate (ibid.).

During the UK Presidency, unlike with previous ones, the Council Secretariat's role was diminished, evidenced by the fact that it was used less as a political tool and more as a drafting body, while it also had less ready-made proposals to draw from than in the Madrid aftermath (Bossong, 2013a, p.99). Meanwhile, the Commission only presented four documents in the London aftermath: a proposal for a directive on data retention, a communication on radicalisation and recruitment, an endorsement of the Council of Europe's convention on money laundering and terrorist financing and a budget allocation of €7 million for pilot projects on prevention and response to attacks. All the proposals had either been discussed pre-London or reflected complacency in the sense of embracing existing frameworks in the place of proposing new ones (ibid.). As the Commission is generally well-informed of the political will likely to encompass specific proposals, it can usually be expected to scale its proposals up and down according to the overall motivation of MS. This equivalency leads to an assumption that the London attack failed to generate a surge of political will, in comparison to the Madrid attack.

The Commission's role post-London, similarly to post-Madrid, has been subject to nuanced analysis. Some observers consider that it became stronger, noting a "significant trend of an increasingly reassured JLS DG[26], strengthened by their increased expertise

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[26] Directorate General Justice Freedom and Security.

and experience on these matters" as well as an increased Commission credibility among EU MS, only after "the supranationalist instincts of some of their initial proposals on police data and intelligence exchange were toned down following national criticisms" (Ibid., p.162). Others found that "the EU's limited reaction to the London bombings was accentuated by a lack of adequate policy inputs by the member states and by an increasingly confrontational relationship with the European Commission (and European Parliament)" (Bossong 2013a, p.100). Through feedback loops, the Commission would come to realise that the more overarching proposals it brings to the table, the more MS would find ways to curtail its role in CT and by extension would lean less on EU instruments in this domain.

The Commission's proposal on interoperability of 24 November 2005 and on access to VIS for CT purposes were not taken up by the Council (European Commission, 2005a). The principle of availability was not developed further post-7/7, despite the Commission's proposal for a framework decision on 12 October 2005. The Council instead issued a report by the "Friends of the Presidency" on these issues, supposedly a sort-of coalition of the willing initiative, and on 3 April 2006 created an ad-hoc group of national experts on information-sharing. While those could be seen as positive developments they also signalled the drawing of a line in the sand on the Commission's role and entrepreneurship over CT matters, and the desire instead to limit these to the narrow cherry-picking extent that some MS foresaw. Thus, the Commission's initiatives in this domain would become very limited, while "the overall climate of cooperation hit a new low" (Bossong, 2013a, p.107).

While the London attacks reaffirmed the threat perception of jihadist terrorism, they failed to open further the window of opportunity for the development of a true EU CT policy, and specifically failed to encourage CT cooperation between MS, while individual nations instead aimed to control political and policy-making processes at EU level, including by limiting the influence of the Commission and the Council Secretariat (ibid.). Difficulties over information-sharing persisted and the principle of availability was deliberately not advanced further, while the UK Presidency was mostly driven by national concerns and priorities in its EU-level initiatives in CT and of the traditional model of policy-making in counter-terrorism – using pre-existing initiatives when policy proposals are in demand, instead of allowing a dynamic growth of the policy (Ibid., p.108).

Aggregated analysis: Harmonisation but not integration

Keohane (2005a, p.3) points out a "paradox" in EU CT policy development:

> "On the one hand, the governments agree in principle that co-operation at the EU level is a good thing because of the cross-border nature of the terrorist threat. On the other, they are slow to give the Union the powers (such as investigation and prosecution) and resources (such as spies and money) it would need to be truly effective."

Depending upon which aspects they chose to focus, scholars disagree about the degree of EU CT institutionalisation achieved in the period 2004-2006. Bures (2006) believes, for example, that the EU was a "paper tiger" in this domain. Monar (2013, p.195), conversely, argues that an EU governance framework developed, even if it could only be described as an "institutionalized system of cooperation coordination between national governance frameworks constructed around a core of common instruments and procedures with a cross-border reach". This analysis will review both points of view in turn and will contextualise these evaluations from the current stage of EU CT's evolution.

No (substantial) institutionalisation

EU CT policy was not designed to drive an integration process in CT work. Much like external security, the internal branch was designated its own pillar, subject to "special" legislative and institutional procedures. Its strongest legal acts – framework decisions - could not be enforced until 2014. Its institutional actors, such as the EU CTC (subordinated under the Council, with no budget or legislative power), SITCEN and Europol were fully subdued to national will and resources, which defined their fate as subjects of chicken-egg dilemmas. This begged the question of whether they needed more powers to add value or to add more value to be granted more powers. Council groupings met rarely and incoherently, composed of representatives from various sectors, meaning they often spoke different professional-culture languages. Some of these WG are still specifically exempt from legislation, while one (COSI) began with a non-permanent mandate, implying it could be scrapped if considered unnecessary (Interviews n.4, 8, 9, 10). The Commission, having very little say in the domain, was occasionally even undermined in its proposals (including in areas to which it was invited to contribute) by alternative national or intergovernmental initiatives.

Beneath the surface of political declarations, many issues were still unresolved in the aftermath of the Madrid-London juncture and this would become apparent in several developments that followed, such as the protracted procedure of appointing a new Europol Director in 2004. Furthermore, a proposal to designate a Commissioner to the

counter-terrorism portfolio was swiftly brushed aside (Bossong, 2013a, p.82, cf. Spence 2007, p.17-18). This would have contributed to more effective implementation through the use of infringement procedures and the appropriation of financial resources necessary for some measures. Instead MS opted for the symbolic post of the EU CTC, who "saw his authority openly questioned" and was "largely relegated to a spectator" (Bossong, 2013a, p.83).

Instead, while an EU CT framework was being gradually put in place, the implementation deficits in the policy remained a bottleneck for the policy's development for years (Monar, 2013, Bures, 2006; van Ballegooij and Bakowski, 2018, p.48, 58). While the uneven implementation can be an indicator of uneven political will and asymmetrical interests between MS, the infringement procedure deficits show the EU's impotence as an actor in this domain, a trend that continued until 2016. The only tool for exerting pressure on MS was the EU CTC's reporting, which brought attention to inefficacies in the policy or incorrect implementation by specific MS, but was clearly not particularly effective.

These (under-)developments further falter under one of the crucial stumbling blocks of EU CT institutionalisation - the "persistence" of MS on the primacy of their national CT policies. For Monar, the principle of subsidiarity will always remain a pretext and a rationalisation for avoiding delegation of any CT work that they do not want to delegate to the EU, thus making it crucial that MS see an added value or have a shared vested interest in any initiative the Commission puts on the table. Heightened, shared sense of threat is thus a precondition for any level of institutionalisation. The principle of subsidiarity [Article 5(3) TEU] states that the EU:

> "shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level"

Lander (2004, p.483-4), argues from a practitioner's perspective that there was an amplified need for agencies to cooperate on increasingly global issues such as terrorism, yet this need has "not altered the underlying position that intelligence services are national instruments that are required to be, if not selfish of their national interest, then self-centred about it", meaning that the only possible rationale for them to collaborate would be a perceived mutual utility, such as in a heightened state of common threat. This is visible in EU CT decision-making, which is "still heavily influenced by Member States' national threat situations and priorities", thus leaving "considerable margins of discretion to national legislation" (Monar, 2013, p.207).

Some observers argue that the high threat perception post-Madrid and London settled quickly, as the Iraq war was considered one of the determinants of the threat, and it

concluded for Europeans soon after (Interview n.27). What became evident is that the heightened sense of threat certainly did not last long enough for substantial institutionalisation or conglomeration of interests to take place:

> "No single EU country, however, felt itself to be more directly targeted than the others, or even threatened by the same type of terrorist action.[…] That the attacks were not aimed at Europe as a whole but rather at different nations led to uncoordinated and wholly national responses.[…] Thus each European country, with its own specific problems, has of late sought to resolve the issues in its own way. This is in stark contrast to when the pooling of information and other intelligence resources was the norm." (Heinrich, 2006, p.138)

According to Müller-Wille (2008, p.69), the international nature of terrorism post 9/11 (including post-Madrid and London) has had "very little effect on EU intelligence cooperation". While intelligence-sharing may have improved and increased as a whole, little credit could be given to the EU, as it was not meant to have operational capacity. Therefore,

> "minor adjustments of the structures and sharing of intelligence at the strategic level, such as the expansion of SitCen with a Counter Terrorism cell and the establishment of a direct link to Europol, meet the needs of EU decision-making" (ibid.)

While critical junctures are necessary for institutionalisation, it is important to note that "each time this decisive influence proved to be temporary, depending heavily on the evolution of terrorist threat perceptions" and the Madrid-London juncture did not last long:

> "Since the Madrid and London attacks of 2004 and 2005, the terrorist threat perception in the Member States – with no major attacks following – gradually receded, reaching in 2012 a new low with, according to Eurobarometer opinion polls, only 2 per cent of EU citizens listing terrorism amongst the two most important issues facing their country.[…] As a result – and to some extent similar to what happened in the TREVI framework in the 1980s – counter-terrorism fell back again into the position of only one amongst several internal security challenges Member States wish to address at the European level." (Monar, 2013, p.200)

The brevity of this critical juncture and its limited impact indicate that the idea of EU CT institutionalisation was perhaps not ripe enough. For Zimmermann (2006, p.135) it is evident that "the impact of 3/11 on European society and governments was insufficient to galvanize multilateral action within the Union as a counterterrorism platform". For Bures (2013, p.88), it was "too early to allow the EU to have an influential role in traditionally state-specific areas such as policing, criminal justice and intelligence gathering".

Substantial Institutionalisation

Still for Monar (2013, p.201) "EU internal security governance – while not replacing the national systems – comprises in the counter-terrorism domain instruments and mechanisms that go beyond traditional intergovernmental cooperation and make it – at least in some respects – an internal security actor in its own right". One of the factors he identifies for qualifying the EU as an autonomous security actor is the fact that it EU began preparing its own threat assessments, including Europol's TE-SAT Reports and SITCEN's assessments. However, he acknowledges that the threat was "unevenly distributed" across the EU, resulting in uneven assessment and asymmetrical motivation to cooperate on CT. Occhipinti contends that the Madrid and London attacks set in motion "institutional innovations distinct from the Tampere [policy programme] pathway", such as the establishment of the EU CTC and the Counter-Terrorism Strategy. Yet Occhipinti also points out that the new path caused resistance to the creation of the EU CTC (by the Commission) and to the enlargement of Europol (by national services) (Occhipinti, 2015, p.250, cf. Argomaniz, p.71-2).

In Argomaniz's 2009 assessment, the Madrid attack was the most significant critical juncture impacting the institutionalisation of EU CT. In comparing it with 9/11 (and even the 2005 London attack), he believes that the 2004 incident shaped the policy's development in a structured way, where he finds that the measures that followed were "more closely tailored to the terrorist threat", thus allowing it to become "a truly differentiated policy space" (Argomaniz, 2009, p.158). For Argomaniz (ibid.), a sign of the advancement of the EU's CT role post-Madrid was its mandate in areas supporting antiterrorist efforts, such as "border control (i.e. inclusion of biometrics on passports); response management (i.e. crisis coordination arrangements); infrastructure protection (i.e. protection from attacks against information systems); judicial cooperation (i.e. mutual recognition of confiscation orders); or information exchange (i.e. criminal records)". Whereas the post-9/11 EU CT policy development was judged by Argomaniz as "institutional bricolage", he qualifies the institutionalisation of post-Madrid CT as:

> "a patch up of new elements to the existing institutional framework reaction to the Madrid events. Incidentally, the post-Madrid political choice of layering over bricolage has contributed significantly towards the 'over-crowdedness' of this policy space, a criticism often raised by experts and policy-makers." (Ibid., p.160)

Whether EU CT development in 2004-2005 was more than simply an expression of overlapping strategic objectives and would indeed involve true transformation of CT governance (including on practitioner level) was not clear at the time. It was also a question to some degree neglected in scholarly analysis for some time; the strong,

seemingly united declarations of common action and solidarity, the regular announcements and discussion of new coordination-enabling measures and the upgrade of some institutional, were a logical reason for pro-European scholars to judge in unambiguous terms that the CT domain was gradually moving towards supranationalisation (Monar, 2013; Argomaniz, 2009; Cross, 2007; and others). While this was to an extent a valid hypothesis for that moment in time, some years later it would become painfully obvious that the institutionalisation surge and the integrationist tone of these reforms were not only overstated, but in fact misleading, as the policy area was much less institutionalised than initially believed.

As Argomaniz concludes his conceptual analysis, there are three indicators to consider when judging whether a critical juncture can be expected to produce long-lasting institutionalisation:

> "Firstly, what is the likelihood of the processes in question to be reversed or deinstitutionalised? The more institutionalised the arena or mode of governance, the less likely is the roll back.[…] Secondly, to what extent are the modes of governance stable and likely to reproduce themselves over time?[…] [T]he more institutions remain useful for actors, the more they will be utilised.[…] Finally, how much future institutional and policy decisions are shaped by pre-existing structures and policy choices? The more past decisions tend to structure future ones, the more an area can be described as institutionalised." (Argomaniz, 2009, p.167-168)

Argomaniz thus analyses the EU's CT development in 2004-2005 on the basis of these criteria and concludes in non-absolute terms that the policy's institutionalisation process has reached a fairly advanced stage. While this was a valid conclusion to make at the time, as certain shortcomings of the policy's functioning had not been illuminated yet, it would have been too early to know. The first and third criteria are very much still valid; deinstitutionalisation was and still is unlikely, and institutional/policy decisions taken between 2004-2006 have proven to have impacted the policy's development. However, these criteria only discuss the superficial political level of a policy's institutionalisation. And in a policy such as counter-terrorism, (integration) discourses can be misleading, as they are certainly dependent on political events, public opinion and time pressure. Thus one can expect that the discourse on terrorism as an area where MS want to cooperate might result from the political pressure to reassure a frightened public, particularly in certain contexts such as before important elections. As it became clear some years later, in the absence of palpable (or at least common) threat, these discourses were abandoned and all the measures that were not yet implemented remained at a proto-stage, for a lack of strategic interest and political commitment to carry them out.

This is where, as EU policy-makers would eventually learn, Argomaniz' second criterion is incredibly important. In this area, more so than in others, the EU's role is determined

by the amount of value it can deliver. The added value in question refers primarily to national practitioners, who are to a large degree the drivers of their government's CT policy. Fägersten (2010, p.502-3) discussed bureaucratic resistance as a layer of the opposition to institutionalisation. Explained by organisational and cultural loyalties and interests, it can become cause for bureaucratic competition. Increased intelligence-sharing measures adopted following the Madrid and London attacks did not take practitioners under consideration, thus failed to transport bureaucratic networks and loyalties to European level, i.e. to Europol and other channels of cooperation.

Unless the EU can offer these practitioners (i.e. intelligence and police officers, border guards, analysts, magistrates and prosecutors, and other relevant government officials) instruments or coordination mechanisms that are either unavailable on national level or unattainable through bilateral channels, the EU would remain irrelevant for their work and consequently without a role to play in counter-terrorism. Thus, while Argomaniz gave the EU a fair grade on that aspect in 2009, convincing national governments, but also experts and practitioners, that the EU indeed *has* an added value to offer to their national efforts in CT has in fact become the hardest hurdle for policy-makers to overcome. While the EU has accomplished an impressive amount in that respect, the discernible progress was achieved in 2015-2016 and not in 2004-2005. As Argomaniz (2009, p.158) too notes, the Madrid attack "made [it] a political necessity to accelerate the institutionalisation" of EU CT.

Conclusion: modest institutionalisation of EU CT

Overall, it could be considered that the Madrid attacks' impact on EU CT was strong on the surface, yet hollow in its foundation. Neither were MS convinced of the necessity to give the EU a mandate on any of the sub-areas of CT, nor of the added value of such a delegation. The sense of solidarity was limited too: the threat perception following Madrid was uneven, partly because of persisting divisions over the Iraq war, which spilled over onto the issue of terrorism, as evidenced by UK-France tensions post-London. The post-Madrid developments were characterised by 1) pre-existing proposals conveniently put on the table at the right time, 2) more ambitious proposals, such as those on increased information-sharing between police and security services being "undermined or blocked by the member states" and 3) persisting iterations to sovereignty and "the absence of a deeper preference convergence" explaining weak institutional design in EU CT (including the post of the EU CTC) and limited legislative response to the Madrid attacks (Bossong, 2013a, p.91). The London attack response, on the other hand was characterised by a

Eurosceptic UK Presidency and intra-MS tensions, resulting in the failure of crucial dossiers to advance.

It was already clear that, for the institutionalisation of EU CT, "what was ultimately necessary is genuine political will", which would be difficult to achieve due to the fact that MS have "widely diverging preferences when it comes to security integration", which ultimately prevail over common approaches (Cross, 2007, p.84-5). What would be underestimated until years later was that political will "is formed through a process of deliberation about the significance of prior shared causal beliefs" (ibid.), such as the belief that cooperation or multilateral action brings value to national CT efforts. In hindsight, deliberation only got EU MS as far as admitting that they shared certain priorities in the fight against international terrorism, which mostly entailed symbolic measures and political declarations of solidarity, however what deliberations failed to achieve at that point was to convince MS and their national CT authorities that there was added value to be found in the cooperation of practical CT activities on EU level.

It thus becomes evident that most of the compounded post-Madrid and post-London innovations in the EU CT framework were more superficial than initially presumed. This can be interpreted simply as a lack of broad consensus and shared vision of the EU as a CT actor. Broadly speaking, poor implementation of most harmonisation measures in the domain until recently can be seen as an indicator of that as well (van Ballegooij and Bakowski, 2018, p.48). In the context of a recent terrorist attack, EU MS are more easily convinced of the good sense and added value of harmonising measures and are more willing to make strong common (political) declarations of solidarity. Yet in the practical reality of CT work in its many aspects – all reflecting national security concerns and sovereign strategic interests – cooperation through the EU was not a (shared) priority, possibly explaining lagging implementation of binding legislation. These dynamics speak of the lack of consensus on the importance and urgency of these measures – even more so they imply the lack of maturity of the broader concept of integration (or institutionalisation) of CT at EU level.

From a theoretical perspective, according to HI, the system/institutions, once shaped, stay in place until there is a critical juncture, that is a shake-up of the system, showing the institutions in place do not work or have become inadequate. This leads to a frenzy where different proposals to change the system/institutions in place are made and innovations are quickly adopted. One of the reasons therein is the political pressure on the bodies and people in power to show their value or reassert it; the other reason is a crisis of identity – if the institutions do not work, we must search for alternative institutions that work under these (changed) circumstances.

After 9/11, MS and national CT apparatuses received the feedback that terrorism *can* be transnational. Yet at the time jihadist terrorism was seen as mainly a US "problem". After the Madrid attack, the first assumption was that it was of separatist nature, thus reverting back to nation-centric reflexes on terrorism. The shock of a large-scale jihadist attack on EU soil incurred a critical juncture in European CT. While EU CT structures had been put in place before without an actual scenario for their usage in mind, they were now open to reconstruction based on actual needs. While European CT cooperation notably increased, the questions driving these developments of (re-)institutionalisation were:

- Is CT an EU-wide issue? Does it concern (equally) all MS?
- Is there an added value in delegating CT tasks to the EU? What might be the long term repercussions of that?

At the end of the critical juncture opened by the Madrid attack and closed shortly after the London attack, both of these questions had received negative answers. Following the London attacks, MS were even more convinced that the threat was not symmetrical across the Union, as the attacks were attributed to the Iraq War and its participants and supporters, causing frictions between MS on the opposite sides of that debate. This explains further the inward-national, bilateral and at most ad-hoc intergovernmental reactions to the threat; some MS increased their cooperation but decidedly avoided the EU as a channel, even going as far as to undermine the Commission and its proposals (e.g. with the Swedish framework decision). Meanwhile, proposals that were generally supported (the setup of the EIS and ECRIS database, the SIS-I upgrade to SIS-II, etc.) took longer than expected to reach fruition, showing the institutional design impediment on EU CT; whereas other proposals (such as interoperability and increased sharing with Europol) initially supported, failed to gain traction. A third group were legal acts such as 2005/671/JHA, which were equipped with no enforcement mechanisms, and were unsuccessful in changing the status quo. A final group were the grand ideas (e.g. centralised intelligence), replaced by modest but sufficiently distracting innovations (EU CTC and SITCEN upgrade – still under the auspices of MS control). Implementation continued to lag behind, further demonstrating the asymmetrical sense of the threat.

It thus becomes clear that the Madrid and London attacks caused a modest institutionalisation of EU CT evidenced by numerous legislative harmonisation measures and small institutional upgrades, however the type of institutionalisation these attacks incurred was explained by historical institutionalism dynamics – a critical juncture provoking shock, shake-up of the system and policy layering, i.e. piling new ideas on top of old ones. The Madrid-London juncture failed to generate a paradigm shift for EU CT; instead it continued to be seen as a domain where the EU's involvement was resented and allowed only à-la-carte. The law enforcement, intelligence and judiciary officials

driving CT preserved their exclusively national loyalties. Bilateral cooperation increased, intergovernmental platforms developed further, while EU institutional channels and cooperation mechanisms remained underused. Institutionalisation occurred on a superficial, rhetorical level, but not on cognitive, ideational level, driven by a paradigm shift of perceptions on the necessity of an EU role in CT work.

Chapter IV. The interim period of EU CT information-sharing development (2007-2015): path dependence, CT fatigue and policy entrepreneurs

Introduction

The 2007-2014 timeframe was a passive one in EU CT development. Due to the lowering terrorist threat, interest in CT measures decreased overall, leading to what has been widely known as a "CT fatigue", characterised as such by the EU CTC himself (Council of the EU, 2009b). With the death of Osama bin Laden, the military withdrawal from Iraq and Afghanistan and the pending financial crisis, political attention shifted to other topics, as Europe perceived itself not to be under high terrorist threat anymore. At the same time, there were several significant foiled terrorist incidents in this period, which informed both national and EU policies. In August 2006, UK and US authorities were able to foil a large-scale conspiracy of attacking transatlantic flights using liquid explosives (Bossong, 2013, p.110). In summer 2007, several attacks were foiled in Germany, involving large quantities of home-made explosives (ibid.) In 2005, the publication of the controversial Danish cartoons of the prophet Muhammad, caused not only worldwide violent demonstrations, but also several foiled attacks in Denmark over the next few years.

Still, scholars have noted that the lack of "a major reorganisation or fundamental addition" to EU CT is at least partially explained by the lack of successful terrorist attacks in Europe, despite the considerable number of foiled or 'lone wolf' incidents, which are not as effective in opening windows of opportunity for policy development in EU CT (ibid., p.109; also Coolsaet, 2010, p.861). After the London attack, EU CT "has largely continued on the tracks that were set out during the formative phase from 2001 to 2005" (Bossong, 2013, p.143). EU CT's punctuated equilibrium model of policy institutionalisation led to a "patchwork of measures and mechanisms, often elaborated in great haste, without an overall design" which are "made even more complex by the intricate institutional architecture of the Union and by differences in threat perception and widely varying cultural and political traditions" (Coolsaet, 2010, p.858). Even after the EU CT Strategy's adoption in 2005, "large chunks of counterterrorism endeavours in Europe remain principally within the confines of national decision-making" (ibid.). The strategy was arguably aimed at

> "not only streamlining, but also institutionalizing, the intra-European collaboration in counterterrorism, which as a result reached cruising speed. But by 2010 […]the drive to further EU-wide cooperation had once

again largely subsided[…]. The major reasons for this relative decline in EU counterterrorism activity are obvious. No major attacks have occurred since the London bombings." (ibid., p.861)

As a result, governance lagged behind, while there few EU CT novelties in this period. Scholars (Bossong, 2013; Occhipinti 2013; Argomaniz, 2010; Bures, 2016; also van Ballegooij and Bakowski, 2018, p.48) also emphasise the lagging implementation of measures in this period, of instruments like the EAW and data retention, while the availability principle "remained out of reach". The political momentum of the Madrid and London attacks was "not sufficiently strong or effectively channelled to resolve the lack of focus and implementation problems of the EU's counter-terrorism policy" (Bossong, 2013, p.142). The slow implementation too is consistent with the claims of a "CT fatigue" in this period.

Despite the relatively negligible EU CT activity in this period, Bossong (2013, p.110) annotated two trends in EU CT internal cooperation in the period 2006-2012: "(1) limited initiatives to expand the EU's arsenal to protect from, and respond to, different forms of attacks; (2) a growing programmatic emphasis, but slow substantial progress, on the prevention of radicalisation and recruitment". Outside of some attempts for common action on radicalisation, the overall trend in this period was one of "growing control over EU security policy by national governments" (ibid., p.109, also Bures, 2011, p.254-256). As noted by Gruszczak, (2013, p.31):

> "The legal framework for cooperation of police and law enforcement services within the EU does not contain string incentives for direct operational cooperation.[…] On the contrary, provisions on intelligence cooperation are fairly modest, but leave no doubt as to who is the major player in this field, i.e. the member states. As a result, EU law allows for strategic intelligence, reducing largely opportunities and capacities of EU agencies and institutions for operational support for national services."

This chapter maintains the structure of the chapters describing the Madrid-London and Paris-Brussels critical junctures: it commences with an overview of key documents guiding the development of EU CT in this period, it then presents an overview of the institutional developments and overall role of institutional actors in the timeframe in question (2007-2015). The chapter then proceeds to examine the developments in the narrow domain of information exchange and concludes by a theoretical account and a structured reflection on the maturation and effectiveness of the EU's CT apparatus in the end of the period examined therein.

Key Documents

The Lisbon Treaty

Without a doubt, the most important legal document adopted in this period was the 2007 Lisbon Treaty, implemented in 2009. After a failed attempt at passing the much more ambitious Constitutional Treaty, not least because of the grand ambitions to incorporate internal and external security in the EU acquis, legislators settled for the more modest Lisbon Treaty. The latter, however did introduce some far-reaching reforms, most importantly the "depillarisation" of the EU, i.e. the abandonment of the pillar structure. At least in theory, this was meant to incorporate foreign policy and internal security into the Community acquis, thus empowering the EU and its institutions to legislate in these domains, wherein the unanimity vote would be replaced by qualified majority voting (QMV) and a co-legislation process between the Council and the Parliament. This innovation was, however not universal, as in police and operational cooperation, MS reserved the right to use unanimity voting (Bossong 2013, Occhipinti 2013). Moreover, as an addition to the Treaty, its Declaration 36, providing for a direct exception on the primacy of the EU acquis in the context of bilateral agreements for police and operational cooperation, affirming that in those fields "Member States may negotiate and conclude agreements with third countries or international organisations" (Publications Office of the European Union, 2012). Furthermore, purportedly some of the larger MS (particularly France and the UK) insisted on the exclusion of intelligence work from EU action, which led to the drafting of the infamous in this domain Art.4.2. TFEU, which emphasised that "national security remains the sole responsibility of each Member State", wherein "national security" implied intelligence (Coolsaet, 2013, p.865; Höhn and De Kerchove, 2019, p.17). This article drew boundaries on the EU's action in CT, and would be used many times in the following years as an integration brake on subjects where MS did not want the Commission's involvement. Still, pro-integrationist MS insisted on the inclusion of a clause in Art.73 TFEU, allowing for willing groups of MS to have organised cooperation on national security (ibid.). The institutional implications of the Lisbon Treaty on the internal security and CT domains will be discussed in the next sub-section.

Hague and Stockholm Programmes and other strategic documents

This period of EU CT development witnessed a lot of strategic and programmatic documents – a trademark EU approach to times of low political will, as a gentle push on reluctant or unmotivated MS via "leadership from behind". Nevertheless, as will be

discussed in this chapter, almost none of these documents exhibited the degree of ambition of the proposals and strategies of the Madrid-London critical juncture, while a number of them were simply stocktaking exercises by the Commission, merely reminding of the EU instruments in place and prompting action were work was lagging behind. Commission documents were found to be lacking in strategic vision and tangible benchmarks, while even MS noted that instructions provided therein were insufficient to enable a coherent EU information exchange framework (Doherty et al., 2015, p.87).

The most important strategic document of this timeframe was the Stockholm Programme on the development of the AFSJ in 2010-2014, adopted in 2009. Until then, internal security action was guided by the Hague Programme, which was much more ambitious and to the point than the 1999 Tampere one, while it also put an explicit emphasis on information-sharing for the first time (Coolsaet, 2010, p.859; Council of the EU, 2004b). Still, the new Stockholm Programme was much longer and more detailed in outlining plans for AFSJ action in the following five years. Nevertheless, the section covering terrorism was short and unfocused, mostly addressing topics of radicalisation and terrorist financing, and shifting away from repressive measures and information exchange ones. The Stockholm Programme will be further discussed later in this chapter.

The 2010 EU Internal Security Strategy (ISS) was an even more mediocre document when it comes to a strategic vision for countering terrorism. Short and weak on CT measures, it missed many important points such as the importance of information exchange, operational cooperation and interoperability. It described only measures on countering radicalisation, transport security and terrorist financing. While the ISS failed to discuss information management at all, the Commission seemingly was aiming to decouple the latter from internal security and CT in particular (likely due to the low political will in that time) (European Commission, 2010c). In 2012, the Commission published a Communication on a European Information Exchange Model (EIXM), as called upon by the JHA Council, in their 2009 EU Information Management Strategy (IMS). These and other developments in information exchange during this period will be discussed in the dedicated section of this chapter.

This timeframe in EU CT did involve some attempts at harmonisation measures by the Commission, with various degrees of success. Most of the terrorist plots of this period inspired a certain measure from the EU, whether it was followed through or not. The foiled 2006 plot involving liquid explosives aboard transatlantic flights led to an amended 2003 regulation on aviation security, banning large liquid containers on flights (Bossong, 2013, p.110). The 2005 publication of the Danish cartoons of the prophet Muhammad and the subsequent failed terrorist attempts, led to a renewed interest in counter-radicalisation measures among EU MS. Still, while the topic consistently appeared on

the most important strategic documents in the following years, the actual policy output (a media strategy and an Action Plan) was limited and not considered far-reaching, except for the setup of the Radicalisation Awareness Network (RAN) in 2011 (ibid., p.112-113). The foiled attacks in Germany in summer 2007 involved large quantities of explosives, and inspired action on explosive substances regulation that was previously discussed in 2003 and after the Madrid attack, however it lacked political will and readymade proposals on the table to move forward (ibid., p.111). In 2007, the Commission began a consultation process and issued a non-binding "strategic guidelines" document, which was swapped for a legislation proposal only in 2010. Nevertheless, outside of the window of opportunity, it took that proposal until 2013 to be adopted (ibid.) Similarly, in critical infrastructure protection, where common action was discussed in the aftermath of the Madrid attack, discussions and negotiations took until 2008 to settle on a legal document, that was limited to energy and transportation infrastructures, as those pertain to the Single Market, where the EU has straightforward competences (ibid.) In CBRN security, similarly discussed as a new area for common action through the EU, negotiations lasted until 2009 and involved horizontal expert groups. The eventual 2009 Action Plan seemed far reaching, however "its slow gestation and scope clearly reflected the strong control of member states that underlined the primacy of national competences and costs of genuinely common or uniform regulation" (ibid., p.112). This timeframe in EU CT imposed "numerous constraints on further EU cooperation", while "the EU level and the Commission were placed in a supportive and coordinating role for national activities", which further explains why by 2015 security was viewed as a topic out of scope even within the Commission, as the latter had stepped back from active policy making during this period (ibid.).

Another poignant example of the crippling lack of political will in this period was the failed attempt to revise the 2002 Framework Decision on combating terrorism – the most important legal act for EU CT, which criminalises various terrorist offences. The Commission aimed to harmonise various supporting actions to terrorist activity, such as the "preparatory act", traveling to and training for terrorist purposes, financial support as well as inciting public statements of violence (ibid., p.114). While this would become quite important in the early 2010s, it is clear that it was not political priority yet, as it was only passed in 2008 after a significant downsizing by the EP. Importantly, the revised document did not contain any novelties in the field of prevention, therefore "the expansion of repressive legal instruments for the disruption of recruitment would remain limited and subject to divergent national transposition" (ibid.).

Institutions

The institutional implications of the Lisbon Treaty

The introduction of the Lisbon Treaty in 2009 was to have several important implications on EU CT and external security, as the pillar structure was abolished and the AFSJ was formally moved to the areas of Community competence. Firstly, it meant that EU CT would no longer be subject to unanimity decision-making, while that would not apply to *all* aspects of internal security, as matters of operational work, specifically police and criminal justice cooperation remained subject to vetoes and national red lines, as well as transition periods (Bossong, 2013, p.117). Decision-making was then not necessarily easier or simpler, as MS had been reasserting their primacy in EU CT, thus granting them more leverage against EU proposals. Meanwhile, the EP became a co-legislator in this domain, which would bring further complications for internal security measures that often received the highest scrutiny of the Parliament.

Secondly, according to Art.71 TFEU, the Council's Standing Committee on Operational Cooperation (COSI), was set up to "facilitate, promote and strengthen coordination of operational actions of the authorities of the Member States competent in the field of internal security". The fact that there was a committee set up with the primary purpose of ensuring operational cooperation among national CT-relevant authorities was encouraging for the coherence and increased effectiveness of that apparatus (ibid.). Nevertheless, the Committee did not make its mark on EU CT until the critical juncture of 2015-2018. Instead, it was to be concerned only with organised crime, which is why it was in charge of setting up the highly praised among policy-makers "policy cycle" for organised crime, aimed at organising and coordinating national and EU-level (through Europol) actions in the domain, while streamlining certain proposals and their negotiations. CT never received such a chance, wherein discussions on an identical process for CT occurred on several occasions and was never accepted by national policy-makers and practitioners as a viable option (Interview n.4, 24). Meanwhile, COSI, which was heterogeneously composed of high-level law enforcement representatives, interior ministry officials and even legal representatives (The House of Lords, 2011), was added (initially as a temporary committee) onto a plethora of other Council Committees concerned with internal security topics, wherein its place in this variable patchwork was not initially clear.

Thirdly, the adoption of the Lisbon Treaty would have to involve the ultimate adoption of the solidarity clause, politically agreed after the Madrid attack. Once again, an underwhelming development in the aftermath of an ambitious declaration, the clause was included in the Lisbon Treaty (Art.222 TFEU), yet remained "at a declaratory level",

as it was never implemented, while the Council was "unable to agree on a concrete set of legislative and operational instruments" to use in case the clause is ever used (Bossong, 2013, p.118). In the end, "a full-fledged EU response to a terrorist attack" on a EU MS is considered unlikely, while the EU's involvement in such an event is likely to be "limited, if not marginal" (Renard, 2012, p.3).

On the basis of these (under-)developments, several scholars consider that the Lisbon Treaty did not have "an immediate impact on EU counter-terrorism cooperation" (Bossong, 2013, p.118, Coolsaet, 2010, p.861). Since MS retained their authority over intelligence, law enforcement and judiciary – the main instruments used in the fight against terrorism in the EU – it was not expected that the Treaty would make a significant difference to the CT role of the Union, which is relegated to playing a "supporting role, where and when it is deemed able to inject added value into the endeavours of its member states" (Coolsaet, 2010, p.861). One important dynamic, which was, however, expected to change the balance of power in EU CT decision-making was the EP's newfound role, as the EP "holds traditionally distinct, sometimes antagonistic views" to the Commission and Council on topics of security and fundamental rights (Renard, 2012, p.1, Occhipinti, 2013, p.173). This new influence was premiered with the highly publicised rejection of the SWIFT agreement the EU was seeking to make with the US. Such actions would, nevertheless, earn the EP the reputation (at least among EU and national policy-makers) as a trouble-maker and stumbling block to legislation in internal security in the years to come. This sometimes impeded progress in the policy domain and would eventually cause a vicious cycle in the relationship between the EU's institutional triangle. This dynamic will be discussed further in Chapter VI.

Implementation and the Commission's role

The laggard implementation in this time period (and not only) demonstrated the weak institutions involved in EU CT, including the Commission and the EU CTC (Occhipinti, 2013; Bossong, 2013; van Ballegooij and Bakowski, 2018, p.48). The Lisbon Treaty was expected to have somewhat of an impact on implementation in EU CT, mainly because it allowed the Commission to initiate infringement procedures on non-compliant MS, while it granted the ECJ the jurisdiction over the domain. On the other hand, scholars have warned that "the Lisbon Treaty will have a lesser impact on this matter than initially expected" (Argomaniz, 2010, p.312-3, Renard, 2012, p.2), as the Commission was perceived as unlikely to make full use of infringement procedures, due to the sensitive relationship and mutual trust with national authorities, it would be unwilling to compromise – a prediction that came to be true. Additionally, the ECJ only began its

jurisdiction on the domain in the end of 2014 (subject to significant exceptions), while there has also been a correlation found between QMV decision-making and slow implementation, likely in part due to the absence of widespread consensus (ibid.).

The Commission not only remained unlikely to press EU MS on implementation deadlines and compliance, it actually adopted a much more passive role after the London attacks. Not only was its role and authority often resented by national policy-makers and practitioners, but EU MS were actually noted to have gone out of their way to pre-empt Commission regulation in various sub-fields (Makert, 2014), which eventually led the supranational body to retreat and assume a more passive supporting role.

Makert (2014, p.109) found that legislative pre-emption is a strategy that MS apply in AFSJ acquis, "to counter proposals by the Commission", motivated by a "divergence of actors' preferences" on the degree of integration incurred by legislative proposals. (Groups of) MS would then advance proposals "parallel to, or in anticipation of Commission initiatives in order to contain the integrationist scope of legislation" advocated by the Commission. The motivation for pre-emption is for MS to

 "choose a path in the decision-making procedure that gives them more leverage over the final outcome. Preemption provides member states with the possibility to diminish the influence of other actors in the decision-making process, contain policy drift and ultimately avoid litigation before the ECJ" (ibid., p.110).

Makert (ibid., p.118) furthermore finds a trend of MS applying this strategy in the AFSJ domain, isolating the approach in the advancement of the Swedish Framework Decision, the Prüm Decision, the European Investigation Order and four more AFSJ instruments. He also warns that the Lisbon Treaty reforms might trigger MS to make use of this strategy even more to counter the "substantive scope of post-Lisbon instruments" (ibid., p.124). However, the Commission adopted a passive approach instead, wherein proposals in this period (or until the Paris-Brussels juncture) have even been noted as too modest, as will be discussed further in this chapter.

Updated mandates for EU agencies (Europol, Eurojust, Frontex), setup of new ones (eu-LISA)

As noted in the previous chapter, in 2008, the JHA Council decided to upgrade Europol's mandate and turn it into a fully-fledged EU agency. Council Decision 2009/371/JHA gave Europol the authority to "collect, store, process, analyse and exchange information and intelligence and also to provide intelligence and analytical support to member states in connection with major international events, as well as prepare threat assessments,

strategic analyses and general situation reports", even though the staple Europol TE-SAT (Trend and Situation Awareness) Reports had been published since 2006 (Gruszczak, 2013, p.30). As an EU agency, Europol was made subject to the Union's budget and staff regulation and was granted some operational responsibility – such as the authority to request national bodies to begin criminal investigations, to coordinate such with other EU MS or to participate in a given JIT. This "communautarisation" of Europol, involving the agency in assistance and engagement with the work of national authorities seems as institutionalisation at first glance, however academics warn of previous mandate upgrades of the agency not contributing to a deviation from the intergovernmental dynamics underpinning its main challenges, such as the insufficiency – and inefficacy – of data incoming from national authorities (Bures, 2013, p.90, cf. Mitsilegas, 2009, p.552). As mentioned in the previous chapter, this development is considered as an extended consequence of the Madrid-London juncture, as it was in compliance with the intentions of the Hague Programme. Significantly for information-exchange (in an extroverted direction), the Lisbon Treaty conferred legal personalities onto Europol, Eurojust and Frontex, thus making them able to conduct their own cooperation agreements with third countries (Renard, 2012, p.3). All three agencies' legal bases were upgraded and cooperation agreements among them were signed.

In the extended aftermath of the Madrid and London attacks, two Europol Directors (Max-Peter Ratzel in 2005, and Rob Wainwright in 2009) called for a more structured cooperation with Europol to both national authorities and other EU agencies, advocating its use as a "strong centre of operational support in the EU for combating terrorism and international crime'" (Occhipinti, 2013, p.159, cf. Vandystadt, 2009). Nevertheless, in this time, Europol and Eurojust still lagged behind in their potential, as referenced by the ambitions of their design, while Joint Investigation Teams (JITs) remained underused (Coolsaet, 2010, p.863-864). Europol's EIS is reportedly used more often for bilateral exchanges, where neither Europol, nor third MS benefit from the information exchange (ibid., p.865). Thus, in this period too, while information exchange was not always low per se, it did not contribute to the EU's CT apparatus, which needed the instruments, bodies and legal acts it offers MS to be used, in order to mature and be refined or adjusted to national benefit. The Lisbon Treaty or any other strategic EU document were always unlikely to affect significantly the use of EU agencies and channels of cooperation, as these "depend ultimately on the goodwill of the member states for their smooth and swift functioning", as MS maintained their "national preference for bilateral relationships and the parallel participation in informal, practitioner-led networks", while the "longstanding preference for trading intelligence rather than sharing" prevailed (Coolsaet, 2010, p.864, 865). One of the successful initiatives in this period, based on a national practice, was the "check-the-web" programme that Europol adopted on EU level,

on the basis of the positive German experience of monitoring extremist websites, as it made good sense in line with Europol's open-source data collection on jihadist radicalisation online (Bossong, 2013, p.115).

Eu-LISA (the EU agency for large-scale IT systems) was set up in 2011 and became operational in December 2012. It was tasked with the operational management of SIS-II, VIS and EURODAC, ensuring that the systems functioned well and were kept running without interruption. The agency was first discussed during the negotiations on the SIS-II legal basis, wherein it was agreed that the Commission would continue to operationally manage SIS, however with an expectation that "a management authority with responsibility for these tasks should be established" after the transitional period of five years (Publications Office of the European Union, 2007; Marnot, 2021). The Commission proposal came two years later instead and was swiftly adopted, yet it could hardly be considered an entrepreneurial act from the Commission, as the Council had acknowledged the functional need for such an agency in the 2007 SIS-II Decision.

The EU CTC

As mentioned in the previous chapter, after Gijs de Vries resigned his EU CTC post in 2007 (widely believed to have been due to his frustration with the limited authority and the ineffectiveness of the post), there was a six-month window where no successor was appointed (Occhipinti, 2013, p.163; Bossong, 2013, p.113). In the context of this delay, there were allegedly disagreements on how to address the post in the future, where some EU MS even favoured the termination of the post, and while it was eventually continued, its visibility and importance were watered down (Argomaniz, 2009, p.162). Allegedly, "Member States wanted the CTC to have a lower profile and play a behind-the-scenes role largely in Brussels via the EU-level institutions, rather than in the Member States", which is why the post was relegated to a largely technical and advisory function (Occhipinti, 2013, p.163, cf. Bures, 2011, p.141–144).

On 19 September 2007, one of the key EU CT entrepreneurs post-Madrid, Gilles de Kerchove (at the time Director of DG H in the Council Secretariat) was "promoted" to EU Counter-Terrorism Coordinator (Council of the EU, 2007). His entrepreneurial and pro-integrationist approach was instrumental in shaping many key documents and measures, such as the Declaration on Combatting Terrorism (Bossong, 2013a, p.76-77). De Kerchove's pro-EU perspective and his assertiveness as regards an increased Union role in CT have been claimed as key reasons for his appointment to the post. In as much as a Commission post gave him more oversight on decision-making and initiative, the

EU CTC office was nonetheless designed to be subservient to national agendas and preferences in CT, thus limiting his potential influence (ibid.).

De Kerchove too lamented the limited power and lack of budget of his post, nevertheless, he became a veritable policy entrepreneur in EU CT (Occhipinti, 2013, p.163). He has "consistently used his leadership position to press for a variety of enhancements to the EU's CT strategy, including improvements related to information-sharing" (ibid.). De Kerchove has been publishing biannual Discussion Papers and reports to the Council and MS, which offer impressive insights into the intricacies and deficiencies of EU CT governance. While consistently advocating for adequate data protection, he has also been adamant about the need for an effective information management in the EU. In a 2009 Discussion Paper, he noted:

> "In most lessons learned exercises after major terrorist incidents there are indications that an attack could have been stopped had all the relevant information been available to the right people at the right time. We need to improve the way in which Member States are feeding information to Europol and Eurojust. All Member States should also have a national fusion centre and we should set up a network connecting them" (Occhipinti, 2013, p.164; Council of the EU, 2009b).

De Kerchove has, furthermore, advocated for interoperability, EU PNR, and measures in fields such as cyber-security, radicalisation, terrorist financing, external border management, transport security and explosives (Occhipinti, 2013, p.164, Bossong, 2013; p.113). He furthermore abandoned the long-criticised "cumbersome" Action Plans with these Discussion Papers, that were based along the four pillars of the 2005 EU Counter-terrorism Strategy, thus giving them a concrete and digestible form. On a structural level, he also critiqued lagging implementation and insufficient coordination among the Council committees (Bossong, 2013, p.113). Despite his lack of official power, his drive as a policy entrepreneur has been invaluable to the field's development, even insofar as keeping national authorities and the Commission well-informed of the deficiencies of EU CT and the gaps in governance therein that might cause vulnerabilities. The level of insight of his Discussion Papers as early as 2009 is not only impressive: they read like a to-do list of measures that MS and EU institutions would rush to put in place after these gaps were demonstrated by large-scale jihadist attacks in EU capitals in 2015-2016 (e.g. PNR, interoperability, fusion centres, measures on explosives and firearms, etc.). Having de Kerchove in this position at that critical juncture caused him to become a successful policy entrepreneur for filling in EU CT gaps, which made the 2007 decision to appoint him consequential for the maturation of the policy, even though it is unlikely to have been perceived this way at the time.

Clearly, CT fatigue in this period was also reflected in the institutional roles and the motivation of policy entrepreneurs. The Commission retreated from its active role, while the Council meetings' on internal security topics were reportedly convened less often and attended by less senior officials (Coolsaet, 2010, p.862). The only injection of policy entrepreneurship during this timeframe was the appointment of de Kerchove as EU CTC, which would come to be beneficial for the maturation of EU CT as an effective apparatus in the years to come.

Information exchange

As pointed out in the previous chapter, the most significant information-sharing developments in the aftermath of the Madrid-London juncture were: 1) the 2005 Hague Programme, which emphasised the importance on information exchange and launched the principle of availability; 2) the 2006 Swedish Framework Decision, establishing conditions and deadlines for exchange among national authorities, and 3) Council Decision 2005/671/JHA, which formally obliged national authorities to share relevant data and intelligence on cross-border terrorist activity with each other and Europol. This sub-chapter will review the period after these events and until the 2015 Charlie Hebdo attack when the next critical juncture in EU CT began. As such, it will not only examine what other documents and instruments consequential for information exchange were introduced in this period, but also how the aforementioned ones developed and impacted the domain.

Information-sharing remained a stumbling block during this period, as progress was "meagre" (Coolsaet, 2010, p.858). While EU information exchange was a topic of interest in the aftermath of the Madrid attacks, which "exposed the weaknesses and shortcomings of the existing EU anti-terrorist policy, especially poor intelligence sharing and data exchange among EU member states, due to an acute lack of mutual trust", then by the end of this critical juncture this interest had subsided (Gruszczak, 2013, p.29). Overall, information-sharing was less and less visible on official documents addressing CT, replaced by concerns over radicalisation, transport security, data protection and terrorist financing. One likely reason therein is that some of the EU-proposed information exchange innovations faced increasing criticism over data protection concerns (e.g. ECRIS, EPRIS, PNR, interoperability) (Occhipinti, 2013, p.175), therefore this could be perceived as an attempt from EU policy entrepreneurs to change the narrative, as many strategic/framework documents only discussed information exchange in the context of increased data protection safeguards. Still, even measures foreseen or adopted prior to such concerns by the public and data protection watchdogs, lagged in implementation

and operationalisation, even the reform of SIS and the operationalisation of EIS, which were widely approved by both governments and practitioners, thus demonstrating their low political priority in the absence of a palpable threat for the EU (van Ballegooij and Bakowski, 2018, p.48).

Institutional and technological innovations

While a tendency of an increased use of police and judicial EU structures was noticed in this period, "persistent problems continue[d] to impede the effectiveness of EU counterterrorism cooperation" (Coolsaet, 2010, p.863). Consequently, for many MS scepticism on the added value of some of EU bodies and instruments (particularly with regard to Europol and Eurojust) was on the rise (ibid.) It has been claimed that "around 90 percent of the counterterrorism activities in Europe[…] take place at the national level, and less than 10 percent take place at EU level" (Renard, 2012, p.2). That ratio was considered to have not been significantly affected by the introduction of the Lisbon Treaty (ibid.). As MS chose mini-lateral or intergovernmental options over EU cooperation in the aftermath of the Madrid and London attacks, the "imbalance or strategic deficits" of EU CT remained (Bossong, 2013, p.116). Nevertheless, as most MS resisted the calls for an integrated EU intelligence agency, EU institutions, particularly the Commission had no choice but to keep working on the construction of an EU institutional infrastructure which promotes and facilitates cooperation and information exchange among MS' respective CT authorities (Occhipinti, 2013, p.155).

In this timeframe one can observe a number of new legal acts governing the EU's databases. Upon closer inspection, however, most if not all of these were initiated in the aftermath of the Madrid or London attacks. The upgraded version of SIS, SIS-II was initially proposed before the London attack, while it was likely discussed even earlier, as it was mentioned in earlier EU documents, such as the Hague Programme in early 2005. Having experienced multiple delays, the legal basis was adopted in 2007, while it became operational in 2013 (Occhipinti, 2013, p.165). Still, the improved database was to involve more than 30 participants (including the UK and Ireland, as well as Bulgaria and Romania) instead of its previous 15, while it also involved enhanced capabilities for data collection, as it gradually came to include fingerprints, photos and (by now) biometrics – functionalities that would be challenged on the basis of privacy and fundamental rights concerns (ibid. p.166).

The initial proposal the Visa Identification System (VIS), which was considered to have potential benefits for law enforcement and CT, was launched in the aftermath of the Madrid attack, in late 2004. By June 2004, its legal basis was ultimately adopted,

however due to various technical and implementation issues, it only became operational in 2011 (Balzacq and Leonard, 2013, p.137; van Ballegooij and Bakowski, 2018, p.48). The Europol Information Systems (EIS), likely also originating as a notion in the aftermath of the Madrid attack, due to its continued mention in EU strategic documents in that period (such as the Hague Programme), was actually one instrument that had been actively pursued by national authorities, as evidenced by its consistent mention in European Council Conclusions (Council of the EU, 2004a, 2004b, 2005a). EIS is operational since 2005, which was thus a much faster process than other EU-led proposals, nevertheless, its use has reportedly been low and uneven across MS (Doherty et al., 2015, p.68). The SIENA application, through which these exchanges take place has also evolved in this period, with its first version going online in July 2009 and subsequent improved versions being launched in 2010, 2011, 2013 and 2014. While the channel is currently considered useful by national practitioners, the mistrust and scepticism towards Europol (compounded with the lack of full understanding of its features) hampered its effective use until 2014-2015, when national authorities were urged to report Foreign Terrorist Fighters (FTFs) there systematically (Doherty et al., 2015, p.6; Drewer and Ellermann, 2016; Berthelet, 2017; van Ballegooij and Bakowski, 2018, p.46).

The Prüm Convention "gradually and unevenly" came into force in November 2006 (Occhipinti, 2013, p.170) Seen as a good practice, it was introduced into EU acquis in June 2007, while it introduced elements that had been proposed by the Commission, in a proposal that was eventually scrapped (ibid., p.171). The initial idea of the incorporation of Prüm (which came in the aftermath of the London attack) was to develop new and far-reaching functionalities for police cooperation, nevertheless MS perceptions were not symmetrical, thus a much more modest proposal (not motivated by the terrorist threat) was introduced (Bossong, 2013, p.110, 85). The Prüm Council Decisions (2008/615/JHA, 2008/616/JHA) provide for automated exchange of biometric data (DNA and fingerprints) and vehicle registration data, for the prevention and investigation of criminal offences. Implementation, however, would be uneven and technologically problematic as "one group of states [were] already exchanging DNA data, [while there was] another group for finger prints and a third group mutually searching vehicle information" (Occhipinti, 2013, p.172; van Ballegooij and Bakowski, 2018, p.48). The deadline of August 2011 was not met by several MS, while Greece, Ireland, Italy and Malta had still not set up national DNA databases (coincidentally the MS described as "laggards" in EU CT legislation implementation) (ibid., Argomaniz, 2010, p.312).

With the slow progress in database upgrades, and at a time that data protection concerns on internal security measures were palpable, it is no wonder that discussions regarding

their potential interoperability were quite modest and were in some cases removed from Commission proposals. In the context of the post-Madrid discussions on strengthening information exchange, an extension to Eurodac's function to allow its use by law enforcement was being explored. In a November 2005 Communication on improved effectiveness, enhanced interoperability and synergies among European databases in JHA, the Commission noted law enforcement's wish to have access to Eurodac and their view that the lack thereof led to 'a serious gap in the identification of suspected perpetrators of a serious crime' (European Commission, 2005c). At the same time the idea received serious critique on data protection grounds, thus the Commission submitted a new proposal (the old one was invalidated by the entry into force of the Lisbon Treaty), which did not contain the supposedly contentious provision on law enforcement access. This new proposal was not well received *because of* that omission, leading the Commission to come out with another proposal (and an exploratory memorandum) in May 2012, which included "provisions that aim to authorise the comparison of fingerprints contained in Eurodac with those held by national law enforcement authorities or Europol for the purpose of combating terrorism and serious crime" (Balzacq and Leonard, 2013, p.135). This would be consistent with the availability principle.

The Commission did occasionally mention intentions of interoperability, although never in a very concrete form. It is emphasised as one of four focus areas in the Council's Information Management Strategy of 2009, it is discussed in the Stockholm Programme (without a clear strategy or planning proposed), while it is not mentioned at all in the Internal Security Strategy. The Commission did however consistently note its concrete intentions to launch an agency tasked with the management of these large-scale IT systems, which would eventually become eu-LISA. Both interoperability and the setup of eu-LISA (foreseen as the body to be tasked with interoperability in the future), are important steps in fulfilling the principle of availability, which would nevertheless remain out of reach in this period (Occhipinti, 2013, p.166; Bossong, 2013, p.110). Similarly, the principle of availability was also not mentioned in (or was merely a passing reference to) several important EU strategic documents on information-sharing, which led Occhipinti (2013, p.144) to dub the notion "availability by stealth", meaning that "progress towards implementing the availability principle in the EU is continuing, but has not been highlighted in recent public reports where it would seem to be significant and receives much less attention compared [to] other important concepts". The Commission's July 2010 catalogue of information-sharing measures was one of the documents that merely mentions in passing the availability principle without detailing any future intentions on its implementation, while the ISS did not mention information-sharing as a priority at all (European Commission, 2010b, 2010c). The Stockholm Programme, nevertheless,

refers to the availability principle several times, reaffirming its validity and "continued significance" in EU CT and information exchange in particular, albeit making sure to caveat it against data protection (Occhipinti, 2013, p.157; Council of the EU, 2009c). Curiously, despite the EU CTC's comprehensive Discussion Papers, Occhipinti (ibid., p.164) found that he made no mention of the availability principle in those after 2009 either, which (considering his close experience in communicating with national authorities) might indicate that MS were not interested in further concrete actions on it at that time. A trend could be discerned in terms of interoperability and the availability principle: while they were not consistently discussed in CT documents, there seems to be an effort both by the Commission (ISS, EIXM) and the Council (IMS, Stockholm Programme) to decouple information management from terrorism, due to the low interest and presumably low motivation to advance further CT measures in this period. In the Future Group Report and the IMS, interoperability is even seemingly granted additional contexts: interoperability between national authorities, cost-effectiveness, reusability of data, etc.

Strategic documents, policy entrepreneurs and lingering issues in EU information exchange

While the Council's and MS' degree of activity in this period was inconsistent, there were several mini-lateral initiatives that led to consequential actions on EU CT information exchange. The Swedish Framework Decision and Prüm were examples of this, as discussed in the previous chapter. In early 2007, a group of EU interior ministers and EU policy-makers, which came to be known as the "Future Group", organised a sort-of coalition of the willing on internal security, at informal ministerial level (Future Group, 2008). It consisted of the JHA Commissioner, Council Secretariat members, the EP's JHA Committee Chair and JHA ministers from the incoming and outgoing trios of Presidencies (Germany, Portugal, Slovenia, France, Czech Republic and Sweden), who were thus de facto policy entrepreneurs in this time (Occhipinti, 2013, p.156-157). Their work concluded with a 2008 report, outlining important steps for MS to take in order to achieve coherent flows of information exchange, advocating for an Information Management Strategy, interoperability and application of the principle of availability (Future Group, 2008). It recommended that EU MS "individually and collectively should take a 'platform' approach to delivering public security,[…] moving beyond interoperability and focusing on a services-oriented approach, so that outputs from different parts of the system can be shared (within and across organisations)" (ibid., p.43). The report also noted that the disjointed and crisis-driven approach to establishing an EU information exchange model had led to a

"somewhat uncoordinated and incoherent palette of information systems and instruments, but has also incurred costs and delays detrimental to operational work. It seems clear that in formulating a future EU policy on the exchange and availability of information, this is an opportune moment to go beyond the limited perspective of a case-by-case approach and aim for a holistic objective in law enforcement information management" (ibid., p.44).

Nevertheless, the political will expressed therein was clearly not shared by all MS, as the call to take up a more constructive and well thought out approach to information management would not be taken up during this period. The next policy output on the AFSJ would be the 2009 Stockholm Programme, which was reportedly developed simultaneously to the Future Group Report. The programme, however, did not take up many of the far-reaching recommendations on sharing, including the one suggesting to introduce more automation in information exchange in the EU (Occhipinti, 2013, p.178). It also shifted focus in the AFSJ from terrorism to cross-border crime, and within terrorism, from information-sharing and repressive measures to data protection and counter-radicalisation measures. It still advocated for interoperability and for Europol to become an information hub, but not in the context of CT measures – rather in a separate sub-section.

In parallel with the launch of the Stockholm Programme, the JHA Council published the EU Information Management Strategy (IMS). The strategy was built along four focus areas, which were discussed in detail: "needs and requirements", "interoperability and cost efficiency", "decision-making and development processes", and a "multidisciplinary approach" (Council of the EU, 2009d). It then called on the Commission to come up with a proposal for a European Information Exchange Model. On the basis of the IMS, the Commission came up with a catalogue of information-sharing measures in 2010 (European Commission, 2010b). The document was descriptive, yet comprehensive on both the achievements and outstanding issues in the domain, while it was also self-aware of the fundamental characteristics underpinning it, formulated as:

- A decentralised structure
- A limited or unitary purpose of its instruments with no connection between most of them
- Potential overlaps in their functions
- Variegated control on rights to data access
- Similarly, variegated data protection and retention regimes
- Effective identity management and data protection offered by EU solutions
- Different review and oversight systems (ibid.)

On the basis of these, the Commission then formulated the substantive and process-guiding principles of what it is aiming to define as a European information management model through the EU:

- Safeguarding fundamental rights
- Necessity
- Subsidiarity
- Risk management
- Cost-effectiveness
- Bottom-up design
- Clear allocation of responsibilities
- Review and a sunset clause (wherein a measure is to be discontinued if it no longer serves the purpose it was designed for) (ibid.)

This document could be seen as a stocktaking exercise, however it was also a preparatory discursive step by the Commission in its process of elaborating a European Information Exchange Model (EIXM), as it was called upon to produce by the Stockholm Programme and the IMS (European Commission, 2012a). Attached to the 2012 Commission Communication on an EIXM were also evaluations on the lagging and ineffective implementation of the Swedish Framework Decision and the Prüm Decisions. The JHA Council issued a short and lacklustre response six months later, acknowledging the issues noted therein, and urging MS to speed up implementation.

The EIXM document is extensive and detailed. It endorses the same substantive and process-guiding principles described above. While the Council and other stakeholders appreciated the fact that "no new instruments are needed but rather that existing instruments need consolidating", the document also provided an extensive list of gaps and recommendations on filling those (Doherty et al., 2015, p.5; European Commission, 2012a). Importantly, the inadequate implementation of the Swedish Framework Decision (SFD) and the Prüm Decisions were claimed to have affected the effectiveness of EU information exchange. With a transposition deadline of December 2008, the SFD had only been implemented by 16 MS in 2011, while there had been significant divergences in transposition across MS (Doherty et al., 2015, p.27-28). It should be noted that some technical difficulties were established in both the implementation and the use of the SFD's instruments. Similarly, the Prüm Decisions' transposition significantly lagged behind, even though a helpdesk had been established at Europol to aid MS with implementation (ibid., p.39-40; van Ballegooij and Bakowski, 2018, p.48). There were similarly systemic issues in these lags, including access to funding, scope of the information system and competition between neighbouring MS (ibid.). Nevertheless, it

has been noted that a "lack of focus and political will [were] determining factors in the slow implementation of Prüm" (ibid.; European Commission, 2012b).

Another causal factor on the effectiveness of information exchange, as pointed out by the Commission and confirmed by independent studies, is the fact that law enforcement authorities had divergent approaches to the uses and choice of information channels, while not all of them had advanced national instructions for such choice and prioritisation (ibid., p.24; also European Commission, 2012a). In 2008, the Council adopted a Manual of Good Practices concerning the International Police Cooperation Units at National Level, which identified four main criteria for the choice of channel: geographical, thematic, technical and urgency (Council of the EU, 2008b). These were complemented by the Council's 2014 SPOC Guidelines, however both these manuals were supposed to be further supplemented by national guidelines, for the development of which there was insufficient political will in some MS, due to imbedded practices of leaving the choice up to officers themselves (Doherty et al., 2015, p.55). The lacking guidelines, in addition to the use of informal channels and the wide divergence of preferences both across and within MS, contributed to stark differences in the use of information exchange channels (and the purposes for which they were used). The Interpol channel was often favoured over the Europol ones (due to the low confidence in the agency), which affected the usage of SIENA and EIS, wherein the latter was found to have been insufficiently and marginally used (ibid., p.57, 68). Still, stakeholders were found to have been reluctant to standardise or compel sharing through a single channel, while having binding rules in place was not considered feasible (ibid., p.62-63). Finally, the divergent use of EU channels across MS was also reportedly due to insufficient awareness of their scope and functionalities, which should be seen more as a national responsibility than a Union one.

As recommended in the Council's Manual of Good Practices, "setting-up a 'one stop shop' unit for international police cooperation, with a multi-agency organisation within each Member State" was likely to be advantageous to information-sharing, albeit complicated due to legal and structural differences across MS (Council of the EU, 2008b; also Doherty et al., 2015, p.45). The 2012 EIXM also invited MS to create a so-called Single Point of Contact (SPOC) within their administrations, expected to be available 24/7 and have access to both national and EU databases, as well as the expertise to advise on their use (European Commission, 2012b). In 2014, the Council adopted SPOC guidelines, however by 2015, not all MS had established one. The ones who had significantly diverged in their approaches, wherein often the SPOC was not provided guidance on the choice of channel (Doherty et al., 2015, p.48, 54). Still, allegedly practitioners found the concept to have a "substantial added value" in avoiding

duplication, ensure data quality, while it was considered helpful in the process of choosing information exchange channels (ibid., 2015, p.49).

The Communication further stipulated in the EIXM that technical interoperability under the Universal Message Format (UMF II) was not achieved, to the detriment of sharing efficiency use (European Commission, 2012b). The UMF II stipulates a common vocabulary and structure for the messages exchanged. It is executed by the Council Group on information exchange (DAPIX), financed by the Commission, and coordinated by Europol. While practitioners reportedly agree with the functional necessity of such an instrument for the quality and interpretation of data, it was reported to have been implemented only by a few MS and "to a limited extent" in 2015 (while taking into consideration that the measure was only introduced a year earlier) (Doherty et al., 2015, p.72).

The Commission also conducted a study in 2011 (mandated by the Council WG on information exchange (DAPIX) on the feasibility and necessity of a European Police Records Index System (EPRIS), and found that such a measure was not justified from a cost-effectiveness perspective, as similar scope tools existed already (European Commission, 2012b). Nevertheless, several MS (led by France) found that the previously applied methodology was not efficient and initiated a new project on the Automation of the Data Exchange Process (ADEP), seeking to simplify and automate the querying of national police databases (Doherty et al., 2015, p.66). At the time of writing ADEP is still a pilot project between Finland, Spain, Hungary, Ireland, France and Germany, which the Commission intends to evaluate before taking legislative action (European Parliament, 2016b). While the 2018 interoperability legislation would come to address some of these operational needs, during this timeframe the Commission tried to avoid discussing interoperability at all costs, due to the aversion expressed by national authorities (Interview n.9, 29, 17). Instead the Commission continued proposing smaller-scale measures as a way to compensate some gaps and contribute value to operational needs. Nevertheless, such patchwork measures would eventually lead to the fragmentation and compartmentalisation of information, which would bring even further functional gaps in the system. These issues will be discussed further in the following chapters.

Finally, as the training of law enforcement officers across the EU was found to not have been well-organised or sufficiently converged, the Commission issued a Communication Establishing a European Law Enforcement Training Scheme (LETS) in 2013 (Doherty et al., 2015, p.74-75, European Commission, 2013). Nevertheless, in 2015 it was reported that LETS implementation was not as fast as expected, due to protracted consultations and issues of budgeting (Doherty et al., 2015, p.75). Furthermore, while CEPOL was

expected to be in charge of the initiative, the agency reportedly lamented insufficient resources to take upon such a task (ibid.) Still, the lack of an integrated, symmetrically applied training scheme for law enforcement officers led to "a structural lack of adequate training in EU instruments", as well as a "lack of awareness in several subject matters" (ibid., p.84). In the long term, this likely contributed to the deepening gaps between law enforcement perceptions and practices across borders, leading further to an imperfect information exchange between them.

In 2012, DG HOME mandated Deloitte to conduct an independent assessment on the implementation of the European Information Exchange Model (EIXM) (Doherty et al., 2015, p.8). The evaluation, published in 2015, found that field officers were often not fully aware of the procedures and legal bases provided by the EU's tools, wherein some of them did not have access to the necessary channels, while others would not be trained to use them (ibid., p.5). It also noted that some practitioners found that the EIXM focused on stocktaking instead of providing a vision and attempting to harmonise existing instruments. The Commission reportedly did not provide ample guidelines for national authorities, which likely contributed to the compartmentalisation of data that will be discussed in the next chapters (ibid., 2015, p.87). The report also noted that the effect of the Lisbon Treaty on the domain "remains to be seen", and urged the Commission to make use of its newly acquired powers in terms of punitive measures on ineffective implementation (ibid.). It further stated that "the absence of more binding EU level rules hinder effective information exchange", while acknowledging that practitioners were not necessarily eager to have EU-level consolidation in this domain (ibid.). Inadequate implementation was found to be a key issue for information-sharing, wherein insufficient political will and prioritisation were found to have played a significant role, along with financial considerations (ibid.; van Ballegooij and Bakowski, 2018, p.48). Slow implementation was found to have led to a race-to-the-bottom, wherein MS were unmotivated to prioritise transposition when their neighbours or counterparts were non-compliant (Doherty et al., 2015, p.91). Issues of insufficient trust (between MS and towards Europol) were also noted, as well as technical, legal, linguistic and administrative burdens and differences between MS (ibid., p.89).

Finally, the report indicated that, despite the increasing volume of information exchanged, the human and financial resources on national levels in fact decreased (ibid.). With the decreasing terrorist threat, attention was redirected elsewhere, in this period mostly to economic affairs. This also manifested in national CT policies and resource allocation, wherein "counterterrorism units have been reduced, merged with other units, or simply suppressed following strategic reallocation of resources" (Renard, 2012, p.12). Specifically, this has been observed in the case of Belgium, who found itself

experiencing a high terrorist threat, an exponential increase in radicalisation, and limited security resources (Belgian Standing Intelligence Agencies Review Committee, 2017, p.120). In 2014, the Belgian government, having previously pledged an "ambitious security agenda", announced a 10% budget cut on intelligence services' funding (Lasoen, 2017, p.478). These budget cuts, following the financial crisis and subsequent austerity measures, led to personnel cuts, all the while the threat had risen, causing the workload of intelligence services to surge (the VSSE's[27] workload increased by 130% between 2010-2017) (Lasoen, 2020, p.4). The amount of screenings increased, and so did the exchange of information domestically and internationally – while a positive trend in its own right, this led to the overwhelming of intelligence services, in particular the VSSE. The latter supposedly had its less than 600 staff observe at least 900 persons of interest, some of which required 24-hour surveillance (Heath, Sheftalovich, and Spillane, 2016; Bury, 2016). Furthermore, until 2015, VSSE did not have a SOCMINT department, despite the established importance of social media analysis in CT investigations (Lasoen, 2020, p.5). By 2015, data exchange traffic almost doubled for Belgium's threat assessment body (CUTA) too; security services were palpably understaffed, under-budgeted, and overworked, while the threat would start to produce successful and often large-scale terrorist incidents around the EU (as will be discussed in further chapters). By the time of the early 2015 Charlie Hebdo attack and pursuit of the prolific Zerkani network, the government-promised stronger security agenda with increased budget allocations had still not materialised (ibid., p.7). Eventually Belgium would adopt new CT measures, however those would mostly follow major attacks, thwarted and successful, which made the threat palpable.

This period de facto witnessed many documents and (renewed) institutions, yet little progress, thus demonstrating the importance of political will (and high threat perception) and the effects of bureaucratic resistance (due to practitioners not being on board). In this timeframe the "added value of EU CT" discourse began, and it has been used since as a justification to opt for bilateral/ intergovernmental solutions over EU ones. MacKenzie and Zwolski (2013, p.237) note that, despite the many encouraging advancements in EU CT, the latter's development is not only crisis-driven, but "there is no coherent strategy for future developments; as a result, we have no idea of the end-point for the EU's security role or even the direction of its development beyond that of the Stockholm Programme."

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[27] The internal intelligence service of Belgium, State Security in English.

Theoretical account

This timeframe of EU CT development indeed saw a number of advancements consistent with the ambitions expressed in the Hague Programme (e.g. the revision of SIS-II, the setup of Frontex and of VIS, the new Europol mandate, the setup of the ATLAS cooperation framework, the review of the Framework Decision on Combating Terrorism, etc.). Therefore, from a theoretical point of view, these developments should be considered second-degree (or indirect) consequences of the 2004-2005 critical juncture, even though they have been praised for contributing to an incremental model of policy-making in EU CT. While incremental policy-building in EU CT is certainly warranted and a desired model to replace the familiar reactive, punctuated equilibrium model (exhibiting traits of a garbage-can policy model), in this case it is also a manifestation of the punctuated equilibrium model, explained best by HI.

Many of the important developments in EU CT (both in 2004-2006, and 2007-2015) were either directly or indirectly consequences of the critical juncture: either they were leftover actions from the juncture that took longer to be developed, or were consequences of the plans of action made during the juncture. The Commission, the EU Counter-terrorism Coordinator and the Europol Director are considered the main policy entrepreneurs in EU CT, while occasionally a Council Presidency, highly supportive of information-sharing synergies, would play a short-term entrepreneur role. All these policy entrepreneurs remained highly active in the period 2007-2015, with a high output of documents – legislation proposals, explanatory/discussion papers, (provocative) public statements, etc. While some of these would receive occasional responses by the Council, often with large delays, these responses were usually short and affirmative of the statements initially made by entrepreneurs, nonetheless not demonstrating intention of action thereupon. Rather such responses were filled with trite Council keywords, such as "welcomes", "acknowledges", "invites", "takes note", etc., at the same time admitting the knowledge of the gaps and issues identified by the entrepreneurs. This dynamic is a clear illustration of path dependence: a state, where policy entrepreneurs are powerless to incur significant policy or institutional change, however not for the lack of effort. A further dynamic demonstrating this was the worsening during this timeframe implementation record of MS in this domain, noted by scholars, the Commission and the EU CTC, and confirmed by MS themselves in various Council constellations, as discussed in this chapter. While it must be acknowledged that EU CT legislation, especially most legal acts related to information exchange, are technical, complicated and expensive to implement, the significant delays in this domain demonstrate (at least

to an extent) low prioritisation of the Europeanisation of this domain.[28] The Commission offers MS transposition workshops and other measures in aid of the technical and legal difficulties of implementation. At the same time, despite having the prerogative to, the Commission did not pursue infringement procedures on non-compliant MS, apprehensive of harming the fragile power balance between stakeholders. Most of these dynamics changed almost overnight in the aftermath of the Paris attacks in 2015. It is therefore argued that this period is a typical and self-evident example of a path dependence: the latter does not imply *nothing* occurs in that period, it rather hypothesises that, in the absence of the exogenous factor(s) motivating policy development (in this case successful terrorist attacks and high threat perception), the policy stays on a stable path, wherein attempts by policy entrepreneurs to change the status quo (in this case the information exchange model in the EU) will remain futile, as the system will resist. In some cases, the policy entrepreneurs might in fact retreat or take a more passive role in the policy, which was observed with the Commission in this period.

Another important point to make is, that the punctuated equilibrium model (combined with the garbage-can one) have been damaging to the quality and effectiveness of EU CT governance. As will be discussed in the following two chapters, the 2015-2016 attacks were significant not only in shaking the status quo and punctuating the equilibrium, but in demonstrating the gaps of governance left by the 15 years of CT governance built on critical junctures and path dependence. This model of governance is conducive to gaps, errors, misguided policies and reactive policy responses. In short, in periods of path dependence, a number of proposals are put forward by the Commission and other entrepreneurs, which are too far-reaching to convince policy-makers in the absence of the exogenous terrorist threat. However, once the threat spikes (often after a successful attack), decision-makers are under heavy scrutiny and public pressure, to both explain and remedy the situation.

In this context, what has been observed until recently is that they reach for the available, readymade measures previously proposed (from the metaphorical garbage can), which helps them appease a frightened electorate and seemingly offer comfort, security and accountability. This, nevertheless, makes for an unstable governance-building structure, as the uneasy stop-and-go development leaves large gaps: it either leads to the reluctant endorsement of a measure, which was not fully or symmetrically supported by EU MS, or the measure itself proves to have unforeseen consequences for national authorities. Both scenarios are likely to lead to complications in transposition and delays in

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[28] While this is the author's view, on the basis of her findings in the context of this study, it is a finding substantiated by other sources, e.g. Doherty et al., 2015, Bures, 2011, p.254-256.

implementation, as well as reluctant, asymmetrical or insufficient use of said instruments. While some measures suffer from slow and uneven implementation, others are observed to wait for years on the negotiation table (e.g. PNR, interoperability). Gaps in governance resulting from these developments made EU CT an ineffective and inadequate apparatus, as demonstrated under a high EU-wide terrorist threat in 2015-2016. This is exactly why this thesis argues that until 2015, EU CT was not a sufficiently institutionalised polity – while it had gathered a number of bodies and instruments under its aegis, many of these did not function as intended and thus the EU itself was not equipped to counter terrorism, despite national policy-makers aiming to divulge the opposite message to their national publics. This thesis argues that institutionalisation does not simply equal material institutions, posts and legal documents – it implies an effective system, which is able to exercise governance over a policy field, via functional instruments of guidance, harmonisation and oversight, leading to a convergence of practices and perceptions. This would be observed for the first time after the Paris-Brussels juncture: counter-intuitively, despite the relatively low number of new bodies, institutions, measures and instruments were fine-tuned, while the agents in charge of implementing them were co-opted into understanding, using, supporting and contributing in feedback to those. These and other dynamics in this period, as will be argued in the following two chapters, made EU CT a fully-functional apparatus (albeit under construction), from its policy entrepreneurs, to its constitutive agents, to its institutions. It is thus considered a well-institutionalised entity at the time of writing.

Conclusion

In the absence of large-scale successful terrorist attacks, EU CT "reverted to the regular pattern of 'disjointed incrementalism'", where MS "would rhetorically limit the EU to a more supporting role" (Bossong, 2013, p.124, 130). It is also the period where the functionalist discourse of questioning the "added value" of the EU's role in security began, likely as a way to repel pro-integrationist Commission proposals (ibid., p.130). As will be discussed in the next chapters, practitioners in this domain and policy-makers "do not always see eye to eye", wherein the former need to be convinced of the pragmatic aspects of EU instruments, portrayed as "added value" (Coolsaet, 2010, p.873). Therefore, when EU-level arrangements are made, practitioners are seldom on board, leading to problematic implementation and ineffectual usage of the tools adopted. This is the dynamic observed in this period, particularly in terms of the usage of EU information systems and information management agreements in general.

It should be noted that developments described in the previous and following chapters covered two periods of two years, wherein a long list of actions and measures were undertaken, while this chapter describes the events of an eight-year long period, which may seem manifold, yet unfolded over a much longer period. The analysis of this timeframe of EU CT development demonstrates that "the conditions for agenda-setting and decision-making are very different when it comes to temporary windows of opportunity" (Bossong, 2013, p.132). Once the policy window of opportunity closes, the choice of a policy path is "locked-in", and the only dynamic to "unlock" this path is another shock to the status quo, in this case often incurred by a large-scale terrorist attack. In the absence of such, EU CT is unlikely to experience institutional change or policy shift, despite the efforts of its policy entrepreneurs, due to a lack of political will and policy prioritisation.[29] Additionally, two of the consequential factors of EU CT development are "the activities of policy entrepreneurs and the contingent availability of policy proposals" (ibid., p.131). This has been noted in all EU CT critical junctures – from the EAW, to the solidarity clause, and the eventual adoption of PNR, as will be discussed in the next chapter (and many more examples from each of these junctures). If the logic is reversed, it could be noted that proposals that were not readymade for political leaders to adopt in the initial stages of the juncture were not endorsed and entered the tunnel of path dependence, which usually ends at the next critical juncture.

The main reaffirmed causal factor for EU CT institutionalisation, threat perception, was not symmetrical, neither during the Madrid-London juncture, nor in the interim path dependence period. Not all MS "perceive terrorism with the same degree of urgency, nor are all moving in the same direction and at the same speed as far as the European integration process is concerned", demonstrated also by the multiple examples of mini-lateral/ enhanced cooperation and coalitions of the willing examples in both timeframes (from Prüm, to CTG, to the Future Group) (Coolsaet, 2010, p.873; also Bures, 2011, p.254-256). With the decreasing threat, that balance was affected further, whereas many MS were reportedly content with the degree of institutionalisation EU CT had achieved, when contextualised to the threat in this timeframe and the lack of prospect for further threat spikes. This made scholars conclude that the "treaty-based arrangements on counterterrorism have reached their limits, and that the near future belongs to mostly incremental steps" (ibid.). While the EU CT apparatus had achieved a degree of institutionalisation exceeding experts' expectations (ibid.; Doherty et al., 2015, p.5), and despite all the innovations of the Lisbon Treaty, in this period the EU continued to be "a marginal actor in counterterrorism activities, as the member states remain[ed] in charge of the vast majority of European powers and levers in this field" (Renard, 2012, p.15).

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[29] Substantiated by Bossong, 2013, p.137; Coolsaet, 2010, p.873.

Furthermore, a few years later this EU CT apparatus, previously perceived as sufficient, would be put to the test and it would not withstand that test of effectiveness in providing security to EU citizens (according to the intention declared first in the 2005 Hague Programme).

Finally, except for the low terrorist threat, another important political factor must be noted as a likely contributor to the counter-terrorism fatigue in this period. The financial crisis, beginning in 2008 and contributing later to the Eurozone crisis, shifted both EU and national policy-makers' attention from security to economic issues, likely until 2014-2015, when the Foreign Terrorist Fighter (FTF) phenomenon became too prominent (and public) to ignore. Furthermore, the shrinking of the economy by austerity measures made it that much more difficult to implement expensive (often software-related) measures in information exchange, let alone discuss new ones. Still, it could be presumed that those might have been prioritised differently, had there been (successful) terrorist incidents in this timeframe, while some political attention can be noted after every large-scale and publically known failed or foiled terrorist act. This attention, however, came in the shape of political declarations, strategies, stock-taking exercises, etc. Most significant practical/operational measures adopted in this period were in partial fulfilment of commitments made in either the Hague Programme or the Stockholm one, and were usually pieces of legislation that had been in the works for years prior.

While institutionalisation of EU CT advanced immensely until 2015, there were a number of shortcomings, that deprived the EU CT apparatus of full functionality. It is argued here that, a system is well-institutionalised *only* once its institutions, instrument and legal basis are coherent, universally applied, and do not allow for gaps in the governance said system aims to impose. The aforementioned shortcomings are listed below:

- Slow and uneven implementation
- Weak institutions (including in the context of implementation enforcement)
- Large number of strategic (intention-driven) documents, low number of operational or harmonising measures (many harmonising measures with proven added value either rejected or lagging behind)
- Pre-emption of Commission-driven proposals with intergovernmental (or coalition of the willing) proposals
- The Lisbon Treaty effects curbed by exceptions provided for this domain and the Commission's reluctance to use infringement procedures.

In the end, while still considered a "paper tiger", EU CT was considered to be "one with growing teeth", wherein the question remained to what extent it was able and willing to use those (Bures, 2006; Renard, 2012, p.16). This would be tested in the mid-2010s, as discussed in the next chapters.

Chapter V. Paris and Brussels attacks aftermath: an unprecedented EU response in information exchange

Introduction[30]

This chapter offers an overview of the governance response to the 2015 Paris and 2016 Brussels attacks on EU level. It is structured the same way as the chapter discussing the 2004 Madrid and 2005 London attacks, along the lines of three themes: key documents, institutional developments and exchange of information (police and intelligence focused). The purpose of this structuring is to provide a basis for comparison between the two critical junctures, thus the HI response to a crisis (i.e. the immediate and short-term aftermath, often consisting of reactive and politically visible measures). This chapter will then compare the response to the Paris-Brussels attacks with the response to the Madrid-London ones, with the caveat of the adoption of the 2009 Lisbon Treaty, which empowered more initiative by the EU in CT. Through the analysis of the three aforementioned dimensions the chapter will demonstrate the difference in the EU response in this critical juncture to the Madrid-London one, establishing that unprecedented institutionalisation processes occurred in the aftermath of the Paris-Brussels attacks.

Overview of events

One of the more prominent jihadist groups between 2011-2016 timeframe was the so-called Zerkani network, the most prolific one in terms of attacks in Western Europe (Van Ostaeyen, 2016). The group organised several smaller-scale attacks in 2014 and 2015. The first incident (known only in hindsight) was the attack on the Brussels Jewish Museum on 24 May 2014. Mehdi Nemmouche, a French citizen, opened gunfire on Museum visitors, killing four people and fleeing the scene. On 21 August 2015 another potentially deadly attack was organised by the group aboard a Thalys high-speed international train between Paris and Amsterdam. Ayoub El Khazzani, a Moroccan citizen later established as an accomplice of Abaaoud, attempted to carry out an attack,

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[30] This chapter is based on an article published by the Candidate as a part of the PhD process in *ERA Forum in 2020.* (Andreeva, 2020). The empirical material for the article was collected for the purposes of this thesis.

only to be thwarted by American soldiers aboard (Ibid.; Cruickshank, 2017). In hindsight, investigators believe that smaller plots like these (as well as a failed attack in Villejuif, France, and a foiled one in Molenbeek, Brussels) were meant to distract and confuse investigations from the large-scale plot intended for Paris (Allen and Webb, 2015). The ringleader, Abdelhamid Abaaoud was allegedly already wanted in the summer of 2014, and by early 2015 he was "the subject of an international manhunt", involving almost 20 EU and non-EU intelligence services (Rotella, 2016).

On 13 November 2015, a car driven by Salah Abdeslam arrived at Stade de France where a football match was attended by high-level French and German politicians (Cruickshank, 2017). It delivered three assailants, who failed to enter the arena, and subsequently one of them triggered his suicide vest at 9.20 PM, killing himself and a bystander. The second attacker triggered his vest, killing only himself, shortly followed by the third one, who also did not produce victims (Reuters, 2015). Meanwhile two teams of three attackers had begun two separate sieges on the terraces of two restaurants, killing 13 people (Cruickshank, 2017; BBC, 2016a). Seven minutes later they were at another location where they shot bystanders and clients of two cafes, killing five (ibid.). Six minutes later, at another location –the gunmen killed 19 people (ibid.). Four minutes afterwards, the attackers dropped one assailant at a café, where he triggered his suicide vest killing himself and injuring 15 people (ibid.). Another siege had begun simultaneously: three attackers arrived at the Bataclan theatre, where a concert was ongoing, and opened fire on concertgoers (ibid.). This would also become the bloodiest attack site, producing 89 victims, excluding the attackers. Most were killed in the first 20 minutes as the attackers sprayed the crowd blindly with automatic rifles (ibid.). At 10:45 PM, RAID, the French rapid response commandos began communication with the perpetrators, who had meanwhile taken hostages (ibid.). Eventually RAID were able to take down the assailants and free the hostages. The attacks were logistically coordinated in real time from Brussels, the headquarters of the terror cell.

Five days after the attacks, French authorities tracked Abaaoud down to a St. Denis apartment in Paris where him and his accomplice were being harboured, planning another attack. Once RAID commandos moved towards the residence, a suicide vest was detonated, and the attackers were killed (Cruickshank, 2017). Meanwhile, on the night of the attack, Salah Abdeslam, the only surviving Paris assailant, was able to drive back to Brussels (Cruickshank, 2017). The car was stopped three times before the Belgian border, however nobody was detained, as French police had not yet identified Abdeslam as a suspect (ibid.). Despite numerous raids and arrests, and amid mounting

political and public pressure, Belgian authorities were not able to get close to Abdeslam until 18 March 2016, four months after he became a fugitive.

On 22 March 2016, four days after Abdesleam's arrest, two groups of suicide bombers affiliated with him perpetrated another attack. Two assailants detonated their suitcase nail bombs in the departures area of Brussels airport (BBC, 2016b). The two explosions produced 12 victims and at least 80 wounded (Belgian Parliamentary Inquiry, 2017; BBC, 2016b, Hjelmgaard, Reuter, and Bacon, 2015). The third attacker claimed that he had changed his mind, fleeing the airport on foot (Miller, 2016). Subsequently, another assailant detonated a suicide belt aboard a metro train, in the heart of the Brussels EU quarter. Another 20 people were killed, mounting the victim toll to 32, and injuries to 340 (BBC, 2016b). A second attacker did not detonate his rucksack bomb, claiming to have had a last-minute change of mind (Palmkvist and Lönnaeus, 2016). The two escapees were subject of a manhunt and information appeals and were arrested on 8 April (Belgian Standing Intelligence Agencies Review Committee, 2018, p.44). The link to the Paris attacks "was quickly established" in the follow up of the Brussels attack (Belgian Standing Intelligence Agencies Review Committee, 2018, p.44; Wensink et al., 2017, p.36). Investigators later allegedly found out about plans for further attacks at Amsterdam's Schiphol Airport, in Manchester and in Belgium (Interview n.38; Le Parisien, 2015). The investigation of the Zerkani group and their activities revealed a large number of missed warning signs, arrest opportunities and oversights by Belgian, French and other authorities before and during the pursuit of the network (Belgian Parliamentary Inquiry, 2017; Interview n.33, 38; Rotella, Edge, and Pollack, PBS, 2016; Cruickshank, 2017; Rotella, 2016; Pop and Maremont, 2017; Callimachi, 2016; Heath, Sheftalovich, and Spillane, 2016, etc.).

2014	↗	**24 May**: Jewish Museum attack in Brussels
		Council Conclusions on FTFs cooperation: European Council 30 August; JHA Council 9 October; FAC Council 20 October
2015	↗	**7 January**: "Charlie Hebdo" attack in Paris
	↗	**15 January**: Verviers raid in Belgium
		January: SSCAT is set up
		29 January: Riga Joint Statement
		9 February: FAC Council Conclusions
		12 February: European Council Conclusions
		12 March: JHA Council requests setup of EU IRU
		16 March: FAC Council adopts Syria, Iraq and Daesh strategy / Commission allocates €1 billion for implementation ➔ CT dialogues
		20 April: Council approves strengthened rules aimed at preventing money laundering and terrorist financing.
		23 April: European Council holds an emergency meeting after several migrant ships sink
		28 April: European Agenda on Security is published (formally an update of EU Internal Security Strategy)
		(SPRING): SIS-II evaluation takes place and concludes in December 2016 with a new legal basis (under Art. 50 (5) from the SIS-II Regulation it undergoes evaluation every three years)
	↗	**19 August**: Thalys failed attack
		5 September: German Chancellor Merkel announces that "migrants are welcome"; peak of migrant crisis
		October: RAN is set up
	↗	**13 November**: Paris "Bataclan" attack
		16 November: President Hollande triggers article 42.7 (mutual defence clause)
		November: French investigators involve Europol in Paris attack aftermath; share all data (also with Eurojust)
		18 November: revision of EU Firearms Directive is proposed
		November: ECTC is proposed
		26 November: Upgraded mandate for Europol is proposed (on the table since 27 March 2013)
		2 December: Commission publishes EU action plan against illicit trafficking in and use of firearms and explosives
		3 December: EU Internet Forum launched
		3 December: agreement reached on EU PNR (proposed in 2011)
		7 December: Taskforce Fraternité is set up
		December: CT Directive is proposed
2016		1 January: ECTC is launched / Dutch Presidency takes over
		19 January: Setup of ECRIS-TCN and upgrade of ECRIS is proposed
		2 February: Commission Presents EU Action Plan for strengthening the fight against terrorist financing
		20 March: EU-Turkey deal is signed; migration crisis begins to unwind
	↗	**22 March**: Brussels attack
		23 March: Juncker announces Security Union
		6 April: Commission proposes amendment to Schengen Borders Code as well as a new Entry-Exit System of mandatory checks for all citizens (official proposal in July 2016)
		21 April: EU PNR is adopted
		4 May: A Regulation strengthening Eurodac is proposed
		11 May: new legal basis for Europol is adopted
		9 June: JHA Ministers endorse Roadmap on Information Exchange (incl. interoperability)
		June: High-Level Expert Group on Information Systems and Interoperability established for a consultation procedure (goes on until April 2017 and followed by Impact Assessment published on 12 December, and proposed interoperability legislation)
		6 July: NIS Directive is adopted (the first EU-wide legislation on cyber security)
		July: 5th Anti-money laundering Directive is proposed, targeted at terrorist financing
	↗	**14 July**: Nice attack
		19 September: Julian King appointed as Commissioner for Security Union
		4 October: Legislation on Explosive Precursors proposed, adopted in 30 November
		6 October: Frontex upgraded into European Border and Coast Guard
		November: European Travel Information and Authorisation System (ETIAS) is proposed
		December: Commission presents impact assessment on SIS-II and proposes upgrade to its legal basis
	↗	**19 December**: Berlin Christmas market attack

Fig. 2: Timeline of the Paris-Brussels attacks and EU response.

Legislation: green
Attacks: red
Documents or strategy: blue
Institutions: orange
National: gold
Migration crisis: dark blue

Key Documents

January – March 2015 Council Conclusions, giving the EU mandate to be involved in governance and legislation

According to interviewees the threat perception was rising already in 2014, with ISIL taking control over Mosul in June and the first FTF returnee staging a terrorist attack on the Jewish Museum in Brussels in May (as well as the failed Thalys attack in August) (Interview n.4, 2, 19, 34). Interviewees claim that the Syria Strategic Communications Advisory Team (SSCAT)[31] was already being set up and the future Directive on combatting terrorism was being discussed (Interview n.2, 4). Nevertheless, it took the shock of the heavily media-publicised attack on Charlie Hebdo's headquarters to galvanise public and political attention to the threat and the EU's potential role in tackling it. According to policy-makers, the 7 January 2015 attack served as the opening of the window of opportunity for the policy's harmonisation, while later attacks in Paris in November 2015 and Brussels 2016 opened up that proverbial window even further (Andreeva, C., 2020, p.347; Interviews n.2, 3, 4). In the immediate aftermath of the attack, France pushed for an informal Heads of State meeting and in the meantime the G11 convened (Interview n.2). The process was streamlined, as the Latvian Presidency and EU CTC Gilles De Kerchove drafted the Conclusions in consultation with Permanent Representations (instead of passing through the usual protocol order of WG level, Medici and Coreper groupings beforehand) (Interview n.4).

Three sets of Council Conclusions followed in January and February, serving as the official mandate for the EU's new involvement in CT – the Justice and Home Affairs (JHA) Council Conclusions from 30 January, also known as the Riga Joint Statement (Council of the EU, 2015b), the Foreign Affairs Council (FAC) Conclusions from 9 February (Council of the EU, 2015a) and the Informal Heads of State Summit Conclusions from 12 February 2015 (European Council, 2015). The three documents became the guidelines for the development of EU CT that followed, as they provided a clear direction and outlined strategic objectives and targets for policy-makers (Interview n.2). The EU's hitherto mandate in counter-terrorism was severely constricted due to the area's interpretation as a subject of national security, thus requiring sovereign national response, further provided for by Art.4.2. of the Lisbon Treaty (From Treaty on the Functioning of the European Union (TFEU); Andreeva, 2020, p.347; Höhn and De Kerchove, 2019, p.15). The combined effect of the Council Conclusions symbolically

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[31] An advisory group between EU MS established for the exchange of best practices in strategic communication aiming to preventing and countering radicalisation.

amended this mandate by granting the EU the opportunity to legislate in CT, to a degree deemed unimaginable until then (Andreeva, C., 2020, p.347, Interview n.2,3). According to an interviewee, who witnessed the drafting of these documents, their political significance is two-fold: 1) a MS asked the EU for support in the aftermath of a terrorist attack (instead of NATO or another body). This strategic choice "made the environment completely different" for the potential of the EU's CT role. MS did not all necessarily want the EU to do more in that domain, but it did make a significant difference, which was charted by the Heads of State conclusions. 2) The fact that MS were able to reach agreement on the EU's role was significant, but it also had a major impact on what was achieved in CT subsequently (Interview n.2).

European Agenda on Security, 28 April 2015

The framework strategic document on CT was the *European Agenda on Security COM(2015) 185*, officially an upgraded version of the EU Internal Security Strategy of 2010. The document was initiated after the Charlie Hebdo attack, as the Riga Joint Statement called on the Commission to draft a replacement for the 2010 Strategy outlining the EU's agenda in the domain (General Secretariat of the Council of the EU, 2015c). Adopted in April 2015, the document offered a vision for EU coherence in the various CT policy domains, while "setting out the main actions to ensure an effective EU response to terrorism and security threats in the European Union over the period 2015-2020" (European Commission, 2016f). Nevertheless, the document was barely more than a strategic repackaging of a cluster of measures and tools that were stuck in the EU legislative pipeline for years, or else suffered insufficiency in political will or technical ineffectiveness (Andreeva, 2019; Andreeva, 2020, p.348). However, together with the Council Conclusions of January-February 2015, the Agenda on Security was meant to provide the Commission with a certain strategic mandate, with which it could justify further measures, while it also provided guidance for a variety of activities such as common trainings via CEPOL (Ibid.; Interview n.4).

CT Directive in 2017

One of the key legislative acts, due to its overarching nature and centrality in the EU's mandate in CT matters was the *Directive (EU) 2017/541 on combating terrorism*, known as the CT Directive. While work on the document was reportedly ongoing for most of 2015, the Directive proposal was published in December 2015, merely two weeks after the November Paris attack, and was adopted on 15 March 2017. This wide-reaching

legislative act replaced a number of framework documents in EU CT, most importantly the Council Framework Decision 2002/475/JHA on combating terrorism, and the Council Decision 2005/671/JHA, obliging MS to share intelligence on terrorism. Not only does the new document contain many more legal provisions (it is 16 pages long as compared to the former's 5), it is also in the shape of a Directive, which has legislative status, unlike Framework Decisions, which are little more than an expression of a set of common priorities.[32] Except for the evident political impetus in the context of two attacks in Paris over 11 months, it is also important to note that having been empowered by the Lisbon Treaty to legislate in JHA, the Commission could now be involved in the domain and draft more impactful acts than the Council's strongest instrument, Framework Decisions.

The new Directive thus takes account of the ability to fill in governance gaps, notably extending the classification of the types of terrorist activity which represent an offence, including recruitment, providing and receiving training for terrorism, travelling for the purpose of terrorism, facilitating and (helping in) financing terrorist activities, and dissemination of terrorist content online (ibid.; Paul and Virgili, 2019; Wensink et al., 2017, p.34-35). These additions were necessary to impede, arrest and prosecute FTFs attempting to travel for combat training in Syria and the absence of those before 2017 has been claimed to have contributed to the ease of organisation of the 2014 Jewish Museum and 2015 Thalys train attacks, both 2015 Paris attacks, and the 2016 Brussels attack, all of which were carried out by FTF returnees (Ibid., Interview n.33).

Institutional Developments

Europol's updated mandate and new sub-structures: EU IRU and ECTC

The first EU efforts targeted towards online radicalization came after the Charlie Hebdo Paris attacks and led to the creation of an EU Internet Referral Unit (IRU)[33] at Europol with the aim of connecting national practitioners and developing best practices. With a 12 March 2015 JHA Council Conclusions, EU ministers of the interior requested the setup of the EU IRU, originating as a good practice from the UK (Interview n.6; Wensink et al., 2017, p.36; Paul and Virgili, 2019). The body was launched as a sub-body of Europol, through a JHA Council Decision in July 2015 (Council of the EU, 2015b; General Secretariat of the Council of the EU, 2015a), with the purpose of tackling terrorist

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[32] Whereas in certain contexts they can have binding status, there are still no enforcement mechanisms for Framework Decisions (Andreeva, 2020, p.348).
[33] Modelled after the UK's IRU.

propaganda on the internet, advising MS, and acting as a platform for the reporting of violent content (ibid.). An initiative since reported by MS and practitioners to have delivered added value, the unit managed to gain an independent skillset and expertise that is not available at most national administrations (Interviews n.2, 6, 8, 9, 10, 13, 14, 15, 16, Wensink et al., 2017, p.36; Paul and Virgili, 2019; Höhn and De Kerchove. 2019, p.28; van Ballegooij and Bakowski, 2018, p.57). In 2018, Europol reported more than 50,000 referrals processed, with a rather high removal rate of extremist content at 84.8% (Europol, 2018).

The speed of responding to the Charlie Hebdo attack with the setup of the EU IRU was "impressive", largely due to skilled leadership and personnel, who made a difference in achieving it so fast (Interview n.2). The UK was initially the biggest sceptic on the EU IRU, however it later became its biggest proponent, due to the skilled leadership and policy entrepreneurship of Europol's Director, Rob Wainwright. According to a high-level interviewee to this thesis, Mr. Wainwright successfully convinced Theresa May (the then-Home Secretary), that it could serve as a best practice originating from the UK, and subsequently she became an important supporter for the EU IRU (Interview n.6). Another sceptic that tried to prevent its setup was France, who wanted legislation in place instead of a new body, however, as the UK was already a proponent of the new voluntary coordination structure (arguably a softer harmonisation approach), they pushed for it, which is how this sub-institutional measure came about (Interview n.2). The legislative act that France wanted then has since been proposed too and is currently undergoing second reading discussions (and will be discussed further in this chapter) (ibid.). To incorporate the EU IRU, MS necessitated to upgrade the Europol regulation, while the setup of the sub-body enabled them to subsequently provide operational support to France, who asked for it after the Bataclan attack. While many MS were initially sceptical towards the body they grew to find added value in it.

Less than two months after the November 2015 Bataclan attack, the new European Counter Terrorism Centre (ECTC) at Europol, intended as a channel for information-sharing and operational coordination, was agreed upon through a JHA Council Decision and was launched at Europol on 1 January 2016. The Europol leadership had a strategic political approach as both the EU IRU and the ECTC were being prepared long before they were proposed (Interview n.6; Drewer and Ellermann, 2016, p.3, 6).[34] This made it possible for both institutional measures to be on the table when EU MS were looking for strategic involvement from the agency, subsequently both were launched in exceptionally short timeframes. Both initiatives were enabled by Europol's new mandate,

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[34] The ECTC was already discussed at the 12 March 2015 JHA Council meeting and the process was put in motion thereafter (ibid.)

acquired through a Regulation which was on the table since 27 March 2013, being recast by co-legislators in remarkable time (ibid.; Andreeva, 2019). *Regulation (EU) 2016/794 from 11 May 2016 repealing and replacing the Europol Regulations from 2009*, aimed to "[t]o enhance Europol's mandate as the EU's central law enforcement agency and enable it to respond more rapidly to emerging international terrorist threats and serious and organised crime" (European Commission, 2017).

Europol's leadership wanted to create a CT structure at the agency that was a mirrored image to the ones at the MS, yet without it sounding like a "threatening" supranational ambition, trying to duplicate their resources (Interview n.16, n.6). Now 80% of the Europol staff have an operational function (80 out of 110 personnel) – they deal with operational support, analysis and prevention, offering MS "humble analytical support" (Interview n.16). The ECTC Director has declared he is against the "professionalization of law enforcement", which is why he prefers to have seconded experts on a regular rotation, as they keep the attitudes "fresh", and focus on the needs of MS (ibid.; also Drewer and Ellermann, 2016, p.3; Paul and Virgili, 2019, p.2). He reportedly advises staff to not think of the European point of view but of the national one, because MS, especially CT experts "don't want to be told what to do by Europol or the EU" (Interview n.16, n.6.). CT authorities use EU tools when they see fit – e.g. the TFTP, since considered a useful tool for uncovering investigative links, is in existence for 7 years, and 85% of the data put and exchanged through the system was between 2016-2018 (ibid., van Ballegooij and Bakowski, 2018, p.62). Interestingly Manuel Navarette saw CT officers at the ECTC as potential ambassadors – both on the EU and national side. MS now send the best analysts with the highest expertise (they also get higher salaries and more varied tasks at Europol, which is a motivator) (ibid.). Thus they are like an investment for the agency– they represent national interests and approaches at first, which helps Europol add value to MS, but also they eventually go back to MS and can convince national authorities of said added value and can negotiate better on exchange of information towards Europol. They have the potential to change national attitudes towards Europol (ibid.). He is, furthermore, a proponent of the regular rotation of experts – otherwise he believes they lose touch with national CT practice (Interview n.16).

The ECTC was to be implemented under the Dutch Presidency, in the beginning of 2016, however there was a last-minute attempt to stop it from being adopted, and subsequently the Europol Director implied in public that the Centre would be part of the EU's response to the Paris attacks (even though it was in the works beforehand), which made any opposition politically unfeasible. Policy-makers had to compromise with elements of its design in order to have it pass, however the changes were symbolic and it was eventually signed off by the JHA Council (Interview n.6). Europol Director Wainwright cooperated

with Commissioner Avramopolous, and later Commissioner King, who were both fond of the idea, the former from a political standpoint and the latter from a strategical one (ibid.).

As a result of a visible spillover process, Europol was able to continue its evolution in the following months. As the agency's leadership was proactive, they were conceiving of further developments and upgrades that would enable it to take a more active role in CT efforts. The idea of a European Counter-Terrorism Centre is one that (re-)surfaced and failed to gather traction, due to strong resistance from MS, after all previous significant attacks – 9/11, Madrid and London attacks (Interview n.6). This time, as the attitudes towards Europol's role in CT seemed to be changing (and events indicated high threat perception), the agency's command began preparations for setting up such a centre. The fact that, in true EU (security) policy-making fashion, an old idea that was met with resistance in the past, was recycled and eventually embraced, is a strong indication of the weight of the critical juncture that was brought on by the Paris (and Brussels) attacks. Previous critical junctures, including the Madrid-London attacks, were unable to bring life to the idea of an ECTC, nor to stronger Europol role in CT as a whole.

EU agencies gain appreciation; Frontex becomes an executive EU agency

In the aftermath of the Paris attacks, EU agencies in aid of JHA operational work progressively gained appreciation and increased mandates, budgets and trust from national authorities**.** Another decisive shift of attitude was the involvement of Eurojust in counter-terrorism investigations, beginning after the 2015 Bataclan attacks, when the Paris Prosecutor not only submitted all attack data to Europol, but enlisted the help of Eurojust from day one (Interview n.18,19). This paved the way for all subsequent cross-border CT investigations being facilitated by Eurojust coordination, which has since been praised by national authorities, whereas the inter-institutional dialogue helped establish cooperation and build coherence between Eurojust and Europol too. The Joint Investigation Teams (JITs), an EU instrument in existence since 2005 and highly acclaimed by EU MS (Interview n.11, 16, 18, 19, 20, 32; van Ballegooij and Bakowski, 2018, p.50-51; Bigo et al., 2015, p.12), is hosted and coordinated by Eurojust too. While it had been noted as a good practice before 2015, its usage has substantially increased - in 2014 there were two signed JITs with the support of Eurojust, and in 2017 there were eight; in 2014 there were fourteen cases opened by national desks at Eurojust, in 2017 there were 87 (Interview n.18; van Ballegooij and Bakowski, 2018, p.28). The involvement of Eurojust in CT investigations thus can be seen to have convinced EU MS of its added value in this domain, while (similarly to the development of Europol) it helped

the agency learn of the national needs where its support is most valuable (van Ballegooij and Bakowski, 2018, p.31, 55-56).

Border security became an increasingly high priority for MS in the aftermath of the migrant crisis, whereas that concern has been compounded with anxieties over internal security (criminality and terrorism) as well as irregular migration. Throughout the management of the migration crisis MS became aware of the added value that Frontex[35] offers, particularly as front-line officers are the first to question and register migrants at external borders, which can become intelligence data at a later stage (Interview n.40; also van Ballegooij and Bakowski, 2018, p.37). These dynamics led to the realisation of the structural impediments before the agency, such as its officers' lack of access to relevant EU databases, to which most of them had access as national border guards. The Regulation on the strengthening of Frontex's mandate was adopted by the co-legislators on 13 November 2019 (European Commission, 2018g and 2019, Council of the EU, 2019). While the new Frontex, renamed the European Border and Coast Guard (EBCG), was officially launched on 6 October 2016, the new mandate authorises more than double the budget and staff, and provisions for more extensive information exchange with Europol and certain national authorities. Most importantly, EBCG officially become an executive agency, meaning it will be granted the executive power to deploy a Rapid Reaction Force of its agents, for which a standing corps of 10,000 officers will be recruited in a timeframe of eight years (Interview n.40). The agents will participate in operations and will be authorised to use force (European Council on Refugees and Exiles, 2019). This is the most significant mandate given to an EU agency to date, thus demonstrating the thinly-veiled lingering concern of national authorities over irregular migration, despite a counter-narrative by most EU MS governments.

The Security Union and its new Commissioner

The 2016 Brussels attacks impetus enabled one of the most ambitious initiatives in internal security to date, the Security Union, announced only a day after.[36] The initiative, which was met with some chagrin among EU MS and practitioners, was to have its legal basis in Art.67 TFEU, thus upgrading the Area of Freedom, Security and Justice (AFSJ), and had its new Commissioner appointed – Sir Julian King – on 19 September 2016.[37]

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[35] From the French "Frontières extérieures" for "external borders".

[36] The announcement was made during the minute of silence ceremony, a day after the Brussels attacks, on 23 March 2016.

[37] Ironically, an appointment that was doomed from the start, just three months following the Brexit vote.

The Security Union established hitherto the strongest reform framework of the policy area, whereupon the Commission published regular Progress Reports, noting headway and timeframes on relevant dossiers. The initiative allowed concerted and coherent policy action and follow-up on legislation, while one of the major shifts in approach was the regular use of infringement procedures against non-compliant EU MS, which was seen as a taboo until then, having been perceived as "shaming" (Interview n.2, 13, 8, 9, 10).

According to interviewees, the setup of the Security Union with its own Commissioner indicated "the realisation that more emphasis was needed on security issues" (Interview n.13; also Wensink et al., 2017, p.36; Mortera-Martinez, 2019). Reportedly until 2015 security was underestimated as a topic even by the Commission, as it was perceived as a national-only prerogative, and the EU CTC was considered a sufficient institutional assignment to the topic, as his duty was aimed at coordinating Council activities on CT, and it was not deemed necessary that other institutions are involved (Interview n.13). The EU CTC however has (until the time of writing) no legislative authority and no budget, thus he has no real power to coerce EU MS, apart that of persuasion (Keohane, 2005a, p.18). The Security Union, and the Commissioner appointed therein, were also an innovation in terms of the holistic approach to CT and internal security as a whole – apart from traditional JHA tools, measures in this domain now include the Single Market (e.g. on online content, explosives, firearms, etc.) and social policy domains, as well as foreign policy (Interview n.13, 9; also Wensink et al., 2017, p.36; Mortera-Martinez, 2019). Measures on repressive security, online content, protection of public spaces and radicalisation were advanced quickly under the new Commissioner, as "[i]n two years, the EU has achieved more on thorny issues like border controls and counter-terrorism than in the previous decade" (Mortera-Martinez, 2019, p.1). In October 2016, in his first month in office, the CT Directive and the Firearms Directive were finalised and thereafter many more dossiers have been pushed forward by his Cabinet, such as measures on aviation security, extremist content online, explosive precursors, terrorist financing and interoperability (Interview n.13, 4; Mortera-Martinez, 2019). Apart from Commissioner King's role as a policy entrepreneur in this period, he was described by interviewees as well-liked and trusted among national authorities, as a practitioner himself instead of a politician, and as a Brit no less, he was not expected to push for further integration than desirable for MS (Interview n.13, 25, 6).

Other changes in institutional roles (such as the Commission) and in inter-institutional relations (such as between the Commission and Council, and Commission and EP) will be discussed in the next chapter of this thesis.

Developments in information exchange

One of the aspects of EU CT that experienced the most dramatic shift as a consequence of the Paris-Brussels juncture was the information exchange between EU MS. It has been acknowledged by many interviewees that EU MS did not share enough data before the threat became ostensibly high (Interview n.23, 33, 35, 38, 31, 20, 24, 26; also Renard, 2017, p.82; Bigo et al., 2015; Drewer and Ellermann, 2016, p.4; Berthelet, 2017; Paul and Virgili, p.1; van Ballegooij and Bakowski, 2018, p. 26, 30; Wensink et al., 2017, p.36, 76; Höhn and De Kerchove, 2019, p.11-12,). National authorities were purportedly aware already in 2013 of the issues of radicalisation, of persons seeking to reach the conflict zones in order to join terrorist organisations as well as of the high risk for attacks, however it took some MS quite a long time to start sharing, to be convinced of the necessity to share (Interview n.23; Wensink et al., 2017, p.36, 76; Berthelet, 2017). Not only was intelligence-sharing lacking, but perhaps a more significant EU-level issue was that databases were not used well, especially in terms of feeding information in them, both in terms of criminality and in irregular migration (Interview n.31, 13, 28; van Ballegooij and Bakowski, 2018, p.26, 30, 46, 56; Mortera-Martinez, 2019; Doherty et al., 2015, p.6; Berthelet, 2017). Furthermore, it has been noted that Europol was not regarded with trust and respect in this area by national authorities (particularly among intelligence officials), unlike in other domains such as organised crime, counterfeiting and child pornography (Interview n.1, 23, 24, 25; Ballegooij and Bakowski, 2018, p.30, 47, 56; Berthelet, 2017). This would explain the limited amount of sharing with the law enforcement agency and the underuse of its state-of-the-art tools. All these issues made possible the EU information gaps that enabled the successful operation of terrorist groups on EU territory in the 2010s, and most of these were addressed in the aftermath of the Paris-Brussels attacks.

Misguided threat perceptions changed in 2015 with the efforts against European FTFs; information-sharing increased exponentially[38]

The change of attitudes began with the hunt for FTFs - European citizens who underwent training on the territory of the IS caliphate and returned to their EU home countries with the aim of committing or organising terrorist attacks (Interview n.2, also n.10, 13, 22, 23, 34, 35, 36, 38; Ballegooij and Bakowski, 2018, p.26, 30, 46, 56; Berthelet, 2017; Van Vlierden et al., 2018). In 2015, MS discovered that thousands of them were travelling around the EU undetected (at that point an estimate of 5000 European FTFs, 20-25,000

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[38] Interview n.12, 13, 14, 23, 33, 36, 37, 38.

assumed for the caliphate's duration), thus national authorities finally understood that cooperating on bilateral level might not be enough (Interview n.10, 23). Still the response was initially connected to national interests and policies (including the variegated responses to the Arab Spring revolutions). Thus cooperation increased slightly but not systematically, as MS still did not consider it necessary to involve the EU and mostly kept dealing with issues bilaterally (ibid.). According to some interviewees, even the Riga Declaration in the aftermath of the Charlie Hebdo attack did not achieve much, mostly it presented the tools that were already there and told MS to use them (while intending to improve and enhance some capabilities) (Interview n.16). The hunt for FTFs triggered an increased use of SIS-II - interviewees alleged that, since 2015, intelligence and law enforcement agencies began feeding abundant information into it, because they wanted to have the information for discreet checks, when following a suspect (Interview n.13, 23; Berthelet, 2017). Interviewees noted a steady annual increase of the data volumes in SIS-II (according to eu-LISA reporting by about 30%), wherein at the time of interviews it was noted that SIS contained about 75 mil. data points, which had been consulted or accessed by MS 5 billion times (ibid.). This increased usage was claimed to have begun with the rising concern over FTF returnees, as national authorities were aware of the potential threat posed therein (Interview n.13, 23; Wensink et al., 2017, p.34-25; Drewer and Ellermann, 2016; Berthelet, 2017). MS' investigative authorities wanted to check everyone who crossed the border, however in SIS it was only possible to check the documents of third-country nationals and not of EU citizens. As most FTFs were found to be EU citizens, authorities were looking for ways to change the legislation in order to make it applicable to all citizens (Interview n.13, 23.). This led to the revision of the Schengen Borders Code, which is already operational, thus requiring everyone crossing a border in or out of the Schengen space to be checked through SIS-II (i.e. requiring an electronic passport check, not just a manual one) (ibid.). Still, at that point in time the increased information-sharing could have been perceived as a reactive response, i.e. profound long-lasting consequences could not yet have been determined.

As CT structures are traditionally built on national level, it took the hunt for FTFs and subsequent terrorist attacks for MS to realise that the threat could not be tackled nationally anymore (Interview n.16). The novel threat was not only more shared than ever before, it also had new elements unknown to them – the new type of terrorist often had a criminal record, which was not the case with the 20th century terrorists, who saw themselves as freedom fighters, noble, and downtrodden, victims of the system (ibid.). The first generation of Belgian FTFs were different too, they were very religious and slowly moved on to radical interpretations, building a network through radical preachers (politically motivated by the Iraq war). This kind of radicalisation took a long time as online tools were not available, involving contact with recruiters for years and slowly built

relationships, which were easier for security services to track. As noted by Alain Grignard, senior member of the counterterror unit of Brussels Federal Police, in a 2015 interview "[p]reviously we had weeks and months to intercept terrorist plots because terrorists would spend months planning an attack, buying components for a bomb and so on. It's so much more difficult to stop this new form of terrorism" (Cruickshank, 2015, p.10). This new wave of FTFs was different – they were involved in (petty) crime, they sold drugs and were involved in robberies or theft, they dealt with social, economic and sexual frustration, they radicalised much faster, in some cases within two weeks (all those apply to the Abdeslam brothers) (Interview n.38; Van Vlierden et al., 2018). In Brussels the group consisted of older people, who were already involved in crime, they were radicalised in mosques and online, these roots mostly operated in Molenbeek, Vilvoorde, etc. (ibid.).

The online element of jihadist terrorism also caught national authorities unprepared, even though Europol provides extensive resources to deal with this innovative aspect of the threat, including operational assistance and cooperation (ibid.). Furthermore, the type of investigations has changed – when it comes to home-grown terrorists, the threat has evolved in unpredictable ways (Interview n.9). When asked to evaluate the response to the heightened threat in hindsight, Grignard concluded:

> "On a policy level, it is difficult to draw lessons from these events without falling into the trap of rewriting the past with the help of hindsight. It is clear that a good deal of the radicalisation and recruitment that preceded these individual stories happened under the very eyes of the Belgian authorities. But it would be far too easy to claim that the current terrorist threat could have been avoided by better governance. The process of radicalisation happened far too quickly for the non-repressive approach to governance—which of course is always preferable. And while it was gradual, often starting with non-prosecutable acts, effective legal intervention would have required measures that contradict the very same values of freedom and pluralism that the West has to protect against all forms of extremism." (Van Vlierden and Van Ostaeyen, 2017, p.17)

According to interviewees, particularly those originating from national CT structures, the perception of CT as an EU topic was not there before the critical juncture of the Paris-Brussels attacks (Interview n.16). Some perceptions were consolidated in the CT community, including that CT structures are traditionally built on national level (ibid.). The tendency for dispersed CT governance only began developing in recent years, to an extent with the tackling of Al-Qaeda (when the global nature of the threat became evident), thus national CT approaches evolved, as authorities were preparing for a consistent threat and regular attacks, which never happened as many of the affiliated

groups disappeared (ibid.). Many of the EU CT tools were put in place at that point, and no major challenge followed in the period 2008-2014.

The Paris attack strongly impacting the attitudes towards cooperation, especially as the attack targeted France: an experienced and self-confident MS in terms of CT and intelligence-gathering (Interview n.16). The attack had a clear transnational connection, which certainly provoked a reaction from MS. The issue could not be tackled nationally anymore, they needed a security pillar of action, for three reasons: 1) operationally, in case something is missed on national level, to enable data discovery through other services, 2) politically it was unacceptable not to cooperate anymore, 3) it had become about MS' reputation, MS' ability to stop attacks, the quality of their risk assessment and their ability to identify and prevent attacks (ibid.).

By June 2016, information-sharing was becoming more formalised as JHA Ministers adopted a Roadmap on Information exchange, which stipulated expectations between MS and from them towards the EU. The roadmap was initiated by the Dutch Presidency of the Council and was the first document to map out the intention of legislating on database interoperability, including a plan and a timeline therein. While the Dutch Presidency is a well-known and acknowledged policy entrepreneur in EU CT, having been called a "pioneer in pushing communication forward between the CTG and the EU",[39] it has been noted that the Roadmap was "a big stretch for a lot of MS" and would have been inconceivable were it not for the Paris and Brussels attacks (ibid.; also Wensink et al., 2017, p.36).[40]

In this field lessons learned come from attacks: they expose governance gaps to be filled, but they also bring political attention and will for common action. The alleged intelligence-sharing and cooperation failures with the Paris-Brussels attacks put the intelligence community under immense scrutiny, where they not only had to find a way to avoid further information gaps, but they have also had to prove their value to national security, which was suddenly put into question (Interview n.12). Resulting from the tremendous political and public pressure surrounding various failed and successful attacks, "working alone [was] no longer an option" (Interview n.19). The necessity to cooperate, not only on EU level but also internationally became glaring and "now there is no other option for intelligence" - they have to share data among each other, because they cannot run the risk of having undetected terrorist activity (ibid.).

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[39] Interview n.2 and other interviewees who spoke of the policy entrepreneurship of the Dutch Presidency, e.g. Interview n.3, 6, 7, 9.
[40] Other policy entrepreneurs for EU CT in this period included the Europol Director Rob Wainwright, EU Counter-terrorism Coordinator Gilles van Kerchove, the newly elected Commissioner Julian King, and the ECTC Director Manuel Navarette.

Europol's CT role increased substantially through the involvement in the Paris attacks investigation[41] and the setup of ECTC[42]

In the aftermath of the Paris attack, public discourse focused on intelligence-sharing failures, and the proverbial window of opportunity for Europol opened soon after, when in France the Paris Prosecutor leading the investigation on the attack added a clause stipulating that all the data therein was to be shared with the agency (Interview n.6; van Ballegooij and Bakowski, 2018, p.29, 55). It was the first time this had ever happened, and the intelligence community was still quite apprehensive, nevertheless, this event made Europol seem as a useful channel, specifically the perception was shaped by the fact that the endorsement came from France as one of the biggest MS, with some of the oldest traditions in intelligence – it helped for other states to see it as a potential channel too (Interview n.6). This opened the door for international cooperation and the Europol leadership took advantage to advance several initiatives, including the ECTC (ibid.).

France handing the data from the Bataclan attack to Europol was a pivotal moment for the agency, as it marked a major shift in attitude (Interview n.2, 13, 6). When the French authorities started giving information to Europol after November, they were still not done collecting data from January's Charlie Hebdo, which demonstrates the inability of individual MS to handle this type of threat on their own (Interview n.14). Police certainly saw an added value from Europol's input after the Paris attack, as they did not know the perpetrators involved, and they reportedly did not have sufficient cross-border cooperation in advance, whereas afterwards there was a substantial change in attitude. Europol adds value for national authorities as it conducts the background checks necessary for which they might lack the time, thus increasing the speed of investigations (Interview n.13). However, MS only saw that after the Paris attack's handling, and it changed their perceptions of the added value of the agency, which has been asked to be involved in the investigations of every attack since (Interview n.13, 14; Höhn and De Kerchove, 2019, p.28).

Some MS began cooperating bilaterally first and then asked for an enhanced role by Europol – mainly those affected by attacks: France, Belgium, Netherlands, Germany, the UK (ibid.). In the aftermath of the Paris attacks Europol formed *Taskforce Fraternité* on 7 December 2015, at first composed of 25 officers from France and Belgium. Europol asked both MS what experts they needed for the investigations and gathered them together at Europol, with the aim of creating a "toolbox" of investigative instruments for

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[41] Interview n.6, 13, 14, 2, 9, 18.
[42] Interview n.11, 1, 24, 2, 39, 2, 9, 24, 25.

them (ibid.; van Ballegooij and Bakowski, 2018, p.29, 55). This was a sort of pilot for Europol's capability to deliver holistic, integrated solutions in support of operational work conducted by MS, it was created at the operational level and contained all the tools necessary for sharing data necessary for the investigation (ibid.).

According to interviewees, the critical juncture of the Paris attack was necessary to open MS perceptions on Europol's CT role (Interview n.14). Before 2015, Europol received very little information from MS, who now share all the types of data collected in the course of an investigation – phone numbers, bank accounts, facial recognition, DNA, etc. (Interview n.18; Höhn and De Kerchove, 2019, p.14, 28; Drewer and Ellermann 2016, p.4; Berthelet 2017). Europol cross-checks the large amounts of data contained in their databases (some 13m structured files, 3m of which on terrorism) (ibid.). The agency has had to adapt to the increasing data exchange by expanding their capabilities on data collection. Between 2009-2018, they had a ten-fold increase in the amount of data and a six-fold increase in the operations they have been able to carry out (Interview n.6). They used to be involved with 100 law enforcement agencies on their platforms, and now that number is 1200 (ibid.). In the two years since the Brussels attack, entries in the EIS went from 6000 to half a million (Interview n.6, 9; Drewer and Ellermann 2016, p.4; Berthelet 2017). Furthermore, it has been important for Europol to be involved in these investigations in terms of the lessons learned and issues ironed out through that experience (Interview n.9). For example, some of the experts involved in the Paris attack investigations did not speak French, which was necessary to understand the role and statements of French prosecutors (ibid.). A French law enforcement officer was thus appointed to ensure cohesion (ibid.).

MS generally avoided giving access to Europol to all of their data and operations (Interview n.28; Höhn and De Kerchove, 2019, p.12; Doherty et al., 2015, p.6; van Ballegooij and Bakowski, 2018, p.47, 56, 58; Berthelet, 2017). Many MS were distrustful towards both SIS-II and Europol, as they were unsure if these were secure enough channels, and they doubted Europol's added value to national efforts (Interview n.2; van Ballegooij and Bakowski, 2018, p.47, 58; Doherty et al., 2015, p.6). However, as it has proven useful to them, they began to value what Europol has to deliver, especially so since the establishment of ECTC, which has an increased capacity to support MS with operational needs (Interview n.24; Drewer and Ellermann 2016, p.3; Paul and Virgili, 2019, p.2). Before the ECTC, the agency had mainly a strategic and analytical capability, and now it has gained an operational competence and new tools at its disposal, which clearly add value. It is especially useful in the post-hoc stage of important events (i.e. attacks, dismantling terrorist cells, etc.), as well as when there is a less experienced MS

involved (as for many MS the tools necessary are too complicated and expensive to dedicate resources on and develop domestically for a one-off event) (Interview n.24.).

As national authorities began to entrust Europol with such otherwise expensive for them tasks, they have also come to realise that this assistance is practically free of charge, since the agency's work is funded through the EU budget (Interview n.9). MS now provide Europol with quality data, and these types of interactions and cooperation occur more often across different domains relevant to CT (ibid.). In getting the conservative CT community to use these tools, Europol's approach has been to provide them with a menu of options and let them decide when and how to use those for their needs. The agency aimed to be a pillar connecting MS via these tools, nevertheless not wanting to step onto their competences, not wanting to take credit for investigative and operational successes (Interview n.16).

For the agency, the 2015-2016 events were crucial, as being able to set up the ECTC meant it gained valuable experience, but it also made its efforts more visible (Interview n.4). There were already 20 CT people at Europol beforehand, thus there was already some capacity available for those tasks, however that has significantly increased with the ECTC (now there are more than 100 of them). According to interviewees, before ECTC the amount of data fed into Europol was "ridiculously" low – MS clearly felt no added value (Interview n.9; Doherty et al., 2015, p.6; van Ballegooij and Bakowski, 2018, p.29, 56; Wensink et al., 2017, p.36, 76; Höhn and De Kerchove, 2019, p.12). Now they demonstrably do, as they make full use of Europol's data sharing capacity. However, even with the ECTC in place, it took time for Europol to be taken seriously (ibid.). MS trust the agency more now, however this attitude still varies across MS because some use it less (Interview n.9, 25; van Ballegooij and Bakowski, 2018, p.30; Höhn and De Kerchove, 2019, p.27; Drewer and Ellermann, 2016). Before this critical juncture, it was difficult for EU policy-makers to find an added value function for Europol in prevention and disruption, as convincing MS that the agency needs to have a more pro-active role in CT required a change in culture in this domain (ibid.). While law enforcement cultures and minds cannot change this easy or this fast, a significant shift is indeed observed – as interviewees have noted, some years ago the idea of doing CT at Europol was "laughed at" (Interview n.9).

Innovations in information-sharing: EU PNR adopted after a decade in the EU pipeline

The Paris attacks were the main motivator for the ultimate adoption of the Passenger Name Records (PNR) Package (Council of the EU and European Parliament, 2016a) on

172

21 April 2016 – a piece of legislation that had been stuck in the EU pipelines for over a decade[43] and previously vetoed by the EP, was suddenly agreed upon in a matter of weeks under immense political pressure. The PNR package allows the collection of data on air travel passengers, where such data is provided to law enforcement authorities by airline carriers and has been reported by practitioners as very useful and necessary (Interview n.4, 9, 21, 35, 36, 34; Wensink et al., 2017, p.121-122; Höhn and De Kerchove, 2019, p.19; van Ballegooij and Bakowski, 2018, p.38; Paul and Virgili, 2019, p.2). Law enforcement authorities were advocating for this measure as they were struggling to track the movement of FTFs in/out and within the EU. The initiative began with an EU–US PNR Agreement in 2012 (Council of the EU, 2012), which was initially heavily criticised from a data protection perspective by the Parliament. According to an interviewee who was working at the Council at that time MEPs claimed that they could not accept the proposal as such and held PNR as a horse-trading tool for the Schengen governance package (Interview n.4). The demands were oriented at regular reporting on the outcomes of the Schengen package - confidential information that the EP is not entitled to. Parliamentarians also wanted to be consulted if a MS were to be forcibly excluded from Schengen, which is a completely hypothetical situation. As they were not given these guarantees, the EP blocked a number of legislative acts, including PNR. The UK was a champion for PNR in the Council, where there was much more scope for common security dialogue (e.g. the PNR general approach was agreed in 2012-13). In the end, while the Lisbon Treaty was meant to make the process on legislation-making faster, it ended up introducing more checks and balances – while there were reportedly not many fundamental splits between MS on CT or fundamental obstacles, bottlenecks persisted when the file reached the EP (ibid.).

While the events from January and February 2015 made a difference in advancing certain dossiers, it was ultimately the November Paris attack that "made it happen" and showed what the EU can do in that domain (Wensink et al., 2017, p.122). Suddenly, in all legislation in this domain there was a high-level political discussion, which helped to push dossiers through, as MS came to realise that low implementation and slow decision-making backfires on them (Interview n.4, 9). PNR was a clamant example of these issues, demonstrating how a file that was stuck for years could suddenly be pushed forward. Nevertheless, by the transposition date in 2018 the FTF traffic had subsided for two years. Later on, Ireland and the UK (non-members of Schengen) negotiated an opt-in to the PNR legislation. Currently there are ongoing negotiations on the introduction of PNR in other modes of travel (European Commission, 2019).

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[43] The proposal which was ultimately adopted was proposed on 2 February 2011, however there had been previous legislative proposals in 2008 that were rejected at the time.

The Schengen Information System (SIS-II) is the most important information system for cross-border law enforcement investigations. Whereas the first generation SIS database was set up in 1995 as a compensatory measure for the relaxation and eventual abolition of internal border controls among the Schengen signatories, a 2016 Commission evaluation found an unsatisfactory usage of the second generation (SIS-II) database. The evaluation found that, while "the underlying rationale of SIS II continues to be valid", there had been issues in the exploitation of SIS, stemming from technical difficulties, uneven implementation, divergent usage and poor data quality (European Commission, 2016d). One of the triggers for this evaluation was the failure to detain the only surviving perpetrator of the Paris November 2015 attack, whereupon a police check was unable to identify a reason to detain him, despite the Belgian authorities' awareness of his radicalisation (Interview n.34, 35, 36, 38; van Ballegooij and Bakowski, 2018, p.37; Höhn and De Kerchove, 2019, p.26). The incident triggered a bitter political dispute and blame-shifting between France and Belgium, while eventually it was found that the event stemmed from two systematic issues:

1) Insufficient information exchange between police and intelligence authorities in Belgium, but also broadly in the EU. In the case of Abdeslam, he had been included in SIS-II with the limited information that the federal police had on his petty criminality, while intelligence services and local authorities knew him to have been radicalised, yet failed to communicate that to police, who are the competent authority responsible for inputting data in SIS-II.

2) An uneven usage of SIS across MS was identified, due to organisational and cultural differences, which could have perhaps been remedied by further training and coherence exercises on the use of SIS across borders (European Commission, 2016d). The immense political attention and pressure caused by this mishap had a ripple effect not only on an update of the SIS legal basis, but also on its usage, where EU MS saw heavy public criticism. This resulted in record-high increases in the usage of SIS, whereupon in the period 2013-2018 alerts increased by 63.5% and accesses to the database increased by 381.5% (which is likely also due to irregular migration and increased systematic checks).[44] Even more staggeringly, in the same timeframe, Belgium's and France's uses of SIS-II

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[44] These statistics are obtained through eu-LISA annual statistical data on the usage of SIS-II. As eu-LISA has a limited mandate on the use of statistics, where it is only allowed to publish annual estimates *without* any analytical purpose (such as through graphs discussing changes in use), the author has calculated these increases through the figures on annual uses of SIS published by eu-LISA (eu-LISA, 2013, 2014, 2015, 2016, 2017, 2018).

increased exponentially, wherein their alerts rose by respectively 43.3% and 317.7%, while their accesses/queries surged respectively by 425.5% and 2648% (ibid.). As noted above, the queries made to SIS in that period were often in regard to irregular migration and related documentation, however such a staggering variance clearly demonstrates a previous underuse of SIS, particularly by France, who in 2013-2014 had almost the same amount of alerts as the much smaller Belgium.[45] The increased use of SIS-II has proven an added value for the database – the so-called "hits" (i.e. a cross-match when a search is performed by a EU MS where another MS has previously input an alert) have increased by 207.8% between 2013 and 2018, evidencing that when there is more alerts available there is a higher chance of benefit provided by the information system.

There were discussions at EU level as it became clear that MS use Art.36.2/36.3 differently due to various interpretations and approaches to national security, while the less affected states use it less and are not interested in enhancing its capabilities (Interview n.35; van Ballegooij and Bakowski, 2018, p.37; Höhn and De Kerchove, 2019, p.26, 12). Thus both the Commission and MS realised that a reform was necessary to enable harmonised usage. The proposed reform made a legal adaptation in Art.36., which should positively affect its usage, while France and Belgium signed an additional bilateral agreement therein (Interview n.36). With the upgraded SIS the Commission has tried to make it compulsory to include entries in the database, unless operationally disruptive, still there are plenty of national sensibilities and differences in judicial structures that make harmonisation difficult. Purportedly one of the key issues is that MS are always comparing EU measures to their national equivalents and are convinced that the corresponding EU instrument should be constructed "their way", thus excluding other formulations (ibid.). According to some interviewees, databases should be harmonised, however some policy-makers and practitioners (and to a large extent the public) are sceptical and wary of "creating a supranational monster of a system that controls everyone's data" (Interview n.34, 35, 36).

A more effective use of SIS was in the root of this reform (Interview n.36; Wensink et al., 2017, p.123). Addressing national needs and the political impetus on the use of SIS, the Commission was able to propose an upgrade to its legal basis, accompanied by the aforementioned impact assessment in December 2016. Regulations (EU) 2018/1860,1,2 were adopted on 28 November 2018 (Council of the EU and European Parliament, 2018a, 2018b, 2018c), introducing also an obligation on MS to enter all asylum return

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[45] In 2013, France had 2,782,929 alerts, while Belgium had 2,755,919, while in 2014 France had 3,721,127 and Belgium had 3,194,684. As a point of reference, in 2018 France had 11,625,459 alerts, while Belgium had 3,950,297. As pointed out, this represents a 317.7% increase for France and 43.3% for Belgium (ibid.).

decisions in SIS to reduce irregular migration. The legislation grants database access to Europol and Frontex, and includes more data categories in SIS, and which is welcomed by practitioners (Interview n.40, 32, 34, 35, 36, 23; van Ballegooij and Bakowski, 2018, p.37). Yet it has been pointed out that SIS should contain even more types of data, especially background information on suspects, to enable smooth and comprehensive investigation work (Interview n.32). Most relevantly for CT, the new legislation claims to have imposed an obligation on EU MS "to create a SIS alert for all cases related to terrorist offences" and, as of the end of 2019, "to inform Europol of hits [and] alerts linked to terrorism, which will help to connect the dots at the European level" (European Commission, 2018l). With the SIS reform the Commission created derogations for some alerts, e.g. under a proportionality evaluation on a SIS alert creation practitioners are usually able to have an a priori exception, however this is not possible for terrorism, thus EU legislators foresee it as an obligation to input alerts (Interview n.36). This is by no means the first legislative attempt by the EU to oblige national authorities to share information, notably Council Decision 2005/671/JHA formally obliged national authorities to share all relevant CT data relevant to cross-border investigations, however it is now known that there was no feasible enforcement on such an obligation.

SIS-II is considered quite useful by practitioners, however, despite its increased usage since the Paris-Brussels attacks, it is evident that the most affected states use it the most, while there is also asymmetrical usage of its functionalities, often due to misconceptions on those (Interview n.36; van Ballegooij and Bakowski, 2018, p.26, 37; Doherty et al., 2015, p.92). Nevertheless, the heterogeneous usage brings challenges with national approaches to SIS, because not all practitioners see the need for it, first-line border guards sometimes "do not need to know which database to check" as they often do not understand SIS' added value" (Interview n.31; van Ballegooij and Bakowski, 2018, p.47; Doherty et al., 2015, p.5, 56-57). According to some interviewees, one of the missing links between national and EU authorities is in implementation: as noted by one of them, "the how of implementation is usually missing" (Interview n.35, also n.31; Doherty et al., 2015; p.5, 61, 88; van Ballegooij and Bakowski, 2018, p.48). As the EU leaves it to national authorities to decide how to organise it, implementation is often discrepant among MS, which can be conducive to a chaotic system (Interview n.35; Doherty et al., 2015; p.5, 61, 88). One of the issues therein is the copious amount of communication lines between MS that sometimes create parallel channels of exchange. This also allows national discretion on the purposes of each database - some MS may use Prüm and SIS-II interchangeably, thus creating a gap in the information available (ibid.).

Heterogeneous data management was identified, including data fragmentation/compartmentalisation

According to one interviewee, it is – and it has been – clear to stakeholders that cooperation is indispensable and that no MS can handle the threat alone (Interview n.4). The question up for debate until 2016 had been how to organise that cooperation (through which channels, on EU or bilateral level etc.) (ibid.; Wensink et al., 2017; p.36; Drewer and Ellermann, 2016; Renard, 2017). Some administrations purportedly had a preference for EU fora, wherein coordination would be channelled through Europol and have COSI as a guiding political structure. However, as there was no consensus on that, the extent of cooperation and the appropriate channels could not be decided (Interview n.4.). Intelligence services were not willing to "come out in the daylight" and work through the EU. However, these attitudes have changed to an extent and there has been much more exchange of information. It has become evident to national authorities through the increased threat, that they need to work together, and while the system in place provided by the EU is far from perfect, it provides a multitude of benefits and it has improved a lot. Different EU databases are, however, used for divergent purposes by various national authorities (Interview n.4; van Ballegooij and Bakowski, 2018, p.26; Doherty et al., 2015, p.6, 61).

SIS-II is mainly used for combatting cross-border crime in the EU (Interview n.28). When there is a known suspect, who is being followed, his movements, including the use of vehicles, travel by air, etc. are recorded in the database, where raw data is exchanged immediately, enabling end-users with access to use it fast if necessary. This type of discreet sharing deals with the whereabouts of a suspect, and MS can see in real time where he/she is travelling to/from (Interview n.23). SIS is effective but complicated, as it is built piece-by-piece, including with incoming MS (at the current moment 30 countries have access to it, two more are preparing to join). Each MS operationalising SIS-II, has a national SIRENE Bureau,[46] responsible for coordinating cross-border activities related to alerts, and via this channel the information is immediately available to all other MS' authorities, while they also provide linguistic support where necessary (Interview n.23, 9). However, the added value of SIS has become apparent in the context of increased terrorist activity and persecution, which encouraged MS to use it more. SIS is preferred by intelligence agencies, due to its discreet checks - other services would only know that they are pursuing a suspect, without acting on it, and if another MS spotted him

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[46] SIRENE stands for Supplementary Information Request at the National Entries (Ec.europa.eu, 2016).

elsewhere, that information would be shared in real time (Interview n.9; Doherty et al., 2015, p.92; Höhn and De Kerchove, 2019, p.26).

In the Europol Information Systems (EIS), where transactions take place via the SIENA channel for confidential data exchange, the information shared is a type of pre-analysed intelligence, such as known accomplices, phone numbers, connections of the perpetrator, etc. (Interview n.23; Wensink et al., 2017, p.115-116; Doherty et al., 2015, p.62-63; Drewer and Ellermann, 2016). Interpol's database, used for similar purposes, is overall more familiar to practitioners, but as the organisation has 190+ members, information exchange is rather slow, which is an argument in favour of the EIS (ibid.). While Europol too needs time to process and analyse the information, this channel provides confidential data treatment and offers flexible sharing options. EIS links information on a hit/no hit basis, therefore police authorities cannot analyse data through the system, however they will know if the person has a criminal background, or is investigated by another authority (Interview n.34, 35). The platform offers various treatment options – two MS can share information through Europol, they can maintain a bilateral/trilateral exchange, but they can also have on-the-spot officers, who facilitate linguistic difficulties, which also brings an added value (Interview n.9; Höhn and De Kerchove, 2019, p.13). MS thus can share sensitive information with handling instructions wherein they can make it available to one or several MS, or to none - they can ask to be informed when another MS tries to access it, or they can let it be known they have an information on a person/subject without having to reveal it (Interview n.9, 2). In an effort to adapt to intelligence agencies' needs and offer MS a confidential channel of exchange, Europol created SIENA mailboxes for each competent body, which enables each one to share as they like, and sharing increased exponentially (Interview n.14, 9). Based on VPN and designed by Europol, the SIENA network is more secure than other EU information systems (Interview n.6; Wensink at al., 2017, p,116; Höhn and De Kerchove, 2019, p.13). It is the only one in Europe that can deal with live law enforcement data (Interpol does not have that for example). However, some intelligence services still do not trust Europol – or each other. It has been noted by interviewees that some MS used to have a single national contact point for it, which can be problematic for cooperation if two services across borders do not trust each other therefore information does not get shared at all (Interview n.14, 13; Doherty et al., 2015, p.6).

Prüm is a law enforcement exchange database for established criminality, which assists investigations (Interview n.30). While SIS-II is usually reserved for serious crime, Prüm is most used on crime scene-obtained evidence, and can be utilised for investigation of criminal acts that are not clear-cut enough to put in SIS (ibid.). However, it has limited options (it only supports fingerprints and car registration data), while SIS has more

functionalities. There is some complementarity of Prüm, for example it contains DNA data, which is not on other databases, and while police can search for suspects directly from fingerprints, with the updated SIS they will be able to that there too, thus prompting discussions about Prüm's future with the expansion of SIS (Interview n.31). SIS-II is also more efficient: Prüm can take up to 48h to cross-check, which is too long for some investigations. With SIS' new AFIS biometric functionality police can search on the spot (ibid.; van Ballegooij and Bakowski, 2018, p.37).

CT operational information is so sensitive that not everyone might trust one specific channel (Interview n.14, 4; van Ballegooij and Bakowski, 2018, p.26; Doherty et al., 2015, p.56-57, 61). In terrorist cases the information and human intelligence involved are separated not only on national basis but also on regional and local basis, wherein every MS (and region) has a specific way of working on terrorist cases and their own preferences (Interview n.19). They all have different approaches, but also ownership over the information, which can be difficult to give up in the interest of sharing, as they may then lose control over it (ibid.; van Ballegooij and Bakowski, 2018, p.45; Doherty et al., 2015, p.56-57, 61). The intelligence community do not wish to go through EU platforms, they rather have a preference for informal channels, specifically the Club de Berne and CTG fora created by them (Interview n.19; Doherty et al., 2015, p.58; Wensink et al., 2017, p.55; van Ballegooij and Bakowski, 2018, p.47). Law enforcement checks national databases, which are connected to SIS, it will tell them on which platform there is data on the subject, then they could check Prüm, then VIS and Eurodac (while the latter two are only possible since interoperability entered into force) (Interview n.31). However, different MS still have different access to different databases and while the input of data has drastically increased since 2015, national authorities still have preferences (Interview n.23; Doherty et al., p.56-57, 61). Under-budgeting is an issue for some databases, which might consequently experience fallout. PWGT,[47] for example, is currently "falling apart" – while Germany and the Czech Republic wish to keep it, having the new SIENA CT Confidential channel, which some MS prefer, makes it redundant, thus now practitioners use a bit of both, leaving the choice up to the agencies' discretion, which can be messy (Interview n.34). Finally, another problem with information systems is that one agency usually has the hardware and thus can be considered (or can consider itself) the owner of the system nationally, which creates friction between agencies, often between police and intelligence too (ibid.).

Some MS had to be convinced of the advantages of multilateral sharing through the EU (Interview n.23, 1, 2). For example, it was noted by interviewees that UK's SOCA initially

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[47] Police Working Group on Terrorism – the de facto equivalent of Club de Berne for law enforcement.

did not share much, but increased its exchange after taking note of the added value of sharing via the EU through common investigations (Interview n.1). The SIS' applicability in the UK is relatively new and the state had to be convinced of its usefulness of EU tools, however, through SIS they were able to track the movements not only of FTFs, but also of organised criminals, human and drug traffickers, etc. (Interview n.2). Brexit has had a significant impact therein too, despite the UK being one of the most sceptical towards sharing beforehand. Consequently, there has been a reinforced understanding of those systems and they became politically clear, as the UK government has had to justify their added value to the public. Nevertheless, national authorities have come to the realisation that "it is very easy to share with one MS only but if you want all the information at once it is preferable to go to SIS-II" (Interview n.32; Höhn and De Kerchove, 2019, p.11, 13; van Ballegooij and Bakowski, 2018, p.26).

Whereas bilateral cooperation might work better in the aftermath of an attack, it was recognised that multilateral cooperation was necessary to tackle the threat. Due to their experience, some MS (e.g. Belgium) learned to necessarily look for the international elements in terrorist plots, however others do not have the same experience, and thus might not look further than their borders (Interview n.19; Höhn and De Kerchove, 2019, p.13; Berthelet, 2017). Some MS still prefer bilateral channels (especially when the issue is of bilateral nature) (Interview n. 9, 11, 13, 22; Höhn and De Kerchove, 2019, p.13; Berthelet, 2017). National security services are the main instrument to deal with terrorism, and traditionally they avoided cooperation (Interview n.22, 25, 13, 14, 11). For many MS "information sharing is a risk of leaking", wherein the EU or its tools can shed light on covert information and compromise investigations (Interview n.14, 13, 11; van Ballegooij and Bakowski, 2018, p.45). After receiving this feedback, the Commission included an exception in the SIS legislation, to deal with potentially jeopardising ongoing investigations (Interview n.13). Nevertheless, some MS' authorities still believe that by sharing intelligence, "you make yourself weak" as you might lose ownership or leverage, while in terms of policy-making, MS prefer to work in smaller forums to avoid their national positions leaking (Interview n.38, 25). For some national authorities (especially intelligence) bilateral operational cooperation will always be the most important, as that pre-empts the risk of leaks to some extent (Interview n.11). However, it is not only a matter of rationality – often it is simply a matter of practice. Some MS still do not share with Europol, as in the past MS worked CT cases only on bilateral level, with their favourites (Interview n.13; van Ballegooij and Bakowski, 2018, p.30). Previously multilateral cooperation was not to be deliberated at EU fora, as MS worked only in privileged bilateral pairs (both in the EU and outward, e.g. between an EU MS and a

MENA partner, or the UK and the Five Eyes[48]) (Interview n.22). Nevertheless, that meant that they could not have known of a link of the investigation in a small MS, and with the newly rising threat the information was dispersed (Interview n.13). The services' stance was that if they share, it would derive out of a specific necessity (Interview n.22). Whereas sharing has increased, those difficulties persist (ibid.).

Another issue pointed out by interviewees is that "the bigger the format, the more difficult it becomes for it to be productive" (Interview n.3). For example, on FTFs, half the MS involved prioritised the issue, while the other half did not. Such a circumstance can be paralysing in decision-and policy-making. Therefore, MS would rather work with counterparts who care equally about an issue, making it logical to channel-shop according to topics (ibid.). The EU is an important format, but national authorities adapt their cooperation to the issue at stake. For example, the G6 format, a flexible political and operational coordination channel, where MS meet in different configurations (Ministers, Security chiefs, etc.), is used often, usually in advance of high-level official meetings, in order to approximate positions, agree lines of cooperation or to coordinate national responses outside the EU (ibid.; Wensink et al., 2017, p.70; van Ballegooij and Bakowski, 2018, p.46). In intelligence work, especially in a cross-border investigation, officers have agreements on where they can engage (Interview n.31). Nevertheless, some MS increasingly want to cooperate closer: interviewees from eu-LISA noted that several national authorities have approached them to develop messaging/communication services between guards across borders, based on national or regional practices (e.g. in the UK, Germany, Netherlands, etc.) (ibid.). However, some national authorities felt that there was too much administration and paperwork involved in using the EU channels, making the process slower too (Interview n.32; Doherty et al., 2015, p.5-6). One interviewee believed that this pushed away some practitioners from sharing and cooperating through the EU, due to the excessive administration involved (ibid.). At certain levels of hierarchy, they might need a prosecutor assigned for authorisation. There is supposedly a lot of "sending around" of information which can take too long, while with most cases they would need the data in less than 24h, and sometimes it could take up to a week, which would happen much faster on national level (ibid.).

Nevertheless, as a consequence of the rising terrorist threat, MS changed their sharing habits – both in terms of volume and purpose. One of the important realisations, giving the issue of CT a European dimension, was that "you are as strong as your weakest link" (Interview n.34). Therefore, designating matters of information exchange fully to MS and leaving them with a limited understanding of how to use EU tools may have a significant

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[48] An intelligence alliance comprising Australia, Canada, New Zealand, the UK and the US.

effect. For example, Belgium was under the impression that it was "sharing already a lot of information before the attacks, including through SIS and EIS", while the country's SIS usage evaluations "were not good" until 2015 (Interview n.34, 36). However, currently Belgian usage of SIS has been recognised as a good practice by the Commission, while other MS increased their sharing manifold, as discussed elsewhere in this thesis (ibid.).

The EU found an effective way to harmonise and coordinate the response in internal security policies – investing (both financially and capacity-wise) in information systems (Interview n.1; Höhn and De Kerchove, 2019). According to practitioners, on EU level there are now good new sharing-facilitating measures, such as PNR, from which national authorities further spread data into SIS and EIS (ibid.; Interview n.35; van Ballegooij and Bakowski, 2018; Wensink et al., 2017). The volume of information exchanged has sharply increased, and it became clear that it is virtually impossible for one secret service, or for one MS, to deal with the potential threats or criminal networks alone – usually they do not possess the right type or a sufficient amount of information to counter a criminal or terrorist suspect on their own, often it is only through collective action that enough information and evidence can be aggregated in order to persecute or arrest a suspect (Interview n.1; Höhn and De Kerchove, 2019, p.13). Innovative information systems have significantly facilitated cross-border cooperation, and the EU seems to have taken note in implementing several ambitious projects, such as a major SIS upgrade and the interoperability legislation (Interview n.1; Höhn and De Kerchove, 2019). Ever since the surge of the terrorist threat, however, there is a tendency to fill up databases with data, but who is going to follow up is not clear-cut: the analysis component of this work is missing and the roles therein are not straightforward (Interview n.35, 21; Wensink et al., 2017, p.54).

Interoperability, plus new and improved databases

Probably the most ambitious initiative in this domain to date was the proposed interoperability of EU information systems**.** Any legislation on this topic was considered taboo, presumably until the end of 2016, particularly in 2015-2016, when it would have been perhaps most necessary to national authorities. Owing to an unwavering political position of EU leaders to avoid and even forbid any conflation and fallacious association of migration and terrorism, particularly in the context of the 2015 migrant crisis, the discussion of interoperability of EU databases was considered inconceivable. According to EU officials (Interviews n.7, 8, 9, 17, 28, 29, 30, 31), several factors affected the change of approach including:

- ➢ An unnamed attack in Europe involving an individual listed on the Eurodac database for asylum seekers.[49]

- ➢ The Paris attack involving two perpetrators who entered Europe during the migrant crisis with fake identification documents. In the aftermath of the attacks, law enforcement (including Europol) could not access databases such as Eurodac, VIS and SIS, as border management was considered a completely separate issue (Interview n.4).

- ➢ The attack that ultimately led to political pressure on the dossier by German authorities – the Berlin attack of December 2016, involving a perpetrator owning 14 fake identification documents registered in various MS (while he had also been involved in criminality in both Germany and Italy, of which both national authorities were not fully and reciprocally informed).

The interoperability framework involves a new Common Identity Repository aimed at tracing fake identification documents, while a database on ECRIS-TCN is being developed too, to facilitate an exchange of criminal records of third-country nationals across MS. The core purpose of interoperability is to connect EU databases used by migration authorities (VIS, Eurodac) and law enforcement (SIS-II), as well as to create a comprehensive record of the third-country nationals staying on EU territory (either with or without visas), and on asylum seekers, through the establishment of new information systems (European Travel Information and Authorisation System – ETIAS, Entry/Exit System – EES and ECRIS-TCN[50]). Through a European Search Portal (one of the elements of the interoperability package), law enforcement and immigration authorities in MS (at a certain level of clearance) will be able to see a comprehensive profile of the person checked, thus aiming to close information gaps in investigations of criminality, terrorism and irregular migration (van Ballegooij and Bakowski, 2018, p.27, 37-41; Drewer and Ellermann, 2016; Höhn and De Kerchove, 2019, p.31; Paul and Virgili, 2019; Doherty et al., 2015; p.90). The interoperability package will also enable eu-LISA to build a Central Repository for Reporting and Statistics and a Shared Biometric Service, as the agency is developing biometric capabilities for EU databases, which still do not enable such uses (in some cases requiring update of the legislative acts governing them) (Interview n.29, 30; Wensink et al., 2017, p.132-134; van Ballegooij and Bakowski, 2018, p.40). The legislative procedure was finalised with the Council adopting Regulations 2017/0351,2 (COD) on 14 May 2019. The Commission proposal was published in December 2017, and considering the incredible complexity of this legal act in its almost

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[49] This reference might have been to the Paris attack, as the two unnamed attackers were later found to have been registered on Eurodac, however it would be difficult to establish this with certainty as interviewees were purposefully vague.
[50] A new database of European Criminal Records Information System aimed at third-country nationals.

350 pages, as well as its supplementary legislation listed below (Table 1.), the process of formal adoption in under 18 months is truly remarkable and indicates a solid consensus and shared prioritisation, not only from the co-legislators, but also among all stakeholders involved.

Regulations(EU) 2018/1240,1 on the setup of ETIAS, proposed in November 2016 and formally adopted on 19 September 2018.	On the setup of ETIAS, based on a similar database in the US, will allow to keep track of visa-exempt citizens residing in the EU, and will enable law enforcement authorities to know whether such citizens are to be found in the EU in a given moment in time.
Regulation (EU) 2017/2226 of 30 November 2017 on establishing an Entry/Exit System (EES)	"On establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of Member States", it furthermore determines the conditions of access for EU law enforcement authorities. While VIS is aimed at collating data on visa-holders, and ETIAS serves a similar purpose for visa-exempt citizens entering, the EES is meant to store data on both. Its added value to national law enforcement is thus very clear – it retains a record of third-country nationals who have or currently do reside in the EU, as well as those refused entry (and the reasons for such refusals)
Regulations (EU) 2018/1860, 1, 2 from 28 November 2018 on the use of SIS-II	Introduced an obligation on member states to enter all return decisions in SIS to reduce irregular migration. It further introduces new alert categories and grants access to SIS-II to Europol and Frontex. Most relevantly for counter-terrorism action, the new legislation claims to have imposed an obligation on member states "to create a SIS alert for all cases related to terrorist offences" and, as of the end of 2019, "to inform Europol of hits [and] alerts linked to terrorism, which will help to connect the dots at the European level (see previous sub-section).
Regulation (EU) 2017/458 from 15 March 2017 amending the Schengen Borders Code (Formerly Regulation (EU) 2016 /399.)	Reinforcing compulsory systematic checks against relevant databases at external borders (until then those were performed on a random basis, and only at entry). Meant to work in conjunction with the SIS-II Regulations.
Regulation(EU) 2018/1726 on the eu-LISA mandate	To empower eu-LISA to operationally manage existing databases and to develop new ones, the agency's mandate was formally upgraded on 22 November 2018 with Regulation (EU) 2018/1726 (proposed in June 2017), thus making it an official EU agency, and mandating it with direct responsibility of operational management of SIS, VIS and Eurodac, as well as tasking with the development of new information systems European Travel Information and Authorisation System (ETIAS) and Entry/Exit System (EES), as well as ECRIS-TCN and DubliNet ("a secure electronic network of transmission channels between the national authorities dealing with asylum applications", thus an IT system in support of the Dublin II Regulation)
Regulation (COM(2018) 631 final, upgrading Frontex's mandate, and Regulation (EU) 2016/794 upgrading Europol's mandate	Increasing budgeting, staffing and responsibilities of the two respective agencies, providing them with full access to EU databases and instruments for information exchange; in the case of Frontex also executive powers. (see previous and subsequent sub-section for a detailed overview).
Regulations 2017/0144 (COD) of 27 March 2019 and amended Directive 2016/0002 (COD) on the establishment of ECRIS-TCN	ECRIS-TCN, the European Criminal Record Information System on third-country nationals and stateless persons – a new database aimed at third-country nationals, in order to facilitate an exchange of criminal records of third-country nationals across member states.
Regulation 2016/0132 (COD) from 4 May 2016 on strengthening Eurodac	On the strengthening of Eurodac "for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes". The proposal is currently in negotiation phase, at Council negotiation stage.
Proposal for a Regulation 2018/0061 (COD) from 14 March 2018 amending the Visa Code (Regulation (EC) No 810/2009) and Commission proposal COM (2018) 302 final from 16 May 2018 on the Visa Information System (VIS).	These legislative measures aim to strengthen EU visa policy and its coherence across member states, while it also proposes an upgrade of VIS to collect more comprehensive data on visa-holders (including on long-term EU visas and residence permits, which was hitherto not the case), as well it proposes technical measures in the context of inter EU visas, which was hitherto not the case), as well it proposes technical measures in the context of integrating VIS to the interoperability package The new measures will also make visa checks mandatory for law enforcement, as it has been identified that visa checks in the EU are very irregular. The VIS proposal reached the stage of trilogues negotiations between the co-legislators expected under the next EP legislature

Table 1: Legal acts in support of the interoperability legislation.

While important, interoperability is a complex, expensive and difficult undertaking to implement (Interview n.23). It will be useful mainly for police officials, it is meant as a sort-of one-stop-shop for checks, where they can request a comprehensive profile of a suspect (Interview n.28). It only deals, however, with centralised databases, whereas PNR, Prüm, API, etc. are all decentralised, which brought further discussions on those changing shape (Interview n.29, 31). VIS and Eurodac will not only be for checks but for law enforcement purposes too, the access will enable more of a standardisation approach (ibid.; Wensink et al., 2017, p.126; van Ballegooij and Bakowski, 2018, p.27, 30, 37-42). Law enforcement (depending on the level/position of the officer) will also have access (ibid.). Data input will still not be available at all levels of secrecy, it will depend on how it is flagged by a MS. For Eurodac, law enforcement would have to obtain a judicial order through a request (before interoperability they needed one for all levels of database checks). According to Frontex officials, their mandate involves a package of documents on their access to specific data, and their authorisation to pass it on (Interview n.40). While they still have a limited capacity, for them interoperability is "a very big step in the right direction", enhancing access to databases and setting up new ones (ibid.). In Frontex they can see clearly the need and desire to work together, and while it took time and effort to establish the proper procedures for sharing across agencies, between agencies and MS, etc., to really bring operational added value to national efforts, EU agencies too need to be able to have access to databases, where they can share (ibid.; van Ballegooij and Bakowski, 2018, p.37). Europol have supposedly been limited users of SIS-II through their host state (the Netherlands), however the agency will need to build its own platform now (Interview n.23, 29, 31; Höhn and De Kerchove, 2019, p.30). Practitioners on EU level expressed hope that the usage of such tools and the more substantial mandate it provides to Europol will "bring more trust between MS" (Interview n.31).

Perceptions can change and are slowly evolving, however the political pressure has been effective for pushing this change forward (ibid.). Interoperability was discussed in 2003-4, then again in 2008-9, yet it did not go further. The mindset has changed, as the public is more aware of technology, and the fact that "tech companies collect data anyway" (ibid.). Furthermore, it became clear that during the migration crisis, and in dealing with terrorist incidents and prosecutions, databases were "not used greatly" (ibid.; Mortera-Martinez, 2019; van Ballegooij and Bakowski, 2018, p.26, 30; Wensink et al., 2017, p.36). Interoperability was predicated upon the underuse of data from different databases, wherein the quantity of data was not insufficient, but its usage was inefficient. In both migration and law enforcement there is a perceived information gap. With Eurodac and SIS being connected, and with new systems such as ETIAS and EES, EU information systems have a way of closing the gap.

The adoption of the interoperability package would not have been possible if not for the High Level Expert Group on Information Systems and Interoperability - a high-level consultation process the Commission organised at the level of policy-makers, practitioners and consulting bodies (Interviews n.7, 8, 9, 17, 28, 29, 30, 31; Höhn and De Kerchove, 2019, p.40). Not only did the consultation involve high-profile practitioners and policy officials from the 28 MS (plus associated countries Liechtenstein, Norway and Switzerland), it further engaged representatives on several levels from all EU institutions and relevant agencies (Europol, eu-LISA, Frontex, FRA and EASO). The Commission showed political skill in engaging the potentially harshest sceptics – European Data Protection Supervisor (EDPS), the Fundamental Right Agency (FRA) and the EP. These bodies have long criticised the Commission and Council for intransparency of the legislative process in JHA, particularly at the drafting stage where they claim the Commission conducts a covert informal consultation with national stakeholders, drafting security measures with limited input from data protection and fundamental rights experts (Interviews n.21, 21.2, 26, 27, 40; Höhn and De Kerchove, 2019, p.40). The Commission avoided both these criticisms by involving all relevant stakeholders before the drafting stage, thus also co-opting the support of all participants, and fostering compromise by having all concerns preemptively discussed, allowing for a smooth and rapid legislative procedure post-hoc. The Group met five times between June 2016 and April 2017, and was followed by an impact assessment published on 12 December 2017 (European Commission, 2017b), simultaneously with the legislative proposal, which was ultimately adopted in May 2019, and is to be implemented in several stages by national authorities and eu-LISA, expecting to finish the implementation process in 2023. To empower eu-LISA to operationally manage existing databases and develop new ones, the agency's mandate was formally upgraded on 12 November 2018, thus making it an official EU agency and mandating it with direct responsibility of operational management of SIS, VIS and Eurodac, and tasking it with the development of ETIAS, EES and ECRIS-TCN (European Commission, 2018k; van Ballegooij and Bakowski, 2018, p.40).

As the links between law enforcement and border management became visible, it was necessary to build the structures to support a nexus therein. According to practitioners, interoperability is a must, otherwise law enforcement becomes complicated for efficiency and cooperation reasons (Interview n.36, 40; van Ballegooij and Bakowski, 2018, p.27, 37-41; Drewer and Ellermann, 2016; Höhn and De Kerchove, 2019, p.31; Doherty et al., 2015; p.90). Attacks bring international cooperation, however one of the inherent issues is the reflex of police officers to work only bilaterally and with contacts, yet only with cop-to-cop exchange they cannot obtain the full information, for which they need access to multiple databases (Interview n.36; Mortera-Martinez, 2019; van Ballegooij and Bakowski, 2018, p.27, 30, 42). Still, the political pressure to open up EU databases to

different authors led to their use for investigation purposes as interoperability repurposed migration information for usage by law enforcement, bringing important questions on how to balance that with data protection (Interview n.35; van Ballegooij and Bakowski, 2018, p.26, 40).

Formalisation and institutionalisation of CTG demonstrates realisation of importance of cooperation[51]

The "real work" in terms of intelligence coordination is not done on EU level but at the intergovernmental channels of Club de Berne and its sub-grouping CTG (Interview n.3; Wensink et al., 2017, p.55; Doherty et al., 2015, p.5, 58). These were created by the intelligence agencies themselves, instead of being imposed on them politically, thus they were designed bottom-up, in an informal setting and fitting to their operational coordination needs (ibid.). The CTG is thus the "de facto intelligence agency for the EU, there is no need for EU instruments for operational coordination – it takes place there" (ibid.). The intelligence community does not want to us the EU opting instead for informal channels of cooperation (ibid.). EU platforms, have certain limits in the disclosure of information (also due to differences in national data legislation), therefore for some types of intelligence cooperation they are inconvenient (ibid.). CTG is highly classified (*top secret* level), while Europol has a *secret* level of confidentiality, thus not guaranteeing full protection of the data shared. EIS is used quite a lot by police authorities and has sufficient level protection for the type of data that they deal with, but not for intelligence information, which entails national security material (Interview n.2; Wensink et al., 2017, p.115-116; Doherty et al., 2015, p.6; van Ballegooij and Bakowski, 2018, p.30, 47).

Since 2015, the CTG has built a platform of its own (positively outside of EU structures) that enables Europol-like cooperation (Wensink et al., 2017, p.77; van Ballegooij and Bakowski, 2018, p.30; Höhn and De Kerchove, 2019, p.13; Renard, 2017, p.82). The process was initiated by the Dutch Presidency,[52] which focused on information-sharing synergies (Interview n.2). The CTG's permanent cooperation is "a direct reaction of the services to the Paris attack" (Interview n.12). In the attack's aftermath, media and political discourses zeroed in on intelligence-sharing failures, putting CTG under immense pressure – yet they still resisted to opening up to more cooperation (Interview n.6). According to an interviewee, some MS intelligence agencies are quite confident in their emancipated approach to CT, however this self-esteem was often misplaced: the new transnational dimensions of the threat do not correspond to such national isolated

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[51] Interview n.12, 13, 21, 2, 3.
[52] Taking place in the first half of 2016.

approaches anymore (ibid.). This approach of only consuming their own intelligence material means that MS deny themselves the opportunity to identify possible links from different MS and across types of criminal activity, and they may be unable to build the bridge to other datapoints. The Europol Director publically acknowledged the claims of intelligence-sharing failures, which shocked CTG members, but also potentially affected attitudes (ibid.).

Noted as one of the most significant consequences of the Paris-Brussels critical juncture, the formalisation of CTG is something that could not have been foreseen beforehand (Interview n.12, 3, 16, 2, 21, 4, 9; Renard, 2017, p.82). This "substantial progress" achieved on its structure "surpassed everyone's expectations" as the Group was not expected to take this extra step (Interview n.3). CTG is no longer as informal as it used to be – it is still not a formal channel, but it is de facto "formalised", wherein some MS had to adopt legislative provisions allowing for multilateral intelligence-sharing (Interview n.9, 21). Presently, the cooperation of the agencies is structured, they have permanent representatives and liaison officers at the CTG headquarters, if they need to they can connect to their national systems or reach the capitals (Interview n.12; Wensink et al., 2017, p.77; van Ballegooij and Bakowski, 2018, p.30; Höhn and De Kerchove, 2019, p.13). There is also a common database at CTG, where MS input intelligence shared among them, while other MS have access and can explore the information provided (ibid.). Some MS are, however, more interested and involved than others – usually those that experienced more terrorist activity on their territory. According to interviewees, it is important that all these tools are now available at the CTG, and it is "regrettable that it has not been done before, which is due to national reservations on security" (ibid.). There were already certain connections on bilateral and intergovernmental levels, however there were no formal channels of exchange.[53] It is a sign of progress that now services work together on a permanent structured basis, and through a common platform/database. Nevertheless, there is more to be done in this institutionalisation process, as its legal basis is not completed yet, oversight is not provided, and its relationship to collective law enforcement bodies like Europol and PWGT (the Police Working Group on Terrorism) is not clarified (ibid.; Wensink et al., 2017, p.77; p.30; Renard, 2017, p.82). With intelligence there is a shift in mentality, nonetheless there are still bilateral channels, which sustain parallel platforms, creating "a loss of information" and exchange (Interview n.36). Whereas cooperation through CTG has increased exponentially, intelligence agents are known for sometimes not communicating timely to

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[53] It is important to note that there still are no informal channels: CTG has become *more* formal in its coordination, but is still not a structure nor a body, it convenes more regularly, but still on the basis of perceived necessity by intelligence agencies. (ibid.)

law enforcement, which is necessary to discover the links with organised crime, including with weapons, fake identification documents, etc. (Interview n.9; Renard, 2017).

Conclusions: a shift of paradigm for EU CT information exchange?

It has been pointed out that this was an unprecedented threat for Europe, and all MS underestimated the peril – whereas some thought they could handle the problem on national level, others missed warnings along the way (Interview n.34, 35, 36, 11, 27; Höhn and De Kerchove, 2019; Van Vlierden et al., 2018; Drewer and Ellermann, 2016, Paul and Virgili, 2019). Purportedly for some MS the concern had manifested before 2015 and there was some engagement and preparedness towards the terrorist threat, for others it took the attacks in 2015-2016 to realise that it was a common problem (Interview n.11). There was a lack of European dimension in CT, due to a lack of a common European perception of the issue (Interview n.27). Already since the Syrian conflict began in 2011, there had been discussions on CT measures, including a stronger role for Europol, CVE[54], prevention, cooperation with extra-EU countries, etc., however these topics "were never at the top of the agenda" (ibid.). Thus the potential security risks to emanate from the conflict, including the migration crisis, were acknowledged since then, however MS did not prepare well for those, neither on EU nor on governmental level. The issue supposedly seemed "far away" and was "not a political priority", while the MS that prioritised it preferred to deal with it on national level (ibid.). They could agree on the principles of common action, but eventually they could never agree on the channels, means and implementation of such measures (ibid.).

Another important point made by interviewees was that "Europe wasn't ready" (Interview n.1, 2, 5, 20, 21, 22, 24, 25, 27). Harmonising measures that needed to be available to provide a coherent security framework were not in place, whereas some elements of the threat were underestimated and misunderstood, such as the scale of homegrown radicalisation of EU citizens, necessitating a range of social measures, such as integration, education, welfare, etc. Nevertheless, while this inference was confirmed by almost all 40 interviewees, two separate interpretations can be extrapolated: (1) the EU and its MS did not prepare for countering the unprecedented threat, necessary measures were not taken in that regard and, (2) the Union and its constitutive members were not ready to face security challenges like these *together*. Whereas the second meaning is metaphorical and interviewees were rather referring to the first one, the latter could also be derived from the former (i.e. *Europe was not ready to be ready*).

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[54] CVE = countering violent extremism.

While EU counter-terrorism will likely never fully integrate into a common policy, due in large part to the significant operational, functional and sovereignty hurdles to overcome, it is well on its way to overcoming the gaps in governance that may have enabled an easier organisation and execution of terrorist attacks on EU territory until 2015. This paradigm shift was caused by a shake-up of conceptual constructions of security policies as belonging to EU MS' sovereign jurisdictions alone, and not crossing borders, thus not having to be relinquished or shared with the Union. EU policy-makers appear to be well-aware of MS' reservations, as well as adept and strategic about pushing forward important legislation in politically opportune moments, however both European publics and national policy-makers needed to be convinced of the necessity and added value of the EU's role in issues of terrorism. While the policy continues to be a hybrid, it is well on its way to becoming a well-functioning one, through the clarification of mandates, proper utilisation of instruments, and certainly a necessary element in CT policy-making – a high common threat perception, induced by a somehat symmetrical political pressure across MS (ibid.).

Generally, MS believe that they can handle terrorism on a national level, if need be on bilateral level. Therefore, most of the work on EU security policies takes place on an intergovernmental level at the Council, and there is little for the Commission to do (mainly in the prevent branch, in terms of limiting access, protecting infrastructure, etc.), for which the MS need to clearly see an added value. Sometimes MS simply do not like the proposal or do not want to do more on a certain topic, which also depends on the governments in place, and whether they are interested in security measures, or in work through the EU (Interview n.17). Furthermore, policy-making tends to get stuck after some time, then a crisis is necessary to shake things up and for the process of institutionalisation to continue further (Interview n.31, 22). On one hand, the sheer shock of a large-scale indiscriminate attacks in an EU capital, impeccably coordinated, long-organised and expensive, especially when combined with the successful escape of the only surviving assailant for four months and a follow-up attack by his associates, created a critical juncture more powerful than that of the Madrid and London attacks, and reaffirmed the validity of the HI model postulating that, unless the system experiences a shock, opening a window of opportunity for reform, that system would stay on its path, even if that path is no longer functional to its circumstances.

However, the critical juncture opened by the attack produced a long-lasting bracket of reforms, impacted by – and further impacting – shifts of perception on terrorism and counter-terrorism in Europe, leading to a paradigm shift of beliefs and practices. While those would likely not have settled in without the shocks of the attacks and their

aftermath, it is clear from the history of EU CT, that in the absence of ideational and cognitive changes, a critical juncture has short-lasting reactive policy effects, and fails to lead to a shift of paradigm (such as in the Madrid-London case). As interviewees pointed out, the failures surrounding the attacks were able to expose the gaps of governance and security in the EU, and from then on each new incident was a lesson learned that led to a concrete policy or operational response. Hardly any of these responses were original, however – the EU had long lobbied for some of the measures such as interoperability, PNR, SIS-II upgrade, Europol upgrade, measures on extremist online content, etc. Nevertheless, it took the critical juncture of the realisation of the credibility and communality of the threat to begin endorsing these measures, which in itself led to the realisation of their usefulness, leading to more cross-border CT cooperation mediated by EU tools and mechanisms, leading to the endorsement of more measures. This virtuous feedback cycle created a paradigm shift in EU counter-terrorism. While national authorities learned to entrust certain tasks onto EU legislators and institutions, the latter learned to approach the former in a non-threatening, non-sovereignty-impinging manner, increasing their mutual trust and engagement even further. The same effect could be observed on EU level among its own institutions, from the relationship between the legislative triangle of Council-Commission-Parliament to relations among EU agencies, such as Europol, Eurojust, Frontex and eu-LISA. These issues will be reviewed in further detail in the next chapter.

Chapter VI. The Paris-Brussels critical juncture: A paradigm shift of EU CT policy and practice in information exchange

Introduction

This final empirical chapter analyses the aftermath of the critical juncture brought on by the 2015 Paris – 2016 Brussels attacks, which it is shown resulted in a paradigm shift in EU CT. To establish that this juncture indeed brought on a paradigm shift, the chapter presents a discussion of the nature of CT work (police and intelligence) as well as the (sometimes flawed) CT structures, as both are conducive to systemic issues such as trust, information exchange reluctance and limited resources. To fully explore these issues, the discussion is separated into three topics: information-sharing, inter-institutional dynamics and legislation, and perceptions of EU added value. Each of these topics are further sub-divided in thematic sections, dealing with specific components of the issues therein. The chapter will aim to demonstrate that this critical juncture, unlike others for the policy, led to a paradigm shift, due to a transformation of perceptions and ideas about doing CT work in the EU (as elucidated by CI). This is chiefly explained with the understanding and appreciation of EU-level cooperation in CT: not only politicians, but more importantly practitioners, learned the necessity and added value of EU tools and instruments in the domain. As they began making appropriate use of these, governance gaps were filled as they helped to upgrade and shape them to their liking and usefulness. A spillover of usage–appreciation – cognitive frame readjustments followed thereafter, changing the way CT is currently performed in the EU.

Information-sharing

The nature and issues of intelligence-sharing across borders and institutional cultures

The attitude towards information-sharing varies a lot between MS, wherein it often depends on the professional or organisational culture of law enforcement and intelligence in different countries or at different operational levels (Interview n.25, 23, 6, 3, 34, 4; van Ballegooij and Bakowski, 2018, p.26; Doherty et al., 2015, p.56-57, 61; Höhn and De Kerchove, 2019, p.11, 13). There is a certain professional jealousy and guarding of sources that is characteristic to the field, and is evident even within MS, sometimes within the same department of a national service. One interviewee noted that

she had witnessed MS hiding their data either to keep it for their own use and benefit from it, or to avoid bad press or reputation on certain issues such as border control or quantity of FTFs (Interview n.23; also van Ballegooij and Bakowski, 2018, p.27, 45; Höhn and De Kerchove, 2019, p.26; Wensink et al., 2017, p.70). Furthermore, as there is avid competition for data and ownership, MS may hold data as leverage over their partners via quid-pro-quo sharing, or it might be assumed that the information was known by other services too (Interview n.23, 33). Intelligence services sometimes have problematic relationships with other national authorities involved in internal security, especially in bigger or federal EU countries with multiple levels of governance. EU agencies too are in a feisty competition with each other, for reputation, data, mandates, financial resources, etc. "Information is power" and they all guard their data (Interview n.23). In some cases, there are also legislative or constitutional constraints to sharing rooted in the differences in national systems, that represent a significant stumbling block.

Exchange of information does not work equally fast or well with every country, across Europe the patterns of cooperation are "patchy": e.g. the Netherlands and Denmark have a fruitful cooperation, whereas, in a heightened state of terrorist threat, there was no communication line between Belgium, France and the Netherlands (Interview n.32, 37, 33). While Belgium and the Netherlands exchanged liaison officers in 2014 and now supposedly work together on investigations, France struggles with sharing, which creates difficulties in its cooperation with Belgium and other MS (Interview n.35, 33, 23, 11). As most links in CT investigations are between neighbours, it is important to foster that cooperation. Furthermore, at national level MS have issues between their own services involved in internal security, it is especially difficult for bigger and federal EU countries with their many levels of governance (Interview n.23). Yet smaller MS that are more dependent on these channels are supposedly more likely to use them (ibid.). It is difficult to explain to older intelligence agencies that they need to share with other MS (Interview n.12, 14). Purportedly the strong traditional secret services of the past (pre- and during Cold War), ironically of the MS historically most affected by terrorism (the UK, France, Spain, Greece) have a very conservative approach that has changed very little (Interview n.6, 9). This closed-off approach is not conducive to operational cooperation they often supersede their mandate, they work in secret and take executive decisions as empowered by their state apparatus, they "are their own sector" and usually work alone (ibid.; also Wensink et al., 2017, p.77; Höhn and De Kerchove, 2019, p.29). Even when policy entrepreneurs worked directly with such services to convince them of the added value of sharing and the EU's cooperation tools, progress was meagre and incremental (Interview n.6). While the agencies of the Scandinavian MS, the Netherlands, Germany, Italy and Belgium have reportedly been much more open to a common, cooperative

approach, the decision-making power in advancing cooperation structures rested with the most conservative, according to the logic of the lowest common denominator (ibid.).

A specific point of interest is the cooperation and intelligence-sharing between France and Belgium, which has been previously noted as problematic. Multiple interviewees pointed out that France specifically regularly "deemed it necessary to withhold information" of concern to Belgium, on which some interviewees requested to remain anonymous (Interview n.33, 35 and others who wished to be anonymous on this point). Even in the aftermath of the Paris attack, intelligence and police level collaboration increased, however on political level France was pointing fingers at Belgium and the EU, in an effort to avoid accountability for the increased terrorist activity on its territory (Interview n. 12, 34 and others who wished to be anonymous on this point). According to Belgian federal police, their state was already exchanging abundant data before the attacks (whereas a magistrate specified that increased sharing began after the failed Thalys attack), including through SIS-II and EIS, which was "the difference with the French colleagues", whose insufficient output in that period allegedly made CT cooperation difficult (Interview n.34, 35). Belgians reportedly used tools such as the "Analyse project" to share about FTFs, and did manage to "prevent a lot", and while not a 100% of their FTFs were on their database before the attacks, the reporting was very rigorous afterwards (ibid.). While the cooperation between the two MS "has gotten better" and there is a two-way sharing of information at the time of writing, there was data that was not exchnaged in the timeframe of the Paris-Brussels attacks, which would have been key to investigators (Interview n.33, 35, 38). While the French services have been described as "more professional, they have more budget resources, more people, better-trained agents", especially in comparison to the meagre security service of Belgium, it has also been reported that in matters of intelligence, France has treated Belgium condescendingly, acting as "the big partner", thus necessarily putting Belgium in the position of a "small partner" (Interview n.38).

The Belgian Committee on intelligence oversight corroborated the low volumes of information-sharing between the two MS (Interview n.12, 34 and others who wished to be anonymous on this point). However, this was allegedly not a deliberate rejection of cooperation, rather there was no perceived need to share more intensively (ibid.). No intentional negligence was established, the Committee's findings instead suggest different factors were at play (structural, financial, legal and jurisdictional issues of crossing borders, etc.), while the limited personnel capacity was too an impediment to sharing systematically (ibid.). Finally, it was noted that the threat posed by jihadist groups operating within the EU was rather new, hence the necessity to work together was initially not felt and the importance of sharing had perhaps not become clear (ibid.). Thus while

there seems to have been systematic underestimation of the threat by various MS, it has been claimed that negligence in information-sharing was rather incidental and related to fragmented intelligence data across territories and services.

In 2015-6 it became evident for practitioners that measures in this domain cannot be effective if they do not work together and subsequently reforms to the system were introduced, retroactively or post-hoc (ibid.). Europol had made regular requests for information to national authorities on terrorist incidents, they did so also after the November 2015 Paris attacks, which was the first time their call was answered (Interview n.23). Interviewees argued that the extent of sharing depends to a large degree on whether the country was affected by terrorist attacks, thus some MS still have not improved their information exchange with Europol (Interview n.13, 27, 14, 15, 1, 13, 20, 3, 36, 16; van Ballegooij and Bakowski, 2018, p.30). France and Belgium have exponentially increased sharing, as both were affected by the Zerkani network's activities, yet it took the successful attacks to bolster cooperation between the two MS, demonstrating that, even when there is a clear opportunity for cooperation, some MS do not avail of it (Interview n.26). MS and their services need to immediately see increasing returns from their investment (both financial and in terms of data and efforts), otherwise they do not use EU tools, including on information-sharing (Interview n.14; Doherty et al., 2015). The sensitivity is such that unless investigators perceive the added value they do not use the channel, and Europol has been working to convince MS to use its tools, however if there is even one small mistake all the trust goes away (Interview n.14.). Furthermore, the more a MS contributes information to the databases, the more they are presumably used by its authorities (ibid.).

According to interviewees, the November 2015 Paris attack represented a necessary critical juncture for MS to realise that they could not deal with terrorism nationally anymore (ibid.). Beforehand terrorism was a topic of sovereign national concern, largely connected to territorial issues and groups. For intelligence officials, information-sharing is risky, therefore multilateral sharing was not a practice before, inter-institutional competition between national services was an impediment, and simply there was no perceived need to share before 2015. In a way, MS "didn't know they had to share" (ibid.), as "the intelligence from one MS might not be interesting or relevant to another" (Interview n.32; also Höhn and De Kerchove, 2019, p.13; Berthelet, 2017). Arguably it is sometimes difficult to know where the relevant information is, or what information is relevant to whom (ibid.). However, practitioners had to come to the realisation that the notion of one MS dealing with terrorism was no longer realistic, as the nature of the threat has changed, even if these changes were incremental (Interview n.31).

EU policy and operational entrepreneurs have invested abundant efforts in convincing national practitioners of the necessity and advantages of cooperation and information-sharing in CT work. Interviewees from national services noted that there is certainly improvement in EU channels, various formats meet more often, counterparts have gotten to know each other, making it easier for them to coordinate (Interview n.3, 23; van Ballegooij and Bakowski, 2018; Höhn and De Kerchove, 2019). The EU has been recognised as an important format, and while it is not universal (MS adapt their approaches to cooperation based on the issue at stake) national authorities have learned to use EU tools and channels and to appreciate their added value (ibid.; van Ballegooij and Bakowski, 2018, p.47). Some MS are still more interested and involved than others, yet overall the structures and channels necessary have been built, and the perceptions of practitioners on their usage have shifted (Interview n.4, 12; van Ballegooij and Bakowski, 2018; p.47).

Trust between partners improved as practitioners learned to work together and got to know their counterparts

Interviewees reaffirmed that, as previously established in academic literature and independent evaluations (Walsh, 2006; Müller-Wille, 2004; Svendsen, 2011; Fägersten, 2016; van Ballegooij and Bakowski, 2018, p.26, p.47; Doherty et al., 2015, p.89, 6; Wensink et al., 2017, p.55, 76; Bigo et al., 2015, p.12; Drewer and Ellermann, 2016), insufficient trust across authorities is a key issue in EU CT cooperation (Interview n.1, 2, 4, 5, 7, 9, 11, 14, 17, 18, 20, 23). Lacking trust was furthermore reported at various levels – between national authorities of different MS, between national and European bodies, as well as within a single MS' security apparatus (be it between regional authorities or different sectors within centralised services). To some degree mistrust is explained by rivalries and competition for resources and investigative findings; another reason stated is the divergence and occasional incongruence in interests, whereas in some countries exchanges between certain security services is discouraged or even forbidden (e.g. Germany) (Interview n.33, 24, 25, 32; Wensink et al., 2017, p.55, 76; Doherty et al., 2015, p.89, 6; van Ballegooij and Bakowski, 2018, p.27). When it comes to cross-border cooperation, however, perhaps a more significant obstacle was that many national authorities across the EU did not know how to work together and did not know each other enough to develop trust.

While many interviewees admitted that trust (or the lack thereof) was a problem, according to one interviewee, "trust is a condition, not a problem, it needs to be cultivated, it takes time to grow" (Interview n.12). Building trust is a slow process, practitioners need

to know each other well for it to develop, they also must share strategic objectives, which is rarely the case (Interview n.12, 14, 17, 1). Intelligence strides at the core of national sovereignty and state interests, therefore national services may distrust other agencies, often because of relations with third countries (e.g. Russia, the US, Saudi Arabia, etc.) (Interview n.5). Agents are multi-tasked and in certain circumstances they may spy on each other too, depending on national security interests (Interview n.4).

For trust-building it is important to have strong bilateral relationships too, because through them intelligence agents form contact, get to know and trust their counterparts. MS that frequently work bilaterally, work well and develop trust towards each other (Interview n.11). According to interviewees, trust is built through interpersonal contacts and familiarity, which come from cooperating on common investigations (Interview n.12, 14, 17, 1, 19, 7, 5, 1). In the national security domain contacts and work relationships are built through inter-personal communication, which shapes the initial trust and sets the basis for the working relationship (Interview n.7). Regular meetings help to establish connections: cross-border practitioners get to know each other on personal level, then it becomes easier for them to work together, as they can anticipate each other's needs and approaches. Unfortunately, full continuity is unfeasible - as one person leaves his post, the contact lines built by him, and "a lot of valuable coordination efforts", are at least partially lost (ibid.). According to one interviewee, the more channels there are, the more MS would build trust and contacts across borders and institutions, as well as the habit to share, as "time and practice is what it takes to build trust" (Interview n.1).

One way to fast-track that process, according to interviewees, are common trainings - both bilaterally and through the EU framework (Interview n.23, 7, 1, 4, 20; Doherty et al., 2015, p.74, 80-81; van Ballegooij and Bakowski, 2018, p.59; Höhn and De Kerchove, 2019, p.40-41). These practices can be useful for building connections and facilitating counterparts' understanding of each other's way of thinking, approaches, and legal/constitutional differences. EU trainings (including through CEPOL and eu-LISA) are increasingly on the radar, as "it has become clear that [they] help to build trust" and common strategic priorities (Interview n.1, 4; van Ballegooij and Bakowski, 2018, p.59; Doherty et al., 2015, p.80-81; Höhn and De Kerchove, 2019, p.40-41). Another trust-building measure praised by interviewees, is the use of liaison officers (Interview n.17, 20). This type of staff improves operational coordination: not only do officers get well-acquainted, but they become a single point of contact with other MS, helping to build trust and coherence, while the liaison officer himself gets accustomed to the system of his host state (ibid.). Although part of foreign policy response, CT dialogues are another good example of trust-building practice, as it increases internal EU cohesiveness to have

a group of representatives collated from different institutions, working together with an external authority (Interview n.2, 5).

Having different legal systems across MS can be an impediment to sharing, thus curbing trust too. It is not necessarily a lack of trust per se, rather a lack of confidence in each other's national systems (Interview n.1, 11). When a sensitive piece of intelligence is exchanged with a MS with a different legal/constitutional order, the sharing state is not sure how the recipient will handle it, which can cause a reluctance to pass it on. For similar reasons there is sometimes distrust towards the EU's involvement in operational specifics - some MS are dubious it has the capacity or expertise to deal with such data (Interview n.1; also Doherty et al., 2015, p.89; van Ballegooij and Bakowski, 2018, p.27; Wensink et al., 2017, p.55, 76).

It has been pointed out by interviewees that especially, Europol "never quite won the argument" of its added value on terrorism and on transnational operational cooperation (Interview n.6, 1, 23; van Ballegooij and Bakowski, 2018, p.30, 47). The reasons therein are not self-evident, as it has been noted by interviewees that aversion to multilateral cooperation goes against common sense in providing security on the continent (Interview n.23). According to a high-level practitioner, there are two main reasons explaining that disinclination. Firstly, there are alternative channels that are more secured, self-contained, sometimes considered more efficient platforms (Interview n.6). Secondly, intelligence agencies have always been cautious about involving the EU in national security issues. MS' trust in Europol varies: there is a fear that operational data in information systems could be misused, specifically by MS close with third countries where interests diverge (Interview n.9). The main tide-shifting event for the agency was being involved in a terrorist attack investigation for the first time, while the endorsement coming from France opened the perceptions of other MS towards its added value (Interview n.6).

All these dynamics have changed and trust has improved significantly (Interview n.2, 18, 12, 16, 25, 31; also van Ballegooij and Bakowski, 2018, p.47). There is better communication cross-border and cross-agency, and trust has increased overall, through an enhanced understanding of each other's priorities (Interview n.2, 7). Via the common work on various CT cases, the connections have been built and this changes how practitioners think – it is no longer just a national authority they are addressing, it is a colleague they know (ibid.). The CT experts that the ECTC is populated with were necessary for Europol to build confidence – one cannot expect national services to trust EU agencies, if they do not know the staff there, or they do not have a person representing their interests (Interview n.9). CTG's relationship with Europol and the EU CTC's office has also improved, while Eurojust's participation in CT investigations

enhanced the confidence of national judicial authorities too (Interview n.2, 38, 18, 19; also van Ballegooij and Bakowski, 2018, p.31, 55-56).

The enhanced relationship and information-sharing between police and intelligence sectors

CT is a particularly complex field, one of the reasons being that it is a conglomeration of sub-fields, each with its own expertise, priorities and agenda. This makes cooperation inherently difficult, especially since on EU level it is a horizontal matter, thus there is no central authority to coordinate efforts (Interview n.24). CT governance is peculiar: it is decentralised, authority is dispersed across the chain of command, sometimes a CT officer can even go to the top of the hierarchy (i.e. a head of state), for a certain operational task, which is uncharacteristic for public service, thus complicating governance, especially on international level (Interview n.16). One of CT's complexities is that it necessarily involves a fusion of police and intelligence work, and for some MS those silos do not mix, for some it is even constitutionally required to separate from each other (Interview n.24; van Ballegooij and Bakowski, 2018, p.27; Wensink et al., 2017, p.55, 76). The difficulties begin with definitions – intelligence, law enforcement and oversight have slightly different mandates across MS, depending on how each state defines law enforcement, and who the Ministry of Interior designates as competent authorities (Interview n.12, 28, 9; Höhn and De Kerchove, 2019, p.29; Wensink et al., 2017, p.77). Traditionally law enforcement deals with public security, and intelligence with national threats, however, while there needs to be a certain separation between the two because of the risks posed to agents, in CT work they are supposed to come together – and their work can overlap at times (Interview n.14, 16). For the intelligence sector, privacy laws can be an impediment to information exchange, thus they are often restricted in what they can share and with who, as some data from third countries comes with strict controls from the source (Interview n.32, 11). Terrorism is political too – it is a power game between authorities, competition for sources, for credit from investigations and findings (Interview n.16; van Ballegooij and Bakowski, 2018, p.27, 30). All these dynamics, in combination with the radically different professional cultures of the two sectors, complicate cooperation– on national, and consequently, on EU level (Interview n.2, 23, 14, 15, 38, 9, 32, 16; van Ballegooij and Bakowski, 2018, p.30; Doherty et al., 2015, p.6; Wensink et al., 2017, p.54). According to interviewees, practitioners from the two sectors think differently and loyalties may sometimes traverse national borders before they cross sectoral divisions, due to the similarity of issues faced by respective police and intelligence communities across MS (Interview n.23, 32, 4, 38).

According to interviewees, "intelligence works easier if you have an established common enemy", thus a shared political priority (Interview n.4). They have few rules on compliance and are informal in their cooperation – supposedly an information request can be refused, it is considered a favour if it is not (ibid.). When there is an imminent danger, intelligence is likely to work together across borders, however they do not necessarily arrest suspects, they might follow them instead, or use them as informants or double-agents. Thus they can coordinate efficiently and faster when necessary, but it is always in an informal way.

In law enforcement, however, cooperation is much more formal, each request has a case file, paperwork and deadlines, and a judge and prosecutor assigned, therefore the process may be slower, but it is more transparent and structured (ibid.). Cooperation is a must, if an officer sends a request, they shall receive an answer. If there is a terrorist plot and imminent threat the process becomes faster, otherwise it may sometimes take months (ibid.). Police is also locally-based – it has to be in order to understand communal languages and comprehend community cultures (Interview n.2). There is also ownership involved in police work: for them catching a terrorist is a success that needs to be showcased (Interview n.2, 4). Intelligence, however, may lose a source of information with an arrest, demonstrating the conflicting interests between the two sectors (Interview n.38).

For law enforcement Europol is an established channel for coordination, but there is no such channel for intelligence. There has been a strong political demand that CTG and Europol work more together, however, cooperation depends on what the services seek in a particular case (Interview n.4; Wensink et al., 2017, p.77; p.30; Renard, 2017, p.82; van Ballegooij and Bakowski, 2018, p.30). Europol cannot act as a bypass to national services' information exchange, neither domestically, nor cross-border (Interview n.16). If intelligence agencies want to detain someone and hand them over to police, then it becomes a formal process; if not, if they want to follow or use someone, it becomes a grey zone - they could coordinate through the CTG, through the EU or not at all (Interview n.4). One of the structural issues is the interpretation of Art.4(2) TFEU, delineating CT as a national competence, while it is in fact shared, especially with the amalgamation of EU and national governance over the past few years. MS seem to understand that law enforcement is covered by EU competences, while intelligence is not, which creates problems in the information flows between them (Interview n.21; Höhn and De Kerchove, 2019, p.15).[55]

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[55] Art. 4(2): 2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions,

These inherent dynamics make police-intelligence cooperation even more complicated on EU level (Interview n.16, 9, 24, 38, 4). Agencies with overlapping mandates are in direct competition over investigative resources and funding (Interview n.9; van Ballegooij and Bakowski, 2018, p.27, 57-58). According to some interviewees, MS are reluctant to coordinate on this nexus, while others noted that incongruence factors are often in the way, such as legislative burdens (differences between legal systems), divergent political interests, or linguistics (a MS might be disinclined to approach another because the data they get will be in another language, or communication would be an issue) (Interview n.9; Doherty et al., 2015, p.61). The question for EU policy-makers has been what can be done to bring the two together: EU legislation would not create an extra hurdle for agencies, however it might not inspire compliance due to inertia, and it would likely not solve the issues because they are on/between national levels (Ibid.). Intelligence – police relationships are reportedly more problematic on national level, and need to be handled there first - "the EU can't bring much added value [if the relationship doesn't work on national level]" (Interview n.13; Wensink et al., 2017, p.54).

This nexus varies from state to state, in some MS it is very close (they might even merge), in others there is a "brick wall" between the two, and these MS would always block votes on enhanced cooperation via the EU (Interview n.24, 9, 4, 32, 11, 26, 20, 14, 2; Wensink et al., 2017, p.77; van Ballegooij and Bakowski, 2018, p.30; Höhn and De Kerchove, 2019, p.29). Ireland is the only country where police and intelligece function under the same service, while in Germany they are constitutionally separated, which creates difficulties in cooperation (Interview n.2, 24, 25). Practitioners noted particular difficulties in cooperating with Germany in that regard: one interviewee recounted that his colleague was promoted to intelligence-level police in the Netherlands, which automatically stripped him of his contacts in Germany, with whom he theretofore had a constructive working relationship (Interview n.32). The interviewee went so far as to claim that the combination of strong police-intelligence work and an effective police information system, made it possible to avoid attacks on Dutch soil, and it helped to thwart one (ibid.). Another interviewee noted that in her home country of Sweden the intelligence chief is a former law enforcement official, which fosters cooperation, as he understands police needs and works well with them (Interview n.21). Other interviewees noted that their home countries Spain and Britain strengthened the links between their policing and intelligence sectors in the aftermath of the Madrid and London attacks in 2004-2005 (Interview n.2, 24). It has been reported that MS that experienced more attacks (the UK, France, Belgium, Netherlands) have been more open to proposals on EU level police-

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including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

intelligence linkages (Interview n.26). Coordination also depends on the organisational culture of law enforcement and intelligence in different countries, on the structures of authority and mandates at different levels, but also on political priorities – in some MS the relationship is close due to political concerns, but can still fluctuate up and down (Interview n.24, 9, 4, 32, 11, 26, 20, 14, 2; Wensink et al., 2017, p.77; van Ballegooij and Bakowski, 2018, p.30; Höhn and De Kerchove, 2019, p.29).

In other MS, such as Belgium, the police-intelligence relationship was so flawed as to cause "gaffes" in operational work (Interview n.33, 13, 38). The missed opportunity to catch fugitive Salah Abdeslam in the Paris attack aftermath has been largely blamed on this poor rapport (Interview n.33, 13). As a consequence to this incident, Belgium developed a database on FTFs, where all services had to input suspects manually, deciding who is a radicalisation risk and who is a terrorism risk (Interview n.38, 12; Renard and Coolsaet, 2018, p.35). The database, as well as the newly established fusion centres, allow police and intelligence to share information with each other, as well as with prison and community authorities, etc., which was lacking beforehand (ibid.). Community information can be important for prevention too, thus police and intelligence increasingly work with social workers and communal authorities, sharing information and discussing measures and strategies – something that was inconceivable before (Interview n.37).

At national level there has been a tendency for establishing fusion or coordination centres to enable intelligence and law enforcement to work together and overcome information-sharing gaps (Interview n.21). Countries that experienced terrorist acts (UK, France, Belgium, Netherlands) have established fusion centres of their own between law enforcement and intelligence to merge information, which is necessary for a full picture (Interview n.26, 38, 19). One of the fusion tools in Belgium, Plan R, has been reported as effective, requiring exchange between intelligence, police and the threat assessment body CUTA, while clarifying which services are responsible for what (Interview n.38, 35). The Plan is an important response tool – it builds a national taskforce, dealing mostly with repressive measures, which gets police, intelligence and CUTA together to share information and discuss the threat, wherein CUTA has become a national contact point (ibid.). Subsequently, intelligence obtains useful information from teachers and police, while preventative and repressive measures are combined, engaging the judiciary too (Interview n.35, 38, 19, 21). Judicial differences between MS are also potentially a stumbling block, as prosecutors are considered part of the judiciary branch in some countries, while in others they belong to the executive (i.e. under Ministries of Interior), which translates to different mandates and competences, further affecting who can

exchange what information with whom (Interview n.21; Doherty et al., 2015, p.89; van Ballegooij and Bakowski, 2018, p.27; Wensink et al., 2017, p.55, 76).

While fusion centres are on national level, there have already been discussions of EU guidelines on their execution (Interview n.21.). Interviewees noted that "there is no logic to go further for the moment", as whenever such legislation is enforced from the top, it would not be received well and MS would use Art.4(2). on sovereign restrictions to national security as a justification not to progress on EU level Ibid.). Nevertheless, the proposal, while "drafted softly", was purportedly well-received by national authorities, implying more progressive views of the EU's governance in CT (ibid.).

Interviewees agree that the relationship between intelligence and police has been a matter of improvement over the last number of years, and there is better cooperation lately than before 2015 (Interview n.12, 16, 4, 2). Belgian interviewees noted that there had been meetings and discussions between the bodies involved in Plan R, where intelligence services "had to be convinced that sharing is not bad" (Interview n.35, also n.34, 38). The perception used to be that intelligence information should not be shared, however the approaches shifted after the Paris-Brussels attacks, and it became clear that they could not counter terrorism only with police information anymore, they needed intelligence for investigations (Interview n.35, 26). The structures and channels for cooperation are now in place, and they have penetrated the minds of individuals, whereas 10-15 years ago there was a lack of awareness of the potential uses of those channels and their added value (Interview n.4; van Ballegooij and Bakowski, 2018, p.47; Doherty et al., 2015, p.5, 56-57). There is an increased understanding of common priorities across services, as terrorism was more on the radar for all stakeholders, which compelled them to work together. Information is circulating more cross-sector, and while smaller MS are more dependent on these channels and more likely to use them, no MS wants to be the one that had crucial information about a suspect that it did not share with other concerned bodies (Interview n.2, 4, 34).

When media labels a suspect as "known to police" in the aftermath of a terrorist incident, that can be misleading for the public, because law enforcement usually has limited information, which is not enough to build the puzzle, let alone to justify his arrest (Interview n.11). Intelligence services too realised that, while they might not have all the information, law enforcement or community authorities often might be able to complement it (Interview n.20). Importantly, police and intelligence learned that they need each other's data as each brings a different piece of that puzzle (Interview n.34, 35, 36, 11, 37, 9, 4, 20). It has become more evident, through the increased threat, that they need to work together, and while the system in place (including by the EU) may not be perfect, it has improved substantially and has helped cross-border investigations

(Interview n.4; Wensink et al., 2017, p.36; van Ballegooij and Bakowski, 2018, p.29; Höhn and De Kerchove, 2019, p.13, 31, 28). Attacks are a catalyst for change: police and intelligence need each other and it took the increased threat to realise that and change their approaches (Interview n.34).

The political-operational gap

One of the issues consistently discussed by interviewees is the political-operational gap in CT, both on national and EU level (Interview n.2, 3, 4, 5, 11, 19, 23, 24, 31, 32, 34, 38.). There is a noted chasm between the political statements made and the operational reality – initiatives, announced or teased, seldom take account of the operational issues that need to be overcome to achieve those (Interview n.5). Political reality changes after terrorist attacks, and ambitious statements made in the aftermath often refer to existing structures or announce unrealistic initiatives (Interview n.4). One interviewee noted that it seemed as if the political entrepreneurs speak a different language to practitioners, making statements and proclaiming actions that do not reflect operational reality (Interview n.19). According to another interviewee, in the aftermath of attacks there have been some political declarations, specifically by Commissioner Avramoupolous and President Juncker, that "freak out MS", such as the announcement of the Security Union, and even more so the discourse on a EU FBI, which would require a Treaty change (Interview n.2, also n.9). These discourses purportedly follow from a significant gap between the political and operational dimensions of CT, from the different, even opposing approaches of each, and they have delayed progress on certain dossiers, because of the damage done on incentives for cooperation (ibid.). Such discussions have ensued confusion and suspicion as to the role the EU was attempting to take in internal security (considered a sovereign domain for MS) and pushed practitioners "further away" from EU cooperation (ibid.).

When it comes to political leadership, interviewees noted that at EU level there is only partial understanding of operational issues, thus the EU is not an appropriate channel for this type of work. The legislation being put in place is reportedly useful, however even there the EU often fails to account for nuances of importance and proportionality of the threat (Interview n.11). It was furthermore pointed out that sometimes the push for more intelligence-sharing has been counter-productive and often it has come from diplomats, who do not have the practitioners' expertise and do not fully understand the substance of the issues (Interview n.24). Such statements were unproductive and challenging for the policy's development, consisting mainly of finger-pointing and blaming between high-level functionaries. According to practitioners, the EU should not push for reforms that

seem politically valid, but from an operational point of view, would not have much effect (Interview n.3). In order to foster mutual understanding and eventually achieve cohesion between the operational and political, as well as the national and EU dimensions of CT work, it has been suggested that an increased use is made of seconded staff from national administrations (Interview n.2). Not only do seconded workers help EU staff understand national priorities and red lines better, but they complete a feedback loop by going back to the capitals and providing EU experience to MS' governments. Reportedly seconded staff is increasingly used in EU CT and in other policy areas. The narrative on intelligence not being shared sufficiently, leading to intelligence failures, has also shifted.

Nevertheless, it has been unambiguously asserted that the political-operation gap is not exclusively an EU issue, rather it manifests in many MS' relations with their intelligence and law enforcement sectors (Interview n.32, 24, 31, 34, 35, 36, 23, 38, 11, 19, 2, 23). Purportedly European politicians do not consult experts and practitioners bottom-up, wherein it is speculated that "often they just need to score political points" (Interview n.24). It has been pointed out that political leaderships stand to learn a lot by listening to practitioners, to what is happening on the ground, as they sometimes prioritise the wrong measures (Interview n.32). Politicians think differently and their prioritisation is often misguided, such as in their over-emphasis on airport security, which is of more political and economic interest, as opposed to dedicating more CT personnel and efforts to checks at Schengen borders, both external and internal, where terrorist suspects tend to transit (Ibid.).

Furthermore, operational staff has revealed at interviews that "quite often the problems begin at political level" in MS (Interview n.23, also n.34, 38). Political decisions such as sending/withdrawing troops from Afghanistan, supporting rebel groups in Syria's civil war, and disregarding the first groups of FTFs to leave EU MS for the warzones in the region are all quoted as consequential policy decisions that had implications on operational CT work (ibid.). Finally, some of these decisions were allegedly taken without consulting (or ignoring the warning from) the operational branches of CT (chiefly intelligence and investigative police). According to interviewees, at least as far as Belgium was concerned, there were warnings from the intelligence community since 2012, yet it took the political leadership a long time to take policy action on those (Interview n.34, 38). As one interviewee from Belgian CT police put it, "we knew that we would have an attack, we just did not know when" (Interview n.34; also in Rotella, 2016). One interviewee also noted the role of the press in the aftermath of attacks, specifically the scrutiny it brings to political authorities, who often submit to the pressure and tend to (over-)react (such as Belgium after the Paris and Brussels attacks). These dynamics

often lead to difficulties for the operational world, and empower terrorist groups, thus helping them achieve their objectives (Interview n.2).

A counter-argument was made on the political-operational divide by one interviewee. According to him, sometimes the lack of communication and understanding between the political and operational dimensions can be overstated, as it can be driven by a sconception and a misguided narrative of "you don't work at the border, so you don't understand how it works in practice" (Interview n.31). While the argument is valid to some extent it is also arbitrary – high-level policy-makers do visit border points and know how people work on the ground. Practitioners vice-versa sometimes do not understand the political considerations that policy-makers need to juggle in this field (ibid.). This tension is perhaps due to the inherent hierarchical divisions in these domains and issues might stem from insufficient communication between the different levels. As the interviewee pointed out, the Schengen area opening borders has exposed gaps that cannot all be filled, especially solely with information-sharing. The narrative about such measures from both political and operational leadership should thus supposedly be one of "this is a compensatory measure, if you do not use it properly, you are not compensating, you are creating gaps" (ibid.). The first-line practitioner, especially at lower level does not see or understand the added value of an EU measure, he rather needs to be convinced of it. There are two reasons why he would comply: 1) perceived added value and 2) authority (threat of being reprimanded or punished). A cultural change is needed in this domain to address governance gaps, and "cultural change comes from the top" (ibid.; also Doherty et al., 2015, p.56-57; 80-81).

Nevertheless, improvement has been noted in the political-operational divide, chiefly through a number of measures taken on EU and national levels. With the surge of the terrorist threat, political leaders and policy-makers have had a strong motivation to work with practitioners (Interview n.34). As already discussed, on national level, many MS have (begun to) set up fusion centres in attempts to merge existing information among stakeholders. In addition to that added value, those centres encourage dialogue and cooperation, they help build the habit of communication between various practitioners and policy-makers. On EU level, as mentioned above, the usage of seconded staff has increased, fostering cohesion between EU and national authorities. In addition, the High Level Group format has been used by the Commission several times to universal praise from both policy and operational practitioners. The High Level Group on Interoperability brought together practitioners and policy-makers from all levels of hierarchy, who got to participate directly in the shaping of this consequential piece of legislation and tailor it to their needs, which led to an overall "cross-party agreement" (Interview n.31; also Höhn and De Kerchove, 2019, p.40; van Ballegooij and Bakowski, 2018, p.82).

This shift of perceptions in information-sharing resulted in drastically increasing volumes of data exchanged. There has been a small but steady increase in the use of SIS, Europol has had to develop new tools, necessary to facilitate the manifold increases of data input and common investigations (Interview n.29, 6). According to interviewees, practitioners got into the habit of sharing and that will stick at least to an extent – the number of database entries proves it, it has been on a consistently upward trend (Interview n.25). This proactive attitude on cross-border investigations was the "automatism created due to the attacks" and it has been noted that this change in attitude "is an ongoing process, it will never stop" and it "won't change from one day to another but over a couple of years" (ibid.). Police, judiciary and intelligence now all have their contacts to reach, they know and work well with their counterparts. Interviewees do not foresee mentalities shifting back as this cooperation has developed "very organically" (Interview n.19, 21, 2, 34, 35). It has even been claimed that the "national reflex is gone, now the international reflex is there" (Interview n.19).

Inter-institutional dynamics and legislation

Inter-institutional relations evolved in the aftermath of the Paris-Brussels attacks, due to the large amount of legislative and policy files initiated under high political pressure. Through the cooperative work on high-impact legislation under short deadlines, EU institutions and agencies learned to work together and appreciate each other's competence. In the process these bodies' roles and competences evolved too, presumably rendering them more competent CT actors.

The Commission gained importance, simultaneously becoming a more adept actor in CT

Before this critical juncture, security used to be an underestimated topic within the Commission, perceived as a national prerogative (Interview n.13; Höhn and De Kerchove, 2019, p.15). This likely followed a period of inactivity in CT, due to MS' lack of interest for engagement. However, in this new era of heightened threat, the Commission has been active in all the fields where it is considered that it could add value (including on operational level), which is seldom reported by the media (Interview n.9; Mortera-Martinez 2019; Paul and Virgili, 2019; Wensink et al., 2017, p.36; van Ballegooij and Bakowski, 2018; Höhn and De Kerchove, 2019). It has been pointed out that the Commission can be "too confident" in this domain, launching legislation that MS are not ready for, and thus the "operational world would move further away" instead of coming

closer together (Interview n.2). However, Commission DGs and agencies have learned their role and understand their position in CT better, they have found a way to communicate effectively with MS, avoiding federalist narratives. Whether this approach will be pursued further will depend on the new Commission and incoming Commissioners.

DG HOME's approach, in particular, has substantially shifted with experience over the years – they know the red lines of MS better and are careful not to submit proposals that may be interpreted as the EU trying to take away from national security capability (Interview n.9, 2, 24, 25). They rather try to show to MS (and convince them of) the potential advantages of EU channels and instruments and let them see that these are useful and add value. Perhaps it took a heightened threat and a number of incidents for MS to experience and get to utilise these added value instruments to be truly convinced . What is important is to show that they are not intending to replace the national authority on a measure but just provide it with an advantage where a MS cannot fulfil a function on their own.

Practitioners noted that Commission coordination meetings are helpful for achieving coherence, however EU institutions tend to be overly bureaucratic and slow, thus negotiations are protracted even when issues are already settled (Interview n.23). Commission officials are more careful in their approach to MS, they increasingly ask about their operational needs and preferences (ibid.). Most of the documents they negotiate (despite usually having been discussed and approximated in advance) can be changed or adapted to MS' wishes until the last stages. This tendency has shifted: at one point the Commission tried to impose its will on national authorities by forcing conditions and requirements, telling them they need to comply, while in this field it is in fact the Commission that is meant to work for the (interests of) practitioners and national authorities in general, and they learned how to do that (ibid.).

Another important element of the Commission's role that has evolved are the infringement procedures - normally considered taboo in this area, they became standard practice with Commissioner King's tenure (Interview n.13). Interviewees agree that these can be helpful with lagging MS implementation (Interview n.27, 24, 25, 13). To avoid problematic implementation, the Commission also ran transposition workshops with MS, which were reported as helpful by interviewees: they involved practitioners at various levels, and aimed to help national experts in transposing directives correctly into domestic legislation and practice (Interview n.39). Yet, it has been pointed out that "there should be a balance with infringement procedures", otherwise if the Commission is too pushy it will be counter-productive (Interview n.24). Some countries have legal or constitutional restraints with transposition, while some governments may not have

sufficient political support at home therefore, "if you are too pushy or strict they may be eager to block proposals in the future" (ibid.).

EU channels and tools are only as useful as MS let them be. Specifically on technical files, but also in general, DG HOME officials are allegedly "begging" MS for input in the drafting stage, and they do not always receive such feedback (Interview n.8, 9). Commission experts have been aiming to convey the message that once the legislation is drafted and on the proverbial table for discussions, it becomes more difficult for MS "to get what they want" out of it (ibid.). The Commission often offers informal channels for feedback before the legislation is drafted. These attitudes have evolved as they do receive more feedback (ibid.). MS began understanding that it suits them better to provide input at initial stages. National authorities began engaging with the EU, while in the past "Brussels" was seen as a faraway concept that they felt distanced from, while the "real work" was done at the capitals (ibid.). Governments even allocated "EU work" to their international departments, thus dealing with it through an IR approach, instead of being directly involved. Now they understand that it is too important for them to ignore, attitudes changed enormously. Presently, if a MS says they cannot accept a certain clause, issues are ironed out before it is finalised (ibid.).

Furthermore, while information flow following the exchanges between the Commission and MS at Council meetings (mostly TWP and COTER) has been described as slow, it has reportedly improved after 2015 (ibid.). One of the systemic issues impeding better inter-institutional exchanges is the fact that MS usually have one or two JHA Counsellors in their Permanent Representations, who are tasked with representing their states' positions on all JHA topics discussed, wherein the subjects are often beyond their expertise. In these circumstances exchange is not smooth, as representatives need to request instructions from capitals, which makes discussions ineffective and slow (ibid.). The Commission has been proactive in providing materials to TWP delegates in advance, as well as follow-up, so as to assist the progress of discussions and ensure continuity, while MS also began sending national experts along with or instead of JHA Counsellors, thus facilitating dialogue (ibid.). Nevertheless, it has been pointed out that the Commission suffers from internal power struggles and that coordination among the EU institutions can be time-consuming, especially with and within the Commission (Interview n.24, 25).

MS have reportedly changed their approach towards EU institutions since 2015 (Interview n.8, 9). The Commission maintains an ongoing communication with national delegates, however, some MS are more active and effective in CT, while others are "slow active states", passive in their contributions. The active MS push the Commission to look at topics they are not familiar with, as they have not been within their mandate (i.e.

transport/aviation security, infrastructure protection, etc.) (Interview n.8). Often a group of MS, concerned about a particular topic approach the Commission proactively, flag certain issues or trends that need policy action and even provide access to intelligence on those to INTCEN (Interview n.8, 9; Höhn and De Kerchove, 2019, p.18). It is useful for DG HOME to have those views from MS and contribute to legislative planning (Interview n.8). This attitude shift is significant – in the past if a MS was not in agreement with a certain provision, which happened often, due to fears on the operational aspect being taken over by the EU, DG HOME had to work to counter those fears. Lately that has not occurred, MS even ask the supranational body to actively engage in areas new to them (Interview n.8, 9).

Furthermore, intelligence agencies, including CTG, have had meetings with high-level representatives from the Commission, EP and Council, and the trend of engagement has been positive (Interview n.9, 13, 2, 21; van Ballegooij and Bakowski, 2018, p.82; Höhn and De Kerchove, 2019, p.40). CTG's engagement has been appreciated by EU institutions, especially the Commission, whose officials used to only have the police's point of view, and lately they built a connection with the intelligence sector too (Interview n.13, 8, 9). As Commissioner King was invited to attend CTG meetings, cooperation gradually improved, because policy-makers could ask the intelligence community for input, feedback or objections on the EU legislation in the works. The latter are usually not aware of EU legislation - often national governments do not update or consult intelligence services on it (or they do so post-hoc), thus the intelligence sector's considerations are often not reflected in these (Interview n.13). Contrastingly, agents now learn about the EU's role from the Commission, and are able to provide feedback and discuss potential problems (ibid.; Höhn and De Kerchove, 2019, p.36). CTG had some informal channels to EU bodies beforehand, e.g. to the EU CTC, INTCEN and Europol, however now they understand that they need to be more involved with the EU's supranational body too. During Commissioner King's tenure, the Commission was invited to CTG meetings every 6 months, which opened the metaphorical doors for dialogue (Interview n.9, 13; also Höhn and De Kerchove, 2019, p.36). The supranational body thus informs the intelligence community what they do, which legislation they are working on, and through this feedback process the CTG began realising that the Commission puts legislation in place that potentially affects their work. The Commission is still occasionally invited to CTG meetings and, while they do not always understand or are interested in the EU process, it has become important to them to follow EU developments (ibid.). Some MS even placed intelligence officers in their Permanent Representations or Embassies, in order to follow on the EU's work (mostly MS who have undergone attacks) (ibid.).

The CTG has been more present, active and visible and, while it has been pointed out that there is more to be done, the shift of mentality that has begun in the sector takes time (Interview n.9, 13, 21). National authorities began understanding that the Commission does not want their intelligence data but can help them by obtaining expertise of the issues at stake for MS (ibid.). This perception has evolved over the past 4-5 years: on one hand, MS now know how to communicate with the Commission, on the other, the latter also understands better the relevant issue areas and MS' red lines (ibid.). The CTG are also starting to understand that they must be active, certainly not within the EU framework, however there are EU tools (e.g. SIS-II) that could add value to them, thus they cannot completely distance themselves from the Union. Commission officials believe that they have succeeded (at least to an extent) to convince national authorities of the EU tools' added value, which is why the usage of the channels has increased (Interview n.9, 13; also van Ballegooij and Bakowski, 2018, p.47).

COSI WG and other Council configurations became more involved in CT cooperation

Until 2015 CT was not on the agenda of Council WG COSI at all, it was not even part of its mandate. Significantly COSI is explicitly excluded from legislative work, thus drawing a red line on harmonisation and an EU mandate in internal security) (Interview n.4, 9, 13, 25.). The WG started to function with the Lisbon Treaty and a Council Decision mandate, amid continuous debates on what should be its task, as some MS wanted to limit its mandate to operational cooperation on serious and organised crime and not CT (Art.71 TFEU; Interview n.4, 25). After the Paris attack, COSI gradually began working on CT, which is by now the predominant topic on the agenda. It is an important channel that can, and is attempting to, build synergies between the operational and policy dimensions of CT. The traditional setup of the other terrorism-oriented WG, the Working Party on Terrorism (TWP) is now more of a preparatory group for COSI (ibid.). TWP is held at expert level, while COSI is at a senior, high level of Directors General from national services: they are briefed by TWP experts, then in turn brief their Ministers for the JHA Council. Terrorism was never supposed to be on the COSI agenda (and the EU structures as a whole) – the WG was meant for the secret services to discuss organised crime (ibid.).

While this began as an incidental short-term strategic shift, the perception on the EU's role in CT has shifted. It has been noted that at COSI and TWP level there is now increased information-sharing, the impetus for which came from the intelligence and law enforcement communities looking for more collaboration and exchange of expertise and good practices (Interview n.20, 4). Cooperation is, and had to become for political

reasons, more visible and structured, not just on ad hoc basis like it used to be, sharing only when there was something specific to share. After the Paris and Brussels attacks, the political pressure grew too strong, intelligence services had to demonstrate they were doing their work adequately and delivering on the public's expectations. The topic has been on the radar much more for everyone and for law enforcement there is a joint threat, which encourages cooperation, and is conducive to a better understanding of common priorities (Interview n.4, 12).

Opening of inter-institutional relations; the EP and FRA participate more regularly in policy-making

While the domain is by no means an exception in that regard, inter-institutional tensions in the internal security apparatus are notorious. As a general rule, MS are sceptical of any EU measures or legislation in this domain. They are represented in the Council by experts proficient in their respective fields, who sometimes feel that they do not have equivalent interlocutors in representatives from political bodies such as the EP or even the Commission. The latter frequently finds itself in the position of a broker mediating the positions of the other institutions towards constructive progress on EU-wide harmonisation. As such it has an agenda of its own to push, which is often resented by the other bodies – Council representatives have, in the past, pulled back from its drive for integration, while the EP, which is a policy-maker in the domain for only a decade, resents not being included in the process at an earlier stage (Interview n.21, 22, 26). When it came to drafting legislation the Commission often consulted primarily (and sometimes informally) the Council, presumably in its pursuit of easier compromise among the often sceptical MS, with less stakeholders involved. These dynamics, combined with the lack of dialogue on certain divisive issues (such as the security-privacy dichotomy), created a relationship of mistrust and resentment in the EU institutional triangle. This led to a vicious cycle of omitting certain stakeholders from the negotiating stage, wherein they would later block progress on certain dossiers (in particular the EP) (Interview n.4, 21). Even more, it may have become a self-fulfilling prophecy: the more the Commission avoided involving the EP in the legislative procedure from the early negotiating stages for being a sceptic, the more the EP became a sceptic of the Commission's proposals.

One of the developments verifying the directionality of this causal claim is what the High Level Group on Interoperability achieved. Apart from the tangible effect on the legislative dossier's speed, the High-Level Group process, applied in other sub-fields too (radicalisation, cyber security) had the very welcome unintended consequence of inter-

institutional cohesion. The Commission got all relevant stakeholders to sit together and iron out the details on a very controversial dossier, to an extent that its adoption was no longer problematic. In the negotiating process the interlocutors learned about each other's priorities, red lines and preferences. Traditional sceptics of security measures such as the EP and FRA got to voice their objections early in the process and were content that those were considered. The Commission and MS experts got to know these bodies' red lines and got better at addressing them. Interviewees from FRA and the EP praised the High-Level Group exercise for demonstrating the importance of involving stakeholders at the early stages of a legislative process. The Commission's approach in engaging FRA in legislation has so far been ad hoc, sometimes they are consulted informally, other times formally, however the agency would like to be involved coherently so it can flag issues with legislation on time (Interview n.39). FRA interviewees noted that the more consultation is done before a draft is tabled, the better the success of a legislative negotiation (ibid.). FRA has allegedly been emphasising this point to the Commission, inviting them to use the agency's expertise, while also reminding that, if they would like to avoid fundamental rights criticism of dossiers at a later stage, they could consider bringing FRA (and other stakeholders concerned with data protection safeguards) earlier into the policy-making process, as it is better to consider such caveats in advance (ibid.). Ultimately, High-Level Groups are considered a successful and inclusive channel, that allows for deeper engagement on specific issues. It is expected that this model would be applied again, depending on the political leadership and prioritisation of the new Commission (ibid.; van Ballegooij and Bakowski, 2018, p.82; Höhn and De Kerchove, 2019, p.40). While, it is not expected to become standard practice as it is a long, burdensome and expensive process that cannot be applied to every single dossier on the legislative table, it should be considered for more complicated and controversial dossiers.

Inter-institutional cohesion was further deepened through the reporting process of the EP's Special Committee on Terrorism (TERR), mandated to investigate the shortcomings of the EU's CT apparatus. EP interviewees reported positive experiences in their work on the Committee, noting a willingness to cooperate between stakeholders, and an eagerness of the Commission to support their efforts by providing relevant information and experts where necessary (Interview n.27, 21, 26). The Council's follow-up report on the Committee's work was overwhelmingly positive, constructive and appreciative of the EP's work – one interviewee noted that she had never seen such positive feedback from the Council in her parliamentary experience (Interview n.27). It has been noted that this was in sharp contrast with the regular interactions between the three institutions, where the EP's work is often approached with disregard (Interview n.21). Interviewees noted that in the past, the stumbling block on EU CT harmonisation

was the EP – being isolated from expert discussions, its MEPs were more focused on personal opinion and moral objections on certain topics (Interview n.4, 9, 25). Supposedly national authorities's positions were easier to approximate, as they negotiated and understood each other's priorities (ibid.). After blocking JHA legislation several times, the EP gained the reputation of a bottleneck on internal security legislation. This prejudiced approach has cultivated distrust between the institutions on both sides (from the EP to the Council and Commission and vice versa), a vicious cycle for which both sides are at fault. Presumably if the approach taken towards the TERR Committee had been the regular working method with the LIBE Committee, which normally deals with CT, the inter-institutional dynamics might have been much more productive (ibid.). Notably, the EP's approach to CT has also become more moderate, which can be observed in their TERR Committee report (Interview n.9, 13).

According to interviewees, EU institutions need to take each other more seriously, and the EP officials believe that the body is not always attached enough importance in the legislative process. Presumably it is still a reflex to perceive it this way, as it was not involved in legislation before the Lisbon Treaty, although even then the EP was following policy-making, as it participated in consultation procedures (Interview n.21). Traditionally, the Council and Commission are involved at an early stage and are almost finished with the proposal by the time it reaches the EP, who gets little information beforehand (ibid.). This problem can be easily tackled by enlisting the EP earlier in the legislation process, both from the Commission and Council side. However, considering how easily solvable this policy problem is, the Commission likely has a motivation for periodically excluding the EP and other partners from the process.

Three factors can be easily extrapolated therein[56]: 1) Unlike the Council and Commission, composed largely of highly competent experts, the EP is populated with politicians, who are neither narrowly qualified, nor experienced in the field, thus they often do not fully comprehend the inherent dynamics, idiosyncrasies and difficulties that characterise it. This often makes experts on EU and national levels disregard Parliamentarians as purely driven by politics and not competent enough to involve in consultations. 2) Certainly there is a lingering reflex of the pre-Lisbon Treaty times, when the EP had a mere consultative function in this domain and was only involved – rather informed - in the late stages of decision-making. However, the Commission is (more often than not) stuck as a negotiation broker, seeking and maintaining a fragile balance of positions, between stakeholders who are traditionally reluctant to engage in this domain. Maintaining this balance is likely easier the less actors are involved in negotiations, which might make the Commission eager to keep the seats at the table

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[56] To a large extent informed by both formal and informal conversations with interviewees.

limited, in order not to upset the equilibrium (particularly with an actor such as the EP, traditionally a sceptic in this domain). Finally: 3) The Commission might have been underestimating the destructive and dysfunctional effect that keeping some actors isolated from the legislative process might have on inter-institutional relationships and the ultimate ability to reach compromise.

One interviewee noted the unproductive nature of the decision-making process as a whole. The co-legislators cannot attend each other's meetings: the EP is not provided access to the Council, while the Council can follow EP Committees, but not rapporteurs' meetings (Interview n.27). The EP, therefore, usually relies on information from the Permanent Representations as these often brief their national MEPs, while the EP Rapporteur would try to explain positions to national representatives. The Commission attends both institutions' meetings and "tries to be the honest broker" – they might have a stake, but following both processes and reconciling positions also translates to a heavy workload, and they lack the resources to continuously fulfil such a support function (ibid.). These dynamics perhaps demonstrate the obsoleteness of the process, if institutions and key actors have found informal ways to coordinate where no formal channels are available.

(Perceptions of) EU added value

Perception vs. delivery of EU added value

One of the important questions this thesis aimed to address was whether the added value of the EU's role in CT increased as a consequence of the reforms brought by this critical juncture or did MS' perceptions of this added value shift due to their enhanced knowledge and usage of the EU's tools and bodies. On the one hand, tools like the EU IRU, SIS-II, etc. have became clearer, and have been incrasingly used in the past three years (Interview n.2, 19; also Höhn and De Kerchove, 2019; van Ballegooij and Bakowski, 2018; Paul and Virgili, 2019; Drewer and Ellermann, 2016). At the time of the Madrid-London attacks, MS were only learning of the EU potential in CT, however as the Lisbon Treaty was not there yet, the EU had a significantly lower capacity in CT affairs, particularly in operational work (Interview n.2). The Paris-Brussels attacks were a turning point for the policy's development and the resultant EU CT configuration and functional apparatus are arguably its most significant outcome (Interview n.4). According to interviewees, had it not been for the attacks this progress would not be there – MS realised they need to work on EU level and use the tools they already have (Interview n.13, 9, 2).

On the other hand, MS grasped the added value of the EU's CT bodies and instruments (e.g. SIS-II, Europol, Eurojust, etc.), *because* they began to use them more and learned how they work (Interview n.2; also van Ballegooij and Bakowski, 2018, p.47). SIS-II was also not used a lot before 2015, and now intelligence agencies feed a lot of data into it, as they want to have the information available for discreet checks, i.e. when following a suspect (Interview n.13; van Ballegooij and Bakowski, 2018, p.26; Höhn and De Kerchove, 2019, p.26; Berthelet, 2017). MS were sceptical towards the EU IRU at first, and now they use it extensively for its added benefits (Interview n.2; Höhn and De Kerchove, 2019, p.28; Drewer and Ellermann, 2016; Paul and Virgili, 2019; Wensink et al., 2017, p.36; van Ballegooij and Bakowski, 2018, p.57). Through all the common work on CT cases, the connections between operational staff (which are crucial in this area) have been built, and this changes how practitioners think (Interview n.2). The attacks opened MS' perceptions to the EU's role, as CT was always a national prerogative and they were unsure where the EU could contribute (and the Commission was reluctant to propose measures that they know most MS would oppose). Some MS have even been asking the EU to be involved in CT (in particular France and Germany) - while beforehand the perception was that a European Border Guard or a European Counter Terrorism Centre were out of scope as sovereignty-impinging, and now both these institutions are functional. According to interviewees, "you really need a political push in this area" and unfortunately it only comes through events such as attacks (Interview n.13). Nevertheless, this particular push has the potential to cause a lasting change, as it has shifted mentalities: now MS' services have seen the results in practice, however they had to test that theory to be convinced. First came the high threat level, then the necessity to work together and share and then the result of that cooperation, which can convince them of the added value (ibid.). Once the tools are there and are being used, it becomes a reflex for authorities to use them (Interview n.17; also van Ballegooij and Bakowski, 2018, p.47). For a long time, the EU value in CT was not seen because the tools available were underused (incl. SIS and Europol), and now that they are used more, MS realise the added value more (ibid.). The political pressure and common CT work has sparked MS' interest towards working together through EU instruments, and the EU has a role in maintaining this interest. If the progress that has been made is to be maintained, the level of engagement needs to continue.

The most glaring example of scrutinised EU-provided added value is the role of Europol in CT operational work. The ironic nature of the agency's mandate cannot be overstated: after almost two decades of existence and having its contribution repeatedly questioned by national authorities and academics (Bures, 2011; Müller-Wille, 2008, etc.), the EU's law enforcement agency was asked to assist the Paris attack investigation, and its added value has not been questioned since. Regardless of whether it was a strategic move

caused by political pressure, France gave Europol the opportunity to deal directly with a cross-border CT investigation, providing it with all relevant data, and subsequently, until the time of writing, all cross-border jihadist attacks' investigations have been entrusted to Europol, wherein EU MS submitted national data and gave credit to the agency for its operational support (Interview n.6). Furthermore, EU and national practitioners emphasise the notable increase in its added value since the introduction of the ECTC, which aimed at populating it with CT analysts from national divisions, while keeping them on a relatively regular rotation.[57] This allowed for exchange of good practices from the EU to the national level and vice versa, while also fostering an understanding of the potential role and added value that Europol has to offer national CT work. Purportedly "Europol established itself as a standard in later years; it has begun to play an important role" as a provider of those channels of sharing and trust-building (Interview n.1). Some MS' security services could not accept the structure of Europol and use it as a channel, and some still have reservations, yet Europol "managed to build a priority role" (ibid.). It was the mentality of the times in security/intelligence circles – "to receive [information] without sharing", however with the changing circumstances this principle has shifted (ibid.; Höhn and De Kerchove, 2019, p.11-12). Experts interviewed for this thesis believe that "trust in Europol is quite high right now" (Interview n.16, also n.1, 24).

According to interviewees, MS came to realize that Europol can help them with operational tasks and they are increasingly asking for its support (Interview n.13, 17, 16, 21, 4, 36, 2, 3, 5, 39; also Höhn and De Kerchove, 2019, p.28). It has become clearer to national authorities that the links in CT investigations will not be evident in each case (which allows for a bilateral approach), rather the dots to connect often come from a random to the case MS, or a small state, which might not initially seem relevant to the case (ibid.). Europol has tried to adapt so as to be more useful to MS, and the personal contacts it creates are helpful too. Before 2015 the rhetoric of both practitioners and politicians was one of "why do we need the extra work [through Europol], it doesn't give us anything", which is not observed anymore. The "conservatism towards Brussels" and its extensions such as Europol, used to be very strong in the CT community, which gradually came to the realisation that neither the EU nor Europol wants to take "the driver's seat", i.e. national competences and prerogatives, away from them (ibid.). However, it was not easy to get political endorsements from governments, and the conservative CT community. The agency aimed to be a pillar connecting MS through data management and state-of-the-art technological solutions, nevertheless not wanting

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[57] Under the guidance of ECTC Director Manuel Navarette and former Europol Director Rob Wainwright (Interview n.6, 14, 15, 16).

to step into the competences of national authorities, not wanting to take credit for any operational successes (Interview n.16).

While it would be difficult to solve Europol's chicken-egg dilemma without access to confidential information, it must be noted that for the first two decades of its existence, the agency tried to encourage MS to engage it in their CT activities, particularly in cross-border investigations. However, MS had to be the first ones to go to Europol – it helped the agency too, as it was able to learn and adapt to their needs. Reportedly, national authorities do perceive CT as more multilateral now, but that has a limited scope – it extends mainly to the MS that have been affected by attacks or terrorist activity. Some openness to Europol's role has been achieved, however MS had to first start using the tools Europol provides to understand their added value (and some do not have a full understanding of its capacities yet). Still, no investigation of a terrorist attack in the past five years was without an international element, and Europol was involved in all of their investigations. Therefore, the paradigm has shifted on the EU's CT role – both in "real" and imagined terms - however it will take some time for this shift to fully take shape.

Is (counter-)terrorism now perceived as a European issue?

An important question remains open – has the perception of terrorism and counter-terrorism shifted to a European dimension? According to Eurobarometer surveys, terrorism (at least throughout this critical juncture) was perceived as an EU issue by citizens. Unsurprisingly, the European public's threat perception seemed to follow the attacks occurring on EU soil – while it began increasing at the end of 2014 and in the end of 2019 it was still not back to pre-2014 figures (where it varied between 4-7% of respondents for three years), it peaked between 2015 and 2018. The two biggest spikes in threat perception are logically deductible as well – one was in the first half of 2016, after the Brussels attack, and the other in the first half of 2017 – after attacks in Berlin, Stockholm, Manchester and London demonstrated that the threat was not limited to Belgium and France (and the Zerkani network they were trying to contain). This is further evidenced by the fact that the survey taken between these two spikes in fact showed a decrease of the public's concern on terrorism, followed by an even higher spike in the next semester of the survey.

Another interesting finding from the longitudinal look that Eurobarometer studies offer is the distribution of the threat perception among EU MS. Between 2015-2018 terrorism was amid the top three concerns for the EU according to citizens, even peaking at number one in the beginning of 2017. However, when respondents were asked on the most important issues facing their own country, few point to terrorism as a top concern

– in fact the two surges in threat perception came mainly from four countries: Belgium, France, Germany and the UK[58], hence the countries most affected by terrorism in this period (European Commission, 2016a and 2017a).[59] The latest such figure demonstrates a different picture – by 2019, while the overall perception of terrorism as a paramount issue had significantly decreased (from its 2017 peak of 44% to 15% in late 2019), the topic still took fourth place (together with public finances) on EU-wide issues of concern. The distribution of threat perception has, however become much more even, with all MS citizens ranging between 10-32%, mainly in the 15-25% bracket, and most respondents who prioritised the topic originating from Central and Eastern Europe, with the exception of France and Cyprus (European Commission, 2020, p.19). More interestingly, nevertheless, according to Eurobarometer, in 2019 no MS' citizens believed that terrorism was among the top three issues facing their country. In fact, it was mentioned by only 5% of all the survey respondents, and it did not score more than 5% for any individual MS, except for France (14%) (European Commission, 2020, p.25).

QA5a What do you think are the two most important issues facing the EU at the moment?
(% - EU)
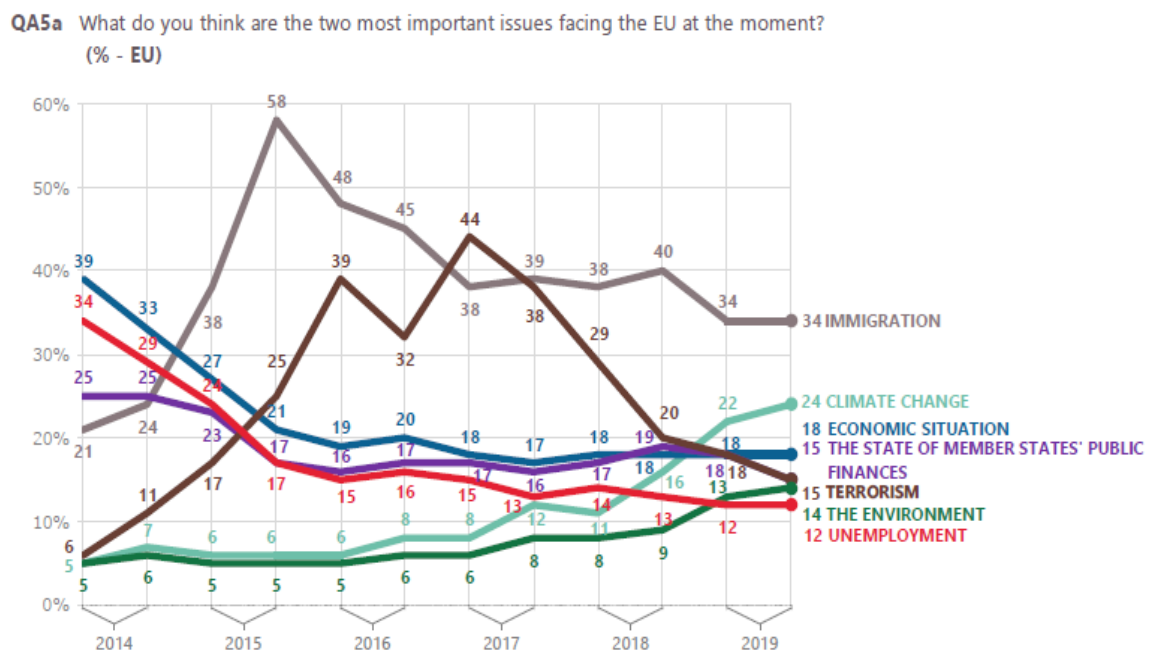
Fig. 3. Eurobarometer 92 figure, visualising European citizens' prioritisation of EU issues in late 2019.

This distribution seems to demonstrate that while EU citizens are still moderately concerned about terrorism in the EU, they mostly do not see it as an issue for their MS of origin. While that might indicate some conflation with immigration concerns, it also manifests the shift of perception of terrorism as an EU issue of interest and concern.

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[58] And the Netherlands in the beginning of 2016.
[59] Each of these MS had between 22-36% of respondents pointing to terrorism as the biggest concern for their country.

Thus intrinsically it may be deduced that citizens increasingly expect the EU to be involved in counter-terrorism as a way to tackle that concern. It is also indicative of a shifting perception of terrorism as an EU, as opposed to a national-only, issue.

While it is feasible that the EU may have had some impact on the practices in the domain, it is more likely that the scapegoating narratives of governments have been successful in convincing audiences that the EU is responsible for tackling the increasing threat and its consequences. It then intrinsically follows that the EU has a significant stake in maintaining MS' interest in its CT involvement – it can be deduced from these tendencies that EU citizens expect the Union to deal with terrorism, hence it might be expected that if it "fails" to, i.e. if there are successful attacks or terrorist groups on its territory, its population will hold it accountable over the nation-state.

Madrid/ London – 2004/2005

Paris/ Brussels – 2015/2016

2017-2019:
Aftermath

2004:
Madrid
attack

2005:
London
attack

2006-2015:
path dependence
→ CT is not an
EU issue

2009:
Lisbon
Treaty

2014-2015: Paris
(Charlie Hebdo),
Brussels (Jewish
Museum) attacks

2015: Paris
Bataclan attack

Window of opportunity

Window of opportunity

Window of
opportunity closing
off a bit due to
closing of critical
juncture (urgency),
but ideas have been
reprogrammed; also
legislative +
institutional updates
to ensure
compliance to new
"institutions"

Critical
juncture

Feedback: CT is an EU
issue? (no certainty)

Feedback: EU added
value? (no certainty)

2011-2012: Threat is real
but not imagined (i.e.
conditions for critical
juncture, but no ideational
shifts; path dependent
cognitive frame of "CT is
a national issue"). Product
of path dependence.

2013 - 2015

Feedback fails to
generate critical
juncture

PARADIGM SHIFT
(≠ critical juncture)
Involves switch to a
new "path"; re-
institutionalization;
re-conceptualization
of cognitive frames.

Feedback: the EU has an
added value in CT

Feedback: CT is an EU
issue

2001 (9/11) –
Feedback:
terrorism is inter-
/transnational

Feedback:

| Paris attack |
| Brussels attack |
| London attacks |
| Berlin attack |
| Barcelona attack |

Feedback: EU added value?

Feedback: Yes

EU added value: Europol >
Eurojust > JITs > SIS-II
>interoperability + eu-LISA >
FRONTEX >firearms and
explosives > online content >
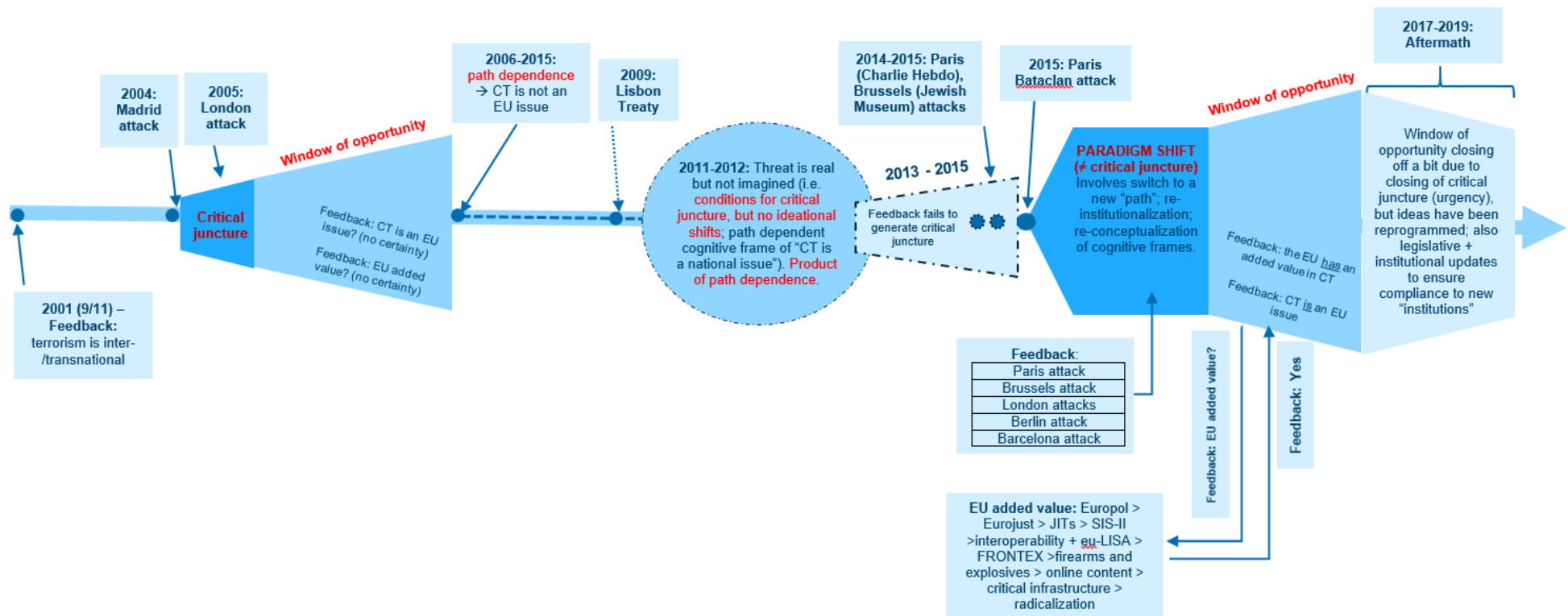critical infrastructure >
radicalization

Fig. 4. A timeline of EU CT development, demonstrating the impact of the Madrid-London and the Paris-Brussels critical junctures on institutionalisation processes.

223

Paris-Brussels paradigm shift: theoretical account

The reason that EU CT scholars perceived critical junctures such as the one brought by the Madrid-London attacks as shifts in the policy paradigm, is that the explanatory mechanisms of HI and punctuated equilibrium models were used for the analysis of those. Under such analytical models, Madid-London qualifies as a critical juncture, one that could have been expected to shift the EU CT paradigm. However, once CI explanatory mechanisms on the (re)structuring of ideational frames are applied, the Madrid-London juncture does not pass the test for a paradigm-shifting event. EU proposals were brushed away and swapped for intergovernmental ones, political leaders shifted blame to each other instead of looking for common solutions, while the EU was used as a smokescreen for knee-jerk-reaction solidarity declarations and underwhelming CT measures with no enforcement mechanisms. Even more – CT practitioners (intelligence and law enforcement officers, judiciary and border guards), the hearts and minds of CT policy, were not co-opted into this juncture, hence resisting any significant change, even when imposed by the political structures (as established by Fägersten, 2010, such bureaucratic resistance is possible in the intelligence sector, where officers enjoy a degree of autonomy that other public servants do not).

In contrast, the Paris-Brussels juncture of 2015-2016 (supplemented by later attacks) compounded a high terrorist threat perception (which is the CT variant of a window of opportunity), and an ideational juncture, leading to a reprogramming of policy ideas. On one hand, the shock of the large-scale, ISIL-organised attacks on EU soil was necessary to reconsider CT perceptions. On the other hand, the threat was already real but not perceived between 2011 and 2015. CT practitioners were aware of the rising threat and were attempting to attract their governments' attention to it, yet in the absence of discernible organised terrorist activity (including successful attacks), this feedback failed to generate a critical juncture: a necessary condition for institutional change. This timeframe is a clear-cut example of CT path dependence – despite reasons to believe the contrary, social agents promulgated the cognitive frame of "CT as an (exclusively) national issue". This period further confirms the validity of HI models, particularly for EU CT: in the absence of a discernible punctuation of the status quo, institutions and policy programmes will be difficult to shake up and will aim to maintain their equilibrium. The "sticky" institutions that HI scholars conceptualise are easily visible in the empirical material of this study: the perception of CT as a national-only prerogative was extremely difficult to shake. Interviewed CT professionals, who wished to remain anonymous, reported even being thrown out of policy-makers' offices when attempting to warn of the seriousness of the (common) threat. The "sticky" institutions in EU CT's case were built around two dominant cognitive frames:

1) The terrorist threat is nation-bound and not shared with European partners. Thus, CT is to be handled exclusively by national authorities, therefore ad-hoc bilateral cooperation is sufficient, and

2) As CT work is handled by national authorities, the EU has no added value to offer, therefore cooperating via the EU equates to unnecessary red tape, creating extra work for MS CT authorities, without adding value.

These cognitive frames persisted through the 9/11 attacks, as well as the Madrid-London juncture, even though both these events clearly challenged them (as exemplified by the European Arrest Warrant adoption post 9/11 and the establishment of the EU CTC and information-sharing obligations in the aftermath of the Madrid attack). Still, MS and their practitioners alike avoided EU-driven CT solutions: even when common action was the chosen path, it followed old patterns of bilateralism and newer patterns of privileged minilateral intergovernmentalism. Once the window of opportunity closed shortly after the London attack, the EU CT apparatus had gained several innovations, yet had failed to substantially institutionalise. Instead social agents had used the EU as a decoy for rhetorically ambitious yet institutionally underwhelming measures (the EU CTC serving as a perfect example). With the closing of the policy window, proposed but unfulfilled initiatives remained at a proto-stage for a prolonged period of time, while low implementation demonstrated low motivation by the political and operational levels of CT to work together through the EU.

The aftermath of the Paris-Brussels attacks manifested completely different actor dynamics. Whether those were present from the outset would be difficult to judge without access to operational information, however it is clear that a virtuous feedback cycle was unleashed in the Paris attack's aftermath, only to be supplemented by feedback from the Brussels and subsequent attacks. One of the consequential policy choices therein was President Hollande's reliance on the EU in the attack's immediate aftermath: triggering the EU's Art.42.7 on mutual defence, involving Europol and Eurojust in the investigations, and activating policy entrepreneurship on far-reaching EU legislation (such as the Firearms Directive, the CT Directive, the Europol mandate upgrade, including ECTC, interoperability, etc.). These choices would initiate a feedback loop, encouraging other agents to turn to the EU for CT action. Hence, the first frame noted above was already empirically debunked by the cross-border element of the threat, while the second one would ultimately be refuted through MS' experience working on cross-border CT cases.

As the CI elements of analysis are brought in this theoretical explanation, it must be noted that CI alone is not equipped to explain paradigm shifts, at least in the case of EU CT. Ideational constructs were being reshaped on the level of practitioners already before the Paris attack, as security professionals were increasingly aware of the cross-

border dimensions of the threat. Yet, in the absence of a critical juncture, this ideational reprogramming was restricted by the dominant institutions in place postulating that CT is a national prerogative wherein the EU could not add value. This cognitive shift would only be empowered in the context of the Paris-Brussels critical juncture that followed. This juncture was significant enough as to make political and policy leaders question the EU and national CT apparatuses and to rethink their setup. This opened the window of opportunity for the alternative frame of "CT as a European issue" to take over. It allowed social and policy agents to open their minds to the EU's potential contribution to the field of CT, which led to the increased usage of the Union's many instruments and bodies. This then led to a feedback loop on their added value – starting with Europol and its sub-bodies (EU IRU and ECTC), then spiralling on to Eurojust, SIS-II and other databases (leading to an interest in eu-LISA), etc. Simultaneously, social agents were becoming interested in harmonising EU instruments – beginning with repressive measures on firearms and explosives, then dealing with extremist online content, spilling over to such ambitious initiatives as interoperability (involving new EU databases), as well as common provisions on cyber security and radicalisation. Through the positive feedback loop establishing and validating the added value of all these bodies and instruments, MS began upgrading the mandates and budgets of EU agencies (Europol, Frontex, eu-LISA), entrusting them with more executive tasks and proactively seeking their assistance (and crediting them with operational successes). This spillover process depended on factors explained together by HI (a critical juncture) and CI (an ideational shift). Combined, these factors led to a true paradigm shift in EU CT, however they were both necessary to contribute to such an outcome, thus their causal power is compounded. This is evident in the two occasions where each of the two was individually insufficient to provoke a paradigm shift:

- *The Madrid-London attacks (2004-2005)* – a critical juncture in the absence of an ideational shift was insufficient to incur substantial institutionalisation processes for EU CT, thus it initiated a number of low-risk, low (political) cost EU measures. The critical juncture closed shortly after the London attack and had modest institutionalisation effects.
- *The period preceding the Paris-Brussels attacks (2011-2015)* – some ideational reprogramming began, particularly in 2014-2015, nevertheless, without a critical juncture to open the window of opportunity, EU CT institutionalisation did not occur.

This thesis aimed to validate the proposed theoretical framework: i.e. HI and CI individually are not considered sufficient to analyse (at least EU CT) policy institutionalisation, however together they are uniquely qualified to analyse substantial

institutionalisation dynamics. Thus, the Madrid-London attacks were driven by HI dynamics, brought on by the "equilibrium punctuating" attacks, however in the absence of CI dynamics, meaning cognitive, ideational shifts to the way practitioners and policy-makers think about CT, it failed to shift the paradigm and cause substantial or lasting institutionalisation. The effects of the juncture were mainly of HI nature – many political documents, declarations, etc., some reactive, attention-grabbing, self-serving legislation initiated by MS, etc. The Paris-Brussels juncture, however, generated *also* CI dynamics, shifting the perceptions of CT as a national-only concern and as a topic out of scope for the EU. This difference made the institutionalisation efforts successful and caused a genuine reform in the policy and the way it is practiced, with potentially lasting effects.

Final conceptual analysis

This section provides a concluding conceptual analysis of the critical junctures of the Madrid-London (2004-2005) and the Paris-Brussels (2015-2016) attacks (defined here in terms of the prolonged intervals of their effects, respectively 2004-2006 and 2016-2018). Table 2 presents the conceptual analysis of each of the three timeframes analysed in this study, according to the institutionalisation model presented in the introduction of the thesis, composed of five elements: policy, governance, technology, economics and culture. Each of the five elements helps to scrutinise the developments in these three periods on the basis of various achievements in information exchange: policy refers to harmonisation measures, governance looks at policy entrepreneurship, technology deals with technical infrastructures, economics refers to political will, and culture looks at the perceptions and behaviours of practitioners as the agents of EU CT.

As can be observed on the table below, each of the three timeframes contained examples of each of the elements of institutionalisation as defined herein. It is beyond doubt that each period of EU CT institutionalisation strongly contributed to the next period of the policy's maturation. It is therefore inconceivable that the developments brought on by the Paris-Brussels juncture would be as crucial in bringing the system to full functionality, were it not for the previous periods of institutionalisation. Nevertheless, the conceptual analysis of this thesis brings forward several important points on the development and institutionalisation of EU CT.

As has been noted elsewhere in the EU CT literature, the Madrid-London juncture was the first crucial timeframe in the policy's evolution. As the EU was seen as a potential CT actor for the first time in its history, policy entrepreneurs were able to drive forward a number of important and consequential measures for the establishment of a EU CT apparatus. A number of legislative and institutional innovations were introduced and the

Union became officially involved in complementing national CT efforts and facilitating MS operational cooperation. Nevertheless, it is worth noting that many of the innovations therein were diminished in their potential impact by several dynamics: 1) ambitious initial proposals were often severely limited in scope by the time of approval, such as the role of the EU CTC and the upgrade of INTCEN (seen as the answer to calls for an EU CIA), 2) the pre-emption of far-reaching Commission proposals with mini-lateral or intergovernmental initiatives, such as the Swedish Framework Decision, Prüm, CTG, G5, etc., and 3) the slow, ineffective and uneven implementation, not only severely limiting EU CT's functionality by creating gaps of governance, but also demonstrating the asymmetrical and insufficient political will to make the EU a major CT actor (or else the lack of conviction of its potential added value to national CT efforts). Despite ample policy entrepreneurship from the Commission, Council Secretariat, the EU CTC and Europol Director (among others), these dynamics characterised both the aftermath of the Madrid and London attacks, and the following period of path dependence (2007-2015). The avoidance of certain measures (such as an operational mandate for Europol, the adoption of PNR and interoperability, etc.) caused a fragmentation in the overall EU CT apparatus, through the introduction of small-scale, limited scope and purpose limitation measures, which contributed to the compartmentalisation of information until 2015. The delayed and uneven implementation of various instruments, driven by dynamic shifts of political will in the previous 15 years of EU CT existence, caused further fragmentation of its overall apparatus, and contributed to gaps in its functionality.

These gaps of functionality of the EU CT apparatus became more than evident in 2015-2016, when the "system" was put to the test through an exceptionally high (and relatively symmetrical) terrorist threat in the Union. The systems, instruments and institutions put in place proved ineffective and incapable to assist MS in their national CT efforts. Importantly, instead of retreating more into domestic CT work, both policy-makers and practitioners became the driving force for a profound reform of the system, aimed at bringing it to full functionality. The institutionalisation of the Paris-Brussels period was less concerned with the setup of new material intuitions, but rather with the enhancement of the existing ones' functionality in the EU CT system and the increase of their added value to national CT efforts. Despite the high number of institutional, policy and operational arrangements already in place before 2015, these were not fully able to execute their assigned functions, often because of constricting mandates, lack of access to necessary data, insufficient cooperation or ineffective use. Political will was palpable in filling these governance gaps, as policy-makers (seemingly for the first time) truly investigated the gaps of the system and invested targeted efforts into filling these.

In terms of this thesis, an even more important argument to make is on the role of national CT practitioners. The column on the very right of the table below looks at the developments in establishing an EU CT culture: the extent to which practitioners (the hearts and souls of CT work) were "on board" with the apparatus put in place. This metric is driven by their perception of EU CT's importance and added value, but also by their understandings of its tools and instruments. These factors then affect the extent to which practitioners will be compliant with the system, the degree to which they use its instruments and structures. This is precisely where the Paris-Brussels juncture made a decisive difference in the EU CT apparatus. As established elsewhere in this thesis, until this juncture (particularly until Europol assisted France with the investigation of the Paris attacks), CT practitioners were not convinced of the EU CT's added value, and were unlikely to be compliant with its requirements (such as the obligation on information-sharing imposed by Council Decision 2005/671/JHA). Once practitioners began to use EU instruments, bodies and information systems, and were able to take advantage of their added value, perceptions began to change, ultimately leading to a virtuous cycle (the more these tools were used, the more they were perceived as valuable). Certainly, the much more symmetrical threat perception (as opposed to the one during the Madrid-London juncture) contributed to this shift in perceptions, which initiated the development of an EU law enforcement and intelligence culture. Practitioners not only realised the necessity to work together cross-border, cross-agency and cross-sector, they became active participants in the construction of the EU CT apparatus: they got involved in decision-making, provided feedback and engaged in dialogue with EU institutions. This cultural change transformed the way CT operational work is conducted in the EU, and is conceptualised in this thesis as a paradigm shift of EU CT.

Period/Criteria	Policy	Governance	Technology	Economics	Culture
Madrid-London Juncture (2004-2006)	• Declaration on Combating Terrorism and solidarity clause • EU CT Strategy • data retention • standardisation of IDs • EEW	• Council Secretariat is policy entrepreneur • Post of EU CTC is created • INTCEN granted mandate on CT (in response to proposal for EU CIA) • Council Group on Information Exchange (DAPIX) set up • CEPOL becomes an EU agency • (outside of EU structures) intergovernmental CTG structure for intelligence cooperation	• SIS-II setup • VIS setup • EIS setup (SIENA in 2010)	• Hague Programme (with ambitions on information-sharing) • Pre-emption of Commission proposals with mini-lateral initiatives outside the EU framework (Prüm, SFD, G5, CTG, INTCEN, which at the time only included selected agencies)	• Council Decision 671/JHA fails to compel national practitioners to share • Swedish Framework Decision on Information Exchange • EIS • Principle of availability
Interim Period (2007-2015)	• EU ISS • RAN • Adjustment of Framework Decision on combating terrorism	• Lisbon Treaty, more power for the Commission, EP and ECJ • new EU CTC becomes policy entrepreneur • Commission withdraws to a passive role • new Europol mandate (consequence of Hague Programme) • Europol, Eurojust and Frontex obtain legal personality • eu-LISA setup • less interest in Council WG meetings • Council COSI WG (not entrusted with CT)	• Prüm Decisions introduce the framework into EU acquis • Eurodac enters into force • ECRIS enters into force	• Stockholm Programme (with focus on radicalisation and data protection) • SFD and Prüm (and other instruments like EAW, EEW, etc.) with significantly delayed implementation, concerns on data protection overshadow attention on information exchange	• Prüm framework, SIENA, (also SFD) fail to increase or organise systematic sharing • Distrust towards Europol is among the reasons, another is the lack of understanding of EU tools • Training schemes for law enforcement around the EU found to be heterogeneous and inconsistent • EU IMS and EIXM
Paris-Brussels Juncture (2016-2018)	• Directive on combating terrorism • EU PNR • Firearms Directive • Regulation on extremist online content • Regulation on explosive precursors	• EU IRU set up at Europol • ECTC set up at Europol • Eurojust becomes engaged in CT cases • Europol, Frontex and eu-LISA get mandate upgrades • Commission takes an active role, uses infringement procedures and progress reports • EU Security Union and its Commissioner are set up, become policy entrepreneurs • Europol Director becomes policy entrepreneur • EP, FRA and other marginalised policy actors are constructively involved in CT work • COSI WG becomes involved in EU CT	• Interoperability • SIS-II new legal basis and upgrade • Entry-Exit System • ETIAS • ECRIS-TCN	• EU PNR passed in weeks after a decade in the pipelines • EU IRU and ECTC passed and implemented quickly • High-level Group on interoperability and quick adoption demonstrate high political will • Europol and Eurojust are proactively used after every EU terrorist attack • Securitisation manifestations (Frontex upgrade, Schengen Borders Code and systematic checks, etc.)	• Taskforce Fraternité • National practitioners begin to use EU tools and instruments after seeing their added value; they get involved in new legislation and upgrades of mandate • SIS-II, EIS/SIENA exponential increase • Common work on CT cases around the EU develops trust, as well as training programmes • CTG becomes involved in EU legislation work and open avenues of dialogue with EU institutions

Table 2. Conceptual analysis of the elements of institutionalisations that occurred in the three periods of EU CT institutionalisation examined in this thesis.

Conclusion

The EU is by definition a reactive entity – as per the Treaties it is only allowed to be involved in policy areas where its MS have explicitly found that it could deliver added value to national efforts. Any field not pertaining specifically to the Single Market is up for debate and national authorities would instinctively try to keep at national level. MS have gotten quite apprehensive of the EU's excessive bureaucracy, as well as the unforeseen inherent obligations that often stem from its regulation, thus in order to be convinced of the necessity to involve the EU, they need to be persuaded beyond any doubt of its instruments' added value to their national ones.

Having said this, national authorities are also quite fond of using the EU as a scapegoat in order to avoid accountability for their domestic policies and sometimes failures. This narrative often resonates with citizens, who seldom fully understand the role the EU plays in governance, while many also perceive "Brussels" as a distant and unfamiliar entity. These two dynamics – the reluctance to introduce EU regulation in national governance, and the predilection towards blaming policy failures and inefficiency on the EU – are often at odds and in competition with each other. Which one prevails is often up to political events, public opinion, economic tendencies, and chiefly the sociopolitical pressure from either or all of these. This brings a challenge in studying EU integration, given the difficulty in determining whether a newly shaped cooperation or harmonisation tendency in MS' attitude is the result of a genuine integration process or simply a reaction to a political event, necessitating a certain response from MS governments. This is also one of the main research questions this thesis aimed to address in terms of the evolution of EU CT information exchange: is the change evident in the policy since the terrorist attacks in 2015-2016 the result of a genuine integration process or is it simply a reaction to political events that invoked strong public opinion?

As noted by one interviewee, "attacks are a wake-up call and then everyone falls asleep again" (Interview n.34). This was, in effect, the dynamic observed at the Madrid-London juncture. What this thesis has aimed to show, however, is that critical junctures are *not* equal to paradigm shifts. While the former might trigger superficial reprogramming of policy ideas, which might slightly deviate the policy from its path, the latter necessarily shifts the policy 's paradigm – its very foundation – by fundamental (re)institutionalisation processes, stemming from the realised inadequacy/insufficiency of "old" institutions and the perceived need for reformed ones. It might also be expected that paradigm shifts are likely to have lasting consequences, at least until another paradigm-shifting event occurs for the policy. Interviewees to this thesis seem to confirm this assertion: 37/40 (92.5%) of the interviewed strongly believed that the change to EU CT brought about by the Paris-

Brussels attacks is significant and possibly lasting, wherein many agreed to the terminology of "paradigm shift". Only three of the respondents, while acknowledging the shift in behaviour in that field, expressed doubt that this attitude might last and characterise the approach to future CT work in the EU, while all other respondents confirmed the opposite. It is worth noting also that the aforementioned three interviewees were all in political functions and were not security practitioners. The practitioners interviewed overwhelmingly believed that the change in behaviour was a symptom of shift in perceptions and attitudes, thus characterising a shift in the very static paradigm that was CT in Europe until then.

Except for the critical-juncture-induced surge in information-sharing and database usage by EU MS, there are two important developments in this field of EU governance that have the potential of translating to substantial and lasting institutionalisation. Firstly, the perceptions on EU CT have changed on the level of practitioners – police, intelligence, and other CT officials need each other, and it took the attacks to realise that and change their attitudes. Their approach has gradually moved from a reactive to a proactive one (Interview n.34, 35, 36). Police, judiciary and intelligence now all have their contacts to reach, they know and work well with their counterparts. Multilateral cooperation has "grown very organically and is not going back", because according to practitioners "this is the future" (Interview n.19). Intelligence services have moved from a "need-to-know" to a "need-to-share" approach, to now even a "share-to-know" one, which has shifted the paradigm of doing CT work in the EU (Interview n.14, 15, 34, 35; Höhn and De Kerchove, 2019). This was an unprecedented threat for Europe and all MS underestimated the threat, some foreseeing that they could handle the problem on national level (ibid.). Now practitioners need to share to have more data - it is a shift in approach observed in other intelligence topics too (e.g. organised crime) (Interview n.24, 14; Höhn and De Kerchove, 2019). The terrorist threat can and should no longer be contained unilaterally or bilaterally by EU MS, nor exclusively by intelligence services (Interview n.1, 10, 14, 23, 37, 32). If CT data can be represented as a puzzle, then it can be assumed that each service or agency might have several pieces, but not quite enough to visualise the image the entire puzzle represents, which is why EU MS need to share pieces cross-border and cross-agency in order to build the investigative picture. Keeping up with the puzzle analogy, one interviewee noted that "even if you have a 500-piece puzzle, of which you have 150 pieces per MS, they might have a feeling of having enough information, however unless you see all 500, you do not have the full picture" (Interview n.37).

Secondly, national authorities and practitioners have gotten to know the EU and its tools, and learned that the EU is a good channel for improving bilateral and building multilateral contacts with other European or international partners. It has been noted that sometimes

practitioners, including police officers, intelligence agents, etc. are bound by their own practices, through which they have been trained and habitualised in the past, and are sceptical of new practices, ideas and approaches, including cross-border cooperation, EU tools, etc. (Interview n.23). The intelligence sector is also fairly independent – they do not cater to the political level, they filter some of the information to their needs, but they are not driven by them, which makes them not necessarily accountable to the government in ways that other public servants may be (Interview n.14). Therefore, CT officers need to perceive a tool as adding value in order to make appropriate use of it. Commission officials believe that they have succeeded at least to an extent to convince national authorities of the EU tools' added value, including in operational cooperation, which is why their usage has increased (Interview n.9). Importantly, through this usage, MS were able to see the added value of EU channels and to perceive them as useful. Whether or not this was intentional or foreseeable is out of scope for this thesis – what is important is that a paradigm shift has occurred, even if it was a consequence of a series of spillover events.

The EU instruments and agencies have played their role, purportedly MS work together on CT much better and more effectively since 2016. According to practitioners, they are increasingly able to avoid information gaps. It has become much more difficult to have an active, organised terrorist cell, to have a major organisation reporting to the caliphate, than it was in 2015. CT staff occasionally encounters organised activity among two-three individuals, who are usually quickly pursued and apprehended (Interview n.19, 34). There is awareness and accountability on CT now, practitioners and politicians alike learned the importance of avoiding governance gaps and are trying to bring the CT apparatus to full functionality, which was never achieved in the Madrid-London critical juncture. These dynamics would have hopefully shaped an "international intelligence community which can increasingly tackle the difficult challenge of counterterrorism with more effectiveness than individual efforts" (Lasoen, 2020, p.13). As noted by Andrew Parker, MI5 Chief, in a speech from 14 May 2018:

> "European intelligence cooperation today is simply unrecognisable to what it looked like even five years ago.[…] Our multilateral operational collaboration is also increasingly critical to operational success […]. It looks like intelligence officers from 30 countries permanently co-located together as a joint operational platform. It looks like real-time intelligence sharing and agreeing joint tactics to combine each country's resources to best effect.[…] It looks like professionals from all across Europe who know and trust each other working together and sharing data on shared systems about terrorist fighters dispersing from Syria.[…] It looks like attacks thwarted and terrorists arrested who could not otherwise have been found in time by any one nation alone." (MI5, 2018)

As has been clear since 9/11, in the field of security, progress comes exclusively after events and the EU policy-makers are so aware of this dynamic, that they appropriated the phrase "Never let a crisis go to waste" to their policy domain (Interview n.6). They know to take political will as it comes and to take advantage of it by introducing or advancing legislation. Afterwards the process takes on a natural momentum – if they can prove the added value of (and encourage the use of) the unique tools that Europol, SIS-II, Eurojust, etc. provide, then the process follows smoothly (ibid.). There is increased accountability in CT and improved awareness of the EU's tools. Practitioners are trying to bring the system to full functionality, while politicians are finally convinced of the importance of CT coordination across states and entities. The threat is not fading away and everyone involved realises that – and this differentiates this juncture from the Madrid-London one, when there was a similar change in attitude, which did not last (ibid.). The other difference is that now if a national authority has potentially important intelligence data, they are much more likely to share it with international partners, as they do not want to be the one that held off on the information that could have helped prevent an attack (ibid.). Thus the increase in sharing is also due to public pressure, political reputation and increased focus and scrutiny on intelligence agencies. MS "realised that you are as strong as your weakest link", which led to more engagement, but also national reforms in countries like Belgium, while MS such as Germany and the UK increased information output (Interview n.34; Wensink et al., 2017, p.71). Hence, the 2015-2016 attacks helped to move from a need-to-know to a need-to-share mentality and helped to fill in governance gaps at EU (and in some cases national) level (Interview n.2, 34; Höhn and De Kerchove, 2019).

The effects of the comprehensive reform in the policy have the potential to last, as the latter has put in place the experts and structures needed for a functioning EU counter-terrorism apparatus. They have created the relationships necessary, on both political and operational level, to be considered as transformative for the policy, and they have created a political rationale and legitimacy for such coordinated EU efforts – while the EU has proven itself a useful channel for such coordination. Some of the legislation adopted during this juncture, e.g. interoperability, PNR, repressive measures towards extremist online content, firearms and explosive precursors possession, etc. have potentially long-lasting effects too, consequential for the way CT is conducted. Pre-existing EU mechanisms and bodies (e.g. SIS-II, Europol, Frontex, etc.) were upgraded and their functions became clearer to practitioners, as impediments to their mandates and effective usage have been removed. Apart from filling in gaps in EU governance, MS have also been developing measures on national level in response to the illuminated problem areas. Thus insufficient information exchange has been tackled in many MS by

the establishment of fusion centres, considered a successful tool to remedy such shortcomings (Interviews n.12, 19, 34, 35, 36, 38).

This thesis has discussed two causal factors affecting EU CT information-sharing institutionalisation that have received relatively little attention in the academic literature to-date. The first is the perception of terrorism as an EU issue (both on political and on practitioner level). While this causal factor is somewhat related to a common EU threat perception, this study has empirically demonstrated that they are still distinct: during the Madrid-London critical juncture, the high threat perception failed to translate into a perception of terrorism as an EU-level issue, thus failing to substantially institutionalise EU CT. The second causal factor is the perception of EU added value in CT operational work – an institutionalisation brake before the Paris-Brussels critical juncture. As has been demonstrated in this study, the latter was the decisive difference brought about by this juncture: as MS began using EU CT capabilities in operational work, their added value was realised and further expanded by new mandates and capacities.

While these two factors may exist in previous EU CT literature, their causal potential has not been discussed thus far, because the first time that their full causal effect on EU CT institutionalisation can be observed is in the aftermath of the Paris-Brussels attacks of 2015-2016. Hence, this study contributes to the academic literature on EU CT in three ways: 1) through the postulation of two novel causal factors to its institutionalisation; 2) through the discussion of new empirical material via the case study of the Paris-Brussels attacks' aftermath; and 3) through a novel theoretical approach in the examination of EU CT institutionalisation.

Contemporary and future issues in EU CT

Still, it is evident that, with the threat being so malleable in nature, by the time one well-placed measure is introduced, a threat has evolved elsewhere. One of the issues of concern at the close of the critical juncture was how to deal with the so-called "jihadi brides" and the children of ISIL fighters attempting to return in high numbers since the decline of the caliphate. Certainly, this is a question of national politics and security, however as MS do not know the answer, they have chosen to work together on voluntary basis on such issues. Another future threat is that a number of terrorist conspirators and highly radicalised individuals (including recruiters) will soon be released from prison due to the short prison sentences for such offences. Since prisons have been identified as hotbeds for radicalisation and de-radicalisation programs are yet to prove their value, EU MS are at a loss on how to handle this developing threat, as intelligence services are already overwhelmed. It is important to note that one of the lessons learned from the

volatile state of internal security in the EU in the past five years is precisely the elasticity of the threat and the need of the security apparatus, on both national and EU levels, to adapt to a changing environment. This will, however, only truly be evidenced by the approaches to these upcoming security threats. The real test to the lasting effects of this paradigm shift will be a subsiding terrorist threat in the future, when it will not be a matter of political pressure to share data and coordinate efforts, but rather a matter of goodwill, and subject to perceived necessity. According to one interviewee, it is difficult to get European citizens on board with strengthening security measures, unless there is a real, tangible security risk or threat, which can justify those directly (Interview n.1). Especially in Europe, it is problematic to propose such measures, as many of them are at the expense of privacy concerns. Harsher security measures often also mean limitations on social networks, restrictions on the freedoms and liberties that Europeans value (ibid.). To build up a common security culture will surely take time, both for authorities and for constituents, as it necessitates adaptation to changing circumstances as well as to the new measures in place.

In the closing of the Paris-Brussels critical juncture, the EU was faced with rising far-right extremist activity across its MS. This type of terrorist or extremist activity is ontologically different for state structures due to the existence of nuances of CT policy - the obscurity of the boundaries of the common enemy, due to absence of "otherness", the blurred line of legitimate political support for moderate- to far-right movements, as well as the fact that some governments might embrace such support or at least be complicit with it. Nevertheless, the Paris-Brussels juncture morphed into a new phase of EU CT development: facing the threat from the far-right, which was surprisingly mobilised through the use of social networks. While the EU and its MS alike have been much more hesitant to adopt far-reaching legislation or announce ambitious policy initiatives in this domain, the remaining impetus could certainly be observed. Various cooperation forums were established to enable MS and their practitioners to deliberate appropriate common measures (whereas it has to be noted that CT cooperation on this type of extremism would be more complicated than on jihadist terrorism). Still, MS' common engagement on this topic would likely not have been as active, had it not been for the preceding paradigm shift in EU CT.

With the rise of far-right extremism in the EU, it is expected that the Commission will eventually be involved with other types of terrorism too, outside of the jihadist one. Commission officials interviewed for this thesis did not believe that the supranational body's efforts would stop with its current mandate (Interview n.9, 10, 13). The EU's CT approach has been adapting to different threats and there is much more that the Commission would like to put in place (Interview n.10). Furthermore, in late 2019 and

throughout 2020, there was a renewed increase in jihadist terrorist attacks in EU MS (particularly France and the UK[60], with incidents in Germany and Austria too). This new surge in attacks, despite its irregularity and small number of victims (as compared to the 2015-2017 period), reminds of the crucial importance of the EU CT apparatus, the institutionalisation of which is often motivated by jihadist terrorism, nonetheless, many of its components are equally effective for all types of extremism.

Policy Recommendations

While EU CT institutionalisation, as noted elsewhere in this thesis, is highly dependent on events and critical junctures, certain steps have been identified in this thesis as possible measures in the pursuit of a common EU CT policy.

Inter-institutional and cross-sector dialogue should be designedly maintained. Policy-makers' consultation with practitioners should be regularised and timely involvement of the EP and other relevant stakeholders (FRA, EDPS, etc.) in legislation-drafting should be ensured.

The High-Level Group format should be considered in the drafting of controversial legislation. In the spirit of dialogue, involving various stakeholders (especially sceptics), early on, not only ensures easier compromise at the decision-making stages, but may warrant a smoother implementation and consistent compliance.

Common trainings for practitioners (cross-border and EU-wide) are deemed to have a positive effect on CT practice, not only in terms of effectiveness and coherence, but also in building trust. The Paris-Brussels juncture demonstrated that insufficient trust can be tackled by common CT cross-border work, as practitioners get to know each other and their respective national approaches. In the absence of terrorist investigations, common trainings and collective activities can be expected to have a similar effect on coherence and trust-building.

Transparency in communication towards the public on the EU's CT role is necessary to maintain the public support on new and existent measures therein, but also due to EU citizens' expectation that the Union is responsible for inhibiting terrorist activity. This implies that in the aftermath of terrorist attacks, European publics (much like their governments) transfer blame to the EU. By maintaining regular and transparent

communication on its CT activities with its citizens, the EU could mitigate this to some extent.

Some interviewees to this thesis have suggested that *establishing an EU policy cycle for CT* (based on the successful example of the EU policy cycle for organised and serious international crime), would streamline legislation-making and exchange of practices, and make them more efficient. Still, it has been noted that EU MS are unlikely to agree to such an upgrade, one of the reasons therein being that the proposed information hub in charge of coordination was Europol. While it might be far-fetched, if drafted appropriately, and proposed at an opportune time (when the threat perception is high), a variant of this arrangement might be able to gain traction.

Continuity between political entrepreneurs is warranted, as the political approaches to EU integration, as well as the prioritisation of CT as an EU topic, vary widely. This has somewhat faltered already, as the Security Union Commissioner post was not carried into the new legislature, whereas the latter approaches CT and migration differently. This could possibly jeopardise the future institutionalisation of EU CT.

Related to the previous point, EU policy-makers would be wise to *keep the topic of EU CT on the political agenda of the European Council,* wherein the latter provides political guidance to the Union structures. Regular discussion of CT measures is likely to aid in lagging decision-making and implementation by introducing political pressure on EU institutions and national authorities. Furthermore, this would be important in order to ensure that the measures in place continue to reflect operational reality, to which end *policy-makers should maintain regular contact with CT practitioners, in order to introduce better informed legislative and operational proposals.*

Avenues for further research

Some of the topics raised herein that warrant further scholarly investigation are the lasting effects of the Paris-Brussels paradigm shift, as well as the continuity of cooperation practices (especially between practitioners) in the new Commission legislature. While this thesis has established a somewhat long-term effect of the Paris-Brussels juncture on EU CT development, this effect cannot be measured in quantifiable terms, while the relatively short timeframe between the juncture and the writing of this thesis does not allow a very long-haul perspective.

It would further be illuminating to examine the effect of far-right extremism on EU CT institutionalisation. As noted above, increased jihadist activity in the EU in the late 2010s was then superseded by a spike in far-right extremism, which undoubtedly left a mark on

EU CT development. Nevertheless, it would be worthwhile to examine and compare this effect with the one brought on by jihadist terrorism, where MS have a perceived common enemy.

APPENDIX A: List of Interviews

Interview n.1 – High-level Bulgarian Official, Interior Security, 13 November 2018, Sofia.

Interview n.2 - Council General Secretariat, 16 November 2018, Brussels.

Interview n.3 - International Security Expert, MFA Belgium, 20 November 2018, Brussels.

Interview n.4 - External Relations Policy Officer, CEPOL, 26 November 2018, Budapest.

Interview n.5 - EEAS, Open-source Intelligence, 3 December 2018, Brussels.

Interview n.6 - Former Senior Official at Europol, 4 December 2018, London.

Interview n.7 - Senior official for the German Foreign Office, Crisis Management, 6 December 2018, Cologne, Germany.

Interview n.8 - Expert at DG HOME, European Commission, 7 December 2018, Brussels.

Interview n.9 - Expert at DG HOME, European Commission, 7 December 2018, Brussels.

Interview n.10 - Expert at DG HOME, European Commission, 7 December 2018, Brussels.

Interview n.11 - Counter-terrorism investigator on national level, representing a MS in Brussels, 11 December 2018, Brussels.

Interview n.12 – Belgium Intelligence sector, 11 December 2018, Brussels.

Interview n.13 – Member of Cabinet, European Commission, 13 December 2018, Brussels.

Interview n.14 – EU IRU Staff, Europol, 13 December 2018, The Hague.

Interview n.15 – EU IRU Staff, Europol, 13 December 2018, The Hague.

Interview n.16 – Director of ECTC, Europol, 13 December 2018, The Hague.

Interview n.17 – EU official, 14 December 2018, Brussels.

Interview n.18 – Eurojust National Member, 17 December 2018, The Hague.

Interview n.19 – Public Prosecutor for Belgium, 18 December 2018, Brussels.

Interview n.20 – EEAS, CT Division, 19 December 2018, Brussels.

Interview n.21 – EP Legal Service, 19 November 2018, Brussels.

Interview n.22 – EP Mid-Level Official, 22 March 2019, Brussels.

Interview n.23 – Police Officer of the Bulgarian Ministry of the Interior, 26 March 2019, Sofia.

Interview n.24 – SNE at the GSC, 28 March 2019, Brussels.

Interview n.25 – GSC – Internal Security, 29 March 2019, Brussels.

Interview n.26 – Policy Advisor to an MEP, 29 March 2019, Brussels.

Interview n.27 – EP Official, 3 April, 2019, Brussels.

Interview n.28 – eu-LISA Employee, 12 April 2019, Tallinn.

Interview n.29 - eu-LISA Employee, 12 April 2019, Tallinn.

Interview n.30 - eu-LISA Employee, 12 April 2019, Tallinn.

Interview n.31 - eu-LISA Employee, 12 April 2019, Tallinn.

Interview n.32 - Dutch Police Officer, 23 April 2019, Venlo, Netherlands.

Interview n.33 – PhD Student, KU Leuven, 26 April 2019, Mechelen.

Interview n.34 – Belgian Federal Police, Directorate for International Police Cooperation, 29 April 2019, Brussels.

Interview n.35 – Belgian Federal Police, 29 April 2019, Brussels.

Interview n.36 – Advisor, Belgian Federal Police, 29 April 2019, Brussels.

Interview n.37 – British Government Official, 29 April 2019, Brussels.

Interview n.38 – Seconded National Expert, CEPOL, 30 April 2019, Budapest.

Interview n.39 – Expert at the EU Agency for Fundamental Rights (ERA), 7 May 2019, phone conversation.

Interview n.40 – Frontex/ European Border and Coast Guard Official, 16 May 2019, phone conversation.

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