The Development Of The EU's Counter Terrorism Policies In The Post 9/11 Era

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THE DEVELOPMENT OF THE EU’S COUNTER TERRORISM POLICIES
IN THE POST 9/11 ERA

by

SİNEM ÇEVİK

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Abstract

THE DEVELOPMENT OF THE EU’S COUNTER TERRORISM POLICIES IN THE POST 9/11 ERA

by: Sinem Çevik

Adviser: Professor Anna Akasoy

European security is shaped by major events. In this perspective, the attacks of 9/11 and the bombings which took place in Madrid and London are marked as turning points in the EU’s counter terrorism history. It was only after 9/11 that counter terrorism became a strategic priority for the EU and the Union started to develop extensive policies to tackle the threat of terrorism. Responding to terrorism threats is crucial for the EU’s existence as an area of security and prosperity. Thus, the EU has been creating a complex and multidimensional counter terrorism approach through the implementation of wide-ranging instruments such as police and judicial cooperation, prevention of terrorism financing or protection of infrastructure. This work focuses on the development of the EU’s multidimensional counter terrorism approach in a historical context. The legal and institutional counter terrorism frameworks which developed especially after 9/11 will be examined and the changes introduced with the Lisbon Treaty will be discussed. Since terrorism has been approached as an internal security matter in Europe, the majority of the counter terrorism cooperation at the European level is found in the Area of Freedom, Security and Justice Area (AFSJ). Therefore, this study aims to provide a comprehensive analysis of the EU’s counter terrorism policies with a particular focus on the AFSJ.
Acknowledgements

I owe an immense debt of gratitude to people who enabled me pursue my studies at the graduate school and helped me write this thesis. Professor Anna Akasoy supervised this thesis, whose analytical insight was particularly helpful in formulating clearly defined analysis from my seamless thoughts. As such she had lots of influence over my thesis and I was very lucky to receive guidance and suggestions from her. I am grateful to her.

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I also owe a special thanks to the MALS Assistant Program Officer Katherine Koutsis, who patiently replied all my long and disturbing questions through e-mails. During my studies I had the chance to meet with the Mina Rees Library staff, each of whom was so kind, sincere and friendly.

And finally I must thank my parents not only for their love and support throughout my stay in the New York City, but also for their intelligence and tolerance. It is to them that this work is dedicated.
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1. INTRODUCTION

9/11 has undoubtedly marked a turning point in international politics. Centralized in the heart of American commerce, the attacks of 9/11 have shaped the international politics discourse of the 2000s. The morning of 11 September 2001, four passenger planes which were hijacked by individuals later identified as related with the terrorist organization Al-Qaeda were used as a weapon to attack targets that symbolize the economic, political and military power of the United States of America (USA). Live broadcast on TV, these attacks have brought terrorism on top of the world political agenda.

Supported in the international community, including the European Union (EU) in pursuit of these attacks, the USA has declared a global war against terrorism. Though the discourse “war against terrorism” wasn’t adopted by many of the EU member states, the fact that counter terrorism has become one of the most important issues of international politics was admitted in general. In his immediate statement the same day, the US President of the time, George W. Bush, argued that these attacks were aimed at the American life style and freedoms and called all his allies to unite their powers to win the war against terrorism. According to President Bush, beyond being terrorist acts, these attacks meant to be a declaration of war against the USA.

In response to Bush’s call for solidarity, European countries strongly condemned the attacks and committed to give support for counter terrorism. However, though the USA and Europe were in agreement on the issue that terrorism was a massive danger, they were considerably

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3On 11 September 2001, 9 terrorists hijacked 4 passenger planes that was flying from Boston, Newark and WashingtonDC, to San Francisco and Los Angeles. Hijacked by 5 of the terrorists, the American Airlines flight 11, hit the WorldTradeCenter's NorthTower at 08:46 am. As news cameras had rushed to the scene, the crash of the United Airlines flight 175 on the SouthTower at 09:03 am was broadcasted live on TV all over the world. The third plane (American Airlines flight 77) hit the Pentagon in Arlington County, Virginia near WashingtonDC. After 26 minutes, it was reported that the fourth hijacked plane was crashed into a rural area in Pennsylvania. This last plane is believed to be hijacked to hit the White House; but wasn't able to achieve this due to the resistance of the passengers.
divided over the methods of counter terrorism. According to a survey carried out by the German Marshall Fund in 2004, international terrorism was seen as an important threat for both the Europeans (71%) and the Americans (76%), however there was a huge split of opinion in terms of the method to be used in counter terrorism: While 54% of the Americans supported military solutions, this proportion was only 28% among the Europeans (Kaunert 2009, p. 42).

Gilles Andréani (2004, p. 33-34) argues that "War against Terrorism" is a good objective, but a wrong concept as the word "war" creates the idea that there are two equivalent and legitimate sides, assigns an important role to military administrations in the fight against terrorism, paves the way to bend the intrinsic international practices and the law, gives the impression that "revenge", rather than "search for justice" is the impetus; and deviates the attention from the actual reasons behind terrorism.

Unlike public opinion in the USA, the mainstream discourse in Europe was that the 9/11 attacks were a crime rather than a declaration of war (Norton-Taylor, 2 September 2011). This also indicates the fact that the European conception with respect to counter terrorism falls within the framework of criminal justice system (Coolsaet, 2010, p. 857).

The dichotomy between the concerns of national sovereignty and the need to have an international cooperation is another feature that shapes Europe’s attitude towards the fight against terrorism (Argomaniz, 2011, p.5). 9/11 has been a great catalyzer for those EU member states such as the UK, Germany, Spain and Italy which have suffered from terrorism in their past and have tried to establish cooperation in this area for many years, but have been reluctant to delegate power to the EU. Countries that have never experienced terrorism at the national level became the target of international terrorism and thus, terrorism became one of the top agenda issues for the EU. Though terrorism has become a key issue in the European
agenda, today 90% of counter terrorism activities are carried out at the national level, while only 10% of it is carried out at the EU level (Renard, 2012, p.2).

As it is also stated in the Schuman declaration, “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity” (Schuman, 9 May 1950). At present, the development of counter terrorism policies in the EU is in parallel with the prediction of Robert Schuman. The cooperation process that started under the umbrella of the Council of Europe (CoE) has unprecedentedly accelerated and deepened in the aftermath of the 9/11. Indeed, after the ending of the Cold War, 9/11 has been the most important incident that has changed Europe's attitude on security issues in general. Since its foundation, the member states of the EU have made significant cooperation on other issues such as the monetary policies, climate change issues or education policies. However, cooperation on security has always been more difficult to make since it requires conferral of power for the member states. EU member states have agreed on a definition of terrorism with the "Council Framework Decision on Combating Terrorism" in 2002, and have accepted "The European Union Counter-Terrorism Strategy" in 2005. As Monar (2007, p. 293) points out, this is a unique event in the world that a group of countries come to an agreement on a comprehensive and common strategy on fight against terrorism. Considering the fact that internal and external security issues are the ones the EU provides the least integration on, we can better understand how great a step this agreement is.

This study aims to address the changes in the EU policies on counter terrorism through a chronological perspective. Legal and institutional instruments established by the EU for counter terrorism will be analyzed on the basis of post-9/11 developments and amendments to the Lisbon Treaty. First the arguments concerning the description of the concept of terrorism will be addressed, the concept of counter terrorism will be mentioned, and the current threat of terrorism in Europe will be discussed. The first developments in the EU for a common
policy on counter terrorism will be examined, and the acquisitions and developments introduced with the Maastricht Treaty will addressed. Then, 9/11 will be taken as a starting point, and the legal and institutional instruments of the EU and the amendments brought by the Lisbon Treaty will be analyzed. And lastly, the effectiveness and weak points of terrorism policies in the EU will be addressed.

Security issues in the EU fall in the Area of Freedom, Security and Justice (AFSJ), which includes home affairs and justice policies of the Union. Common visa regime, policies on internal and external border controls, the prevention and combating of crime, harmonization of the international law and immigration and asylum policies are some of the issues included in AFSJ. The Union attaches special importance to AFSJ, which intends to establish an area of freedom, security and justice and to frame a common policy on security issues such as internal and external border controls, and immigration and asylum. I will analyze the EU's counter terrorism policies from the perspective of the developments that took place in the Area of Freedom, Security and Justice (AFSJ). As terrorism has been historically addressed as an issue of internal security in Europe, and cooperations in this issue have always taken place within the scope of internal affairs, the counter terrorism capacity of the EU is mainly included in this area (Rhinard, Boin, &Ekengren, 2007). The European Council and the Commission have taken several significant steps to make the EU as a global actor in areas regarding security, and hence have enhanced the EU's capacity to act on the international arena. These steps have added an international value- that is to say an external dimension to AFSJ, the requirement of which was also emphasized in the European Summit held on 16-17 June 2013. However, this issue has been excluded from this thesis. The instruments used in the external dimension of AFSJ are as follows:

- Bilateral agreements (on issues such as legal assistance, extradition, visa and etc.)
• Enlargement process

• Neighborhood policy

• Foreign aid programs

• Regional cooperations

• Cooperations with third countries on justice, freedom and security issues

• Agreements with third countries such as Europol and Eurojust

Within this context, bilateral cooperations of the member states or of the EU as an international institution is beyond the scope of this thesis.
1.1 The Concept of Terrorism

There is no precise definition of "terrorism". Bruce Hoffman (2006, p. 1) emphasizes that though everyone has a tentative idea about what terrorism is, there is still no open, precise, and comprehensive definition of it, upon which everyone has come to an agreement. Hoffman argues that this is due to the fact that the definition of the term has been constantly changing in the last 200 years. Meaning horror in Latin, the word *terror* has been used as a political term after the French Revolution, and has entered into the literature - *régime de la terreur* - to describe the state terrorism of the Jacobins. Since then, the word terrorism has been used to define different situations in different contexts: revolutionary movements, acts of violence against governments, oppression of totalitarian administrations, acts of violence of groups targeting to establish their own nation-states, acts of violence supported by relatively weaker states in a struggle with stronger states (covert war), and acts of violence of religious radical groups can be given as examples to the situations defined as "terrorism" (ibid, p. 3-20).

Alex P. Schmid and Joseph J. Easson (2013) have gathered more than 250 definitions of terrorism used by academics, governments and international organizations. Within this diversity, I will try to determine common features of terrorism activities and to establish my own definition through an inductive method.

Terrorism is an act of violence; however not every act of violence is terrorism (Laqueur, 1999, p.8). The most important element distinguishing terrorism from other acts of violence is the political motivation behind the act. For instance, according to a definition, "terrorism is the assassination of the civilians or security forces for a political objective" (Bal, 2006, p.8). This narrow definition classifies terrorism as the activities threatening lives; however, many acts of violence that doesn't cause loss of life can also be treated as terrorism.
All terrorism activities appear as "acts of crimes", without exception. Acts such as bombing, human trafficking, highjacking, violations of physical integrity, and threatening are defined as crimes in the criminal justice system of most countries (Chalk, 1996, p. 12).

Terrorism involves the objective of changing the *power* balances for the good of a certain group. Those groups turning to terrorism represent the relatively weak politics, which cannot achieve their demands on a legitimate ground. As it is impossible for those groups to win an election, or to make a change through activities such as peaceful protests, petitioning, non-government acts and etc., they chose terrorism acts in order to create great influences with limited sources. In other words, terrorism is the pursuit of politics through different instruments (Sick, 1990, p. 51). Modern communication channels and media play an important role for the effectiveness of this strategy which tries to create an influence of a weaker group over a powerful one (Hirschmann, 2000, p.299).

Terrorism can be defined as a method of *psychological war*; the actual objective is not to give material damage, it is to gain political benefit through creating a psychological atmosphere of horror by means of violence or threat of violence. In this regard, the target audience of terrorism is more than the direct victims of the offense. A single man, who is willing to die for his beliefs can terrorize thousands of people (Martin, 2011, p.13).

For any act to be considered as terrorism, it should be performed by a certain *organization*. In the global world today, the definition of organization has changed and groups can nowadays be loosely organized through such tools as internet, mobiles, and social media. Furthermore, a single person can also form the group itself, and can cause a massacre as in the case of 2011 Norway attacks. Anders Behring Breivik had published a manifesto, “2083: A European Declaration of Independence” on the internet eight hours before his attacks, for which he was charged under an article in Norway's anti-terror law.
Taking into consideration the above definitions, terrorism can be defined as the acts of violence or the threat of using acts of violence that are performed by an organization for political targets and motivations, and with an objective to provide power or visibility to a certain group through the spread of fear to a wider masses of population.

In addition to the definitions of terrorism made in academic circles, we can also review the legal definitions of the term. Indeed, law is the most powerful and important instrument to avoid and punish terrorism, which is essentially a crime.

The Draft Convention for the Prevention and Punishment of Terrorism prepared by the League of Nations in 1937 is the first step to determine a definition of terrorism to be accepted in the area of international law. Also known as the Geneva Convention, this Convention defines the act of terrorism as "a person’s unlawfully and intentionally causing or threatening to cause violence by means of firearms, weapons, explosives, any lethal devices or dangerous substances, which results, or is likely to result, in death or serious bodily injury to a person, a group of persons or serious damage to property — whether for public use, a State or Government facility, a public transportation system or an infrastructure facility."

However, this Convention has never entered into force. Today, the United Nations (UN) doesn't use a definition of terrorism upon which all the members have come to an agreement, but frequently refers to this definition in its decisions and acts regarding the fight against terrorism. Work on a draft Comprehensive Convention on International Terrorism is ongoing at present, however no conclusion has been reached so far, due to the conflicts between the member countries of the UN.

The EU is the first international actor that has reached an agreement on the common definition of terrorism (Argomaniz, 2009, p.155). Actually, this is quite normal due to the fact that the EU was set up with the aim of ending the bloody wars between neighbouring countries; between Germany and France in particular. The six founders had come together to
form an economical and political initiative, which would also ensure peace in Europe. The
terrorism definition used by the EU has been determined through a Council Framework
Decision\(^2\) that has been accepted in June, 2002. According to the Decision "offences under
national law, which, given their nature or context, may seriously damage a country or an
international organization where committed with the aim of seriously intimidating a
population, or unduly compelling a Government or international organization to perform or
abstain from performing any act, or seriously destabilizing or destroying the fundamental
political, constitutional, economic or social structures of a country or an international
organization, shall be deemed to be terrorist offences." To be addressed in detail in the part
“3.1.1.2 European Council Framework Decision on Combating Terrorism” of this thesis, this
Decision not only provides a common description of terrorism used by the member states, but
also describes terrorism acts and terrorist groups in detail (Bures, 2011, p.7).

### 1.2. Counter Terrorism

An inseparable part of terrorism, the concept of “Counter terrorism” is not a political field that
is defined in concrete terms; it is constituted of various politics, and requires all the state
institutions to act in concert. This is already a difficult task even for nation states, and when
we consider the EU it is even harder for 28 member states to enable institutional coordination
(Keohane, 2005, p. 2-3).

EU Counter Terrorism Coordinator Gilles de Kerchove argues that terrorism is the most
apparent threat for democratic societies and draws a parallel between terrorism and a virus:
An exterminated virus can sometimes adapt itself to new conditions, and all the precautions
taken against the virus can make it stronger. In this regard, combating terrorism requires an

\(^2\)2002/475/JHA, OJ L 164,22.06.2002
effective struggle each time terrorism emerges and elimination of the conditions that leads to the spread of terrorism (de Kerchove, 2008).

An efficient and effective policy for counter terrorism needs to be multi-directional. One of the most important features of combating terrorism is to maintain the physical security at the highest level; and the protection of important people, the usage of metal detector in public spaces that are crowded and open to threat such as airports, shopping centers and the protection of infrastructure units that are strategically important are the measures to be taken at first place.

Collecting intelligence and the analyzing the data are important for a more effective fight against terrorism. Thereby, the potential targets can be better identified and the sources can be used effectively.

In addition to avoiding terrorist acts and diminishing the damage caused by those terrorist acts, combating terrorism also involves the weakening of the terrorist groups. Preventing access of the terrorist groups to financial resources would be the most important step in this regard.

Retaliation and punishment are also inseparable parts of the fight against terrorism. Detection and trial of the criminals, and disincentive punishments would be effective in both relieving the consciousness of the public, and prevention of new offences. Retaliation is more generally used in the punishment process of the countries and institutions that give support to terrorism.

In addition to military methods, diplomatic condemnation, economic sanctions, avoiding those countries from membership to international organizations and prevention of arms sale are also included in retaliation (Lutz & Lutz, 2008, p. 26-71).

The priorities of the EU Counter-Terrorism Strategy are Prevention, Protection, Pursuing, and Responding. “Pre-emptive actions”, which the USA has applied after the 9/11 attacks is not included in the EU Counter-Terrorism Strategy. This might be due to the fact that it is
easier to take pre-emptive actions or measures for a state. However, this may not be practical for the Union. Moreover, it should also be kept in mind that pre-emptive measures may be far too harsh for the Europeans, who would rather solve many issues through diplomacy and negotiation.

**Table 3: EU Counter-Terrorism Strategy**

<table>
<thead>
<tr>
<th></th>
<th>Before the attacks</th>
<th>After the attacks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fight with threats</strong></td>
<td>Prevent</td>
<td>Pursue</td>
</tr>
<tr>
<td><strong>Control of the influences &amp; risks</strong></td>
<td>Protect</td>
<td>Respond</td>
</tr>
</tbody>
</table>


Any policy that is introduced by politicians for the repression or prevention of terrorism can be included within the scope of counter-terrorism. Within this context, reinforced borders and airport security, increasing security of the embassies, introducing new counter-terrorism acts, investigating in counter-terrorism technologies, preparation of crises management plans or establishing new units of counter-terrorism within the public sector and etc. can be regarded as parts of the measures for counter-terrorism (Spencer, 2006, p. 94).

### 1.3 Current Threat of Terrorism in the EU

Security issues are one of the most difficult areas for the EU in terms of establishing a common policy and harmonization. The history of EU integration reveals the fact that the EU member states are more willing to waive from their national sovereignty and establish a common policy at the EU level, when they face a serious threat or believe a joint act would be
in their interest (Wallace, 1999). The establishment of European Coal and Steel Community after World War II; the economic crises following the 1970’s, attaching importance to the establishment of the Single Market with the decline in competitiveness of the European industry due to globalization and rise of Japan as a strong economic actor, acceleration of the works towards the establishment of a Common Foreign and Security Policy following the Kosovo crises, in which European capacity was insufficient, and development of a common counter terrorism policy after the 9/11 can be given as examples of this attitude (Dinan, 2004; Green Cowles, 1995).

Within this context, we must first examine the current threats of terrorism for the EU in order to make an evaluation whether a common counter terrorism policy at the EU level is actually required, and whether political actors would be willing to make concessions upon their sovereignty rights in this area.

Europol publishes annual reports (EU Terrorism Situation and Trend Report – TE-SAT) which evaluate threats of terrorism for the EU. According to the report released in 2013, terrorist attacks and detentions increased significantly in 2012. While 2 people lost their lives due to terrorism in 2011, this number reached 17 in 2012. 219 terrorist attacks were reported, with an increase of 26% compared to 2011, and 537 people have been arrested due to terrorist crimes (Europol, 2013).

The Te-Sat Report manifests that EU states are equally targeted by terrorist attacks. The attacks in Europe are predominantly separatist and involve religiously inspired terrorism. Countries such as Ireland, Spain, France, Italy, and the UK which have experienced fight against terrorism in the past have become the main targets. It is important to note here that these countries had encountered terrorism through the acts of terrorist organizations that have emerged within the territories of the Union in the past. With 9/11, they confronted a new type of fear, which is the fear of the unknown. The rightists and conservative parties in power have
also played a role in this new type of perception of the threat of terrorism. Nevertheless, according to a Euro barometer survey that has been carried out to evaluate the apprehension of threat in Europe, economic crises (34%) and terrorism (33%) are the most important threats for the security of the EU.

In this survey, while citizens of 15 countries regard economic crises as the greatest threat; citizens of 13 countries regard terrorism as the primary threat. Citizens of the rest 3 countries regard terrorism and economic crises as equal threats for the EU (Euro barometer, 2011).

In a survey that was carried out before 9/11, only 12% of the EU citizens regarded terrorism as a threat while this ratio has increased significantly and reached 86% after 9/11 (Euro barometer, 2002). That this ratio is 33% today can be interpreted as terrorism not being regarded as an existentialist problem, though still an important threat. Indeed, when we look at the number of the terrorist attacks in the world, it can be concluded that except a few exemptions, Europe hasn't been the center of the terrorist attacks as it was in the 1980s.

Nevertheless, it can be seen that the nature of the terrorism threat for the EU has changed over time. In addition to the ethnic and leftist terrorist groups, religiously inspired radical groups, that is to say mainly Islamists have come to fore as of the 2000s. The Theo van Gogh assassination in 2004, the discovery of 1,300 pounds (600 kg) of ammonium nitrate fertilizer which was intended to be used for making a bomb in April 2004 in London; and the London attacks on 7 July 2005, a number of plans of terrorist attacks that were prevented in Denmark following the caricature crises, and the recent Charlie Hebdo attack in Paris in January indicate a significant religiously inspired terrorist potential in Europe. This serious problem the EU faces is being described as the "Euro-jihadist" phenomenon (Keohane, 2005). It can also be noted that due to the negative views of Islam in Europe for centuries, religious terrorism and Islamic terrorism in particular draw so much reaction. the worst form of Among European jihadists, we can distinguish "outsiders" and "insiders." Outsider European jihadists
are those who aren't EU citizens, and who have entered the European territories through migration and asylum. They are trained by the terrorist organizations and have exclusively come to Europe for "jihad" (Leiken, 2005).

Insider European jihadists are the children of Muslim immigrants; they were born and raised in Europe and hold an EU passport. These Euro-jihadists, though they were raised in the environment of freedom, wealth, and security within the EU, participate in the religiously inspired terrorist organizations that oppose to the values the EU stands for. There is no doubt, this situation creates an important internal threat for the physical security of the EU. However, more importantly, the fact that the European values aren't adopted by certain citizens also create an existential problem for the European identity in general.

Another alarming issue is also the significant increase of EU citizens who move to the Middle East for jihad, in parallel with the developments in the region. EU citizens who are trained by the terrorist organizations in Europe travel to countries such as Afghanistan, Pakistan, Yemen, Somali, or Syria in order to get military training or to join the hot war. Especially as of 2012, when the war in Syria became much more violent, there has been a significant increase in the number of terrorists arrested while travelling to or for these regions (Europol, 2013, p.22-3). The possibility for these people to use their military training, experiences and network for carrying out terrorist attacks in the EU territories is a top security issue in the EU agenda. Another important threat is the type of terrorist named as "lone wolf." In such a period where terrorist groups have the opportunity to freely promulgate their messages via social media in particular, lone wolves are individuals who, though not having any physical bonds with terrorist organizations, keep up with their messages and carry out terrorist attacks upon their individual initiative without any logistic support³. Anders Behring Breivik, who made a dreadful slaughter in Norway on 22 June 2011, or Michael Adebolajo and Michael Adebowale, who

³For more information about this type of terrorism, see the book "Understanding Lone Wolf Terrorism: Global Patterns, Motivations and Prevention" written by Ramón Spaaij (2012)
assassinated British soldier Lee Rigby on 22 May 2013 can be given as examples for the lone wolf. Monitoring and identifying such self-reliant terrorist attacks is nearly impossible, which necessitates an emphasis on preventive counter terrorism instruments. Within this scope, intelligence and international cooperation gains much more importance in the fight with such terrorists who have acted beyond the terrorist networks and have mobility due to the communication and travel opportunities technology provides, as Europol Director Rob Wainwright also emphasizes (B92, 24 March 2012). For instance, in the Norway attacks of 2011, it became quite difficult for the European authorities to decide on whether this case should be dealt within the frame of terrorism or massacre. Indeed, the definition and content of the concept of terrorism have been extended after this attack.

Within this framework, it can be concluded that counter terrorism, which became a priority for the EU as of 9/11 will continue to be an important issue that requires joint initiatives within the member states due to the current developments.
2. COUNTER TERRORISM POLICIES IN THE PRE-9/11 PERIOD

While 9/11 is a turning point for examining the EU counter terrorism policies, significant work had already been carried out to establish a common policy all across Europe even before that event. Upon the establishment of the EU with the Maastricht Treaty, the Union starts to establish common EU policies and gets involved in intergovernmental cooperations.

Research that examine pre-9/11 counter terrorism policies in Europe generally focus on the experiences of European countries on separatist or revolutionary terrorist attacks (Argomaniz, 2011, p.3). European countries each have different experiences in terrorism. European terrorism, which manifested itself in the terrorist acts of anarchist organizations and politically inspired assassinations in the beginning of the 20th century, have evolved to the attacks of ethnically inspired terrorist groups. This evolution can be explained with David Rapoport's waves of terrorism theory. According to Rapoport (2002), modern terrorism can be classified into four waves: The "Anarchist Wave" that started in the 1880s; "Anti-Colonial Wave" that started in 1920s; "New Left Wing" that started at the end of 1960s; and the "Religious Wave" that includes ethnic elements also and started in 1979.

Particularly in 1960s and 70s, non-state political violence was at a significant rise (Stampnitzky, 2013, p. 24). In parallel with the global trend, the increasing attacks of Western European and Middle Eastern terrorists and the failure of countries who tried to fight with and prevent these attacks individually have revealed the need to act in cooperation in counter terrorism for the European countries (Anderson, 2002, p.229).

According to some writers, the phenomenon of international terrorism began with the high-jacking of a plane (El-Al) flying from Rome to Tel Aviv, by three Palestinian terrorists belonging to the Palestine Liberation Organization on 22 July 1968 (Hoffman, 2006, p. 63).
Others argue that the Munich massacre, in which eleven Israeli Olympic team members were taken hostage and eventually killed by the Palestinian group Black September during the 1972 Summer Olympics in Munich, West Germany was the first example of modern terrorism. (Zulaika & Douglass, 1996; Stampnitzky, 2013, p.21) After this, incidents that were previously defined as massacre, bombing, torture, assassination started to be named as "terrorist acts". During the time period from the 1972 Munich Olympics to 9/11, no other terrorist act had been broadcasted live on TV and reached millions of people around the world (Bergen, 2011, p.91).

Right after the Munich massacre, the USA prepared a draft convention (U.N. Doc. A/CN.6/L.850) focusing on the measures to eliminate international terrorism and submitted it to the UN General Assembly on 25 September 1972. However due to the objections of some countries arguing that first reasons which lie behind terrorism need to be investigated before preparing a convention on terrorism, this initiative remained inconclusive and an agreement upon the definition of terrorism wasn't reached (Dumitriu, 2002, p. 585). Nevertheless, many conventions had been signed against terrorism acts until 9/11.

**Table 2: UN Conventions on Counter-Terrorism**

<table>
<thead>
<tr>
<th>Name of the Convention</th>
<th>Date/Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on Offences and Certain Other Acts Committed on Board Aircraft</td>
<td>14 September 1963, Tokyo</td>
</tr>
<tr>
<td>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation</td>
<td>23 September 1971, Montreal</td>
</tr>
<tr>
<td>International Convention against the Taking of Hostages</td>
<td>17 December 1979, UN General Assembly</td>
</tr>
<tr>
<td>Convention on the Physical Protection of Nuclear Material</td>
<td>3 March 1980, Vienna</td>
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<tr>
<td>International Convention for the Suppression of Terrorist Bombings</td>
<td>15 December 1997, UN General Assembly</td>
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<tr>
<td>International Convention for the Suppression of the Financing of Terrorism</td>
<td>9 December 1999, UN General Assembly</td>
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Moreover, 24 decisions in the UN General Assembly, and 21 decisions in the Security Council have been approved regarding terrorism.
Western European countries, disappointed with the failure of international efforts, decided that a regional cooperation would be more effective (Lodge, 1989, p. 30). In parallel with the diplomatic efforts within the frame of European Political Cooperation, the European Community (EC) started to establish the implementations that would serve as a basis for counter terrorism policies at legal and operational level (Bures, 2011, p.60). Although they were moderately restricted at the beginning, cooperation in the area of counter terrorism that would be further developed in the 9/11 period started to be realized (Bossong, 2013, p. 25).

Further efforts in counter terrorism policies will be dealt in the next chapter.

2.1. The First European Cooperation in the Area of Counter Terrorism

As treaties establishing the European Communities didn't authorize the Community in areas such as justice, security, and home affairs, the first cooperations were done under the umbrella of Council of Europe (CoE), which had an intergovernmental structure. The Statute establishing the CoE in 1949 (Statute of the Council of Europe) authorized the Council for common actions in economic, social, cultural, scientific, legal and administrative issues. Moreover, as the CoE had more members than the EC, it was expected that cooperations within CoE would have a larger area of influence (ibid, s. 26).

According to the European Council Parliamentary Assembly Recommendation 703 (1973), international terrorist acts which involve the killing, kidnapping or endangering of the lives of innocent people should be condemned and punished as serious criminal offences, regardless of their cause. Considering the international community's response as disappointing, the Recommendation argues that joint action among member states of the European Council is necessary and urgent; and recommends that the Committee of Ministers invites the governments of member states to establish a common definition for the notion of “political
offence", in order to be able to refute any "political" justification whenever an act of terrorism endangers the life of innocent persons. Following this Recommendation, the Committee of Ministers gathered on 24 January 1974 and adopted the Resolution (74) 3 at its 53rd meeting, and invited the member states to take into account the severity of the offences when discussing the requests for extradition of terror suspects and criminals. Following the meeting of the member states' Ministers of Justice on 22 May 1975, European Committee on Crime Problems (CDPC) have gathered and invited the Committee of Ministers to establish a committee of governmental experts which would investigate the terrorist acts and the problems it causes. The decision to establish this committee was adopted at the 246th Session of the Committee of Ministers held in 1975\(^4\) (Donay, 1979, p.418-9).

The European Convention on the Suppression of Terrorism, prepared by the committee of governmental experts was signed on 27 January 1977, and entered into force on 4 August 1978. Establishing a common understanding in Europe, this Convention was more of a procedural nature and pointed out a terrorist action list, rather than providing a comprehensive description of terrorism (Murphy, 1985, p. 15).

The Convention, which refers in its preamble to concerns for the increasing terrorist acts, aims at preventing the terror criminals from escaping from trial and punishment and thus aims at preventing them to be considered within the scope of "political offences" under the European Convention on Extradition (Bossong, 2013, s. 26; Murphy, 1985, s. 38).

The Convention stipulates that specific offences below shall not be regarded as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives (Article 1):

\(^4\)For further information about the adoption of the Convention please see “Explanatory report on the European Convention on the Suppression of Terrorism”.
a) the offences which fall under the Hague Convention on Seizure of Aircraft of 16 December 1970,
b) the offences which fall under the Montreal Convention on Safety of Civil Aircraft of 23 September 1971,
c) serious offences which involves attacks on premises, accommodation and means of transport of internationally protected persons, including diplomatic agents
d) offences of kidnapping, taking of a hostage or unlawful detention,
e) offences involving the use of bombs and other instruments capable of killing people,
f) The attempt to commit any of the offences above as well as the participation as an accomplice in their commission or attempt,

According to Article 2, contracting countries have the opportunity to decide that certain offences involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person is not a political offence or an offence connected with a political offence or an offence inspired by political motives. Likewise, the same would apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created doesn't constitute a collective danger for persons. Thus with this Convention, certain acts of violence that used to fall within the frame of political violence can now be addressed as terrorist acts. Many acts of violence that weren't considered to be terrorist acts are now addressed under the counter terrorism laws.

This Convention was not signed by leading European countries such as France, Ireland and Italy initially, therefore, some writers argue that the Convention has a limited importance (Murphy, 1985, p.15; Bossong, 2013, p.26). These leading countries probably didn't want to confer their power to the Union and be treated similar to other new members of the Union in terms of security issues at first. In 1985 Belgium, in 1986 Italy, in 1987 France, in 1988
Greece, and in 1989 Ireland signed the Convention. Signed by every CoE member state except Andorra today, the Convention has served as the only common ground for the fight against terrorism for long years (Dumitriu, 2002, p.586-7). This Convention has also been a starting point for further comprehensive measures for counter terrorism (Mitsilegas, Monar, & Rees, 2003, p.20).

In 1979, Dublin Agreement was prepared for the CoE states to sign and ratify the European Convention on the Suppression of Terrorism; however a sufficient number of signatures for the Convention to enter into force was not submitted. This shows the need of intergovernmental cooperation and the dichotomy when it comes to conferral of power for such a sensitive issue (Argomaniz, 2011, p.5). The European countries are actually in need of a cooperation in security issues. However, unlike other policy areas such as climate change or education, or health, security issues necessitates the conferral of power to the EU institutions. As most of the states are reluctant about this conferral of power, security issues take more time and effort to become materialized.

Following the tragedy at the 1972 Summer Olympics in Munich, where terrorist groups from the Middle East realized their terrorist acts in the European continent, it became obvious that international terrorism has spread to Europe as well. David Casale (2008, p.50) argues that the establishment of the TREVI (Terrorisme, Radicalisme, Extrémismeet Violence Internationale) group in 1975 is the beginning of the fight against terrorism for Europe. Established by 12 members of CoE, TREVI aimed at increasing the cooperation and information sharing among the European police departments on issues regarding terrorism and related international offences. Apart from the structure and legal organization of the CoE, TREVI was established within the framework of European police cooperation which had an intergovernmental structure (Bossong, 2013, p.27).
In addition to the ministers of Justice and Home Affairs, high level police and intelligence officials are also involved in the system which serves the purposes of information sharing through an independent telex system, preparing a "black list" for terrorism, analyzing the foreign terror threats, and monitoring of certain terrorist groups (Cardona, 1992, p. 252; Bures, 2011, p. 60).

Upon the proposal of James Callaghan, the UK’s Minister of Foreign Affairs, at the Committee of Ministers held in Rome in December 1975, it was decided to establish a working group within the CoE for counter terrorism. This proposal was officialized in the meeting of Home Affairs Ministers at Luxembourg in 29 June 1976 (Bunyan, 1993). It can be said that before this proposal, the EU cooperation was limited to an intergovernmental one, which is between the individual member states. With this proposal, national parliaments alone had limited influence on the security issues.

Following a series of terrorist attacks in mid 1980s, the TREVI group deepened its cooperation and established a working group to reinforce the border controls of the CoE, coordinate the national visa policies, and prevent passport forgery (Zagari, 1992, p. 293; Bures, 2011, p. 60). TREVI was an effective platform for sharing best practices, intelligence, and establishing trust among police and intelligence officials. According to Monar (2007), the lack of a secretariat general that would establish an institutional memory, and adequate legal basis and centralized database for information sharing prevent the strengthening of cooperation.

As Lodge (1989, p. 42) argues that, at the turn of 1980s, many CoE members believed that TREVI was more efficient compared to Interpol in terms of information sharing and database security on international terrorism issues. Moreover, it was understood that as long as the issues mentioned by TREVI weren't discussed at the CoE, the completion of the Internal Market wouldn't be possible. In addition to the free movement of the capital, goods, services
and workers, the common European market to be established also provided the free movement of criminals and terrorist, as a negative side effect. As the Union provided free movement of people and services and with the Schengen agreement in 1985, people started to travel more often within the boundaries of the Union and it became easier to provide services in whichever member state. This inevitably led to a difficulty in maintaining security at the borders and within the Union.

In this regard, though not a direct counter terrorism measure, the Schengen System established in 1995 with the Schengen Agreement and the complementary Schengen Convention signed in 1985, has played a significant role in ensuring the standardization required for the fight against many organized crimes, including terrorism (Chalk, 1996, p. 125-6; Bures, 2011, p. 6). Schengen acquis was integrated to the EU with the Amsterdam treaty which entered into force in 1 May 1999. Schengen acquis consists of the Schengen Agreement, the Schengen Convention and decisions and rules adopted by the Schengen administrative board (Anderson, 2000, p.13).

In order to ensure a balance between freedom and security, Schengen has introduced measures for the strengthening of police cooperation, simplified asylum procedures, harmonized the rules on the entrance to the Union and reinforced judiciary cooperation (Chalk, 1996, p. 127). Moreover, contracting states have established the Schengen Information System (SIS) and today, this common database has become a critical element for the coordination of counter terrorism activities at border security (Zimmermann, 2006, p. 125).
2.2. *The Maastricht Treaty and the Establishment of the EU*

The Treaty Establishing the European Union was signed in Maastricht on 7 February 1992 by 12 European Economic Community (EEC) and entered into force on 1 November 1993. With this Treaty, the European Union was established with a three pillar structure. The title EEC was replaced with European Communities (EC) which was also the first pillar. The second and third pillars were Common Foreign and Security Policy; and Justice and Home Affairs, respectively.

At the beginning of the 1990s, it was argued that illegal migration, drug trafficking, and other organized crimes were closely linked with terrorism and that fighting these offences separately was not an effective method (Zimmermann, 2006, p. 126; Bures, 2011, p. 60). Within this perspective, the European institutions dealing with issues such as judiciary, customs, and migration were gathered within a new structure under the scope of the VI Section of the Maastricht Treaty. The VI Section was actually about the compensative measures to be taken when the border controls among the EU countries would be abolished. The unofficial organizations of the European Police Cooperation and TREVI were united and constituted the basis of the third pillar - Justice and Home Affairs. As Peter Chalk argues (2000, p. 175) the fact that counter terrorism competences were conferred to the third pillar indicates that terrorism is an issue to be discussed as an internal security issue, rather than a domestic issue of the member states. The Maastricht Treaty also authorized the establishment of Europol (Article K3). It can be said that with these significant policy developments, the EU experienced a supranationalization process, which paved the way for the Union to become a key actor on the international level on issues concerning counter terrorism.
The Maastricht Treaty has defined terrorism as a serious offence which has to be prevented and eliminated and has provided a legal basis for the establishment of a common policy on counter terrorism (Dumitru, 2002, p. 587):

- close cooperation among police departments, custom agencies and related authorities, including Europol
- close cooperation between the judicial and other authorities of the member states.
- the approximation of the rules regarding criminal justice system when deemed necessary.

The unofficial meeting held in La Gomera in 14 October 1995 was the only meeting at which terrorism was seriously addressed until 2001. The La Gomera Declaration, also released with the 1995 Madrid Summit, defined terrorism as a threat to democracy, human rights and economic and social development. The Declaration highlighted that none of the member states were excluded from this threat and that the development of a police and judicial cooperation was a must for an effective fight against terrorism (La Gomera Declaration, 1995 Madrid, European Council, Annex 3: Terrorism). The Declaration was no more than good intentions on cooperation in the area of fight against terrorism (den Boer & Wallace, 2000, p.24).

2.3. The Amsterdam Treaty and the Foundation of the Area of Freedom, Security and Justice in the EU

The Amsterdam Treaty amended the Treaty Establishing the European Union in 1997. With the perspective of an inclusion of Central and Eastern European countries, the Amsterdam Treaty aimed at reinforcing the institutional structure of the EU and widening the scope and function of joint decision making mechanisms, and stipulated the establishment of the Area of
Freedom, Security and Justice (AFSJ). Moreover, some issues of Justice and Home Affairs such as visa, migration, border controls and asylum were displaced from the third pillar to the first one. The name of the third pillar was changed to Police and Judicial Cooperation in Criminal Matters. However, the term "Justice and Home Affairs" continued to be used to define all the issues that used to be within the scope of the third pillar.

With the Amsterdam Treaty, the guiding role of the Council in the issues of the third pillar was maintained, and four different instruments were introduced: Common Position, Convention, Decision, and Framework Decision. According to the 2nd paragraph of Article K6, the "Common Position" was the instrument to be used to determine the common attitude of the EU on certain issues. To be used for the purpose of approximation of the laws and regulations of the Member States, the "Framework Decision" would be binding upon the Member States concerning the result to be achieved but would leave to the national authorities the choice of form and methods. The "Decisions" would be binding and the Council, acting by a qualified majority, would adopt measures necessary to implement those decisions at the level of the Union. The "Conventions" were introduced in the Maastricht Treaty also. However, the Amsterdam Treaty stipulates that the Conventions would be adopted within the Council by a majority of two thirds of the member states.

The Amsterdam Treaty establishes that while increasing security, member states have to better coordinate their justice and home affairs policies and give new mandates to the EU in some areas to ensure freedom and justice. However, the EU didn't make much progress in the coming years in terms of creating an area of EU freedom, security and justice and had to adopt a five-years-plan that stipulates some targets and deadlines for the implementation of several policies on migration, border controls, police coordination and asylum at the Tampere Summit in 1999.

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5The Amsterdam Treaty allows for a period of 5 years as of the entry into force of the Treaty, for the Council to take the measures that would establish the AFSJ.
Known as the Tampere Program (1999-2004), this plan aimed at establishing a common policy of migration and asylum policy; fighting against organized crimes at the Union level; and the strengthening of intelligence sharing at the international level in the AFSJ, within the framework of the principles of democracy and transparency. However, very few of these objectives were realized before 9/11 and even some of them were not put into practice until the deadline of 2004 (Bures, 2011, p. 62).

According to Bures, (op. cit.), terrorism was not a top issue on the European agenda when 9/11 happened and thus the EU didn't have a compatible common policy of counter terrorism. Europe had been subject to terrorism for long years at both the national (IRA, ETA, BrigateRosse, Rote ArmeeFraktion) and international level (Palestine Liberation Organization) however, counter terrorism was considered as an issue of internal security and a political will to establish a common counter terrorism policy was lacking.

Although significant instruments (such as the European Police Office authorized to fight against terrorism, agreements that simplified the extradition process and direct and regular connection among the heads of the European intelligence institutions) regarding counter terrorism were introduced in the EU before 9/11, most effective cooperations were on particular or bilateral issues, within the initiative of the related member states (Den Boer & Monar, 2002, p. 21). For instance, before 9/11 attacks, intelligence sharing and the exchange of personal information was weak among the member states. As the counter terrorism was inserted to the third pillar, the Union had to enhance its intelligence sharing and take new counter terrorism measures in this respect.

When the EU acquis of the third pillar is examined from the entry into force of the Maastricht Treaty in 1993 to 2000, it can be seen that not much initiative is taken in the area of counter terrorism. Especially in 1997 and 2000, no single legal instrument was developed. Moreover, the late ratification of the Europol Convention and some other counter terrorism measures,
and the reluctances of the member states apart from France and Spain to include terrorism in the Europol Convention indicate that counter terrorism was regarded as an internal issue even during the 1990s (Occhipinti, 2003).

It can be concluded that establishing a common counter terrorism policy wasn’t a major issue for the European countries in this period. That cooperations were mainly held at intergovernmental level is a clue that efforts to establish a common policy at the European level were insufficient. In this regard, it can be said that establishing a counter terrorism policy came to the agenda of the Council with 9/11 (Bures, 2011, p. 63; Casale, 2008, p. 50).

9/11 attacks had a significant influence on the European perspective on terrorism. Not having an effective and efficient practical counter terrorism policies before 9/11, the European Union set off on a quest of vision and strategy for counter terrorism right after the attacks, and took steps to develop new counter terrorism policies and measures. The Union started to consider terrorism as a severe threat for itself, and counter terrorism became one of the priority issues on the agenda. These measures included avoiding the financing of terrorism, strengthening police and law enforcement cooperation and intelligence sharing. In the post 9/11 process, most of the measures that could have been considered as "radical" were rapidly adopted with less objection. The fear caused by 9/11 attacks resulted in a rapid integration process in the EU in terms of security issues.
3. LEGAL AND INSTITUTIONAL INSTRUMENTS ESTABLISHED FOLLOWING 9/11

According to Hodge (1999, p. x), European security was being redefined with specific incidents. The incidents of 9/11 and following attacks that occurred in Madrid and London could be considered as turning points of the EU’s history of fight against terrorism. These attacks demonstrated to European policy-makers that we are facing a new style of terrorism. The difference between this new concept which is called mega-terrorism and the old style of terrorism is that it causes large-scale damage with one attack and acts through global terrorist networks. The scale and global characteristics of the threat has shown the essentialness of international cooperation. The fight against terrorism became a strategic priority for the EU and changed the stance of both the EU and member states towards the issue of terrorism after 9/11 (Keukeleire & MacNaughtan, 2008, p. 237).

Europe has become one of the main targets of terrorism especially as a result of the invasion of Afghanistan and Iraq that occurred after 9/11 (Nesser, 2006). The mega-terrorism that emerged in the European continent through the attacks against Madrid and London has caused both the requirement and opportunity of deepening the EU member states’ cooperation in counter terrorism. This is also important in terms of the credibility of the Union in its bid to ensure an area of security and prosperity (Monar, 2007, p. 283). As a result, the EU started to follow a policy that is becoming gradually active in counter terrorism, and thus the EU became involved in the search of a multi-directional solution ranging from information sharing between the police and intelligence units to judicial cooperation and the measures aimed at protecting the countries’ infrastructure and prevention of terrorism financing (Argomaniz, 2011, p. 2).
Although the 9/11 attacks were directed against the US only, the "West" perceived the attacks against themselves a whole. The UN Security Council defined these attacks as horrifying in its Resolution 1368 on September 12, underlined that international terrorism was a threat to global peace and security and called on unanimously all UN member countries to cooperate in the fight against terrorism (United Nations Security Council, 2001).

According to Kim Elling, counter terrorism policies established by the UN shaped the measures taken by the EU after 9/11 to a great extent. Firstly, the work conducted by the EU in order to prevent terrorism financing was following the agenda that was fully established under the UN’s umbrella. Secondly, counter terrorism strategies had an impact on the process of planning the EU’s development aid. In this respect, things became easier for the EU, which has established its counter terrorism policies on the basis of certain standards that are currently determined by the UN.

The counter terrorism discourse which has been dominating the world since 9/11 has been perceived both as an opportunity and an evidence of requirement of deepening. The EU Commission accelerated the steps towards a full-fledged counter terrorism policy. Only six days after the incidents of 9/11, it decided to accelerate the European Arrest Warrant and the Council Framework Decision on Combating Terrorism, on which preparations have been continuing since 1999, and establish the EU’s fundamental measures related with counter terrorism (Bossong, 2008, p. 34). As indicated by Monica den Boer (2003), the EU institutions such as Europol wanted to take the “window of opportunity” that emerged after 9/11, and thus pushed for more EU actions with regard to combating terrorism (Occhipinti, 2003, p. 149). Furthermore, Argomaniz (2009) says that the incidents of 9/11 allowed for steps to be taken in order to institutionalize the fight against terrorism; previously it was not possible to consider the EU as an actor with regard to combating terrorism.
The period of 2001 – 2005 is striking in terms of formation of the EU’s counter terrorism policies (Bossong, 2013, p. 126). One of the most important issues of this period is the establishment of closer cooperation between the Common Foreign and Security Policy (CFSP) and the Area of Freedom, Security and Justice (AFSJ) (European Council Secretariat General, 2011). The situation characteristic of pre-2001 is that the fight against terrorism was considered as a matter of internal security, but it was regarded as a possible threat also from outside the border after 9/11, and thus counter terrorism elements started to be incorporated into the CFSP. For example, the Conceptual Framework on the European Security and Defense Policy [ESDP] Dimension of the Fight against Terrorism dated 2004 envisaged it as a de facto rule that the issue of cooperation in the fight against terrorism should be incorporated into the Union’s agreements with third countries and decided that the issue is made a part of the EU’s Action Plans under its Neighborhood Policy.

As a result, the legal and institutional instruments to be analyzed in this chapter will be discussed in terms of those incorporated into two groups, namely, the Area of Freedom, Security and Justice and the Common Foreign and Security Policies.

### 3.1 The Legal Framework of Counter Terrorism

In this chapter, certain decisions, action plans, framework decisions, common position documents, strategy documents and regulations which were prepared after 9/11 and which constitute the legal framework of the EU’s current counter terrorism policies will be discussed in chronological order with regard to the differences between the AFSJ and the CFSP.

#### 3.1.1 Area of Freedom, Security and Justice

Based on Title V of the Treaty on the Functioning of the European Union, the Area of Freedom, Security and Justice has been developed with the Tampere (1999-2004), Hague
(2004-2009) and Stockholm (2010-2014) Programs. This is the main area, where the cooperation in counter terrorism has been developed (Rhinard, Boin, & Ekengren, 2007).

3.1.1.1 Action Plan on Combating Terrorism

The EU member states immediately reacted to the 9/11 attacks. The member states held a series of meetings with regard to the way of responding to the global terrorism threat and an Extraordinary European Council Meeting was convened just after these meetings on 21 September 2001. During the meeting, it was stated that terrorism was a real challenge to the world and to Europe and that the fight against terrorism would be a priority objective of the EU, and thus terrorism became for the first time the indisputable priority of the European Council meeting (Argomaniz, 2011, p. 19).

In the extraordinary meeting, based on the decisions that were taken during the Justice and Home Affairs Council on the previous day, the Action Plan entitled the “European Policy to Combat Terrorism” was adopted. Accordingly, the Council of Europe calls on that certain instruments and measures are taken in five required fields:

- Developing mutual assistance with the police in criminal matters;
- Establishing international legal instruments;
- Putting an end to the financing of terrorism;
- Increasing security standards at airports and on board aircraft;
- Ensuring coordination of the EU’s global actions (European Summit, 2001).

The most important aspect of this plan is that it subjects all member states to a single and long-term counter terrorism strategy and prevents term presidents from changing the EU’s counter terrorism agenda in line with their national interests (Bures, 2011, p. 64). According

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6 See Bossong (2013) pp. 45-9 for a detailed analysis of the Extraordinary Justice and Home Affairs meeting which was held on September 20, 2001.
7 SN 140/01
to Dorine Dubois’ (2002, p. 324) interpretation, this situation caused the incidents of 9/11 to turn the EU into a consistent actor in terms of the fight against terrorism. Some writers are of the opinion that the Action Plan is important only in the sense that it turned a green light to various initiatives which were included in the agenda by the EU Commission just after 9/11 (Bossong, 2008, p. 35). According to Argomaniz (2009, p. 154), the action plan constituted the embryo of the EU’s counter terrorism policies, ensured a framework for disorganized policies and served as an internal coordination mechanism allowing for targets, expiry dates and authorizations for applications.

The Action Plan has been revised, updated and expanded repeatedly. Just after the attacks that occurred in Madrid in March 2004, Ministers of Justice and Home Affairs prepared the Declaration on Combating Terrorism8 which was adopted by the Council on 25 March 2004. The revised version of the EU Action Plan on Combating Terrorism, which was prepared by taking into consideration the Action Plan of 2001 and this Declaration, was adopted by the Council on 18 June 2004. A detailed road map was prepared for the implementation of the Action Plan in October 2004.

In accordance with the Declaration on Combating Terrorism, the following strategic targets were set out with regard to the Action Plan:

- To deepen the international consensus and enhance international efforts to combat terrorism (support for the UN, especially for the role of Terrorism Prevention Unit of the UN’s Office on Drugs and Crime);
- To reduce the access of terrorists to financial and economic resources;
- To maximize the capacity within EU bodies and Member States to detect, investigate and prosecute terrorists and to prevent terrorist attacks;

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8Doc 7906/04
• To protect the security of international transport and ensure effective systems of border control;
• To enhance the capability of the European Union and of Member States to deal with the consequences of a terrorist attack;
• To address the factors which contribute to support for, and recruitment into, terrorism;
• To target actions under EU foreign relations towards priority third countries where counter terrorist capacity or commitment to combating terrorism needs to be enhanced (European Council, 2004, p. 4).

Within the context of these objectives, nearly 200 actions were set out to be realized by the EU institutions and member states. The Position of a Counter Terrorism Coordinator (CTC) is the competent body authorized to follow-up the implementation of Action Plan. Covered by the “3.2.2.1 Position of a Counter-Terrorism Coordinator” headline, this position is responsible for monitoring the work conducted in the EU member states within the framework of the Action Plan and regularly reporting to the Council.

3.1.1.2 Council Framework Decision on Combating Terrorism

The Council Framework Decision on Combating Terrorism 2002/475/JHA is one of the most important legal instruments which have been established with regard to the fight against terrorism⁹. This decision was made by a meeting of the Justice and Home Affairs Council on 6-7 December 2001 and adopted by the Council on 13 June 2002. The Framework Decision aims at further enhancing the legislative harmonization level of member countries and establishing a uniform legal framework in the course of prosecuting the terrorist activities. In

⁹OJ L 164, 22.06.2002
2002, only six out of 15 member countries\(^{10}\) had provisions regarding the terrorist activities in their criminal law; other states were penalizing terrorist activities as a common offence (European Commission, 2001, p. 7). In addition to these legal differences, some contracts related with terrorism were not adopted by certain member countries, and thus the EU’s intervention was legitimized within the context of the subsidiary principle. Furthermore, the Framework Decision contributed to the EU’s fulfillment of its responsibility arising from the UN Security Council Resolution No. 1373. (Dumitriu, 2002, p. 590-1).

As there cannot be any undefined crime, it is legally important to make a definition of “terrorism.” The difficulty of making a common definition of terrorism reveals itself in the history of European counter terrorism policies as well. The old EU documents and *acquis* make attributions to terrorism without any legal definition of terrorism (legal definitions appear in the Treaties and are binding). Following the incidents of 9/11, it became indispensable to agree on a definition of terrorism, and thus a comprehensive and harmonized definition of terrorism was incorporated into the *acquis* in accordance with the Framework Decision on Combating Terrorism. Accordingly, “seriously intimidating a population or unduly compelling a government or international organization to perform or abstain from performing any act or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization shall be deemed to be terrorist offences.” This definition is the most comprehensive one in the EU acquis.

The minimum criteria defining the elements constituting terrorist offences have been set out through this Framework Decision (Den Boer, 2003, p. 5). More importantly, the EU has become the first international actor agreeing upon a common definition of terrorism (Argomaniz, 2009, p. 155).

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\(^{10}\)France, Germany, Italy, Portugal, Spain and Britain
The Framework Decision begins with a preface that defines terrorism as the most serious violation of universal values (respect for human dignity, freedom, equality, solidarity, human rights and basic freedoms) and principles (rule of law and democracy) underlying the EU. Moreover, in parallel to the La Gomera Declaration that was adopted by the Council in 1995, it defines terrorism as a threat to democracy, human rights, as well as economic and social development. Within this framework, the post-9/11 terrorism threat is perceived as a threat to political, constitutional and socio-economic fundamentals of the EU and its member states. This is evident in its definition of terrorism in terms of its “objective to seriously stabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization” (Monar, 2007, p. 294).

The penalization of terrorist activities that were previously mentioned in 12 different international agreements and a new category of terrorist activities under the “activities related with terrorist groups” were realized in a single document for the first time through this Framework Decision.

The Framework Decision covers the terrorist activities aiming at the EU institutions and member countries and also encompasses the terrorist activities committed by an EU citizen or resident or on behalf of a legal person established in the EU, targeting at third countries or international organizations. The Framework Decision makes no discrimination between international and national terrorism by definition and indicates that such discrimination shall be taken into consideration only with regard to the use of judicial power. These attacks showed that the ongoing violence in the Middle East for centuries can turn to West and become a serious threat for the Western values and life style. Though 9/11 attacks didn't have a direct bond with the EU, it was considered as a threat automatically as the EU positioned itself as the guardian and follower of the European values as a whole.
According to the Framework Decision, there are three types of terrorist offences: 1) terrorist offences (Article 1); 2) terrorist offences related to a terrorist group (Article 2); and 3) offences linked to terrorist activities (Article 3). According to Article 4, inciting or aiding or abetting an offence referred to in above-mentioned articles shall be made punishable by the international law.

The offences indicated in Article 1 underlie all the other offences covered by the Framework Decision; a link to offences covered by Article 1 is required to conclude that the offences indicated in Article 2, 3 and 4 are constituted. According to Article 1, two objective elements (defined as offences under national law and constitution of current or potential consequences) and a subjective element (seriously intimidating a population or unduly compelling a government or international organization to perform or abstain from performing any act or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization) shall be deemed to be terrorist offences.

Shortly, judicial authorities must answer the following three questions in order to be able to characterize an activity as a terrorist offence: 1) Is the mentioned activity defined as an offence in national law?; 2) Is the mentioned activity seriously damaging a country or an international organization by its very nature or context?; 3) Is the activity committed in order to seriously harm a country or an international organization? (Dumitriu, 2002, p. 592).

Contrary to other common offences, the “intent” of activity takes place in the center of the Decision’s definition of terrorism. The originality of this definition is based on the fact that it considers the existence of a final political objective in order to discriminate the terrorism offence from other offences (Casale, 2008, p. 61). However, the national laws were defining the terrorism offence through activities constituting a crime, regardless of target of the activity.
until then (Saul, 2003, p. 323). With the above mentioned amendments, terrorism attacks are now being addressed in a more exclusive and broader sense.

### 3.1.1.3 Framework Decision on the European Arrest Warrant

The European Warrant issue has been on the EU’s agenda as an element which is required for the establishment of the Area of Freedom, Security and Justice, but it could have been implemented thanks to the “window of opportunity” that was opened during the counter terrorism process that started after 9/11 (Den Boer, 2003, p. 188). The Heads of Member States and Governments, the President of the European Parliament and the High Representative for the Common Foreign and Security Policy issued a declaration on 14 September 2001, condemning the incidents of 9/11, announcing the EU’s determination to combat terrorism and undertaking an accelerated implementation of a genuine European judicial area, creation of a European warrant for arrest and extradition and the mutual recognition of legal decisions and verdicts (EU Joint Declaration: 9/11 attacks in the US, 2001).

The Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States 2002/584/JHA\(^{11}\) was adopted on 13 June 2002 and replaced the official extradition procedures then available between the member states.

“The Framework Decision on European Arrest Warrant is a legal instrument which is considered a milestone in terms of the free movement of interrogation, prosecution and verdicts within the framework of mutual recognition in judicial cooperation in criminal matters” (Yakut, 2010, p. 143). The member countries which are unable to reach an agreement regarding the harmonization of appropriate national measures about cross-border

\(^{11}\)OJ L 190, 18.07.2002
crime and terrorism threat decided to turn the principle of mutual recognition into the milestone of judicial cooperation (Bures, 2011, p. 152). The mutual recognition is the acceptance of a ruling made by a member state as exercisable in another member state. The European Arrest Warrant (EAW) is a noteworthy step in the field of cooperation in combating terrorism which has been progressing in a relatively less official way by then (Plachta, 2003). In this respect, the EAW is one of the best-known measures which have been at the top of the agenda most of the time in terms of the fight against terrorism (MacKenzie&Zwolski, 2013, p. 231).

Article 1 of the Framework Decision defines the EAW as follows: “The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order”.

The process of extradition has been a long, inconvenient and slow process between the member states prior to the EAW. For example, RachidRamda, the suspect of bombed attacks that occurred in Paris in 1995, was extradited from Britain to France in December 2005, following a process of 10 years (de Vries, 2006). Nowadays, the extradition takes even shorter than two months thanks to the EAW; the process is completed in 14 to 17 days in case of the person’s consent and in a maximum of 48 days without his/her consent (European Commission, 2011, p. 3). For example, Isaac Hamdi, one of the suspects of the bomb attacks that occurred in London in 2005, was extradited from Italy to Britain in 42 days (de Vries, 2006).

In accordance with this Framework Decision, the principle of extraditability for the member countries that are protected by Article 6 of the European Convention on Extradition ceased to be exercisable in principle.
In addition, the requirement of a constitution of crime on the basis of acts which are subject to the extradition request both by the law of the issuing member state and the requested member state which is covered by Article 2 of the European Convention on Extradition has become void. In terms of 32 different offences covered by Article 2 of the Framework Decision\textsuperscript{12}, the offences, if they are defined as punishable by the law of the issuing member state for a maximum period of at least three years, shall give rise to surrender.

Another issue which should be mentioned regarding this Framework Decision is that the requirement for the Justice Ministry’s consent on extradition has been removed, and thus the procedure has been depoliticized. As a result, the extradition issue has become an ordinary legal procedure occurring between officials of judiciaries of two countries in horizontal cooperation.

\textbf{3.1.1.4 Counter Terrorism Strategy}

An Al-Qaeda-linked attack occurred in Madrid on 11 March 2004 and Europe experienced its own 9/11 in a sense. According to Argomaniz (2010, p. 299), the attack in Madrid showed the lack of effective incorporation of counter terrorism policies into the laws of member states. The fact that a huge attack has not occurred in Europe until then camouflaged the deficiencies with regard to implementation.

\textsuperscript{12} Participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud, including that affecting the financial interests of the European Communities, laundering of the proceeds of crime, counterfeiting currency, including of the euro, computer-related crime, illicit trafficking in endangered animal species and in endangered plant species and varieties, facilitation of unauthorized entry and residence, murder, grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, organized or armed robbery, illicit trafficking in cultural goods, including antiques and works of art, swindling, racketeering and extortion, counterfeiting and piracy of products, forgery of administrative documents and trafficking therein, forgery of means of payment, illicit trafficking in hormonal substances and other growth promoters, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, arson, crimes within the jurisdiction of the International Criminal Court, unlawful seizure of aircraft/ships, sabotage.
Immediately after the attacks in Madrid, Ministers of Justice and Home Affairs prepared the Declaration on Combating Terrorism\(^\text{13}\) which was adopted by the Council on 25 March 2004. The Declaration makes attributions to attacks in Madrid, indicates that full implementation of measures to combat terrorism is a matter of urgency and underlines that the effective combating of terrorism requires that measures adopted by the Council be effectively and comprehensively implemented by Member States. The Declaration agrees to the appointment of a Counter-Terrorism Coordinator (CTC) by Javier Solana, then High Representative for the Common Foreign and Security Policy, and indicates that necessary measures are taken in order to provide assistance to victims of terrorism. Moreover, the document envisages the provision of solidarity in combating terrorism to be implemented later by the Treaty of Lisbon\(^\text{14}\) (European Council, 2004).

Parallel to the Council Decision, the Commission indicated that the EU owns sufficient legal instruments and the member states’ incapacity of incorporating these instruments into the national law is unacceptable (European Commission, 2004). In order to remedy such deficiencies, the reviewed EU Action Plan to Combat Terrorism was adopted by the Council on 18 June 2004.

The attacks that occurred in London in July 2005 following the incidents in Madrid have again underlined the urgency of taking measures. During the extraordinary meeting of Ministers of Home Affairs that was held following the attacks, it was decided that a series of measures which have been previously adopted are immediately implemented: setting out the European Evidence Warrant, strengthening the Schengen and visa information system, launching biometric passports, preventing the financing of terrorism, cutting the human

\(^{13}\)Doc 7906/04

\(^{14}\)The provision of solidarity is analyzed in the chapter covering the developments following the Treaty of Lisbon.
resources of terrorism and preventing radicalization, as well as boosting the controls on trading, storage and transportation of explosives. The most important consequence of these two attacks is that they have caused establishment of the Counter-Terrorism Strategy.

As mentioned above, the Ministers of Justice and Home Affairs adopted the new European Union Counter-Terrorism Strategy based on four basic principles, namely, Protect, Prevent, Pursue, and Respond, in December 2005. The strategy aims at increasing cooperation both internationally and on the level of the member states, uniting various policy areas from these four branches. Prevent aims at removing the causes of terrorism, preventing radicalization both in Europe and throughout the world and hindering people’s tendency towards terrorism. The second objective, namely, Protect, is related with finding out and strengthening Europe’s weaknesses and protecting its citizens and infrastructure from possible damages to be caused by terrorist attacks. Pursue, the third objective, points to such goals as following up the terrorists within and outside the EU borders, interrupting the travel, communication and plans of people who are engaged in terrorism, weakening terrorist groups’ support network, cutting their financial resources, blocking their access to attack materials and bringing them to court. The fourth objective, namely, Respond, consists of such elements as acting with the spirit of solidarity, decreasing the impacts of terrorist attacks, coordinating the actions following an attack and fulfilling the victims’ needs. The Strategy indicates that the member states are mainly responsible for combating terrorism and that the EU could support the fight against terrorism by 1) strengthening national capacities; 2) facilitating cooperation throughout Europe; 3) developing the collective capacity; and 4) encouraging the international cooperation.

__Doc 14469/4/05__
The EU Counter Terrorism Strategy consists of approximately 200 counter terrorism measures established on the basis of four objectives. A significant step has been taken through this strategy in order to set out an effective and consistent counter terrorism policy also comprehensible for the public (Den Boer, 2003, p. 139).

Prevent

Prevention is one of the most important components of the Strategy and an objective reflecting the EU’s point of view also regarding combating terrorism. The fundamental actions set out with regard to eradicating the human resources of terrorism are as follows:

- Develop common approaches to spot and tackle problem behavior, in particular the misuse of the internet;
- Address incitement and recruitment in particular in key environments, for example prisons, places of religious training or worship, notably by implementing legislation making these behaviors offences;
- Develop a media and communication strategy to explain better EU policies;
- Promote good governance, democracy, education and economic prosperity through Community and Member State assistance programs;
- Develop inter-cultural dialogue within and outside the Union;
- Develop a non-emotive lexicon for discussing the issues;
- Continue research, share analysis and experiences in order to further understanding of the issues and develop policy responses.

Protect

The main priorities set out in terms of this objective are as follows:
• Deliver improvements to the security of EU passports through the introduction of biometrics;
• Establish the Visa Information System (VIS) and the second generation Schengen Information System (SISII);
• Develop through Frontex effective risk analysis of the EU’s external border;
• Implement agreed common standards on civil aviation, port and maritime security;
• Agree a European program for critical infrastructure protection;
• Make best use of EU and Community level research activity.

Pursue

• Strengthen national capabilities to combat terrorism, in light of the recommendations of the peer evaluation of national counter terrorism arrangements;
• Make full use of Europol and Eurojust to facilitate police and judicial cooperation, and continue to integrate the SITCEN’s\(^{16}\) threat assessments into CT policy making;
• Further develop mutual recognition of judicial decisions, including by adopting the European Evidence Warrant;
• Ensure full implementation and evaluation of existing legislation as well as the ratification of relevant international Treaties and Conventions;
• Develop the principle of availability of law enforcement information;
• Tackle terrorist access to weapons and explosives, ranging from components for homemade explosive to chemical, biological, radiological and nuclear material;

\(^{16}\)SITCEN, the JointSituationCenter, is the European Union’s intelligence analysis unit. The institution, which was renamed as INTCEN in 2012, is discussed in detail in chapter entitled “3.2.2.2 European Union Intelligence Analysis Center.”
Tackle terrorist financing, including by implementing agreed legislation, working to prevent the abuse of the non-profit sector, and reviewing the EU’s overall performance in this area,

Deliver technical assistance to enhance the capability of priority third countries.

Respond

Agree EU Crisis Coordination Agreements and the supporting operational procedures for them;

Revise the legislation on the Community Mechanism for civil protection;

Develop risk assessment as a tool to inform the building of capabilities to respond to an attack;

Improve coordination with international organizations on managing the response to terrorist attacks and other disasters;

Share best practice and develop approaches for the provision of assistance to victims of terrorism and their families.

Following the adoption of the Strategy, the Action Plan was turned into its annex. The last update on the Action Plan was made in 2007.

3.1.1.5 Strategy for Combating Radicalization and Recruitment to Terrorism

This strategy is the milestone of “prevention” element of the EU counter terrorism strategy (European Union Council, 2011, p. 3). In particular, after it has been found out that the perpetrators of the attacks in Madrid and London were Muslims living in Europe, The European Union Strategy for Combating Radicalization and Recruitment to Terrorism17 was adopted by the Council on 24 November 2005 in order to disrupt the activities of individuals

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17Doc 14781/1/05
and networks that draw people into terrorism, ensure that voices of mainstream opinion prevail over those of extremism and promote security, justice, democracy and opportunities for all people living in Europe more vigorously (European Union Council, 2005; de Kerchove & van ReedtDortland, 2008).

An Action Plan aimed at achieving the mentioned goals has been prepared just after the strategy to be controlled by the Counter-Terrorism Coordinator\textsuperscript{18}.

Within the context of this Strategy, the Radicalization Awareness Network (RAN) has been established by the EU Commission. This initiative brings together key actors such as social workers, religious leaders, young leaders, police and researchers working with vulnerable groups in the fight against radicalization and aims at ensuring the sharing of knowledge and experience in various fields, including the confirmation of good practices throughout the EU, internet and social media.

A great many factors such as the turmoil in the Middle East, the attack carried out by Breivik in Norway and the rise of far right in Europe required the expansion of context of the Strategy specifically focusing on the “radical interpretation of political Islam.” It was confirmed in a meeting of the Justice and Home Affairs Council in Luxembourg on 6-7 June 2013 that the Strategy for Combating Radicalization and Recruitment to Terrorism must be updated, as it was not responding to current problems sufficiently (Justice and Home Affairs Council, 2013).

3.1.1.6 Internal Security Strategy

The Stockholm Program, namely, the continuation of its preceding Tampere and Hague programs, sets out the EU’s priorities in its Area of Freedom, Security and Justice for the

\textsuperscript{18} Duties and authorities of the Counter-Terrorism Coordinator are discussed under the “3.2.2.1 Counter-Terrorism Coordinator” chapter in detail.
period of 2010-2014. As advised in this program, the EU Internal Security Strategy (ISS) has been developed by the EU. The Strategy which was adopted in a European Summit on 25-26 March 2010 aims at responding to risks related to main crimes and threats facing Europe such as terrorism, serious and organized crime, drug trafficking, cybercrime, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption, trafficking in arms and cross-border crime through the integration of current strategy and approaches without creating new authorities.

The Strategy envisages the creation of a European Security Model in order to ensure internal security. This model sets forth creating balance between security, freedom and privacy, improving cooperation and solidarity between member states, involving all EU institutions and also all political, economic and social actors with a role to play in public protection, addressing the causes of insecurity and not just the effects, prioritizing prevention and anticipation and recognizing the interdependence between internal and external security (EU Justice and Home Affairs Council, 2010).

The communication entitled the EU Internal Security Strategy in Action\textsuperscript{19} was adopted by the Commission in November 2010 in order to implement this strategy. This document consists of 41 actions aimed at responding to the most urgent security problems faced by the EU (EU Commission, 2010). These actions serve to five strategic objectives:

- Disrupt international criminal networks;
- Prevent terrorism and address radicalization and recruitment;
- Raise levels of security for citizens and businesses in cyberspace;
- Strengthen security through border management;

\textsuperscript{19}COM (2010) 673 final
• Increase Europe’s resilience to crises and disasters.

The Commission has suggested that the home affairs budget is increased by 40% to reach 10.9 billion Euros for the years 2014-2020 and an internal security fund is set up to promote the implementation of the internal security strategy.

The budget was increased by 30% and the home affairs budget totaled 9.26 billion Euros and 3.764 billion Euros were reserved for the internal security fund.

3.1.2 Common Foreign Affairs and Security Policy

Terrorism has become one of the priorities of the internal security field following the 9/11 attacks and also gained an important policy in the EU’s Common Foreign Affairs and Security Policy. During the extraordinary summit that was held on 21 September 2001, it was stated that the EU would adopt a multifaceted approached in coordination with all its policies, including the CFSP and the European Defense and Security Policy (European Summit, 2001).

Obviously, internal security issues also consist of an external dimension. The external dimension of the Area of Freedom, Security and Justice appears in civilian missions of the CFSP. The EU Border Assistance Mission for Moldova and Ukraine in terms of border security; rule of law missions in Kosovo, Bosnia-Herzegovina and Afghanistan and the security sector reform assistance conducted in Kosovo, Bosnia-Herzegovina and Guinea Bissau are examples to this. However, these issues are outside the scope of this study. This chapter will deal with legal instruments developed under the CFSP and serving for the AFSC.

3.1.2.1 Document of Common Position on Combating Terrorism

Based on a decision of the extraordinary European Summit that was held on 21 September 2001, indicating that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union, and the UN Security
Council resolution numbered 1373\textsuperscript{20} which was adopted on 28 September 2001, the Council Common Position on combating terrorism\textsuperscript{21} 2001/930/CFSP was published on 27 September 2001.

This document underlines the EU’s determination to combat terrorism and requests that the member states become parties to the relevant international conventions relating to terrorism (Article 14 – 17). The document covers such measures as freezing the financial assets of persons and entities associated with terrorism (Article 2), making not available the economic resources or financial services for the benefit of such persons and entities (Article 3), suppress any form of support, active or passive, to entities or persons involved in terrorist acts (Article 4), provide exchange of information and cooperation between member states and third states (Article 5, 9, 11, 12 & 13), denying safe haven to those who finance, plan, support or commit terrorist acts or provide safe havens (Article 6); preventing persons who finance, plan, facilitate or commit terrorist acts from using the territories of the member states of the EU for those purposes against member states or third states or their citizens (Article 7), bringing to justice persons who participate in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts, establishing such terrorist acts as serious criminal offences in laws and regulations of member states and ensuring that punishment duly reflects the seriousness of such terrorist acts (Article 8), preventing the movement of terrorists or terrorist groups by effective border controls (Article 10).

\textsuperscript{20}“The mentioned decision encompasses such issues as eradicating the financial resources of terrorism, preventing any acts of terrorism on each level, including the preparation stage, ensuring intensive cooperation between the member states for the purpose of combating terrorism, bringing to justice any person involved in terrorist acts within the context of serious criminal offences, ensuring that the refugee status is not granted to terrorists and also the immediate participation of UN member states into all agreements envisaging international cooperation for the fight against terrorism”. (Republic of Turkey, Ministry of Foreign Affairs, 2011)

\textsuperscript{21}OJ L 344, 28.12.2001
3.1.2.2 Common Position on the Application of Specific Measures to Combat Terrorism

Just after the Document on Common Position on Combating Terrorism, the EU Council published the Common Position on the Application of Specific Measures to Combat Terrorism\textsuperscript{22} 2001/931/CFSP on 29 December 2001 again on the same grounds.

The annex to this document covers a list of persons, groups and formations involved in terrorist acts, uses the Council Framework Decision on Combating Terrorism as the base for a definition of terrorism and imposes an obligation on the EU to freeze the funds and economic resources of persons, groups and entities involved in following offences (Article 1, 2 & 3):

1) Seriously intimidating a population, or;

2) Unduly compelling a government or an international organization to perform or abstain from performing any act, or;

3) Seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization;
   a) Attacks upon a person’s life which may cause death;
   b) Attacks upon the physical integrity of a person;
   c) Kidnapping or hostage taking;
   d) Causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
   e) Seizure of aircraft, ships or other means of public or goods transport;

\textsuperscript{22} OJ L 344, 28.12.2001
f) Manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

g) Release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;

h) Interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

i) Threatening to commit any of the acts listed above;

j) Directing a terrorist group;

k) Participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.

The list in the Annex is drawn on the basis of precise information by competent judiciary authorities in the EU member states, and the persons, groups and entities identified by the UN Security Council as being related to terrorism and against whom it has ordered sanctions may be included in the list (Article 1.4). The aim of the list and common position document is to ensure that terrorist organizations are made financially non-functional (Özcan&Yardımcı, 2006, p. 223).

In order to keep the list updated, it is prescribed that the list shall be reviewed at least once every six months (Article 1.6). The last update was made with a Council decision23 2013/395/CFSP on 25 July 2013. The final list of terrorist persons and entities was prepared in accordance with this decision and presented in ANNEX-2.

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23 OJ L 201, 26.7.2013
As the Common Position is involved in the CSDP, necessary arrangements aimed at prevention of financing of terrorism were made in the Community field through the Council Regulation on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (EC) No 2580/2001\(^{24}\) by the Council on 27 December 2001 (European Union Council, 2001).

The annex in the regulation also encompasses a list of national authorities authorized to give information on persons and entities involved in terrorist acts and freeze the accounts of such real and legal persons. Furthermore, the Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP\(^{25}\) 2003/48/JHA was adopted on 19 December 2002\(^{26}\). This decision sets out that the member states shall cooperate with Eurojust and Europol for the implementation of Article 4 which provides that the member states shall provide each other with assistance in the most comprehensive way possible in the fight against terrorism and prioritize the legal assistance or mutual recognition requests from other member states with regard to terrorism.

The Council made a new decision on 20 September 2005 on the subsidiary principle on the grounds that the objectives indicated in this Council Decision are not sufficiently implemented by individual efforts of the member states and the work on the Community level would become more successful. The Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences\(^{27}\) replaced the decision 2003/48/JHA which was adopted in 2002.

\(^{24}\)OJ L 344, 28.12.2001  
\(^{25}\)OJ L 16, 22.01.2003  
\(^{26}\)Although the decision was made in 2002, it entered into force on 23 January 2003.  
\(^{27}\)OJ L 253, 29.09. 2005
3.1.2.3 European Security Strategy

A Secure Europe in a Better World - European Security Strategy (ESS), the first security strategy to have been accepted within the context of the EU, was adopted during the Brussels Summit on 12 December 2003. As part of this strategy which is also called the “Solana Document” after the then High Representative for the CFSP Javier Solana, in reference to the fact that the focus of security shifted from the nation state to the individual and society in the post-Westphalia era (Buzan, Wæver, & de Wilde, 1998, p. 23-4), the EU member states indicate that they are not likely to face a large-scaled conventional attack against them. Instead, the fundamental threats are defined as terrorism, proliferation of weapons of mass destruction, regional conflicts, the failed states and organized crime. At this point, what is striking is that the document underlines that the problems caused by four threats other than terrorism result in terrorism.

The document indicates that terrorism undermines the openness and tolerance of societies in Europe, European countries are both a target and a base for such terrorism, and thus a common European position against terrorism is fundamental. Underlining that in case that terrorist groups acquire weapons of mass destruction, a small group would be able to inflict damage on a scale previously possible only for states and armies, the document stresses that the regional conflicts may cause the failed states, and thus uncontrolled territories, where organized crimes are likely to develop. Moreover, the document concludes that the organized crime, an internal threat, have links to terrorism by ensuring money, weapons and human resources.

The European Security Strategy specifies that the EU has three strategic objectives:

- Addressing the threats;
- Building Security in Neighbors;
• Upholding an international order based on effective multilateralism.

The document also underlines that better coordination between external action and Justice and Home Affairs policies is crucial in the fight both against terrorism and organized crime.

3.2 Institutional Framework of Combating Terrorism

The most important institutions of the EU in terms of combating terrorism on an operational level are Europol for the police cooperation and also Eurojust for judicial cooperation. These institutions are authorized to combat terrorism as a priority. Secondarily, the institutions mainly concerned with migration, refuge and visa issues such as the Schengen Information System and Eurodac play a role in counter terrorism policies. As underlined by Boswell (2007, p. 590), these institutions’ authorities and the data collected by them following the 9/11 attacks started to be used in accordance with the EU’s counter terrorism strategy. In addition to these institutions, Frontex and the Position of a European Counter-Terrorism Coordinator which were established directly after 9/11 are other important shareholders in the EU’s counter-terrorism structure. Although established before 9/11, the European Union Intelligence Analysis Centre (EU INTCEN), formerly named the European Union Situation Center (EU SITCEN), which started to carry out activities aimed at countering terrorism are other formations to be discussed within an institutional framework.

3.2.1 Area of Freedom, Security and Justice

3.2.1.1 Europol

The authority to establish the European Police Office (Europol) has been given by the Maastricht Treaty. According to Article K1 of the Treaty, this international police
organization aims at establishing cooperation between police forces of the EU member states and effectively fighting serious organized crimes.

The idea of establishing police cooperation throughout Europe has been suggested in order to fight intensive actions conducted by anarchists in the later 19th century. After the Austrian Empress Elisabeth became a victim of assassination in 1889, police administrators from various countries convened a secret international conference in Rome28. Although the efforts aimed at institutionalizing similar cooperation initiatives were conducted under the leadership of the French in 1914, such efforts were hindered by World War I. The International Criminal Police Commission (ICPC) was established with the participation of 34 countries in Vienna following the war, and thus the first international organization aimed at coordinating internal security was set up in 1923. The work conducted by this organization, namely, the predecessor of Interpol, was interrupted due to World War II and the organization reinitiated its activities in France in 1946. This organization was named Interpol in 1956, becoming a means of intelligence sharing for criminal investigations in Europe (Occhipinti, 2003, p. 29). Afterwards, the TREVI which was established in 1975 for the fight against terrorism ensured that police cooperation in Europe was developed regionally.

As the Federal Republic of Germany requested further cooperation in international security in the early 1990s (ibid, p. 34), the frameworks of informal organizations, namely, the European Police Cooperation and the TREVI, were united in accordance with the Treaty Establishing the European Union and the process of setting up Europol started. In 1994, Europol began its activities with limited authorities in order to follow illegal drug trafficking (Argomaniz, 2010, p. 5).

Reference to terrorism has not been covered by the first drafts of the Europol Agreement (though it was covered by the Maastricht Treaty). The fight against terrorism was involved in the Europol’s tasks as a result of Spain’s insistence. The main reason of disagreement between the member states on the issue was that an agreement on the definition of terrorism did not materialize (Kaunert, 2010, p. 654). The member states agreed upon the requirement for incorporating the fight against terrorism into the scope of authority of Europol which aimed at fighting international organized crimes in 1995 (Casale, 2008, p. 55). Europol is an international organization which has been established with an agreement in accordance with international law. As a result, it could come into operation fully in 1999, when the Europol Agreement that was prepared in 1995 was completely approved by all of the member states. The establishment of Europol points to a change in the direction of supranationalism as part of the EU’s intergovernmental approach towards international police (Occhipinti, 2003, p. 1-2). Europol is mainly responsible for providing intelligence and ensuring the sharing of information between police forces of the member states. Europol combats such offences as drug trafficking, human and vehicle trafficking, child pornography, forged money, money laundering and terrorism. The priority is attached to financial and cyber crimes instead of the persons involved in financial and cyber crimes in cases of a relevant offence affecting two or more member countries and the presence of an organized crime structure.

The 9/11 attacks affected the EU’s approach towards combating terrorism and also the functioning of Europol. The Counter Terrorism Task Force (CTTF) was set up in November 2001. The TMGG consists of terrorism experts working in the police and intelligence units of member countries. When its term of authorization ended in 2003, the CTTF was integrated into Europol’s Serious Crime Department. But it was restructured within Europol’s
organization as a separate unit following the attacks in Madrid that occurred in 2004 (Bures, 2008, p. 502). The CTTF is responsible for collecting and analyzing the intelligence that is compiled by member states in the form of an Analysis Work File (AWF) with regard to the terrorism threat in Europe. The AWF is an information processing system which has been set up in order to collect, process and analyze tangible data, intelligence data and sensitive personal data from Europol in a certain sphere of crime. Europol’s current AWF files related with terrorism consist of “Hydra” concerning Islamic terrorism and also “Dolphin” encompassing all other terrorist groups and actions within the EU without any Islamic connections.

In addition to the Counter Terrorism Task Force, Europol has established a great many specialized programs. Among them is the Counter Terrorism Program which has been set up in order to better coordinate counter terrorism activities such as information gathering and threat assessment. This program encompasses such elements as following the developments in issues covered by Europol’s scope of authority, analyze the collected intelligence in terms of strategic and operational aspects, conducting threat and risk analyses and carrying out work to raise awareness in accordance with results. Furthermore, Europol is entitled to support the operational interrogations conducted by member states through the Counter Proliferation Program dealing with illicit trade and trafficking of nuclear and radiological materials, weapons, ammunition, explosives and weapons of mass destruction and also the Networking Program aimed at allowing the experts working in counter terrorism and prevention of proliferation of weapons units of the member states, third countries and international organizations to establish communication and relationships regularly. The Preparedness Program has been set up in order to respond to terrorist activities that are likely to occur in the EU in a multilateral way. Finally, the Training and Education program is available to ensure
that police forces and intelligence officers could work together in a multicultural atmosphere (Europol, 2006).

Within the context of its coordination task, Europol also makes common interrogation teams available. The Europol Operational Center was established in order to ensure 24-hour exchange of information following the 9/11 attacks. Moreover, Europol publishes the Terrorism Situation and Trend Report (TE-SAT) annually.

Europol has been authorized to request the initiation of interrogation by police forces of member states and also share information with the FBI, Interpol and police units of member states.

Despite all of these counter terrorism instruments, Europol is considered as a weak actor in the fight against terrorism (Dubois, 2000; Zimmermann, 2006; Bures, 2008). The weakest side of Europol derives from problems in the flow of information from the member states’ intelligence services. Europol is able to fulfill its tasks within its authority only in case the member state ensures the required information. In practice, a member state acts ungenerously in terms of sharing of information and this situation causes erosion with regard to effectiveness of the EU’s police cooperation. It could be said that the member states do not have confidence in the effectiveness of Europol and police cooperation to a great extent (Casale, 2008, p. 57).

Such a lack of cooperation is evident not only on the EU level, but also in bilateral relations between the member states. For example, Spanish police officers refused to share information on the types of explosives used with French authorities following the attacks that occurred in Madrid (Kupchinsky, 2004). They were reluctant to share information because they thought sensitive information would be revealed to all 25 member states. France proposed that only
the five leading member states (France, the UK, Germany, Spain and Italy) should make a deeper cooperation on intelligence. The establishment of a new coordination mechanism that would enable operational information exchange was discussed in the Union after the Madrid attacks. Similarly, it was revealed that a Moroccan citizen, who was detained by the Italian police on grounds of his relation with the Al-Qaeda cell in Milan in April 2003, was interrogated by the German police a couple of weeks after the 9/11 attacks; but the Germans failed to inform the European police organization on the issue and also gave up following the suspect (Keohane, 2005, p. 1-2). To sum up, failure to conduct effective European police cooperation derives from the member states’ reluctance (Casale, 2008, p. 57).

3.2.1.2 Eurojust

Eurojust is one of the fundamental institutions with regard to judicial cooperation, one of the most important elements of the AFSJ. The idea of establishing a judicial cooperation institution that has been shaped with the Tampere decisions materialized under the name of “Pro-Eurojust” on 14 December 2000. This formation, the predecessor of Eurojust, was serving the purpose of bringing together prosecutors of all member states in order to exchange information and test the idea of Eurojust (Eurojust, 2009, p. 7; Bures, 2010, p. 237-8).

Eurojust has gained a legal basis with the Treaty of Nice which was signed on 26 February 2001 and entered into force on 1 February 2003. According to the new regulation, the following issues were incorporated into judicial cooperation in criminal matters:

- Facilitating and accelerating cooperation between competent ministers and judicial or equivalent authorities of the member states, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;
- Facilitating extradition between member states;
• Ensuring compatibility in rules applicable in the member states, as may be necessary to improve such cooperation;

• Preventing conflicts of jurisdiction between member states;

• Progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organized crime, terrorism and illicit drug trafficking.

The Council has assigned the following tasks to Eurojust:

• Facilitating proper coordination between member states’ national prosecuting authorities;

• Promoting support for criminal investigations in cases of serious cross-border crime, particularly in the case of organized crime, taking account, in particular, of analyses carried out by Europol;

• Facilitating close cooperation between Eurojust and the European Judicial Network, particularly, in order to facilitate the execution of letters rogatory and the implementation of extradition requests.

In this respect, Eurojust has been assigned an important role in the field of judicial cooperation through the Treaty of Nice.

Eurojust was established on 28 February 2002 with a Council Decision on Setting Up Eurojust with a View to Reinforcing The Fight Against Serious Crime\(^29\) 2002/187/JHA. This decision was updated with the Council Decision on the Strengthening of Eurojust and Amending Decision 2002/187/JHA Setting Up Eurojust with a View to Reinforcing the Fight Against

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\(^{29}\) *OJ L 63, 06.03.2002*
Serious Crime\textsuperscript{30} 2009/426/JHA and dated 16 December 2008 in order to increase Eurojust’s operational effectiveness.

According to Eurojust’s decision, each EU member state appoints a Eurojust representative or a “national member.” This member may be a prosecutor, a judge or a police officer. As a result, Eurojust could be defined as a collage composed of senior lawyers, magistrates, prosecutors, judges and legal experts from all of the EU member states (Casale, 2008, p. 58). Furthermore, Eurojust, also as a permanent judicial network, has a \textit{dual character} in this sense; on the one hand, this institution is composed of members who are appointed by the EU member states and obliged to act in accordance with their countries of origin, and on the other hand, it is a collective EU structure in which decisions are made by majority of votes (Bures, 2010, p. 238).

Eurojust is an important actor in the EU’s counter terrorism policies. The Council Decision on the Implementation of Specific Measures for Police and Judicial Cooperation to Combat Terrorism in Accordance with Article 4 of Common Position 2001/931/CFSP\textsuperscript{31} which was taken on 19 December 2002 just after the 9/11 attacks has redefined Eurojust’s role in combating terrorism. In accordance with Article 3 of the decision, each member state shall designate a National Correspondent for Terrorism (Article 3). The member states shall share all the information on terrorism matters with this representative in accordance with national law and send it to Eurojust.

In accordance with the Council’s decision, Eurojust’s tasks in the field of combating terrorism could be grouped as follows:

- National representatives’ access to information on national level;

\textsuperscript{30}OJ L 138, 04.06.2009
\textsuperscript{31}OJ L 16, 22.01.2003
- Ensuring exchange of information with Europol;
- Eurojust’s data processing;
- Eurojust’s support and feedback for member states.

A Counter-Terrorism Team was established within Eurojust following the attacks that occurred in Madrid in 2004. The information about terrorism obtained from member countries are analyzed by the case management team, and when necessary, by law analysts within Eurojust. The information obtained are collected in a database to be used in TE-SAT reports. Furthermore, the Eurojust counter terrorism team publishes a quarterly report entitled Terrorism Convictions Monitor that compiles the convictions for terrorism on the basis of open resources and information from the National Correspondent for Terrorism (Eurojust, 2009, p. 3). Another important function of this team is to make preparations for and organize terrorism coordination meetings, regularly communicate with contact persons related with terrorism and ensure the required flow of information, as well as collect legal documents about terrorism and establish a database.

The counter terrorism meetings are held within Eurojust on three levels, namely, operational, tactical and strategic meetings. During operational meetings, the national members assess the ongoing investigations. On the tactical level, the work is carried in terms of sharing of good practices in the fight against terrorism between the Eurojust representatives and member states, transmitting national experiences concerning various terrorist groups and finding out the potential links between terrorist groups operating on national level. The strategic meetings are usually held annually, focusing on national members’ responsibilities for sharing information with Eurojust with regard to ongoing criminal investigations and demanding an explanation from the members who fail to convey information with the fear that sensitive information would be revealed to all 25 member states. (Bures, 2010, p. 240).
Eurojust provides a means of collecting criminal records from all of the member states; thus the Eurojust representatives find the opportunity of obtaining information about lawsuits both in their countries and other countries and also exchange opinions and information with representatives from other countries. As a result, it finds out the situations in which the member countries’ authorities are required to establish cooperation and takes the steps necessary for facilitating such cooperation (Müller-Wille, 2004, p. 26).

On the other hand, Eurojust has no legal competency to open or conduct an investigation. In case its requests are not fulfilled by the member states, no sanction is imposed (Bures, 2010, p. 239). Such consequence would be in the interest of member states that are reluctant to share information due to their insistence on national autonomy. In such cases the national interests of member states and of the Union as a whole conflict.

**Table 4: 2003 – Lawsuits related with terrorism offences recorded by Eurojust in 2003 - 2012**

Eurojust has made agreements with third countries such as the US, Switzerland, Norway, Iceland and Macedonia in order to ensure exchange of information with judicial authorities. In addition, it has signed cooperation agreements with EU units such as Europol and the European Anti-Fraud Office (OLAF). The signing of a bilateral cooperation agreement with Frontex is on the agenda in order to enhance the effectiveness of Eurojust.

3.2.1.3 Frontex

Frontex has been set up through the Council Regulation on establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union dated on 26 October 2004 and numbered 2007/2004. Accordingly, it is indicated that the responsibility for the control and surveillance of external borders lies with the member states and Frontex is required to be set up in order to apply the relevant Community measures relating to management of borders and ensure the coordination of member states’ actions in the implementation of those measures. This regulation was amended twice, on 11 July 2007 and on 25 October 2011.

The regulation sets out that Frontex shall perform the following tasks:

- Coordinate operational cooperation between member states in the field of management of external borders;
- Assist member states on training of national border guards, including the establishment of common training standards;
- Carry out risk analyses;
- Follow up on the development of research relevant for the control and surveillance of external borders;

32OJ L 349, 25.11.2004
- Assist member states in circumstances requiring increased technical and operational assistance at external borders;
- Provide member states with the necessary support in organizing joint return operations.

Following the 9/11 attacks, links between border security, migration and terrorism came to the forefront (Boswell, 2007; Neal, 2009). The Hague Program which was adopted in 2004 reads as follows: “the management of migration flows should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism” (EU Council, 2004). Among the missions of Frontex which was set up just after the Madrid attacks are the capacity enhancement on the level of member states and Europe in order to combat migration flows on external European borders, serious organized crimes and terrorism issues. Initially, Frontex was established mainly as an operational assistance for the control and monitoring of the borders. The role of Frontex has increased with the problems member states have faced in terms of illegal migration. As the Madrid attacks have direct relation with illegal migration, the attacks have had an immediate effect on the establishment of the institution.

3.2.1.4 Schengen Information System

When initially established, the Schengen Information System (SIS) was designed as a “support instrument” in the free movement of persons and police cooperation. Established in order to overcome the security flaw caused by removal of borders within the Union, the SIS is one of the largest and most comprehensive databases used in the field of migration and border control within the EU. In this regard, the SIS is one of the milestones of the AFSJ (Parkin, 2011, p. 1).
As a result of the rise of the fight against terrorism in the EU’s list of priorities, new types of data were incorporated into the SIS, which is considered as a successful instrument in terms of security, and the security units outside the institutions responsible for border security were given access permission, and thus the SIS was turned into an instrument used in investigations.

The counter terrorism characteristics were incorporated into the SIS through the Council Regulation concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism dated 29 April 2004 and numbered 871/2004 and also the Council Decision concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism dated 25 February 2005 and numbered 2005/211/JHA. As a result, officials working in the field of counter-terrorism on the EU level were provided with the opportunity of accessing the SIS database.

The Supplementary Information Request at the National Entry (SIRENE) bureau was set up in order to provide supplementary information on alerts appearing on the SIS database, coordinate the required measures and carry out operations in cross-border issues in Schengen area (for example, finding a missing person or a getaway car, illegal entry of a persona non grata into the Schengen area). There is a SIRENE bureau located in each Schengen country.

The SIS II consisting of more developed characteristics was launched on 9 April 2013.

3.2.1.5 Eurodac

Eurodac establishes an asylum fingerprint database. It was established with the Council Regulation concerning the establishment of "Eurodac" for the comparison of fingerprints for

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33OJ L 162, 30.04.2004
34OJ L 68, 15.03.2005
the effective application of the Dublin Convention\(^35\) dated 11 December 2000 and numbered 2725/2000. The objective of its foundation excludes the fight against terrorism (European Union Council, 2000), but the database which has served merely in the context of asylum issues until now will be able to be used as an counter terrorism instrument as from 20 July 2015 through a new regulation dated 26 June 2013 and numbered 603/2013\(^36\). Council Regulation on the establishment of Eurodac doesn't make any reference to terrorism. In fact, the actual purpose behind its establishment is related more with illegal migration and asylum seekers. Perhaps we can say that at the beginning, in 2000, these immigrant people were not seen as a risk of terrorism. Accordingly, the national police forces and Europol will be granted access permission to the Eurodac database in order to prevent, detect and investigate serious offences and terrorist acts. The EU also recognizes the fact that this update violates the privacy of personal information and right of privacy with regard to persons on the Eurodac database, and thus strict rules were imposed on this practice and the violation of the *acquis* with regard to sharing of information with third countries, systematic scanning on the database, fundamental rights and security of personal information was prohibited (European Parliament & Council of the European Union, 2013).

3.2.2 Common Foreign and Security Policy

3.2.2.1 Counter Terrorism Coordinator

The establishment of Position of a Counter Terrorism Coordinator derived from the need for a better follow-up of the work concerning the transposition of EU’s counter terrorism law into national law by the member states (Argomaniz, 2010, p. 299).

\(^{35}\)OJ L 316, 15.12.2000  
\(^{36}\)OJ L 180, 29.06.2013
There is no specific legal document establishing the Position of a Counter Terrorism Coordinator and defining its authorities (Bures, 2011, p. 138). Gijs de Vries was designated as the counter terrorism Coordinator under the CFSP with Javier Solana’s proposal by the Council on 25 March 2004. Solana listed the Counter Terrorism Coordinator’s main roles as follows: 1) to analyze the work that has been done so far and see how it can be done in a more efficient manner; 2) to do preparatory work, so that ministers of the interior can have as much information as possible to make serious decisions when they meet in the Council; 3) to make sure that every country, once a decision has been made collectively by the European Union, implements it at national level (Solana & de Vries, March 30, 2004).

The Counter Terrorism Coordinator has no concrete power; he/she has no budget and he/she is not authorized to propose legislation or chair justice and foreign ministers’ meetings related with terrorism and thus direct the counter terrorism agenda. He/she is mainly responsible for establishing the EU’s role in the fight against terrorism and ensuring that the police offices establish better cooperation on the EU level. He/she inspects member countries’ progress in the Action Plan but he/she is not authorized to bring pressure on them (Keohane, 2005, p. 18). According to Bures (2011, p. 137), the CTC’s authorities are restricted, and thus his/her added value to the fight against terrorism is limited. It can be figured out that although most of the counter terrorism policies of the EU are well-designed in principle, there are some deficiencies in their practices. In most cases, the institutions or the workflow itself is lacking a mechanism for control and accountability. It seems that good functioning of the policies are left to the mercy of the authorities in question, and good will of the people in charge. A mechanism for supervision and sanction is missing in the implementation process of most of the well-developed measures.
The countries providing the greatest support for the CTC are Spain and Britain, which have a history of terrorism; particularly the support from Britain, which has been an abstainer regarding the deepening of the EU, is intriguing (ibid, p. 141-2).

Gilles de Kerchove, former Belgian Interior Minister and Director of Justice and Home Affairs in the Council Secretariat, was appointed to the post of the new CTC on 19 September 2007 with the same authorities owned by his predecessor.

3.2.2.2 European Union Intelligence Analysis Center
The EU Intelligence Analysis Centre’s (INTCEN) mission is to provide intelligence analyses, early warning and situational awareness to the High Representative of the European Union for Foreign Affairs and Security Policy and to the European External Action Service, as well as to the various EU decision making bodies in the fields of CFSP and combating terrorism (European Parliament, 2011).

INTCEN’s predecessor is the Policy Planning and Early Warning Unit, which has been established in order to support the Higher Representative for the CFSP in accordance with the Treaty of Amsterdam. Following the 9/11 attacks, this unit has been given the task to make analysis and assessments. (Rehrl & Weisserth, 2010, p. 47), integrated into counter-terrorism policies and named as the Joint Situation Center (SITCEN). This unit, mainly structured under the EU Council Secretariat, became a part of the External Action Service in January 2011. This unit has been officially called as the European Union Intelligence Analysis Center since 2012 (INTCEN).

INTCEN monitors and analyses international incidents, focusing particularly on sensitive geographical areas and serious threats such as terrorism and the proliferation of weapons of mass destruction for 7 days and 24 hours.
INTCEN has been analyzing only the threats from outside the EU previously, but it has been combining external threat analyses with internal security intelligence from the member states and Europol since January 2005, as required by the Madrid attacks as Madrid attacks were closely associated with border controls and intelligence sharing in this regard (Keohane, 2005, p. 31). The Single Intelligence Analysis Capacity (SIAC), envisaging that common analyses are made by IntDir, the EU military intelligence unit, and INTCEN, was set up in 2007. The intelligence obtained from third countries is made available both for IntDir and INTCEN, and thus the ground is set for preventing duplication and ensuring the most effective and accurate form of intelligence analysis (Bagdonas, 2010, p. 16).

INTCEN’s effect in the fight against terrorism is limited. INTCEN’s weak sides consist of the following; it lacks official authority with regard to intelligence, it is dependent on voluntary contributions from member states as the source of information, certain member countries fail to make contributions to INTCEN, it has been operating in the field of sharing of information, namely, one of the areas in which the EU has been historically reluctant the most, and also its officials are appointed not by an EU institution, but by the national authorities of the member states in the EU (Davis Cross, 2011).
4. POST-LISBON TREATY

Ratified in December 2007, and entered into force in 2009, the Lisbon Treaty amending the European Union Treaty has introduced significant changes to the counter terrorism policies of the EU. With this Treaty, the third pillar structure was changed and the Commission has gained new competences in the areas of justice and security. This has affected counter terrorism policies in terms of internal security rather than external (Renard, 2012, p.1).

4.1 Qualified Majority Voting on Internal Security

A catalogue of competences was established with the Lisbon Treaty. These competences were classified as exclusive, shared, supplementary and supportive ones. Competence in Justice and Homeland Security issues (third pillar) that was subjected to intergovernmental decision taking mechanisms according to the three-pillar structure was distributed among the EU and the member states with the Lisbon Treaty. Unanimity voting was abolished for issues regarding internal security and qualified voting was introduced; thereby, the process was shortened and simplified. Like all other decisions taken through qualified majority voting, the decisions of the EU and member states will be subject to the European Union Court of Justice (CJEU) regarding the internal security issues. A transition period of five years was provided for the exercising of CJEU’s power of control and it came into effect on 30 November 2014.

Though CJEU’s power of control was broadened to the third pillar to some extent with the Amsterdam Treaty, the authority to action for infringement conferred to the Commission in Lisbon Treaty will put pressure on those member states that are reluctant to implement the decisions of the EU (Argomaniz, 2010, p.312). The practice of unanimity voting still continues in the Foreign Policy (second pillar) area. CJEU is not authorized regarding the
provisions of the common foreign and security policy or acts adopted on the basis of these provisions.

Issues that have been subjected to qualified majority voting and ordinary legislative procedure mechanisms after Lisbon are:

- The list and visa format of the third country nationals to cross the external borders of the Union (Article 77);
- Legal migration (Article 79);
- Judiciary cooperation on criminal matters (Article 82-86);
- Eurojust (Article 85);
- Operational police cooperation (Article 87);
- Protection of civilians (Article 196).

Issues that have been subjected to qualified majority voting and ordinary legislative procedure mechanisms before Lisbon are:

- Rules on short term visas and other short-stay residence permits (Article 77);
- Asylum policy (Article 78);
- Illegal migration (Article 79);
- Cooperation on matters of civilian law, excluding family law (Article 81).

Decisions that have to be taken in unanimity voting at the Council are as follows:

- Passports and identity cards (Article 77);
- Family law (Article 81);
- Operational police cooperation (Article 87);

4.2 New Competences and Institutions on the Area of Security
With Lisbon, in three issues that fall under Justice and Home Affairs decisions should be taken on the initiative of a quarter of the Member States. These are judicial cooperation on criminal matters, police cooperation and administrative cooperation (Article 76).

The participation of the European Parliament to the process is increased with the Lisbon Treaty. The Parliament has now the same legislative power with the Council on issues regarding security. This authority sharing between the Parliament and the Council is called "joint decision". Joint decision is taken through qualified majority voting. Moreover, the authorities of national parliaments are also increased. The Lisbon Treaty requires each EU legislation proposed to be send to the national parliaments. National parliaments have the right to object to a legislative proposal within 8 weeks before it enters into force; and the proposal can be amended or revoked if a sufficient number of national parliaments has objected.

In order to raise the effectiveness of the EU in the area of foreign policy, a number of amendments such as the establishment of High Representative of the Union for Foreign Affairs and Security Policy have been introduced. The Representative will head the Council of Ministers of Foreign Affairs of the EU. Moreover, the President of the European Council will be elected unanimously by the member states for a term of 2, 5 years instead of 6 months.

In the founding treaties before the Lisbon Treaty the EU did not have a legal entity. With Lisbon, "European Communities" and "Community" is replaced with the "Union" and the EU became a legal entity via Article 47. Europol, Eurojust and Frontex have also gained legal entity and attained the capacity to ratify international conventions with Lisbon. The European Parliament has the authority to audit the activities of these institutions.
The Lisbon Treaty provides the establishment of a European Public Prosecutor’s Office, in which cross border crimes could be judged. Once this institution is established, the structure of Eurojust will be changed and a new phase will be attained in legal cooperation.

With the Lisbon Treaty, the Standing Committee on Internal Security (COSI) was established within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. According to Article 71, the standing committee, “without prejudice to Article 240, shall facilitate coordination of the action of Member States’ competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.” In order to enable the coordination between the police and customs; operational coordination on criminal matters and on issues of foreign borders security and internal security, COSI meets with the representatives of national security organizations. It is stipulated that COSI should have significant contributions in the coordination of inner security issues.

4.3 The Solidarity Clause

The Solidarity Clause is the most significant element introduced with the Lisbon Treaty. According to Article 222:

“The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union

\[1\] A committee consisting of the Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter. The Committee may adopt procedural decisions in cases provided for in the Council’s Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council. The Council shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.
shall mobilize all the instruments at its disposal, including the military resources made available by the Member States, to:

a) prevent the terrorist threat in the territory of the Member States;

- protect democratic institutions and the civilian population from any terrorist attack;

- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.”

As it is clearly stated in the second paragraph of the article, the solidarity clause is conditioned upon the request of the country subjected to disaster: "Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council."

Upon the request of a member state for the implementation of the solidarity clause, "The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defense implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defense policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions."

38Standing Committee on Internal Security (COSI)
This article obliges the EU to mobilize all the legal instruments to accelerate the legislation making process and to establish cooperations in extraordinary situations (Myrdal & Rhinard, 2010, p. 8).

Some writers argue that the solidarity clause is ambiguous due to the fact that it doesn’t contain any information on the details of the implementation process (Keller-Noellet, 2011; Fuchs-Drapier, 2011). In order to avoid this ambiguity, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy have prepared a draft Council Decision that involves the arrangements regarding the implementation of the solidarity clause.

The Solidarity Clause shouldn’t be confused with the obligation of aid and assistance of the member states which is indicated in Article 42(7). This Article indicates that:

“If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defense policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States which are members of it, remains the foundation of their collective defense and the forum for its implementation.”

As it can be seen, Article 42 (7) doesn’t authorize the EU institutions for solidarity.

**4.4 Bindingness of the EU Charter of Fundamental Rights**

With the Lisbon Treaty, the Charter of Fundamental Rights of the European Union gains the same legal value as the Founding Treaties. Moreover, the EU is obliged to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
Following the entry into force of the Lisbon Treaty, the Commission took steps to start the negotiations and official meetings started as of 7 July 2010 (Council of Europe, 2012). It is expected that these developments would balance the conflict between the counter terrorism policies and the fundamental rights.

The amendments brought by the Lisbon Treaty would have positive contributions to the development of AFSJ. Several developments that were delayed would be easily practiced with the practice of qualified majority voting. As the three pillar structure is removed, legislation harmonization in member states would be increased and the European parliament and national parliaments would be further involved in the policy making processes in this regard. Therefore, the establishment process of AFSJ would be more comprehensive, effective, transparent and democratic.
5. CONCLUSION

The development of the EU counter terrorism policies has a long history. Gradual cooperations with the increasing terrorist act as of 1970s have established the basis of the common policies in this area today. When we examine the pre 9/11 period, we can see that counter terrorism was regarded mostly as an internal security issue and was left to the initiative of the member states. In this period, as a manifestation of the dichotomy between concerns regarding national sovereignty and the need for international cooperation, counter terrorism efforts in Europe were generally restricted to particular issues, which resulted in bilateral or multiple cooperations. However, after the establishment of the EU with the Maastricht Treaty, a common policy of counter terrorism at the Union level entered the agenda. Nevertheless, it can be seen that not much initiative was taken on this area, when we examine the EU acquis within the third pillar. This also indicates that a common policy for counter terrorism didn't have much significance in the EU before 9/11.

A key turning point in international politics, 9/11 attacks have accelerated EU’s counter terrorism policies and have provided an opportunity for the member states to deepen their cooperations in this area. Measures that were planned but failed to be realized for years have been put into practice in this period. Counter terrorism has become a strategical priority and terrorism was positioned as a threat to the EU’s welfare, freedom and security area, as clearly stated in the European Security Strategy. In this period, regarded as an internal matter, terrorism started to be considered an issue of foreign affairs also and counter terrorism components were added to the area of CFSP. Quite important legal instruments and institutions were being established in the post 9/11 period, in which the importance of a collective fight were frequently emphasized by political actors.
During this period, the EU has become more motivated for cooperation in counter terrorism, which have accelerated after significant incidents such as 9/11, and the London and Madrid attacks. Aimed at determining a common and long-term counter terrorism strategy for the member states, the Action Plan on Combating Terrorism introduced the principle of mutual recognition; the European Arrest Warrant Framework Decision made the member states responsible for any suspension of support in the transposition of international documents regarding terrorism; the Document of Common Position on Combating Terrorism aimed at eliminating the financial sources of terrorism; and the Common Position on the Application of Specific Measures to Combat Terrorism emphasized the external aspect of counter terrorism. All of these legal instruments were approved between 2001-2003, taking the “window of opportunity” that emerged after 9/11.

The Madrid attacks on 11 March 2004, and the London attacks on 21 July 2005 drew attention to the weakness of the EU with regard to member states' transposing EU laws on counter terrorism. For the EU objectives to be also prioritized at the level of the member states also, the EU adopted a new Counter Terrorism Strategy in December 2005, which was established on four main principles namely Protect, Prevent, Pursue and Respond. Based on the fact that the offenders of the Madrid and London attacks were Muslims resident in Europe, the European Union Strategy for Combating Radicalization and Recruitment to Terrorism entered into force on 24 November 2005, in order to avoid acts of the people and circles that recruit further individuals for terrorist organizations, to let moderate thoughts prevail over radical thoughts, and to take measures to ensure that everyone living in Europe benefit from security, justice, democracy and opportunities equally. Lastly, another instrument introduced in this period is the Internal Security Strategy dated 2010, which provided the establishment of European Security Model to ensure internal security through integrating the current strategies and approaches of the EU.
In addition to these significant legal instruments, many new institutions have been established in the post 9/11 period. The most operationally prominent of these institutions are Europol which emphasizes cooperation with the police; and Eurojust which aims at a legal cooperation. Counter terrorism is prioritized within the authorities of these institutions. Institutions such as the Schengen Information System and Eurodac were initially established for issues such as migration, asylum, and visa; however, the authorities and the data collected were used for the purposes of the counter terrorism strategy of the EU against the backdrop of increasingly important connections between border security, migration and terrorism as of 9/11. In addition to these institutions, Frontex and the Counter Terrorism Coordinator, which were established after the 9/11, are also significant shareholders within the structure of counter terrorism in the EU. The European Union Intelligence Analysis Centre which was established before 9/11 have focused on counter terrorism after the attacks. The Centre is also an important element of the institutional framework of the EU’s counter terrorism.

With the Lisbon Treaty entering into force, qualified majority voting started to be implemented in the decision taking processes for internal security issues including terrorism. Many decisions that were not taken due to the unanimity voting in the area of Justice and Home Affairs are expected to be realized with qualified majority voting. Moreover, with the disposal of three-pillar structure it is expected that legislative harmonization will be enhanced in the member states in terms of AFSJ.

Despite all these significant developments, it is not possible to say that the EU has an effective common policy of counter terrorism. Though the legal framework was reinforced, there are still difficulties in implementation, which is the most significant weakness of a common policy for counter terrorism. Transposition of laws on counter terrorism in particular,
is relatively slow in comparison to other areas (Argomaniz, 2010, p.298). Therefore, Monar (2006, p. 155) defines the European counter terrorism policies as the "Achilles’ heel."

Transposition of the EU law has two dimensions. The first phase is the transposition of the EU acquis into national law (legal implementation); and the second phase is the implementation of this law through national authorities (ultimate implementation). These two phases are supervised through the annual reports of Counter Terrorism Coordinator; however, the Counter Terrorism Coordinator cannot impose any sanctions other than "condemnation".

Weaknesses in the transposition of the EU acquis provoke legal differences among the member states and obstruct cooperation. Likewise, the fact that member states have different law enforcement bodies constitute an obstacle. Though harmonization is accomplished through different laws and acts, practices and terror histories and conceptions of threat vary greatly among member states. Due to all these factors mentioned, the EU still has a restricted feature in terms of intelligence in counter terrorism.

A weakness of the EU's counter terrorism policies is the lack of a system that would measure its success or failure. Counter Terrorism Coordinator only monitors whether determined objectives are accomplished or not; the success of these objectives are still not tested. There is no performance evaluation in a policy area, in which billions of Euros are allocated, and we don't know which instruments are more beneficial and which are not. Existing figures such as the total number of detentions for terrorism, or of the frozen sources are inadequate to test the impacts of counter terrorism measures (Bures, 2010, p. 246).

Since it is not possible to gain information regarding the impartial success of counter terrorism policies, we can only make subjective judgments; whether the policies are perceived as successful or not. According to a Eurobarometer survey on home affairs in 2011, 60 % of the EU citizens think that counter terrorism policies are inadequate (Eurobarometer, 2011).
Table 4:

Source: Eurobarometer Survey on Internal Security (2011)

We can say that general public opinion concerning the effectiveness of counter terrorism policies in Europe would be positive. In 2011, two people lost their lives due to terrorism in the EU territory; and 219 attacks took place in 2012, in which 17 people lost their lives. According to START, a major database on terrorism, the bloodiest attacks took place in countries in the Middle East and Africa such as Yemen, Iraq, and Nigeria. Europe has not been a center of focus for terrorist attacks since the 1980s.

However, in the aftermath of 9/11, counter terrorism has become a priority for the EU within the frame of security policies. Above all, an effective and efficient activity is a must for the consistency of the policies and discourses.

Within this scope, there are some measures to be taken for the establishment of a more effective counter terrorism policy in the EU. For instance, the Secretariat General of the Council has suggested holding regular informative meetings, in which the participation of
representatives from the Term Presidency, the Secretariat General of the Council, the European Foreign Action Service (EU Political and Security Council, Crisis Management Planning Directorate in particular) and the Commission are provided. In addition to these meetings, preparatory units of the Commission is also envisaged to hold joint meetings on security issues which intersect (General Secretariat of the Council of the European Union, 2011, p. 3-4).

Moreover, radicalism and giving support for terrorism is considered as a problem of integration in Europe. Accordingly, a common integration policy across Europe can be established. Respective efforts in the member states are made to solve this problem for the time being.

Likewise, it is argued that the EU accession of countries like Turkey, Albania and Bosnia-Herzegovina, the population of which are predominantly Muslim, would be beneficial in terms of a better integration of the Muslim population living in the EU territories. The accession of these countries may show that the EU is not against Islam or noncompliant with it (Keohane, 2005, p.26).

There is a dynamic relationship between security issues and the European integrity. As McCormick (2007, p. 72) underlines, the legitimate sources of the project of a united Europe are the objectives of being protected from the Soviet threat and the peaceful integration of Germany into the system after the war. In order to fulfill this project, the EU needs to fight against the threats and difficulties brought by the new era. Within this respect, it is possible to say that the EU’s success in establishing and implementing counter terrorism policies will be influential for the future of Europe.
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