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**THE EU PRESIDENCY AGENDA
FOR ANTITERRORISM:
A MULTIPLE STREAMS ANALYSIS**

**DOUBLE DIPLOMA
MASTER IN EUROPEAN STUDIES**

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ABSTRACT

John Kingdon is a scholar concerned about the process of agenda-setting in the federal government and its effects. Taking into consideration the antiterrorist agenda of twelve Council Presidencies from the second half of 2001 until the first half of 2007, this study analyzes its evolution by showing when, why, and how such agenda changed and which were the policies emanating from it, while providing a better understanding of the EU policy-making process. In order to reach this aim, this work is based on the application of Kingdon's Multiple Streams Model to four case studies, namely, the European Arrest Warrant, the (Second and Third) Money Laundering Directives, and the European Evidence Warrant.

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LIST OF ABBREVIATIONS

AOP	Action Oriented Paper
ASEM	Asia-Europe Meeting
ASEAN	Association of Southeast Asia Nations
CBRN	Chemical, biological, radiological and nuclear terrorism
CFSP	Foreign and Security Policy
CIS	Customs Cooperation System
COREPER	Committee of Permanent Representatives
CTTF	Counter Terrorism Task Force
EAW	European Arrest Warrant
EC	European Community
ECOFIN	Economic and Financial Affairs
EEW	European Evidence Warrant
EPCIP	European Programme for critical infrastructure protection with potential transboundary effects
ESPD	European Security and Defense Policy
EU	European Union
EURODAC	European database to compare fingerprints
Eurojust	European Judicial Cooperation Unit
Europol	European Police Office
FATF	Financial Action Task Force
GAERC	General Affairs and External Relations
IGC	Intergovernmental Conference
IMO	International Maritime Organization
JHA	Justice and Home Affairs
2MLD	Second Money Laundering Directive
3MLD	Third Money Laundering Directive
NATO	North Atlantic Treaty Organization
NBC	Project Group on Nuclear, Biological, and Chemical Protection
PPC	EU-Russia Permanent Partnership Council
QMV	Qualified Majority Voting
SEA	Single European Act
SECI center	Southeast European Cooperation Initiative Center for Combating Transborder Crime
SEECF	South-East European Cooperation Process
SIS	Schengen Information System
SitCen	European Union Joint Situation Centre
SR/HR	Secretary General/High Representative
TEU	Treaty of the European Union
TEC	Treaty of the European Community
TTE	Transport, Telecommunications and Energy
TE-SAT	Terrorism Situation and Trends
US	United States
UN	United Nations
VIS	Visa Information System

CHAPTER 1

INTRODUCTION

1.1 DEFINITION OF THE PROBLEM

As some previous EU Council Presidencies'¹ agendas, the policy agenda of the Belgian Presidency in the second half of 2001 was dominated by issues related to employment, enlargement and sustainable economic growth. (Council, 2001: 1). However, the agenda changed after a disastrous event took place during this presidency: the terrorist attacks in the United States on September 11th. Although the terrorist events happened in another continent at thousands of kilometers away from Europe, the Presidency envisaged the threat of terrorism within the European region, in accordance with the Treaty of the European Union that establishes that one of the objectives of this union is “to provide citizens with a high level of safety within an area of freedom, security and justice... That objective shall be achieved by preventing and combating crime, organized or otherwise, in particular terrorism” (Treaty of the European Union, Article 29). Following these acts thus the Belgian Presidency modified its agenda, acknowledging that “terrorism is a real challenge to the world and to Europe” (Council, 2001a: 1). The Presidency then considered diverse measures to counter terrorism and to promote security within the European Union. As consequence, various issues appeared on the antiterrorist agenda. In the subsequent Presidencies –i.e. Spain, Denmark, Greece, Italy, Ireland, the Netherlands, Luxembourg, United Kingdom, Austria, Finland and Germany²- the agenda for antiterrorism took diverse colors with different items passing through different levels of attention. In general, during this 6-year-period journey, in an attempt to find ways to tackle terrorism, some ideas were welcomed and others dismissed; thus various instruments were examined by the Council, changing the agenda. Eventually most were adopted producing consequences for the existing system.

1.2 RESEARCH QUESTIONS

After the events in the United States several issues rose on the antiterrorism agenda. By reading this simple sentence, some doubts come out: which issues were these?; what were the reasons that provided such issues a place on the agenda?; what happened after they took the attention of governmental officials? This study attempts to answer these questions and more, as it analyzes the development of the EU policy agenda in the field of counter terrorism, in order to find the factors that produced agenda changes and policy changes, while having a thorough understanding of the EU policy-making.

¹ Note that the formal name is ‘Presidency of the Council of the European Union’. However, it is informally known as ‘European Presidency’ or ‘Presidency of the EU’. Throughout this work, I will mostly refer to it as ‘Presidency’. Besides, the official name of the EU Council is ‘Council of the European Union’. It is also known as ‘Council of Ministers’ or ‘Council’. Do not to confuse with the European Council that is other body of the EU.

² In chronologically order until the most recent.

Thus, the central research question of this study is: *How was the development of the EU Council Presidency policy agenda in the field of antiterrorism as from the attacks of September 2001 in the United States until the first half of 2007 and how can this be explained in terms of policy windows?* This analysis will provide the elements to evaluate the agenda's evolution and estimate the policy changes regarding counterterrorism after the '911', using the "Multiple Streams Model" of John Kingdon (1995) as a theoretical framework.

To achieve this, three are the subquestions that will give shape to the study. The first one is: *What issues in the field of antiterrorism were placed on the agenda of the EU Council Presidencies, starting from the terrorist attacks of September 2001 in the United States until the first half of 2007?* The answer will give information about the state of the agenda for antiterrorism of the twelve presidencies during this period, describing its content in order to observe how the agenda looked like.

Having done this, the next question is: *What streams of processes affected the EU policy agenda for antiterrorism during this period?* This question makes reference to Kingdon's Model –this model will be widely explained in the second chapter of this study-. Broadly speaking, according to the author, there are three streams of processes in the federal government agenda-setting, namely: problems, policies, and politics. Among them, there is neither a sequential order nor dependency; rather, each has a life by its own. The first process (problem stream) relates to the way and reasons by which one problem, rather than another, attracts the attention of governmental officials, recognizing the existence of a problem. The second stream (policy stream) deals with the development and selection process of solutions or policies. The last process (political stream) refers to political events –such as the national mood or turnover of administration-. Thus, taking this theoretical framework into account, this second inquiry will identify: why the EU Heads of State and Government and their ministers paid attention to antiterrorism (problem stream); which policy alternatives were generated (policy stream); and which circumstances took place within the political sphere (political stream).

The last question is: *how the development of the Presidency policy agenda for antiterrorism can be explained in terms of policy windows?* This will refer to the results of the preceding inquiry and it is also based on Kingdon's Multiple Streams Model, but on other two concepts that include the three streams: policy window and coupling. This window is an opportunity –that usually is taken by policy entrepreneurs- to increase the attention of policy-makers and influence the agenda, provoking agenda changes and very possibly policy changes. However, in order to have this chance all the streams need to merge and interrelate with each other at the same critical time. All this implied the occurrence of changes in either the problem stream or the political stream which are able to open the policy window and seize the opportunity by coupling the streams and then stimulate changes. The aim of this question is to recognize the opportunities to affect the agenda, what and why opened the window, how the three streams joined, whether the chances were seized and how, and its effects. Consequently, this will allow to observe the development of the antiterrorism agenda and the policy changes in the EU during this 6-year period.

Therefore, after observing the content of the agenda, recognizing the existence of diverse factors, and analyzing their influence, this study will reach its goal of

answering its major research question by studying how and why the three streams came to join and its opportunistic effects.

1.3 MOTIVATION

The study of the policy-making process in the European Union is the principal motivation of this work. However, the rationale that stimulated the focus on the EU policy agenda is its relevance to have a better understanding of that process from its origins: it is through the agenda-setting that some specific issues come to be subject of serious consideration of authoritative decision makers, encouraging not just agenda changes, but also policy changes (Kingdon, 1995). Besides, another reason to study the EU agenda is the existence of few specific studies on agenda-setting for the case of the European Union (Peters, 2001; Princen and Rhinard, 2006; Princen, 2007); thus the idea is also to promote the development and contribution of a study focused on this stage of the policy-making process.

This thesis will particularly analyze the agenda of the Presidency of the Council of the European Union, since it refers to three EU ‘formal system arenas’ (Timmermans, 2001: 314) –feature that will be explained in the second chapter-, namely: the Council of the European Union, the Council meetings, and the European Council.³ The triad will provide substantial information to widely appreciate the formation of the EU policy agenda, as the depiction of the problems and the consideration of their solutions arise from the highest level of EU policy-makers. This is because during the Presidency’s term in office, the list of issues included on the agenda is debated (or not)⁴ by the very high-level governmental representatives –heads of state and government and their ministers- of 27 Member States under the leadership of one of them before such solutions come (or not) to be finally adopted.⁵ Besides, the Presidency of the Council of the European Union presents a dual characteristic: while the Presidency is part of the EU agenda-setting, the Council itself is part of the EU decision-making. So the conclusions of this study could be even more interesting, as the goal of the agenda-setting is to see its solutions adopted. Additionally, there are few analysis about the Presidency agenda-setting (Tallberg, 2003; Christiansen, 2006), thus this study will contribute to the study of such political structure and policy process.

The policy to be studied moreover is antiterrorism due to its relevance for the security of a region that nowadays includes 27 internally and externally interconnected member states, where all can freely flow (from persons to criminal groups). Besides, it entails an interesting cross-pillar approach –as it will be later observed- in the composition of its agenda. Antiterrorism becomes even more important when the EU

³ The differences among these will be also explained in Chapter two. However, it is important not to confuse any of them with the Council of Europe, since it is an international organization non-related with the structure of the European Union.

⁴ Note that excluding issues from the agenda is also part of the agenda-setting process. Bachrach and Baratz refer to this as ‘nondecision- making’: “[it is] the practice of limiting the scope of actual decision-making to ‘safe’ issues by manipulating the dominant community values, myths and political institutions and procedures.” (1963: 632)

⁵ Kingdon claims: “An item can be prominently on the agenda, for instance, without subsequent passage of legislation.” (1995: 3) However, he also acknowledges that “when opportunities come along, participants bring ... their proposals, hoping they will be adopted.” (1995: 176)

attempts to continue enlarge, but at the same time to maintain its internal freedom, improving its security and promoting justice.

Furthermore, the terrorist attacks of 2001 were taken as the point of departure to begin with this study because these events were an unprecedented landmark in the history of terrorism. The first half of 2007 was taken as the closing time for this research as it is the most recent finished Presidency term at the moment of writing, so the information for each of the twelve cases will be the same.

The “Multiple Streams Model” of John Kingdon will be the theoretical basis of this study for three reasons. This model deals with agenda-setting and its relation with policy changes, necessary elements for solving the central research question of this study. Besides, this theory was developed by the author to understand specifically the federal government agenda (Kingdon, 1995: 86) that in the case of the EU is symbolized by the Council Presidency. Finally, many scholars have made theoretical and practical studies applying this model to the United States, where the model and the author were born, and even to some European countries (Compston and Madsen, 2001: 129-130), but there is hardly any literature applying this model to the European Union level (Corbett, 2005). However, it is possible to find some studies about EU, but with certain adaptations of Kingdon’s model (Zachariadis, 2007).

1.4 OBJECTIVE

The main objective is to analyze the evolution of the EU counter-terrorist agenda after the attacks of 2001 in the United States. To achieve this, it is necessary to recognize when, why, and how it changed. This will require first the observation of the content of the agenda of the Council Presidency as from that date until the summer of 2007, i.e. twelve presidencies. Later based on certain issues on it, the circumstances and reasons, as well as the ways that promoted agenda changes will be studied applying the Multiple Streams Model. Once knowing this, another goal is to notice whether policy changes emanated from changes in the Presidency agenda for antiterrorism. Thus the aims of this study are mostly two: to appreciate agenda changes and to perceive policy changes derived from it. Of course this entails a better comprehension of the EU policy making, particularly from an agenda-setting view, as the analysis will depict the processes through which certain issues on the antiterrorist agenda passed before and after being subject to consideration by decision-makers. This study in addition will contribute to the literature in the fields of EU agenda-setting, EU Council Presidency, and counter-terrorism. Furthermore, it will be added to the very few that have applied the “Multiple Streams Model” to the European Union.

1.5 METHODOLOGY

Before studying the evolution of the EU Presidency agenda for antiterrorism between 2001 and 2007, it is important to describe the research theory in order to know the lenses through which this analysis will be done; *Agendas, Alternatives, and Public Policies* by John W. Kingdon will be the source. After delineating the theoretical framework, three will be the secondary questions that should be answered. Regarding the first subquestion about the content of the Presidency agenda for counter-terrorism, two are the things to be studied. First, a general overview of the research subject will be elaborated, describing the EU antiterrorist policy and the characteristics of the

Presidency; the sources will be the “Treaty of the European Union”, “the Rules of Procedure of the Council”, and the websites of some presidencies. Following this, in order to know the composition of the agenda for antiterrorism in the twelve presidencies, a descriptive and chronological picture of their agendas in this field will be done. This will provide empirical information for each of the presidencies during this period. This section will be very important for the development of the next chapters, as it will provide the raw material for the analysis of this study. Besides, this information will support the establishment of reliable conclusions. The sources for the empirical research in this part will be mainly three, since three are the formal system policy arenas within the Presidency –as mentioned in section 1.3-. For the Council of the European Union, the main source will be that related to the priorities in Justice and Home Affairs –also known as the Area of Freedom, Security and Justice-. Although there is no established format, each Presidency expresses its objectives for this area, which includes the field of antiterrorism. In the case of the European Council, the ‘Presidency Conclusions’ will be the main source. This document contains the agreements reached in diverse policy areas by the Heads of State and Government at their gatherings when they “define the general political guidelines” of the European Union (Treaty of the European Union: Article 4). For the Ministerial meetings, the information provided by the “Press Release of the Council Meeting on Justice and Home Affairs” will be used.⁶ It includes the issues related to this area, such as terrorism, discussed during these audiences. Since the major focus of this study is the federal governmental agenda, the sources of the three venues are official documents issued by the incumbent Presidency of the Council. Thus, after collecting this information and organizing it for each Presidency, the counter-terrorist agenda will take shape.

Related to the second subquestion, an explanatory delineation of the Presidency’s agenda, in terms of the theoretical framework, will be done in order to identify the three processes that affected it. For doing this, some prominent issues on this agenda will be selected in order to count with concrete case studies. Once choosing them, the first thing to do is to determine the problem stream by finding indicators, studies, major events, crises, symbols, or governmental official’s feedback, as well as policy entrepreneurs involved in the process. It is essential to observe which of these elements helped to define a problem. The second step relates to the policy stream, where the elements to find are: the ideas from the community of policy specialists – from academics to analysts- in the policy area of antiterrorist police cooperation; the suggested alternatives; the policy entrepreneurs involved in the selection process of solutions; and the final proposals emerged. Finally, the third stream deals with politics, so it is necessary to identify the political events -such as the national mood, changes of administration, and pressure of political forces and interest groups-. To recognize these streams, the source will be the data found in the previous question, as well as internal and external sources. Regarding internal sources, there will be taken into account statements, communications, and documents emanating from the European Union, such as declarations from high-ranking EU officials, surveys, reports and studies carried out by specialized EU agencies, among others. As for the

⁶ An important remark: even when the counter-terrorist agenda included issues from diverse policy fields, the only line –besides the Presidency and the European Council- I will always follow is that expressed during the meetings of the Council of Justice and Home Affairs. However, when necessary, I will make reference to the gatherings of other Councils. For more information on this and on the ministerial meetings, see chapter three.

external sources, these will be newspapers, journals, non-governmental organizations, and books, as it is the case of “European Report”, “European Voice”, “Statewatch”, and “Journal of European Public Policy”, among others.

As to the third subquestion, it will be also an analytical part. The idea is to bring the three streams together, in order to theoretically and practically analyze the evolution of the agenda for antiterrorism and its changes. Here it is important to observe how the streams coupled and what were its effects. Therefore some elements need to be identified for each case study: either the problem window (changes in problems) or the political window (political changes) that opened the policy window; the policy entrepreneur(s) that made the streams joined; how the streams coupled; the adaptation of a solution to a changing problem and changes in political events (agenda changes) and finally the decisions generated from this (policy changes). Besides, it is very important –if it was the case- to recognize partial couplings and observe when policy windows closed without being seized or when there where no policy changes. The main sources of the third question are the results found in its precedent part and some external and internal sources –the same mentioned in the case of the second subquestion-.

Finally, taking into consideration the previous description and analysis, the last part will include the conclusions of this study. In this section, all the results will be organized and interpreted in order to conclude by answering the central research question about the characteristics of the evolution of the Presidency agenda in the field of antiterrorism and its explanation in terms of policy windows. The findings will show the moments, the means, and the causes that provoked changes on the antiterrorist agenda, as well as their policy effects.

As can be observed, the three questions are sequentially necessary, since the answer of the first is essential to start answering the next and so on. Thus, after collecting information, observing the processes separately, and analyzing them together, the results will lead to answer the central research question. The logical sequence of the questions in this study follows the same logical sequence of Kingdon’s idea: “Once we understand these streams taken separately, the key to understanding agenda and policy change is their coupling” (2005: 88).

1.6 STRUCTURE

This thesis is structured in 7 chapters. The first chapter is the introductory section, where all the elements that support this study are explained –from the definition of the problem to the methodology-. Chapter two will include the description of the research theory. Here the features of the “Multiple Streams Model” are to be described. Chapter three will contain a brief description of the research subject and a broad delineation of issues regarding antiterrorism established on the agenda of each EU presidency -from the Belgian presidency, in the second half of 2001, until the German presidency, in the first half of 2007-. The following chapters four, five, and six will refer to the analysis of case studies based on selected issues of the agenda during that time, applying Kingdon’s model to each of them, and observing the agenda changes and policy changes. This will lead to the last chapter that will contain the conclusions about the changes in the EU policy agenda in the field of antiterrorism, their causes

and their consequences. Observe the following table (1.1) that provides a global overview of this study.

Table 1.1: Thesis general scheme

Chapter	Name	Content	Main sources
1	Introduction	<ul style="list-style-type: none"> • Definition of the problem • Research questions • Motivation • Objectives • Methodology • Structure 	Not applicable
2	Research theory	<ul style="list-style-type: none"> • Multiple Streams Model <ul style="list-style-type: none"> ◦ Separate streams ◦ Problems, policies, politics ◦ Coupling ◦ Policy window 	<ul style="list-style-type: none"> • <i>Agendas, Alternatives, and Public Policies</i> by John Kingdon
3	Research subject	<ul style="list-style-type: none"> • Antiterrorist policy <ul style="list-style-type: none"> ◦ Definition • EU Council Presidency <ul style="list-style-type: none"> ◦ Composition, role ◦ Relation with EU arenas 	<ul style="list-style-type: none"> • Treaty of the European Union • Rules of Procedure of the Council • Presidencies websites • Books
	EU Presidency agenda for antiterrorism	• Council (sub)agenda	• Priorities in JHA
		• European Council (sub)agenda	• Presidency Conclusions
4-6	Case studies	• Council Meeting (sub)agenda	• Press Releases of JHA Council Meetings
		<ul style="list-style-type: none"> • Separate streams • Coupling • Agenda changes • Policy changes 	<i>External sources:</i> <ul style="list-style-type: none"> • European Report • European Voice • Statewatch <i>Internal sources</i> <ul style="list-style-type: none"> • Findings of Chapter 3 • EU Statements, official communications • Surveys
7	Conclusions	<ul style="list-style-type: none"> • Evolution of the presidency agenda for antiterrorism • Effects 	<ul style="list-style-type: none"> • Results of case studies

CHAPTER 2

AN APPROACH TO THE RESEARCH THEORY

After defining the problem and explaining the research questions and its methodology in the last chapter, chapter two is devoted to describe the characteristics of the theoretical framework on which this study is based: the Multiple Streams Model of John Kingdon (1995). However, in order to have a better comprehension of the model, it is also important to consider first some general concepts closely related to it. Therefore, this chapter is divided into three. I will start explaining Kingdon's conception of public policy making and its relation with the Multiple Streams Model. Then I will describe Kingdon's model. And finally I will delineate its application to the European Union. The main aim of this chapter is to understand the way in which the case studies will be analyzed throughout the following chapters.

2.1 KINGDON'S CONCEPTUALIZATION

2.1.1 Policy-making

According to Kingdon, public policy making consists of a set of processes: "(1) the setting of the agenda, (2) the specification of alternatives from which a choice is to be made, (3) an authoritative choice among those specified alternatives, as in a legislative vote or a presidential decision, and (4) the implementation of the decision." (1995: 2-3) The Multiple Streams Model studies particularly the first two processes: agenda-setting and alternative specification. This is because the author attempts to know "not how issues are authoritatively decided by decision makers, but rather how they came to be issues in the first place." (*Ibid*: 2)

2.1.2 Agenda-setting

Kingdon's main interest is "to understand the agenda setting in the federal government" (1995: 86) and "how and why it changes from one time to another" (*Ibid*, 3). The author conceives two kinds of agendas within the governmental sphere: governmental agenda and decision agenda. The former includes the latter. The governmental agenda is the set of subjects that attract the attention at any time of public officials and people around them; while the decision agenda is the list of issues -within the governmental agenda- "that is moving into position for an authoritative decision, such as legislative enactment or presidential choice" (*Ibid*: 202). This means that the issues on the decision agenda have more possibilities -than the items on the other agenda- to be taken into consideration by decision-makers, stimulating policy changes. According to Kingdon, agenda-setting is a process that makes an issue –and not another- becoming a priority for the government: "Out of the set of all conceivable subjects of problems to which officials could be paying attention, they do in fact seriously attend to some rather than others. So the agenda-setting process narrows this set of conceivable subjects to the set that actually becomes the focus of attention." (*Ibid*: 3)

2.1.3 Alternative specification

Besides being interested in knowing why an issue becomes prominent on the agenda rather than another, Kingdon also has interest to study “why some alternatives for choice are seriously considered while others are neglected.” (1995: 3) According to the author’s terminology, alternatives refer to solutions or proposals. Among the list of proposals, officials take some solutions more seriously into account than others, thanks to the alternative specification: “the process of specifying alternatives narrows the set of conceivable alternatives to the set that is seriously considered.” (*Ibid*: 4)

2.1.4 Relation with the Multiple Streams Model

As will be explained in the following section, the constituents of the Multiple Streams Model are four: the problem stream, the policy stream, the political stream and the policy window. But how do these relate to policy-making? As observed by Kingdon, agenda-setting and alternative specification are the initial processes of policy-making. However, there is no sequential relation between them: “participants do not first identify problems and then seek solutions for them; indeed, advocacy of solutions often precedes the highlighting of problems to which they become attached.” (1995: 205-206) Instead, both processes have their own dynamic and no sequence. Here is where the elements of the Model enter the political scene. Both processes of policy-making are peculiarly affected by three streams that have their own life, as well: problems, policies and politics. These streams are the pillars of Kingdon’s Multiple Streams Model. According to the author, specifically the problem stream and the political stream promote agenda-setting, while the policy stream provokes alternative specification: “[A]gendas are set by problems or politics, and alternatives are generated in the policy stream” (*Ibid*: 20). Sometime and somehow the three streams join together opening a policy window. This means that the agenda and alternatives converge, placing an issue on the first place in the decision agenda -to be subject to consideration of an authoritative decision and implementation decision- and increasing the possibility to provoke agenda changes and possibly policy changes. The streams separately and jointly, as well as their effects, will be clarified in the next section, where Kingdon’s Model is described.

2.2 MULTIPLE STREAMS MODEL⁷

Kingdon claims that there are three streams of processes in the federal government: problem stream, policy stream, and political stream. These do not depend on each other; rather, each has its own life and rules. Nevertheless, there is a certain point in time where all the three streams join, stimulating agenda changes and policy changes. This section includes two parts: the first deals with the description of each of the streams separately, while the second is about the coupling of the streams.

⁷ This is the common name attributed by scholars. The original name established by Kingdon in his book is just “a Revised Model”. The model he is referring to is the ‘Carbage Can Model’ by Cohen, March, and Olsen, made to understand organizations (1972). After making a revision, Kingdon adapted this model to understand the federal government. (1995: 84-86)

I. INDEPENDENT STREAMS

In the following subsections, each stream will be described. Certainly all are independent among them and have different characteristics as well, but two share one element in common. The problem stream and policy stream include the presence of certain actors: policy entrepreneurs. They are people inside or outside the government that want to spend their time, reputation, effort, and money to get a benefit, such as influencing public policy, promoting their career or merely satisfying themselves. They can be current officials, career civil servants, lobbyists, academics or journalists.

2.2.1 Problem stream

This stream focuses on the recognition of a problem for the consideration of public officials and people around them on the governmental agenda. This means that, from the whole quantity of problems that exists in an entity, only a few get government's attention.⁸ Thus, this stream deals with the mechanisms by which a problem attracts officials' concern.

Before describing the means, it is important to know that, according to Kingdon, not all bad things that happen –such as poverty or unemployment– are considered problems. In order for these conditions or situations to become problems, it is necessary that participants in the policy process are convinced that something has to be done about them. Furthermore, Kingdon claims that “a condition is a problem when people want to change the condition, not necessarily when they actually have a solution” (1995: 109). The transformation of conditions into problems includes ‘perceptual, interpretative’ elements, since this is made by evaluating the situation according to one's own values; comparing the achievements of others; and categorizing the condition under one or another label. Next, I will describe the ways in which a problem –not a condition– is able to capture consideration from the government and advocates. These are mostly three: indicators, major events, and feedback to officials.

Sometimes an official pays attention to a problem due to the indicators of studies or reports carried out, either routinely or spontaneously, by governmental and non-governmental agencies that monitor diverse situations and events. However, the recognition of a problem is not merely determined by the studies themselves, but mostly by the interpretation of the results. According to Kingdon, “a steady state is viewed as less problematic than changing figures”, thus officials are more interested on variations in indicators since this determines the existence of a problem: “Policy makers consider change in an indicator to be a change in the state of a system; this they define as a problem.” (*Ibid*: 91-92) Nevertheless, it is important to be cautious about indicators and indicator changes, since these can be overestimated. This is because a major challenge of policy entrepreneurs is to demonstrate that a problem genuinely exists and attempt to persuade officials to perceive the problems their way. Thus, as “the indicator itself is very powerful”, one form to achieving their goal is to create and highlight an indicator and try to convince people about its relevance (*Ibid*: 93). Therefore, due to the implications of indicators, the data collection methodology

⁸ Note that this does not infer any official action from the government, but just observance.

is very important. However, as “the data do not speak for themselves”, interpretations emanating from this information are fundamental as these are the ones that can transform a normal condition into a policy problem.

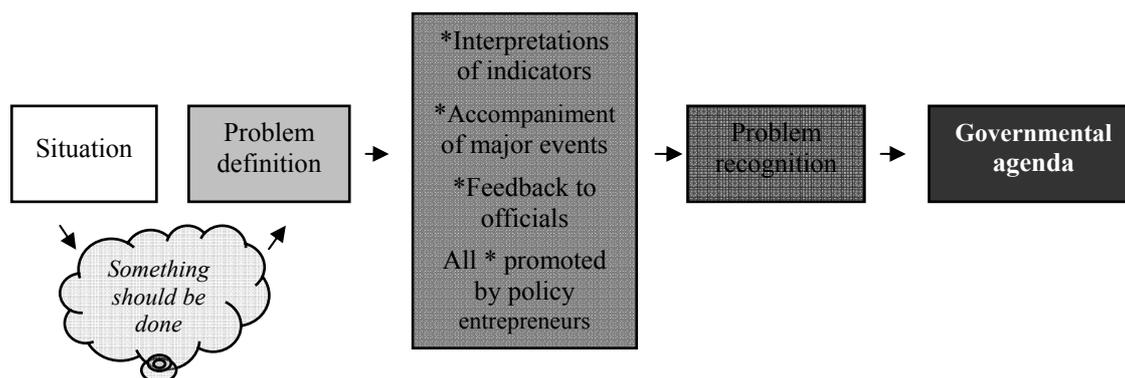
Furthermore, major events, such as crises, disasters or symbols, are also important to obtain the attention as these cannot go unnoticed. It is not enough that a bad situation happens, but that this reaches a level of crisis before it is recognized and becomes an issue on the agenda. In other cases, a major event can be perceived as even more relevant due to the personal experiences of policy makers and powerful symbols – such as words, phrases or written representations-. Thus, because policy entrepreneurs “know that focusing events can move subjects higher on the agenda, they push to create such things as personal viewings of problems by policy makers and the diffusion of a symbol that captures their problem in a nutshell.” (*Ibid*: 204) However, a situation lived by an official or a symbol is not a determinant influence to recognize that a problem is more important than another, but they help to emphasize its relevance. On the other hand, important to mention is that as the indicator needs interpretation, the focusing event needs accompaniment. The event should be related - or ‘accompanied’- to something else in order for a problem to be considered in the agenda. For instance, sometimes major events strengthen the existing negative situation, focusing the attention to this not-at-all-new problem; some other time, the focusing event is conceived as ‘an early warning’, evoking attention only when it is foreseen –after studies or inspection programs- that the event will happen again not just as an isolated case, but as a generalized condition; in other cases, attention to a problem can happen when several disasters or crises related to the same subject take place because “awareness of a problem sometimes comes only with the second crisis, not the first, because the second cannot be dismissed as an isolated fluke, as the first could” (1995: 98).

Moreover, feedback about existing situations is another means to catch the attention. Governmental officials receive feedback by monitoring governmental programs and administering them, as well as by receiving letters, complaints and opinions from citizens and especially from policy entrepreneurs. From all this feedback, however, only specific information attracts the attention of officials. They get concerned when they realize that implementation and legislation don’t fit together because those in charge of implementing made a wrong interpretation of the legislation, evidencing the existence of a problem and that probably a new or further regulation is needed. Another case is when they perceive that a program is not accomplishing its objectives, so they start to consider the existence of a problem that should be observed. Also is the case, when the cost of a program is high: “Sometimes programs come to be so costly that policy makers rethink future initiatives, and may even cut back the existing programs to save money.” (*Ibid*: 102) The last case is when a public policy has consequences –either negative or positive- that were not anticipated and have a major impact; this infers that something is wrong and should be examined.

Important to clarify is that once a problem is recognized as such, it enters the governmental agenda, but not the decision agenda. It is just by coupling it with a solution that the decision agenda can be reached; this will be explained in section II. However, even when a problem is recognized by an official, it can stop from being relevant –and consequently leave the governmental agenda- for some reasons. For example, usually officials consider a problem to be solved if there is already a

decision or legislation implemented on this matter, but this is not always true: “[E]ven if it is questionable whether governmental officials have solved a problem, they sometimes feel that they have addressed it by passing legislation or making administrative decision. If they have, they turn their attention elsewhere, and then the subject drops from their agendas.” (1995: 103). This means that an attempt – successful or not- to solve a problem may discourage the recognition of a prominent problem. Besides, when people get used to a problem, this wanes interest in it, so official’s attention may move to another issue: “A subject gets attention when it is novel.” (1995: 105)

Figure 2.1: Problem stream



2.2.2 Policy stream

The formation of policy proposals and alternative specification is the main focus of this stream. Kingdon refers to these solutions as alternatives, since they passed through a selection process and they will be eventually chosen at a further stage of policy process.⁹ As mentioned before, this stream is independent from the others, meaning that proposals are generated irrespective of policy problems or political conditions.

First it is important to know that besides policy entrepreneurs, policy communities are also the actors involved in the development of proposals. Policy communities are circles of policy specialists -inside or outside government- in a given policy area. They can be governmental officials, researchers, academics or interest groups, but all share “their concern with one area of policy problems” (1995: 117). Specialists within a community are usually very close to each other politically and personally, although there can be the case of a circle with a high level of fragmentation, but the more integrated, the more stable is the agenda in that policy area. On the other hand, policy entrepreneurs are, as established before, people -external or internal to the government and to the policy community- who give their time and money to influence the policy making, to promote their career or to satisfy themselves.

The story of the formation of alternatives starts with what Kingdon calls ‘policy primeval soup’.¹⁰ This symbolic soup contains diverse ideas from policy specialists. These ideas are moving freely, combining, softening up, recombining again, surviving

⁹ Note that words proposals, solutions, alternatives and ideas are interchangeable.

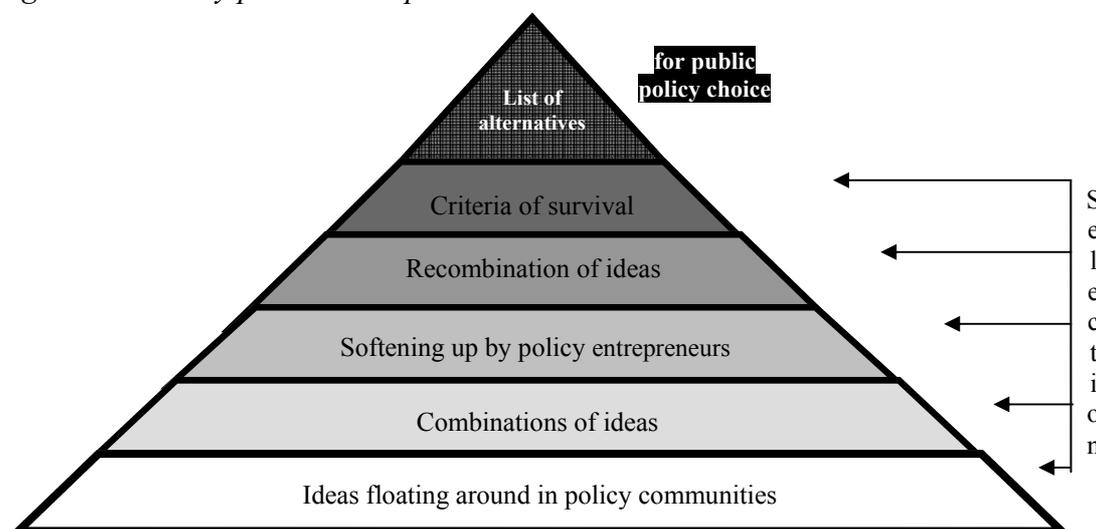
¹⁰ Kingdon takes this name from the concept of ‘primeval soup’ coined by biologists. For them, this soup is the place where “molecules floated around (...) before life came into being” (1995: 116).

to certain criteria, and finally, after a selection process, originating serious alternatives to be considered by policy makers. How a soup starts to be cooked? Due to their concern with a policy area, policy specialists originate a lot of ideas regarding this matter. These ideas are floating around while combining with others. From these ideas, policy entrepreneurs try to persuade people of the relevance of the proposals they like most and to make them get used to new ideas. Entrepreneurs' work is "central to the softening-up process." (*Ibid*: 205) The aim is to soften up the mass public, directly concerned public, and the policy community itself, in order to create a favorable climate to accept a certain proposal in case it is seriously taken into consideration by policy makers. Softening up can be attained by hearings, speeches, papers, meetings, reports, and advisory panels, among others. During this attempt, the original idea suffers an evolutionary process of recombination with other existing ideas to create a new one until it is finally refined "to enter a serious decision stage" (*Ibid*: 124). Therefore, according to Kingdon, no spontaneous idea is absolutely new, since all is part of a series of political mixture and recombination of ingredients inside the policy soup. Thus "at the very same time change and innovation are being observed" (*Ibid*: 124).

Until here we have seen that at the beginning of the cooking a lot of ideas are boiling around in the soup, but now the question is: from the bulk of ideas, which ones are to be tasted? In other words, which ideas are subject of serious consideration? It is necessary first to fulfill three criteria in order for a proposal to survive: technical feasibility, value acceptability, and anticipation of future constraints. Feasibility in technical terms means that it is necessary to be aware of the details regarding the implementation of the proposal: whether a proposal is capable to work out and be actually implemented; whether it can attain its main objective; or whether it can be administered (including money and administrative effort). In case the answer to any of this is no, the proposal is not to be seriously considered. Value acceptability deals with the values of the members of the policy community. The values are part of the dominant ideology or political culture (for instance, conservative or liberal). The anticipation of future constraints relates to the expectation of policy specialists about possible budget and public limitations: whether their proposals will be financially accepted and warmly welcomed by the public and approved by decision-makers. These criteria increase the chances of an idea to be taken into account as a policy solution. If a solution does not accomplish one or more of these requisites, "it might be reworked or combined with something else, and then floated again." (1995: 131). As observable, all the elements mentioned before –from the origin of ideas until the survival criteria- constitute a selection process by which some proposals are considered and others discarded, provoking every time a reduction in the number of ideas and establishing a short list of prominent alternatives at the top of the policy primeval soup. This list is "ready for policy makers to consider" (*Ibid*: 139). Here is the end of the story of the formation of policy proposals. However, note that this list is not 'the list', but a group of alternatives conceived by the policy community as the most prominent to be taken into serious consideration. Consensus about these final proposals is built after persuading officials and public and diffusing the ideas within the policy community. Thus, as these alternatives have the support of most specialists, they have a greater chance of being adopted than those that don't. Nevertheless, having prominent alternatives is not enough to reach the decision agenda, but when these are attached to a problem –this will be explained below in section II-

Observe the following diagram that portrays the policy primeval soup and the way in which the long list of ideas and proposals starts to become narrower -thanks to the selection process by which proposals are drafted, modified, discussed, redrafted, and evaluated- until getting the most relevant to be considered by officials.

Figure 2.2: Policy primeval soup



2.2.3 Political stream

This stream deals with the political events in a country, which come to happen irrespective of the official's attention to problems and of the policy community's activities. The elements of this stream are: swings in national mood, position of organized political forces, and changes of administration.

National mood is the attitude and common way of thinking of the general public (public opinion) and active social organizations toward the government. This concept is also known as "the climate in a country, changes in public opinion, or broad social movements" (1995: 146). It is not steady; rather it changes. Governmental officials believe they somehow are able to perceive the mood and its changes. Communications and conversations with activists and interest groups, newspaper editorials, and media coverage of public events, are some of the ways in which politicians sense the national mood. These perceptions influence the promotion of some issues on the agenda and the restraint of others: "A shift in climate ... makes some proposals viable that would not have been viable before and renders other proposals simply dead in water" (*Ibid*: 149). Thus, shifts in the national mood give an opportunity to push proposals on the governmental agenda.

Interest groups¹¹ pressure, political mobilization and the behavior of political elites are organized political forces. This element relates to the position –whether in support of or in opposition to- of powerful groups towards an item: "[S]upport for an item allows it to be pushed, and may be solely responsible in some cases for its rise to agenda prominence" (*Ibid*: 150) The forces try to influence the governmental agenda, but politicians evaluate the consensus and conflict among these forces. When all

¹¹ Interest groups are composed of "participants without formal government position... [such as] researchers, academics, consultants, media, parties and other elections-related actors, and the mass public." (Kingdon, 1995: 45)

forces converge, officials usually consider their position and try to move in that direction; but when there are conflicts among forces, politicians calculate the balance of support and opposition to potential proposals. In case of strong opposition, officials can move one step back of their idea. The relevance of these forces is evidenced in the following statement: “Interest groups are often able to block consideration of proposals they do not prefer.” (*Ibid*: 199) The political forces have generally this ability because the officials realize they would have to pass through “land mines strewn in their path” in order to attain the consideration of their proposals; therefore they decide to desist from their efforts.

The last element of this stream is the changes of administration. It includes two aspects to be observed: turnover of key personnel and jurisdiction. New high-level politicians taking office bring their priorities and try to include new issues on the agenda. The same applies to board members of administrative agencies. The other feature to observe is governmental office’s jurisdiction and its boundaries. Some offices confront a ‘battle over turf’ in an attempt to have under its responsibilities a potentially prominent issue in order to get popularity and control it and, consequently, affect the agenda. These battles can provoke either an impasse of governmental action, due to lack of cooperation among other offices involved, or a promotion of an issue in the governmental agenda, as competition for developing a potential popular initiative is better than no office interested in making it. According to Kingdon, “overlapping jurisdictions actually enhance the chances for serious consideration, as the various players vied with one another for the credit and for the claim to jurisdiction.” (*Ibid*: 158)

In contrast with the consensus building through persuasion and diffusion among policy specialists in the policy stream, the political stream builds coalitions through bargaining among potential coalition members. Political bargaining refers to give “concessions in return for support of the coalition” (*Ibid*: 159). Thus as soon as politicians perceive a change in any of the elements of the political stream, they try to form part of a coalition to protect their interests and ideas. Reaching agreements in the political sphere is not a matter of conviction, as in the policy stream, but of fear of being excluded of the potential benefit of participating in a coalition: affecting the governmental agenda. However, the most powerful effects on the agenda are produced after shifts in national mood and administration.

II. COUPLED STREAMS

The three subparts in section I depict separately the three processes in the federal government agenda-setting. Section 2.2.1 talked about how officials recognize a problem; section 2.2.2 described how a proposal originates and refines; and section 2.2.3 mentioned what are the political events that influence the public policy making. After recognizing the features of each of the streams, we are ready to continue immersing in the policy-making process, as Kingdon affirms: “Once we understand these streams taken separately, the key to understanding agenda and policy change is their coupling” (1995: 88). Thus this part will describe the moment in which the streams come to join and its potential effects. Policy entrepreneurs appear again in this section as essential actors.

2.2.4 Policy window, opening and closing

Usually each stream is living its own process apart from the others. Problems are recognized irrespective of the existence of alternatives to solve them; proposals are developed according to their own selection process, although they don't respond to problems; and political events are happening without relating to problems or alternatives. However, sometimes a solution responds to a problem without the appropriate political climate; or a new administration promotes a proposal that seems not to solve any important problem. This partial coupling of two streams usually promotes an issue only to be in the governmental agenda or rises an item on the agenda for a very short time without be taken into account, since one element is missing to have enough foundation and backing to stick an issue on the decision agenda and move into a position of serious consideration.

In contrast, the amount of possibilities of getting an issue on such agenda in a steady way increases when the three streams couple at the same time: “[T]he complete joining of all three streams dramatically enhances the odds that a subject will become firmly fixed on a decision agenda” (*Ibid*: 202). Here is when the term policy window appears. Policy window is a chance for policy entrepreneurs to make their solutions to be adopted and promote the prominence of an issue on the decision agenda: “the policy window is an opportunity for advocates of proposals to push their pet solutions or to push attention to their special problems” (*Ibid*: 165). This opportunity takes place when all the three streams come together. When coupling, suddenly policy entrepreneurs join their alternatives to problems, taking advantage of the political moment. Consequently, the way is open -but not for a long time- to try to look for an authoritative decision on those proposals, such as their adoption. In contrast, without a policy window, the advocates of an initiative do not waste their time and energy to try to push it, because they know that not all the conditions are set to be successful in their attempt. Instead, they wait until the right moment comes.

However, opportunities do not last long, and policy windows are not an exception. Nobody knows how much time will be opened, so the opportunity should be seized quickly before it closes. Sometimes there is a feeling that an existing legislation or decision solved the problem, so there is no more action made in this respect, making the window close. In other cases, if there is a failed attempt to pass a proposal without achieving it, the attention goes to other directions, closing the window. Furthermore, the fleeting excitement of a major event –such as a crisis- that once opened the window may pass, as well as the propitious political moment. Also closing is imminent when new key personnel that promoted an opening leave such position. Moreover, if there was no well-done softening-up process, the opportunity to push an alternative may pass.

Besides being ephemeral, open policy windows generally happen very seldom. This is due to limited governmental capacity –not enough time, money and people to deal with all agenda issues- and strategic considerations –save resources by focusing just on priority items-, among other causes. Nevertheless, there is a ‘fifty-fifty’ chance to predict the moment in which they will open. Sometimes they open on a regular basis thanks to the renewal cycle (i.e. expired programs or legislation in need of renewal), budget cycle, scheduled reports, and regular addresses of a Head of State or

Government. Issues arising from these renewals, however, are not always predictable. Although policy windows are infrequent and have a fleeting duration, they are important not just for attaining agenda changes, but also policy changes: “Despite their rarity, the major changes in public policy result from the appearance of these opportunities.” (1995: 166). This is because so limited time produces a sense of turning point that pressures for adaptation of problems and proposals to the political atmosphere.

2.2.5 Problem window and political window

But why does a policy window open? It opens due to either the problem stream or the political stream. These are called problem window and political window, respectively. Events happening in these streams –crisis, symbols, turnover of key personal, and shift in national mood, among others- create opportunities to push and highlight certain problems or proposals to serious consideration on the agenda over others. Thus, one way to open a policy window is by the emergence of a pressing problem that enables a solution to be bound to it, since decision makers become convinced about the relevance of the problem and considering the necessity of solving it. The other way is when organized political forces –or any other situation happening in the political stream- support or promote the consideration of a proposal.

2.2.6 Policy entrepreneurs and seizing opportunities

Having explained the meaning of a policy window and the causes that open it, it is important to know what makes the streams couple. The answer directly has to do with policy entrepreneurs. As we studied in the problem and policy streams (sections 2.2.1 and 2.2.2, respectively), these persons -inside or outside government- spend their time and energy to obtain benefits. In the problem stream they invest their resources to capture the attention of officials to their conception of problems, while in the policy stream they were devoted to make a softening-up process. However, they do not just try to persuade people of their portrayals about problems and alternatives, but they are also expecting the time when a policy window opens. After this opportunity presents, owing to a problem or a political event, policy entrepreneurs rush in an attempt to seize the moment. They know that an open policy window is a very brief instant so they have to make the coupling of the streams quickly before the window closes; otherwise, they have to wait until the next opening. They of course are aware of the fact that a policy window is the appropriate instant to affect the decision agenda –and possibly also the whole public policy making process- because when opening and coupling “[p]roposals are being moved into a position for legislative enactment, for instance, or subjects are under review for an imminent decision by the president or a department secretary” (1995: 166). This is why Kingdon claims that the joint of the three streams is the key to comprehend agenda change and policy change, since an open policy window is a chance to push a proposal (1995: 88). Therefore, policy entrepreneurs have a central role during the merger of the streams: “[They] play a major part in the coupling at the open policy windows, attaching solutions to problems, overcoming the constraints by redrafting proposals, and taking advantage of politically propitious events” (*Ibid*: 165-166).

Since coupling is not an easy goal, the entrepreneurs must have expertise and communication skills; negotiation abilities and political connections; and persistence

for investing their resources. Furthermore, they have to be ready with their proposals to hand in case an opening occurs. Their previous work as softeners made things much easier to take advantage of an opportunity. In fact, in order to be prepared when needed, they “try to make linkages far before windows open so they can bring a prepackaged combination of solution, problem, political momentum to the window when it does open.” (*Ibid*: 183). However, this doesn’t mean that without them a coupling is impossible to happen, but their presence within the process strongly contributes: “[T]he appearance of a skillful entrepreneur enhances the probability of a coupling. Potential couplings without entrepreneurs are less likely because they fail for lack of someone willing to invest resources in them” (*Ibid*: 207). Furthermore, central to emphasize is that this does not mean either that thanks to their efforts to take advantage of the opportunity and join the streams, their proposals will finally end the way they want and according to the link they made. This is due to the fact that the outcome of the opportunity is neither controllable nor guaranteed. On the one hand, after an initiative is on the agenda, it can suffer modifications and follow new directions, meaning that “[o]nce the agenda is set, control over the process is lost”. (*Ibid*: 178) On the other hand, a policy window is merely an incentive that stimulates agenda changes and the adoption of a certain policy, but it does not assure that a decision –or much less implementation- on any alternative will be taken: “An item can be prominently on the agenda...without subsequent passage of legislation.” (*Ibid*: 3) At this point, it is important to recall Kingdon’s main interest: to comprehend agenda-setting more than the decision-making process. Thus, his model tries to translate how and why an issue becomes part of the policy agenda more than how and why it is adopted.

2.2.7 Spillovers

Another effect produced by the appearance and success of a policy window for one issue is that it increases the opportunity for another related item to be considered: “Once a precedent is established in one area, it can be used to further similar change in an area that is like the first in some way.” (*Ibid*: 192) This means that a chain reaction can be produced after an open policy window, as two or more windows about issues alike can open thanks to the previous opening. But why this happens? One of the answers is this: “Events spill over into adjacent areas because politicians find there is a reward for riding the same horse that brought benefit before, because the winning coalition can be transferred to new issues, and because one can argue from precedent.” (*Ibid*: 195) However, in order to have the same policy opportunity, it is necessary to establish a feasible categorization where both issues are included under the same classification. Besides, spillovers also can happen because a political decision in one area affects the structure of advocates of neighboring policies: “The coalition resisting change is defeated, and the coalition that was built and nurtured to establish the new policy can be transferred to other fights.” (*Ibid*: 192)

2.3 MULTIPLE STREAMS MODEL AND ITS RELATION WITH THE EU

2.3.1. Application of the Multiple Streams Model to the case of the European Union

As mentioned in Chapter 1, Kingdon applied his theory to the United States. However, this doesn’t mean that he developed his Model exclusively for the American government. Rather, as I said before, Kingdon’s main interest was to

understand the federal government's agenda-setting process (*Ibid*: 86). Regarding this, I do not attempt to open a discussion about the legal nature or political definition of whether the European Union is a state or a international organization or even something else¹²; instead, I pretend to delineate the European Union in terms of Kingdon's perception about the federal government. For him, "the federal government is seen as an organized anarchy" (*Ibid*: 86) in which participants do not have precise goals, not clearly understand the organization to which they belong, and take no uniform ways to make a decision on a subject. (*Ibid*: 84)

2.3.2 Kingdon's conceptualization and the EU

Making reference to the subsection 2.1.1-3, the process of policy-making in the field of antiterrorism in the European Union will be explained, as well as its translation into Kingdon's conceptualization.

EU Policy-making process

In 1993, the Treaty of the European Union (TEU)¹³ established the creation of the so-called 'three pillars' of the EU, namely: European Community (EC), Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA), respectively. Since that date, these three pillars are the EU basis structure. This is important to know because not all pillars have the same policy-making process: EC has its own way, while CFSP and JHA work very similar.

For the purposes of this study, what interests us is principally the JHA pillar -or 'third pillar'- because counter-terrorism falls under its scope. This pillar suffered modifications. In 1993, its objective was to attain a closer European Union by commonly cooperating on fields that in the past were merely dealt at the national level. Thus there were established nine areas of common interest, in which "police cooperation to combat terrorism" was included. (Nugent, 2006: 91) In 1999 nevertheless there was an amendment to the TEU¹⁴ that is still in force. The JHA pillar is nowadays totally addressed to create an area of freedom, security and justice -EU's aim that was noted before in section 1.1 of the first chapter-, in which people can move without barriers through borders under a framework of "police and judicial cooperation in criminal matters" that would enable to prevent and combat "crime, organised or otherwise, in particular terrorism" as well as other offences. (TEU: Article 29).

However, part of our interest is also related to the Community pillar -or 'first pillar'-, as in practice the fight against terrorism has used other ways to support it, rather than only by police and judicial cooperation.¹⁵ Its main aims of this pillar are to establish a common market and an economic and monetary union; to attain this, the European Union should accomplish among several other things the progressive establishment of

¹² For information on this see Caporaso and Keeler, 1995; Falkner, 1998; Hix, 1998; Marks, 1992; Pierson and Leibfried, 1995; Rhodes and Mazey, 1995; Rosenau and Czempiel, 1992.

¹³ In this period also called Treaty of Maastricht.

¹⁴ Then also known as Treaty of Amsterdam.

¹⁵ Note that the EU has also taken advantage of measures on the CFSP pillar to contribute to this battle, as the objectives of this pillar are to strengthen the security of the EU, to preserve peace, and to promote international security and international cooperation (Treaty of the European Union: Article 11) However, I do not make reference to its contribution as none of the case studies in this work will be part of the second pillar.

an internal market -of free movements of goods, persons, services and capital- and a common policy of transport. (Treaty of the European Community: Article 2-3, Article 95, Article 71) This means that, for instance, measures to control illegal immigration, combat terrorist financing, or to improve aviation security fall within this pillar.

Thus, once known this, I will explain the policy-making process of both the third pillar and the first pillar. On the one hand, regarding the former, according to the TEU, measures can be proposed either by any Member State or by the European Commission. The Council is responsible for adopting the proposals generally by unanimity, taking the following four kinds of decisions: common positions¹⁶; framework decisions¹⁷; decisions¹⁸; and conventions¹⁹. (Article 34) However, although deciding by unanimity, an abstention is not an impediment to adopt a proposal (*Ibid*: Article 7), but a vote against any decision could block its adoption. Furthermore, the European Parliament is to be consulted by the Council before it decides to any of them, except for the common positions. This is known as the ‘Consultation Procedure’, since the Council requests the opinion of the Parliament. (Article 39) However, the Council has only the obligation to consult it, but not to take the Parliament’s position into account to determine the adoption or not of an initiative. On the other hand, as to the latter, the Treaty of the European Community (TEC) determines that only the Commission is able to make a proposal. The Council shares with the Parliament the power of adopting an initiative (Article 251), which is called the ‘Codecision procedure’.²⁰ In this case the adoption of an instrument is only possible after the Parliament approves it and then the Council decides on it by qualified majority voting (QMV)²¹. Thus, this procedure allows the Parliament “to veto legislative proposals it did not wish to accept.”²² (Nugent, 2006: 87) The type of decisions the Council –and Parliament- can take are: directives²³, regulations²⁴,

¹⁶ A common position determines EU’s approach to specific issues in JHA and provides orientation for the attainment of national policies regarding this field.

¹⁷ The purpose of a framework decision is to align national legislation. Member States should take the necessary measures –they are free to choose the method to do it- in order to translate the EU’s objective of this instrument into their national legislation.

¹⁸ A decision under the third pillar is used to achieve any other objective of this pillar, rather than approximating law. The method to do it is established within this instrument.

¹⁹ A convention is an instrument that the Council recommends the Member States to adopt. Member States should apply the necessary procedures according to their national law, but within the time set by the Council. The Council adopts it by unanimity, but should be ratified by the national parliaments.

²⁰ Note that in the sole case of initiatives in the field of economic and monetary union applies the ‘Cooperation procedure’ (TEC: Article 99, Article 252). As such area does not relate to terrorism, I do not explain this procedure.

²¹ QMV refers to the number of votes needed in the Council to pass a proposal. When there were 15 Member States, the requirement was of 62 votes out of 87. Later, after the large enlargement of May 2004, the number increased to 232 out of 321. Currently, after the accession of Bulgaria and Rumania – in last January- the votes required are 255 out of 345. (TEU: Article 34; Treaty of the European Community: Article 205; Nugent, 2006)

²² A more detailed explanation of the process: the Parliament examines the proposal by its pertinent committees, probably making amendments to it, and then voting and attaining a ‘first reading’ –there is no time limit for reaching this first opinion; in case the Parliament rejects the proposal, it cannot be adopted-. Afterwards, the Council should accept this outcome and only then it is able to adopt the initiative by QMV. If the Council disagrees with the Parliament’s opinion, the process continues with a ‘second reading’ (Council, 2004y: 2-4) and even a ‘third reading’ if necessary.

²³ A directive is addressed to the Member States, with the aim of approximating national legislation the way the Member States themselves determined to make it (similar as a framework decision in the third pillar).

decisions²⁵, recommendations, opinions, and resolutions²⁶. Summarizing the policy-making processes, in the third pillar the Commission and the Member States are able to submit a proposal; and the Council by unanimity takes decisions on it, after “consulting” the Parliament. However, in the first pillar only the Commission can issue an initiative; and the Council -by QMV- and the Parliament “codecide” on its adoption.²⁷

Thus, the decision-making process of the third pillar is known as intergovernmental procedure, as “Members States shall inform and consult one another within the Council with a view to coordinating their action” (*Ibid*: Article 34); this means that full cooperation among the Member States’ governments –represented by the ministers of justice and interior attending Council meetings- is needed in order to achieve agreements on Justice and Home Affairs. In this context, significant to note is that the United Kingdom, Ireland, and Denmark do not fully participate in JHA matters, especially in relation with the measures on free movement of persons (Treaty of Amsterdam, Protocol on the position of United Kingdom and Ireland; Protocol on the position on Denmark); therefore these countries do not vote for the adoption of JHA measures and they are not obliged to follow the decisions out of them, but they are enabled –if they wish- to take part of the adoption and implementation of a legal instrument, previous notification in advance to the Council. As regards the first pillar, the process is called Community procedure.

EU policy-making process in terms of the conceptualization of Kingdon

Relating the EU policy-making process to the author’s view, talking particularly about the EU agenda-setting process and alternative specification of the EU antiterrorist policy, there are two important things to know. On the one hand, the governmental agenda -the political agenda that consists of all the items discussed by politicians- is represented by the officials’ agendas of the three venues within the Presidency: Council of the European Union, European Council and JHA Council –their characteristics will be explained in the following chapter-. On the other hand, the decision agenda –the policy agenda that includes the issues to which selected initiatives are to be considered by the body responsible and authorized for decision-making– relates to the proposals made by the Commission or the Member States that are taken into account by the Council of the European Union, in order to adopt them mostly by unanimity and sometimes requiring the approval of the Parliament. The process varies according to the kind of measure and its legal basis.

²⁴ A regulation is for every EU inhabitant and is a general measure. Once adopted, it has immediate binding effect in all Member States –as if it was a national instrument-.

²⁵ A decision is a specific measure given to a specific Member State or individual on a particular issue.

²⁶ Recommendations, opinions, and resolutions can be addressed to Member States, institutions, or persons to establish a point of view on an issue. They are non-binding.

²⁷ This summary is in general terms. For particular cases and more information, see the respective treaty and article.

CHAPTER 3

EU PRESIDENCY AGENDA FOR ANTITERRORISM

Chapter one defined the goals of this study and the means to attain them, while chapter two delineated the theoretical basis of this study. Now, it is time to begin giving an exposition of the content of the Presidency agenda for antiterrorism. Before this, it is relevant to have knowledge of some general features of this policy field and the principal actors involved. Therefore, this chapter is divided into two main parts. Firstly -in section A- I will describe the policy area to be studied and the EU institutions. Secondly -in section B- I will delineate the agenda for counter-terrorism throughout the term in office of each Presidency between the second half of 2001 and the first half of 2007. The main aims are to recognize the most important characteristics of the research subject and to give an outline of the EU's antiterrorist agenda during the mentioned period.

A. Research subject

The scope of this work is mainly composed of two elements: the antiterrorist policy and the Council Presidency. In this part, I will describe the features of both, starting with the former.

3.1 ANTITERRORIST POLICY

According to the European Union, terrorism refers directly to two concepts: 'terrorist offences' and 'terrorist groups' (Council, 2002). Both definitions are EU-wide accepted. Firstly, terrorist offences are acts that directly or indirectly attempt on life, but only when they are intentionally done or linked with any of the following terrorist objectives: to seriously intimidate a population; to put excessive pressure on a government or international organization for doing or abstaining from any act; or to critically destabilize or destroy the "fundamental political, constitutional, economic or social structures of a country or an international organization" (*Ibid*: Article 1). Secondly, terrorist groups are those that are formed –as from two persons- to commit the terrorist offences mentioned above, even when there is no continuity of their members or they do not have a developed structure (*Ibid*: Article 2). Additionally, terrorism relates indirectly to another item: 'terrorist financing' that deals with the act of getting funds, irrespective of the means, to attempt to use them, to actually use them or to know that they would be partially or totally used to commit a terrorist offence or to support terrorist groups. (Council, 2005m: Article 1) Consequently, due to the threat that terrorism represents, this problem is "one of the most serious violations" of the common principles of the member states of the European Union: democracy and the rule of law (Council, 2002: Paragraphs 1-2), hence the necessity of an antiterrorist policy.

Furthermore, -as mentioned in the preceding chapters- this policy area is part of the 'third pillar', one of the key objectives of the European Union since 1999: "[T]o maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to...the prevention and combating of crime." (Treaty of the European

Union: Article 2). One way to promote an area where people can freely move along the EU under conditions of security and justice is to prevent and counter terrorism. According to the EU, the antiterrorist fight can be achieved through

“closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol)...; closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit (‘Eurojust’)...; [and] approximation, where necessary, of rules on criminal matters in the Member States...” (*Ibid*, Article 29).

In other words, for the European Union the means to counter terrorism is by promoting police cooperation and judicial cooperation in criminal matters.²⁸ Both kinds of cooperation require the common action of different authorities and means among Member States. For instance, on the one hand, police cooperation is made out of the combined efforts among police forces and customs authorities of the Member States -mainly through the European Police Office (Europol)- in order to prevent, detect and investigate criminal offences. This cooperation includes the collection and exchange of information on crimes; police training and exchange of police officers; the use of equipment and forensic research; and the evaluation of techniques of investigation. (*Ibid*: Article 30) On the other hand, judicial cooperation refers to the relation among competent ministries, judicial, and national prosecuting authorities of the Member States -mostly via the European Union’s Judicial Cooperation Unit (Eurojust)- to: facilitate extradition between Member States; ensure rule’s compatibility when needed to improve this cooperation; prevent conflicts of jurisdiction among Member States; and progressively adopt procedures (penalties, rules, etc) against terrorism –and other crimes-. (*Ibid*: Article 31) Nevertheless significant to be aware is the fact that, although not officially established in the Treaty of the European Union, the EU has incorporated diverse measures of the other pillars to strengthen its antiterrorist campaign –as explained in the previous chapter-.

3.2 EU COUNCIL PRESIDENCY

Its formal name is Presidency of the Council of the European Union. Each Member State holds the Presidency under a rotation system and a half-year basis. This means that every six months –either in January or July- a different Member State takes office.²⁹ The Minister of the Foreign Affairs of the incumbent Member State in office is the president of the Council (Council website).

The Presidency is in charge of mainly three tasks: organizing and chairing the Council ministerial meetings, the European Council, and other working gatherings (Council, 2004: Article 2; TEU: Article 4); representing the Council in other EU institutions and bodies; and acting on behalf of the European Union in international organizations and foreign relations with third countries –in cooperation with the European Commission and the EU’s High Representative of the Common Foreign and Security Policy-. (German Presidency website).

²⁸ According to the TEU, terrorism is not the only crime subject to be tackled by police and judicial cooperation, but also: trafficking in persons, drugs and arms, as well as fraud and corruption (Article 29)

²⁹ The sequence list is decided by member states’ unanimity with various years in advance.

For the purposes of this research study, I will focus on the Presidency's role as chair body. Thus in the next paragraphs, I will describe the activities of the Presidency within the two most important kinds of sessions chaired by it: the ministerial meetings and the summits of the European Council. Then, I will mention the three Council venues related to the Presidency and, finally, I will list the presidencies that constitute the research subject.

3.2.1 Ministerial meetings

On the one hand, the Presidency organizes the sessions of the Council of the European Union. The Council is one of the five institutions of the European Union and the main EU decision-making body.³⁰ The Council is composed of all the ministers from each Member State³¹, whose gatherings are referred as Council meetings or ministerial meetings. However, not all the ministers from the different portfolios meet at the same time. Instead, their sessions are based on nine 'configurations' that bring together the different EU policy areas and the ministers in charge of dealing with those areas.³² These configurations were established by the Council in order to organize its activities. Among the most prominent formations are: the General Affairs and External Relations Council (GAERC), the Economic and Financial Affairs Council (Ecofin), and the Justice and Home Affairs Council (JHA). (Council, 2006: Annex I) In relation to the EU antiterrorist policy, since it has been supported by other actions besides those regarding JHA, it involves diverse configurations. For example, also GAERC, ECOFIN, TTE (Transport, Telecommunications and Energy Council) may deal with instruments that in diverse ways contribute to the combat of terrorism. However, for this study, the ministerial meetings that I will examine in section B are only those of the JHA Council –attended mainly by the minister of Justice and the minister of the Interior of each Member State-. Without doubt, other configurations are also significant, but in order to limit my scope the sole line I will follow for my analysis is that drawn by the Justice and Home Affairs Council. Just when necessary, other configurations will be mentioned in my study.

Continuing with the organization of the ministerial meetings, the preparation work is made by the Committee of Permanent Representatives (COREPER), which is composed of the national delegations –or permanent representatives- of each member state.³³ (Nugent, 2006: 198-200) Hierarchically, below COREPER, there are other small committees, as well as working groups (known also as working parties) consisted of diverse officials of the Member States who assist COREPER and the Council of Ministers. In addition, there is a General Secretariat, which provides administrative support for the Council's work –from ministerial to working group meetings-. The head of this Secretariat, i.e. the Council's Secretary General, is also the EU's High Representative for the CFSP (SR/HR) –alluded above-; currently this position belongs to Javier Solana.

³⁰ The five institutions of the European Union are: the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors (Treaty of European Union: Article 5).

³¹ This is why the Council of the European Union is also known as the Council of Ministers.

³² Before the second half of 2002, the number of configurations was sixteen.

³³ Note that there are two COREPERs: I and II. COREPER II deals with the issues of the three most important Councils mentioned above, including the JHA; while COREPER I works for the rest.

The Presidency almost freely decides the frequency of ministerial gatherings during its six-month period, as established in the Rules of Procedure of the Council: “Seven months before the beginning of its term of office...the Presidency shall make known the dates which it envisages for meetings that the Council will have to hold in order to complete its legislative work or take operational decisions.” (Council, 2006: Article 1). Thus, each Presidency should issue a calendar, determining the schedule of the Council meetings -as well as the European summits and any other session-. Usually from 2001 until the last presidency, the Justice and Home Affairs Council met three times per Presidency.³⁴ Nevertheless, the Presidency has almost no authority to decide the location of the gatherings, since it is established by rule that the ministerial meetings should take place in Brussels -seat of the Council-, except from those made in April, June and October that should be held in Luxembourg (*Ibid*).

The Presidency identifies its priorities for each configuration at the beginning of its term and establishes its general work programme.³⁵ Based on these plans, the Presidency structures the agenda of all Council meetings, as part of its responsibilities: “[T]he President shall draw up the provisional agenda for each meeting.” (*Ibid*: Article 3). At the beginning of each meeting all members of that Council should adopt the provisional agenda proposed by the Presidency. However, there is also space to add an issue in case all members of the Council agree: “The inclusion in the agenda of an item other than those appearing on the provisional agenda shall require unanimity in the Council.” (*Ibid*) Each agenda is divided into ‘A’ and ‘B’ items. The first kind of issues includes those that are to be approved by the Council without discussion, since these were previously considered by the COREPER. Of course, any ‘A’ item can be discussed if a member of the Council expresses his desire to do it. Finally, relevant to mention is that most of the Council meetings are held behind closed doors, except when having a debate regarding a codecision procedure (Council, 2006: Article 5). However, the Council’s press office issues a communication that contains the discussions and results of all ministerial meetings.

As observed, the relevance of the Presidency is not just to chair Council meetings, but also to promote an efficient network: “The institution of the Presidency also permits a greater degree of both horizontal coordination (across the various sectoral Councils) and vertical coordination (between meetings of ministers, permanent representatives and national officials).” (Christiansen, 2006: 155).

³⁴ Note that usually the Presidency organizes informal meetings to freely interchange ideas. However, “[t]hey are not Council sessions and therefore cannot replace the Council’s normal activities. No official agenda is drawn up and meetings cannot arrive at formal conclusions or decisions.” (German Presidency website1)

³⁵ Before 2004 the work programmes were made individually on a half-yearly basis. In contrast, from 2004 to 2006 the two Presidencies taking office in the same year had to coordinate their plans each December to adopt a joint annual document in order to give continuity to the Council’s work in terms of logistics and policy-making. However, since 2007 the incumbent Presidency and the two following member states taking office should prepare a multiannual program for the coming year and a half (Council, 2004; Council, 2006).

3.2.2 European Council summits

On the other hand, the Presidency organizes the meetings of the European Council. The European Council is neither an EU institution nor an organization; rather, it is the official term that refers to the meetings of the Heads of State and Government of the Member States³⁶ (TEU: Article 4). The objectives of these high-level gatherings are to encourage the European Union; to achieve further development; and to guide EU's general policy direction. Besides, the European Council in most of the cases "examines progress made, makes important decisions on personnel appointments, decides on common strategies and sets the course for the CFSP. In exceptional cases, it also seeks to settle issues on which agreement cannot be reached at ministerial level." (German Presidency website) However, essential to mention is that –contrary to the Council meetings- the European Council has no decision-making power and it is no legislator, since its decisions are only political. Certainly these should be taken into consideration by the Council of the European Union, but they are not legal. Thus for a European Council political decision to have binding power, it should follow the usual official policy-making process: "When it is intended that its decisions should be given a legal effect, the customary EU legislative procedures have to be applied." (Nugent, 2006: 236).

The preparation of these summits is the responsibility of the Presidency, whose political host in this case is not the Minister of Foreign Affairs, but the Head of State or Government: "The European Council shall meet at least twice a year, under the chairmanship of the Head of State or of Government of the Member State which holds the Presidency of the Council." (TEU: Article 4) As evidenced in the precedent quote, the Presidency has the possibility to organize more than one summit during its term. From 2001 until 2007, the European Council usually met two times per Presidency – at the beginning and at the end of the six-month period-. However, it has limited decision on the location, since it was officially stipulated that from 2002 the closing summits of June and December should be held in Brussels, while the others can be done elsewhere (Nugent, 2006: 225).

The agenda of the European Council is shaped by the Presidency, represented by the GAERC configuration: "For the purpose of preparing the meetings of the European Council, the General Affairs and External Relations Council...shall draw up an annotated draft agenda on a proposal by the Presidency at least four weeks before the meeting of the European Council." (Council, 2006: Article 2) Regarding the items included on the agenda, according to the European Commission, usually the Spring European Council –that normally takes place in March- focuses on economic, social and environmental issues³⁷ (Commission website). The GAERC Council is in charge of approving the agenda of the summits. All the meetings are private, but at the end of each European Council the agreements of the Heads of State and Government are made public in the "Presidency conclusions".

³⁶ The President of the European Commission also attends these meetings.

³⁷ These are the three pillars of the 'Lisbon Strategy', which was devoted to make the EU the most competitive economy in the world and to attain full employment by 2010. This strategy was launched during the Spring European Council in March 2000.

3.2.3 Presidency and Council venues

Having explained the characteristics of the Presidency and its implications as meeting-organizer, I will mention the formal system arenas that it includes. These are mainly three: the Council of the European Union, the ministerial meetings, and the European Council. However, not all the policy arenas have the same room for political manoeuvre: the Council itself and its ministerial meetings have a key role in the EU decision-making process; while the European Council cannot enact legislation, but it is the top political forum to make noise and make it real loud. Nevertheless, as seen in the two sections before, the Presidency itself presents a dual characteristic: it relates to both agenda-setting and decision-making. The research study will take into account these three venues when defining the content of the antiterrorist agendas of all the presidencies between 2001 and 2007 -note again that in the specific case of the ministerial meetings I will only consider those of the Justice and Home Affairs Council-.

3.2.4 EU Council Presidencies subject to study

The following table includes the 12 consecutive Presidencies as from the second half of the 2001, when the terrorist attacks of the United States happened, to the last recently finished term at the time of writing. These delimit the research subject.

Table 3.1. EU Presidencies 2001/2 – 2007/1

Half	Year	Presidency of the Council of the European Union	President of the Council of the European Union ³⁸	President of the European Council ³⁹
2 nd	2001	Belgium	Louis Michel	Guy Verhofstadt
1 st	2002	Spain	Jose Piqué i Camps	José María Aznar López
2 nd		Denmark	Per Stig Møller	Anders Fogh Rasmussen
1 st	2003	Greece	George Papandreou	Costas Simitis
2 nd		Italy	Franco Frattini	Silvio Berlusconi
1 st	2004	Ireland	Brian Cowen	Bertie Ahern
2 nd		Netherlands	Bernhard Bot	Jan Peter Balkenende
1 st	2005	Luxembourg	Jean Asselborn	Jean-Claude Juncker
2 nd		United Kingdom	Jack Straw	Tony Blair
1 st	2006	Austria	Ursula Plassnik	Wolfgang Schäussel
2 nd		Finland	Erkki Tuomioja	Matti Vanhanen
1 st	2007	Germany	Frank-Walter Steinmeier	Angela Merkel

³⁸ The Minister of Foreign Affairs of the incumbent Presidency chairs the Council, since its meetings are at a ministerial level.

³⁹ The Head of State and Government of the incumbent Presidency is the chairman of the European Union, as its gatherings are at the very high political level.

B. Presidencies' agendas for antiterrorism

This part will include the agenda for this policy area of the twelve presidencies listed in the precedent table, observing the concerns of each Presidency during its period in office, according to the priorities it established at the beginning of its term and the conclusions of the meetings –i.e. JHA Council and European Council sessions- it chaired under its leadership.⁴⁰

3.3 PRESIDENCY OF BELGIUM (JULY – DECEMBER 2001)



Antiterrorism: not a priority

Antiterrorism did not appear within the priorities of the Belgian presidency at the beginning of its term.

During the Belgian Presidency, 6 Justice and Home Affairs Council meetings were held. However, only 4 were planned in advance by the Belgian Presidency, while 2 extraordinary gatherings were organized during the running term owing to the terrorist acts on September 11th in the United States. Furthermore, 3 European Council summits were held, but only 2 were established in advance and 1 was ad hoc due to the same reason as to the extraordinary JHA sessions. Observe the following table.

Table 3.2. JHA Council and European Council meetings during the Belgian Presidency

	JHA Council meetings						European Council summits		
	<i>Jul</i> 13 [1]		<i>Sept</i> 27, 28 [4]	<i>Oct</i> ⁴¹ 16 [5]	<i>Nov</i> 16 [8]	<i>Dec</i> 6,7 [9]		<i>Oct</i> 19 [7]	<i>Dec</i> 14, 15 [10]
Ordinary									
Extraordinary		<i>Sept</i> 20 [2]		<i>Oct</i> 16 [6]			<i>Sept</i> 21 [3]		

[] The number inside the square denotes the chronological order of the meetings.

Still no existence of terrorism on the agenda

The July's Council meeting dealt with other issues on JHA, but **terrorism was not even mentioned.**

Antiterrorism: suddenly, 'the' issue

The first extraordinary Ministerial meeting of September –20th- was carried out because of the terrorist attacks in the US; thus this gathering was entirely devoted to the fight against terrorism. The Council highlighted the **relevance of accelerating the creation of an area of freedom, security and justice** within the European Union and of **establishing cooperation with the United States**. Moreover it decided to take advantage of some adopted measures within the EU: the two Conventions on extradition between Member States⁴²; the establishment of **Europol**⁴³ and **Pro-**

⁴⁰ No informal meetings are taken into consideration, since as I indicated above “they are not Council sessions.”

⁴¹ Note that in the same day were two meetings. But the Ordinary was a joint session between the JHA and ECOFIN Councils.

⁴² In 1995 and 1996, two conventions to simplify and facilitate the extradition procedure between the Member States were adopted, though not ratified by the Member States (Council, 1995; Council 1996)

Eurojust,⁴⁴ the **Convention of Mutual Assistance in Criminal Matters**⁴⁵; and the **setting up of the EU Police Chief Task Force**⁴⁶. Besides, the JHA Council established new “**measures to step up the fight against terrorism** within the European Union” mainly in four areas: judicial cooperation, police cooperation, financing of terrorism, and measures at borders (Council, 2001d: 3). Specifically, on *judicial cooperation*, it urged to **replace the existing extradition procedure with a ‘European Arrest Warrant’**⁴⁷; to **establish a common definition of a terrorist act and a common comprehension of terrorism** in order to facilitate cooperation through borders; and to **vanquish the requirement of the principle of double criminality**⁴⁸ in the very special case of terrorist offenses. Additionally, in this meeting, the Council welcomed the proposal of some Member States of a Framework Decision for setting Joint Investigation Teams⁴⁹. It asked the Commission for **making proposals on the possibility to carry out investigations on crimes related to the use of electronic communications systems**. Furthermore, the JHA Council considered that the European Union’s Judicial Cooperation Unit (**Eurojust**) **should start its activities as from 2002**, after finalizing the draft decision establishing it.⁵⁰ In the case of *police cooperation*, the Council invited the Police Chiefs Task Force to **carry out a meeting on counter-terrorism to coordinate measures –via Europol- between Member States and third countries in order to enhance a high level of security and observe the measures implemented in the field of air safety**. Also, it emphasized the importance that **police authorities and the intelligence services of the Member States provide any relevant information on terrorism in order for Europol to carry out effective analyses**. Related to this, the Council instructed the Europol’s director to **give a report** -in the last JHA Council meeting in December- on

⁴³ Europol was established in 1992 in the TEU; however, it started its activities until 1999. (Article K.3). As mentioned above in section A, its main task is to improve cooperation between the relevant authorities in the Member States to prevent and combat terrorism and other serious crimes.

⁴⁴ Pro-Eurojust is the Provisional Judicial Cooperation Union that later will become known as Eurojust, whose aim is to promote cooperation among judicial authorities in the Member States. Pro-Eurojust was established in 2000 and became operational in 2001. (Council, 2000)

⁴⁵ It was decided in 2000 in order to facilitate judicial cooperation and improve its efficiency in a region constituted of different judicial systems (Council, 2000a). This convention has not been ratified by the Member States.

⁴⁶ The European Police Chiefs’ Task Force was established in 2000 in order to develop personal and informal contacts among the heads of national and local police agencies in the EU with the aim of exchanging information and promoting police cooperation to fight against crime (Freedom, Security and Justice website).

⁴⁷ The European arrest warrant is a procedure that could provide the opportunity for judicial authorities to hand over criminals responsible for perpetrating terrorist attacks. The idea is that a Member State would be able to arrest or surrender a requested person by another Member State in order to prosecute criminal acts and execute a sentence or a detention order, without proving the principle of double criminality (Council, 2002a). To know about double criminality, see the note below.

⁴⁸ Double criminality is an extradition requirement that suggests that a crime should be an offense in both countries: where the crime took place and where it is prosecuted (the transferring and the receiving country).

⁴⁹ The concept of joint investigation teams was established in 2000 in the Convention of Mutual Assistance with the aim to carry out coordinated criminal investigations and action in the Member States. The teams should be composed of the judicial and police authorities of at least two Member States, and they should act for a specific purpose and a limited duration. (Council, 2000a) However, since this Convention was not ratified, it was necessary to issue other proposal that allows the establishment of these teams.

⁵⁰ Eurojust is an EU body whose role is to enhance the assistance among judicial authorities -such as prosecutors, magistrates and police officers- within the Member States when investigating and prosecuting organized and cross-border crimes, including extradition requests. (Council, 2002b)

the data supplied by the Member States and any problem to this respect. Also, the Council decided to establish, within the framework of Europol, a temporal team of specialists on antiterrorism called Counter Terrorism Task Force (CTTF)⁵¹ consisted of police forces and intelligence services to collect, analyze and assess information for recognizing potential targets, consequences, and preventive measures on terrorism. Besides this, the Council asked Europol for updating the Directory of Specialized Counter-Terrorist Competences, Skills and Expertise.⁵² Additionally, it requested the Article 36 Committee⁵³ to improve coordination among Europol, Pro-Eurojust and the European Police Chiefs Task Force. Furthermore, the role of the intelligence services of the Member States was conceived essential for preventing terrorism as they identify potential terrorist threats; thus, the exchange of information and cooperation among them must be enhanced by meeting regularly as from before the beginning of next November. Regarding this, the assistance among these services and the police services, including Europol, would also have to be improved. Likewise, the JHA Council urged the Article 36 Committee to work on the establishment of a mechanism to assess the application at the national level of international measures against organized crime, in a view to define an evaluation procedure for national antiterrorist arrangements; as of this, a report and proposals should be delivered to the Council by the end of 2002. Thus, the Council called Member States to exchange information about their national existing measures to fight against terrorism (such as control at airports, cross-border controls or external borders controls), and requested the Working Party on Terrorism⁵⁴, together with Europol, to carry out an inventory of those measures and to prepare plans in case of transborder terrorist attacks. Furthermore, the JHA Council decided to send the European Parliament an annual report about the terrorist situation in the EU in the last 12 months and its trends; this study would be called TE-SAT (Terrorism Situation and Trends).⁵⁵ Besides, the Council invited the Member States to provide information about detection, production, storage, and trafficking in arms and explosives. It suggested the European Commission to evaluate the necessary steps for harmonizing the legislation in this field and regarding firearms licenses. As to *financing of terrorism*, the JHA Council encouraged Member States to ratify the international conventions regarding prevention and fighting terrorist financing, as well as to take measures for achieving this and to avoid generation and transfer of terrorist funds. Furthermore, it established that, once receiving

⁵¹ Note that during this ministerial meeting this team no specific name was given to this team. It was later that it was known as CTTF. For more information, see Europol, 2001: Terrorism section.

⁵² In 1996 the Council decided to create a Directory that included the specialized abilities for combating terrorism in order to make this problem easier to tackle. Thus, Member States should indicate any aptitude in this field that they have and that consider useful to other Member States. This directory should be updated by the Presidency of the Council. (Council, 1996a)

⁵³ Note that 'Article 36 Committee' -also known as CATS (*Comité Article Trente Six*)-, is a Council working group that provides support and coordination regarding third pillar issues. Its name is taken of the article of the Treaty of the European Union that established it. This Committee consists of senior officials in the area of JHA, whose main role is to provide opinions to the Council. (Treaty of the European Union: Article 36)

⁵⁴ The Working Party on Terrorism includes police and intelligence services of the Member States, as well as other unites created *ad hoc*, specialized to fight against terrorism. It should inform the JHA Council about the problems of cooperation in this matter and to expose proposals and suggestions to overcome this.

⁵⁵ According to Europol, since 2000 there have been efforts "for producing periodical trend and situation reports" regarding terrorism. (Europol, 2000: See 'Terrorism' section)

Parliament's opinion, it would adopt the **Protocol to the Convention on Mutual Assistance in Criminal Matters** that includes measures regarding financing terrorism, such as request of information on bank transactions. (Council, 2001) Besides this, it noticed that it would also adopt, after Parliament's opinion, **the draft Framework Decision on the execution in the EU of orders freezing assets or evidence** –its scope would be extended to cover terrorist offences⁵⁶, as well as the **draft Directive amending Council Directive 91/308/EC on prevention of the use of the financial system for the purpose of money laundering (also known as Second Money Laundering Directive⁵⁷)**, whose scope would be broader. Concerning *measures at borders*, the Council promoted **the strengthening of external borders control and surveillance**, and asked the Police Chiefs Task Force for **examining the necessary measures to attain it and to present a report** in the last Belgian JHA Council meeting. Besides, it suggested the Member States **to apply strong measures to detect and avoid forgery on identity documents and residence permits**. Thus, it noticed **the importance of establishing consular cooperation**. It also requested the Commission **to make proposals for creating an information network regarding issued visas**. Moreover, the Council invited the Schengen countries **to enter more information into the Schengen Information System (SIS)⁵⁸** about: wanted persons for arrest for extradition purposes; persons once refused entry to a country; and vehicles and persons for check purposes. Likewise, it considered **studying the situation of countries with risk population movements as a result of the attacks in the United States, in case special temporary protection by the EU is needed**. The JHA Council also recommended considering, together with the Transport Council, **necessary measures to increase airports' security**, as aviation safety should have very high standards. In order *to improve European Union's cooperation with the United States*, the Council emphasized **EU's preparation to assess and identify, together with the US, terrorist threats and terrorist organizations**. Furthermore, **gatherings and cooperation between US and EU authorities specialized on antiterrorism should be held regularly** –twice per semester-. Besides, **both countries should coordinate efforts to increase cooperation and to fight against financing terrorism**, too. Thus, **an agreement between Europol and US agencies should be done to attain the exchange of police officers and information**. Besides, the Council agreed on **proposing to the US to**

⁵⁶ The objective of this Framework Decision is to set up the rules by which a Member State should recognize and execute in its territory a 'freezing order' made by a judicial authority of another Member State. This kind of order is a procedure established to prevent the destruction or transformation of property (such as objects, documents or data) in order to secure evidence and potential property confiscation used in criminal proceedings. (Council, 2003)

⁵⁷ Note that the first money laundering directive was the 91/308/EC adopted on 10 June 1991.

⁵⁸ SIS is an EU database network, consulted mainly by police agents, border police, and customs authorities in order to find information on wanted –either missing or criminal- persons and stolen property within the territory of the Schengen states and at external borders. This is an instrument used to compensate the elimination of controls within the borders of this area. It was established in 1995 and it promotes exchange of information among police agencies. Note that the Schengen states are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, Spain and Sweden, as well as two non-member states: Iceland and Norway. Ireland and United Kingdom participate only partially. The new member states are waiting for the Council's decision on this matter so they will soon join the Schengen area. Switzerland is currently negotiating its entrance. Take note that due to EU enlargement, technological changes, and new necessities, the Council decided later -at the end of 2001- the creation of a second generation of information system or SIS II (Council, 2001b).

negotiate an agreement with the EU in the field of penal cooperation on terrorism.

Action Plan to Combat Terrorism

One day after the extraordinary Council meeting, the European Council also held an extraordinary summit where it exclusively discussed the international situation after the terrorist attacks and encouraged EU's **fighting against terrorism**, which was **categorically established as an EU's top aim**: "The European Council has decided that the fight against terrorism will, more than ever, be a priority objective of the EU" (Council, 2001a: 1). The leaders of the EU emphasized their solidarity to cooperate with the United States to punish the perpetrators, sponsors, and supporters – either individuals or countries- of such criminal acts. As to this, they recognized that the Member States were prepared to carry out this action, but that a closer cooperation among them was required. Besides, they called for a global coalition among all the Member States, US, and third countries -such as the candidate countries, Russia, and Arab and Muslim countries-. Furthermore, it approved an Action Plan to combat terrorism. It **included five major points** –that emphasized most of the arguments discussed by the JHA Council the day before-: *enhancing police and judicial cooperation* (the leaders encouraged the introduction of the European arrest warrant and a common definition of terrorism, the elaboration of a common list of terrorist organizations, the exchange of information regarding terrorism -via Europol- among Member States, the adoption of a Framework Decision on Joint Investigation Teams -on terrorism-, the conclusion of a cooperation agreement between Europol and US authorities, and the implementation of all the measures decided at Tampere⁵⁹ in 1999); *developing international legal instruments* (the EU leaders promoted that Member States should quickly implement all international conventions on counter-terrorism); *putting an end to the funding of terrorism* (the European Council emphasized the relevance of combating any form of financing terrorist activities, so it promoted the adoption of the Second Money Laundering Directive and the framework Decision on freezing assets or evidence; and it called Member States for ratifying the UN Convention on the Suppression of Financing Terrorism. It also mentioned that there will be taken measures against those territories and countries identified by the Financial Action Task Force (FATF)⁶⁰ as non-cooperative on combating financing terrorism); *strengthening air security* (the leaders requested the Transport Council to take action to strengthen air safety by training crew, checking and monitoring luggage, and controlling the quality of air security measures applied by Member States, among others); and *coordination the EU's global action* (the EU political heads noted that to coordinate the fighting against terrorism, it is necessary to coordinate EU's policies, so the CFSP would have to further integrate counter-terrorism). Besides adopting the Action Plan, the leaders recognized the EU's role within the international community to stabilize and prevent conflicts in order to combat terrorism. Furthermore, the CFSP and the political dialogue with countries suspicious of originating terrorism were **considered very important to have more effectiveness in fighting against**

⁵⁹ Tampere or Tampere Programme are the informal names to refer to the European Council in which essential measures regarding JHA were decided, in order to build an area of freedom, security, and justice.

⁶⁰ This force was established in 1989 by the G-7. Currently, it includes 34 member countries from all around the world. Its main objective is to combat money laundering and terrorist financing.

terrorism. The European Council also called for **tolerance and justice in the international community**; hence the necessity **to tackle nationalist, racist and xenophobic movements, as well as to reject any association of the concept of terrorism with Arabs and Muslims.** Besides, it noticed that **the EU would pay attention to refugee flows and establish an aid program for refugees from Afghanistan.** Finally, one issue related indirectly with the topic of antiterrorism was established on the table: the situation of the world economy after the attacks. EU leaders acknowledged **the negative impact for the economy**, so they called the Member States **to be cautious and to welcome the actions carried out by the central banks worldwide to strengthen the financial markets.** However, they also recognized **that thanks to the stability of the EU and the single currency, the region would be able to face such effects**, emphasizing besides the relevant role of **the European Central Bank and the positive effects of the Stability and Growth Pact.**⁶¹ Lastly, they suggested the elaboration of a report developed by the **European Commission of the economic situation trends and recommendations** for the next European Council.

Tracking implementation of terrorist measures

Six days after the extraordinary European Council, the second ordinary JHA ministerial meeting took place. Again the topic of fighting against terrorism was discussed, but contrary to the two previous meetings this session was not entirely related to this problem. The Council reviewed **its schedule and procedures to implement the measures established on the previous JHA Council session and European Council regarding the Action Plan on terrorism**, so it wrote a ‘**route map**’ –that should be regularly updated- to elaborate a report for the end of the Belgian presidency and to observe the work progress. Besides, the director of Europol held a **presentation on the measures taken after the two mentioned meetings.** Europol’s and Pro-Eurojust’s heads were asked to **report on their progress at each of the JHA gatherings.** Additionally, the Council promoted the study of the **necessary provisions to decide upon the draft Decision establishing Eurojust** in December. Furthermore, the Council agreed to **extend Europol’s mandate to deal with serious forms of crime in which terrorism would be contemplated.** Lastly, the Council called the candidate countries **to undertake EU actions to fight against terrorism.**

In October, both the JHA Council and the ECOFIN Council met in a Joint session. They discussed about **the adoption of future instruments to combat terrorism, money laundering, and financial crimes.** Specially, they expressed that the Council would soon adopt the **Second Money Laundering Directive, important to combat organized crime** and the **Framework Decision on the execution of orders freezing assets or evidence.** In the same day as the Joint meeting, a special JHA ministerial meeting was held. Only two points were discussed; one related directly to the fighting against terrorism, while the other did it indirectly. On the one hand, they discussed the preparatory work about a **Framework Decision on combating terrorism**, particularly **about the definition of terrorism**, the penalties for terrorist offences, and Member States’ jurisdiction. On the other hand, the ministers **debated** on the scope of **the proposed Framework Decision on a European Arrest Warrant and**

⁶¹ The Stability and Growth Pact is a measure established by the EU in 1997 in order for the Member States to maintain a budget discipline to avoid excessive deficits. The aim is to contribute to attaining a monetary stability. (Council, 1997)

the applicability of the principle of double criminality; thus requested the Article 36 Committee to study the proposal in-depth, so it could be adopted soon.

EU's antiterrorist activities within and beyond its borders

In the same month, few days later, the Heads of State and Government of the Member States gathered again; this time it was an ordinary European Council. Most of the summit was related to the fight against terrorism. The leaders **emphasized their commitment to tackle this problem inside and outside the EU**: “The European Council is determined to combat terrorism in every form, throughout the world” (Council, 2001h: 2) and they also **mentioned their willingness to strengthen the international coalition against terrorism**. Besides, they **reaffirmed their solidarity with the US and expressed its unconditional support for the deployment of international forces in Afghanistan as from October 7 to eliminate the Al Qaeda terrorist organization as responsible for the terrorist attacks in the US**, action that the leaders **considered legitimate according to the United Nations and to the decisions emanating from the previous extraordinary European Council meeting**. Furthermore, the EU high political heads **recognized the United Nations as the framework to constitute a new stable and representative Afghan government**. Moreover, the European Council **undertook as a priority the development of a political and humanitarian aid programme, together with other countries and donors, for the reconstruction of Afghanistan and its neighbors** in order to promote stability in the region. Likewise, **after assessing the ‘route plan’, it requested the Council to quickly accomplish** four points in particular: firstly, **the approval of a common definition of terrorist offences and freezing of assets, the European arrest warrant and the abolition of the principle of double criminality for various crimes, particularly terrorist offences**; secondly, **the increase in the cooperation among those responsible for fighting terrorism –Europol, Eurojust, intelligence services, police forces and judicial authorities- and the elaboration a list of terrorist organizations** at the end of the year; thirdly, **the adoption of effective measures to combat terrorism’s funding, such as the Directive on money laundering and the UN Convention for the Suppression of the Financing of Terrorism**; and finally **the approval of the proposal of a Regulation establishing common rules in the field of civil aviation security**. Additionally, the European Council **expressed the possibility to establish bilateral cooperation between EU and US regarding judicial assistance, extradition, customs cooperation to avoid faked visas or passports, non-proliferation of arms and chemical, biological and nuclear substances subject to terrorist use**. Besides, the EU leaders **requested the Council and the Commission to elaborate a Cooperation Programme to assess the risks and intervention as to the use of chemical and biological means to provoke terrorist attacks**. For the purposes of this program, the leaders **argued that a coordinator of the EU for civil protection measures should be appointed**. Likewise, the European Council **expressed its concern for relaunching the peace process in the Middle East in order to finish violence and recognize the Palestinian and Israeli States, as well as returning stability in the Balkans**. Thence, it **requested the Presidency of the European Council to visit these countries to achieve the goal**. Besides, it **promoted political dialogue with Arabs and Muslims**. Finally, the Heads of State of Government also **discussed the economic situation after the terrorist acts, reacknowledging their negative effects to intensify an economic decrease**. However, they **reaffirmed that the EU could be able to overcome this thanks to its internal existing fiscal consolidation and the**

Stability and Growth Pact, so that **EU economic policy would remain the same**. Nevertheless, the leaders invited the Member States **to consider certain economic measures in order to improve inflation trends and maintain wage restraint as a means to stimulate a better monetary policy**.

Continuing negotiations

In November, the JHA Council had its fifth meeting during the Belgian Presidency. Many of the subjects concerned counter-terrorism. The **Framework Decision on a European arrest warrant** was again discussed particularly on its scope, sentence time, and its process of appeal; however, the Council mentioned that it could be adopted very soon. Furthermore, the debate on a Framework Decision to combat terrorism –that defines a terrorist offence and establishes penalty limits- continued; the Council foresaw a positive decision on the matter soon. In addition, it took note of a **paper presented by Austria on improving the utilization of SIS to fight against terrorism**.

Achieving results of the negotiations

During the December JHA Council session some issues related to antiterrorism were on the agenda. Most ministers agreed on **some content of the European arrest warrant**, such as its applicability for a list of 32 crimes, where terrorism was included, without verifying the double criminality of the offence. In contrary, regarding the **Framework Decision on combating terrorism**, the Council did reach political agreement on the definition of terrorist aims and offences, as well as its penalty minimum and maximum limits according to the type of offence, respecting the fundamental rights. The same consensus happened in the case of **accepting to establish Eurojust -and the end of Pro-Eurojust's activities-**. Furthermore, the Council gave its authorization to Europol's director **to conclude a cooperation agreement with the US⁶² on exchange of information and investigation assistance to fight particularly against terrorism** and other crimes. In fact, **the alliance document was signed** in parallel with the Council meeting. Besides, Europol's director presented a report on the progress on counter-terrorism, in which he acknowledged the **Member States' open attitude to provide information to Europol on the activities of Al Qaeda within the EU**, though recognizing legal problems. Furthermore, the JHA ministers noticed the **completion for the first time the EU list of terrorist organizations**, which would be periodically updated.⁶³ They also considered **relevant to increase and standardize EU border controls and to prevent illegal flows and transborder crimes**. Moreover, the Council adopted a Regulation and a Decision on the development of SIS II, promoted by the future enlargement and further adaptations to the new political and technological reality. It also adopted a Decision to extend Europol's mandate as from January 2002 **to deal with a list of 'serious crimes', in which terrorism was included**.⁶⁴

Finally, in mid-December, the Laeken European Council carried out its final meeting. It was not devoted to antiterrorism; rather, various issues were discussed. The leaders

⁶² Note that according to Europol's Convention, this office can establish relations with third States and third bodies (Council, 1995a: Article 42).

⁶³ This list was included in the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, adopted days later on December 27 2001. (Council, 2001n)

⁶⁴ For more information of more 'serious crimes' considered by the European Union, see Article 2 and the Annex of the Europol Convention.

of the Member States adopted the **Laeken Declaration** that included a reflection about the future of EU; in it, it was acknowledged that the terrorist attacks in the US “**brought a rude awakening**” after a period of world stability and certainty (Council, 2001k: 20). Thus, the EU’s role should be of combating violence, terror, fanaticism and injustice, hence the need of better coordination action and **Community approach**. Related to the EU measures following the attacks, the political EU heads reaffirmed its concern about restoring stability and democracy in Afghanistan and encouraged the deployment of international forces in the region under **United Nation’s mandate**. Thus, they welcomed the recent signing of the agreement for the reestablishment of political order in Afghanistan.⁶⁵ Also they emphasized as an EU’s priority the **provision of humanitarian aid for this country**. Moreover, the European Council reasserted its commitment with the US and the international community to tackle terrorism. It evidenced this by underlying the adoption of the common definition regarding terrorism, the provisions about freezing of assets, and the cooperation among specialists in the field, as well as the future decision on the European arrest warrant. However, it encouraged the Commission and the Council to finish elaborating a Programme to improve cooperation among Member States on chemical and biological terrorist attacks, where the collaboration of a possible future European Civil Protection Agency will be very useful. Besides, as the EU wanted to diminish the negative effect of the attacks on the aviation sector, the leaders welcomed the common view of the Council regards the Regulation on civil aviation security. Likewise, they reaffirmed that a better control of EU’s external borders would support their combat against terrorism and other transnational crimes. Thus, they asked the Council and the Commission to work on the creation of a mechanism to control this. Furthermore, they called for the creation of a common system of visa identification and the establishment of common consular offices. Moreover, they considered that the decision to establish Eurojust and the extension of Europol’s mandate significantly contribute to EU’s antiterrorist goal. They suggested examining the proposal of establishing a European Public Prosecutor.⁶⁶ Besides, in order for the EU to be able to support its legal decisions on criminal offences, such as terrorism, the leaders noted the importance of harmonizing law and recognizing judicial decisions. Additionally, they encouraged the signing of a cooperation agreement on antiterrorism with Russia. Lastly, they also promoted the EU’s contribution in restoring peace in the Middle East and the Balkans, due to its determination to fight terrorism.

3.4 PRESIDENCY OF SPAIN (JANUARY – JUNE 2002)



From the six major priorities established by the Spanish Presidency, terrorism was the first of them, since it acknowledged that terrorism is EU’s very priority: “The fight against terrorism has become the priority objective of the European Union and,

⁶⁵ This agreement is formally known as Afghanistan Agreement on Interim Arrangements. It was signed in Bonn, Germany on December 5th, a couple of days before this European Council took place.

⁶⁶ This was a Commission’s proposal made in 2000 to secure the creation of an area where criminal activities would be overcome by mutual judicial assistance thanks to the European Public Prosecutor, which would be an independent judicial body able to bring criminal cases in the Member States’ courts and control their investigations throughout the EU. (Commission, 2000, 2001)

therefore, it will be the first priority of Spain's Presidency."⁶⁷ (Council, 2001m: 2) Furthermore, the Presidency emphasized the relevance of confronting the threat of terrorism as a consequence of the attacks of the United States. Thus, it also reaffirmed the importance of the Action Plan to combat Terrorism, the establishment of Eurojust, the common definition of terrorism, the constitution of joint investigation teams, and the future decision on the European Arrest Warrant –whose adoption, the Presidency claimed, was not made so far due to Italy's opposition but that it would change its posture soon-. Regarding terrorism definition, the Presidency noted that this would allow the facilitation of judicial procedures in the field and other crimes linked to terrorist activities. Besides, it established that five would be the areas of action on which Spain would focus to fight against terrorism. Firstly, to continue attaining EU legislation on judicial decisions. Secondly, to enhance judicial cooperation among Member States through Eurojust. Thirdly, to improve police cooperation by linking the national and the EU efforts to counter terrorism, promoting the creation of joint investigation teams, improving SIS, and fomenting the coordination between Europol, Eurojust, and the Police Chiefs Task Force to contribute to the exchange of information on terrorist activities. Fourthly, to cut off financing terrorism, by promoting the accomplishment of international measures, such as the United Nations Resolution 1373 (2001) -against terrorism that includes the financing of terrorist acts-, the recommendations of FATF, and the UN Convention for the Suppression on Financing Terrorism. Fifthly, to examine EU's relations beyond its borders in order to fight together against terrorism and to conclude the UN global Convention against terrorism. Additionally, the Presidency wanted to enhance the cooperation with the United States, thus it would promote the negotiation of a treaty in the field of judicial cooperation with this country. Furthermore, it reasserted the threat of the terrorist attacks of the US, claiming that it is also very important for the EU to have an active role in the international sphere. Thus, the EU should develop: CFSP, its transatlantic relations, its relation with Russia, its links with Latin America, and its role in Middle East and the Mediterranean. Lastly, the Spanish Presidency wished to include the fight against terrorism as part of the CFSP objectives in the next Intergovernmental Conference (IGC).⁶⁸

According to the Presidency's Calendar, three were to be the JHA Council meetings and two the European Council summits; there were no extraordinary meetings during this term, as the following table shows.

Table 3.3. JHA Council and European Council meetings during the Spanish Presidency

	JHA Council meetings			European Council summits	
Ordinary	<i>Feb</i> 28 1	<i>April</i> 25, 26 3	<i>Jun</i> 13 4	<i>Mar</i> 15, 16 2	<i>Jun</i> 21, 22 5
Extraordinary					

1 The number inside the square denotes the chronological order of the meetings.

⁶⁷ Note that the source containing the priorities of the Spanish Presidency was in Spanish language. Therefore, this quotation is not an official translation.

⁶⁸ These conferences are made among the Member States in order to amend the treaties that have given shape to the European integration, due to the institutional changes emanated from them. The next would be in 2007 to draw up a 'Reform Treaty'. Other examples were the establishment of the Single European Act (SEA) in 1986, the Treaty of Maastricht in 1992, the Treaty of Amsterdam in 1997, the Treaty of Nice in 2001, and the European constitution in 2004.

Antiterrorism: 'part' of the fight against organized crime

During the first JHA Council meeting in February many issues were discussed, besides terrorism. Contrary to what happened during the Belgian Presidency, the current administration **did not take the fight against terrorism alone, but as part of the fight against organized crime** where also other crimes were considered, **substituting terrorist sole preponderance for a shared preeminence**: “The Council held a debate on the Union's role, capabilities and priorities in the fight against organized crime through international cooperation. The debate showed that terrorism, money laundering, drug trafficking and trafficking in human beings are priority areas of concern.” (Council, 2002c: 6) Therefore, in order to counter this organized crime, the JHA ministers noticed that the **EU should establish and enhance international cooperation with the candidate countries, Russia, Ukraine, United States, Canada, and the Balkans by doing agreements with Europol and Eurojust**, among other instruments. They also noted the **importance of establishing common control on borders and joint investigation teams**. Furthermore, again the Council considered the **Framework Decision on the execution in the EU of orders freezing assets or evidence**, by agreeing on its content but establishing that it should be in relation with the applicability of the European arrest warrant –regarding the non-verification of the principle of double criminality for 32 crimes, including terrorism-. Besides, it acceded to establish negotiations for an agreement with the United States on judicial cooperation –including extradition-, so they asked COREPER to **define the possible content in order to sign one or various arrangements in this matter**. Moreover, the Council discussed the Commission's **proposal on the creation of a European Public Prosecutor**, considering it a **very radical measure to take and of complex implications**. Besides, regarding Europol, the Council adopted the **Europol supplementary and amending budget for 2002 in order for this office to implement the measures to fight against terrorism** that were established during the extraordinary JHA Council meeting in September last year. Additionally, the ministers gave its authorization to set up an agreement between Europol and the Czech Republic on counter-crime, including “crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property”, **through exchange of strategic information**. (*Ibid*: III) Besides, the Council took note of a **proposal made by Austria about creating an EU system of air marshals to enhance aircraft security**. Finally, the Council adopted a **Decision of establishing Eurojust** in order to improve the fight against serious crimes –such as terrorism- through judicial coordination.

No mention on terrorism

One month later, in the Spring European Council⁶⁹, many issues about different policy areas were discussed. However, **regarding EU antiterrorist policy nothing was discussed**. Nevertheless, there was a brief note about terrorism in the Middle East; this was a declaration in which the EU called on Palestinians and Israelis for ceasing acts of violence, “including all acts of terror” (Council, 2002d: 28).

⁶⁹ Remember that -as mentioned in part A- usually the European Councils that take place in spring deal with items related to economics, society and environment. However, this does not mean that these are the ‘only’ issues subject to be on the agenda.

Reappearance of terrorism

In the second JHA Council in April, very few issues were directly discussed about terrorism. For instance, the ministers authorized the Presidency **to initiate an agreement with the United States on judicial cooperation in criminal matters, where terrorism was included**; this negotiation would cover extradition, exchange of information, and the establishment of joint investigation teams, among others things. Furthermore, in parallel with the Council meeting, the EU ministers of JHA met with their Russian counterparts in order to enhance cooperation to fight against organized crime, especially against international terrorism and five other specific areas. The Council also adopted a **Recommendation to establish multinational *ad hoc* teams to improve exchange of information on terrorists.**⁷⁰ Other issues related indirectly to antiterrorism were the **presentation made about the evaluation of risk of 16 major airports in the EU from people attempting to illegally enter the EU.**

Bioterrorism

During the last month of the Spanish Presidency, it chaired its two last meetings: the JHA Council and the European Council. On the one hand, in the JHA ministers' session they emphasized the **progress made in the last months to counter terrorism**, besides noticing the **preparation of some documents to assess terrorist threats, to improve national security measures, and to promote police and judicial cooperation.** However, it noted that **it was necessary to increase the exchange of information among Member States and "to continue elaborating a longer-term strategy to fight the terrorist threat**, involving the participation of the Union, the Member States, Europol and the EU's partner countries" (Council, 2002f: 7). Additionally, Europol's Director reported on the activities of the CTTF. The ministers also agreed on a **draft Decision on the implementation of specific measures for police and judicial cooperation to combat terrorist acts**⁷¹ caused by individuals included in the EU's list of terrorist organizations.⁷² Besides, they adopted the **Framework Decision on combating terrorism** and the **European Arrest Warrant** and the surrender procedures between Member States. The former **included a common definition of terrorist offences and terrorist groups for all Member States**, taking into consideration the protection of human rights; while the latter dealt with the judicial decision made by a Member State in order for another Member State to arrest and surrender a requested person for bringing a prosecution against him; it included a list of 32 crimes –terrorism was in it- to which the principle of double criminality does not apply. Furthermore, regarding **bioterrorism**, the Council acknowledged the support of the Working Party⁷³ on Civil Protection to the **future Programme to promote cooperation in the EU to safeguard the security of the population regarding chemical and biological terrorist threats.** In the same

⁷⁰ Such groups should consist of experts within authorities responsible for combating terrorism; their aims would be to investigate terrorist groups and support networks, as well as to conduct studies for preventive and judicial purposes for exchanging information.

⁷¹ By this Decision, Member States should nominate a special area of their police services that would access information on investigations made by their authorities in relation to any of the persons or groups listed, besides following problem following other procedures.

⁷² Remember that this list was adopted through a Common Position at the end of the Belgian Presidency. For more details see 'Council, 2001n' and its following amendments for updated lists.

⁷³ As mentioned in part A, a working party of whatsoever issue is a Council working group that assists COREPER to develop its responsibilities.

context, the Council agreed to **widen the scope of the program to include also nuclear and radiological terrorism**. Furthermore, they mentioned that this program - that **now would include chemical, biological, radiological and nuclear (CBRN) terrorism**- would be ready soon.

Terrorism and its relation with CFSP

On the other hand, in the very last meeting of the Spanish Presidency, the Seville European Council issued a **declaration in which it linked antiterrorism to CFSP**, as it acknowledged the **contribution of this policy to fight terrorism**. As to this, it reaffirmed that **counter-terrorism would continue being part of EU's priorities and of its external relations**, where the **reinforcement of international cooperation with the United States, other partners, and international organizations was essential**. Within this approach, **CFSP could play a major role combating terrorism, promoting security and peace, and preventing and containing regional (post)conflicts** by: **encouraging dialogue on counter-terrorism and non-proliferation of arms; supporting third countries' capacity to fight terrorism; including antiterrorism clauses in international agreements; implementing UN measures to counter this problem; and reconsidering EU foreign relations according its partners' position and action towards terrorism**. Besides, this Council expressed its **opposition to the terrorist acts in the Middle East** and its desire to support the peace process. The Council made the same consideration in relation with the **problematic relation between India and Pakistan, in which terrorist groups were involved**.

3.5 PRESIDENCY OF DENMARK (JULY – DECEMBER 2002)



One of the main priority policy fields for this Presidency was the reinforcement of an area of freedom, security and justice, where **terrorism was reaffirmed to be one of the crimes necessary to combat by the collective action of all the Member States**, even more after the terrorist attacks in the United States. Therefore, **“the Danish Presidency will give high priority to implementing the EU Action Plan to combat international terrorism...”** (Royal Danish Ministry of Foreign Affairs, 2002: 5). Thus, this Presidency **would continue fighting against terrorism** by: **strengthening EU's external relation** (making use of the CFSP, evaluating third countries' counter-terrorism, and incorporating clauses regarding antiterrorism in EU's international agreements); **promoting an international coalition against terrorism; improving its cooperation with US, including the ending of an agreement on judicial matters; implementing UN legal instruments to combat terrorism, including freezing terrorists' assets; promoting non-proliferation of arms; improving cooperation on civil protection against bioterrorism; and establishing a joint survey of the typical operation of terrorists**. Additionally, the Danish Presidency noticed that **the fight against terrorism should also be done through an efficient development policy and development aid**, as it considered that the “[s]upport for the fight against poverty, the promotion of democracy and respect for human rights can help to eliminate the fertile breeding ground for fundamentalism and political violence”. (*Ibid*: 12). Besides, it also estimated that **exchange of information on cross-border investments and savings was also important to combat funding terrorism**.

Just as in the previous Spanish Presidency, there were 3 JHA Council and 2 European Council scheduled meetings, but no extraordinary sessions. Observe the following table.

Table 3.4. JHA Council and European Council meetings during the Danish Presidency

Ordinary	JHA Council meetings			European Council summits	
	<i>Oct</i> 14, 15	<i>Nov</i> 28, 29	<i>Dec</i> 19	<i>Oct</i> 24, 25	<i>Dec</i> 12, 13
	1	3	5	2	4
Extraordinary					

□ The number inside the square denotes the chronological order of the meetings.

In the first Council meeting in October, the ministers agreed on a **Decision establishing a mechanism to evaluate the legal systems and their implementation at the national level to counter terrorism**; thus every country should collaborate with the assessment teams to give **information on their national arrangements in combating terrorism**; it was noticed that this decision would be formally adopted later, after Parliament's opinion. Besides, the Council adopted conclusions on the necessity of adopting a legal instrument to establish electronic exchange of information among the police forces of the Member States regarding only to serious crimes –where terrorism is included–, as a way to improve police cooperation; Denmark would make an examination on this field. Furthermore, they discussed about a **Framework Decision on confiscation of crime-related proceeds, instrumentalities and property**.⁷⁴

Terrorism: almost out of the sight of EU leaders

In the same month, the European Council had its first session. **No issue regarding EU antiterrorism was on the agenda, apart from a declaration made due to the terrorist acts that were taking place in Russia at the same time of the summit**.⁷⁵ The Council strongly condemned the situation and called for the soon and safe solution, reaffirming EU's intention to improve its relation with Russia to fight against terrorism.

Reinclusion of the fight against terrorism

The second JHA Council noted the development and direction of **the negotiations with the United States to attain an agreement on criminal matters** and extradition. Besides, the Commission announced the Council that soon it would **submit a proposal to improve Europol's activities against terrorism and that 5 millions of euros would be addressed to this initiative**. Moreover, the Council agreed on **the recommendation made by the Europol Management Board⁷⁶ about the future of the CTTF**, where it considered that the responsibilities of this temporal group should

⁷⁴ The aim of the Decision is to make certain that all Member States have effective confiscation rules, as each Member should take the measures to enable its power to confiscate what is necessary in case of criminal offences.

⁷⁵ On October 23 –one day before the European Council- a rebel's armed group from Chechnya's separatist movement took more than 500 hostages in a theatre in Moscow for 3 days. They tried to push Russian government in a view to gain the independence of this republic from the Russian Federation. After Russian action, most terrorists were killed together with more than 100 hostages.

⁷⁶ Part of Europol's internal structure is the Management Board, consisted of one representative of each Member State. Its aim is to discuss Europol's present and future and to provide a report to the JHA Council on Europol's activities made in the last year.

be transferred to a permanent structure within Europol by the end of December 2002. Besides, it adopted a **Recommendation on the development of terrorist profiles**.⁷⁷ The Council also adopted a **Decision establishing a mechanism for evaluating the legal systems and their implementation at national level to counter terrorism in order to increase police and judicial cooperation in the field of terrorism**. Additionally, it adopted **conclusions on consular cooperation**, where it considered very relevant **the improvement and reinforcement of consular cooperation, including the exchange of information on data related to visa application and issuing, to fight against terrorism –and illegal immigration- as a way to identify terrorists at an early stage**.

Terrorism again not considered by EU leaders, but by their ministers

In December, the agenda of the Copenhagen European Council –last summit of the Danish Presidency- **included no items to debate on antiterrorism**. However, a **declaration on the situation in the Middle East was made**, in which the EU leaders emphasized **their opposition to all acts of terrorism**, alluding to the violence in this region. In contrast, in the last JHA Council of 2002, **the negotiation on the agreement with the US regarding judicial cooperation was discussed** again. Furthermore, the ministers noted Europol's **TE-SAT report** from October 2001-2002. They adopted a **Decision on the implementation of specific measures of police and judicial cooperation to combat terrorism**. Besides, they reached political agreement on a **Framework Decision on confiscation-related proceeds, instrumentalities and property**. They debated on a **Framework Decision on the execution of confiscation orders**.⁷⁸ Finally, they also talked about the **introduction of some new functions to SIS**.

3.6 PRESIDENCY OF GREECE (JANUARY – JUNE 2003)



Within the efforts to create an area of freedom, security and justice, “[t]he **fight against terrorism remains a top priority issue under the Greek Presidency**” (Council 2003a: 23); these were the words expressed by Greece when taking office. However, **terrorism** was not one of its ‘five major priorities’, but it was recognized as **part of one of these: EU’s ‘external relations: the New Europe as an International Factor of Peace and Stability’** (*Ibid*: 9). This Presidency considered that **counter-terrorism includes the following areas: military, economic, political, and cultural**; hence **the necessity of a global strategy to tackle terrorism’s manifestations and causes**, so security and certainty would be restored. Therefore, Greece encouraged a **more active role of the EU in the international sphere to fight against terrorism, by promoting political dialogue and cooperation with third countries –especially with the United States- and international organizations**. Besides, it established **the necessity to improve sea transport safety in order to prevent terrorist attacks in ports and ships**.

⁷⁷ The objective was that all Member States contribute with information to elaborate reliable and useful profiles or common terrorist patterns to prevent and combat terrorism.

⁷⁸ The objective of this Framework Decision is to make easier the execution of ‘confiscation orders; –a judicial order to remove permanently an asset from a person- by setting up certain procedures for Member States to recognize and accomplish in a mandatory way with orders issued by another Member State. (Council, 2002) It is being currently negotiated

According to Greece’s calendar, four JHA Council sessions were to be held during its Presidency, but just three took place.⁷⁹ Regarding the European Council, the EU leaders gathered in four occasions, from which two were ordinary meetings, while the rest were extraordinary mainly to discuss the crisis in Iraq. At the end of its term, the Greek Presidency chaired seven gatherings. Observe the following table.

Table 3.5. JHA Council and European Council meetings during the Greek Presidency

	JHA Council meetings			European Council summits			
	<i>Feb</i> 27, 28	<i>May</i> 8	<i>Jun</i> 5, 6		<i>Mar</i> 20, 21		<i>Jun</i> 20
Ordinary	2	5	6		3		7
Extraordinary				<i>Feb</i> 17		<i>Apr</i> 16	
				1		4	

□ The number inside the square denotes the chronological order of the meetings.

Indirect relation with terrorism

In both extraordinary sessions –of February and April-, the European Council evidenced **its concerned about the situation in Iraq**, while **reaffirming EU’s commitment to combat terrorism worldwide as part of its global responsibilities**.

Very few to say on terrorism

The first JHA Council **encouraged** the course and the conclusion of **negotiations to establish soon an agreement on judicial cooperation with the United States**, where terrorism and other forms of crimes were to be included. Besides, the Council **agreed** on the **Framework Decision on attacks against information systems**.⁸⁰ Furthermore, the Council **adopted** a **Common Position on specific exceptions to the restrictive measures**⁸¹ –such as the freezing of funds and economic resources- **imposed by a previous Common Position**⁸² **against Osama Bin Laden, Al-Qaeda members, the Taliban, and any other entity associated with them**. This was made following the implementation of the UN Resolution 1390 (2002) and 1452 (2002) about restrictions and exceptions in the same matter, respectively. The exceptions should be given in case of humanitarian need and respecting the fundamental rights. On the other hand, the Spring European Council of March dealt very briefly with the subject of terrorism. It **talked** about **terrorism in the international sphere**, but **making reference just to Iraq**, where the EU leaders **emphasized** that **the neighbor countries are particularly responsible to prevent terrorist acts**, while the **European Union would continue reinforcing the international coalition against terrorism**.

In the case of the agenda of the second JHA Council, it practically did not include any item on antiterrorism. The JHA ministers only **referred** to the **signing preparations of the future agreement between EU and the US on judicial cooperation**. Also they

⁷⁹ There is no information about the reason of the cancellation of the meeting established for April 4th.

⁸⁰ This measure was to better the cooperation among authorities in the Member States responsible for law enforcement, based on the harmonization of legal rules related to acts against information systems, in particular terrorist attacks, and guaranteeing that these acts are punishable as criminal offences in all the EU.

⁸¹ For more information on these restrictions, see ‘Council, 2002j’

⁸² Common Position 2002/402/CFSP (Council, 2002j)

were notified of the discussion that the G8 Member States held in the previous days on the progress on counter-terrorism and organized crime.⁸³

In contrast, in the last JHA meeting, more issues were considered. As to SIS II, the Council debated on the preparations for its future operation and requested its working groups to deliberate on the way in which this system could be in line with the EU Action Plan to combat terrorism. Besides, the Council approved the final text of the agreement on mutual legal assistance and extradition with the United States, which included the improvement of cooperation to investigate financial support to terrorism and other serious crimes. The Council also updated the EU's list of terrorist organizations and individuals linked to terrorist activities, thus they amended the previous Common Position on this matter. Likewise, it approved a document on the conclusions of the Diagoras seminar on terrorism in sport events.⁸⁴ Finally, it continued debating on a Framework Decision on the execution of confiscations orders.

A lot to say on terrorism: EU's fight and the international community

During the Thessaloniki European Council in June, the Presidency presented a report on the contribution of EU's active role in the international scene to counter terrorism. This report considered seven points, namely: EU's relation with third countries, technical assistance to third countries, fight against the financing of terrorism, cooperation with international organizations, regional fora and other partners, cross-pillar cooperation, and CFSP. Regarding EU's external relation, the Presidency mentioned that the Working Party on Terrorism made an analysis per country and region to evaluate terrorism threat worldwide and based on this assessment the EU developed a strategy towards these territories; also it noted that the Extreme Fundamentalism and Terror Group⁸⁵ submitted a report on fundamentalism and terrorism; besides, the Presidency expressed that the EU established a procedure to amend some aspects of its relations with third countries in relation to counter-terrorism, such as the case of applying antiterrorist clauses in agreements with some third countries (Chile, Algeria, Egypt, and Lebanon); it emphasized the importance of the political dialogue with third countries (US, Russia, India) and regional organizations (Asia-Europe Meeting (ASEM) and Association of Southeast Asia Nations (ASEAN)) to let them know EU's willingness to tackle terrorism and promote antiterrorism cooperation; the Presidency claimed that the Guidelines for a Common Approach to the Fight against Terrorism were completed and that these would also contribute to the goal. As to technical support for facilitating countries to implement UN Resolution 1373 (2001) on improving international cooperation to combat terrorism, some pilot programs were launched in selected countries⁸⁶ (Indonesia, Pakistan, and the Philippines). Besides, the Presidency noted that the first compilation on the Inventory on bilateral assistance programs on antiterrorism to third states was established and that it should be updated. In relation to terrorist financing, the

⁸³ The debate took place on May 5 in Paris with the assistance of the ministers of JHA of the G8 and a representative of the European Commission.

⁸⁴ The objectives of this seminar were to ensure the security during the Olympics in Athens in 2004 and to prevent international terrorism in other major sports events. (Commission, 2005: 27)

⁸⁵ This group was established in October 2002 that would carry out an analysis on extreme fundamentalism and terrorism.

⁸⁶ The criteria to select the countries was decided by the Council together with the United Nations Counter Terrorism Committee.

Presidency established that “**the fight against terrorism funding remains a top priority of the European Union**” (Council, 2003j: 32), so it emphasized that **the work with third countries, particularly with the US, is very important**. It also noticed that a **Regulation regarding the imposition of restrictions to Al-Qaeda and the Taliban was updated many times**⁸⁷, as well as the **Regulation on exceptions to the UN Resolution related to economic restrictions to individuals linked to those terrorist groups and the Common Position on EU’s list of terrorist groups**. Moreover, the Presidency said that it **proposed the Gulf Cooperation Council (GCC)**⁸⁸ **countries to define a means to guarantee transparency upon the use of funds for humanitarian purposes**. Also in its report the Presidency claimed that **the EU continued working and cooperating with the FATF**. Concerning *international organizations and partners*, the Presidency mentioned that **the EU participated in most United Nations’ meetings regarding antiterrorism, in the International Maritime Organization (IMO) to review existing legislation on maritime terrorism, and in ASEM and ASEAN**. Furthermore, the Presidency noticed **EU’s bilateral cooperation on antiterrorism with the US and Russia**. In relation with *cross-pillar cooperation*, the EU developed a joint approach among the three EU pillars on antiterrorism mostly through the elaboration of a **Compendium of Threat Assessments in the fight against terrorism** that included internal and external threats to EU interests. Finally, CFSP referred to the progress on its contribution to counter terrorism. For instance, the Presidency expressed that **the use of Member States’ military assets and capabilities could be used to protect population of the consequences of terrorist acts, including CBRN**. For informative purposes on these military resources, the Presidency mentioned that **a database was established in an attempt to reinforce cooperation when considering crisis management operations**. **On the protection of EU forces deployed in operations to manage crisis against terrorist and CBRN attacks, a relevant Project Group on Nuclear, Biological, and Chemical Protection (NBC) was set up**. The Presidency also said that the Council Secretariat **elaborated an assessment of CBRN terrorism threat**. Lastly, it claimed that **the EU and NATO would improve their cooperation and continue sharing information on antiterrorist activities, including civil protection against this type of terrorism**. Besides taking note of the Presidency’s report, the European Council dealt with the item of the **conflict in the Middle East, reaffirming EU’s commitment to combat terrorism and to cutting off and preventing all kind of support, such as economic and arms**. Furthermore, it also referred to Iran, mentioning that **the EU would pay attention to progress of this country to handle terrorism –and human rights- and encouraging this country to put more effort to improve its results**. Additionally, it welcomed the proposal of the SG/HR for set up a strategy in the field of foreign and security policy called European Security Strategy which would include the fight against terrorism.

3.7 PRESIDENCY OF ITALY (JULY – DECEMBER 2003)



Among Italy’s objectives as President of the EU Council, counter-terrorism was included within one of the five major priority areas: the security of citizens, as it was

⁸⁷ This was because the legal measure including the list of terrorist organizations related to this regulation was also updated many times.

⁸⁸ Its members are Kuwait, Qatar, Oman, Saudi Arabia, Bahrain, and the United Arab Emirates. Its objective is to promote the relations among its members in many areas: economy, trade, tourism, and agriculture, among many others.

a significant means to provide the population in the EU a safer atmosphere. Moreover, **counter-terrorism was considered an important issue for Italy**: “Another Italian Presidency priority will be a renewed firm commitment to fight terrorism, with increased cooperation both between Member States and internationally to implement the many initiatives put in hand following the events of 11 September 2001, particular[ly]...**financing of terrorist organizations**.” (Council, 2003k: 34) As to this, the Presidency expressed that **terrorism should be combated not as an isolated action, but together with cross-border crime and illegal immigration**: “the fight against international terrorism must be accompanied by effective measures to combat transnational crime and illegal immigration” (*Ibid*: 4). According to Italian Presidency, this should be done **by reinforcing Europol, controlling external borders, establishing common rules of asylum, promoting cooperation with countries with migration flows, and improving relations regarding visas among Member States**. In this context, **new proposals on judicial cooperation should be made for recognizing transnational criminal association as a crime, in case its purpose is committing terrorist attacks** or other serious crimes. Furthermore, **other issue very prominent of this Presidency was the adequate application and the elaboration of an annual report on the implementation of the 2002 CBRN Programme** –the EU civil cooperation programme to prevent consequences of potential CBRN terrorist threats to look after the population’s security⁸⁹-. Besides, the Presidency would promote the **establishment of an Expert Group for the detection, warning and intervention against CBRN attacks**. It also considered very important to discuss **measures to prevent terrorist acts in maritime ports and ships**. Furthermore, Italy noticed that **counter-terrorism was also part of the CFSP objectives**; hence **the need to promote EU’s relation on antiterrorism with the US, which was considered essential for combating terrorism and ensure the implementation of the EU’s Action Plan against terrorism**. Moreover, relevant was **to increase antiterrorism cooperation with Russia and South-East Asia**.

The calendar established at the beginning of the Italian Presidency included four JHA Council meetings, buy finally just three took place. As to the European Council, two sessions were held. There were no extraordinary meetings.

Table 3.6. JHA Council and European Council meetings during the Italian Presidency

	JHA Council meetings		European Council summits	
	Oct	Nov	Oct	Dec
Ordinary	2, 3 1	6 / 27,28 3 4	16 2	12,13 5
Extraordinary				

1 The number inside the square denotes the chronological order of the meetings.

October’s JHA Council took note of the **state of the project Multinational ad hoc teams for exchanging information on terrorists**⁹⁰, according to the information presented by the Presidency. In order for them to start full operations, taking into consideration that laws among Member States differ very much, the Presidency

⁸⁹ Note that this program, whose official name is Cooperation Programme for preventing and limiting the consequences of chemical, biological, radiological and nuclear terrorist treats, was adopted on December 20th 2002. A report on the situation of this programme should be done once a year. (Council, 2004o)

⁹⁰ Remember the establishment of these groups was decided during the Spanish Presidency in the April ministerial meeting (Council, 2002e).

proposed to gather the ‘best practices’ of Members States on judicial matters. Once collecting this information, an **Operational Handbook for Multinational Teams should be issued** to provide the guidelines for such groups to follow; Europol was to be in charge of assisting these *ad hoc* teams. In response, the Council instructed that **this project should become operational as soon as possible**. Additionally, the Council agreed on the **draft Agreement between Europol and Russia to reinforce police cooperation on fighting against serious forms of crimes between both, particularly in respect to terrorist offences and their financing**. Besides, the Council adopted a **Resolution on a Strategy for Customs Cooperation in the Third Pillar in order to combat serious crimes, including terrorism**. The Council agreed on **creating an Agency for the management of external borders**, a proposal that would be issued soon by the Commission.

EU and terrorism in regional conflicts

In the same month, two weeks later, the European Council called the Member States for **continuing their efforts to improve judicial, police, and customs cooperation especially as to fighting against terrorism**. Also, in respect to the situation in the Middle East, the EU leaders condemned the **terrorist attacks in this region that recently killed three American citizens**⁹¹; they also emphasized that **terrorism against Israel should not have justification, reaffirming EU’s and international community’s priority to combat terrorism and noticing that all countries should cooperate to attain this goal and not provide support to terrorist organizations**; thus, the **Palestinian Authority must take action to fight against terrorism**. The leaders also recognized Israel’s right to protect from terrorist attacks, but only with measures that follow international law. Related to Iran, they reaffirmed EU’s **intention to promote cooperation with this country, but only in case it makes more progress on counter-terrorism**.

November saw two JHA Council meetings: the second and the third. During the second session, the ministers approved the project **Multinational *ad hoc* teams for exchanging information on terrorists** – start of activities, under the characteristics discussed in the first JHA meeting. They also urged the Commission **to submit a proposal to create a Border Management Agency**. The Council was informed by the Commission that so far **only three Member States adopted into their national law the Framework Decision on the European Arrest Warrant despite the fact that the deadline was about to finish** in 1 month –on December 31. On the other hand, in the third, last JHA session, the agenda had no issue directly related to antiterrorism; however, **regarding the implementation of the European Arrest Warrant, the Member States and the acceding countries expressed that this would be accomplish in the first half of 2004**. In addition, the Council adopted conclusions on the External Borders Agency, welcoming the initiative on this entity.

In the last European Council, the Heads of State or Government welcomed the **progress made by the Council in the field of police cooperation, particularly as to an amendment made the Europol Convention**⁹² by which this office increased its power and capacities to be more prepared to fight against terrorism and

⁹¹ This happened on October 15th in the Gaza Strip.

⁹² A Protocol amending the Europol Convention was decided in the last JHA Council during this Presidency.

organised crime. The leaders also took note of the **results of the Conference on Interfaith Dialogue**⁹³; in this context, they confirmed **EU's condemnation to any form of violence and terrorism.** The same happened with respect to the situation in Iraq, since the Council also reaffirmed its **opposition to terrorism as a way to weaken the process of reconstruction in this country.** Additionally, it condemned the **terrorist acts that happened in Turkey,**⁹⁴ reaffirming its **commitment to fight against terrorism** and encouraging the **international coalition to continue combating this crime.** As to the **Middle East,** the leaders called the **Palestinian Authority to make more progress in counter-terrorism,** reassuring **EU's and world's position to combat this problem.** Finally, the European Council adopted the **European Security Strategy,** whose aim is to face the threats of the new millennium in order to guarantee 'a secure Europe in a better world'; **according to it, the fight against terrorism is one of the key objectives to attain**⁹⁵; this strategy is part of the responsibilities of the SH/HR Javier Solana. In this context, the leaders instructed the next Presidency (Ireland), the SR/HR, and the Commission **to propose ideas to implement the strategy.**

3.8 PRESIDENCY OF IRELAND (JANUARY – JUNE 2004)



Counter-terrorism was not among the very top priorities of the Irish Presidency, but it was part of two of them. Firstly, the fight against this phenomenon **was a way for EU to be a safer region of freedom, justice and security.** For attaining this, **the Presidency would improve police cooperation by continuing the implementation of the Action Plan on Terrorism.** It would also **promote the implementation of the Strategy for Customs Cooperation by starting to apply an Action Plan for Customs Cooperation.** In addition, it would **continue supporting the effective application of the 2002 CBRN Programme.** Secondly, **antiterrorism was also considered a part of EU's responsibilities within the international sphere; hence the concern of the Irish Presidency to look after the effective implementation of the European Security Strategy, particularly regarding terrorism.** Within this context, it would also **strengthen EU's transatlantic relations –with the United States and Canada- on international issues, such as the peace process in the Middle East and Iraq, and the fight against terrorism.**

Five were the JHA Council sessions, but one of them was an extraordinary meeting carried out after the terrorist attacks of March 11th in Madrid⁹⁶; while three were the meetings of the European Council.⁹⁷

⁹³ It was held on last October 30th and 31th in Rome. It was attended by the Ministers of the Interior and diverse religions and philosophical communities in order to establish an open dialogue that could promote peace in Europe.

⁹⁴ Three weeks before the European Council, on November 15th, a couple of truck bombs exploded inside two synagogues in Istanbul, killing almost 30 people and injuring 300. Besides, days later to this bombing, two more truck bombs exploded in a bank and in the British Consulate; the number of people affected was the same as in the previous attacks.

⁹⁵ Besides counter-terrorism, the other key threats are: the proliferation of Weapons of Mass Destruction, regional conflicts, state failure, and organized crime. (Council, 2003u)

⁹⁶ The attacks happened when a series of bombs exploded simultaneously in different trains and stations in Madrid, killing almost 200 people. At the beginning the suspects of committing these acts were members of ETA (*Euskadi Ta Askatasuna*) group –a Spanish separatist and terrorist group-, but later the investigations led to militants of an Islamic extremist group. The supposed cause of these attacks was Spain's support to US in its fight against terrorism. (BBC News, 2004, 2004a).

Table 3.7. JHA Council and European Council meetings during the Irish Presidency

	JHA Council meetings					European Council summits		
Ordinary	<u>Feb</u> 19 [1]		<u>Mar</u> 30 [4]	<u>Apr</u> 29 [5]	<u>Jun</u> 8 [6]	<u>Mar</u> 25, 26 [3]	<u>Jun</u> 17, 18 / 29 [7] [8]	
Extraordinary		<u>Mar</u> 19 [2]						

[] The number inside the square denotes the chronological order of the meetings.

During the first ministerial meeting, the Council observed the **state of the implementation process of the European Arrest Warrant**: half of the Member States (8) adopted already the measure, the rest (7) would do it around next April, and the new Member States (10) by May –month of their accession to the EU-. Also, the Council adopted a **Recommendation on a Handbook to prevent terrorist acts at the Olympic Games**⁹⁸. Likewise, the Council discussed some features **on the future Visa Information System (VIS)**⁹⁹ and suggested that **one of the objectives of VIS should be to promote the administration of the common visa policy in a view to enhance internal security and combat terrorism**. Furthermore, the Council noticed **SG/HR's efforts to implement the European Security Strategy** and emphasized the **necessity to involve the JHA working groups and Europol due the complexity of this measure**. Besides, the Commission informed the Council about a **possible proposal to establish an EU system of sky marshals**.

Promoting old and new antiterrorist instruments and worries, as well as direct and indirect measures

The second session of the JHA Council was extraordinary, carried out because of the terrorist acts in Madrid; therefore the only issue discussed was EU's fight against terrorism. The Council reassured and reimpulsed **EU's major interest to tackle terrorism threat, by encouraging: the promotion of cooperation particularly of the Police Chiefs Task Force, Europol, and Eurojust; the implementation of existing procedures; the improvement of cooperation among Member States' police, security services, and intelligence services; and the completion of work on existing proposed measures that could support the fight against terrorism, such as SIS II, VIS, the Framework Decision on the principle of mutual recognition¹⁰⁰ on the execution of confiscation orders, and the European Borders Agency¹⁰¹**. The

⁹⁷ Note that according to the Irish Presidency calendar, the JHA sessions of February and April were planned for two days each one, but in the practice they were just of one day. On the other hand, regarding the European Council, the last meeting of June was neither established in the calendar nor officially named an extraordinary meeting.

⁹⁸ This manual would provide the guidelines to promote cooperation among authorities in the Member States responsible for countering terrorism at the 2004 Olympic games and other major international sport events, such as the Football World Cup in 2006

⁹⁹ VIS would be consulted by authorized authorities in the Member States, who also would enter and update data on visa applications. The idea is to exchange information throughout the EU on this matter in order to improve consular cooperation, facilitate national border controls, and prevent visa forgery.

¹⁰⁰ This principle is essential for the judicial cooperation among Member States, as, based on it, a decision taken by a competent authority in one Member States should be 'automatically' accepted in another Member State and have the same effects. (Commission, 2000a)

¹⁰¹ Its official name is European Agency for the Management of Operation Cooperation at the External Borders (FRONTEX -frontières extérieures). Since May 2005, it coordinates the operational

Council also took into consideration other measures: **to revise the route map of the Action Plan on terrorism, to strengthen border controls and security of documents, to reinforce common EU antiterrorist guidelines, to promote sharing of intelligence, to prevent financing terrorism, to protect transport and population, to enhance international cooperation, and to establish the position of a Coordinator for countering terrorism.** Furthermore, the Council instructed the Commission to issue a proposal for creating a European Programme for the protection of witnesses. The Council highlighted EU's measures already taken to combat terrorism in specific (**Framework Decision on the common definition of terrorism, insertion of antiterrorism clauses in international agreements, improvement of aviation safety and freezing assets of terrorists**) and in general (**adoption of the European Arrest Warrant, Framework Decision on Joint investigation teams, creation of Eurojust, and reinforcement of Europol**, among others). In addition, it expressed the new concerns of Member States: **factors contributing the support of terrorism; protection of minorities, promotion of pluralism, violent religious extremism, and maritime security.** It also noticed that the European Security Strategy included a wide approach in order to coordinate the internal and external scopes of countering terrorism. Lastly, it mentioned that an updated Action Plan to combat terrorism was launched at the beginning of 2004 to renew EU's objectives.

EU's Declaration against terrorism

In their first meeting in March, the Heads of Government or State, besides discussing other items, adopted a **Declaration on Combating Terrorism**, in which they called upon **EU bodies, institutions and Member States to take their respective actions to reinforce a common fight against terrorism.** This declaration included 15 detailed points. First of all, the leaders expressed **their solidarity with the victims of the attacks in Madrid.** They underlined that **these acts were against the EU's values, and that terrorism is a menace for all the international community, even when it happens in only one country; hence the need to fight it through an international coalition.** They endorsed the European Parliament's **proposal of declaring March 11th the European day to commemorate the terrorism victims.** Secondly, they welcomed the **commitment of the current and new Member States to act together against terrorist attacks according the *Solidarity Clause* included in the draft European Constitution.**¹⁰² Thirdly, they also considered that in line with the *European Security Strategy* and due to the attacks in Madrid the **measures on antiterrorism should be urgently implemented.** To this respect, they suggested the **development of a long-term strategy that dealt with the elements increasing terrorist threats and a report on the contribution of CFSP –as from the Seville European Council- to combating terrorism.** Fourthly, related to *assistance to victims*, the European Council encouraged the **adoption –before next May- of the Directive on compensation to crime victims**¹⁰³, and the **availability of the funds of**

cooperation among Member States regarding external borders management and makes analyses of risk and control in this matter. (Council, 2004p)

¹⁰² This clause is established on Article 42 of the new Treaty: in case a Member State suffers a terrorist attack, the others should support it –with or without military capacities- in order to assist it and protect the population.

¹⁰³ Its objectives are that all Member States had a national framework that ensures a convenient compensation to victims of crime and that these victims are able to easily receive compensation. It is valid since January 2006.

2004 budget for supporting the victims of terrorism. Fifthly, in relation to the *existing cooperation*, the European Council urged the Member States **to either implement or ratify the following measures on judicial cooperation adopted already** by the Council to combat terrorism: -by June 2004- implement the Framework Decision on the European Arrest Warrant, the **Framework Decision on Joint Investigation Teams**, the **Framework Decision on Combating Terrorism**, the **Framework Decision on money laundering, identification, tracing, freezing, and confiscation of instrumentalities and the proceeds of crime**¹⁰⁴, the **Decision establishing Eurojust**, and the **Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism**; as well as –by December 2004- implement the Framework Decision on the execution of orders freezing property or evidence, ratify the Convention and the Protocol on Mutual Assistance in Criminal Matters, and ratify the three Protocols on Europol¹⁰⁵. Moreover, according to the EU leaders, the **work in the following measures should be completed** in June: the **Framework Decision on the confiscation on crime-related proceeds, instrumentalities and property**, the **Framework Decision on attacks against information systems**, the **Framework Decision on the mutual recognition of confiscation orders**, and the **Framework Decision on a European Evidence Warrant**¹⁰⁶. Furthermore, they asked the Council **to examine proposals** in these fields: **rules on the retention of communications traffic data**, **exchange of information on convictions for terrorism**, **cross-border prosecution**, a **European register on convictions and disqualifications**, a **database on forensic material**, and **simplification of exchange of information and intelligence on judicial cooperation**. Likewise, the leaders instructed the Commission **to draft a proposal on a European Programme for the protection of witnesses in terrorist cases**. In addition, the European Council called upon the **reinforcement of the cooperation among Member States’ law agencies and EU bodies (Europol, Eurojust) to counter terrorism**, by **ensuring that Europol/Eurojust agreement**¹⁰⁷ **is to be adopted**—by next May- and that national specialists on terrorism work together and closely with both European offices. It also urged Member States **to strengthen Europol’s role in combating terrorism by reactivating the CTTF**. Besides, the Council asked Europol **to implement Europol Information System**¹⁰⁸ as soon as possible. It also highlighted the **important role of the Police Chiefs Task Force in responding and preventing terrorist attacks**, so the European Council also asked this group **to reinforce its capacities and to issue a report on the recent acts in Madrid**. It asked the Council **to analyze a report on the state of the antiterrorist**

¹⁰⁴ The name of the measure explains itself; note that proceed is in this case a synonym of property. It was adopted on June 26th, 2001. (Council, 2001o)

¹⁰⁵ The Europol Protocols are: 1) protocol of 2001 -30 November- amending Article 2 and the Annex to the Europol Convention; 2) protocol of 2002 -28 November- on Europol members’ privileges and immunities; and 3) protocol of 2003 -27 November- amending the Europol Convention. The aim is to provide Europol of better and adapted characteristics that allow it to assist more efficiently Member States to combat terrorism and other crimes.

¹⁰⁶ It is a judicial decision issued by a Member State to obtain any evidence (objects, documents, and information) in any other Member State for criminal proceedings. In addition, it is an attempt to replace the current EU regime of mutual assistance with the mutual recognition for certain offences –of the list of ‘32 crimes’-.

¹⁰⁷ The idea of this bilateral relation is to set up and promote close collaboration between both EU agencies to reinforce the fight against serious crimes and avoid work duplication, by coordinating their activities and exchanging strategic information.

¹⁰⁸ It is only for the internal use of Europol. It contains information on individuals suspected of criminal offences subject to be dealt under the power of Europol. (Council, 1995a)

measures at the national level of current and acceding Member States. The leaders recognized the importance to reinforce the security of firearms, explosives, bomb-making equipment, and technologies for terrorist purposes, so they instructed the Council to examine measures on this. Furthermore, in order to maximise the effectiveness of information systems, they urged the Council to adopt whatsoever was necessary to enable the Draft Council Regulation and Draft Decision on the introduction of new functions for the SIS, including in the fight against terrorism, as well as to decide on the ways of management and financing SIS II -by May- so the Commission would be able to develop it; and to continue with the work on VIS according to the conclusions of the first Irish JHA Council in which one of the objectives should be related to counter-terrorism. The European Council instructed the Commission to propose measures to: coordinate European databases, such as SIS II, VIS, and EURODAC¹⁰⁹ to improve counter terrorism; exchange personal information (DNA, fingerprints, and visa data) for counter-terrorism purposes; and ensure that national agencies have access to EU systems. Sixthly, the European Council recognized that “*improved border controls and document security play an important role in combating terrorism*” (Council, 2004e: 7); hence the need to adopt soon: the Regulation establishing a European Borders Agency so that it starts operating at the beginning of next year; the Directive on the obligation of carriers to communicate passenger data¹¹⁰; and the proposal for the incorporation of biometric features into passports and visas¹¹¹; as well as to look after the implementation of the Strategy for Customs Cooperation. In this same line, the leaders asked the Council to create an integrated system for the exchange of information on stolen and lost passports making use of SIS and Interpol databases; while the Commission should draw a proposal for a common EU approach on the use of passengers’ data for border and aviation security. Seventhly, as to *EU guidelines for a common approach to combating terrorism*, the Heads of State or Government welcomed this criteria as it demonstrates EU’s commitment to counter terrorism. Eighthly, regarding *strategic objectives for an updated Action Plan to combat terrorism*, the leaders agreed on seven key aims to enhance the existing Plan: to deepen the international coalition to fight against terrorism; to diminish terrorist financing; to maximise EU’s capacity (EU bodies and Member States) to detect, investigate, and prosecute terrorists and prevent terrorist attacks; to promote international transport security and border control; to strengthen Member States’ capability to overcome the consequences of terrorist attacks; to detect the factors contributing to support terrorism; and to recognize EU external relations with countries in need of enhancing their capacity to combat terrorism. Ninthly, *sharing intelligence* on terrorism should be improved by the use of effective mechanisms of cooperation among police, security intelligence services, and Europol. Tenth, in order to improve the *prevention of financing of terrorism*, the Council should work to make the freezing of assets of terrorist more effective and to identify the individuals benefiting from bank accounts, charities and remittance systems. Besides, all Member States were

¹⁰⁹ This database contains the fingerprints of asylum applicants and persons arrested when trying to illegally cross an external border of the EU. It allows to compare such fingerprints. (Council, 2000b)

¹¹⁰ In order to improve border control, air carriers transporting persons from third countries into the EU –upon request of competent authorities- are obliged to communicate information of the passenger.

¹¹¹ Biometric refers to the use of a storage device for keeping computerised facial and fingerprints data, usually encrypted, to verify the identity of a person and the authenticity of the document. Thus, basically there are two kinds of biometric identifiers: primary biometric –face- and secondary – fingerprints. They would allow prevent the falsification of documents and identities.

to ratify and implement the UN Convention for the Suppression of the Financing of Terrorism and UN Resolution 1373; and they were encouraged by the European Council to improve cooperation on exchange of information on terrorist financing with private financial institutions, national authorities and financial intelligence units. Also, the leaders noticed that the EU would continue to reinforce its external relations to fight against the financing of terrorism. Eleventh, regarding *measures to protect transport and population*, the European Council referred to the enhancement of security of all forms of transport, but it instructed the Commission to propose particularly on harbours' and ships' safety; it also encouraged the use of the CBRN Programmes and the development of proposals to strengthen the protection of citizens, services (water supply, energy, and communications), production systems (agro-food and process industries), and systems to respond in case of terrorist attacks. Twelfth, the EU would promote *international cooperation*, implementing all UN resolutions, participating in international and regional organizations, and improving cooperation with third countries to fight terrorism. In order to promote its external relations, the EU should: develop strategies to provide technical assistance to increase others antiterrorist capabilities, impulse the counter-terrorism in the political dialogue established with third countries -especially those that were a menace for the international peace-, and assess the progress of countries to fight against terrorism. Additionally, the European Council called for an efficient use of EU forces deployed in third countries. Thirteen, the *cooperation specifically with the United States –and other partners-* would be strengthened to combat terrorism. Fourteen, the leaders agreed to establish the position of a Counter-Terrorism Coordinator. He would work with the Council Secretariat to coordinate the work of the Council regarding combating terrorism, report on all EU mechanisms, and follow up Council decisions. The European Council welcomed Gijs de Vries for this position, who was appointed by the SG/HR. Finally, the Heads of State or Government invited the Council, the SG/HR, and the Commission to issue a detailed report on the implementation of the measures of this Declaration in the last Irish European Council in June. Additionally, besides making this Declaration on terrorism, the European Council reinforced its condemnation to the terrorist activities in the Middle East and Iraq.

Paying special attention to the content of the Declaration on terrorism

During the third JHA Council at the very end of March, many issues on the agenda dealt with antiterrorism. This Council discussed some elements of the **Framework Decision on the mutual recognition of confiscation orders**, noticing that -according to the Declaration on Terrorism- this should be concluded at the end of this Presidency. They noted that this measure was closely **related to** the already adopted **Framework Decision on the application of the principle of mutual recognition to orders freezing property or evidence**, as well as to the **draft Framework Decision on confiscation on crime-related proceeds, instrumentalities and property**. Furthermore, the JHA ministers reached political agreement on the **Directive on compensation to crime victims**. Therefore they asked the Council working bodies to conclude the text in order to adopt it before May this year –as established on the Declaration on Combating Terrorism-. Likewise the Council, together with the EU Coordinator to Counter Terrorism, discussed the **development of the measures established on the Declaration on Combating Terrorism**. The Council also agreed on the **Directive on the obligation of carriers to communicate passenger data** that

–as requested in the Declaration on terrorism- should be adopted before May. Most ministers acceded on the **draft Regulation establishing the European Borders Agency**. Besides, the Council took note on the **Strategy for customs cooperation in the third pillar and its work plan**. Also, in order to promote customs cooperation regarding international transport to obstruct and prevent terrorist weapons in shipments, the Council gave its authorization to signing an agreement with the US on sea container transport.

Approving many antiterrorist measures

In the JHA Council in April, it did not reach an agreement on the entire draft **Framework Decision on the mutual recognition of confiscation orders**, but it mentioned that a full agreement could happen in June this year. In contrast, the Council adopted a **Directive on the obligation of carriers to communicate passenger data**; the **Directive on the compensation to crime victims**; and a **Regulation on the introduction of new functions for SIS, including in the fight against terrorism**. Besides, following the Declaration on Terrorism, the Council issued some **conclusions on the management and financing of SIS II**, establishing provisional designations but mentioning that both factors would continue to be discussed by Council working groups in order to determine them definitely. Likewise, it approved the **Europol/Eurojust agreement**. Furthermore, the Council discussed about the **second annual report of Eurojust** and issued some conclusions, where it emphasized the role of this body to improve judicial cooperation to especially counter terrorism, reassuring that “the effective combating of crime, and of terrorism in particular, is a necessary and essential component in realising an area of freedom, security and justice”. (Council, 2004g: 9) The Council also stressed the importance of Member States to take action to promote judicial cooperation in line with the Declaration on terrorism. Furthermore, the **progress (follow-up) on the application of this declaration** was positively observed by the Council.

The last JHA Council session agreed on the complete text of the **Framework Decision on the application of the mutual recognition principle to confiscation orders**, but it did not adopt it yet. Observing the follow-up to the Declaration on Combating Terrorism and in preparation for the next European Council, the Council examined a draft report made by the Presidency on the implementation of this Declaration and of a draft Action Plan on combating terrorism. The SG/HR exposed its proposal on the improvement of EU’s intelligence cooperation; the Coordinator de Vries presented two papers on the application of the measures of the Declaration; and Eurojust informed of further measures to improve its contribution to counter terrorism. Furthermore, the Council adopted conclusions regarding the progress on the Declaration on Terrorism, in which it called for the collaboration of all competent EU bodies (Secretary General of the Council, Council itself, Counter-Terrorism Coordinator, Counter Terrorism Task Force, Europol, Eurojust, Police Chiefs Task Force, Article 36 Committee) and Member States to look after the attainment of the Declaration. It noted and welcomed the reestablishment of the CTTF. Additionally, the Council adopted a Decision establishing VIS.

Continuing in line with the Declaration on terrorism and adopting the Updated Action Plan on Terrorism

A couple of days later, in mid-June, took place the second European Council. Among other issues, antiterrorism had a broad space on the agenda. This Council recalled the Declaration on Combating Terrorism, reaffirming EU's commitment to tackle terrorism. It considered that the appointment of a Coordinator to Counter Terrorism would better the allocation of EU antiterrorist actions. It took positive note of the report on the application of some measures of this Declaration, such as the Directive on compensation victims of crime, the Regulation for new functions of SIS including in the fight against terrorism, the Decision establishing VIS, and the Europol/Eurojust agreement. Besides, it adopted the updated Action Plan/Routeplan on Terrorism and called Member States and institutions to accomplish all the goals and deadlines established in this document. It also instructed to review two times per year -starting in December this year- the implementation of the route map of this Plan. It approved the proposal of the SG/HR to integrate in the Council Secretariat an intelligence capacity regarding terrorism threat to improve on intelligence cooperation, asking to enable the necessary to make it real and to inform the progress in the December European Council of this year. The European Council also welcomed that the CTTF restarted its operations within Europol. Moreover, it requested the Council to adopt proposals to strengthen the Police Chiefs Task Force. It encouraged the Commission to develop proposals related to its Communication on access to information by law enforcement authorities (also known as European Information Policy).¹¹² Likewise, it asked the Commission and the SG/HR for the reinforcement of the fight against terrorist financing. It requested the Council to agree by June 2005 on proposals about exchange of information and cooperation and the retention of communications traffic data, and by December next year on initiatives to simplify the exchange of information and intelligence among law enforcement agencies. The European Council invited the Commission and the Council to evaluate Member States' capabilities to respond to the effects of terrorist attacks of any kind in order to recognize best practices and suggest measures to improve civil protection at national and EU level. In this context, the EU Heads requested the Council to develop a strategy to enhance the protection of critical infrastructures¹¹³. They also underlined the need to reinforce the fight against terrorism as an integrated approach into the CFSP/ESPD, so they called for proposals to elaborate a conceptual framework of the major features of the European Security and Defence Policy (ESPD)¹¹⁴ **dimension against terrorism –**

¹¹² In this Communication, the Commission suggested to enhance exchange of information among the law enforcement authorities and those responsible for preventing crime in the Member States (such as police forces, financial intelligence units, and customs and judicial authorities) in order to combat terrorism and organised crime. This would be facilitated by the introduction of a 'European information policy' that would allow better share and access of information thanks to the principle of right of equivalent access to data. (Commission 2004)

¹¹³ As it would be seen in the British Presidency, it was until the end of 2005 that the EU defined the concept of critical infrastructure as: "infrastructure the destruction or disruption of which would have a serious impact on the critical societal functions, including the supply chain, health, safety, security, economic or social well-being or the functions of government, of a number Member States which needs to be further defined." (Council, 2005k: 30)

¹¹⁴ Within the context of the CFSP, two are the main purposes of the ESPD: to develop "more effective military capabilities" in order to respond to international crisis and carry out civilian and military crisis management operations by providing humanitarian assistance and undertaking a peacekeeping role, as

by the December European Council this year-. Besides, they highlighted EU's **intention to maintain drawing up initiatives to improve cooperation with international organisations** -especially the United Nations-, **the United States, and other third countries. In the international sphere**, in line with the European Security Strategy, **the EU should promote political dialogue on the implementation on all types of antiterrorism and non-proliferation and arms control instruments.** Besides, the EU leaders approved a **final report** -made by the Presidency, the SG/HR, and the Commission- **on the Strategic Partnership of the EU with the Mediterranean and the Middle East by which the European Council adopted this relation.**¹¹⁵ The European Council, furthermore, reaffirmed EU's interest on the observance of **Iran's progress towards the fight against terrorism.** As to the situation in **Iraq and the Middle East**, the Council reiterated **its position against the terrorist attacks in those regions** and exhorted both to take the appropriate measures according to international law to cease violence. Additionally, after **hearing a report on the progress of five years** from the establishment of **the Tampere Programme**, the EU leaders considered very convenient that the Commission and Council **prepare a new multi-year programme for strengthening the formation of an area of freedom, security, and justice –where terrorism would be included-**.

Finally, the third, last European Council was held at the end of the month. It was devoted only to operational purposes -the appointment of EU High-level politicians-, so there was no place for any other issue.

3.9 PRESIDENCY OF THE NETHERLANDS (JULY – DECEMBER 2004)



For the Netherlands, terrorism was included within three of its five major priorities. **Concerning the objective of strengthening the area of freedom, security, and justice “high priority will be granted to the fight against terrorism”** (Council, 2004l: 5). In this context, **the base of Dutch antiterrorist actions would be the Declaration on Combating Terrorism and the report of the Counter-Terrorism Coordinator.** Besides, this Presidency **would encourage the improvement of the cooperation between intelligence and security services, as well as between these and the police.** It would put great effort on the proposed **European Evidence Warrant.** It **would also promote the implementation and development of existing measures taking as basis the assessments of the Member States regarding counter-terrorism and counter-CBRN terrorism.** It would work to attain the adoption of the Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (or Third Money Laundering Directive¹¹⁶) –that now would specifically include terrorism. The

well as to establish “political and military” institutions to accomplish such tasks. (Council, 1999a: Annex IV)

¹¹⁵ The final report is the basis of this Partnership. The aim of this relation is to encourage peace and prosperity in those regions and to promote cooperation and measures to reinforce the fight against terrorism. (Commission, 2004a) It is partially based on the Euro-Mediterranean Partnership (EMP) –or Barcelona Process-, by which the EU and 12 Mediterranean countries (Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestinian Authority, Syria, Tunisia, and Turkey) promote bilateral and regional relations to establish political dialogue on economic, security, social and cultural matters.

¹¹⁶ It is called ‘Third’, since there were two previous Anti-Money Laundering Directives: Directive 91/308/EEC and Directive 2001/97/EC. (Council, 2005m)

Presidency would introduce a debate on the transparency and regulation of non-profit organizations, as well as on the evaluation on the mechanism for freezing the assets of terrorist and terrorist organizations. Related to this field, too, it expressed that much would be done on the development of VIS and that it is expected that soon some migratory documents (such as passports, visas, and residence permits) include biometric identifiers that promote the fight against terrorism and illegal immigration. The Netherlands also emphasized that, due to the terrorist attacks, it was very relevant to promote effective cooperation among Member States in criminal cases -in the shape of mutual recognition of decisions, exchange of information and harmonization of legislation-, and to strengthen the operation of police cooperation –so, for instance, barriers limiting cross-border investigations would be removed and EU police networks expanded-. The Presidency would examine the possible ways for SIS II to contribute to combating terrorism. On the other hand, regarding the second Dutch priority as to external policy, where terrorism was included, the Presidency recognized its intention to strengthen the role of multilateral organizations in the fight against terrorism – based on the European Security Strategy-; its willingness to promote EU relations with Asia, where the issue of terrorism is included, as well as with the Mediterranean countries and the Middle East –through the Strategic Partnership-, and the United States; and its desire to improve transparency and cooperation with NATO on antiterrorism. Finally, as to the third objective of this Presidency related to terrorism, on strengthening the European economy, it would encourage the finalization of a Regulation on controlling cash flows at the EU’s external borders in order to combat terrorist funding.

The Dutch Presidency chaired four JHA Council meetings and two European Council sessions.¹¹⁷ Observe the following table.

Table 3.8. JHA Council and European Council meetings during the Dutch Presidency

Ordinary	JHA Council meetings				European Council summits	
	<i>Jul</i> 19 1	<i>Oct</i> 25,26 2	<i>Nov</i> 19 4	<i>Dec</i> 2 5	<i>Nov</i> 4,5 3	<i>Dec</i> 16, 17 6
Extraordinary						

□ The number inside the square denotes the chronological order of the meetings.

Follow-up of the Action Plan on terrorism and first steps towards the Hague Programme

In July’s meeting, the JHA ministers held a discussion on the Multiannual Programme for JHA –later it would be called ‘The Hague Programme’¹¹⁸-, principally on terrorism as well as other areas, and called the Member States to

¹¹⁷ According to the initial Presidency’s calendar, all these sessions were planned, but their length increased in one day in the case of both summits and decreased in one day for the last JHA Council.

¹¹⁸ Many are the objectives of this five-year-period Action Plan, but the main goal is to develop the building of an EU common area of freedom, security, and justice. It establishes 10 key priority areas: fundamental rights and citizenship; *the fight against terrorism*; migration management; internal borders, external borders and visas; a common asylum area; positive impact of migration on the EU society and economy; privacy and security in sharing information; the fight against organised crime; civil and criminal justice for all; and sharing responsibility and solidarity to attain freedom, security and justice. (Council, 2005). However, note that in this initial session these elements were still not determined; rather, it took many negotiations until the Action Plan of this Programme was adopted establishing these goals.

contribute with more ideas. Also, the Council was informed by the Counter-Terrorism Coordinator of **the actions made after the adoption of the updated Action Plan on terrorism**, recalling the priorities established by the European Council to fight against terrorism, namely “financing, civil protection, protection of critical infrastructures and external relations Policy” (Council, 2004m: 9). The Commission underlined the relevance of **examining in-depth its Communication on access to information by law enforcement authorities**. Moreover, the Council authorized Europol to **finalize an agreement with Switzerland on the transmission of personal data in order to combat serious forms of international crime, such as terrorist offences**.

Three months later the second JHA Council gathered. It continued the **debate on some issues of the Multiannual Programme for JHA, such as terrorism**, concluding that the draft text of this plan would be subject of approval in the next European Council of November. Furthermore, the Coordinator on Counter-Terrorism reported the **assessment of Member States’ fight against terrorism**. Besides, the Commission –in line with the requests of the European Councils of the previous Presidency- presented **four Communications on antiterrorism, in which it encouraged the enhancement of preparation in case of terrorist attacks to contribute to the revised Plan of Action on Terrorism**: “[t]he first of the four Communications is entitled *Prevention, Preparedness and Response to terrorist attacks*. The other three concern the fight against terrorism financing, preparedness and consequence management in the fight against terrorism and protection of critical infrastructures.” (Council, 2004n: 10) Regarding biometric identifiers, the Council agreed to **obligatorily include fingerprints** -second mandatory identifier-, besides **facial image** –first mandatory biometric identifier previously decided- **to passports and other travel documents issued by Member States**¹¹⁹ as a way to verify the documents authenticity. Moreover, the JHA ministers adopted a **Regulation on the establishment of an External Borders Agency**¹²⁰. At the same time, but aside this Council meeting, representatives of JHA of **Russia en EU meet to deal with the promotion of cooperation in this field, particularly terrorism**.

The Hague Programme

In the first European Council, the -now officially called- **Hague Programme** occupied most of the agenda. Recognizing the relevance of EU security primarily due to the terrorist attacks in the US and Madrid, the EU leaders adopted **this new five-year programme (2005-2010), where counter-terrorism was one of the ten goals to attain to strengthen security**, in order to continue reinforcing the objectives of Tampere in 1999. Thus, according to the Hague Programme,

“[a] key element in the near future will be the prevention and suppression of terrorism. A common approach in this area should be based on the principle that when preserving national security, the Member States should take full account of the security of the Union as a whole...Freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole.” (Council, 2004o: 13)

¹¹⁹ Note that this does not apply to those identity cards made by a Member State to its own nationals.

¹²⁰ The decision is officially called Regulation establishing a European Agency for the Management of Operational Coordination at the External Borders of the Member States of the European Union.

This meant that, **when combating terrorism, a Member State should not just see its own benefit, but EU's.** Therefore, **intelligence, security services, and exchange of relevant information should be used to protect the security of all Member States.** Besides, continuing in the context of this new Programme specifically regarding antiterrorism, the **Declaration on Terrorism and the updated Action Plan on Combating Terrorism should be soon fully implemented;** the use of **Europol and Eurojust should be promoted;** and the **Counter-Terrorism Coordinator should support more action on this matter.** Furthermore, the EU political Heads, reminded the Commission to **issue an initiative on an EU common use of passengers' information for border and aviation security.** They also considered very important that **the security services continue exchanging information among them, while improving it according to the principle of availability¹²¹, securing the methods of collecting information, and maintaining data confidentially.** As from the beginning of 2005, the Council **would be provided by the European Union Joint Situation Centre (SitCen)¹²² with analysis of terrorist threats** based on information from the security and intelligence services of the Members States and Europol. Likewise, in order to counter terrorist financing, the European Council expressed its intention to **examine** in the next summit in December **a proposal of the SG/HR that included ways to improve the monitoring of financial flows and the freezing of assets, as well as to create new measures regarding cash transactions.** Besides, this Council requested the Commission to **issue proposals to improve explosives' storage and transport security and to trace industrial and chemical materials.** Moreover, it urged the Commission to **increase the counter-terrorism funding regarding projects in third countries.** Also the European Council mentioned that by the end of next year (2005), the Council **should make a strategy regarding radicalisation and recruitment for terrorist activities and adopt the Framework Decision on the European Evidence Warrant.** The European Council furthermore urged the Council to **establish, together with Europol and the European Border Agency, a network of national experts on prevention and counter terrorism and on border control;** these specialists could support third countries with technical assistance and thus train their authorities. Moreover, the leaders emphasized the **relevance of: ensuring protection and support to victims of terrorism; promoting police and customs cooperation to have an effective fight against terrorism; and of coordinating investigations and prosecutions by Eurojust with the support of Europol in order to combat terrorism.** Additionally, they reassured **biometric identifiers and information systems on external borders control as means to prevent and counter crime, particularly terrorism.** Furthermore, **in order to be able to protect European citizens and vital infrastructure in case of a CBRN and terrorist attacks or major crises –such as natural disasters- with effects beyond the borders of one Member State,** the European Council requested the Council and Commission to **establish a coordinated EU management arrangement of crises with cross-border consequences.** Besides, the European Council asked the Commission to **issue an Action Plan in order to translate the objectives of this Programme into specific actions;** the plan should

¹²¹ This principle means that law enforcement authorities should make the information available for their counterparts in another Member State, in the same way they do it for their own country. (Council, 2004o: 27)

¹²² The SitCen is located within the organization of the Council General Secretariat. It is “the point where different types of national intelligence and ‘civil’ information are synthesised to all-source assessments and external intelligence” (Müller, 2004:29).

include a timetable for its accomplishment, which would be observed by the Council. On the other hand -out of the content of the Hague Programme- the EU Heads of State or Government, while congratulating US President George W. Bush on his re-election, reminded the commitment of EU and US to fight against terrorism and emphasized its bilateral cooperation on this and other issues. Lastly, they dealt with the topic of the **situation in the Middle East and Iraq**, reaffirming their condemnation to terrorism and violence.

Prolific times

In the third JHA Council in the same month –November-, the Coordinator on Counter-Terrorism issued a report on the situation of some documents about the fight against terrorism, which would be presented to the last European Council of this year: **an updated Action Plan on terrorism, a report on the progress of the incorporation in the Council Secretariat of an intelligence capacity, a strategy to strengthen counter-terrorist financing, a plan to promote the protection of critical infrastructures, measures to enhance civil protection, proposals to include the fight against terrorism in the EU external relations policy, an evaluation of EU antiterrorist clauses, and a Conceptual Framework of the ESPD dimension on the fight against terrorism**¹²³. Moreover, in order to combat terrorist financing, the Council adopted a Common Position on the revision of the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime.¹²⁴

During the following, last Council on Justice and Home Affairs in December, the ministers were informed on the state of the negotiations of Council working groups regarding the proposals **of a Framework Decision on the European Evidence Warrant**. Furthermore, the Council debated on the draft Framework Decision on data retention by telecommunications service providers.¹²⁵ Likewise, the Council agreed on the following documents, which should be subject of consideration of the European Council in two weeks: **a revised Action Plan on combating terrorism, a strategy to fight against terrorist financing, a report on intelligence capacity, and conclusions on prevention, preparedness and response to terrorist attacks**. It also adopted a EU Solidarity Programme on the consequences of terrorist threats and acts –this is a widened version of the 2002 CBRN Programme-. The Council was briefed on an interim report on the evaluation of national antiterrorist arrangements, while requesting the Member States to inform in June 2005 on the progress of the application of the recommendations included in this report. The Council took note of a document on recruitment of terrorists. It moreover, discussed four major issues more regarding terrorism: first, exchange of information (it emphasized the importance of the Hague Programme, the **future**

¹²³ This conceptual framework establishes that significance to apply all existing EU instruments to counter terrorism; hence the vital necessity of cross-pillar coordination. Based on this, it provides a series of measures and procedures to further contribute to the prevention and fight against terrorism supported by the ESPD. (Council 2004r)

¹²⁴ This document referred to EU's positive position to the amendment of this legal measure made by the Council of Europe in 1990 with the intention to promote the international cooperation on money laundering. The Council of Europe revised this Convention in order to adequate it to the new reality, where, for instance, the terrorist funding is a major problem. (Council of Europe: 2005)

¹²⁵ By this measure, providers of public electronic communications must keep certain information about the source, destination, date, and duration of communications with the aim to avoid the use of telecommunications to commit terrorist acts.

implementation of the principle of availability for sharing-information, the proposal for a Decision on the exchange of information and cooperation concerning terrorist offences¹²⁶, the draft Framework Decision on simplifying the exchange of information and intelligence among law enforcement authorities as regards particularly terrorist acts¹²⁷, the proposal for a Framework Decision on the retention of telecommunications traffic data, and the draft Framework Decision on a European Evidence Warrant); second, terrorist financing (it recognized the progress on two proposals that should be finalized soon: the **Third Money laundering Directive** and the **Regulation on controls of cash entering or leaving the EU**¹²⁸); third, civil protection and critical infrastructure protection (it highlighted the **Solidarity Programme** and the conclusions on prevention to terrorist acts, and announced the development by the Commission of a **European Programme for critical infrastructure protection with potential transboundary effects (EPCIP)**); and fourth, recruitment and radicalisation (it noticed the necessity to limit recruitment to terrorism, which is linked to religion –extremist and violent- and radicalisation, as well as the importance to issue a long-term strategy to observe the factors that contribute to radicalisation and recruitment as to terrorism). Additionally, the JHA ministers agreed on a **Decision on the exchange of information and cooperation concerning terrorist offences**. Finally, they adopted some **recommendations on CBRN threats against population**; these included national risk evaluations and exchange of EU best practices.

Monitoring and encouraging existing and future antiterrorist instruments

In the European Council in December, the issue of terrorism was broadly discussed. The EU leaders reaffirmed its commitment to fight against terrorism through an internal and external strategy of cooperation, recognizing that this combat must be in line with the fundamental freedoms and that it should tackle the very deep basis of terrorism, where radicalisation and recruitment are very important elements. Thus, they requested the establishment of a long-term strategy and action plan on these two items –radicalisation and recruitment- and invited the SG/HR to issue proposals to this respect. They also urged the implementation of the measures included in the Hague Programme, particularly the improvement of the exchange of information among intelligence services so the EU Heads asked the Commission to make proposals based on the principle of availability of information. After welcoming the updated Action Plan on terrorism and the report on progress since June this year, the European Council highlighted the following antiterrorist actions: the **strengthening of operational cooperation through Europol and the Police Chiefs Task Force**; improvement on the exchange of information among Member States, Europol and Eurojust; share of information with Interpol on lost and stolen passports, progress on data retention; development on the draft European Evidence Warrant; inclusion of biometric identifiers on EU passports; establishment of the European Border Agency; establishment of linkage between the CTTF and the SitCen; legal actions

¹²⁶ It established procedures and requirements for Member States to transmit information on terrorism to Europol, Eurojust, and other Member States. (Council, 2005n)

¹²⁷ The aim is to guarantee a fast exchange of information and intelligence within the EU of data essential for law enforcement authorities in their investigations of crimes and criminal operations; hence the obligation of Member States to respond on any request of an authorized authority.

¹²⁸ In order to ensure that all Member States control cash movements that would be used for illicit purposes, that any person carrying 10 000 EUR in cash, entering or leaving the EU should declare it to the customs authorities of the Member State where he/she is to enter or leave. (Council, 2005o)

to combat terrorist financing (such as the **Regulation on controls of cash entering or leaving the EU and the third Directive on Money Laundering**); the soon establishment –before the end of 2005- of a **the EPCIP**; the **adoption of counter-terrorist clauses in international agreements**; the **implementation of the 2004 EU-US declaration on combating terrorism**¹²⁹; the **adoption of the Conceptual framework on ESDP dimension of the fight against terrorism**; and the **development of dialogue and assistance of third countries to fight against terrorism**. In this context, the European Council made some requests: the Commission **should present initiatives for a European Protection Programme to protect and support victims and witnesses of terrorism**, as well as to **prevent (charitable) organisations to finance terrorism**, and it should **issue conclusions on civil protection capacity to response to terrorist attacks and on the Solidarity Programme**; the SG/HR to **report on the development of cooperation among police and security services**, including the SitCen; Member States **should implement EU antiterrorist measures and must provide information on individuals and groups to be included in the EU list for freezing of assets and on the evaluation of their civil protection capabilities to respond to terrorist attacks**; and both the Council and the Commission **should set a national experts network for providing technical assistance to third countries and continue working on the implementation as scheduled of the Action Plan on Combating Terrorism**. Lastly, regarding EU's foreign affairs, the European Council confirmed EU's intention to **observe Iran's attitude towards the fight against terrorism** and it welcomed the **beginning of the Strategic Partnership with the Mediterranean and the Middle East**.

3.10 PRESIDENCY OF LUXEMBOURG (JANUARY – JUNE 2005)



For Luxembourg, **“the fight against terrorism remains a priority”** (Council, 2005a). It would have an **active role in particular regarding counter-terrorist financing**. It furthermore recalled that from the beginning of 2005, the SitCen **should provide strategic reports on terrorist threats to the Council**, made out of the data of Member States and Europol. It underlined the **role of the Counter-Terrorism Coordinator**, as the means for the Luxembourg Presidency to **promote cooperation against terrorism**. It expressed that **the principle of availability would be the basis of the exchange of information to attain a better level of cooperation among police services as to combating terrorism**. It would work to achieve an **agreement on the Framework Decision on traffic data retention and development of the Framework Decision on the European Evidence Warrant**, as means to **prevent and combat terrorism**. On the other hand, the Presidency would **promote cooperation with United States and Asia, especially in terrorism**. Besides, Luxembourg considered that **ESPD would be a useful instrument to combat terrorism, based on its Conceptual framework**.

¹²⁹ In it, both partners reaffirmed their commitment to combat terrorism, by working together in 7 fields: promotion of international efforts to counter terrorism; prevention of terrorist financing; development of instruments to further detect, investigate, and prosecute terrorists and prevent attacks; protection of international transport security and border control; improvement of capabilities to face the effects of terrorist attacks; decrease the factors contributing to recruitment and radicalization; and support of third countries in need to enhance their capacity or commitment to fight against terrorism. (US Department of State, 2004)

According to the Presidency’s Calendar, three would be the JHA Council meetings, while two were to be the European Council sessions; it happened as planned.

Table 3.9. JHA Council and European Council meetings during the Luxembourg Presidency

	JHA Council meetings			European Council summits	
Ordinary	<i>Feb</i> 24 1	<i>Apr</i> 14 3	<i>Jun</i> 2,3 4	<i>Mar</i> 22,23 2	<i>Jun</i> 16, 17 5
Extraordinary					

The number inside the square denotes the chronological order of the meetings.

Developing EU information systems

In the first Council meeting, an **agreement on some elements of the Framework Decision on the European Evidence Warrant** was reached. The Council agreed on a list of 32 crimes¹³⁰ that would not be subject to the principle of double criminality, and it was decided the **inclusion of the principle of ‘territoriality clause’**¹³¹, as well. Furthermore, the Council adopted the **Framework Decision on the application of the principle of mutual recognition to financial penalties**¹³² and the **Framework Decision on the application of the principle of mutual recognition to confiscation orders**. Due to the future commemoration of the **terrorist attacks in Madrid**, the Council showed its indignation at these acts and its **support for the families of the victims**, as well as **to the citizens in general by preventing the occurrence of terrorist events thanks to antiterrorist measures set up by the EU within and outside its borders** but respecting the fundamental rights. It recognized that **this kind of attacks not just kill people, but also injure the values –such as democracy and freedom- of societies**, and thus **the EU would do its best to protect itself from extremism and to counter terrorism**. Likewise, the Council recognized the **technical problems on the application of biometric identifiers** to a uniform format of visas and residence permits, so it asked the Commission **to issue proposals to find a solution**. Furthermore, the Council agreed on draft conclusions where it highlighted that the **Regulation on VIS and the exchange of data between Member States on short-stay visas**¹³³ would **contribute to combat terrorism and promote security**, as it would facilitate the fight against fraud and the identification of persons while preventing, detecting, and investigation criminal offences. However, the **access to VIS should be done respecting the protection of personal data**¹³⁴; therefore, it invited the Commission **to make proposals on this and on the guarantee of consultation of competent authorities of the Member States**. Furthermore, the Council adopted a **Framework Decision on attacks against information systems**. Also the Council adopted a **Framework Decision on confiscation of crime-related**

¹³⁰ Note that this list is the same as the European Arrest Warrant.

¹³¹ By this principle, a Member State could refuse this warrant if the offences were made totally or partly in its territory.

¹³² According to it, a ‘financial penalty’ is the obligation to pay: money on conviction of a terrorist offence –or other offences included in a list-, victims compensation, and costs of judicial or administrative proceedings (Council, 2005p).

¹³³ The Regulation defines the objectives and operation of VIS, as well as the procedure to exchange information among Member States regarding the applications for short-stay visas. (Commission, 2004b)

¹³⁴ Note that there is a regulatory instrument that attempts to look after the privacy of persons, establishing limits to the gathering and use of personal data (for instance, it is not possible to process information on political opinion or racial origin) and obliging Member States to have a national agency responsible to protecting such data. (Council, 1995b)

proceeds, instrumentalities and property. Moreover, the Council adopted a **Decision related to the inclusion of new tasks to SIS in order to facilitate the fight against terrorism** and other crimes. It allowed Europol and Eurojust to access SIS, among other functions.

Terrorism: unnoticed

In the first European Council, antiterrorism was not mentioned –neither indirectly nor directly-.

New proposals

The JHA Council of April discussed the proposal of a **Framework Decision on the exchange of information extracted from criminal records between Member States**¹³⁵, trying to define the guidelines for the interconnection of national criminal records of convictions from individuals of Member States and non-Members. Moreover, the Council took note of a **proposal** made by the Commission **under the financial framework**¹³⁶ **for the period between 2007 and 2013**: it suggested that, in order for the EU to attain an area of freedom, security and justice, three framework programmes should be **set up**, as a way to administer the JHA field. One of these was **the Framework Programme on Security and Safeguarding liberties** which relates to the prevention and fight against terrorist attacks and other crimes, as well as the management of the consequences of these acts, in order to promote a secure society. It **included two specific programmes: the ‘Prevention, Preparedness and Consequence Management of Terrorism and other Security-related risks’ and the ‘Prevention of and Fight against Crime’**. In this context, the budget proposed by the Commission for this framework programme was of 745 million of euros. Lastly, the Council decided to establish the headquarters of the External Borders Agency in Poland, however the formal adoption of this decision would be made later.

New action plan on the Hague Programme and revised Plan on Combating Terrorism

In the last session of ministers of JHA at the beginning of June, they debated on some elements of the **draft Framework Decision on retention of telecommunications data**. The topics discussed were the list of information to be kept, the retention period, and its legal basis. The ministers agreed on the importance of data retention to combat terrorism and other crimes. Likewise, some features on the **European Evidence Warrant** –the scope of the territoriality clause and the inclusion of a provision to get computer information from another Member State- were discussed by the ministers. Furthermore, the Council approved the Action Plan to translate the Hague Programme into specific measures. **This plan**, as well as **the updated Action Plan on Combating Terrorism and other strategies on JHA issues**, would be the basis of the work of the Commission and the Council for the next five years. Moreover, according to the June’s European Council in 2004 that the **implementation of the updated Action Plan/routeplan on Terrorism** should be review two times a year, the Presidency together with the Counter-Terrorism Coordinator **revised this plan** -based on the last version of December 2004-. In it, many things were observed: in general **all EU and national bodies made efforts to adopt the measures of the Action Plan particularly against terrorist financing**;

¹³⁵ This initiative deals with the content, transmission, and storage for sharing information regarding terrorist offences, among other crimes.

¹³⁶ Also called ‘financial perspectives’, it is EU’s spending plan for a certain period of time, imposing expenditure limits for determined EU policy priorities.

soon a cooperation agreement between SitCen and Europol would be finished in the current month; Eurojust and Europol strengthened their activities to combat terrorism; and the Police Chiefs Task Force presented a draft proposal to support community policing. Nevertheless, they recognized the occurrence of a long delay between a Council agreement and the adoption of JHA measures. The Council approved this updated text -that would be subject of consideration by the next European Council for its adoption-, while taking note of the work that need to be done before the end of this year principally as to civil and critical infrastructure protection. It was established that counter-terrorism would be one of the objectives of the next Presidency –of United Kingdom-.

Determining the aims of the next Presidency

The last European Council during the Luxembourg Presidency was informed by the Council on the **situation of the implementation of the updated Action Plan to combat terrorism**. In this context, the EU leaders noticed the **progress made on the exchange of information with judicial and police prosecution objectives**, as well as on **the fight against terrorist financing**. They highlighted the **relevance to attain progress in all areas of this Plan in line with the deadlines established**. They also took note of the **guidelines established by the Council to set up a Strategy on Radicalisation and terrorist Recruitment**, such as promoting dialogue among religions and the completion of a review on antiterrorist measures at the national level. Besides, they welcomed the **adoption of the text related to the implementation of the Conceptual Framework on ESPD against terrorism**. Furthermore, the European Council established some **elements than should be priority for the next British Presidency** –and that would be assessed on the last summit of this year in December-: **legal measures to reinforce judicial and police cooperation, the European Evidence Warrant, the Retention of data, the Decision on the exchange of information and cooperation on terrorist offences; sharing of information among Member States and competent EU bodies; the drafting of the Strategy and Action Plan on Radicalisation and terrorist Recruitment; recommendations made out of the review of national antiterrorist arrangements; adoption of the code of conduct to prevent the abuse of charitable organizations; promotion of the actions regarding assets' freezing; reinforcement of resources of civil protection to counter bioterrorist acts; development of a capability of rapid reaction for civil protection against terrorism; promotion of international dialogue and cooperation on antiterrorism; completion of technical assistance programs to third countries regarding antiterrorism measures; and customs cooperation procedures to enhance security**. On the other hand, in a view of the future **United Nations World Summit** in September 2005¹³⁷, the European Council considered the **fight against terrorism**, together with other items, **part of its priorities for the preparation of this summit**. It also embraced the **agreement made within the UN on the Convention for the Suppression of Acts of Nuclear Terrorism**¹³⁸, while urging all UN countries to **sign it during the September summit**. Likewise, the EU political Heads approved a **report on the implementation**

¹³⁷ It took place in the seat of the UN in New York on September 14th to 16th. It gathered the world's leaders to deal with many issues, such as terrorism, as well as development, human rights, and environment, among others.

¹³⁸ By this instrument, all the countries should take the necessary measures to avoid and prevent the occurrence of nuclear terrorist offences, including radioactive activities, and they should exchange relevant information to prevent and investigate these offences. (United Nations, 2005)

of the Strategic Partnership with the Mediterranean region and the Middle East. As to Iran, they reaffirmed EU's observance on the actions made by this country in relation with the fight against terrorism and other areas. Recalling the UN Resolution 1244 on Kosovo¹³⁹, the European Council considered that the future status of this country should include specific measures to promote the fight against terrorism, among other fields. Finally, on a Declaration on the peace process in the Middle East, the European Council expressed that the **Palestinian Authority should evidence its full commitment to fight terrorism.**

3.11 PRESIDENCY OF UNITED KINGDOM (JULY – DECEMBER 2005)



In general, one of United Kingdom's major objectives of its term was 'security and stability' (Council, 2005h), where **although affirming that the EU was more prepared regarding terrorism and other JHA issues, it recognized the necessity to implement the Hague Programme, particularly working on the draft European Evidence Warrant as part of the revised Action plan to combat terrorism.** On the other hand, particularly **considering the priorities in Justice and Home Affairs, counter-terrorism was one of them.** Within it, the items underlined by the UK were **the rules on Retention of data, the strategy on Recruitment to terrorism, the assessment of Member States on antiterrorist arrangements at national level, agreement on a program to protect critical infrastructure, and the introduction of a EU strategy against terrorist financing.**

In contrast to other Presidencies, only three were the meetings planned: two JHA Councils and one European Council. However, one session more had to be held after the terrorist attacks in London.

Table 3.10. JHA Council and European Council meetings during the British Presidency

Ordinary	JHA Council meetings		European Council summit
	<u>Oct</u> 12 2	<u>Dec</u> 1,2 3	<u>Dec</u> 15,16 4
Extraordinary	<u>Jul</u> 13 1		

□ The number inside the square denotes the chronological order of the meetings.

Declaration on the EU response to the London bombings

During the first Extraordinary JHA Council there was just one issue on the agenda: terrorism, as the only cause of making this session was the terrorist attacks of July 7th in British territory –London-.¹⁴⁰ Therefore, the Council adopted a Declaration on the

¹³⁹ It was adopted in 1999 in order to provide a political solution to the crisis in Kosovo and promote its reconstruction. (United Nations, 1999)

¹⁴⁰ The attacks happened in the morning in the public transport system of London when a series of consecutive bombs made explosion in three underground trains and, one hour later, in one bus, killing more than 40 people –including four terrorist suspects- and injuring almost 500. There was no clear reason for the bombings. The suspects were British citizens of Pakistani origin, with possible influence of Islamic extremism. (House of Commons, 2006) Note that two weeks later, on the 21st there was an attempt of terrorist acts in London, as well, but this time the bombs did not explode and there were not victims. (BBC News, 2005)

EU response to the London bombings, in which it condemned the terrorist attacks and expressed its deepest condolences to the victims and their families, establishing two minutes of silence throughout the EU at the next day in the afternoon and making funds available for them –as victims of terrorism-. The ministers reaffirmed that these acts went against the EU values and that it would reinforce its commitment against terrorism with the work of the Counter-Terrorism Coordinator, the Commission and the Parliament in order to attain the implementation of the Action Plan on Combating Terrorism and other measures. It also expressed that “[t]he terrorists who reject that commitment and seek to use violence to impose their ideas will be defeated”. (Council, 2005i: 6) It established as a very priority to stop terrorist plans, disrupt supporting networks and funding, as well as bringing terrorists to justice, based on the existing EU measures to investigate terrorists beyond borders. For achieving this, it mentioned that during this Presidency the Council would reach agreement on the Framework Decision on Retention of Telecommunications Data, on the European Evidence Warrant, and on the Framework Decision on the simplification of the exchange of information and intelligence between law enforcement authorities. In addition, it would adopt the Decision on the exchange of information and cooperation concerning terrorist offences. In order to specifically tackle terrorist financing, the Council would agree on a Regulation on Wire Transfers¹⁴¹ and a Code of Conduct to prevent the misuse of charities by terrorists; it would adopt the Third Money Laundering Directive and the Regulation on controls of cash entering or leaving the Community; it would examine EU’s performance on this field; and it would call Member States to guarantee that financial investigations are set together with all terrorist investigations and to develop strong powers of asset freezing. Furthermore, the JHA ministers requested the Member States to: increase exchange of information on police and judicial items mainly through Europol (and its CTTF) and Eurojust; improve the relation of their security and intelligence services with the SitCen; strengthen sharing-information on lost and stolen explosives; apply the recommendations established out of the assessment of national counter-terrorism arrangements as a way to improve their capabilities; and make complete use of Joint Investigation Teams. Likewise, the Council urged the Commission to issue proposals on data protection and the principle of availability regarding law enforcement, on access to VIS, and on enhanced interaction among VIS, SIS II and EURODAC. On the other hand, the Council continued underlying the relevance of finding the factors of radicalization and recruitment to terrorist groups, in order to prevent people to get into terrorist activities, so it would soon agree on a strategy on this issue. Furthermore, it emphasized the necessity to increase the capacities to respond to attacks by guarding the safety of citizens and infrastructure. Thus, the Council asked the Member States to reach common agreement on security standards for issuing identity cards and to implement EU standards on maritime and ports security. In this same context, the Council compromised itself to increase the ability to share visa information through VIS and law-enforcement data via SIS II, as well as to ensure flexible information systems in order to protect internal and external borders. Furthermore, the Council established that it would: prioritize the roll-out of biometrics under VIS on visa applicants of high-risk countries; strengthen EU

¹⁴¹ It is a Commission’s proposal whose aim is to reinforce money transfers control as a means to restrict terrorist funding and other crimes, by improving the information of wire transfers. (HM Treasury, 2005)

standards on aviation security; and agree on the **EPCIP, including road and rail transport**, in order to increase the standards EU-wide. It also called the Commission to **present a proposal on air line passenger name records** by October this year. On the other hand, stressing the importance of **bettering EU's ability to manage terrorist acts consequences**, the Council invited: the Member States to **carry out regular joint exercises on fighting terrorism to examine their recovery capacity**; and the Commission together with the Counter-Terrorism Coordinator to **make a report on the progress of response capabilities and coordination in case of emergency of (bio)terrorist acts at the national and EU level**. Moreover it insisted that this is a '**worldwide agenda**' and that the EU would maintain its idea of a **global counter-terrorism strategy, its support to the UN to attain agreement on the Comprehensive Convention against Terrorism**¹⁴² during the UN Summit, its **partnership with United States and other countries and international organizations**; and its **technical assistance to third countries**. Lastly, the Council mentioned that it would continue evaluating the necessity to **establish more EU antiterrorist measures** and that it would analyze **progress made in order to guarantee the convenience of the current framework on antiterrorism**. Finally, it said that an **updated Action Plan on terrorism would be presented** on the December's European Council of the UK Presidency.

Let's get down to it!

The second JHA Ministerial meeting –or first ordinary session- was held in October. The Ministers discussed some elements of the **Framework Decision on retention of communication data**, with the idea to adopt a final decision by the end of the year. In addition, they continued debating on the draft **Framework Decision on European Evidence Warrant**. Besides, they endorsed a Commission's **proposal on the application of the principle of availability and a Decision that fixes the date of implementation of some provisions of the Decision on the introduction of new functions for SIS, including in the fight against terrorism**. Aside the Council, the **EU-Russia Permanent Partnership Council (PPC)**¹⁴³ of freedom, security, and justice had a meeting; it debated on the **fight against terrorism and terrorist financing**. Besides, the Council discussed the scope of the **draft Framework Decision on simplifying the exchange of information and intelligence between Member States' law-enforcement authorities, in particular regarding serious offences including terrorist acts**.

EU's new strategy to Counter Terrorism and other new strategies

At the beginning of December, the JHA Council had its last meeting of the year, in which most of the agenda was related to antiterrorism. The ministers dealt with many documents as to specifically antiterrorism. They agreed on a **new EU Counter-Terrorism Strategy**, whose aims were two: to develop a clear and coherent EU framework to fight against terrorism that allows the establishment of specific objectives for action, and to let general public understand in a more transparent way the EU's activities to combat terrorism. This new strategy **would include four areas: prevention, protection, pursuing, and responding**. These refer to: *prevent people to turn to terrorism by combating the causes that could lead to radicalisation and recruitment* in the EU and worldwide; *protect citizens and infrastructure*, and

¹⁴² The Convention is still in process of elaboration.

¹⁴³ It is a regular consultation framework within the Partnership and Cooperation Agreement (PCA) between both regions established in 1997. The PPC is composed of the ministers of JHA.

reduce vulnerability to attacks by improving the security of borders, transport, and critical infrastructure; *pursue* and investigate terrorists across EU internal and external borders, to obstruct planning, travel, and communications, to end with support networks, funding and access to attack materials, and to bring terrorists to justice; *respond* to terrorist attacks, by being prepared to manage and decrease the consequences, to improve the capacity to deal with them, and to coordinate the response and the victims' necessities. Regarding these four areas, the strategy underlined the relevance of the work at the national and EU level –i.e. the work of the Council, Commission and Parliament together-, as well as considering the EU's role in the world. It also evidenced the contribution that the EU makes to the domestic work of the Member States and the role of the Counter-Terrorism Coordinator to monitor progress. On the other hand, the Council agreed on -a six-monthly- **report on the implementation of the Action Plan on Combating Terrorism**. It was presented by the Coordinator on antiterrorism and overall it denoted good progress as to the last six months. Furthermore the ministers adopted an **EU Strategy for combating Radicalisation and Recruitment to terrorism**. It addressed the **following elements that contribute to violent radicalisation**: 'facilitational' factors (to limit the activities of individuals and networks who try to recruit people for terrorist purposes), 'motivational' factors (to secure the preponderance of public opinion over extremist ideas to avoid radicalisation), and 'structural' factors (to encourage better security, justice, and democracy for all in order to make such a socio-economic environment that could diminish radical messages). The strategy also delineated the way in which the EU and the Member States would combat both problems (i.e. radicalisation and recruitment) particularly in relation with terrorism influenced by Al Qaeda. In order to have a better comprehension of these problems, **the EU would promote dialogue with academic experts, Muslim communities, and third countries that have faced radicalisation and/or recruitment**. Besides, the JHA ministers approved a final report on the evaluation of national antiterrorist arrangements to counter terrorism, in which Member States' structures and capabilities for fighting against terrorism were analyzed, the good practices were underlined, recommendations on the necessity of improvement were given, and national practices able to be applied in other Member States were recognized. The Council was informed on a -a six-monthly- **report on combating terrorist financing**, made by the Coordinator of Counter-Terrorism. In addition, the Council approved a report on arrangements in case of EU emergency and crisis coordination, issued by the Presidency and the above mentioned Coordinator. It included the arrangements possible to use in case of emergencies –such as terrorist crises or other kind of problematic events- affecting one, more or all Member States or happening outside the EU. Continuing with the idea to combat terrorism, but in a more general way –i.e. considering the whole JHA field-, the Council agreed on a **Strategy for the External Dimension of the area of Global Freedom, Security and Justice, in which the threat of terrorism was part of its three 'key thematic priorities'**. To combat it, it is important to work together with third countries, respecting human rights and international law; besides, according to the Strategy, **cooperation with North Africa on counter-terrorism would be an objective in 2006**. Moreover, the ministers reached agreement on the text of the –now- **Directive¹⁴⁴ on Data Retention**. They also held a debate on the **Framework Decision on European Evidence Warrant**, requesting COREPER to

¹⁴⁴ Note that before this discussion, the regulation was a 'Framework Decision' on data retention, but this Council decided to change it to a Decision.

give continuation to the negotiations. Besides, they agreed on the **Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities**, particularly regarding terrorist acts. The Council took note of a Commission's **report on the technical development of SIS II**. The Commission presented two **proposals: on consultation of the VIS by authorities responsible for internal security and by Europol and on improved effectiveness, enhanced interoperability and synergies among European databases in the area of JHA**. The Council was briefed by the Europol Management Board of a **report on the evaluation of the (second) CTTF** from its relaunching in 2004 until mid-June 2005. It also took note of a **report on the principle of availability of information** regarding the technical modalities needed to implement it. Likewise, the ministers adopted conclusions as to the protection of critical infrastructure, in which it embraced the Commission's **efforts to set up an EPCIP** and Member States' **positive attitude on this**, but encouraged them to **continue working**. They recognized the **responsibility of Member States to protect their infrastructure within their territories**, but it also considered the **relevant contribution of EU in supporting this action**. The ministers admitted that **terrorism threat is a priority of the EPCIP**. Related to this, they **established the meaning of critical infrastructure** as: "infrastructure the destruction or disruption of which would have a serious impact on the critical societal functions, including the supply chain, health, safety, security, economic or social well-being or the functions of government, of a number Member States which needs to be further defined." (Council, 2005k: 30) Furthermore, the Council adopted conclusions regarding the Code of conduct of the non-profit/charitable sector to avoid the financing of terrorists. In this document, the Council established five specific **principles** that should be observed, besides those of the FATF, by Member States **when applying procedures to prevent terrorist abuse of the charitable sector**. It also endorsed conclusions on the Consular roll-out for the VIS, where it considered that Member States **should made a plan to collect biometric data for VIS at consular posts** (starting in North Africa) **in order to denote illegal immigration, internal security threats, and biometric data-gathering problems**; furthermore Member States should be able to collect this kind of information for VIS within a period of two years after the beginning of the roll-out. Lastly, it also adopted conclusions on the common minimum security standards for national identity cards; based on a previous Member States' agreement, this text included the points of reference for Member States to issue identity cards, such as standard materials, technical specifications, and issuing processes, among other things.

International partners and regional conflicts

In the last European Council of 2005, the new **EU Counter-Terrorism Strategy** was adopted. The EU political Heads noted that the **Counter-Terrorism Action Plan** was being revised in order to be fully coherent with the new strategy, but welcomed the **progress** made according to the six-monthly report **on the implementation of the Action Plan to combat terrorism** presented by the Counter-Terrorism Coordinator. They also established that in their meeting in June 2006 they would observe **progress on the implementation of the Strategy to Counter Terrorism**. On the other hand, they confirmed its **concern about the situation in the Mediterranean and Middle East**, so it called the **countries in these regions to combat terrorism and terrorist networks**, while expressing **EU's support to attain this** and other challenges and underlining the **relevance of the full implementation of the EU's Strategic**

Partnership with both regions. As to **Iran**, they urged a solution for the Palestinian-Israel conflict and **to finish supporting terrorist groups**. In the case of **Iraq** the EU leaders called neighbour states –especially Syria and Iran- to assist Iraq **to prevent the support of terrorists**. At the end, they embraced the **10th Anniversary of Euromed Summit**¹⁴⁵ in which a **Euro-Mediterranean Code of Conduct on Countering Terrorism** was adopted.

3.12 PRESIDENCY OF AUSTRIA (JANUARY – JUNE 2006)

The fight against terrorism was one of the Austria’s priorities within the area of Justice and Home Affairs. The activities on this issue would be devoted to **improve exchange of information, coordination of facilities, and implementation of measures to prevent terrorism threat**. Austria considered that, besides the importance of information to anticipate terrorist attacks, it is relevant to **eliminate the very main causes of terrorism**. Thus, the Austrian Presidency would work to: **implement the Action Plan to combat terrorism; better information exchange at all levels –strategic and operative-; improve coordination and utilization of existing structures**, such as further cooperation among special units – ATLAS Cooperation¹⁴⁶-, “particularly with regard to flight attendants”¹⁴⁷ (Austrian Presidency website); **develop measures to protect critical infrastructures**; implement the **Strategy against Radicalisation and Recruitment**, by promoting dialogue among cultures and religions; and **implement measures to combat terrorist financing**. Besides, the Presidency claimed that it would focus on other **JHA measures that indirectly contribute to counter terrorism**, as is the case of the **Decision on establishing a computerised system to exchange information on convictions, coordination of crisis management and civil protection, SIS II, and VIS**.

Five were all the meetings in total: three JHA Council sessions and two European Councils. Observe the following table.

Table 3.11. JHA Council and European Council meetings during the Austrian Presidency

Ordinary	JHA Council Meetings			European Council Summit	
	Feb 21	Apr 27,28	Jun 1,2	Mar 23,24	Jun 15,16
	1	3	4	2	5
Extraordinary					

1 The number inside the square denotes the chronological order of the meetings.

February’s JHA Council discussed some terrorist issues. The Council adopted a **Directive on data retention**. Besides, the ministers debated about some elements –

¹⁴⁵ The summit took place on November 27 and 28 2005 in Barcelona, just in the same date and place as it was in 1995 when the Euro-Mediterranean Partnership was inaugurated. This relation is composed of 37 members, including all Member States and 10 Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey).

¹⁴⁶ ATLAS is a ‘crisis intervention unit’ composed of special intervention units of police forces of Member States and non-Member States (Norway). It was informally established at the end of 2001, after the attacks in the US “to facilitate police cooperation in crisis situations” (de Vries, 2006: 3). It is possible to use this network, for instance, in hostage situations and other cross-border emergencies.

¹⁴⁷ I tried hard to search, find, and interpret what did Austria mean when mentioning its interest about ‘flight attendants’; unfortunately, I did not get any result.

such as definitions and executing measures- of the **Framework Decision on a European Evidence Warrant**. Moreover, the Council took note of the **starting of a study** by the Commission to **analyze the way to improve the exchange of information on criminal records** among Member States. It also was informed about the **ministerial meeting** –held two weeks before in Greece- **of the South-East European Cooperation Process (SEECp)**¹⁴⁸ to which ministers of JHA attended to **reinforce cooperation to fight against terrorism** and other crimes. Likewise the Council was briefed about the **situation of the development of SIS II**; it agreed to **establish a group of experts to support this project**, while asking the Commission to **make proposals regarding SIS management**. Furthermore, the Council adopted a **Regulation imposing restrictive measures against persons suspected of involvement in the assassination of the former Lebanese Prime Minister Rafiq Hariri** –in line with the UN Resolution 1636 (2005) that establishes sanctions to this respect-. The measures included **funds freezing to those related to this crime**, as it was the result of a **terrorist bombing**¹⁴⁹ in Beirut.

And the fight against terrorism?

In the first Spring European Council of 2006 no issue of terrorism was included on the agenda, but only the Spanish President mentioned that a permanent ceasefire was announced by the Spanish terrorist group ETA¹⁵⁰, situation that was welcomed by the EU political Heads.

Checking progress on measures' application and future gatherings at the EU level

In the second JHA ministerial meeting in April, the Council was informed again on **the state of progress of SIS II** and discussed some items of its content, such as the use of biometrics, its legal basis, and technical aspects with a view to start operating in 2007. Besides, the Council took note of a Presidency's **report on the development of the implementation of the Strategy for the external dimension of JHA: Global freedom, security, and justice**. The Council was also briefed on the **Ministerial Conference on the role of external relations in implementing internal security** to be held in May in Vienna where one of the panels would be counter-terrorism. The Council continued revising the **content of the Framework Decision of the European Evidence Warrant**. The Council took positive note of the first meeting of the **High Level Dialogue on the Fight against Terrorism** –a new conference generated as part of the **EU Strategy on Terrorism-** that would take place also in May.¹⁵¹ Three could be the **topics of discussion** during this event: **the implementation of the Strategy and Action Plan on Terrorism; the EU Strategy and Action Plan on Radicalisation and Recruitment; and the UN strategy and role to combat terrorism**.

¹⁴⁸ This framework of regional cooperation was established in 1996 among Albania, Bosnia-Herzegovina, Bulgaria, Greece, Macedonia, Romania, Serbia, Turkey, Croatia, Moldova, and Montenegro. Its objectives are to reinforce the security and political cooperation of the region, intensify economic relations, and combat organized crime, among others.

¹⁴⁹ This act occurred in February 2005. More than 20 people died.

¹⁵⁰ This announcement was made on March 22th, after almost 40 years of terrorist and violent separatist campaign in Spain.

¹⁵¹ The participants would be: the Presidency, the Counter-Terrorism Coordinator, the Parliament, and the Commission.

EU counter-terrorism campaign affected by EU decision-making ?

In the last JHA Council session, the ministers reached a **general approach** on a **draft Decision on the European Evidence Warrant**. This agreement was attained on its main purpose, scope of application, proceedings, recognition, and execution. However, the Council decided to include a territoriality clause and Germany made certain reservations on the abolishment of the principle of double criminality, regarding particularly terrorism, computer-related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling, urging the definition of these crimes. Thus, it was concluded in this approach that the working groups would make the necessary, including the further discussion on the categories of offence and the possible Germany's opt-out, to adopt the proposal as soon as possible. Moreover, they heard a **report** by the Coordinator for Terrorism as from December 2005 **on the progress of implementation of the Strategy(ies) and Action Plan(s)** on both: **Counter Terrorism, and Radicalisation and Recruitment**. In it, the Coordinator underlined the **necessity to have more effective means of decision-making for attaining better results in counter-terrorism**, so he suggested the **reconsideration of the use of certain legal instruments** -as 'framework decisions' and 'conventions' - **due to the long time that it takes to adopt them**¹⁵². In addition, he mentioned that **decisions finally adopted are not as ambitious as originally** and that it was very common that **many years passed before these decisions were implemented by all Member States**. As part of the **Action Plan for combating radicalisation and recruitment**, the Council took note of a **Media Communication Strategy**.¹⁵³ Furthermore, the Council approved a series of **policy recommendations on antiterrorism that later would be included in the Action Plan on Counter Terrorism**. Besides, in the context of the Strategy for the external dimension of JHA, the Council adopted an **Action Oriented Paper (AOP) on combating terrorism - and other areas- between the EU and Western Balkans**.¹⁵⁴ The ministers also achieved agreement on a **draft Regulation on the establishment, operation, and use of SIS II**. The ministers adopted conclusions on EU's emergency and crisis response capacities, in which they stressed the **possibility that major risks –natural disasters or not and even outside the EU- affect one or more Member States, so the assistance of the whole EU would be required**. Thus, the Council endorsed the **manual on operational EU emergency and crisis coordination** made by the Presidency, the Commission and Javier Solana; it **should be periodically updated by the presidencies**. Additionally, the Council requested Member States to **set up the necessary resources to ensure a rapid response to a support request regarding all kinds of crises**. Likewise, the Council agreed on a **draft Decision establishing the EU Specific Programme on the Prevention, Preparedness, and Consequence of Management of Terrorism and other Security-related risks** for the period 2007-2013.¹⁵⁵ The Council was briefed about the **conclusions of the first High Level Political Dialogue on Counter-Terrorism** and the date of its second meeting –next November 2006-. Finally, it took note of the **TE-SAT annual report** from October

¹⁵² Remember that unanimity is needed to reach these legal instruments.

¹⁵³ The strategy includes a series of key messages and frequently used terms on fighting terrorism that could be observed and said by the press services and spokespersons of Member States and EU institutions in charge of transmitting EU values and policies, so that they could avoid misunderstandings that directly or indirectly promote radicalisation and recruitment.

¹⁵⁴ It contains specific recommendations on the actions that should be made to fight against terrorism. According to the Strategy on JHA periodical report on the application of the AOP is to be issued.

¹⁵⁵ Remember it was part of the Framework Programme on Security and Safeguarding Liberties.

2004 to 2005 and then it approved a **proposal** made by Europol **to develop a new TE-SAT report** that includes more data to inform the Parliament on terrorism in the EU.

Promoting antiterrorist measures' implementation

The last European Council in June dealt with some issues related to antiterrorism. For instance, the EU high-level politicians expressed that an **evaluation on the measures of the Hague Programme as to terrorism and other phenomena should be made** in December 2006; before that date it established that **progress should be done regarding: SIS II, VIS, and the finalisation of the Framework Decision on European Evidence Warrant**, among others. They also urged the **fast implementation of the Action Plans on Counter Terrorism and Radicalisation and Recruitment**, as well as **continuing the work on the protection of critical infrastructure**. They invited the Council and the Commission **to present measures to combat Internet misuse for terrorist purposes**. They also highlighted the **necessity to respond to emergencies and crises inside or outside the EU**. Thus, it endorsed a Presidency's **report on Reinforcing the Union's emergency and crisis response capacities**. It also welcomed the **Vienna Declaration on Security Partnership** –agreed at its respective Ministerial conference- on the role of external relations in implementing internal security, **where one of the objectives was to improve cooperation with the Western Balkans to combat terrorism**. Lastly, as to the **Middle East Peace Process**, the European Council expressed its **concern for the security in the region** and urged the Palestinian Authority **to avoid terrorist attacks in Israel**.

3.13 PRESIDENCY OF FINLAND (JULY – DECEMBER 2006)



The Finnish Presidency had four main priority areas; one of them was Justice and Home Affairs. According to it, “The primary objective here [JHA] is a Union that lives up to its citizens' expectations in combating international crime, human trafficking and terrorism” (Council, 2006h). Thence, for Finland, **preventing terrorism was very relevant as a means to strengthen security, in line with the EU Strategy to Counter Terrorism**; in consequence this plan would be implemented, **focusing on the prevention of radicalisation and recruitment of terrorism**. It moreover committed itself to **attain progress on the Framework Decision on the European Evidence Warrant**. Furthermore, Finland also considered that an **essential element to counter terrorism was to improve information exchange among judicial and law enforcement authorities**; hence, **the necessity to apply the principle of availability**. In fact, this Presidency expressed that **this principle should be set up as the basis of the exchange of information as from 2008**. In order to work on it, Finland was **particularly concerned about addressing issues on data protection regarding police and judicial cooperation**, before the application of this principle could be possible. Moreover it **would attempt to reinforce operational cooperation at the EU level**, mentioning that the Finnish example of best practice in the EU –of cooperation among Finnish police, customs authorities, and border control authorities- could be used to augment effectiveness of law enforcement investigations, but considering very convenient the inclusion of Europol's and Eurojust's cooperation as well. In addition, the Finnish Presidency mentioned that **the EU system of crisis coordination for cross-border risks would start operating in the first month of its term**. Likewise,

it would reform the emergency and information system in order to develop coordination among Member States regarding civil protection. In this context, it also expressed that an EU funding programme would be established for the period 2007-2013 to assist the development of civil protection within the EU, as well as the drawing up of procedures to support third countries in this field.

Regarding to the high-level meetings, Finland held three JHA Councils and only one European Council, as initially planned.

Table 3.12. JHA Council and European Council meetings during the Finnish Presidency

	JHA Council meetings			European Council summit
	<i>Jul</i>	<i>Oct</i>	<i>Dec</i>	<i>Dec</i>
Ordinary	24 1	5,6 2	4,5 3	14,15 4
Extraordinary				

□ The number inside the square denotes the chronological order of the meetings.

Information systems

During the first Council in July, the Commission presented its **Communication on the Report on the implementation of the Hague Programme for 2005** according to the time scheduled for 2005. However, the **idea of this report was to monitor also the Action Plan on combating terrorism, since it was a complement of the Hague Programme.** The Council debated on the **schedule for the setting up of SIS II** and other legal and technical elements constituting this system, noticing that in order to be able to operate it was necessary to adopt two Regulations and one Decision¹⁵⁶ that would give legal basis to SIS II. Moreover, the Council adopted **two Decisions fixing the October 1st and November 1st 2006 as the dates to introduce new functions to SIS, including in the fight against terrorism.**

The second Council was briefed by the Presidency of the **state of the negotiations on the legal instruments to make SIS operational.** Additionally, it adopted **conclusions on SIS II and SIS 1+¹⁵⁷**, where it mentioned that **SIS II would operate –for both new and existing Member States- as from June 2008**, while expressing that the development of this system is “the absolute priority” (Council, 2006j: 13), and agreeing on the **establishment of an informal Task Force to support in the preparations of this system.** Besides, it welcomed the initiative **SISone4all¹⁵⁸ to integrate new Schengen States into SIS II.** On the other hand, the EU finished negotiations with the US on a **temporary agreement on the processing and transfer of passenger name record (PNR) data by air carriers to the US Administration¹⁵⁹**; it would support the **prevention and the fight against terrorism** and other serious transnational crimes. Moreover the ministers adopted a **Framework Decision on the application of the principle of mutual recognition to confiscation**

¹⁵⁶ Regulation on the establishment, operation and use of SIS II, Regulation on access to SIS II by the services in the Member States responsible for issuing vehicle registration certificates, and Decision on the establishment, operation and use of SIS II.

¹⁵⁷ Name given to the latest and current version of SIS.

¹⁵⁸ A Portugal’s proposal to temporarily include the SIS 1+ nine of the new Member States –joining the EU in 2004- (Council, 2007) until SIS II development is finished.

¹⁵⁹ The PNR data in the systems of reservation and departure control of airlines in the EU is sent to the US. This way, the EU guaranteed that air carriers with (passenger)flights to or from the US process this data out of their reservation systems.

orders. Furthermore, they analyzed a Commission's **proposal to establish a civil protection financial instrument to support** –during the financial framework 2007-2013- **EU action inside and outside this region regarding civil protection in major emergencies with disastrous effects, such as terrorist attacks** among many other events.¹⁶⁰

Monitoring existing measures

The third, last JHA Council adopted **conclusions on the review of the Hague Programme**. After reaffirming its **commitment with the measures and deadlines set in the Action Plan of this programme**, it considered that **the fight against terrorism** –as well as other areas- **should be particularly attended**. Likewise it also adopted **conclusions on the enlargement of the Schengen area**, where the Council dealt with the participation of the new Member States in SIS 1+ -taking into consideration the proposed SISone4all-, and with **the planning of the inauguration of SIS II**. Furthermore, the ministers examined the **draft Decision establishing a civil protection financial instrument**, without agreeing on some of its elements. In contrast, they reached agreement on the **conclusions on the Future of Europol**, where they took positive note that **most of the Member States ratified the three Protocols**¹⁶¹ **amending the Europol Convention**, and that the rest of them would do it, too, in this year; hence the entering into force of the Protocols would be in the beginning of 2007. Moreover, the Counter-Terrorism Coordinator presented a report to the Council **on the implementation of the Strategy and Action Plan to fight against terrorism**, stressing: **the promotion of cooperation among the EU and the US, Russia, Australia, and other third countries; the request of Pakistan and Egypt to increase cooperation on this field with the EU; the inefficient decision-making in the JHA area as unanimity is necessary, situation that slowed the progress on implementation of the strategy; the necessity of Member States to promote cooperation with Europol and continue working to improve their capabilities to deal with the consequences of a terrorist attack and the needs of victims; and the great importance of implementing the EU Action Plan on Radicalisation and Recruitment**. The Council likewise was informed of various reports on the implementation of: **the Strategy for the External Dimension of JHA for 2006; the Framework Decision on the European Evidence Warrant**¹⁶²; **the Strategy/Action Plan of Radicalisation and Recruitment; and the Action Oriented Paper on improving cooperation on counter-terrorism -and other fields-between the EU and the Western Balkans and relevant countries**. Furthermore, it approved various **policy recommendations on counter-terrorism that would be included in the Action Plan to combat terrorism**. In addition, it adopted the **conclusions of the development of the Southeast European Cooperation Initiative Center for Combating Transborder Crime (SECI center)**¹⁶³, which would closely

¹⁶⁰ The amount for actions proposed within the EU was of EUR 17 Millions and 8 Millions in third countries. The financial assistance would be reimbursed by the accepting Member State, according to nature of the emergency and the damage.

¹⁶¹ Remember these protocols attempted to make Europol more efficient in countering terrorism.

¹⁶² Note that this measure has not been adopted yet. However, in its conclusions of its third meeting the Council claimed that it took note of the situation of the “implementation” of the Evidence Warrant. (Council, 2006k: 25)

¹⁶³ Its aim is to promote a common fight against trans-border crime, in which counter-terrorism is a major issue, among its members in order to attract more investment in this region and to promote its economic stability. It is composed of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Macedonia, Moldova, Romania, Serbia, Slovenia, and Turkey.

work with Europol. The Council heard a Member States' **resolution on the agreement they achieved on the minimum security standards of identity cards.**¹⁶⁴

Reflecting on EU's decision-making

The first and only European Council that took place during the Finnish Presidency commented very briefly on antiterrorism. The Heads of State or Government noted the **state of the adoption of the Hague Programme, reaffirming its devotion to reinforcing the area of freedom, security and justice**, while debating on the **improvement of existing decision-making in this pillar** and acknowledging that **this process makes difficult to respond to the citizens' great expectations about concrete results in the fight against terrorism** and other JHA problems. Thus, it asked the Presidency and the Commission to **examine possibilities to improve the decision-making process in the third pillar** according to the current treaties. Likewise, after being informed of the **progress on crisis response**, it emphasized the **relevance of constituting European capacity to be prepared and respond to emergencies**, so it suggested next Presidencies to **continue monitoring and reporting periodically on this field**. Lastly, the EU leaders issued a **declaration on Lebanon** in which they showed their concern for the situation in that country and condemned the **assassination of the Minister of Industry**¹⁶⁵, stressing its **opposition against negative intentions to destabilise Lebanon "by assassinations or other terrorist acts"** (Council, 2006l: 23).

3.14 PRESIDENCY OF GERMANY (JANUARY – JUNE 2007)



One of the general aims of the German Presidency was to **promote the creation of an area of freedom, security and justice, which would be done by fighting international terrorism -among other actions- through close cross-border police cooperation; thus "one priority of the Presidency is to strengthen Europol"** (Council, 2007a: 17), meaning that Germany **would work to develop the legal framework and responsibilities of this office**. It would also **include in the EU legal basis the Treaty of Prüm**¹⁶⁶. Furthermore, it considered **essential the access of police and competent authorities to broad and daily update information**, therefore Germany **would expand the European information network**. In this context, the Presidency claimed that **all authorities involved in the fight against terrorism –and other crimes- should have access to systems of information in the EU (SIS, VIS, EURODAC, Customs Cooperation System (CIS)**¹⁶⁷) according to

¹⁶⁴ It specified the basic common elements necessary for issuing identity cards, such as materials, biographical data, printing and issuing techniques, protection against copying, and biometric features.

¹⁶⁵ It happened on November 21st 2006. He was the fifth politician to be murdered in Lebanon in two years. Note that there was no terrorist bombing or attack, but he was shot.

¹⁶⁶ It was signed in Prüm, Germany on May 27th 2005 by Austria, Belgium, France, Germany, Luxembourg, The Netherlands, and Spain. The Member States wishing to accede the treaty soon are: Bulgaria, Finland, Greece, Italy, Portugal, Romania, Slovenia, and Sweden. Its objective is to intensify cross-border police cooperation, in particular as to counter-terrorism, illegal migration, and international crime, as well as to substantially improve and make more efficient the information exchange procedures, since the Member States covered by this Treaty provide one another automatic access to certain national databases (such as those related to vehicle registration data, DNA analysis and fingerprint (dactyloscopy); however, regarding potential terrorist perpetrators the sharing of information is regulated).

¹⁶⁷ CIS' purpose is to facilitate the transmission of information regarding customs, as well as to reinforce the cooperation and border control actions of customs authorities of all Member States.

the necessity of their tasks. In addition, it conceived that **national databases should also be available to all Member States**. Moreover Germany would attempt to **achieve cooperation among authorities related to internet surveillance in the Member States and Europol in order to tackle terrorist threats**. It would also support the Commission in its efforts regarding the **circulation in internet of bomb fabrication information**. Also the Presidency considered that **VIS was a vital tool to combat not just illegal migration, but also international terrorism**. On the other hand, according to Germany, **one means to prevent radicalisation was to improve the integration of new and old migrants living in the EU**; hence the **significance of promoting intercultural and political dialogue, in particular with Islam**. Likewise, the Presidency would establish a **more efficient foreign and security policy, in line with the European Security Strategy**. Finally, it reaffirmed that **the EU would reinforce its cooperation with the United States on the fight against terrorism** and other selected items.

There were five sessions in total: 3 Ministerial meetings and 2 European Councils.

Table 3.13. JHA Council and European Council meetings during the German Presidency

	JHA Council meetings			European Council summit	
	<i>Feb</i>	<i>Apr</i>	<i>Jun</i>	<i>Mar</i>	<i>Jun</i>
Ordinary	15 [1]	19,20 [3]	12,13 [4]	8,9 [2]	21,22 [5]
Extraordinary					

The number inside the square denotes the chronological order of the meetings.

Possible inclusion of Prüm at EU level

In the Council meeting of February, it was agreed to **integrate into the EU legal framework the parts of the Treaty of Prüm related to the third pillar**. Furthermore, the Council was informed about some **reports on: the good situation of SISone4all; the new timetable of SIS II that set a delay of six months for this system to start operating –so it would start in mid-December 2008-; the implementation of the action plan of the Strategy for Customs Cooperation in the third pillar for the 2005-2006; and on the effectiveness of CIS**.

No counter-terrorism agenda

In the following month, the Spring European Council was devoted to other issues rather than the fight against terrorism.

Continuing the observation of EU antiterrorist instruments' application

During the second JHA Council the Council took note on the **state of the implementation of SISone4all and SIS II**. Regarding the former, the schedule was accomplished on time, while in the case of the latter its operation should be postponed until December 2008. The Council was also briefed on the **draft Council Decision on access for consultation of VIS by determined authorities –visa, border and immigration agencies of the Member States- and Europol for the purposes of preventing, detecting, and investigation terrorist offences and others serious crimes**. As to Europol, the ministers heard a **report on the future of Europol, the improvement of its capabilities, and the entering into force of the last of its three Protocols**. They stressed that **with the amendment of Europol's tasks, this office could be in better position to fight against terrorism and other crimes**. They also adopted a **Resolution on information exchange on the expulsion of third country nationals due to behaviour related to terrorist activity or inciting violence and**

racial hatred.¹⁶⁸ Moreover, they approved the **Executive Summary of the follow-up report on the implementation of the Council's recommendations regarding the fight against terrorism in the Member States**. They besides adopted the **conclusions on the EPCIP**, where they underlined the **responsibility of Member States to protect their critical infrastructure within their territory and the contribution of the EU to complement and support** that national responsibility which included the evaluation of risks and threats on the field and exchange of information with the Commission on this respect. In these conclusions, the Council also welcomed the Commission's **work to develop a European procedure to identify and designate European Critical Infrastructure** and it supported the **establishment of an Action Plan for the implementation of this Programme**.

Some innovative antiterrorist proposals

In the last ministerial meeting, the Council agreed on a **Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime**.¹⁶⁹ It welcomed Parliament's **positive opinion towards a Decision for certain authorities to access VIS in order to prevent, detect and investigate terrorist offences** and other crimes. It reached agreement on a **proposal for a Framework Decision on the exchange of information extracted from criminal records between Member States**. The Council took note of the **state of the debate** – provoked after Germany's reservations and desire of defining certain crimes- **on the horizontal approach of Member States to six categories of offence, where terrorism was included** – besides computer-related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling-, that would be **subject to the European Evidence Warrant**. From this debate it was concluded that such proposal **should be assessed once implemented in order to observe the existence of real problems and their possible solution**.¹⁷⁰ The Council endorsed the **revised version of the Manual on EU Emergency and Crisis Coordination**. Likewise, it adopted conclusions on preparedness for decontamination of casualties following CBRN incidents, such as, for instance those provoked by CBRN terrorism. The Council confirmed its intention to implement SISone4all and develop SIS II as scheduled. In addition, the Council adopted a Decision on the establishment, operation and use of SIS II, identifying its objectives, rules, technical features, and financing. Moreover, the Council: approved some **policy recommendations to fight against terrorism that would be incorporated into the Action Plan to combat terrorism**; heard a **report on implementation of the Strategy and Action Plan on this field**; and took note of the **conclusions of the second High-Level Political Dialogue on Counter-Terrorism**. Additionally to these antiterrorist measures, it adopted conclusions on fighting the terrorist use of the Internet by the initiative "Check the Web", in which the Council recognized that **terrorist groups work with internet to radicalize, recruit and train possible future terrorists, besides transferring information, spreading propaganda and obtaining terrorist financing**; in relation

¹⁶⁸ It referred to the process of exchange of information that should be followed by the competent authorities that decided to expel a national from a third-country because of terrorist linkages.

¹⁶⁹ This measure is mostly based on the Treaty of Prüm and its aim to improve information exchange.

¹⁷⁰ It is based on the general approach of the Evidence Warrant reached at the end of the Austrian Presidency. The first debate among the Council working groups on a horizontal approach was held in March 2007. The idea was to reach a common understanding of terrorism –and the other crimes-, as this offence could broadly defer from the legal system of one Member State to another. This action would allow the elimination of different interpretations by having more precise definition when applying the European Evidence Warrant.

to this, the Council estimated impossible for one Member State to **monitor and evaluate Internet and suspicious activities, particularly Islamic terrorist websites**; hence the importance of making and supporting these tasks **among Member States' cooperation –by their competent authorities- under a voluntary basis**. In order to develop this EU-wide cooperation measure, Europol's portal would be vital. Nevertheless, the decision of shutting any website down would depend on the Member States. For all this, the Council asked the next Presidencies to **issue an annual report on the development of the cooperation in this field**. Furthermore, the Council adopted a **Recommendation** proposed by the Presidency **on the sharing of information on terrorist kidnappings**.¹⁷¹ It moreover adopted **conclusions on limiting the availability of arms and explosives to terrorists**, where it considered that **cutting off illegal acquisition and use of firearms and explosives would prevent the organization of terrorist acts**. Thus, it recognized the necessity to **strengthen cross-border police cooperation to facilitate exchange of information and combat crime in this matter**, as well as the **establishment of systems to track sources of risk and the application of common standards in the free internal market**. It also encouraged Member States to **cooperate on R&D**¹⁷² on this issue, **provide each other of relevant information, and coordinate strategies**. It mentioned the significance of establishing soon a database –via Europol- of information on EU-wide offences related to explosives with terrorist purposes. Furthermore, the Council adopted **conclusions on access to EURODAC by Member State police and law enforcement authorities as well as Europol**. These conclusions dealt with the idea that **the fight against terrorism would be better supported if the mentioned authorities are able to consult updated information, such as the case of biometric data in EURODAC of suspected or real terrorists, for the purpose of preventing, detecting and investigation terrorist offences and other kind of crimes**. Thus, the Council called the Commission to **present a proposal to attain this**. Finally, regarding Europol, the ministers approved the **transformation of the CTTF into a first response network that would organize the first answer of Member States and Europol in case of a terrorist act**.

Nothing new

June's European Council discussed very briefly the topic of antiterrorism. It welcomed the **Decision on access for consultation of VIS by designated authorities of Member States and Europol for the purposes of prevention, detection and investigation of terrorist offences**. Likewise it embraced the **development on SISone4all** and encouraged the Commission to **work on the necessary tasks to finish SIS II in December next year at the latest**. It furthermore considered that **more should be done to reinforce the fight against terrorism** as EU citizens had great expectations on EU and Member States' action to counter terrorism and other crimes.

¹⁷¹ Acknowledging that terrorists sometimes kidnap people as a means to attain their goals, the text suggested unclassified data exchange regarding past terrorist kidnappings in order to learn from experiences of all Member States in similar situations. Therefore, after the terrorist incident is over, the involved Member State should submit information about the motivation of the kidnapping, its modus operandi, and characteristics of the perpetrators and hostages.

¹⁷² Research and development

EUROPEAN ARREST WARRANT

In the precedent chapter some elements of the research subject were described, as well as the content of the agendas for antiterrorism of the Presidencies from the second half of 2001 to the first half of 2007. From all the issues that came out on these agendas, four were selected in order to count with concrete and limited case studies to analyze: the Framework Decision on a European Arrest Warrant (EAW), the Framework Decision on a European Evidence Warrant (EEW), and the –second and third- Money Laundering Directives (MLD). These cases are a representative sample of around two dozen of measures considered during that period of time by the Presidency, JHA Council, and European Council. Important to know is that not all were related just to the third pillar –to where terrorism in theory belongs- but also to the first pillar: i.e. the first two cases are judicial measures, while the other two are financial instruments. The four were selected due to reasons related to both the Presidency and Kingdon’s Model. Regarding the former, the four items were claimed very relevant by the three venues as a means to fight against terrorism; besides, they appeared on the Council antiterrorist agenda in different times covering almost all the 6-year-period and giving a global overview of it (namely, the EAW was on the agenda at the beginning, the MLD were at the beginning and in the middle, and the EEW in the middle and at the end). As to the Multiple Streams Model, that not all have the same legal basis in terms of EU policy-making and its pillars, provokes different acting ways of policy entrepreneurs to reach their goal; and since not all the four issues were adopted, this provides an interesting case in relation to agenda changes attained that not necessarily become policy changes.

This chapter will start analyzing one of these four items: the European Arrest Warrant. The analysis will be based on Kingdon’s Multiple Streams Model, first taking into account the three streams separately –problems, policies, and politics- and then observing their coupling. Therefore two will be the parts of this chapter. The objective is to recognize how the issue came to be on the decision agenda and the policy changes emanated from it.

I. INDEPENDENT STREAMS

4.1 PROBLEM STREAM

The terrorist events on September 11th 2001 were a landmark in the history of terrorism. Besides provoking a tremendous impact in all quarters of the globe, they exposed the existence and support of terrorists and criminals worldwide. The attacks made governments from all the continents realized that terrorism was not just a disturbing situation of the most isolated weak corners, but a serious close menace that can affect even the most powerful country, as well as a grave danger capable of being provoked by terrorists from all over the world. According to the US President George Bush, the terrorist organization Al Qaeda and its leader Osama Bin Laden, which were suspected of committing the attacks in the United States, were linked to other terrorist groups all around the globe. Regards such relation, he claimed: “There are thousands of these terrorists in more than 60 countries...they are recruited...brought

to camps in places like Afghanistan, where they are trained in the tactics of terror. They are sent back to their homes or to hide in countries around the world to plot evil and destruction.” (Bush, 2001) Similarly, days after the ‘historic’ date, Antonio Vitorino, Commissioner of Justice and Home Affairs, claimed that behind the execution of a terrorist attack there is a worldwide network of criminals taking advantage of legal flaws in cross-border investigations: “[T]errorist acts are committed by international gangs with bases in several countries, exploiting loopholes in the law created by the geographical limits on investigators...” (EU Press Release, 2001h). Therefore as a result of the events in the US the Belgian Presidency put particular attention to terrorism, aware of the potential threat of terrorists and related criminals inside and outside the EU, estimating necessary to provide a common response at the EU level against terrorism due to the magnitude of the attacks and their implications. This view was reaffirmed by the Commissioner Vitorino who considered that the response to combat international crimes, as is the case of terrorism, should also be international: “If crimes of the most horrific sort are being committed at global level, how can we expect national solutions on justice and home affairs...?” (Vitorino, 2001)

4.2 POLICY STREAM

In order to have a ‘genuine area of justice’, in October 1999 the Tampere European Council considered necessary to remove the existing formal extradition procedures among Member States¹⁷³ “as far as persons are concerned who are fleeing from justice after having been finally sentenced” in order to replace them with “a simple transfer of such persons...” (Council, 1999: 5). Thus this Council invited the Commission to issue initiatives on this respect. Few months later, at the beginning of 2000, an EU Millennium Strategy to prevent and control organized crime was born. It urged as a first priority to facilitate and accelerate the extradition procedures within the EU, requesting the Commission to draw up proposals for “expedited extradition of convicted persons fleeing from justice” and for establishing in 2010 a European extradition area. (Council, 2000d: Recommendation 28) Afterwards, during the JHA Council held on November that year, while the ministers “reaffirmed [their] determination to combat terrorism by taking all necessary steps at the European level”, the Commission announced that it would send the Council a proposal on a European Arrest Warrant. (Council, 2000c: 23) Additionally, in the same meeting, they approved a ‘Programme of measures to implement the principle of mutual recognition¹⁷⁴ of decision in criminal matters’, which determined the priorities for setting up a law-enforcement area within the EU; one of them –with priority rating 2-¹⁷⁵ referred to the facilitation of arrest warrants in the EU “with a view to creating a single judicial area for extradition.” (Council, 2001s: 15)

Almost one year later, on September 19th 2001, the Commission drew up a proposal on a Framework Directive on the European Arrest Warrant and the surrender

¹⁷³ The existing extradition procedures to which it made reference were: Council of Europe European Convention on Extradition of 1957; Protocols to this Convention of 1975 and 1978; Council of Europe European Convention on Terrorism of 1977; and EU Conventions on Extradition of 1995 and 1996 (Council, 1995; Council, 1996; Statewatch, 2001b).

¹⁷⁴ By this principle, a judicial order issued by a competent authority in one Member State should be ‘automatically’ accepted and executed in another Member State and have the same effects. (Commission, 2000a)

¹⁷⁵ The scale: 1 the most urgent, 6 the less.

procedures between the Member States (Commission, 2001b). In its initiative, the Commission claimed that extradition was generally a difficult process not appropriate for an open-border region with mutual confidence and collaboration among its members and with similar legal characteristics, as is the case of the EU: “[Extradition] is often a slow and complex business, and it is not suited to a frontier-free area such as the European Union in which there is a high degree of trust and cooperation between States that share a sophisticated concept of the State based on the rule of law” (*Ibid*: 2). Therefore, the Commission drew up this proposal that could promote law-enforcement effectiveness “by making it easier for justice to be administered across borders between Member States. In this respect, the mechanism is a major contribution to the fight against transnational organised crime.” (*Ibid*: 4) According to the Commission, based on the principle of mutual recognition, this would be attained since any judicial decision made by one Member State -i.e. the issuing State¹⁷⁶- to arrest or surrender a suspect for committing a crime should be mutually accepted and enforced by another Member State -i.e. the executing State-. This would facilitate and accelerate the transferring from one Member State to another of a suspicious person requested for committing a crime falling within the general scope of the draft European Arrest Warrant (EAW), in which almost any offence would be subject to it.¹⁷⁷ In relation to this, the initiative stated that as “a consequence of the application of the principle of mutual recognition...the double criminality condition must be abolished.” (*Ibid*: 27) Therefore, the principle of double criminality –which establishes that, to be able to extradite a person, a crime should be an offense in both the issuing State and the executing State- would not apply to the EAW, except for those offences to be determined by each Member State in a future “negative list”. (*Ibid*: 27) This meant that this Warrant should be recognized and executed irrespective of the existence, conceptualization, or differences of most crimes in the judicial systems of each of the two Member States involved. Thus, no executing Member State could refuse to transfer its own citizens for the only sake of protecting its national population.

4.3 POLITICAL STREAM

It was obvious that the terrorist attacks were a major shock worldwide not just for the governments, but also for their population. These acts impacted societies in several ways. In the particular case of the EU, a survey (Standard Eurobarometer¹⁷⁸, 2001) conducted in Autumn 2001 to provide an overview of the feelings of the Europeans on various EU issues, proved that “the events of September 11th have substantially altered public opinion in many regards” (*Ibid*: i). This was the case of the following situation: from 10 options of negative phenomena¹⁷⁹ to be chosen by the interviewee according to what frighten them the most, terrorism was considered the first fear of the EU with 86% of the total sample. (*Ibid*: 13) It was followed by organized crime and spread of nuclear, bacteriological or chemical weapons of mass destruction, each

¹⁷⁶ The ‘issuing state’ is the requesting Member State that makes the EAW and sends it to the ‘executing state’ for the enforcement of such warrant.

¹⁷⁷ For details, see Commission 2001b: 28.

¹⁷⁸ This kind of EU surveys (‘Standard Eurobarometer’) brings relevant information on the changes in the EU public opinion since they are made twice a year –in Spring and Autumn- under the same format. The usual sample of these surveys is 1000 persons per Member State.

¹⁷⁹ The ten events were: conventional war in Europe, nuclear conflict in Europe, world war, accidental launch of a nuclear missile, epidemics, ethnic conflicts in Europe, terrorism, accident in a nuclear power station, organised crime, and spread of nuclear, bacteriological or chemical weapons of mass destruction.

with 79%. (*Ibid*) Furthermore, the survey mentioned that, in comparison with the results of one year earlier -Autumn 2000's survey- on the same question, there was an increase of 12 percentage points regarding the fear of terrorism.¹⁸⁰ (*Ibid*: 12) These results showed a change in the public opinion from the 2000 to 2001, besides a clear concern of almost all the Europeans regarding terrorism.

II. COUPLING

4.4 Policy window

A couple of days after the terrorist events in the United States, the EU Heads of State or Government, the President of the Parliament, the President of the Commission, and the SG/HR, expressed in a Joint Statement that those attacks “were also directed against us all...”, so that the EU would ensure that “those responsible for hiding, supporting or harbouring the perpetrators, organisers and sponsors of these acts” would be prosecuted and castigated. They concluded therefore that the EU should act quickly and respond accordingly by accelerating the implementation of a real European judicial area that requires “the creation of a European warrant for arrest and extradition.” (EU Press Release, 2001g) In the same line, the Belgian Minister Annemie Neyts, on behalf of the Presidency, reaffirmed that the EU would put a lot of effort to “bring to justice and punish those responsible” for the attacks in the US. This would be attained, according to her, by promoting the proposal on a European Arrest Warrant. (Council, 2001u) Likewise, Romano Prodi, President of Commission, emphasized that the Arrest Warrant would “provide our authorities with instruments for combating terrorism more effectively” (Prodi, 2001b). Additionally David Blunkett, Home Secretary of the United Kingdom, expressed that the introduction of this Warrant “will effectively remove cumbersome extradition procedures for wanted terrorists in Europe.” (The Guardian, 2001a)

The above information demonstrates that the attacks in the United States triggered the opportunity for the Commission to come forward with its proposal; or what is the same, under Kingdon's conceptualization, the problem window opened the policy window. This was not so simple, though. Of course the terrorist acts themselves were a very important point of discussion, but the real problem –at least, the problem depicted by the European Union- was other very closely related: these attacks highlighted the presence of terrorist networks worldwide that direct and indirectly support the perpetrators of such evil acts. This meant that their nationality, location, and flight could be related not just to the United States, but also to foreign countries, including the European ones. However, the portrayal of the problem was more complex because the terrorists make use of the lack of law uniformity among countries so they can execute their attacks without being investigated. This situation, in a time when the first fear of EU's population was terrorism, urged to have a solution at the EU level to prosecute and punish the responsible people: the creation of the European Arrest Warrant. This instrument, based on a single judicial process for all the Member States, would provide the possibility to easily and quickly dispose the despicable terrorists and the masterminds involved. This was the moment to attempt to push the Commission's proposal on the decision agenda. In fact, it happened: the EAW entered the Council agenda as a very prominent issue.

¹⁸⁰ Note that, when trying to find the quoted results directly to the source –i.e. the previous survey of Autumn 2000-, terrorism was not even mentioned. (Standard Eurobarometer, 2000)

4.5 Agenda and policy changes

During the Belgian Presidency in 2001, the European Arrest Warrant was placed in first line on the agenda of its first Extraordinary JHA ministerial meeting –held due to the terrorist acts in the US-. The initiative was considered a solution in the field of judicial cooperation “for handing over perpetrators of terrorist attacks”. Thus, it was stated, the current system of extradition among Member States would be substituted with the proposed measure. (Council, 2001d: 3) Later on, the European Council adopted an EU Action Plan to combat terrorism, which reaffirmed that the introduction of the EAW would replace the existing extradition procedures in the EU, since they “do not at present reflect the level of integration and confidence between Member States of the European Union” (Council, 2001a: 2). The Warrant proposal, the EU Heads claimed, “will allow wanted persons to be handed over directly from one judicial authority to another.” (*Ibid*). In each of the following gatherings, the EAW was always on the agenda. A whole and constant debate took place on the JHA Council upon the general scope of this initiative, the applicability of the principle of double criminality, and the role of the pertinent authorities responsible for looking after the civil rights of the requested persons; however, no political agreement seemed possible to be reached despite European Council’s encouragement. It was until the last JHA Council meeting of the Presidency of Belgium –beginning of December- that most ministers agreed on some of content of the EAW, such as its applicability specifically for a list of 32 offences –in contrast to the general proposed scope- where terrorism was included¹⁸¹, without verifying the principle of double criminality for those crimes. This meant that any Member State should have the obligation to transfer any suspect of committing any of those listed crimes to any other Member State requesting it, even when the legal meaning or existence of the offense in question between them was different. However, of all the 15 Member States, Italy was the only that opposed to approve this measure as it preferred to apply it to a smaller list of six crimes, leaving out corruption and fraud, among others. Although never publicly expressed by Italy, its opposition was owing to personal implications of Italy’s Prime Minister, Silvio Berlusconi, who was investigated by fraud in Spain and Italy, so he “feared being extradited himself one day for past tax-related financial wrongdoing” (Occhipinti, 2003: 170). Italy nevertheless argued that its position had to do only with its concern on the respect of civil rights. Thus, after no further compromise was reached by the Council, the Commissioner Antonio Vitorino declared: “[W]e cannot be held hostage to Council unanimity”. So he proposed that the European Arrest Warrant should be better adopted by enhanced cooperation¹⁸² in order to take into

¹⁸¹ Besides terrorism, some serious crimes subject to the EAW are: involvement in a criminal organization; 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; laundering crime money; counterfeiting of currencies including the euro; racism and xenophobia; computer-related crime; and environmental crime, among others. For the complete list of offences, see Council 2002a: Article 2.

¹⁸² Enhanced cooperation is a procedure used as the last resource to attain cooperation when a reasonable period of time has passed without it. It allows to facilitate and accelerate the adoption of an initiative regarding the third pillar for those Member States that decide to establish such cooperation – they should be at least 8 participants-. They should submit a request to the Commission, which proposes it to the Council. After receiving the Council’s authorization, previous consultation with the Parliament, the measures adopted by enhanced cooperation are binding only to the participant Member States. (TEU: Articles 40-44)

consideration the approval of only 14, instead of 15 Member States. (European Report, 2001) Nevertheless, this was not necessary as the Belgian Prime Minister, Guy Verhofstadt, visited Berlusconi days later in an attempt to establish consensus on the EAW. Thus, in mid-December Italy finally agreed with the proposal. (New York Times, 2001) Later, Spain assumed the leadership of the EU Council Presidency. Weeks previously, in a speech to the national Congress –addressed on 10th December– the Spanish President, José María Aznar, informed the priorities of his country when taking office. He expressed that the European Arrest Warrant would be adopted very soon, allowing the EU to be more efficient to combat terrorism. (Council, 2001m: 3) He also mentioned that this initiative had not been adopted so far due to a series of “difficulties” of Italy, but he was convinced that this Member State would change its position.¹⁸³ (*Ibid*) Finally, when Spain took office, the EAW appeared on the agenda of the last JHA meeting in June, when it was adopted.¹⁸⁴ Entering into force on January 2004, the European Arrest Warrant would modify the extradition system in the EU, abolishing all previous mechanisms and harmonizing all national rules to this respect to make a single EU procedure. Thus, a Member State desiring to prosecute a suspect of committing terrorism or any other crime out of the list of 32 and located in another Member State would simply send a EAW to the court in that other Member State, preventing a criminal to escape justice by crossing national borders. All Member States have the obligation to transfer their nationals,¹⁸⁵ but they also have the right to ask for their return to serve their sentence in national territory. Related to the civil rights of the arrested individuals, all Member States’ courts should respect them in line with the European Convention on Human Rights; besides, the suspects can have legal advice and an interpreter if necessary. The EAW would be valid only within the EU, so the cases regarding third countries should still be subject to the pertinent current extradition rules.

This happy-ending story in which an agenda change stimulated a policy change was not a natural consequence. It is true that after the work of coupling the three streams, the EAW turned to be a suitable alternative subject to an ‘authoritative choice’, reaching finally the agenda. However, once on it, the issue was full of polemic and opposition around, not only at the national level but also at the European level. On the one hand, Stephen Jakobi, Director of Fair Trials Abroad¹⁸⁶ expressed that the proposed EAW “is fraught with danger for innocent citizens” since there is no uniformity throughout Europe on the respect of law, no implementation of the standards established by the European Court of Human Rights¹⁸⁷, and no fair trials when the suspect is not a citizen of the country in which the offence happened. (Jakobi, 2001) Moreover the news network BBC mentioned that the opponents to the proposal had strong concerns about the implications of the differences regarding the recognition of crimes in the EU: “[T]he arrest warrant could mean Britons facing a foreign court charged with crimes not recognized in the UK, such as xenophobia and corruption.” (BBC, 2001)

¹⁸³ Note that Aznar’s speech was made before Berlusconi and Verhofstadt met.

¹⁸⁴ Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States. It was adopted on June 13th, 2002. (Council, 2002a)

¹⁸⁵ Note that the text of the EAW includes grounds for refusal to execute it. See Council 2002a: Articles 3-4. Besides, it is also possible that the executing State itself enforces the sentence decided by the issuing State. This way the former should not transfer its national to the latter.

¹⁸⁶ According to its Director, Fair Trials Abroad “is a unique legal rights organization concerned with the rights of European citizens to due administration of justice when facing criminal trial whilst traveling abroad.” (2001)

¹⁸⁷ Note that it is not a body of the EU, but of the Council of Europe.

The British Conservative Party moreover considered that the initiative had not to do with counter-terrorism and that it was just taking advantage of the moment: “[I]t is another example of laws unrelated to the fight against terrorism being rushed onto the statute book on the back of other more urgent requirements following 11 September.” (BBC, 2001) In addition, Klaus Jansen, Head of the Command Center of the Swat-Team/Surveillance Unit of the German Federal Criminal Investigation Agency (*Bundeskriminalamt*), estimated that the EAW was useless to combat terrorism: “European warrant seems to be a mere conjurer’s trick without offering an actual improvement in international counter-terrorism”. (Jansen, 2001: 13) Also the national parliaments of Denmark, The Netherlands, Sweden, and United Kingdom scrutinized the EAW proposal and made some reservations on it (Statewatch, 2002). Two cases to illustrate this. The European Scrutiny Committee of the British Parliament published a report on the national negotiations upon the EAW, in which it concluded that an “immediate adoption” of this measure was not a convenient way “of determining changes at the EU level to criminal law”. (European Scrutiny Committee, 2002) Additionally Frederik Reinfledt, spokesman of the Swedish party *Moderaterna* –the second largest group in the national Parliament– expressed that the EAW “highlight[s] essential issues regarding the relation between the rule of law in a constitutional State and the European Union...[therefore] the national legislation council, legal experts and other interested circles must be given an opportunity to carefully analyse the consequences first.”¹⁸⁸ (Statewatch, 2002a) On the other hand, at the European level, besides the Council’s discussions, the Parliament debated on the EAW initiative several times expressing in some occasions its opposition to some of its content.¹⁸⁹ In its report of mid-November, the minority opinion of the Parliament expressed that the proposal provided neither a satisfactory analysis of the necessity to modify the existing extradition process nor an adequate explanation of its effects. Besides, according to this minority, the “real political reason for submitting the proposal and requesting the urgent procedure –the attack on the USA on 11 September 2001– does not constitute genuine grounds for urgent procedure” because the EAW includes various crimes non-related with antiterrorism; thus having such a “haste” adoption procedure would not allow to assess seriously its “wide-ranging implications for the rules of criminal”. (Parliament, 2001: 54) Summarizing, the Framework Decision on a European Arrest Warrant was a controversial issue on the agenda because, according to the above opinions, it rests on the incorrect idea that the justice systems throughout the EU are equivalent and that, as a consequence, the civil rights of the requested individuals regarding the transferring and the defense process would be EU-wide respected. This entails that Member States should have (almost) blind faith in each other’s judicial behavior. Furthermore, the measure obligates the executing State to act, regardless of the non-recognition of all the 32 crimes in its national law. The Council urgency to adopt the EAW as fast as possible was not convenient, due to the domestic legal implications of ‘framework decisions’ –mentioned in Chapter 2–; since Member States are free to choose how to translate the objectives of the measure into national law; they should examine the legal actions to be done and its national effects. The proposal besides did not support enough the necessity to replace the existing

¹⁸⁸ This party thus withdrew in March 2002 its earlier support to the Swedish government on the introduction of the EAW, but two months later the Swedish Parliament reached an agreement.

¹⁸⁹ Note that on September 28th, 2001 the Council requested Parliament’s opinion (Parliament, 2001: 4). Later, the Parliament was consulted again on December 12th (Parliament, 2002: 4) due to the controversy of this issue.

extradition mechanism. Lastly terrorism was not perceived as the reason to adopt the EAW and this measure was not conceived as a way to combat terrorism.

4.6 CONCLUSIONS

The terrorist events in the US were the determining factor to open the policy window and to provoke the appearance of the European Arrest Warrant on the Council's agenda during the Belgian Presidency. On the one hand, they stressed that terrorists are supported by worldwide networks, taking advantage of the diversity of national laws that limits them to be investigated. On the other hand, the general climate in the European Union was of fear to terrorism as a consequence of such attacks. The solution was there: the proposal on a Framework Decision on a European Arrest Warrant as a means to apprehend the terrorists –whether directly or indirectly responsible- who caused such appalling attacks, irrespective of their location in the EU thanks to a single process among all the Member States. The opportunity to affect the decision agenda was evident, but it was necessary the coupling of the three streams, thus: in order to catch those implicated in the terrorist attacks it was imperative to create a warrant to support the prosecution of such criminals by facilitating and accelerating the administrative procedures among Member States in a time when the Europeans were terrified by terrorism. This way the EAW entered the agenda of the Belgian Presidency as a prominent issue and appeared also on that of the Spanish Presidency. The JHA ministers tried hard to reach an agreement, backed by the European Council. However, the initiative faced the opposition of national and EU specialists. Thus while the problematic and political situation promptly encouraged agenda changes, the legal and social implications momentarily tempered the attainment of policy changes. Nevertheless, the agenda-setting eventually bore fruit: the adoption of the European Arrest Warrant during the Spanish Presidency, finishing with the existing extradition procedures and imposing a new simpler way to directly transfer criminals among Member States.

CHAPTER 5

MONEY LAUNDERING DIRECTIVES: SECOND AND THIRD

Chapter 4 started analyzing one of four prominent issues on the Presidency agenda for antiterrorism during the 6-year-period. I showed how the European Arrest Warrant entered the agenda in the Belgian Presidency and its subsequent policy effects in the Spanish Presidency. This chapter will continue studying other two issues that were part of the agenda of some presidencies: the Second Money Laundering Directive and the Third Money Laundering Directive. This chapter is divided into two parts, as two are the items to analyze. Within each part, there is a subdivision in which Kingdon's Model is applied –first to its separate streams, and then to their coupling-. The aim is to observe the agenda-setting process regarding this issue and its consequences.

A. SECOND MONEY LAUNDERING DIRECTIVE

I. INDEPENDENT STREAMS

5.1 PROBLEM STREAM

The imposing terrorist events in the United States denoted large sums of money behind them, promoted by the support of thirds from all over the world. The Commissioner Antonio Vitorino expressed that terrorists groups involved in the execution of the attacks were placed in many countries, generally counting with sizable financial means: “[T]errorist acts are committed by international gangs with bases in several countries...often enjoying substantial financial and logistical resources.” (EU Press Release, 2001h) Strengthening this statement, American intelligence officials expressed that the terrorists related to the events were located worldwide, requiring the movement of monetary resources worldwide: “The bin Laden organization operates in 35 countries and needs to move money to its members.” (The New York Times, 2001a) The newspaper Guardian moreover claimed that it would not be an easy task to catch Bin Laden due to his important financial support: “Because Osama Bin Laden is...suspected of being financially aided by states hostile to the west such as Iraq, he is much more difficult to crush.” (The Guardian, 2001b) However in this situation the financial system was also involved. This implied the acquiescence of such system in the free flow of illegal money for terrorist purposes –i.e. money laundering-. Reuters, one of the world's largest international news agencies, claimed that the support of the banks to financing terrorism was stressed as a consequence of the events in the US: “The attacks on New York and Washington highlighted the problem of money circulating through banks to finance such deadly actions.” (Reuters, 2001) Similarly, according to a Member of the Congress of the United States, lacking the assistance of the financial system would have avoided the execution of those terrorist acts: “The horrendous attacks of September 11th could not have taken place without the movement of the terrorists' assets through the global financial system.” (LaFalce, 2001) Furthermore, Hugo Young, a British senior political commentator, highlighted EU's pledge to fight against terrorism, estimating that it would be a difficult work and would involve powerful financial institutions: “Europe is committed to taking all appropriate means

to wipe out terrorism. That's a serious promise to engage in strategies that will cost governments and citizens heavily. Drying up terrorist funds will draw in mainline banks.” (The Guardian, 2001c) Additionally, Jack Blum, a researcher on money laundering, stated that the persons involved in the services rendered were also accountable: "Now you have to understand that every banker who touched this money...is a co-conspirator and ought to be treated as such." (BBC, 2001b) Thus, the hitch of terrorist financing lay before the Belgian Presidency: it was notorious that terrorism was resting on an extensive backing, thus, boosting itself.

5.2 POLICY STREAM

In 1990's various ideas regarding money-laundering saw the light. In May 1999, the Commission presented a Communication on a Financial Services Action Plan (FSAP) (Commission, 1999a). It contained specific measures to harmonize Member States' rules of financial transaction in order to create a single market for financial services¹⁹⁰ in the next five years. Among 42 measures in this Plan, one way to ensure “the continued stability of EU financial markets” was to update –by 2001- the (first) Directive on the prevention of the use of the financial system for the purpose of money laundering adopted in June 1991. Based on the “Forty Recommendations” issued by the FATF¹⁹¹ in 1990, this ‘revisable’ Directive obliged financial and credit institutions to require the identification of most of their customers, keep records, suspend rules of banking secrecy when needed, and report any suspicion of money laundering. It applied only to drug-related crimes and to institutions in the financial sector. (Council, 1991) However in 1996 –five years after the adoption of the Directive-, the FATF updated its Recommendations, stating the necessity that all countries extended the crime of money laundering to serious offences, rather than just to drug activities. (FATF, 1996: 3) The following year –in 1997- an Action Plan to combat organized crime was established. It urged the extension of the Money Laundering Directive to serious crimes and the inclusion of persons. Besides, the Parliament expressed in some occasions during these years its doubts on the convenience of this Directive, calling for additional measures to strengthen anti-money laundering action. In mid-1999 –one month after the launching of the Commission's Communication- the FSAP was endorsed by the European Council (Council, 1999b).

Finally, in July 1999, the Commission proposed a Directive to amend 1991's instrument on Money Laundering.¹⁹² (Commission, 1999) Thus, this measure would be informally known as the Second Money Laundering Directive, as it suggested certain modifications and additions to the previous first Directive on this issue because the Commission estimated that there had been changes regarding this crime: “Since the Directive was adopted in 1991 both the money laundering threat and the response to that threat have evolved”; hence, the necessity of a renewed Directive on Money

¹⁹⁰ According to the Commission, having a single market in financial services would improve “the allocation of capital and long-run economic performance”, as the financial markets become more integrated. (Commission website2)

¹⁹¹ Remember from Chapter 3 that FATF stands for Financial Action Task Force, whose main aim is to combat money laundering and terrorist financing. Its internationally recognized recommendations provide measures for the countries to follow against these crimes; they are periodically updated since 1990.

¹⁹² Formal proposal's name: Directive amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. (Commission, 1999)

Laundering. (*Ibid*: 3) According to the Commission's proposal, the scope would be broadened including all serious crimes, as well as illegal actions damaging EU financial interests. In addition, non-financial sectors would be considered, as they could involve vulnerable activities –operation of companies and casinos; opening or managing bank savings or securities accounts, etc- and professionals –external accountants and auditors, notaries, lawyers, etc. when they assist or represent their clients in certain financial transactions- that could also be subject to money laundering purposes;¹⁹³ thus the new Directive would cover not just institutions, but also individuals. Besides, there would be new identification requirements of customers. However, the definition of 'money laundering' would remain exactly the same as in the 1991's Directive that stated that it is the way by which resources –or dirty money- coming from illegal origins are 'cleaned' in order to hide its criminal ground, as well as the allocation of such resources for criminal activities: "[It is] the following conduct when committed intentionally: the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity...; participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions mentioned in the foregoing paragraphs."¹⁹⁴ (Council, 1991: Article 1; Commission, 1999: Article 1)

5.3 POLITICAL STREAM

As observed in the previous chapter, although the terrorist attacks on September 11th happened outside the European Union, they affected the European society as well. The climate all around the EU was of fear. According to a survey made after those events, the great majority of the Europeans were scared of terrorism. When the interviewees were asked for their opinion about which one of 10 options they considered the most frightening phenomenon, their answer was definitely terrorism with 86% of the total sample.¹⁹⁵ (Standard Eurobarometer, 2001: 13) The scrutiny claimed that this result represented 12 percentage points more than that of the previous year (*Ibid*: 12). Thus, this proved that the consternation of the Europeans at terrorism was not a pure perception of the EU officials; rather, it was a fact. Most of their population was currently terrorized, despite the attacks did not occur in EU soil.

II. COUPLING

5.4 Policy window

After the events in the US, the Belgian European Council made a declaration in which it expressed 'its horror' upon such event, asseverating that not only those who committed the acts, but also those financing them would be prosecuted by the EU wherever they were: "The Union utterly condemns the perpetrators and sponsors of these acts of barbarism. The Union and its Member States will spare no efforts to help identify, bring to justice and punish those responsible: there will be no safe haven for terrorists and their sponsors." (Council, 2001v) Thus, later the Belgian Minister

¹⁹³ For a complete list of activities and professions, see Commission, 1999: 17-18 or Article 2a.

¹⁹⁴ Note that this paragraph is only one part of a long definition of 2 more paragraphs. For the complete definition, see Council, 1991: Article 1 or Commission, 1999: same article.

¹⁹⁵ For detailed information on the characteristics of the survey, see Chapter 4: Section 4.3.

Annete Neyts on behalf of the Presidency said to the Parliament that counter-terrorism should be strengthened by all kinds of actions, such as the monitoring of “financial flows”. (Council, 2001u) Moreover Gordon Brown, Foreign Minister of the United Kingdom, considered that worldwide action was needed to fight against terrorism from its depths, finishing with its funding: "We should stand shoulder to shoulder to root out the financial lifeblood of terrorism." (BBC, 2001a) Likewise, the Belgian Council President Louis Michel, during a speech to the Parliament, reaffirmed European Union’s commitment to combat terrorism; hence the need to take comprising measures, such as those involving the “financing of terrorism...[specifically] with regard to money laundering.” (Council, 2001x) Regarding this, Frits Bolkestein, Commissioner of Internal Market, claimed that the Directive on Money Laundering would be an important instrument to combat terrorist financing. (EU Press Release, 2001c)

What can we draw out of all this? In terms of Kingdon’s Model, the answer is a policy window; a policy window that was opened by the problem stream, seizing the political moment. This was provoked because the terrorist acts in the United States, besides showing the level of atrocities the human being is capable to do, suggested the existence of substantial amounts of money backing and promoting their execution. Thus it was estimated that the realization of the attacks in the US was possible in great extent due to the resources coming from illegal sources and passing by the financial system, involving entities and individuals. Since the EU population was now feeling terrorism very close to them, conceiving this phenomenon as their very first fear, it was necessary to promote more measures to combat terrorism not solely in the field of the justice and home affairs, but also in other areas, such as the financial field in order to cut off terrorist funding and tackle terrorism from its basis. How to solve this? Fortunately, there was an initiative regarding this issue on the shelf: the Second Money Laundering Directive. Although in 1999 the Commission attempted to attach this proposal to the problem of money laundering due to its estimations of supposed changes in comparison with 8 years ago, this did not provoke an opening of a window, since it was only a partial coupling of the problem stream with the policy stream, but there was still one stream missing. However, in the second half of the 2001 all the three streams were in the convenient position to locate the issue on the decision agenda in a relevant place.

5.5 Agenda and policy changes

The Second Money Laundering Directive was placed on the Belgium agenda of the JHA Council on September 20th 2001-in the session made after the terrorist events- as a measure that should be adopted “as soon as possible” to tackle the financing of terrorism. (Council, 2001d: 6) The European Council met one day after, stressing the importance of fighting against any form of financing terrorist activities so it promoted the adoption of this Directive as part of the EU Action Plan to Combat Terrorism, which was adopted in that session. Later, during the Joint ministerial gathering between the JHA and ECOFIN Councils in October, the issue was again highlighted, but this time it was conceived as a way to combat organized crime in general. The European Council gathered in the same month; it requested the accomplishment of particularly four points, where the Directive on money laundering was included, but this time it was considered again a means to combat terrorist funding. Finally, at the

end of the Belgian Presidency, in December, it was adopted^{196,197}, previous approval of the Parliament in November¹⁹⁸. This new policy maintained the same definition of money laundering and reinforced some existing elements, such as the identification of customers. In contrast, it finished with others, such as the rule of monitoring only institutions of financial nature. Thus, professionals and entities –whether financial or non-financial- would be equally subject to this Directive. Additionally it changed the idea of conceiving trafficking in drugs as the solely crime capable of being involved in money laundering, since more crimes were incorporated into the scope of this measure. However, this was not explicitly established. Rather, the offences were included as part of what this policy defined a ‘criminal activity’: “[A]ny kind of criminal involvement in the commission of a serious crime”. (Council, 2001p: Article 1(E)) But, what is a serious crime? Apart from corruption and fraud which were explicitly enunciated in the Directive (*Ibid*), there was no clear definition. Thus, the Council -in the final text- stated its request to the Commission to draw up an initiative to define serious offences in line with this Directive by the end of 2004: “The Council invites the Commission to present before 15 December 2004 a proposal for a Directive amending in that respect this Directive.” (*Ibid*)

5.6 CONCLUSIONS

The agenda-setting process was affected by a window of opportunity opened after it became clear that terrorists supported their activities, such as the attacks in the United States, with illegal resources making use of the financial system. The next step was the adaptation of the Commission’s proposal on a Second Money Laundering Directive to this problem, promoting it as the solution to combat terrorist financing during a time in the EU of fright towards terrorism. Thus the linkage was made: the Directive would diminish the financial support of terrorism in the particular moment when the European society was highly concerned about such offence. Then the issue moved into a preponderant position on the agenda of the Council during the Belgian Presidency and achieved to modify in the same period the existing policy on money laundering.

B. THIRD MONEY LAUNDERING DIRECTIVE

I. INDEPENDENT STREAMS

5.7 PROBLEM STREAM

During the Irish Presidency in the first half of 2004 –and even since the very end of the previous Greek Presidency- a hot issue on the media and for diverse institutions worldwide was the Parmalat case, “one of Europe’s biggest financial scandals” (BBC, 2005a). This case saw the light in December 2003 when Parmalat, a giant Italian company specialized in milk and food products –with 36,000 employees in 30

¹⁹⁶ Directive 2001/97/EC amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. It was endorsed on December 4th. (Council, 2001p)

¹⁹⁷ Member States were obliged to transpose the measure into their national law by June 15th 2003 at the latest.

¹⁹⁸ Given on November 13th, 2001. (Parliament, 2001a)

countries-, was not able to make a 150 million EURO bond¹⁹⁹ payment, declaring itself insolvent, even when it claimed to have more than 3 billion EURO in a Bank of America account that supposedly belonged to Bonlat, one of Parmalat's offshore subsidiaries based in the Cayman Islands -a United Kingdom's overseas territory-. In order to diminish market's concerns, Calisto Tanzi, Chairman and Chief executive of Parmalat, mentioned that the company was passing through a problem of liquidity. However, afterwards, Bank of America denied the existence of such account. Then Tanzi admitted a debt of more than 8 billion EURO, but later it was determined that the debt was higher -i.e. 14 billion-. This meant that "billions of euros have gone missing from its books...There are suspicious that the company executives invented contracts that were shown to the banks in order to raise cash that was the used to cover up day-to-day losses." (The Guardian, 2004). Also involved in this case were Deloitte & Touche and Grant Thornton, which were the auditor firms of Parmalat at the time of the beginning of the scandal -and before-. The latter was in charge of examining specifically Bonlat, but the former was considered accomplice as it accepted the financial reports issued by Grant Thornton. Additionally, there were suspicions that this case was related to money laundering. In fact, Switzerland, where Parmalat had two subsidiaries, opened an investigation of possible links of former Parmalat executives with money laundering. (New York Times, 2004) Also Luxembourg and the United States initiated an investigation on the same crime (The Herald Tribune, 2004). Almost at the end of the Presidency of Ireland, the Italian prosecutors urged an Italian judge to put on trial more than 30 persons and financial institutions involved on this scandal. Among the requested were Tanzi, other Parmalat executives, Bank of America, and both auditor companies. (The Guardian, 2004a)

5.8 POLICY STREAM

In June 2002, the Sixth Progress Report on the Financial Services Action Plan (FSAP) incorporated another measure to its original 42 goals of 1999 due to the necessity to reinforce the fight against money laundering: "[T]he legal framework to combat money laundering may need further strengthening by a third Money Laundering Directive." (Commission, 2002a:10) This report concluded that all measures within the Action Plan "must be agreed by mid-2004 at the latest to allow adequate time for implementation by Member States" in order to meet the FSAP deadline of 2005. (*Ibid*: 11) The FATF made again an update of its Recommendations in 2003, which included this time terrorist financing, besides money laundering: "The revised Forty Recommendations now apply not only to money laundering but also to terrorist financing." (FATF, 2003: 1) The FATF called all countries to carry out any step needed to combat both crimes following its revised guidelines. Later, in the Declaration on Combating Terrorism made in March 2004 after the terrorist attacks in Madrid, the European Council urged "to reduce the access of terrorists to financial and other economic resources." (Council, 2004e:12)

Taking this into consideration and the Council's request in 2001 to issue a proposal to precise the meaning of serious offences in line with the Second Money Laundering Directive, at the very end of the Irish Presidency -June 30th, 2004- the Commission proposed a Directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing. (Commission, 2004c) It

¹⁹⁹ In financial terms, a bond is a debt instrument that should be paid back by its holder -i.e. the borrower-.

would be unofficially called Third Money Laundering Directive. In its initiative, the Commission reaffirmed that the fight against money laundering was a very effective way to combat organized crime. Furthermore, according to it, the whole financial system could be threatened by criminals trying to cover the illicit origin of the money or the use of resources –illegal or lawful- for terrorist intentions; hence the necessary action at the European level to promote the adequate functioning of the internal market, avoiding different approaches among Member States. Thus, this directive would expand the range of serious crimes subject to money laundering. For instance, money laundering would be defined also in terms of terrorism: “the range of criminal activity underlying the definition of money laundering should be expanded in order to include the fight against terrorism and terrorist financing”. (*Ibid*: 9) Accordingly, such definition would be modified to include “not only the manipulation of money derived from crime but also the collection of legitimate money or property for terrorist purposes.” (*Ibid*) Therefore, all reference to money laundering would imply terrorist financing, as finance terrorism would be considered part of the definition of money laundering. However, the initiative estimated also necessary to recognize that the risk of money laundering and terrorist financing would not always be the same. Furthermore, other crimes –besides those considered by the Second Directive- would be included, such as “offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year...or for a minimum of more than six months”, according to Member States’ legal system. (*Ibid*: 15) The scope would be extended to include, besides the already established entities, activities and professions, “life insurance intermediaries and trust and company service providers”, as well as “persons trading in goods or providing services and accepting cash payments” above 15,000 EUR. (*Ibid*: 10, 3) More detailed requirements would be implemented in order to make sure that those subject to this Directive –i.e. institutions and persons- “know their customers and understand the nature of their financial and business activities.” (*Ibid*: 4) Thus a new provision would be included: the application of ‘customer due diligence’ procedure. This meant that those covered by this Directive have the obligation to know and verify the identity of the customer and the beneficial owner based on reliable sources and “on a risk-sensitive basis” –so this procedure would not apply if its perceived only a minimal danger-, in order to avoid the existence of anonymous accounts or accounts with fictitious names, situation that should be prohibited by Member States. (*Ibid*: 18) In this context, a definition of ‘beneficial owner’ would be added to the directive: “the natural person who is ultimate beneficiary, directly or indirectly [or] on whose behalf a transaction or activity is being conducted.” (*Ibid*: 15) Additionally entities and individuals falling under the Directive scope should follow a broader procedure of record-keeping. Furthermore, financial intelligence units should be established by each Member State with the aim of countering money laundering in an effective way; every suspicion of money laundering or terrorist financing must be reported to this unit. In case those responsible for keeping records, identifying customers and reporting suspicious transactions don’t accomplish this, the initiative considered specific penalties to punish them. (*Ibid*: 27) Thus, the Commission proposed in its initiative to end officially the Second Directive, instead of amending it: “For the sake of clarity it has been decided to repeal the existing Directive and propose a new autonomous text.” (*Ibid*: 3)

5.9 POLITICAL STREAM

The two most powerful political forces in the Parliament during the Presidency of the Netherlands were the European People's Party and European Democrats Party (EPP-ED) and the Party of European Socialists (PES).²⁰⁰ Of the 732 places, the former held 279 and the latter 199. (Parliament website) As to their political ideologies, on the one hand the EPP-ED group determined in its Action Programme 2004-2009 that promoting common definitions of serious and transnational offences, in particular regarding money laundering would be a way to strengthen police and judicial cooperation. (EPP-ED, 2004: 26) Besides, it showed its strong concerns about the financial sector, which considered important owe to its implications for the EU and its society: "The EPP-ED Group in the European Parliament gives particular attention to the financial services sector of the economy because of the number of jobs involved, the potential for future growth, the need for a level playing field for all the interests involved, and the need of agreed rules on an international level." (EPP-ED, 2004a) On the other hand, the PES considered very relevant "learning lessons" from the Parmalat case and preventing the occurrence of this kind of scandals, thus encouraging the Commission to present "its third proposal for a directive to combat money laundering." (PES, 2004) This political force moreover stated that it was necessary that the Third Money Laundering Directive "address the problem of terror funding", urging the submission of this initiative. (PES, 2004a)

II. COUPLING

5.10 Policy window

After expressing his surprise at the Parmalat scandal, Frits Bolkestein, Commissioner of Internal Market, asserted that the "new EU laws against money laundering should contain provisions to boost financial supervision in the offshore centers" (Fair Finance Watch, 2004). Also during the Irish Presidency, in relation to this major case, in a Communication on financial crime, the Commission acknowledged that such scandal showed that a very relevant item to be taken into account to combat these offences was transparency, as well as financial paradises: "The issue of transparency, including the use of financial havens and special purpose vehicles, as illustrated most recently by the Parmalat scandal, should therefore be addressed as an important aspect of the fight against organised financial crime." (Commission, 2004e: 3) Specifically related to money laundering, the Commission considered the necessity to combat this financial crime because of "the need to protect the financial system from contamination and misuse", as illicit money puts in danger "the reputation and stability of financial institutions and the banking and financial system in general". (*Ibid*: 5-6) Therefore, after the Parmalat case, the Commission was engaged to develop updated anti-money instruments such as the Third Money Laundering Directive that would address clarity in the financial system, by providing tools to know and verify the real owners and beneficiaries of an account in order to counter money laundering: "[The Directive should] ensure that the EU standard never falls below the international standard set by the FATF notably in the area of customer due

²⁰⁰ Note that both parliamentary groups are still majority –and until 2009, when the next Parliament elections will be held–.

diligence²⁰¹, which, in view of the recent Parmalat scandal, should continue to be addressed as an important instrument to fight against money laundering.” (Commission, 2004e: 8) This was strengthened by other Communication on measures to fight particularly terrorism, in which the Commission stressed the importance of setting ways, such as those provided by the Third Directive, to recognize the genuine bank account owners to promote the fight against both terrorist financing and money laundering (Commission, 2004f: 8-9). According to the Commission, like other criminal organizations, terrorist networks may launder money to finance themselves. Terrorism, besides, was a complex phenomenon that can be an impediment for an “investment-friendly climate.” (*Ibid*: 2, 5) Additionally, -in its previous document on financial crime- the Commission urged the full application of the Directives on money laundering by all Member States and their overseas territories: “Member States should ensure that...the Community Money Laundering Directives are adequately implemented in off-shore and on-shore financial centers and fiscal paradises operating in dependent territories.” (Commission, 2004e: 12) Furthermore, in its 10th Progress Report on the implementation of the Financial Services Action Plan, the Commission established as a “high priority” the adoption of the Third Money Laundering Directive by the “new” European Parliament and Council, “in the light of the lessons learned from the Parmalat scandal [and] the global fight against terrorist organizations.” (Commission, 2004g: 5)

Applying the Multiple Streams Model to the issue of analysis, it can be seen that the problem window opened the policy window. The Parmalat scandal was a milestone in the financial history in Europe due to the diverse criminal elements and entities, countries, and money involved. However, for the European Union represented even more as it emphasized the need to thoughtfully observe the financial activities not just of its Member States but also of those territories depending on them wherever they were located in an attempt to safeguard the reliability of the European financial system by tackling money laundering. The Commission, therefore, conceived it necessary to take all precautions at European level to uncover the real identity of those criminals disguised as legitimate clients. In addition, since terrorists may also make use of such illegal way to obtain financial resources, while seriously affecting the financial system, the funding of terrorism should be countered in parallel as well. Thus, besides acting against money laundering, the EU was now addressing terrorist financing. This chain reaction, according to Kingdon, was due to the “powerful spillover effects” (1995: 194) that encouraged the entrepreneurial Commission to influence the agenda not only in terms of money laundering, but also of its “adjacent area” terrorist financing. Both areas were placed under the same conceptualization: combating organized financial crime to protect the European internal market, as shown in the proposal of the *Directive on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing*²⁰²: “In order to facilitate their criminal activities, money launderers and terrorist financiers could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails, if certain coordinating measures are not adopted at Community level.” (Commission, 2004c: 8) However, once adapting its solution to a specific problem, the Commission attempted to raise its issue, encouraged by the position of the two majority political forces in the Parliament, the EPP-ED and the PES. Their ideas were in line with the objectives of

²⁰¹ See FATF, 2003: 2.

²⁰² Official name of the proposal on a Third Directive.

the Commission's proposal which attempted to tackle the problem stressed by the Parmalat scandal. This was primordial as, the initiative to become law required the consideration of both the Council and the Parliament, according to the Codecision Procedure, which provides the Parliament the power to adopt instruments together with the Council, meaning that the view of the Parliament was not only important, but fundamental to decide on this initiative because in case the Parliament rejects it, it cannot be adopted by the Council.²⁰³ Thus, after the Commission's work to couple the three streams, the Third Money Laundering Directive moved into position for an authoritative decision, as it was considered on the agenda of the Dutch Council.

5.11 Agenda and policy changes

The last day of the Irish Presidency finished with the presentation of the proposal of a new Directive on money laundering, which was warmly received by the coming Dutch Presidency in the second half of 2004. As the Netherlands took office, it expressed that one of its aims would be "to make substantial progress towards the adoption of the Third Money Laundering Directive." (Council, 2004l: 21) In fact very few days later in July the issue arrived on the agenda of the Council, in its ECOFIN configuration, where it was subsequently discussed.²⁰⁴ Later on, the item entered the decision agenda of both the JHA Council and European Council in their last meetings in the Dutch Presidency in December. During the following Presidency of Luxembourg, the Money Laundering Directive was again part of the agenda of the ECOFIN Council in its last meeting in that period.²⁰⁵ In the meanwhile, the Parliament gave its approval on May 2005. The United Kingdom took office in the second half of that year. The issue reached the agenda of the first (extraordinary) JHA Council meeting made after the terrorist bombings in London in July. Three months later the Directive was adopted.²⁰⁶ After this, several changes in the EU policy on money laundering occurred. As originally established in the initiative, rather than amending the Second Directive, the final text of the Third Directive was completely new. As proposed, it provided better and stronger surveillance tools to protect the use of the financial system for money laundering purposes regarding a wider scope of crimes, owe to the inclusion of more and new definitions and provisions, like the due diligence procedure, that allowed a clearer recognition of launderers trying to take illegal advantage of the European market. In contrast to the original Commission's proposal, terrorist financing was finally not part of the money laundering definition, but a concept aside. In fact, the proposed official name of the Directive changed the word "including" for "and": 'Directive on the prevention of the use of the financial system for the purpose of money laundering *and* terrorist financing'. The new policy thus stated a particular place for each of them by establishing specific meanings in which money laundering, albeit continuing with the same definition as its predecessors, was conceived a different phenomenon from terrorist financing. This

²⁰³ Remember that by the Codecision procedure a proposal should be first approved by the Parliament. Only after that, the Council is able to adopt the measure. Such procedure applies to this proposal, as it is a measure on internal market, particularly regarding the free movement of capital and services. See Chapter 2: Section 2.3.2.

²⁰⁴ The proposed Directive was on the agenda of the Dutch ECOFIN Council in three of four sessions. For more information, see Council, 2004v-x.

²⁰⁵ For more information, see Council, 2005v.

²⁰⁶ Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. It was adopted on October 26th, 2005. (Council, 2005m)

particularization reinforced the counter-terrorism, while the extension of the ambit of offences strengthened the fight against money laundering. However eventually all the new stipulations were supposed to serve as a means to protect the financial sector from both: “Since the objective of this Directive, namely the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States...the Community may adopt measures...” (Council, 2005m: (46)). This was because the EU considered that not just the money laundering was able to affect such sector, but also terrorism: “[T]he misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system.” (*Ibid*: (8))

However, after achieving policy changes, the agenda changes caused by this issue provoked the reaction of diverse actors. Some considered that the new stipulations were a heavy administrative burden. Besides, they were against the disclosure requirement of customer identification. Others, for instance, the European Banking Industry Committee (2004) had serious reservations about the concept of beneficial owner as it considered it too specific. It estimated moreover that the current-due-diligence procedures in banks were working adequately so no additional measures to this respect were needed. Furthermore, the European Banking Federation (2005) showed its concern about some points, like the application of the risk-based approach and the effective recognition of beneficial owners as, according to it, the banks are not always able to access reliable data. The financial services firm KPMG (2005) moreover claimed that, due to the application of this Directive to cash payments, the universities and business schools could be also subject to investigation of money laundering as they “often take large cash payments from overseas students, who seek to pay for an entire degree course or school fees up-front.” In the case of the Parliament, after the initiative was examined by five parliamentary Committees²⁰⁷ in several occasions, it concluded in its last Report previous to its approval that “money laundering has become a criminal activity which has the capacity to undermine confidence in the financial system”; hence the need to take effective measures against this crime. (Parliament, 2005: 81) Thus, it welcomed the risk-sensitive approach as a way to avoid the customer due diligence procedure if the case was estimated a “minimal risk” of money laundering; and the establishment of penalties for those infringing the Directive; among others. However, it considered, for instance, that terrorist financing should be a separate crime rather than part of the money laundering definition; and that it was important to clarify the aim of extending the scope of the Directive to cover professional groups, such as life insurance intermediaries and company service providers. Furthermore, it stated that since the “Parliament, given its role under the codecision procedure as a legislator on an equal footing with the Council, must be able, like the Council” to observe the implementation of technical aspects related to this Directive. (Parliament, 2005: 83)

²⁰⁷ Committee on Civil Liberties, Justice and Home Affairs; Committee on Petitions; Committee on Legal Affairs; Committee on the Internal Market and Consumer Protection; and Committee on Economic and Monetary Affairs. (Parliament, 2005a: 1)

5.12 CONCLUSIONS

It was needed a major scandal on the financial system to open a policy window. The Commission made the most of this opportunity, promoting the fight against money laundering and terrorist financing, through the Third Money Laundering Directive, in a view to protecting the internal market. However the support of the majority political groups in the Parliament stimulated the Commission's work as it knew that the issue counted with their support, situation very convenient since the Parliament's opinion was decisive for the adoption of the Directive. In this way, the item entered the agenda of the Dutch Presidency, was approved by the Parliament during Luxembourg's term in office, and finally was adopted under the leadership of the United Kingdom, reinforcing the EU policy on money laundering and explicitly establishing a new one on terrorist financing.

CHAPTER 6

EUROPEAN EVIDENCE WARRANT

Two financial issues regarding counter-terrorism were studied in the previous chapter. In contrast, the current chapter will deal with an item merely of the justice and home affairs field: the European Evidence Warrant. Although the name of this case study sounds similar as that analyzed in chapter 4, its aims is different, it was set on the agenda of the EU Council Presidency at another moments, and passed through a divergent decision-making process. Nevertheless, they share the same legal principle –i.e. mutual recognition-. Like in the two precedent chapters, in order to identify whether there were agenda changes and policy changes and how these occurred, two will be the main parts in this section. On the one hand, I will study each of the three streams of processes and, on the other hand, later I will recognize their union.

I. INDEPENDENT STREAMS

6.1 PROBLEM STREAM

After the Madrid bombings on March 11th the Commission expressed that Spain was “the victim of an appalling terrorist outrage” and that therefore it was EU’s “duty” to act with haste in order to assist this Member State to investigate the attacks and to bring the perpetrators to justice, as well as to prevent the occurrence of terrorist acts in that Member State and in any other. (EU Press Release, 2004) To be able to provide a quick support, the Commission proposed five tasks. One of them was to improve the implementation of those EU current measures related to counter terrorism: “Better implementation of existing legislative instruments relevant to the fight against terrorism...” (*Ibid*) The Commission determined this because, although recognizing that the EU had taken several measures to combat this phenomenon, it acknowledged that their implementation was “slow, poor and inadequate”, considering it “unacceptable”. Such was the case of the EU Convention on Mutual Assistance in Criminal Matters –and its 2001 Protocol- (EU Press Release, 2004a) which was agreed in 2000 to facilitate and improve judicial cooperation in a region constituted of different judicial systems through the establishment of rules based on the principle of mutual assistance –by which two Member States or more freely agree to cooperate in specific cases²⁰⁸, complying with the requirements of the requesting State but respecting the legal principles of both²⁰⁹- (Council, 2000a). Nevertheless, to the date of the Madrid bombings, neither the Convention nor its Protocol had entered into force, as only four Member States have ratified it (EU Press Release, 2004a), when at least half of all the Member States was needed. Certainly no legal deadline was set up to implement the Convention and Protocol, but the Council has made constant efforts to encourage Member States to do it in order to support the fight against terrorism²¹⁰. In this manner, the terrorist attacks in Madrid stressed the inefficient level of

²⁰⁸ Such as transferring persons being investigated, handing over stolen or criminal objects, hearing a person by videoconference, and intercepting telecommunications, among others.

²⁰⁹ The principle of mutual assistance “is relied on when a State is unable to continue with an investigation or procedure on its own and requires another State’s help, such as to hear witnesses or carry out surveillance on persons located on the other State’s territory.” (Commission website3)

²¹⁰ See Chapter 3.

implementation at national level of antiterrorist-related instruments endorsed at EU level, in particular of the Convention on Mutual Assistance.

6.2 POLICY STREAM

The principle of mutual recognition -by which a judicial order issued by a Member State should be recognized and enforced by another Member State²¹¹- “should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.” (Council, 1999: (33)) This was agreed by the Tampere European Council in 1999. Specifically as to criminal affairs, this principle “should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State’s authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.” (*Ibid*: (36)) Accordingly, in 2000 the JHA Council endorsed a Programme of measures to implement the principle of mutual recognition of decisions in criminal matters²¹² that established that the highest priority should be given to take action regarding “orders for the purpose of obtaining evidence” (Council, 2001s: 14) to prevent that it disappears and to make the enforcement of search and seizure procedures easier. The following year, in its Final Report on the first evaluation exercise on mutual legal assistance in criminal matters, the Council recommended the facilitation of transferring evidence without passing by “multiple controls”. (Council, 2001z: Recommendation 8) Consequently in July 2003 it was adopted a Framework Decision on the execution of orders freezing property or evidence; it was addressed to prevent the evidence to be destructed, transformed or displaced (Council, 2003). However, in opinion of the Commission, such legislation was limited, as the transferring of such material was not addressed, recognizing the need of issuing “an initiative on mutual recognition for orders to obtain evidence.” (Commission, 2003: 6-7)

Months later, in November, the Commission finally presented a proposal on a Framework Decision on a European Evidence Warrant.²¹³ (Commission, 2003) It propounded that the “existing mutual assistance procedures would be replaced by a European Evidence Warrant based on the principle of mutual recognition.” (*Ibid*: 5) It was referring to the substitution of the “international co-operation mechanisms to obtain evidence” (as is the case of the Council of Europe 1959 Convention on Mutual Assistance in Criminal Matters –and its two additional protocols-²¹⁴, the 1990 Schengen Convention²¹⁵, and the EU 2000 Convention on Mutual Assistance in

²¹¹ For more information, see Commission, 2000a.

²¹² The European Arrest Warrant was also part of this Programme. See Chapter 4.

²¹³ The complete name of the proposal is Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters. It was issued on November 14th, 2003.

²¹⁴ The 1959 Convention “provides the basic framework for co-operation “on obtaining evidence”, as it establishes that requests of mutual assistance should be executed, according to the law of the requested Member State.²¹⁴ (Commission, 2003: 4) It entered into force in 1962.

²¹⁵ By it, check controls were gradually eliminated within the common borders of the signatory Member States, promoting the freedom of movement. It came into effect in 1995. It contains specific provisions regarding mutual assistance in criminal matters, where the obtaining of evidence is considered. (Council, 1999c) For more information on the signatories, see Chapter 3: Belgium Presidency.

Criminal Matters –and its protocol-²¹⁶) (*Ibid*: 4). The Commission suggested such replacement because it estimated that the cooperation on mutual assistance was “slow and inefficient” (*Ibid*: 4). Besides, it asserted that Member States currently use diverse judicial ways –like search orders²¹⁷ or seizure orders²¹⁸, among others- to collect evidence for proceedings in criminal matters, using methods that vary significantly among Member States, which “result in barriers to cooperation” (*Ibid*). In contrast, the proposed European Evidence Warrant (EEW) would be a “single, fast and effective mechanism for obtaining evidence and transferring it to the issuing State” (*Ibid*: 7). This would be possible as, once a Member State sends this single-format warrant, the other Member State should recognize and execute it²¹⁹ without the need to translating it into its national legislation –i.e. principle of mutual recognition-. The requested evidence would be used in criminal prosecutions in the issuing State. However, the initiative stated that the type of material to be obtained by the EEW only included “objects, documents and data” that already exist²²⁰ in the executing State, as well as copies of criminal records. This meant that other types of evidence like interviews of suspects, hearing of witnesses and victims, DNA samples from the body of a person, the interception of communications, and monitoring of bank accounts, would not be subject to the EEW, except when this material “had already been gathered prior to the issuing of the warrant.” (*Ibid*: 8) The ways to obtain the evidence would be entirely determined by the executing State, based on its national law. Once having the requested material, the executing Member State should transfer it “immediately”.²²¹ In relation to the scope, it “should be the same as the EU 2000 Convention” (*Ibid*), meaning that the EEW would apply to any criminal offence and acts that are punishable according to the law of the Member State requesting the warrant. However, the EEW procedure would be easier regarding a list of 32 crimes - where terrorism is included²²²- that are not subject to the verification of the principle of double criminality when responding to the execution of the warrant.²²³ Thus, the EEW would replace the traditional mutual assistance procedures with one of mutual recognition for the specific cases mentioned above. In line with this, according to the Commission, the final objective is to constitute “a single consolidated instrument [that] would within the EU replace mutual legal assistance in the same way that the European arrest warrant will replace²²⁴ extradition.” (*Ibid*: 10) Nevertheless, the Commission acknowledged that such aim is “unduly complex”, needing two stages to accomplish it, where “[t]he first step would be the proposed European Evidence Warrant.” (*Ibid*)

²¹⁶ See Section 6.1.

²¹⁷ Search orders enable the direct examination of the evidence.

²¹⁸ A seizure order provides the investigating authorities the possession of the evidence.

²¹⁹ Although the executing State has the obligation to accept and enforce the EEW, there are also ‘grounds for non-recognition and non-execution’. See Commission, 2003: Article 15.

²²⁰ Note that there is also real-time evidence, like the interception of current communications, for instance.

²²¹ As soon as the evidence is no longer required by the issuing State, the executing State may request its return. (Commission, 2003: 26)

²²² Same list as that of the European Arrest Warrant. See Chapter 4.

²²³ The 32 crimes are not stated as part of the scope. Nevertheless, it is established that for these offences the EEW “shall not be subject to verification of dual criminality...” (*Ibid*: 40) Therefore the executing State should obtain and transfer evidence, even when such material is to be used in judicial proceedings of crimes that, under its legal system, are not offences.

²²⁴ It was talking in future tense, since the EAW would come into effect in the following year -in January 2004-.

6.3 POLITICAL STREAM

The terrorist attacks in Madrid affected all the European Union, provoking dismay throughout its citizens and urging the EU Heads to assess their policies to fight against terrorism: “[T]he Madrid bombings have echoed across Europe, causing alarm among residents and prompting leaders to look into counter-terrorism measures.” (America’s Intelligence Wire, 2004) Additionally, CNN news evidenced such effects when saying: “Already across the streets of Europe, in European towns and cities, we’ve seen an increase in the security that’s been put on by the authorities. Police, for instance, on the London transport system, undercover anti-terrorism police are patrolling that network for the first time.” (*Ibid*) Furthermore with a positive view, the SG/HR Javier Solana, who personally took part of the demonstrations made after the Madrid acts, showed the existing climate in the EU: “I marched together with more than 2 million others in the streets of Madrid the day after the bombings. The mood was not one of fear. It was of quiet resolve –to honour the dead, to prevail in the face of terrorism...In Spain as throughout Europe, people are united in their determination to fight terror. At the same time, there is also a legitimate political debate about how best to proceed in that fight.” (Javier Solana, 2004) Thus the Europeans called for a firmer and better attitude towards counter-terrorism, pushing governments to examine their instruments on this respect.

II. COUPLING

6.4 Policy window

The Commission claimed the necessity of counting with a European Evidence Warrant as a consequence of the delay of Member states to ratify the Convention on Mutual Assistance in Criminal Matters. This was promoted, according to the Commission, because the former could eventually substitute the latter:

“Unfortunately at the moment only 3 Member States have ratified the 2000 Convention: Spain, Portugal and Denmark so that it is not yet in force, as its Protocol. The Commission has therefore proposed a European Evidence Warrant...[it] is, in the Commission view, the first step towards a single mutual recognition instrument that would in due course replace all of the existing mutual assistance regime.” (Commission website3)

This is reaffirmed when, in its Action Paper in response to the terrorist attacks in Madrid, the Commission referred to the draft Framework Decision on a European Evidence Warrant: “This proposal applies the mutual recognition principle to obtaining certain types of evidence and thereby replaces the existing mutual assistance regime in this area.” (EU Press Release, 2004) The Commission then urged its adoption “as a matter of priority.”

Under Kingdon’s view, the window of opportunity was given when the Commission became aware of the low score registered by the Member States which agreed long time ago to ratify the 2000 EU Convention on Mutual Assistance so it could come into effect. In this way, the problem window opened the policy one. A feasible alternative, in the Commission’s view, was the adoption of the proposed Framework Decision on European Evidence Warrant. The initiative seemed very suitable for replacing the ‘problematic’ instrument, owe to its objectives and characteristics. This situation was boosted by the European mood post-terrorist attacks in Madrid that

forced the EU to revise its legal tools to determinedly fight against terrorism. This led the Commission estimated convenient to provide a prompt reaction with its draft Evidence Warrant at hand in order to cover the lack of response of Member States to implement the Convention on Mutual Assistance during a time when the EU needed to demonstrate its commitment to tackle terrorism. Consequently at the end of March the European Evidence Warrant was entering the decision agenda of the Irish Presidency.²²⁵

6.5 Agenda and policy changes

It was the first meeting of the European Council during the Presidency of Ireland in March 25th, 2004. It was the first time the EU political leaders gathered since the Madrid bombings. They adopted a Declaration on Combating Terrorism where the European Evidence Warrant was considered a means to support this fight. Thus, they encouraged to attain substantial progress on this draft measure. The following Dutch Presidency stated in its initial Work Programme that it would put great effort into the EEW, which it regarded as a proposal with “central role” in promoting mutual recognition of judicial decisions in order to contribute to the battle against terrorism (Council, 2004l: 24). During this period, the EEW was on the agenda of both the JHA Council and the European Council and was included on the Hague Programme – endorsed in this Presidency- in order to strengthen justice in the EU, particularly by reinforcing mutual recognition regarding judicial cooperation in criminal matters, urging the adoption of the EEW by the end of 2005. Luxembourg took office, claiming its commitment to the development of the proposal, as a way to prevent and combat terrorism. In its first JHA ministerial meeting, an agreement on some elements of this proposal was reached; however, contrary to the expectations, the way would still be long. The EEW was also part of the discussions of subsequent Luxembourg Council and European Council meetings. Later, within the priorities of the Presidency of the United Kingdom the European Evidence Warrant had a place. It was on the agenda of the first (extraordinary) JHA Council session made after the terrorist acts in July 2005 in that Member State; the proposal was incorporated to the Declaration on the EU response to the London bombings, where the Council urged its soon adoption. The issue continued being debated by the ministers in the rest of its gatherings, introducing it in the new EU Counter-Terrorism Strategy agreed at the end of the British Presidency. According to this new strategy, the Evidence Warrant “will enable Member States to obtain evidence from elsewhere in the EU to help convict terrorists.” (Council, 2005w: 13) The Council leadership was passed to Austria that discussed again the European Evidence Warrant during all its JHA ministerial meetings and one summit. In their last session, the ministers reached a ‘general approach’ on it, agreeing on certain points like purpose, scope, recognition, and execution, but dissenting in others. Particularly Germany showed some reservations as to the no application of the principle of double criminality to the EEW in cases regarding terrorism and other five crimes.²²⁶ In fact, since some time back Germany has “blocked [it] repeatedly” (European Voice, 2006), insisting on defining these

²²⁵ Note that before, during an informal JHA meeting held in January 2004, the Commissioner Vitorino presented the Commission’s proposal. (Presidency of Ireland, 2004) However, this event is not taken into consideration for the purposes of this analysis because informal gatherings “are not Council sessions”. See Chapter 3: 3.2.1 Ministerial meetings.

²²⁶ The other offences were computer-related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling. (Council, 2006e: 11)

offences. According to this Member State, its opposition was provoked by problems with “an earlier piece of EU legislation, the European arrest warrant.” This was due to a requirement of the German Constitution that was inconsistent with the existing warrant: under this constitution the accused person has the right to know specifically the crime of which he was accused; but this was not possible as, in the view of the German Court and the German Parliament, the crimes subject to the Arrest Warrant “were open to dispute”. Hence the claims of Germany in the JHA Council in relation to the proposed EEW that, in its opinion, has similar problems. “According to one EU official, because the court decision was seen as a rebuke to the German ministry of justice... the ministry is now being ‘a bit too careful’ on what laws are agreed at European level.” Germany’s position caused annoyance to some Member States. However since the problem was related to Germany –generally “a champion of Commission proposals- the matter needs to be handled delicately.” (*Ibid*) Thus, the general approach attained by the Council at the end of the Austrian Presidency considered giving Germany the possibility for opting-out particularly in the cases regarding those 6 offences and in a provisional way –for a period of 5 years and later this prerogative would be revised by the Council-. This approach also took into account the importance of having further discussions on some aspects of the EEW, such as the offences’ clarification, in a view to adopt the proposal as soon as possible. Afterwards, the issue remained on the agenda of the following Presidency of Finland. The EEW was part of its priorities to reinforce justice in the EU and it was considered during the last JHA Council. Afterwards, finally Germany took office. In its last ministerial session, the Council took note of the state of the debate among its working groups that had begun three months before. It was about a ‘horizontal approach’ on the definition of six “certain categories of offence” -of which terrorism was part²²⁷- falling under the scope of the Evidence Warrant. (Council, 2007e: 38) Such debate came from the “wish” of Germany, based on the results of the general approach during the Austrian Presidency, as this Member State argued that these six crimes could broadly defer “in substance and in coverage” among the legal systems of the Member States and that a common understanding throughout the EU of these categories could avoid different interpretations on the scope. (*Ibid*) Thus, the working groups debated on different ways to attain more precise definitions; estimating, for instance, making reference to international conventions on these categories or drawing up separate definitions. Nevertheless, some delegations had doubts about the benefit of defining these offences, wondering whether it meant “a step backwards in mutual recognition”. (*Ibid*: 39) In addition, the majority considered that any horizontal approach should contain non-binding guidelines. However, the debate concluded that it was too early to evaluate and identify any problems regarding the application of existing policies based on the principle of mutual recognition, as the European Arrest Warrant, stating that to be in able to find such problems the European Evidence Warrant should be also assessed but “this will have to wait until [it] has been implemented in all Member States. Only then will it be possible to ascertain whether and, if so, on what basis any specific steps can be taken towards a horizontal instrument.” (*Ibid*: 40) After so much debate on the Evidence Warrant this final corollary seemed to left a doubtful atmosphere of whether a clearer definition was going to be achieved and whether the EEW was actually adopted. The truth was that, although the issue was constantly on the Council agenda during seven presidencies and some agreements were achieved, neither the EEW was officially

²²⁷ These were the same six offences that were considered problematic for Germany in the general approach reached during the Austrian Presidency.

endorsed nor a more precise definition of the crimes susceptible to it was drawn up. Therefore, no policy changes were observed, since the way to act in case of needing material located in another Member State to begin or support criminal prosecutions continued to be the same as always: still based on the principle of mutual assistance instead of mutual recognition, meaning that a Member State remained to have the prerogative to choose whether –or not- to accomplish the request of another Member State to help it to get evidence. So no Member State had yet the obligation to recognize or, much less, to execute any judicial decision from abroad to provide its domestic material.

As observed, the European Evidence Warrant was a controversial issue, just as the EAW. However, the current case didn't have the same denouement. Some opponents to the new initiative learned from the previous experience. Germany was the marked case in this but Marisa Leaf, Legal Officer of JUSTICE²²⁸, also expressed that the EEW would “foster a culture of mistrust” among Member States due to the differences regarding the protection of the fundamental rights in each judicial system. “This was a problem with the arrest warrant and the current proposals show the same inadequacy.” (European Voice, 2005) In contrast, Franco Frattini, Commissioner of Justice, Freedom and Security and advocate of the EEW expressed: “How can one explain [to the citizen] that we can be arrested and transferred but the evidence held against you cannot?” (Frattini, 2006) On the other hand, Statewatch believed as well that there “are not sufficient” safeguards to protect the human rights in relation with a “fair trial and the respect for private life, including personal data protection.” (Statewatch, 2004) Likewise, the European Parliament's Committee on Legal Affairs and the Internal Market recognized that the “European Union's system as a whole does not provide effective legal protection of fundamental rights”. So they considered that the adoption of the proposal was “premature”, suggesting it only after the adoption of the European Constitution that, in its vision, provides effective protection of such rights. (Parliament, 2004: 12-13) Other Member States also showed their concern. For instance, Italy expressed “reservations” about the EEW. An Italian official said that the Ministry of Justice “would have to scrutinize its constitutional implications.” (European Voice, 2005) The United Kingdom, through its parliamentary European Scrutiny Committee, mentioned: “We continue to have grave doubts about applying the principle of mutual recognition to orders which are made without the person affected being given an opportunity to be heard in his defence.” (Jonathan Djanogly, 2005) More considerations on the principle of mutual recognition also emerged. After estimating that the initiative does not take into account the diversity of the Member States' legal systems, the Council of Bars and Law Societies of Europe (2004) claimed that, because the EEW implies that the executing State does not have the possibility to scrutinize and deny the request of the issuing State to obtain evidence, the principle of mutual recognition would become “a shield behind which the requesting member state can hide.” (*Ibid*: 3) It considered besides that the Commission's proposal does not support enough the necessity of replacing the existing mutual assistance instruments. Some others worried about the application of the principle of double criminality. Jonathan Djanogly, member of the British Parliament, considered “unacceptable” to use the warrant for searching and seizing material of persons suspected of committing a crime in another Member State, “even

²²⁸ JUSTICE itself defines itself as “an independent all party law reform and human rights organisation which aims to improve British justice through law reform and policy work, publications and training. It is the British section of the International Commission of Jurists.” (JUSTICE, 2004: 2)

when no British law has been broken.” (Jonathan Djanogly, 2005) Other declarations pointed to problems with the decision-making process at European level as the grounds of delaying the adoption of the EEW: “The adoption process in police and criminal justice matters (the so-called ‘third pillar’) remains particularly problematic. Unanimity vote slowed down the adoption of measures of utmost importance such as the European evidence warrant.” (EU Press Release, 2006) This point of view was later reaffirmed by the Commissioner Franco Frattini who recognized that the “European Evidence Warrant has been blocked in the Council for lack of unanimous agreement.” (Frattini, 2006)

6.6 CONCLUSIONS

The policy window was seized thanks to the effort of the Commission that identified where to attach its proposal on a European Evidence Warrant: the poor performance of the Member States regarding the implementation of the Convention on Mutual Assistance in Criminal Matters, stressed by a moment given after the terrorist attacks in Madrid to react decisively against terrorism. Thus, after the Commission linked its initiative to the perceived problem under the conditions of the European climate, the item attained a place on the decision agenda of the Presidencies of Ireland, the Netherlands, Luxembourg, United Kingdom, Austria, Finland, and Germany. However, this case study evidenced Kingdon’s theory that a policy window is merely an incentive that stimulates agenda changes however it does not guarantee policy changes because, although reaching the agenda, the European Evidence Warrant was not adopted. The initial idea of substituting the existing instruments of mutual assistance with one of mutual recognition promoted by the aim of combating terrorism did not prosper. The issue was stuck on the Council agenda –at least- for 3.5 years²²⁹ mainly due to the opposition of Germany and also owing to lessons learnt from the past, concerns for human and civil rights, negative repercussions at national level, and difficulties in the policy-making process at the EU level.

²²⁹ The scope of this study finishes with the Presidency of Germany, therefore the situation of the EEW after this is not analyzed here. Just as an additional information, at the very last time of writing this study –i.e. November 2007- the Council had not adopted it yet.

CHAPTER 7

SUMMARY AND CONCLUSIONS

At the EU level, the antiterrorist policy appeared for the first time in 1993 in the Treaty of the European Union as part of the Justice and Home Affairs pillar with the idea of facilitating cooperation in areas of common interest. However, this Treaty only recognized police cooperation as the way to combat terrorism. Of course before this time, there were carried out efforts against this crime but these were made at the national level or outside the EU's framework. Years later, in 1999 the European Union took the task of building a whole area in which people were able to move freely enjoying an environment of safety and lawfulness; hence the necessity to prevent and tackle terrorism but not only in terms of police cooperation, but also of judicial cooperation. This was the state of the antiterrorist policy at the beginning of the new millennium. Shortly afterwards a remarkable event took place: the terrorist attacks in the United States in September 2001. This generated diverse changes on the agenda for antiterrorism.

7.1 SCOPE

Here is where this study begins. The events in the US were taken as the point of departure and the first half of 2007 as the closing time to analyze the agenda for antiterrorism of the EU Council Presidency. Thus 12 presidencies –i.e. of Belgium, Spain, Denmark, Greece, Italy, Ireland, the Netherlands, Luxembourg, the United Kingdom, Austria, Finland, and Germany, in chronological order- were examined. The idea was to outline the EU agenda for antiterrorism during a 6-year-period in order to have a comprehensive view of the issues considered by the Presidency, the JHA Council, and the European Council, since these are three EU formal arenas very relevant to the formation and denouement of the EU policy agenda due to their powers regarding agenda-setting and decision-making. After the observation of the agendas, four were the items selected based on their political relevance and theoretical interest: the European Arrest Warrant, the Second and Third Money Laundering Directives, and the European Evidence Warrant.

7.2 RESEARCH THEORY

The theoretical framework for doing the analysis of these issues was the Multiple Streams Model. Its author, John Kingdon, was interested, as well as I am in this study, to understand the agenda-setting process in the government. In my particular case I wanted to comprehend the policy-process in the European Union and Kingdon's Model helped me to attain this goal through its origins: appreciating the EU agenda-setting process and its implications –i.e. alternative specification- and potential effects –i.e. decision-making-.

For Kingdon, the agenda-setting implies two kinds of agenda: the governmental agenda and the decision agenda. The former relates to all the items that are part of the attention of public officials, while the latter includes only those that are subject to the consideration of the authorities in charge of taking decisions in a government. Kingdon then conceives agenda-setting as a process that reduces the issues to be

attended, making an issue –and not another- a priority for the government. Furthermore, the scholar also considers the existence of a process of alternative specification that, in the same way as the agenda-setting, reduces the number of solutions to be seriously considered. His model thus focuses on these two processes, which for him are the initial ones of the public policy making, because eventually both will converge, increasing the possibilities to generate agenda changes and policy changes, by placing an item on the decision agenda for its examination and likely adoption. Therefore, his model attempts to show the means and the reasons for an issue to become part of the policy agenda and its potential effects. Thus, the Multiple Streams Model states that diverse alternatives, which previously passed through a selection process among other ideas and proposals within the policy community, are floating around without specific direction. This happens irrespective of the presence of problems that are defined as such once they capture the attention of the officials provoked by changes in a negative condition that are evidenced by the interpretations of indicators, effects of major events, and feedback to officials. According to the Multiple Streams Model, problems have also their own life no matter the existence or not of solutions. In addition, this model takes into account a third element –that is as essential as the other two-: the occurrence of political events, such as alterations in national mood, position of organized political forces, and changes of administration, regardless of problems or solutions. Thus the three streams, i.e. problems, solutions, and political events, have their own dynamic and are equally important. This means that, according to Kingdon, the origins of policy-making do not necessarily rest on a process in steps since agendas are not always first set and then solutions generated. Rather, there is a critical time in which, either a change in a problem –i.e. problem window- or in a political event –i.e. political window-, opens a window of opportunity –i.e. policy window- to push a solution to the consideration of policy-makers on the decision agenda. Nevertheless, this to be effective needs the linkage of not just of two streams, but of all the three streams. This work is mostly promoted by the policy entrepreneurs who are looking forward to finding the way to do it but in the appropriate moment. This coupling could be made, for instance, by attaching the solution to a problem under the convenient political conditions or by adapting the alternative to the political events so it could be justified as a way to solve a problem. Thus, the coupling of the triad encourages the fix placement of an issue on the decision agenda, provoking agenda changes and very probably policy changes if the solution is adopted. However, neither agenda changes nor policy changes are a sure matter since the policy window is solely a stimulant, not a determinant for these to occur.

7.3 OBJECTIVE

My aim was to recognize when, why, and how the antiterrorist agenda in the European Union changed, in order to analyze its evolution during twelve Council Presidencies, as well as the policy changes emanating from this. In the end this served as a means to have a clearer and better picture of the policy-making process in the EU, by applying a theoretical framework to a practical case. To reach this goal, my study was focused on this central research question: *How was the development of the EU Council Presidency policy agenda in the field of antiterrorism as from the attacks of September 2001 in the United States until 2007 and how can this be explained in terms of policy windows?* In order to be in a position to answer it, I followed three

subquestions²³⁰ to give direction to my work and support the collection and analysis of information. Briefly, the line I obeyed started by describing the agenda in the field of counter-terrorism of the Council Presidency throughout such period. Later I selected four issues as case studies to appreciate the processes that promoted the establishment of the agenda, based on the Multiple Streams Model. This way I recognized for each of the cases the problems depicted, the solutions given, and the political moments that later pushed its entry into the agenda, how this happened, and which were its effects.

7.4 CASE STUDIES

From the four case studies, the European Arrest Warrant and the European Evidence Warrant were related to the justice and home affairs area -third pillar- and the Money Laundering Directives to the internal market -first pillar-. Nevertheless, all gave shape to the EU antiterrorist policy post-September 11th during diverse Presidencies.

7.4.1 European Arrest Warrant

The issue of extradition was set on the decision agenda of the Belgian JHA Council as a way to promote judicial cooperation in the fight against terrorism. This was attained once the policy window was seized after its opening generated by the terrorist events of September 11th 2001 which emphasized the existence of terrorists and their worldwide networks that make use of the differences in law regarding prosecutions from one country to another. Then the solution was attached to this problem, by establishing the necessity to prosecute all those in any way involved in these attacks, which would represent to catch people located also in the EU, owing to the international arrangement supporting terrorism. This was boosted by a political moment in which the European mood was dominated by fear of terrorism as a consequence of the attacks. The coupling thus came when, during a moment of remarkable consternation in the EU towards terrorism, the European Arrest Warrant was claimed to be the alternative to attain the punishment of all the persons responsible for the attacks no matter their hideout within the EU thanks to the issue of a single judicial decision that would be equally valid in all the Member States when requesting the surrender of a criminal, in order to fight against terrorism in a more effective way. The agenda of the Belgian Presidency therefore changed: the issue of extradition of terrorists was translated into the European Arrest Warrant with a prominent place on the Council agenda. Its adoption was estimated necessary by the Council and the European Council for transferring terrorists involved in the execution of attacks. The negotiations among the Ministers of Justice and Home Affairs were continuous during each of their meetings under the Presidency of Belgium, trying to reach an agreement, while the Heads of State or Government encouraged their effort. However, the attempts to get a unanimous voice on this issue were put on hold by Italy, which wanted to substantially reduce the scope of the EAW and exclude crimes such as fraud and corruption, probably due to the personal fear of its Prime Minister Berlusconi who seemed to be involved in criminal acts falling under the common-

²³⁰ Firstly, *what issues in the field of antiterrorism were placed on the agenda of the EU Council Presidencies as from the terrorist attacks of September 2001 in the United States until the first half of 2007?* Secondly, *what streams of processes affected the EU policy agenda for antiterrorism during this period?* And finally, *how the development of the Presidency policy agenda for antiterrorism can be explained in terms of policy windows?*

agreed wide scope. After this, the Commissioner on JHA Antonio Vitorino urged the use of another procedure –instead of unanimity-, namely enhanced cooperation, among only those Member States that agreed with the initiative in order to adopt it, leaving Italy aside due to its opposition. Finally, after the work of conciliation made by the Belgian Prime Minister Verhofstadt, the Italian Head of State agreed on the proposal and its large scope. However this did not mean the adoption of the EAW, but it opened the door to it. The following Spanish Presidency was confident of its eventual and soon enactment. Meanwhile, the policy community²³¹ expressed its opposition to the initiative, claiming concerns about the differences among the judicial systems in the Member States, the rights of the criminals subject to be transferred and processed, the non-existence under national law of all the crimes listed in the EAW, urgency to pass a proposal that should be widely meditated owing to its national implications, and lack of connection with counter-terrorism. Nevertheless, at the end of the Spanish Presidency the European Arrest Warrant was adopted. This implied various policy changes: the existing extradition procedure would not be valid any more; instead, a single EU mechanism would apply to those criminals living in a Member State and prosecuted in another Member State for terrorism or any other crime from a new-established list of 32 offences, finishing with the principle of double criminality in these particular cases. The competent authority in a Member State could make and dispatch an arrest warrant to its counterpart in another Member State. The receiving State is obligated to recognize and execute it, even when the addressed crime is not considered in its national law –only in a few cases determined in the Framework Decision the executing State could deny the arrest warrant-. Thus, after issuing it, the State requesting a criminal should expect with certainty to receive him and bring him to justice. When arresting the criminal, the issuing State should provide him a decent treatment, according to the European Convention of Human Rights. This way the extradition process was abolished, creating an EU common mechanism for handing over criminals irrespective of their position within the EU.

7.4.2 Money Laundering Directives

7.4.2.a- SECOND MLD

The Belgian Presidency saw its agenda change when the item of money laundering was seriously considered by the JHA Council, shortly after the terrorist attacks in the United States. These events brought to light that terrorists possess enough economical resources to carry out their criminal acts, making use of illegal financial channels around the world, enjoying the assistance of the financial system. The problem was a big one because it was estimated that such horrendous attacks in the United States would possibly not have taken place without this financial support. This way the problem window opened the policy window. It was necessary to take action on an instrument to punish not merely the executors of the attacks, but also their sponsors, by solving the problem of using the financial system to promote terrorist acts: the Second Money Laundering Directive would help to observe the financial flows running through financial and non-financial institutions, as well as persons with professions involved, limiting terrorism from its roots and finishing with its dirty sponsorship. These two streams were joined at the moment when the Europeans were particularly afraid of terrorism above all phenomena, provoking the prominence of this Directive. As a consequence, based on the linkage of the three streams, the

²³¹ Recall this concept from chapter 2 (2.2.2).

proposal occupied an important place on the agenda of the JHA Council after the terrorist attacks during the Belgian Presidency. The Ministers of Justice and Home Affairs urged its fast adoption as a means to combat terrorist financing. The same happened with the European Council. It included the initiative in the EU Action Plan to Combat Terrorism and reinforced its prompt adoption. Later the voices of the Ministers of Economic and Financial Affairs joined those of the JHA Ministers, considering the Directive an important way to counter organized crime in general. Finally, at the end of the Presidency of Belgium the issue was adopted. The new measure altered the existing money laundering policy by extending most of its elements. Among the prominent policy changes, its scope was broadened to include, besides financial entities as usual, non-financial sectors and professionals that could be also affected by money launderers. Therefore, institutions and individuals should be now equally responsible for following this Directive in an attempt to close holes of which money laundering could take advantage. Moreover, the crimes falling under this Directive would not be any more related only to drug. Rather, it was explicitly extended to fraud and corruption and tacitly to all kinds of serious crimes but without a clear definition. Acknowledging this, in the adopted final text it was established the request of the Council for the Commission to present an initiative to clarify this respect by the end of 2004. Some other aspects like the requirement to identify the customers were strengthened, as well. Many important elements were modified, except for the definition of money laundering. Thus, there was a significant difference between the pre and post-September 11th policy on money laundering.

7.4.2.b- THIRD MLD

Less than three years after the adoption of the Second Money Laundering Directive, the Commission issued a proposal on a Third Directive in 2004. It launched such initiative attached to a major event in the EU: the Parmalat scandal. This giant Italian dairy company with subsidiaries worldwide, including in diverse European Member States and their overseas territories, was discovered to be involved in illicit financial practices like money laundering. The argument used by the Commission to seize this policy window was that of transparency in order to avoid money laundering and keep safe the internal market beyond its onshore borders. According to it, Parmalat's crisis emphasized the need of counting EU-wide with an instrument that ensured the accomplishment of recognizing the genuine identity of those making and benefiting from financial transactions in a view to look after the image and stability of the financial system against the illicit management of dirty money, which could be used also by terrorists. Thus, both money laundering and terrorist financing were conceived as part of the same categorization, namely, protecting the financial system from such types of financial crimes. The alternative was the Third Directive Money Laundering supported by its security provisions regarding, for instance, customers' recognition. The partial coupling was made by the time the Commission was certain of the positive position of the Parliament towards the proposed Directive and its objectives. The two major political forces in the Parliament, the EPP-ED and the PES, had manifested strong concern on the financial services sector and money laundering, as well as interest in an initiative on this matter that besides could deal with terrorist financing. This situation was of considerable relevance for the Commission as the policy-making process in which its initiative would be involved required obligatorily the Parliament's consent. Thus finally the three streams were fully joined and the issue of money laundering entered the agenda of the Council at the very beginning of the

Presidency of the Netherlands, provoking again changes despite the fact that this item was virtually recently considered by the Council. Later under the Luxembourg leadership the Parliament approved the initiative and was finally adopted during the Presidency of the United Kingdom. The policy changes were substantial, beginning with the official text that was a new one instead of being modified in some of its parts, a situation that showed the level of changes suffered even when the measure was not brand-new but a 'Third' Directive. More definitions and requirements were included in order to constitute an instrument capable of bringing better protection against the use of the financial system by money launderers and terrorists. To this respect, stronger and new surveillance mechanisms were established, like the obligation to recognize the real owners and beneficiaries of bank accounts and other transactions within the financial system, in case it is perceived the existence of criminal links. Furthermore, money laundering did not include terrorist funding within its conception, contrary to what it was originally proposed. Rather, –promoted by the Parliamentary decision- finally terrorist financing got its own new space separated from that of money laundering within the Directive. This was reflected in the final official title where it was established that the measure was against “money laundering *and* terrorist financing”. However, the definition of money laundering itself did not change. Regarding other offences, the definition of serious crimes was made more detailed regarding its legal basis, but no more crimes were literarily specified. The scope was broadened to include more professionals. It would be mandatory for each Member State to establish a financial intelligence unit to counter these crimes more effectively. For the first time, there were established penalties for those that do not follow the provisions of this Directive.

7.4.3 European Evidence Warrant

The issue of the legal principle of mutual recognition reached the decision agenda of the Irish Presidency. This happened as a repercussion of an opening of a policy window pushed by the problem window generated after the Madrid bombings. These terrorist attacks highlighted the deficient accomplishment of the implementation of the EU Convention on Mutual Assistance in Criminal Matters which, according to the EU, was a measure that supported the fight against terrorism. Although this instrument was endorsed in 2000, just half of the minimal amount of Members States required had ratified it, making its enforcement impossible. Thus the alternative of the Commission to such a delay and low performance was the Framework Decision on a European Evidence Warrant. It was the solution owing to the objective it pursued: to eventually replace the Convention on Mutual Assistance with a mechanism based on mutual recognition for obtaining certain types of evidence, such as objects, documents and data to be used in judicial proceedings in criminal matters. Then, once binding its solution to the problem, the Commission took advantage of the political moment that denoted that Europeans urged a firmer attitude of their governments to evaluate their antiterrorist measures in order to combat terrorism more effectively. Since, according to the EU, the Convention on Mutual Assistance was an instrument to counter terrorism that was not having the desired results, it was important to solve that problem based on the expectations of the Europeans. Thus, the European Evidence Warrant provoked changes when reached the agenda of the European Council during the Presidency of Ireland as a way to support the fight against terrorism. Later the proposal was place also on the agendas of the Presidencies of the Netherlands –it was included as part of the Hague Programme-; Luxembourg; United Kingdom –it was

incorporated in the Declaration on the EU responses to the London bombings and in the new EU Counter-Terrorism Strategy-; Austria; Finland; and Germany. In the particular cases of the Austrian and the German Presidencies, two events regarding the negotiations on the EEW were remarkable. Regarding Austria –after more than two years on the decision agenda during 5 Presidencies- the JHA ministers attained a general, albeit incomplete, agreement on the proposal –known as general approach-. Showing concerns on the non-application of the principle of double criminality to certain offences covered by the Evidence Warrant, Germany was the main opponent to it during most of the negotiations, blocking it constantly. Based on constitutional problems in which the German Ministry of Justice, the German Court, and the German Parliament were involved in relation to the translation of the already adopted Arrest Warrant into the national judicial system, Germany urged to define some crimes –including terrorism- subject to the proposed Evidence Warrant considering that this initiative would entail the same kind of problems. Contrary to the case of Italy opposing to the EAW, there was no intention to use other procedures to endorse the Evidence Warrant without including Germany, but to give this Member State the prerogative of opting-out partially and temporarily so it would adopt the measure, reserving its right of executing it in certain cases, such as those regarding terrorism – and other five crimes- during a established period of time. Despite the case of Germany, the Council agreed on the purpose, scope, proceedings, recognition, and execution of the European Evidence Warrant, concluding that it was important to continue discussing on the clarification of crimes and make any other necessary action to adopt this proposal soon. In relation to the German Presidency, during a ministerial meeting the Council was informed of the recently-started debate among its working groups to find a so-called horizontal approach on the definition of terrorism and other offences. According to the Council, such debate was born after Germany’s desire to precise such crimes due to the substantial differences among Member States’ judicial systems in order to have similar interpretations on the scope. However, the working groups were a little skeptical about this, even considering it an attempt on the principle of mutual recognition. Finally they concluded that, just after implementing the European Evidence Warrant, it would be possible to asses and identify problems on this measure and how to solve them. Regarding other measures already implemented, as the European Arrest Warrant, their evaluation was still precipitated. The policy community, for its part, also raised objection to the EEW. For instance, there were some concerns about the negative experience previously lived with a measure based on the same political basis –like the Arrest Warrant-; the respect of human rights; the application of the principle of mutual recognition; the abolishment of the principle of double criminality; and the inefficiency of the policy-making process in the third pillar. Finally, although being on the agenda during seven Presidencies, the European Evidence Warrant attained no political changes as it was not adopted in this time. Thus instead of counting EU-wide with a procedure in which the judicial decisions in one Member State should be recognized and enforced in another Member State to obtain material that would be useful in judicial proceedings against criminals –i.e. principle of mutual recognition-, one Member State in need of the support from another to collect evidence should ask for it and they should find the way to arrange cooperation between them –i.e. principle of mutual assistance-.

7.5 RELATION TO AGENDA CHANGES

Origins of policy-making: a non-sequential multiprocess and the agenda for antiterrorism

In his Multiple Streams Model, Kingdon conceives agenda-setting and alternative specification as processes coexisting in a kind of organized randomness focused on three independent streams that included problems, solutions and political events that ultimately come to be together; instead of following a sequence based on a given problem, as a rational choice model assumes in which “problems and solutions are closely connected and the latter follow the former” (Zahariadis, 1998: 441). This was illustrated by all case studies. The Second Money Laundering Directive was proposed in 1999, more than two years before it came to solve the problem by which finally entered the JHA agenda. Thus, this proposal was drawn up without addressing a specific problem. It had to be in the waiting list for an important period of time until it was attached to a problem. Only after this and encouraged by the political moment, the Ministers of Justice and Home Affairs considered the Second MLD as an alternative needed to fight against terrorist financing. Similarly, the initiative on a European Evidence Warrant was launched a few months earlier than the appearance of the problem it would intend to solve. Once having a situation that required its solution at the propitious political time, the EEW was regarded by the Council also as a means to support counter-terrorism. Furthermore, the other two measures showed that in some other times, proposals may be issued *ad hoc*, according to an existing problem, but also always taking into account the feasibility provided by the political climate to become part of the agenda. Thus the proposal on a European Arrest Warrant and the Third Money Laundering Directive saw the light after the recognition of a problem that, boosted by the political conditions in that moment, attained the consideration of the Council.

Equal importance of streams of processes

The case studies reaffirmed that all three streams were significant in the same proportion, as all were needed to establish the agenda. Thus, besides problems and solutions, an element that not always is considered important by other political theories to reach the policy agenda such as public opinion –as seen in the European Arrest Warrant, the Second Money Laundering Directive, and the European Evidence Warrant- and the position of political forces –like in the case of the Third Money Laundering Directive- were very significant and even determinant to directly force the European Union to do or constrain itself from taking action against terrorism. Furthermore, in all four issues situations of crisis and major events, rather than changes of administration or political pressure, proved to be the most powerful to open the policy window. Thus, agenda-setting was particularly influenced from a problem, but in any case followed in parallel by its solution and the political situation. In relation to the solution’s stream, its significance was obvious since without the existence of an alternative simply no Council’s deliberation would have been possible, despite hundreds of windows of opportunity.

Dominant players that promoted changes on the antiterrorist agenda

In all case studies the role of supranational institutions was more prominent than that of national actors to incite the entry of an issue into the agenda for antiterrorism. As to the Commission, its President Romano Prodi tried to push the European Arrest Warrant on the agenda. Regarding the Second and Third Money Laundering Directives, the attempt was made by the Commissioner of Internal Market Frits Bolkestein; besides, the Commission in general, through its communications and reports, incited also the consideration for the Third Directive and the European Evidence Warrant. In the case of the work of the Presidency, represented by the Belgian Deputy Minister of Foreign Affairs Annemie Neyts, it strove to move the EAW and the Second MLD into the agenda, supported in this last issue also by the Belgian Minister of Foreign Affairs Louis Michel. Moreover, the European Council made the same effort as to the Second Directive. In contrast, in fewer occasions the voice of Member States was raised particularly from the United Kingdom, through its Home Secretary David Blunkett, with respect to the European Arrest Warrant and, by its Foreign Minister Gordon Brown, regarding the Second Directive. Besides, in one time there was a joint effort of the European Council, the President of the Parliament, the President of the Commission, and the General Secretariat of the Council to promote the creation of a European Arrest Warrant. Therefore, as observed from all the supranational institutions the Commission was the most important actor for the proposals to arrive on the Council's table regarding counter-terrorism after the attacks in the United States. This policy entrepreneur and those within its structure achieved that all of their four proposals were welcomed on the decision agenda. On the other hand, contrary to what could be thought, the Presidency made little use of its privileged role of being part of both the agenda-setting and the decision-making.

Importance of spillovers

Kingdon dealt with the topic of chaining events after the appearance of a policy window to promote the prominence of similar issues on the agenda, situation that was shown by the case study of the Third Money Laundering Directive in which terrorist financing was also depicted as part of the same problem related to money laundering with a view to making use of the same window. This prospered in such a way that finally when the proposal was adopted instead of considering terrorist funding within the scope of money laundering, it got its independent recognition. In this way the agenda changes generated substantial policy changes even more than expected as the new policy gave terrorist financing its own place and significance by defining it individually. Therefore, the window of opportunity opened not just for money laundering but also for terrorist financing, giving as a result changes on both policy fields. This would avoid legal misunderstandings, making the fight against terrorism more effective.

Implications of policy windows and coupling for the EU antiterrorist policy

Kingdon claims that an essential element that substantially increases the possibility of an issue to rise on the decision agenda and its likelihood of being adopted is the coupling of the streams by policy entrepreneurs once the policy window opened. When applying it to the case studies on counter-terrorism, this was reaffirmed, as seen in a previous section. However, what does this entail for the counter-terrorist policy?

In all the case studies, it was shown that the ability of such advocates to seize the policy window by coupling the streams was very valuable, as this made a silent proposal floating around become steady on the antiterrorist agenda with noise enough to be seriously considered by the decision-makers as an important tool to combat terrorism. The task was not an easy one as time, effort and other resources were needed in order for an issue to be finally in a position to be adopted. Nevertheless after its entrance on the agenda, the opinions of the policy community led one to wonder about the convenience and real benefit for the fight against terrorism of considering the adoption of those initiatives that ‘won its right’ to be on the agenda. For instance, regarding the European Arrest Warrant some claimed that the depiction of such problem did not justify the adoption of such solution and that no sufficient argument were given to change the existing procedure on extradition; others estimated that it was simply not a way to combat terrorism; and some others believed that terrorism was mainly a pretext to adopt this measure and rush its adoption. Additionally, concerns were raised on human and civil rights and on inconvenient repercussions and inconsistencies of the EAW regarding the national legal systems. In the case of the European Evidence Warrant the arguments were very similar, except from a new one related to problems with the decision-making process due to the lack of consensus among Member States on this measure. The result: no adoption. It is normal that most proposals on the hands of decision-makers pass through a process of scrutiny from the public in general, besides obviously that from policy-makers themselves, but it may be proper in terms of effectiveness to recognize and assess even before reaching the agenda the genuine contribution of a proposed instrument for countering terrorism, as well as the possible negative effects on other areas that eventually need to be solved. What about that thorough studies and statistical reports on the impact and advantages of applying a measure for reaching a particular aim were instead the ones that served as a basis for attaining the consideration of decision-makers on a proposal especially in a field as delicate as terrorism? Of course this rational-choice process in which “solutions are chosen for their optimally efficient solutions of preexisting problems” (Lipson, 2007: 12) and “are assigned different weights in terms of preference and achievement of goals” (Zahariadis, 1998: 438) did not happen during the six-year period. Rather, practical cases such as the European Arrest Warrant demonstrate that agenda-setting was an opportunistic process attained despite the existing general disagreement to a potential measure due to its implications, as shown by *The Economist* (2003) when expressing: “Sometimes it takes a crisis to create an opening for action from Brussels. The terrorist attacks on the United States generated the political will to push through an old idea –to create a European arrest warrant- which had hitherto been too controversial, since it expands the EU's remit into criminal law.” Other example is the Second Money Laundering Directive. The portrayal of the problem in terms of terrorist financing under such tense political moment helped to achieve a coupling to promote the issue on the JHA Council as another antiterrorist instrument, even though the proposal counted with no clear definition of that what it claimed to solve, generating doubts about its forcefulness against terrorism. Thus, the effects of policy window and coupling although notably led to set the agenda for antiterrorism not naturally led to an appropriate policy on this field, but often to a one in favor of policy entrepreneurs. This strengthens Kingdon’s (1995) idea that “the federal government is seen as an organized anarchy” (p. 86) in which participants do not have precise goals, not clearly understand the organization to which they belong, and “drift in and out of decision making”. (p. 84) As a result, the policy making in the European Union becomes a

process in which policies emerge from ideas out of a garbage can: “The outcomes, then, are a function of the mix of garbage (problems, solutions, participants, and the participants’ resources) in the can and how it is processed” (p. 86). This does not provide an argument to criticize the European Union; this just talks about a real-world theoretical framework instead of a model that “does not very accurately describe reality” -such as, in Kingdon’s view, a rational one- (p. 78).

The counter-terrorist agenda: a policy of reaction?

As seen before, the Presidency of Belgium set its agenda without taken into consideration instruments to promote the fight against terrorism. However, the events in the United States generated that the European Arrest Warrant and the Second Money Laundering Directive reached a relevant placed on the agenda in a view to counter terrorism. Years later, once the bombings in Madrid occurred, the European Evidence Warrant appeared on the Council agenda of Ireland with the same objective. Afterwards, during the Presidency of The Netherlands, due to an event related to other causes different than terrorism, the Third Money Laundering Directive entered the agenda to tackle terrorist financing. Therefore, after analyzing the case studies, we observed that in the last 6 years most of the effects on the antiterrorist agenda were produced after facing major terrorist attacks –first in a foreign country and then in ‘domestic’ soil-. This leaves a perception that the EU policy on this field was built more in response to than in prevention of terrorism.

7.6 RELATION TO POLICY CHANGES

EU decision-making and the antiterrorist policy

As previously noticed, the legal origins of the four case studies are different. While the European Arrest and Evidence Warrants are part of the third pillar, the Directives on Money Laundering belong to the first pillar. Therefore, this entails an interesting point to compare the decision-making process in the European Union and the way of policy entrepreneurs to act, through the cases of one and other pillars, which are the most divergent among the three as the second pillar behaves very similar to the third. Regarding the third pillar, unanimity of the Council is obligatory to adopt a proposal without the approval of the Parliament which just issues an opinion. It means that merely the word of Council counts, suggesting that, as far as the political stream is concerned, there is no absolute need for a policy entrepreneur to pay attention to the position of other governmental forces about his “pet” proposal but to concentrate on other political events that could boost his work, like for instance the political climate or public opinion—as it was the case of the European Arrest and Evidence Warrants-. Nevertheless, this does not necessarily make the process easier. Each of the 15 Member States –for the proposals considered before May 2004 when the EU was enlarged- or 25 and later 27 Member States –in the case of those made from the second half of 2004- should give its assent to the initiative so it could be adopted. Thus, all Member States, represented by their ministers of Justice and Home Affairs in the Council, had to find a political means to reach an agreement. Otherwise, the proposal would not be endorsed. These two cases were illustrated by the two case studies regarding this third pillar. On the one hand, the European Arrest Warrant was constantly discussed by the Council. When it seemed that all Member States had finally attained an agreement, one of them, Italy, opposed it for reasons that had

probably nothing to do with the European or national interest but with personal problems of its Head of State regarding illicit activities. This put at risk the enactment of the EAW. However, the diplomatic effort of the incumbent Presidency avoided an impasse in the negotiations and afterwards Italy gave its approval which allowed the later adoption of the proposal. On the other hand, the European Evidence Warrant was a matter of debate during 7 Presidencies due to the disapproval of one Member State, namely, Germany, that was interested in defining some elements of the EEW scope, based on its concern for the implementation of this measure at the national level and the multiple interpretations emanating from it within a region with a great diversity of judicial systems. As to this, some alternatives –like the temporal and partial opt-out of Germany- and additional mechanisms –such as the general and horizontal approaches- were considered in order to attain a consensus. In spite of this, no agreement on the EEW was possible and therefore the initiative was not adopted. As to the first pillar, in most cases the Council does not require unanimity. Rather, it just needs the approval of a representative part of it –according to the rules established by the European Union-. However, in this pillar, the Parliament does have an essential role to play. More than providing only an opinion, it should give its approval. In this way, both Council and Parliament share the power to decide on an initiative. This represents a point of caution for policy entrepreneurs that do have to care about the view of this other EU institution. Regarding the case studies, although both Directives on Money Laundering passed by the same decision-making process, the relevance of the Parliament was more evident in the Third Money Laundering Directive. In this case, one of the reasons that led the Commission to attempt to push its initiative on the agenda was the support of the two most powerful political forces in the Parliament as it was aware of the great significance of having its political backing for the adoption of the Directive. Then after the Parliament thoroughly discussed the proposal, it gave its approval. Later on, the Council adopted it.

Therefore, the case studies showed that the decision-making process in the EU has a kind of policy padlock. In the JHA pillar is only needed a complete participation of the Council whereas on the Community pillar its partial involvement is enough but always supported by the Parliament. Thus, while in the former pillar the Member States are able to veto a proposal; in the latter the Parliament has this power. Nevertheless, there are possible ‘keys’ in the case of the third pillar such as the use of diplomacy, enhanced cooperation, and opt-outs, as seen in the European Arrest Warrant and the European Evidence Warrant. In contrast, in the first pillar if the Parliament rejects a proposal this definitely cannot be adopted, as mentioned in the Third Money Laundering Directive. Furthermore since the EU policy on counter-terrorism makes use of the support of diverse kinds of measures in different fields besides that officially established, the decision-making process related to the fight against such a crime is not just a matter of intergovernmental harmony, but also of Community cooperation.

Powerful countries and policy changes; its consequences for the antiterrorist policy

As just noticed, both proposals of the Justice and Home Affairs field –the European Arrest Warrant and the European Evidence Warrant- faced the lack of consensus in the Council owing to the disapproval of mainly one Member State in each case. The ways to solve this were different, however, as well as their implications.

After all Member States reached an agreement on the European Arrest Warrant soon after it was on the Council's table, except Italy that disagreed with one point, the Commissioner Vitorino urged the use of enhanced cooperation to adopt the initiative. Such request suggested the total exclusion of Italy's voice and role from the Council's determination regarding the issue of extradition, due to mainly two things: this alternative cooperation procedure is executed in the third pillar –as the last resort- by only the Member States interested in a proposal in order to facilitate its adoption; and its enactment is binding only to the participant Member States. However, this resource of cooperation was not necessary because shortly afterwards Italy changed its position encouraged by the effort of the Belgian Presidency that diplomatically approached the Italian Head of State in an attempt to persuade him to comply with the initiative the way already agreed by the rest of the Member States. Consequently, the Council was in position to adopt the EAW, which eventually happened during the following Presidency of Spain. With this, the European Union was adding another measure to its antiterrorist policy, reinforcing its fight. On the contrary, when Germany manifested its opposition to certain elements of the draft European Evidence Warrant, the means used to try to adopt the proposal did take into account the participation of this opponent Member State, even though it in several occasions during a long time seemed not to cooperate with the rest of the Council. The Council considered to giving Germany a temporal prerogative for the partial execution of the EEW, covering the points claimed by this country, and encouraging it to adopt the proposal. This meant that the Council was providing Germany an alternative to take part of the process of replacing mutual assistance with mutual recognition. Furthermore promoted also by Germany's claims regarding the Evidence Warrant, the Council set later a debate on this country's main point of opposition –definition of certain crimes-. Nevertheless, despite the important work of the Council to attain the adoption of the proposal and more than three years of talks, the European Evidence Warrant was not adopted due to the veto of one Member State. The lack of legislative outcome left the EU without a prominent instrument to promote judicial cooperation in order to strengthen its policy to counter terrorism.

Why not trying to use a valid last resort such as the enhanced cooperation in the case of the European Evidence Warrant that after seven presidencies did not get the approval of all the Member States? In relation to this, the question would also be: why actually it was attempted to use such procedure for the adoption of the European Arrest Warrant that very soon after its appearance on the Council agenda was almost agreed? Furthermore, why making so much effort to find means to respect the ideas of Germany? The answer suggested the relevance of powerful countries. Since Germany was “a champion of the Commission proposals” the subject should be “handled delicately.”²³² However, this was not the case of Italy, which besides in that moment had a weak reputation as –it was not a secret for anybody- its Prime Minister was involved in illicit activities related to the sphere of the Arrest Warrant. Thus, while in the case of the EAW Italy seemed to be an actor whose voice was not necessary to be listened to, in the EEW Germany showed to be such a central player that even the adoption of the proposal was put at risk and actually denied although the possibility to use alternative procedures like that intended in the case of the Arrest Warrant. As consequence –similarly to that expressed by the Commissioner of Justice, Freedom and Security Franco Frattini during the negotiations of the European Evidence Warrant- nowadays is feasible in the European Union to arrest a person and directly

²³² Recall Chapter 6.

transfer him, but not the evidence against him. This way the prosecution of a criminal responsible for committing acts related to terrorism would stagnate without counting with enough elements to punish him, constraining an efficient terrorist campaign.

7.7 WINDING UP

The policy agenda for antiterrorism in the European Union after the attacks in the United States was influenced particularly by three random and equally important processes: the recognition of problems, the specification of solutions, and the political conditions in the EU. These streams were aligned once significant events took place inside and outside Europe, opening a window of opportunity for policy entrepreneurs to take action to stimulate changes on the agenda in question. In this task, the European Commission had a major role in seizing the chance and finally coupling the three processes by adapting its proposals to the problems and taking advantage mainly of the concern of the public opinion and the positive position of political groups. The policy window besides was exploited in such a way that its spillover effects encouraged the entry of an issue on the agenda. By this opportunistic procedure the agenda for antiterrorism was set, producing some reactions of the policy community about the genuine convenience of the proposed measures to combat terrorism. Moreover, since most of the Council's antiterrorist agenda took shape after facing shocking terrorist attacks, it denoted that the policy in this field was formed as a matter of reaction. Regarding the generation of policy changes, the issues on the counter-terrorist agenda passed through diverse decision-making processes and experiences in which sometimes the responsibility was mainly of the Council and other times also of the Parliament. In particular in the former case, powerful Member States showed to be very important to attain and block changes.

7.8 THE MULTIPLE STREAMS MODEL: A BRIEF REFLECTION

Just as I recognized the ways in which the Model supported my analysis, I will mention some elements of it that I consider significant to reflect on according to my empirical work. The Model centers around policy window, which seems to be an ambiguous event. Kingdon himself asserts that there is not always certainty of the moment when a policy window is opened because, in addition to serious crises or political events that may help to define a policy window, "the window exists in the perceptions of the participants as well". This generates that "even highly skilled and knowledgeable people may disagree on whether a window is or will be open because the nature of the beast is complex and a bit opaque." (Kingdon, 1995: 171) This means that misperceptions and misestimations are also part of the agenda-setting process, making the recognition of the existence of a policy window not an easy task for a student wanting to write a work on it –as my personal case- but also for policy makers or entrepreneurs attempting to take advantage of such opportunity.²³³ This leads to another complication closely related: the recognition of the three streams. On paper each of them looks quite simple to locate and distinguish following Kingdon's description, but in practice this is not exactly the case owing to the existence of an important diversity of processes flowing throughout a political system –as the European Union-, encountering some difficulties to identify those that eventually promote the opening of a window and push an issue into the decision agenda.

²³³ "[D]etermining the existence of policy windows is one of the more frustrating and cumbersome features of the multiple streams model –for both participants involved in advocating policies and for analysts attempting to understand what happened." (Stout and Stevens, 2000: 353)

Furthermore, a policy window is a moment of opportunity that mostly needs to be awaited, as Kingdon evidences: “[A]dvocates in and around government keep their proposals and their problems at hand, waiting for these opportunities to occur.” (*Ibid*: 203) Such window may not be activated but predicted in some cases. This ambiguity and the lack of control on the window of opportunity denotes that the Multiple Streams Model is a theoretical framework to be used more as a way to describe how actually the agenda is built than to prescribe how eventually it may be managed: “We have been talking as if one can tell with some certainty when a policy window opens. Sadly for strategists trying to manipulate the process, the world is not quite that simple.” (*Ibid*: 170) This has to do with the idea that the Multiple Streams Model is “more concerned with describing the ‘right’ process” than “with predicting the ‘correct’ output” –like a rational choice theory- (Zahariadis, 1998: 445). Moreover, I faced problems regarding the understanding of the achievement of policy changes as Kingdon provides almost no elements on this subject, taking it for granted, even though he acknowledges that there is no control on the destiny of an issue on the agenda. Certainly there are required agenda changes for policy changes to occur, but this is not a mandatory result. Therefore, saying that the “key” (Kingdon, 1995: 88) to understand policy changes –besides agenda changes- is the coupling of the streams is a hasty statement because, as it was seen in the case of the European Evidence Warrant, not always an item that entered the agenda after a convenient streams’ joint is adopted. One obstacle to this can be strategic participants who want to move the game their way just as policy entrepreneurs but restrictively. As to this aspect, the Model does not take into consideration the negative connotations of certain elements within it, like policy entrepreneurs and their antagonist veto players which instead of promoting the consideration of a proposal they obstruct it –recall the case study of EAW and EEW-, as well as spillovers that rather than increasing the probability that a window opens for another similar issue they wane such opportunity –as perceived in the draft EEW when Germany, based mostly on its bad experience with the application of a similar measure already adopted, namely, the European Arrest Warrant, opposed the proposal due to possible similar negative effects. Mainly this backlash restrained policy changes regarding counter-terrorism from happening-.

In sum, despite the room for reflection, for the purposes of this work the Model did provide me the adequate lenses to appreciate in general the agenda-setting process in the European Union and in particular the development of the agenda for antiterrorism. However, as to the decision-making process, my comprehension was not caused by Kingdon but promoted by him and myself in an attempt to clarify why “major changes in public policy” come from the appearance of a policy window (*Ibid*: 166).

7.9 RECOMMENDATIONS FOR FURTHER WORK

Since this thesis analyzed issues related to the JHA and EC pillar, it would be relevant the study of an item regarding the CFSP pillar in order to observe the factors that caused agenda changes and its effects in that case and make a comparison among all the pillars. Moreover, specifically as to the JHA pillar this work took into consideration case studies regarding judicial cooperation to combat terrorism, but not police cooperation –the other means, according to the TEU, to counter this crime-; therefore an analysis on it would be appropriate. Finally, a further work on the EU antiterrorist agenda before the attacks in the United States would provide information about the ways that contributed to the agenda-setting process at a time when terrorism was not perceived as a worldwide major threat.

REFERENCES

- AFP (2004), “Swiss probe into Parmalat widens to money laundering: authorities”, 4 February
- The America’s Intelligence Wire (2004), “Are Police Closing in on Person Responsible for Ohio highway shootings?; More Evidence of Al Qaeda Link to Train Bombings in Madrid.” From CNN News, 16 March
- Amnesty International (2001), “The backlash: human rights at risk throughout the world”, AI Index: ACT 30/027/2001, 4 October
- Austrian Presidency website, specifically on JHA, in http://www.eu2006.at/en/Policy_Areas/Justice_and_Home_Affairs/Home_Affairs.html
- Arteaga, Felix (2002), “The balance of Spanish Presidency of 2002 with regard to Justice and Home Affairs of the European Union”, Instituto Universitario de Seguridad Interior, Madrid, October 12
- Bachrach, Peter and Morton S. Baratz (1963), “Decisions and nondecisions: an analytical framework”, *American Political Science Review* Vol. 57, No. 3 pp. 632–642.
- Baumgartner and Bryan D. Jones (1991), “Agenda Dynamics and Policy Subsystems”, *The Journal of Politics*, Vol. 53, No. 4, pp. 1044-1074
- Baumgartner and Bryan D. Jones (1993), *Agendas and Instability in American Politics*, Chicago: University of Chicago Press
- BBC News (2001), “Battle looms over EU arrest warrant”, 13 December
- BBC News (2001a), “EU combats terror funding”, 16 October
- BBC News (2001b), “Conference targets terror funds”, 17 October
- BBC News (2004), “Passengers weigh the risks in Spain”, 4 April
- BBC News (2004a), “Timeline: Madrid Investigation”, 28 April
- BBC News (2005), “21 July Attacks. What happened”, constantly updated
- BBC News (2005a), “Timeline to turmoil”, 28 September
- Bush, George (2001), “President declares ‘Freedom at war with fear’. Address to a Joint Session of Congress and the American People”, Washington, 20 September
- Byrne, David (2001), “Preparedness on Bio-terrorism”, Speech/01/483, Agriculture Council, Luxembourg, 23 October 2001
- Caporaso and Keeler, J. T. S. (1995), “The European Union and the Regional Integration Theory”, in C. Rhodes and S. Mazey, *The State of the Union Vol. III: Building a European Polity?*, Harlow: Longman

Christiansen, Thomas (2006), "The Council of Ministers. Facilitating interaction and developing actorness in the EU", in J. Richardson, *European Union. Power and Policy Making*, London: Routledge.

Cobb *et al* (1976), "Agenda Building as a Comparative Political Process", *The American Political Science Review*, Vol. 70, No. 1, pp. 126-138

Cobb, Roger and Charles Elder (1972), *Participation in American Politics: The Dynamics of Agenda-Building*, Baltimore: John Hopkins University Press

Cohen, *et al* (1972), "A Garbage Can Model of Organizational Choice", *Administrative Science Quarterly*, Vol. 17, pp. 1-25

Commission website, http://ec.europa.eu/index_en.htm

Commission website1, http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm

Commission website2, http://ec.europa.eu/internal_market/top_layer/index_24_en.htm

Commission website3 http://ec.europa.eu/justice_home/fsj/criminal/assistance/wai/fsj_criminal_assistance_en.htm

Commissioner of External Relations website, http://ec.europa.eu/external_relations/afghanistan/docs/index.htm

Commission (1999), "Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering", COM(1999) 352 final 99/0152 (COD), Brussels, 14 July

Commission (1999a), "Commission Communication 'Implementing the framework for financial markets: action plan'", COM(1999) 232 Final, 11 May

Commission (2000), "Communication from the Commission. The criminal protection of the Community's financial interests: A European Prosecutor", 29 September

Commission (2000a), "Communication from the Commission to the Council and the European Parliament. Mutual recognition of Final Decisions in Criminal Matters", Brussels, 26 July

Commission (2001), "Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor", 11 December

Commission (2001a), "Proposal for a Council Framework Decision on combating terrorism (presented by the Commission)", COM(2001) 521 final, 2001/0217 (CNS), Brussels, 19 September 2001

Commission (2001b), "Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States" (2001/C 332 E/18) COM(2001) 522 final o 2001/0215 (CNS) (submitted by the Commission on 19 September 2001), *Official Journal of the European Communities*, 27 November

Commission (2002), "Communication COM(2002) 95 from the Commission to the European Parliament and the Council. Democratic control over Europol", Brussels, 26 February

Commission (2002a), “Report from the Commission to the Council and the European Parliament. Sixth Progress Report on the Financial Services Action Plan”, COM(2002) 267 final, Brussels, 3 June

Commission (2003), “Proposal for a Council Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters (presented by the Commission)”, COM(2003) 688 final, 2003/0270 (CNS), Brussels, 14 November

Commission (2004), “Communication from the Commission to the Council and the European Parliament: Towards enhancing access to information by law enforcement agencies”, Brussels, 16 June

Commission (2004a), “Euromed report on the EU strategic partnership with the Mediterranean and the Middle East. Final report” Issue No. 78, 23 June

Commission (2004b), “Proposal for a Regulation of the European Parliament and the Council concerning the Visa Information System (VIS) and the exchange of data between the Member States on short stay visas”, COM(2004)835, Brussels, 28 December

Commission (2004c), “Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing”, COM(2004) 448 final 2004/0137 (COD), Brussels, 30 June

Commission (2004d), “Annex. Progress on the Financial Services Action Plan”, 2 June

Commission (2004e), “Communication from the Commission to the Council and the European Parliament on the prevention of and fight against organized crime in the financial sector”, COM(2004) 262 final, Brussels, 16 April

Commission (2004f), “Communication from the Commission to the Council and the European Parliament on measures to be taken to combat terrorist and other forms of serious crime, in particular to improve exchanges of information”, COM(2004)221 final, 2004/0069 (CNS), Brussels, 29 March

Commission (2004g), “Financial Services. Turning the Corner. Preparing the challenge of the next phase of European capital market integration”, Brussels, 2 June

Commission (2005), “Commission staff working paper. First annual report to the Council and the European Parliament on the implementation of the AGIS programme”, Brussels, 19 April

Compston, Hugh and Per Kongshoj Madsen (2001), “Conceptual innovation and public policy: unemployment and paid leave schemes in Denmark”, *Journal of European Social Policy*, Vol. 11. No. 2 , pp 117 -132

Corbett, Anne (2005), *Universities and the Europe of Knowledge: Ideas, Institutions and Policy Entrepreneurship in European Union Higher Education Policy, 1955–2005*, Basingstoke: Palgrave

Council website, <http://www.consilium.eu.int>

Council (1991), “Council Directive on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC)”, *Official Journal of the European Union*, 10 June

Council (1995), “Council Act drawing up the Convention on simplified extradition procedure between the Member States of the European Union”, 10 March

Council (1995a), “Council Act drawing up the Convention on the establishment of a European Police Office (Europol Convention)”, *Official Journal of the European Communities*, 26 July

Council (1995b), “European Parliament and Council Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data”, *Official Journal of the European Communities*, 24 October

Council (1996), “Council Act drawing up the Convention relation to extradition between the Member States of the European Union”, 27 September

Council (1996a), “Joint Action on the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise in the Member States of the European Union”, 15 October

Council (1997), “Resolution of the European Council on the Stability and Growth Pact”, *Official Journal of the European Communities*, Amsterdam, 17 June

Council (1999), “Presidency Conclusions of the European Council”, Tampere, Finland, 15 and 16 October 1999

Council (1999a), “Presidency Conclusions of the Helsinki European Council”, Helsinki, 10 and 11 December

Council (1999b), “Presidency Conclusions. Cologne European Council”, Cologne, 3 and 4 June

Council (1999c), “The Schengen Acquis as referred to in Article 1(2) of Council Decision 1999/435/EC”, *Official Journal of the European Communities*, 20 May

Council (2000), “Council Decision setting up a Provisional Judicial Cooperation Unit” *Official Journal of the European Communities*, 14 December

Council (2000a), “Council Act establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union”, 29 May

Council (2000b), “Council Regulation (EC) 2725/2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention”, *Official Journal of the European Communities*, 11 December

Council (2000c), “Council meeting on Justice, Home Affairs and Civil Protection” Brussels, 30 November and 1 December

Council (2000d), “The Prevention and Control of Organised Crime: A European Union Strategy for the beginning of the new Millennium”, 6611/00 CRIMORG 36, Brussels, 3 March 2000

Council (2000e), “Council meeting on ECOFIN”, Luxembourg, 5 June

Council (2000f), “Council meeting on ECOFIN”, Brussels, 17 July

Council (2000g), “Santa Maria da Feira European Council. Conclusions of the Presidency”, Santa Maria da Feira, 19 and 20 June

Council (2001), “Work Programme of the Belgian Presidency of the European Union”, Brussels, 1 July to 31 December 2001

Council (2001a), “Conclusions and plan of action”, Brussels, 21 September

Council (2001b), “Council Decision on the development of the second generation Schengen Information System”, Brussels, 6 December

Council (2001c), Council meeting on Justice, Home Affairs and Civil Protection, Brussels, 13 July 2001.

Council (2001d), “Extraordinary Council meeting on Justice, Home Affairs and Civil Protection”, Brussels, 20 September

Council (2001e), “Conclusions and Plan of Action of the Extraordinary European Council meeting”, Brussels, 21 September

Council (2001f), “Council meeting on Justice, Home Affairs and Civil Protection 2370th Council meeting”, Brussels, 27 and 28 September

Council (2001g), “Special Council meeting on Justice, Home Affairs and Civil Protection”, Luxembourg, 16 October

Council (2001h), “Declaration by the Heads of State or Government of the European Union and the President of the Commission”, Ghent, 19 October

Council (2001i), “Council meeting on Justice, Home Affairs and Civil Protection”, Brussels, 16 November

Council (2001j), “Council meeting on Justice, Home Affairs and Civil Protection”, Brussels, 6 and 7 December

Council (2001k), “Presidency Conclusions of the European Council meeting”, Laeken, 14 and 15 December

Council (2001l), “Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union”, *Official Journal of the European Communities*, 21 November

Council (2001m), “Comparecencia del Presidente del Gobierno en el Congreso para explicar las prioridades de la Presidencia Española de la UE”, 10 December

Council (2001n), “Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism”, 27 December

Council (2001o), “Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime”, *Official Journal of the European Communities*, 26 June

Council (2001p), “Directive 2001/97/EC amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering”, *Official Journal of the European Communities*, 4 December

Council (2001q), “Regulation (EC) No 2424/2001 on the development of the second generation Schengen Information System (SIS II)”, 6 December

Council (2001r), “Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism”, *Official Journal of the European Communities*, 27 December

Council (2001s), “Programme of measures to implement the principle of mutual recognition of decisions in criminal matters”, (2001/C 12/02), *Official Journal of the European Communities*, January

Council (2001t), “Speech by Mr. Louis Michel, President-in-office of the Council of the European Union, to the European Parliament on the events of 11 September 2001”, Brussels, 12 September

Council (2001u), “Speech to the European Parliament by Ms. A Neyts-Uytterbroeck, President-in-office of the Council of the European Union”, Brussels, 19 September

Council (2001v), “Declaration by the Council of the European Union”, Brussels, 12 September

Council (2001w), “Speech by Prime Minister Guy Verhofstadt at the opening ceremony of the College of Europe -Natolin Campus: ‘The new world order after 11 September’”, Warsaw, 23 October

Council (2001x), “Speech by Mr. Louis Michel, President-in-Office of the Council of the European Union addressing the European Parliament: Report on the Extraordinary European Council of 21 September”, Strasbourg, 3 October

Council (2001y), “Council meeting on ECOFIN and Justice, Home Affairs, and Civil Protection”, Luxembourg, 16 October

Council (2001z), “Final Report on the first evaluation exercise-mutual legal assistance in criminal matters (2001/C 216/02)”, *Official Journal of the European Communities*, 28 May

Council (2002), “Council Framework Decision 2002/475/JHA on combating terrorism”, *Official Journal of the European Communities*, 13 June

Council (2002a), “Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States”, 13 June

Council (2002b), “Council Decision on setting up Eurojust with a view to reinforcing the fight against serious crime”, *Official Journal of the European Communities*, 28 February

Council (2002c), “Council meeting on Justice, Home Affairs, and Civil Protection”, Brussels, 28 February

Council (2002d), “Presidency Conclusions of the Barcelona European Council”, Barcelona, 15 and 16 March

Council (2002e), “Council meeting on Justice, Home Affairs, and Civil Protection”, Luxembourg, 25 and 26 April

Council (2002f), “Council meeting on Justice, Home Affairs, and Civil Protection”, Luxembourg, 13 June

Council (2002g), “Seville European Council. Presidency Conclusions”, Seville, 21 and 22 June

Council (2002h), “Council meeting on Justice, Home Affairs and Civil Protection”, Luxembourg, 14 and 15 October

Council (2002i), “Brussels European Council”, Brussels, 24 and 25 October

Council (2002j), “Council meeting on Justice and Home Affairs”, Brussels, 28 and 29 November

Council (2002h), “Presidency Conclusions of the Copenhagen European Council”, Copenhagen, 12 and 13 December

Council (2002i), “Council meeting on Justice and Home Affairs”, Brussels, 19 December

Council (2002j), “Council Common Position 2002/402/CFSP concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP”, *Official Journal of the European Communities*, 27 May 2002

Council (2002k), “Draft Recommendation of the Management Board to the Council on the future of the Counter-Terrorism Task Force”, Brussels, 8 November

Council (2002l), “Initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on the execution in the European Union of confiscation orders”, *Official Journal of the European Communities*, 2 August

Council (2002m), “Council Decision 2003/48/JHA 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”, *Official Journal of the European Communities*, 19 December

Council (2002n), “Regulation (EC) 2320/2002 establishing common rules in the field of civil aviation security”, *Official Journal of the European Communities*, 16 December

Council (2002o), “Regulation (EC) 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan”, *Official Journal of the European Communities*, 27 May 2002

Council (2002p), “Council Framework Decision 2002/465/JHA on joint investigation teams”, *Official Journal of the European Communities*, 20 June

Council (2002q), “Council Decision 2002/996/JHA establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism”, *Official Journal of the European communities*, 28 November

Council (2003), “Council Framework Decision on the execution in the European Union of orders freezing property or evidence”, 22 July

Council (2003a), “The priorities of the Hellenic Presidency. Our Europe. Sharing the Future in a Community of Values”, Hellenic Presidency of the European Union

Council (2003b), “Extraordinary European Council”, Brussels, 17 February

Council (2003c), “Council meeting on Justice and Home Affairs”, Brussels, 27 and 28 February

Council (2003d), “Presidency Conclusions of the Brussels European Council”, Brussels, 20 and 21 March

Council (2003e), “Presidency’s Statatement on Iraq”, Athens, 16 April

Council (2003f), “Athens Declaration”, Athens, 16 April

Council (2003g), “Informal European Council discusses the convention”, Athens, 16 April

Council (2003h), “Council meeting on Justice and Home Affairs”, Brussels, 8 May

Council (2003i), “Council meeting on Justice and Home Affairs”, Luxembourg, 5 and 6 June

Council (2003j), “Presidency conclusion of the Thessaloniki European Council”, Thessaloniki, 19 and 20 June

Council (2003k), “Programme of the Italian Presidency of the Council of the European Union. 1 July to 31 December 2003”, Brussels, 27 June

Council (2003l), “Council meeting on Justice and Home Affairs”, Brussels, 2 and 3 October

Council (2003m), “Presidency Conclusions of the Brussels European Council”, Brussels, 16 and 17 October

Council (2003n), “Council meeting on Justice and Home Affairs”, Brussels, 6 November

Council (2003o), “Council meeting on Justice and Home Affairs”, Brussels, 27 and 28 November

Council (2003p), “Presidency Conclusion of the Brussels European Council”, Brussels, 12 and 13 December

Council (2003o), “A secure Europe in a better world. European Security Strategy”, Brussels, 12 December

Council (2003p), “Council Resolution on a Strategy for customs cooperation”, *Official Journal of the European Union*, 2 October

Council (2003q), “Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence, 22 July

Council (2003r), “Common Position 2003/140/CFSP concerning exceptions to the restrictive measures imposed by Common Position 2002/402/CFSP, *Official Journal of the European Union*, 27 February 2003

Council (2003s), “Common Position 2003/402/CFSP on the application of specific measures to combat terrorism”, *Official Journal of the European Communities*, June 5

Council (2003t), “Council resolution (2003/C 247/01) on a strategy for customs cooperation”, *Official Journal of the European Union*, 2 October

Council (2003u), “A Secure Europe in a better world. European Security Strategy”, The European Union Institute for Security Studies, France: L’Alenconnaise d’Impressions

Council (2004), “Council Decision adopting the Council’s Rules of Procedure”, *Official Journal of the European Union*, 22 March 2004

Council (2004a), “Europeans-Working together. Programme of the Irish Presidency of the European Union. January-June 2004.”

Council (2004b), “Council meeting on Justice and Home Affairs”, Brussels, 19 February

Council (2004c), “Extraordinary Council meeting on Justice and Home Affairs”, Brussels, 19 March

Council (2004d), “Presidency Conclusions of the Brussels European Council”, Brussels, 25 and 26 March

Council (2004e), “Declaration on combating terrorism”, Brussels, 25 March

Council (2004f), “Council meeting on Justice and Home Affairs”, Brussels, 30 March

Council (2004g), “Council meeting on Justice and Home Affairs”, Luxembourg, 29 April

Council (2004h), “Council meeting on Justice and Home Affairs”, Luxembourg, 8 June

Council (2004i), “Presidency Conclusion of the Brussels European Council”, Brussels, 17 and 18 June

Council (2004j), “EU Strategic Partnership with the Mediterranean and the Middle East, Brussels, 8 June

Council (2004k), “Council meeting of Heads of State or Government”, Brussels, 29 June

Council (2004l), “The Dutch Presidency of the Council of the European Union. Priorities”

Council (2004m), “Press Release. Council Meeting on Justice and Home Affairs”, Brussels, 19 July

Council (2004n), “Press Release. Council Meeting on Justice and Home Affairs”, Luxembourg, 25 and 26 October

Council (2004o), “Brussels European Council. Presidency Conclusions”, Brussels, 4 and 5 November

Council (2004p), “Press Release. Council meeting on Justice and Home Affairs”, Brussels, 19 November

Council (2004q), “Press Release. Council meeting on Justice and Home Affairs”, Brussels, 2 December

Council (2004r), “Brussels European Council. Presidency Conclusions”, Brussels, 16 and 17 December

Council (2004o), “First annual Presidency report (2003) to the Council on the implementation of the joint Programme of the Council and the Commission, of 20 December 2002, to improve cooperation in the European Union for preventing and limiting the consequences of chemical, biological, radiological or nuclear terrorist threats”, Brussels, 22 January

Council (2004p), “Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.”, *Official Journal of the European Union*, 26 October

Council (2004q), “Council Directive 2004/80/EC relating to compensation to crime victims”, 29 April

Council (2004r), “Conceptual Framework on the ESDP dimension of the fight against terrorism”, Brussels, 18 November

Council (2004s), “Council Regulation (EC) No 871/2004 concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism”, 29 April

Council (2004t), “Council Decision 2004/512/EC establishing the Visa Information System (VIS)”, *Official Journal of the European Union*, 8 June

Council (2004u), “Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States *Official Journal of the European Union*, 13 December

Council (2004v), “Council Meeting on Economic and Financial Affairs”, Brussels, 5 July

Council (2004w), “Council Meeting on Economic and Financial Affairs”, Brussels, 16 November

Council (2004x), “Council Meeting on Economic and Financial Affairs”, Brussels, 7 December

Council (2004y), “Co-decision guide”, 29 April

Council (2005), “Communication from the Commission to the Council and the European Parliament. The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice”, Brussels, 10 May

Council (2005a), “Luxembourg Presidency. Priorities in Justice and Home Affairs”, in http://www.eu2005.lu/en/presidence/priorities_et_pgm/priorites/index.html#general

Council (2005b), “Press Release. Council Meeting on Justice and Home Affairs”, Brussels, 24 February

Council (2005c), “European Council Brussels. Presidency Conclusions”, Brussels, 22 and 23 March

Council (2005d), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 14 April

Council (2005e), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 2 and 3 June

Council (2005f), “Brussels European Council. Presidency Conclusions”, Brussels, 16 and 17 June

Council (2005g), “UK Presidency. Justice and Home Affairs. Presidency Priorities”, in <http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1115138956534>

Council (2005h), “Priorities for the UK Presidency of the EU 2005”, in <http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1107293521089>

Council (2005i), “Press Release. Extraordinary Council meeting on Justice and Home Affairs”, Brussels, 13 July

Council (2005j), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 12 October

Council, (2005k), “Press Release. Council meeting on Justice and Home Affairs”, Brussels, 1 and 2 December

Council (2005l), “Brussels European Council. Presidency Conclusions”, Brussels, 15 and 16 December

Council (2005m), “Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing”, *Official Journal of the European Union*, 26 October

Council (2005n), “Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences”, *Official Journal of the European Union*, 20 September

Council (2005o), “Regulation (EC) No 1889/2005 of the European Parliament and of the Council on controls of cash entering or leaving the Community”, *Official Journal of the European Union*, 26 October

Council (2005p), “Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties”, *Official Journal of the European Union*, 24 February

Council (2005q), “European Union-Canada Video Conference Summit. Joint Statement”, Brussels, 24 November

Council (2005r), “Council Framework Decision 2005/222/JHA on attacks against information systems”, *Official Journal of the European Union*, 24 February

Council (2005s), “Council Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism” 24 February

Council (2005t), “Council Common Position 2005/69/JHA on exchanging certain data with Interpol, *Official Journal of the European Union*, 24 January

Council (2005u), “Council Decision 2005/876/JHA on the exchange of information extracted from the criminal record”, *Official Journal of the European Union*, 21 November

Council (2005v), “Council meeting on Economic and Financial Affairs”, Luxembourg, 7 June

Council (2005w), “The European Union Counter-Terrorism Strategy”, 14469/4/05 REV 4, Brussels, 30 November

Council (2006), “Council Decision adopting the Council’s Rules of Procedure”, *Official Journal of the European Union*, 15 September 2006

Council (2006a), “Austria Presidency Priorities in Justice and Home Affairs”, in http://www.eu2006.at/en/Policy_Areas/Justice_and_Home_Affairs/index.html

Council (2006b), “Press Release. Council meeting on Justice and Home Affairs”, Brussels, 21 February

Council (2006c), “Brussels European Council. Presidency Conclusions”, Brussels, 22 and 23 March

Council (2006d), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 27 and 28 April

Council (2006e), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 1 and 2 June

Council (2006f), “Brussels European Council. Presidency Conclusions”, Brussels, 15 and 16 June

Council (2006g), “Preliminary Agenda for Finland’s Presidency of the EU”, Finland, Cabinet Committee on European Union Affairs, 24 May

Council (2006h), “Finland Presidency Priorities on EU. Press release, General Affairs and External Relations, Justice and Home Affairs, Competitiveness (Internal market, Industry and Research). The objective for Finland’s EU Presidency: a transparent and effective Union”, 30 June

Council (2006i), “Press Release. Council Meeting on Justice and Home Affairs”, Brussels, 24 July

Council (2006j), “Press Release. Council Meeting on Justice and Home Affairs”, Luxembourg, 5 and 6 October

Council (2006k), “Press Release. Council Meeting on Justice and Home Affairs”, Brussels, 4 and 5 December

Council (2006l), “Brussels European Council. Presidency Conclusions”, Brussels, 14 and 15 December

Council (2006m), “Directive 2006/24/EC of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC”, *Official Journal of the European Union*, 15 March

Council (2006n), “Regulation (EC) No 1987/2006 of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen Information System (SIS II)”, *Official Journal of the European Union*, 20 December

Council (2006o), “Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union”, *Official Journal of the European Union*, 18 December

Council (2007), “Revised Global SIS II schedule in light of the SISone4ALL implementation, Brussels, 27 January

Council (2007a), “Europe-succeeding together. Presidency Programme 1 January to 30 June 2007”

Council (2007b), “Press Release. Council Meeting on Justice and Home Affairs”, Brussels, 15 February

Council (2007c), “Brussels European Council. Presidency Conclusions”, 8 and 9 March

Council (2007d), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 19 and 20 April

Council (2007e), “Press Release. Council meeting on Justice and Home Affairs”, Luxembourg, 12 and 13 June

Council (2007f), “Brussels European Council. Presidency Conclusions”, Brussels, 21 and 22 June

Council (2007g), “Council Decision 2007/124/EC, Euratom establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks”, *Official Journal of the European Union*, 12 February

Council (2007h), “Council Decision establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme Prevention of and Fight against Crime”; *Official Journal of the European Union*, 12 February

Council (2007i), “Council Decision (2007/162/EC, Euratom) establishing a Civil Protection Financial Instrument”, *Official Journal of the European Union*, 5 March

Council (2007j), “Council Recommendation (2007/562/EC) concerning sharing of information on terrorist kidnappings”, *Official Journal of the European Union*, 12 June

Council and Commission (2002), “Decision adopted by written procedure. Council and Commission adopt a joint Programme on preventing and limiting the consequences of chemical, biological, radiological or nuclear terrorist threats”, 15861/02 (Presse 413), Brussels, 20 December

Council of Europe (2005), “Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism. Explanatory report. CM(2005)35addfinalE”, 925 meeting, 3 May

Council of Bars and Law Societies of Europe (2004), “CCBE response to the Commission proposal for a European Evidence Warrant”, Brussels, December

de Vries, Gijs (2006), “Speech on the European Union and the fight against terrorism at the seminar of the Centre for European Reform” Brussels, 19 January

The Economist (2003), “Snoring while a superstate emerges? The European Union's powers are quietly but steadily growing”, 10 May

EPP-ED (2004), “European People’s Party. Action Programme 2004-2009”, 4-5 February

EPP-ED (2004a), “Theme of the day of 28 May 2004. The EU financial sector: Financial Service Action Plan (1999-2004)”

Eurojust website, http://eurojust.europa.eu/official_documents/Agreements/04%20Europol-EJ%20agreement.pdf

Eurojust website1, http://eurojust.europa.eu/official_documents/Agreements/061106_EJ-US_co-operation_agreement.pdf

European Banking Federation (2005), “Press Release. Banks generally welcome Council Agreement on 3rd Anti-Money Laundering Directive – although with some reservations”, 7 June

European Banking Industry Committee (2004), “Comments on the proposal for a new EU Directive on Money Laundering”, Enclosure to letter C1231, Brussels, 23 September

European Commission website, http://ec.europa.eu/index_en.htm

European Scrutiny Committee (2002), “European Arrest Warrant”, House of Commons, Press Notice No. 11 of Session 2001-02, 1 February

European Report (2001), “Justice and Home Affairs: Italy blocks deal on EU Arrest Warrant”, 8 December

Europol website, <http://www.europol.europa.eu/legal/agreements/Agreements/16191.pdf>

Europol (1999), “Council Act (1999/C 25/01) adopting the Financial Regulation applicable to the budget of Europol”, *Official Journal of the European Communities*, 18 January

Europol (2000), “Annual Report 2000”

Europol (2001), “Annual Report 2001”

Europol (2002), “Press Release: Europol and the Czech Republic sign a cooperation agreement in combating organized crime”, The Hague, 5 March

Europol (2002a), “Europol Supplementary and Amending Budget for 2002 (2002/C 74/01). New counter-terrorism activities. Revised in the light of the outcome of the meeting of the

Management Board on 11 and 12 December 2001”, *Official Journal of the European Communities*, 23 March

European Voice (2004), “Commission prepares plans to curb large cash transactions”, 3 June

European Voice (2005), “Evidence warrant clash beckons”, 17 March

European Voice (2006), “Vienna gives evidence warrant a last chance”, 1 June

European Union (2003), “Agreement on mutual legal assistance between the European Union and the United States of America”, *Official Journal of the European Union*, 25 June

EU Press Release (2001), “Europeans and the international crisis”, IP/01/1735, Brussels, 4 December

EU Press Release (2001a), “G7+ agreed plan to coordinate responses to bioterrorism globally”, IP/01/1553, Brussels, 8 November

EU Press Release (2001b), “Statement by President Prodi on the attacks against the United States”, IP/01/1265, Brussels, 12 September

EU Press Release (2001c), “EU Response to 11 September. European Commission action. Briefing”, MEMO/01/375, Brussels, 16 November

EU Press Release (2001d), “Money laundering: Commission welcomes Council adoption of new Directive”, IP/01/1608, Brussels, 19 November

EU Press Release (2001e), “Terrorist attacks: emergency measures for air transport”, IP/01/1399, Brussels, 10 October

EU Press Release (2001f), “Towards new EU rules on aviation security following the attacks”, IP/01/1397, Brussels, 10 October

EU Press Release (2001g), “Joint Declaration EU on Terror Attacks in US by the Heads of State and Government of the European Union, the President of the European Parliament, the President of the European Commission, and the High Representative for the Common Foreign and Security Policy”, DOC/01/12, 14 September

EU Press Release (2001h), “Europe must have common instruments to tackle terrorism”, IP/01/1284, Brussels, 19 September

EU Press Release (2004), “European Commission action paper in response to the terrorist attacks on Madrid”, MEMO/04/66, Brussels, 18 March

EU Press Release (2004a), “Existing legislative instruments relevant to the fight against terrorism, and draft measure already on the Council Table”, MEMO/04/63, Brussels, 18 March

EU Press Release (2006), “Strengthening freedom, security and justice in the European Union: report on the implementation of The Hague Programme for 2005” (the so-called “the Hague scoreboard “plus”), MEMO/06/252, Brussels, 28 June

Fair Finance Watch (2004), “Parmalat and offshore shenanigans”, 16 February

- Falkner, Gerda, (1998), *EU Social Policy in the 1990s: Towards a Corporatist Policy Community*, London: Routledge
- FATF (1996), “The Forty Recommendations of the financial action task force on money laundering”, FATF-VII, Annex I, 28 June
- FATF (2003), “The Forty Recommendations”, 20 June (incorporating the amendments of 22 October 2004)
- Flash Eurobarometer (2001), “International crisis”, No. 114, EOS Gallup Europe, 8 November
- Flash Eurobarometer (2004), “European Elections 2004 Barometer”, No. 161, EOS Gallup Europe, July
- Flash Eurobarometer (2004a), “Post European elections 2004 survey (21/06/2004-30/06/2004)”, No. 162, EOS Gallup Europe, July
- Frattini, Franco (2006), “Internal Security in the EU - The fight against terrorism and the role of National parliaments”, SPEECH/06/387, The Hague, 20 June
- Freedom, Security and Justice website, http://ec.europa.eu/justice_home/index.htm
- German Presidency website, http://www.eu2007.de/en/The_Council_Presidency/What_is_the_Presidency/index.html
- German Presidency website1, http://www.eu2007.de/en/The_Council_Presidency/informal_meetings/index.html
- The Guardian (2001), “Invisible rights. Anti-terrorist laws can threaten liberty”, 19 September
- The Guardian (2001a), “Blunkett tells EU to 'get on with it'”, 20 September
- The Guardian (2001b), “The financial war on terrorism”, November 8
- The Guardian (2001c), “Crisis is reshaping Europe as a vital force in the world. America's allies must absolve it from the need for unilateral action” Hugo Young, September 18
- The Guardian (2004), “Parmalat. All you need to know about the collapse of the Italian dairy giant”, October 6
- The Guardian (2004a), “Prosecutors want trial for 32 over Parmalat scandal”, 26 May
- The Guardian (2004b), “Capitalism is a danger to itself. Only a new emphasis on ethics can restore confidence in the system”, Evelyn de Rothschild, 13 July
- The Herald Tribune (2004), “Diary giant’s U.S. unit files for bankruptcy: U.S aides seek clues in Parma”, 25 February
- HM Treasury (2005), “EU regulations on wire transfers. Consultation document”, Norwich: The Licensing Division
- Hix, Simon (1998), “The Study of the European Union: ‘The New Governance’, Agenda and Its Rival”, *Journal of European Public Policy*, pp 38-65

- House of Commons (2006), "Report of the Official Account of the Bombings in London on 7th July 2005", London: The Stationary Office
- Jakobi, Stephen (2001), "Open letter to the UK Prime Minister. Civil Rights and the Currency Emergency", Fair Trails Abroad, 26 September
- Jansen, Klaus (2001), "Fighting Terror in Germany", Federal Criminal Investigation Agency, Washington: American Institute for Contemporary German Studies, John Hopkins University
- Javier Solana (2004), "Three ways for Europe to prevail against the terrorists", in the Financial Times, 25 March
- Jonathan Djanogly (2005), "Europe - European Evidence Warrant", 1 December
- JUSTICE (2004), "JUSTICE response to the Home Office Consultation on the Proposal for a European Evidence Warrant", London, March (updated July)
- Kingdon, John W. (1995), *Agendas, Alternatives, and Public Policies*, 2nd Ed. Boston: Little Brown
- LaFalce, John (2001), "Hearing on the Administration's National Money Laundering Strategy for 2001 – Senate Banking Committee. Prepared Testimony of the Honorable John LaFalce (D-NY) Member of Congress", 26 September
- Lipson, Michael (2007), "A Garbage Can Model of UN Peacekeeping", *Global Governance: A review of multilateralism and international organizations*, Vol. 13
- Marks, Gary (1992), "Structural Policy in the European Community", in A. Sbragia, *Euro-Politics: Institutions and Policy-Making in the New European Community*, Washington DC: The Brookings Institution
- Müller-Wille, Björn (2004) "For our eyes only? Shaping an intelligence community within the EU", *Occasional Papers*, No. 50, pp. 1-51, Paris: European Union Institute for Security Studies
- The New York Times (2001), "Italian Leader Drops Opposition To Europe-Wide Arrest Warrants", 12 December
- The New York Times (2001a), "Roadblocks cited in efforts to trace bin Laden's money", 20 September
- The New York Times (2004), "Court Rejects Italy's bid for Parmalat documents", 26 April
- Nielson, Poul (2001), "Political and security situation in Afghanistan: the opportunities for and the obstacles to peace and stability", Speech/01/644, Afghanistan Reconstruction Steering Group meeting, Brussels, 20 December 2001
- Nugent, Neill (2006), *The governments and politics of the European Union*, New York: Palgrave
- Occhipinti, John D. (2003), *The politics of EU police cooperation. Toward a European FBI*, Boulder, Colorado: Lynne Rienner
- Parliament News Report (2001), "Renewed calls for a European Public Prosecutor", 7 November

Parliament News Report (2001a), “Fight against terrorism a key component of CFSP”, 11 October

Patten, Chris (2001), “Building a better future for Afghanistan”, Speech/01/643, The Afghanistan Reconstruction Steering Group Meeting, Brussels, 20 December

Patten, Chris (2001a), “Situation in the Middle East”, Speech/01/627, European Parliament, Plenary Session, Strasbourg, 12 December

Parliament website <http://www.europarl.europa.eu/elections2004/ep-election/sites/en/results1306/graphical.html>

Parliament (2001), “Report on the Commission proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 – C5-0453/2001 – 2001/0215(CNS))”, FINAL A5-0397/2001, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, 14 November

Parliament (2001a), “European Parliament legislative resolution on the joint text approved by the Conciliation Committee for a European Parliament and Council directive amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (PE-CONS 3654/2001 - C5-0496/2001 - 1999/0152(COD))”, 13 November

Parliament (2002), “Report on the proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the Member States (14867/1/01. C5-0675/2001. 2001/0215(CNS)) (Renewed consultations)”, FINAL A5-0003/2002, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, 9 January

Parliament (2004), “Report on the proposal for a Council framework decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters (COM(2003) 688 – C5-0609/2003 – 2003/0270(CNS))”, FINAL A5-0214/2004, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, 22 March

Parliament (2005), “Report on the proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004)0448 – C6-0143/2004 – 2004/0137(COD))” FINAL A6-0137/2005, Committee on Civil Liberties, Justice and Home Affairs, 3 May

Parliament (2005a), “European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (COM(2004)0448 - C6-0143/2004 - 2004/0137(COD))”, 26 May

Plachta, Michael (2003), “European Arrest Warrant: Revolution in Extradition?”, *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 11 No. 2, pp. 178–194

Peters, Guy (2001), “Agenda setting in the European Union”, in J. Richardson, *European Union: Power and Policymaking*, London: Routledge.

- Pierson and Leibfried, Stephan (1995), "Multitiered Institutions and the Making of Social Policy", in P. Pierson and S. Leibfried, *European Social Policy: Between Fragmentation and Integration*, Washington DC: The Brookings Institution
- Presidency of Ireland (2004), "Press Release. Mc Dowell review a successful informal Justice and Home Affairs Council", 23 January
- Princen, Sebastiaan and Mark Rhinard (2006), "Crashing and creeping: agenda-setting dynamics in the European Union", *Journal of European Public Policy*, Volume 13, Number 7, pp. 1119-1132
- Princen, Sebastiaan (2007), "Agenda-setting in the European Union: a theoretical exploration and agenda for research", *Journal of European Public Policy*, Volume 14, Number 7, pp. 21–38
- Prodi, Romano (2001), "Time for real solidarity", Speech/01/484 to the European Parliament, Strasbourg, 24 October
- Prodi, Romano (2001a), "An enlarged and more united Europe, a global player. Challenges and opportunities in the new century to the College of Europe", Speech/01/528, Bruges, 12 November
- Prodi, Romano (2001b), "Preparation of Ghent European Council. Press Conference", Speech/01/472, Brussels, 18 October
- PES (2004), "The Parmalat affair: European Socialists call for the protection of all stakeholders", 12 February
- PES (2004a), "European activism would be wrong! Gerhard Schmid in the aftermath of the Madrid bombing: 'Member States should do their homework instead of concocting new institutions or powers.'" 19 March
- Reuters (2001), "Brown urges 'terrorist money' clampdown", 19 September
- Rhodes and Mazey, Sonia (1995), "Introduction: Integration in Theoretical Perspective", in C. Rhodes and S. Mazey, *The State of the Union Vol III, Building a European Polity?*, Harlow: Longman
- Rosenau and Czempiel, Ernst-Otto (1992), *Governance Without Government: Order and Change in World Politics*, Cambridge University Press
- Roth, Kenneth (2001), "Open Letter to the President of the European Union", Human Rights Watch, 26 September
- Royal Danish Ministry of Foreign Affairs (2002), "One Europe. Programme of the Danish Presidency of the EU July to December 2002", Denmark: Phønix-Trykkeriet as
- Standard Eurobarometer (2001), "Report Number 56", Directorate-General Press and Communication, Brussels, April 2002 (release), October to November 2001 (fieldwork)
- Standard Eurobarometer (2000), "Report Number 54", Directorate-General Press and Communication, Brussels, April 2001 (release), November to December 2000 (fieldwork)
- Standard Eurobarometer (2004), "Joint full report of the Eurobarometer 61. Spring 2004", Volume 1, July (publication), February to March (fieldwork)

- Statewatch News online (2001), “EU to adopt new laws on terrorism”, 14 September
- Statewatch News online (2001a), “EU anti-terrorism action plan: operational measures”, Statewatch post 11.9.01 analyses: No 7, 14 October
- Statewatch News online (2001b), “Proposed Framework Decision on European arrest warrants”, Statewatch post 11.9.01 analyses: No 3, October
- Statewatch News online (2002), “Irish government not consulted on European arrest warrant proposal”, 2 April
- Statewatch News Online (2002a), “EU proposal on European arrest warrant: Swedish parliament votes in favour”, 11 March
- Statewatch News Online (2004), “Statewatch briefing on the European Evidence Warrant to the European Parliament”, March
- Single European Act, *Official Journal of the European Union*, 29 June 1987
- Stout, Karen and Byron Stevens (2000), “The Case of the Failed Diversity Rule: A Multiple Streams Analysis”, *Educational Evaluation and Policy Analysis*, Vol. 22, No. 4., pp. 341-355.
- Tallberg, Jonas (2003), “The agenda-shaping powers of the EU Council Presidency”, *Journal of European Public Policy*, Vol. 10, No. 1, pp. 1–19
- Timmermans, Arco (2001), “Arenas as Institutional Sites for Policymaking: Patterns and Effects in Comparative Perspective”, *Journal of Comparative Policy Analysis: Research and Practice*, Vol. 3, pp. 311–337
- Treaty on the European Union http://europa.eu/abc/treaties/index_en.htm
- Treaty of the European Community http://europa.eu/abc/treaties/index_en.htm
- Treaty of Amsterdam http://europa.eu/abc/treaties/index_en.htm
- US Department of State (2004), “Press Release on the US-EU Declaration on Combating Terrorism”, Office of the Press Secretary, Dromoland Castle, Shannon, Ireland 26 June
- United Nations (1999), “Resolution 1244(1999) adopted by the Security Council at its 4011th meeting”, 10 June
- United Nations (2004), “First report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities” S/2004/769, 25 August
- United Nations (2005), “International Convention for the Suppression of Acts of Nuclear Terrorism”, New York, 13 April
- UN Press Release (2001), “Security Council condemns, ‘in strongest terms’, terrorist attacks on the United States”, Security Council 4370th Meeting, Press Release SC/7143, 12 September
- Vitorino, Antonio (2001), “Creation of the European Area of Freedom, Security and Justice”, European Policy Centre, 27 September

Zahariadis, Nikolaos (1998), "Comparing three lenses of policy choice", *Policy Studies Journal*, Vol. 26, No. 3, pp. 434-448

Zahariadis, Nikolaos (2007), "Ambiguity and Choice in European Public Policy", Paper prepared for presentation at the biannual meeting of the European Union Studies Association in Montreal, Canada, May 17-19

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