

**‘THE CONSTRUCTION OF A EUROPEAN INTEREST IN
FOREIGN POLICY’: THE AREA OF FREEDOM,
SECURITY AND JUSTICE AND EU-US COUNTER-
TERRORISM RELATIONS**

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Abstract:

The EU Foreign Policy has experienced significant developments since the Maastricht Treaty (1992). At the same time, it is still perceived as the bastion of intergovernmentalism due to the lack of significant transfer of national sovereignty. In contrast, while acknowledging the continued importance of member states, this article argues that this is only one side of the political process. The other side demonstrates that there are first signs of an emerging ‘European’ interest. This implies that EU Foreign Policy is becoming increasingly supranationalised despite the continued importance of member states. The legal construction of the Area of Freedom, Security and Justice provides a good case in point. This can be analysed within the case of EU-US counter-terrorism relations. Since September 11, there have been significant developments that have strengthened the role of the EU as a foreign policy actor with the USA.

Keywords: European Foreign Policy; European Interest; Area of Freedom, Security and Justice; Counter-terrorism; Transatlantic relations; Constructivism.

Between National Sovereignty and Supranationalisation

The foreign policy of the European Union (EU) with the United States is of key importance to establish whether the EU can become an effective international actor. The EU-US relationship has been marked by certain ambivalence throughout the years. The beginning of the European project was already inspired by American ideals such as liberal democracy and the free-market. These ideals translated into efforts to construct a European Common Market in order to construct greater power on the international scene. Thus, the desire of European elites to counter-weight American and Russian power has also been a driving factor in European integration (Smith, 1984; Smith 1998). These two distinct, though complementary, dynamics produced what has been called a ‘competitive cooperation’ (Smith, 1998) in their economic, political and security relationship.

However, European Foreign Policy (EFP) is still perceived by many analysts to be a bastion of ‘intergovernmentalism’, where the different national member states play the key role. This would logically deny the EU a crucial role in European-American relations. The reasoning for this most relies on an ‘intergovernmental logic’:

‘In areas of key importance to the national interest, nations prefer the certainty, or the self-controlled uncertainty, of national self-reliance, to the uncontrolled uncertainty of [integration] the untested blender.’ (Hoffmann, 1966, p.882)

This article will demonstrate that this argument for the survival of intergovernmentalism in EU Foreign Policy is only one side of the coin. In this context, Christopher Hill’s (2003) definition of foreign policy will be employed: ‘the sum of official external relations conducted by an independent actor (usually a state) in international relations.’ There have been some very significant developments other than the pooling of national sovereignty, which demonstrate a ‘supranationalisation’ of EU Foreign Policy, even in its most significant external relationship with the USA. Firstly, the construction of an Area of Freedom, Security and Justice (AFSJ) has pooled a significant amount of national sovereignty at the level of the EU. As a side effect, however, it has also constructed a ‘European’ interest in foreign policy related to the AFSJ. Consequently, the main argument of this article is that despite a certain degree of persistence of intergovernmentalism in EU Foreign Policy, a parallel process of supranationalisation has been set in motion – the construction of a ‘European’ interest. This process is visible in the EU-US counter-terrorism relationship, which has received primary significance after 9/11.

The article will proceed in four stages. The first section will provide a brief outline on the debate amongst scholars of European Foreign Policy, and will establish the analytical framework used in this article which draws on constructivist International Relations literature. The second section will examine how the analysis of the AFSJ can help to identify a ‘European interest’ in EU Foreign Policy. The third section will analyse the European interest within the case study of EU-US counter-terrorism relations. Finally, the article will conclude that the construction of a European interest is discernable in EU-US counter-terrorism relations, which indicates a larger process of a degree of supranationalisation in European Foreign Policy.

1. Constructing a ‘European’ interest in European Foreign Policy

It is important to analyse the concept of ‘interests’, whether national or European, in the significant process of constructing a European Foreign Policy (EFP) which the European Union has embarked upon since the 1970s with European Political Cooperation (EPC), and more specifically since the Treaty of Maastricht in 1992 which brought foreign policy under the umbrella of the treaties. The scholarly debate over interests in EFP falls within the dispute between (a) structuralist or (b)

individualist scholars in their understanding on the causes for foreign policy change (Carlsnaes, 2004, pp.503-04).

This article suggests that the existence of national interests, or rather the absence of a ‘European’ interest, has been seen as a key obstacle to the emergence of a truly European Foreign Policy. Stanley Hoffmann (1966) forcefully underlined that nations would prefer to keep control of their interests rather than integrating such significant matters. The so-called ‘logic of diversity’ would put a break on European integration in ‘high politics’ security areas. Consequently, ultimately, national interests would prevail over a European interest, if one were to ever exist. The problematique of ‘the national interest’ has puzzled both individualist and structuralist EFP approaches.

Firstly, individualist scholars of the ‘European Union-as-Actor’ approach, concentrate on the impact of Europe on world politics (Bretherton and Vogler, 2006; H. Smith, 2002; K.E. Smith, 2003; Krahnmann, 2003). This approach aims to identify what kind of an actor the EU is on the global level, thereby relating this research strand back to the conception by Duchêne (1973) of Europe as a civilian power. The latter stresses the ‘soft power’ exercised by the EU, which extend its internal virtues and values through politico-economic (Rosecrance, 1998) and normative means (Manners, 2002; Nicolaïdis and Howse, 2003). This approach has significantly contributed to the discipline, particularly to the understanding of the EU’s role in global politics. While scholars may not always find a coherent policy outcome in the EFP, it would be empirically careless to neglect the role of the EU on the international stage.

However, understandably, the ‘Europe-as-Actor approach’ defines the problem of the absence of a ‘European’ interest away by assuming that, despite the fact that there are numerous national interests, Europe does act like an actor on the international stage in certain settings and under certain conditions. While this is empirically observable, it does not answer the question as to whether there truly is a ‘European foreign policy’ based on a common interest, or whether there even is a process underway to create one. Policy coherence, for understandable reasons, is not a key determinant in this particular approach – the fact that Europe acts matters more. ‘European’ becomes European by definition – because Europe acts, it is an actor. Consequently, it sidesteps the legal (and realist) understanding that only states or entities with a legal personality can be an actor in the international system. However, in practice, the legal basis for external relations activities in the name of the ‘EU’ is ambiguous. While the defunct Constitutional Treaty (2004) and its successor, the ‘Reform Treaty’ (2007), create the legal competence for foreign policy actions

through the explicit construction of a legal personality for the EU, all previous treaties are less empowering. There is an absence of explicit legal powers in external relations treaty-making. Only the case law of the European Court of Justice in the 1976 Kramer case created this competence under certain conditions directly related to the competences of the European Union (Bretherton and Vogler, 2006). Consequently, the construction of direct competences for the European Union is a *conditio sine qua non* in the establishment of the European Union as an actor on the international scene. Only through this legal construction of, for instance, the single market, does the EU (or in this case rather the EC) become an actor. Thus, the EU is not an actor because it acts, but because it establishes internal competences through the pooling of sovereignty in that area. Consequently, this article, in agreement with this, will use this logical reasoning henceforth.

Secondly, structuralist scholars provide an explanation for member states’ behaviour as actors. These actors are located in a complex set of interdependencies, institutions and structures (Nutall, 1992; Ginsberg, 2001; Smith, 2004). Member states’ behaviour is altered, according to these scholars, as a result of operating in a European institutional context. Institutional structures can include supranational institutions like the European Commission or the Council Secretariat (White, 2004). The merits of this approach derive from its empirical observation that member states – though still very significant – are not the only important actors any more. International institutions, especially European institutions, are increasingly gaining in importance. Bruter (1999) suggests that European diplomacy increasingly is not confined to a state structure any longer – the external delegations of the European Commission work like diplomatic missions. Current empirical trends have strengthened these developments; the Constitutional Treaty, as well as the ‘Reform Treaty’, even provide for an establishment of a European Foreign Service incorporating these delegations under a European Foreign Minister. The ‘Reform Treaty’ changes only the name, but not the substance, to a ‘High Representative’. As a consequence, member states could be constrained by institutional structures, and in addition, may even change their ways voluntarily.

Ergo, structuralist scholars examine how member states’ behaviour is altered through European institutions and structures. Again, the determining factor for this approach is behaviour – that of member states – and not interests. However, this approach opens avenues for future research into interests. If European institutions and structures altered not just the behaviour of member states, but also the interests of member states? If these structures changed member states’ interests in such a way that the observance of distinctly different national interests were to decrease, while at the same time it was possible to increasingly observe ‘European’ interests?

This article will use such a constructivist structuralist framework. EU member states are located in a complex set of interdependencies, institutions and structures. However, rather than analysing member states’ behaviour, this article will analyse and scrutinise the concept of the national interest vs. the European interest within the institutional structures provided by the EU. The article will draw on constructivist International Relations scholars (Katzenstein, 1996; Finnemore, 1996a, 1996b; Finnemore and Sikkink, 1998). In their view, one cannot just assume that interests are fixed and stable – though empirically they may be at certain times; this has to be empirically validated. These interests, like everything else in the world of international relations, are socially constructed. Katzenstein (1996) argues that the cultural and institutional elements of states’ environments shape national (security) interests and thus their respective policies. Norms affect the way in which states perceive their social identity and thus their interests.

Consequently, applied to the EU, interest formation needs to be seen as endogenous of institutionalised co-operation; thus, partly resulting from the co-operation itself. Member states do not just use European institutions in the pursuit of their interests, but their interests are influenced and, in fact, reconstituted by them through norms. The latter, which form a standard of appropriate behaviour, are established in the social interaction of EU member states in the institutionalised structures of the EU and in the interaction with those structures: (1) the European Commission, (2) the Council of Ministers and the European Council, (3) the European Parliament, and (4) the European Court of Justice. These norms, through a reasoning process, have a direct influence over the interests of member states, initially derived from a domestic context. The latter point has been sufficiently emphasised by Moravcsik (1991, 1993, and 1998). However, through this influence of norms on interests, the latter may change empirically, and, at times, may even converge around a ‘European interest’.

The following section will proceed to establish empirically how norms constitute interests in the context of EU Foreign Policy. Methodologically, this can be traced in a historical-sociological way. First, the context of the decision-making environment is examined with a focus on reasons for action for decision-makers. As argued above, this reasoning process establishes the norms derived from member states’ interaction. In turn, these norms then influence the interests of member states by changing the context of the interaction itself, ultimately resulting in the construction of a ‘European interest’.

The case of the AFSJ has been chosen for this purpose. As previously mentioned, the dynamic of this policy-making area has been very significant; it has even become one of the major policy-making areas in the European Union. Yet, precisely this dynamic and interaction, has changed the perception of the interests of EU member states in the realm of foreign policy. Increasingly, the AFSJ has developed a strong ‘external dimension’ (Lavenex, 2004). Has this become the process by which a ‘European interest’ has been developed?

2. The construction of an AFSJ – constructing European interests

The Area of Freedom, Security and Justice (AFSJ) experienced significant growth in the late 1990s and the early part of the new millennium. This demonstrates an extraordinary dynamism as a special regime of European governance (Monar; 1999a). The following section will highlight some normative policy changes in the AFSJ – a process that has started to construct a ‘European’ interest in its external relations with third countries as a by-product of this increasingly institutionalised environment. Ultimately, the construction of these institutional structures institutionalises the underlying normative reasoning of its construction. Thus, these norms have a direct impact on member states’ interests, which are decreasingly national only and increasingly with a ‘European’ dimension in character. This section has employed a historical genealogy of the events and institutional changes in order to demonstrate this argument.

How were norms operationalised? For the purpose of this article, they are defined as: ‘Norms are written and non-written rules which are reasons for action of different orders. They enable, restrain, or constitute different actions by providing a standard of appropriate behaviour for a particular reference group.’ In order to identify norms, it is necessary to examine the complementary, underlying normative questions of the rules around which the political ‘grand debates’ are structured. Methodologically, norm change has been examined through legal texts, policy documents, and elite interviews. Thus, a change in the legal status of those rules can be any one of the following: (1) the depth and the scope of the competences of the European Union; (2) the legal instruments used; (3) the decision-making mechanisms; (4) the competences of the different institutions; and (5) the procedure on establishing those rules.

(a) Pre-Maastricht

Most areas within the AFSJ are at the heart of the nation state. In his widely cited and authoritative article ‘The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs’

(Monar, 2001b), Joerg Monar claims that the rapid development of Justice and Home Affairs¹ into a major field of EU policy-making since the beginning of the 1990s can be explained by a combination of specific ‘laboratories’ and ‘driving factors’ which triggered development and expansion. What are the implications for the norm structure that the institutional set-up of the ‘laboratories’ reflects? Firstly and unsurprisingly, it shows that from the beginning until before the end of the 1990s national sovereignty was treasured to a great extent. Internal security and the police were widely perceived to be vital and, indeed, core areas of the state. The same is true with regards to admitting foreigners onto the territory of the state - especially asylum and migration. Uncompromisingly so, the pooling of sovereignty in this vital area of the state was beyond inconceivable. This reluctance to pool sovereignty prevailed during times when first efforts to pool sovereignty in the area of the common market succeeded. It appears from this example that national sovereignty in internal security had to be protected and remained the core norm in the area.

Examples of those laboratories were:

- Interpol
- Council of Europe
- Trevi Framework
- The Schengen Group
- The Ad Hoc Group on Immigration

(b) Maastricht:

The Intergovernmental Conferences (IGC) on Economic and Monetary Union and on the political union prepared the Maastricht Treaty. The main objective had been to deepen the internal market foreseen by the Single European Act and the establishment of the monetary union. It also established the area of Justice and Home Affairs for the first time institutionally within the framework of the EU. The Treaty of Maastricht or Treaty of European Union (TEU) created a new legal concept, the so-called questions of ‘common interest’ Title VI states in article K1. The nine areas of common interests are: (1) asylum policy; (2) external border control; (3) immigration (entry, circulation, stay and fight against illegal immigration); (4) fight against drugs; (5) against international crime; (6) judicial cooperation in civil matters; (7) in criminal matters; (8) customs cooperation; and (9) police cooperation.

¹ JHA; With the Treaty of Amsterdam this area was renamed as AFSJ. Throughout this section JHA shall be used for before Amsterdam and AFSJ after

Effectively, however, these areas of common interest only brought existing forms of intergovernmental cooperation under the umbrella of the EU. The Council of Ministers became the one main legislator, while the European Parliament was excluded from the decision-making (consultation procedure in article K6), as well as the Court of Justice from adjudicating (only limited control in article K3). The Commission was only granted a marginal role, the shared right of initiatives for the first six topics only (article K3). Justice and Home Affairs at the beginning of the 1990s was not an area that was marked by any significant evidence of a political will to transfer any competences upwards to the level of the European Union.

According to Kaunert (2005), the effect of this cooperation was not significantly different from intergovernmental cooperation. He argues this due to the fact that the legal instruments available to the EU were international legal instruments, and not the typical EU legal instruments. For instance, Article K. 3(2) (a) allowed the Council to adopt ‘joint positions’, art. K. 3(2) (b) allowed for ‘joint actions’ in order to reach EU objectives, and art. K. 3(2) (c) referred to conventions. Thus, the legal effect of all these instruments was marginal and negligible. In conclusion, this serves very well to underline the fact that the EU was not gaining specific legislative competence in JHA with the Treaty of Maastricht. The fact that the EU institutions were weak in the third pillar only follows as a logical consequence. National sovereignty remained fully intact, indeed most legal developments could have been achieved in theory before Maastricht just as well as after.

(c) Amsterdam

The Treaty of Amsterdam created a strong institutional impetus for the policy area. The most fundamental change was the creation of an ‘Area of Freedom, Justice and Security’ (AFSJ), which had previously been termed Justice and Home Affairs (JHA). While the Treaty of Maastricht had only described common areas of interests in which cooperation could happen in order to attain other Community objectives, the Treaty of Amsterdam made the concept of ‘Freedom, Security and Justice’ an objective in itself for the EU (Kaunert, 2005, p.466-467). In addition, the notable achievement of this treaty was the inclusion of Schengen into the framework of the EU.

Regarding the use of legal instruments, the Treaty of Amsterdam brought about the most significant change to date, in particular regarding asylum and migration policies (Simpson, 1999, pp.102-103). Transferred into the first pillar, the Council was then enabled to adopt the same legal instruments, such as directives or regulations, as in the rest of the first pillar. Consequently, one significant

problem regarding the effectiveness of the Treaty of Maastricht had been changed. This is in contrast to the newly created third pillar legal instruments, such as common positions, conventions, framework decisions (similar to directives) and decisions.

The legislative procedure changed in the following way (Kaunert, 2005, p.466-467; De Lobkowicz, 2002, p.130; Peers, 2000, p.40; Simpson, 1999, p.91-124):

- The Council acts unanimously in the consultation procedure with the European Parliament;
- The legal right of initiative is with both the Commission and individual Member States;
- From 1 May 2004, for the first pillar competences asylum and migration, the treaty establishes the sole right of legal initiative for the Commission;
- The Council could then also decide by unanimity to move towards co-decision with the European Parliament, and towards qualified majority voting as the decision-making mechanism in the Council.

The integration of the Schengen Convention (‘Schengen Acquis’) into the European Union was one of the major achievements of the Treaty of Amsterdam (Den Boer, 2001, p.296). The functional reason for the incorporation was the close relationship between the substance of the intergovernmental Schengen cooperation and the substance of the newly created AFSJ. With the integration of the Schengen acquis into the treaties of the EU, it has become a legal obligation for all new Member States of the different Enlargement waves of 2004 and 2007 (EU12) to fulfil.

In conclusion, in the Treaty of Amsterdam, a number of incremental steps were taken towards supranationalisation. Yet it is difficult to overlook the fact that the question of EU competence was far from settled. If anything, it was even more diverse after Amsterdam; in particular after the inclusion of the Schengen acquis, which was split between the third and first pillars. The EU had been given a broad objective in the AFSJ, but with a limited mandate in terms of competences and instruments. Indeed, it is a reasonable assessment that in the AFSJ, member states were still exercising significant sovereignty in a number of areas.

(d) The Tampere Programme 1999-2004

The start of the Finnish Presidency on 1 July 1999 marked one of the most critical junctures in the history of the Area of Freedom, Security and Justice (AFSJ) (Kaunert, 2005, p.467 - 470). While the fact that the European Heads of Government decided to dedicate an entire summit to the AFSJ is remarkable in itself, the Tampere programme had wider implications. Significantly, the Tampere

Council summit gave the EU a policy direction to what had been hitherto an incoherent European approach. Thus, the main outcomes of the Tampere summit were the so-called ‘ten milestones’ towards a union of ‘freedom, security and justice’, a work programme for the EU to complete between 1999 and 2004.

In the conclusions of the summit, the milestones (European Council, October 1999) are preceded by ten introductory points, which included:

- European integration as a process based on human rights, democratic institutions and the rule of law.
- Links to citizens outside the union due to Europe’s humanitarian tradition.
- Commitments to international obligations such as the Geneva Refugee Convention.
- Freedom in a genuine area of justice, where criminals cannot hide behind differences in legal systems.
- Most importantly: The union as an actor on the international scene.

The latter point was followed up by two milestones (Kaunert, 2005, pp.467 - 470) in the Tampere conclusions:

- A goal of a ‘partnership with countries of origin’ of migration: This is a new goal, and had not been included in the Treaty of Amsterdam as an objective, nor given any specific legal competences.
- In addition, part D calls for stronger external action, for which the legal basis is also not crystal clear. Point 59 calls for all competences and instruments at the disposal of the EU to be used to build the Area of Freedom, Security and Justice.

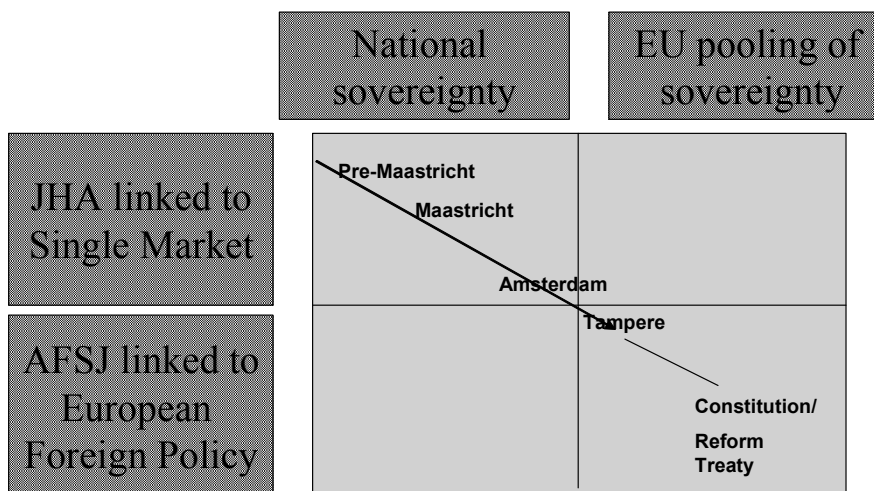
Point 59 could be read with Part B and Part C, which calls for a genuine area of justice and the fight against crime and terrorism:

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- Better access to justice in Europe;
- The principle of mutual recognition on judicial decision;
- Greater convergence in civil law;
- The prevention of crime at the level of the union;
- Stepping up co-operation against crime becomes an objective;
- Point 48 calls for common definitions, incriminations and sanctions;
- Special action against money laundering;

Thus, in general, the political impetus moved very strongly onwards from Amsterdam to Tampere. Until Tampere (see Kaunert, 2005), the normative debate had been structured between those member states wishing to preserve national sovereignty and those wishing to pool sovereignty at the EU level. Secondly, there was also some development on the axis of what the aims and the purpose of such legislation would be. Here, the evolution ranged from Justice and Home Affairs (JHA) as a flanking measure of the Single Market to a free-standing Area of Freedom, Justice and Security (AFSJ). Significantly, however, this AFSJ would need to be built with all competences and instruments at the disposal of the EU in the area of external action. Policy-makers clearly see the importance to build the AFSJ by means of foreign policy as well as internal competences. This includes external action related to asylum and migration, as well as crime and terrorism. Thus, as the table below indicates, while JHA was linked closely to the Single Market, the AFSJ becomes increasingly linked to EFP.

Table 1: Evolution from JHA to AFSJ – increasing development of links to EFP



In conclusion, this section has used a constructivist structuralist framework by employing a historical-sociological genealogy of development in the AFSJ. The assumption behind this approach was the argument that European institutions and structures alter the interests of member states. This is due to the fact that EU member states are located in a complex set of interdependencies, institutions and structures. The section demonstrated that political norms of the elites of the member states moved from the preserving of national sovereignty in areas of Justice and Home Affairs to the construction of internal competences in the Area of Freedom, Security and Justice. As argued in the previous section, the construction of direct competences for the European Union is a *conditio sine qua non* in the establishment of the European Union as an actor on the international scene. Only through this legal construction of the AFSJ does the EU become an actor. The Tampere Council confirmed this argument itself in the introductory rationale of the conclusions, as well as explicitly in point 59. The EU has not previously been an international actor in the AFSJ, but aims to construct this actorness in future years. This emerging reasoning within Council Summit conclusions points very clearly how the AFSJ will be closely linked to EFP. Thus, the developments in the AFSJ contribute to the construction of a ‘European’ interest. The next section will analyse this in the significant case of EU-US counter-terrorism relations.

3. The Case study of EU-US counter-terrorism relations

The purpose of this section is to examine the role of the EU as an actor in its counter-terrorism relations with the USA, in particular its ability to define and discuss the ‘European interest’. As demonstrated in the previous section, the construction of legal competences in the AFSJ advanced significantly until the Tampere Council Summit in 1999. Equally, the area became closely linked to its foreign policy dimension. However, September 11 created a special impetus for developments in the AFSJ (Kaunert, 2007). Consequently, countering terrorism became a very significant focus of EU action in the aftermath of the events, with EU-US counter-terrorism relations being at the forefront of this development.

The following section has three parts. Firstly, the EU-US relations are examined in its historical perspective. Secondly, the aforementioned EU internal actions will be examined to identify the emerging European interests in its relations with the US. Thirdly, this section will then examine the precise foreign policy action in the EU-US counter-terrorism relations.

(a) Contextualising EU-US relations

The international relations between Europe and the United States of America have a long history, which this section by necessity cannot do justice to. However, the aim of this section is rather to outline the character of the relationship between the EU and the USA, a context which significantly influences the precise dealings within the framework of countering terrorism. This section elucidates the two distinct though complementary dynamics produced which Smith (1994; 1998) has called a ‘competitive cooperation’ in EU-US relations. On the one hand, economically, Europe and America are interdependent and are players of very significant importance. Consequently, the economic partnership between the USA and the European Union has become one of equals. However, regarding EU-US security relations, the balance of power is very clearly in favour of the USA.

With the 11 September 2001 attacks, alongside the attacks on Madrid on 11 March 2004 and London on 07 July 2005, as well as numerous failed plots such as in London and Glasgow on 29 June 2007, Europe has demonstrably become a major target for Islamist terrorism alongside the USA. Thus, September 11 had a significant impact on foreign policy makers in Europe and America. It had two effects in Europe.

Firstly, the fundamentalist terrorists could strike in Europe as well. Yet, there was even a possibility that they could strike in a yet unprecedented coordinated successful attack across member states. In particular, the existence of the EU Schengen Convention, which allows EU citizens to travel freely to any other EU country, necessarily also allows for this possibility. The fundamental Islamist threat by Al Qaeda is different from nationalist terrorism and aims for such coordinated attacks with massive casualties (Hoffman, 2006). Islamist terrorists, according to Wyn Rees (2006, p.54), are ‘those carrying out a political project based upon an extremist understanding of the Koran and teachings of the prophet Mohammad.’ Islamist terrorism is a global problem, according to James and Brenda Lutz (2004, p.82) Al-Qaeda has between 5,000 and 12,000 members in at least 24 groups. These groups are scattered all over the world, and this number is only related to the recognised groups. Therefore, a number of European countries could be targeted simultaneously. Consequently, the European Union has had to act internally in order to create the competences necessary to protect Europe from this particular terrorist threat.

Secondly, in foreign policy terms, this terrorist threat also had clear implications on Europe’s relationship with the USA. Since 9/11, European foreign policy with the USA has been most fragile and vulnerable. The 11 September 2001 terrorist attacks on the US homeland were seen by many analysts as a turning point in US history (Martin, 2006; Hoffman, 2006). This incident has since been the worst event of modern international terrorism – nearly 3,000 people were killed. It was carried out by 19 Al Qaeda terrorists on a ‘martyrdom mission’ (Martin, 2006, p.22). While the USA had previously been the target of international terrorism, the American homeland had never suffered any comparable terrorist strike on this scale, with many commentators drawing parallels to the Japanese attack on Pearl Harbour on 7 December 1941. Consequently, the political mood in the USA shifted significantly (Hoffman, 2006), and, in October 2001, the USA PATRIOT Act was passed. Given the importance of the changes taking place in the USA, scholars expected this to influence American foreign policy, and thus its relations with the rest of the world.

Firstly, a platform for the ‘War on Terror’ was first established with Bush’s ‘act of war speech’ (BBC News, 12.09.01). In this, he declared:

‘The deliberate and deadly attacks, which were carried out yesterday against our country, were more than acts of terror. They were acts of war.’ [...] ‘This enemy attacked not just our people but all freedom-loving people everywhere in the world.’ [...] ‘We will rally the world.’ [...] ‘This will be a monumental struggle of good versus evil, but good will prevail.’

This demonstrates the significant pressure for countries to join the ‘war on terror’. Bush defined appropriate action in terms of fighting in the ‘war against terrorism’, and made an even stronger case by distinguishing between ‘good and evil’. Later, Bush (BBC News, 12.09.01) enforced this by stating that ‘you are either for us or against us’. Thus, the political pressure is such that the appropriate course of action became defined in its support of the US. Consequently, given the still positive state of transatlantic relations between Europe and America, declining the US its support would have marked a clear rupture in EU-US relations. Thus, it was unlikely to occur.

As a result, a political norm that the international community needed to join the war against terrorism emerged with the attacks of 11 September 2001 (Kaunert, 2007). Thus, the EU found itself in a position where it had to support the USA in some shape or form. Germany’s Chancellor Gerhard Schroeder called on European nations to band together within the framework of the EU to fight global terrorism (BBC News, 18.10.01):

‘Only if we put in place common policing and judicial resources can we ensure that there will be no hideouts for terrorists and other criminals in the European Union’ [...] ‘We are ready to make Europe into an international player with global influence’.

It was clear that the EU would have take part in the ‘war on terror’. The significant events of 9/11 had such an impact that, either way, European states would need to react and adapt their foreign policies. Consequently, Europe was meant to become a ‘true player on the international scene’.

Notwithstanding these developments, it is in contrast to the historical trajectory of counter-terrorism relations. Bruce Hoffman (1999) argued two years before 9/11: ‘Terrorism has long been a source of friction between the United States and Europe.’ In particular, European governments have historically adopted a more tolerant approach to dealing with terrorism due to a preference for maintaining dialogue, for protecting foreign investment opportunities, and due to its large stock of Muslim populations. However, initially transatlantic security relations remained positive. The war in Afghanistan was exemplary for the positive cooperation across the Atlantic, and the Europeans even supported the American decision to use force (Wyn Rees, 2006, p.114). ‘Operation Enduring Freedom’ started on the 7 October 2001, aiming to arrest or to destroy Al Qaeda and to topple the Taliban regime in Kabul, which had become the protector for Al Qaeda. Initially, the US decided not to act through NATO during the military campaign², but accepted only background support. Only with the end of the military campaign, the US turned more seriously towards the Europeans, and assembled a UN mandate, the International Security Assistance Force (ISAF), under the initial UK leadership with troops from many European countries, including France and Germany.

In 2002, American attention focused more strongly on the ‘Axis of Evil’ states, i.e. Iraq, Iran and North Korea. Especially, Iraq reflected the top priority within the Bush administration (Wyn Rees, 2006, p.115). The argument for war relied on the link drawn by the US administration between Iraq’s weapons programmes and its support for terrorism – a potentially lethal combination. Thus, a direct link was drawn between Saddam Hussein’s regime and Al Qaeda – despite their ideological incompatibility. Yet, this link was questionable. Firstly, the Baath Party, nationalist in its ideological position, was strictly secular. Consequently, most terrorist groups supported by Iraq had been secular groups. Secondly, Al Qaeda with its origins in the Muslim Brotherhood in Egypt (Laqueur, 2004) had been founded in ideological opposition to secular nationalist parties such as the

² despite the fact that NATO Article V was invoked the first time in its history. However, this did not suit American military thinking initially.

Baath Party. Thus, a link between Hussein and Al Qaeda was always a very distant possibility only – yet one that the US did not want to take a chance with.

Equally, European governments were very sceptical of the links between Saddam Hussein and Bin Laden. Both France and Germany questioned the assumption as to whether Iraq was relevant to the War on Terror. Symbolically for German and French war opposition, the then German Foreign Minister Joseph Fischer told the then US Defense Secretary Donald Rumsfeld during a security conference in Munich in February 2003 ‘I am not convinced!’. Subsequently, Donald Rumsfeld termed EU countries as the ‘Old Europe’ in 2003, in particular France and Germany, in order to divide the positions of the different EU member states and applicant states (Wyn Rees, 2006). Consequently, there was no unity amongst European positions. An open letter to support the US position was signed by the UK, Spain, Italy, Poland, Portugal, Denmark, the Czech Republic, and Hungary at the end of January 2003 (*ibid*, p.119). These strong differences amongst EU member states ensured that there was no attempt to construct a common EU response to the Iraq conflict. NATO became paralysed in this conflict. This was epitomised by the denied request by Turkey in January 2003 to receive help in the event of war in Iraq, which was opposed by France, Germany and Belgium. Consequently, the transatlantic relationship appeared torn apart by the debate on Iraq. France and Germany even attempted to disturb American multilateral efforts; most notably when then French President Jacques Chirac rejected a British attempt to secure a UN Security Council resolution which would explicitly authorise force. Yet, in March 2003, the War in Iraq began and ended swiftly, thus clearly demonstrating American military might to the world.

Superficially, one could deduce three observations from this context. Firstly, America and Europe are increasingly in a competitive relationship, which started in economic affairs and continued to move into security policy – as epitomised by the war in Iraq. Consequently, the US-EU relations in the War on Terror are reasonably bad. Secondly, there are a clearly observable number of different national positions derived from varying national interests amongst EU member states, ranging from pro-Atlanticist Britain, Poland, Spain, the Netherlands and others to US-sceptical governments, such as France, Germany, Belgium, and others. Thirdly, a ‘European’ interest is hardly detectable in the ‘War on Terror’. However, this article argues that, despite the merits of this view and a certain amount of evidence supporting it, there are significant empirical facts to counter it. Firstly, despite its competitive relationship, the US and the EU have continuously worked very well, increasingly so, and intensively together on counter-terrorism, which will be explained in the remainder of the section. Thus, EU-US relations are reasonably positive. Secondly, despite the existence of national

interests, the ‘War on Terror’ has also increasingly produced a ‘European’ interest through the institutionalised cooperation in the Area of Freedom, Security and Justice. Thirdly, there are first signs of an emerging ‘European’ interest, which can be demonstrated in US-EU counter-terrorism cooperation. The two sections aim to establish all of the above points.

(b) EU counter-terrorism after 9/11 – The European Arrest Warrant and the Definition of Terrorism

The aim of this section is to demonstrate the fact that the EU had to establish internal counter-terrorist instruments first in order to be able to establish fully-functioning counter-terrorism relations with the US, which had traditionally always relied on bilateral counter-terrorism relations with Europe (Wyn Rees, 2006). Its bilateral relations worked well in the obvious case of the United Kingdom, but less well known, it had also established close bilateral counter-terrorism relations with France, Germany and the Netherlands. In order for the EU to provide for a better platform for the US to deal with Europe more efficiently, internal EU competences had to be established first. This section will establish the prime importance of the European Arrest Warrant (EAW) and the legal definition of terrorism as a laboratory for extradition agreements with the US.

Amongst scholars of EU counter-terrorism there are diverging opinions as to the extent of EU competences matter in the fight against terrorism (Bures, 2006; Zimmermann, 2006; Gregory, 2005; Kaunert, 2007). On the one hand, the EU is characterised as a ‘paper tiger’ (Bures, 2006, p.57), and not an effective counter-terrorism device. On the other hand, scholars point out that the EU has taken great strides forward in increasing integration and encouraging co-operation between member-states since 9/11 (Zimmermann, 2006; Kaunert, 2007). Zimmermann (2006, p.123) asserted that ‘on 21 September 2001, the Union prioritised the fight against terrorism, and accelerated the development and implementation of measures deliberated on prior to the events of 9/11.’ Yet, if one assesses the capabilities of the EU, they need to be put in perspective. Zimmermann (2006, p.126) makes an important caveat to all EU action in the field of counter-terrorism: ‘[...] the Union does not have a ‘normal’ government at the supranational level with all the requisite powers, competencies, and hence, capabilities of regular government; it is not a federal European state.’

Despite the above mentioned caveat, the EU responded very quickly to the attacks of September 11. In speaking to the European Parliament, the Commissioner responsible for the Area of Freedom,

Security and Justice (formerly better known as Justice and Home Affairs), Antonio Vitorino, remarked (Norman, FT, 06.12.01):

‘Terrorist acts are committed by international groups with bases in several countries, exploiting loopholes in the law created by the geographical limits on investigators and often enjoying substantial financial and logistical resources. Terrorists take advantage of differences in legal treatment between States, in particular where the offence is not treated as such by national law, and that is where we have to begin.’

Vitorino made the link that was established earlier very clear. In order to combat terrorism, EU measures were vital.

Subsequently, a special EU Council of Justice and Home Affairs ministers on terrorism met on 21 September 2001 (Hayes, 2001) and developed a far-reaching action plan. In this document measures in five areas are proposed: (1) police and judicial cooperation enhancement, (2) the development of international legal instruments, (3) putting an end to the funding of terrorism, (4) strengthening air security, and (5) coordinating the EU’s global action. Especially the latter point points clearly to the desire to construct an international role for the European Union. Dubois (2002, p.324) thus asserts that ‘the events of 11 September have indirectly allowed the EU to become a consistent actor in the fight against terrorism’. Due to limitations of space, this article will deal with the two measures it considers the most important ones - the definition of terrorism and the European arrest warrant. This, however, shall not take away from the importance of any other measures.

Firstly, the *Framework Decision on Combating Terrorism* is important. The European Commission presented a proposal to that effect to the aforementioned special meeting of EU Justice and Home Affairs ministers in Brussels on countries in September 2001. It intended to put in place a definition of terrorism, alongside penalties and sanctions that come on extradition procedures and mechanisms for exchanging information. Effectively, this is the first time such a definition has been agreed to on a supranational level, especially in the light that a number of member states did not even have definitions of terrorism (Douglas-Scott, 2004).

The EU’s Framework Decision on Combating Terrorism, agreed politically in December 2001, firstly defines what is meant by terrorist acts in three parts: (1) the context of an action; (2) the aim of the action; and (3) the specific acts being committed. *‘They must be intentional acts [...] which*

given their nature or context, may serve to damage a country or an international organisation. These acts must be committed with the aim of either seriously intimidating a population or unduly compelling a Government or international organisation to act or fail to act, or seriously destabilizing or destroying the fundamental political, constitutional economic or social structures of a country or international organisation (Bures, 2006, p.68).’ In addition, a list defines eight specific acts. The definition also covers behaviours which may contribute to terrorist acts in third countries.

The Framework Decision on Combating Terrorism thus ensures that terrorist offences are punished by heavier sentences than common criminal offences in all EU member states would have provided for. Furthermore, it approximates the level of sanctions between member states according to the principle that sentences have to be both proportional and dissuasive. Member states are legally responsible to act in cases of terrorist incidents that take place on their own territory or are committed against their own people. However, ‘actions by armed forces during periods of armed conflict, which are governed by international humanitarian law [...] and inasmuch as they are governed by other rules of international law (Bures, 2006, p.67)’ are excluded by the Framework Decision, which means, according to Protocol I and II of the Geneva Convention, peoples fighting against colonial and alien occupation and against racist regimes in the exercise of the right of self-determination. As pointed out by Dubois (2002, p.326), this Framework Decision is favourable for EU-US cooperation in the fight against terrorism as this offence is now recognized as a criminal offence on both sides of the Atlantic.

Secondly, the *European Arrest Warrant* (EAW) is highly significant. It was politically adopted by the Laeken Council summit on 14-15 December 2001, with the formal legal adoption in June 2002 under the Spanish presidency. This proposal for the policy had already been under preparation for about two years before it was launched (Kaunert, 2007). Vitorino initially intended to launch it under the Spanish Presidency in the first half of 2002 due to Spain’s strong support of the issue in order to solve its own problems with the ETA terrorists. Officials in the Commission (COM10, COM14, COM20, and COM25) confirmed the political decision to bring the proposal of the EAW forward. Officials in the Directorate-General JHA under Sir Adrian Fortescue had to work at full speed over the weekend before the proposal for it to be approved by the College of Commissioners on 19 September 2001 (Occhipinti, 2003, p.149; also confirmed by interviews COM10 & COM25). The timing was crucial in order to construct the EU response to the ‘war on terror’. In addition, the

European Commission and its Commissioner Vitorino proposed action which clearly demonstrated its support for the United States and its ‘war on terror’ (interviews COM10, COM25 and CON7).

Compared to international counter-terrorism instruments, the European Arrest Warrant is revolutionary, as it abolishes extradition amongst member states. Vogel even regards this to be a ‘revolution in extradition law’ (Vogel, 2001, p. 937). Until the adoption of the EAW, extradition between EU member states was based on several different intergovernmental measures based on international law (Peers, 2001), for instance the 1957 Council of Europe European Convention on Extradition, the 1975 and 1978 protocols to the convention, the 1977 Council of Europe European Convention on terrorism, the Schengen Implementing Convention of 1990, a convention in 1995 supplementing the aforementioned conventions, as well as a 1996 convention.

Unsurprisingly, all of these measures regarding extradition are based on sovereign nations agreeing to create international law between them to govern their relations with regards to extradition matters. The European arrest warrant is of a completely different kind. It does not create international law, but rather transnational or ‘European’ law (Wagner, 2003a). It replaces all of the aforementioned measures based on international law between the different member states with a legal instrument of the European Union. In effect, this is a European extradition law.

The Commission's proposal went much further than the plans to simplify extradition law within the EU based on the 1999 conclusions of the Tampere European Council (Peers, 2001, p.2; Wagner, 2003a, p.706). Firstly, the EAW abolishes the term extradition, and replaces it with the term ‘surrender’ (Douglas-Scott, 2004). The national judicial authorities will be responsible for its enforcement, thus virtually excluding political decisions by excluding the national executives from the decision-making process. Secondly, the legal effect of this measure is subject to the jurisdiction of the European Court of Justice (Peers, 2001) if member states sign a declaration approving of this. This may be limited, but is an improvement to the previous legal position. Thirdly, the EAW abolishes the principle of double criminality for serious offences, (Douglas-Scott, 2004).

In conclusion, this section demonstrated the fact that the EU made significant progress in establishing internal counter-terrorist instruments. This was necessary in order to facilitate counter-terrorism relations with the US. It would have been possible for the US to continue to rely on bilateral counter-terrorism relations with Europe, as conducted throughout most of the post-WWII era. In order for the EU to become an international actor with the US, America had to be able to

deal with Europe more efficiently. This section established the significance of the European Arrest Warrant (EAW) and the legal definition of terrorism as a laboratory for extradition agreements with the US. These instruments, as provided for by the Treaties constructing the Area of Freedom, Security and Justice, allowed for the EU to become an actor in counter-terrorism relations with the US.

(c) EU-US Counter-terrorism policy after 9/11: EU-US extradition agreements

‘[...] by far the greatest amount of cooperation has been conducted within the US-EU relationship. The EU’s model of internal security [...] has been adapted to cope with the threat from international terrorism (Wyn Rees, 2006, p.79).’

The aim of this section is to demonstrate the link between the adoption of internal EU counter-terrorism measures and the relations between the EU and the US. As suggested in section 1 regarding the construction of a ‘European’ interest, interest formation needs to be seen as endogenous of institutionalised co-operation in the EU. EU member states do not just use European institutions in the pursuit of their interests, but their interests are influenced and, in fact, reconstituted by them. The construction of direct competences for the European Union in counter-terrorism is a *conditio sine qua non* in the establishment of the European Union as an actor on the international scene. Thus, this institutionalised cooperation in the EU constructs a ‘European’ interest.

The first attempt to link the construction of internal EU counter-terrorism competences and the construction of an international role for the EU occurred shortly after 9/11. The Director-General of the Commission, Fortescue (European Voice, 27.09.01), had been part of an EU delegation meeting on the 21 September 2001 with Colin Powell, the US Secretary of State, in Washington the week after the events of September 11. As a result of the terror attacks, Fortescue mentioned the fact that the EU and the US could be drawn together by co-operating. Furthermore, bilateral extradition arrangements between EU member states and the US could be replaced by an EU-wide system. Moreover, a letter was sent to Washington asking President Bush how the EU could assist America.

On the one hand, Bush’s reply in the form of a five-page letter provided a list of 47 demands covering judicial and diplomatic co-operation, data protection, the proliferation of biological weapons and other issues, and hence improving co-operation with the European Union in fighting

terrorism. The US would ask Europol to pass on to the United States ‘all information, including information about individuals, which it may have on terrorist cases and subsequently expand this co-operation to include criminal cases’ (BBC News, 22.10.01). Extradition processes from the EU to America should also be streamlined, the letter requested. In addition, the letter asked the Union to ease extradition procedures internally. Again, welcome support for the Commission’s cause. Leonello Gabrici, the Commission’s Justice and Home Affairs spokesman, argued that ‘the things that we are doing against terrorism...will simplify life for the Europeans and make it easier for us to co-operate with the United States’ (BBC News, 22.10.01).

Wyn Rees (2006, p.80) points out the five issue areas of EU-US cooperation following the meeting³: (1) closer police and law enforcement cooperation, (2) judicial cooperation, particularly on extradition matters, (3) information sharing of criminal databases, (4) cooperation over border and transport security, and (5) the targeting of terrorist financing. Despite the significance of all of these areas for the practical cooperation between EU and the US, this article will deal mainly with extradition and police and law enforcement matters in order to improve the clarity of the argument.⁴ Nonetheless, it needs to be recognised that the same patterns detected for these matters, are equally true for all the other four of the five areas.

Firstly, regarding police and law enforcement, the US had wanted to cooperate closely with the EU for quite some time (Wyn Rees, p.80) due to the recognition that it was possible to achieve efficiency gains to share data with the entire entity than with 27 individual entities. Equally, in order to cooperate with the EU, the US had to wait until Europe first established a police and law enforcement agency – such as Europol. Naturally, as always in the relations between a federal state (the USA) and a confederal entity (such as the EU), internal competences are always more solid in America. Gijs de Vries (the former head of the Office of the Co-ordinator for Counterterrorism) explained that ‘we are not the United States of Europe...we do not have an EU police force, or an EU army.’ (quoted in Zimmermann, 2006, p.138).

In December 2001, despite the arguments above, the Director of Europol, Juergen Storbeck signed an agreement with the US Ambassador to the EU, which facilitated the exchange of strategic and

³ Wyn Rees points out that the EU Troika Louis Michel, Javier Solana, and Chris Patten met with US Secretary of State Colin Powell. However, as indicated in this article, very senior Commission officials from the DG Justice and Home Affairs were also in attendance, which was very significant for counter-terrorism cooperation.

⁴ Nonetheless, all other areas are very significant and would merit an article by themselves. However, this venture shall be left for future articles.

technical information (Wyn Rees, 2006, p.84). This agreement also permits the exchange of liaison officers, as well as the participation in Joint Investigation Teams. Thus, a US representative is based at the Europol offices in The Hague. Europol, on the other hand, has also received the right to make secondments to the FBI. Finally, in August 2002, a Europol liaison office was established in Washington DC (Gregory, 2005, p.115). In December 2002, a Europol agreement on exchange of personal data and related information with the US was signed.

A similar pattern, as described above in police and law enforcement matters, can be detected in judicial and extradition matters within the EU-US counter-terrorism relationship. Like in law enforcement matters, there are significant philosophical differences between the European and the American side. On police matters, Europeans perceive Americans to heavy-handed in their approach. This has been particularly sensitive in Germany, which has one of the strictest data privacy laws in Europe. In extradition matters, the main philosophical difference between the European side and the American is related to the existence and execution of the death penalty in a number of US states. However, Americans also perceive the European penal code as too unjustifiably light more generally, especially the sentencing in relation to murder (Wyn Rees, 2006, p.86).

Consequently, the *EU-US Mutual Legal Assistance Treaty (MLAT)* were necessarily controversial (Gregory, 2005, p.116). The European Parliament’s Committee on Citizen’s Freedoms and Rights, Justice and Home Affairs, in its report on the 12 May 2003, endorsed the expected benefits as a step forward, but also criticised provisions regarding Human Rights and data protection, as well as the accountability in the EU. It considered the way the agreement was made a breach of the democratic principle, as the Parliament had not been consulted before the adoption, as foreseen by the treaties.

The first agreement, the MLAT includes a number of judicial areas for cooperation with the US, and was signed in June 2003. It includes (Wyn Rees, 2006, p.89):

- evidence sharing for criminal investigations and prosecutions
- streamlining of extradition arrangements
- central points of contact between US and EU judicial authorities
- sharing of sensitive data, such as related to bank accounts and terrorist finance

However, despite the clear benefits for the Americans derived through the MLAT, there were also drawbacks. The main problems regarding the MLAT have been related to the issue of

implementation in the EU member states (*ibid*). This needs to be seen in the context of the general implementation problems in the EU’s third pillar. In fact it shadowed the main problems regarding the EAW. Institutionally in the third pillar, the Commission cannot take member states to the European Court of Justice (ECJ) for failure to transpose framework decisions, or agreements such as the MLAT, properly or on time as would be the case in infringement proceedings under the TEU. This makes the Commission’s role somewhat unbalanced – stronger in the legislative process than in the implementation phase (Kaunert, 2007). Again, the EAW and the MLAT serve as a good case in point, as there were some important implementation problems after its adoption. Three member states experienced problems in the implementation of the EAW – Cyprus (07.11.2005), Poland (27.04.2005) and Germany (18.07.2005) – where it ended up in the respective national constitutional courts. Poland and Cyprus were consequently required to change their constitutions, while Germany had to adopt a new transposition law for the EAW which has been adopted by the ‘Grand Coalition’ under Chancellor Angela Merkel in July 2006 (Welt, 08.07.06). In the case of the MLAT, it had to be implemented individually between the American government and each of the European signatories, which was very time consuming and contained many legislative hurdles.

In conclusion, this section explained and examined the link between the adoption of internal EU counter-terrorism measures and the relations between the EU and the US. The establishment of direct competences for the EU was vital for becoming an interesting partner for the US in its counter-terrorism relations. Given that the US had fully functioning well established bilateral counter-terrorism relations with a significant number of EU countries, the EU would need to provide a better platform than the bilateral route. Consequently, it was necessary for the EU to establish well functioning institutional structures in counter-terrorism in order to be a viable partner. However, as a side product, these institutional structures also led to EU member states converging around a ‘European’ interest in its dealings with the USA, rather than just forming its national interests. Recognizing the importance of internal EU measures for counter-terrorism relations with the US, the Commission actively lobbied America in their campaign to gain support for the EAW and the definition of terrorism. Internal counter-terrorism instruments, such as the EAW, were crucial in the establishment of similar extradition agreements between the EU and the US, such as the MLAT. This development has also been carefully helped along by a European Commission, which immediately discovered a political opportunity for the EU to gain a bigger role – both in the AFSJ and in the EU-US relations.

4. Conclusion: The successful construction of a ‘European’ interest

In conclusion, this article demonstrated some significant points. European Foreign Policy (EFP) has experienced some very significant developments other than the pooling of national sovereignty, which demonstrate a ‘supranationalisation’, even in its most significant external relationship with the USA. The Area of Freedom, Security and Justice (AFSJ) and the related construction of direct competences for the European Union is a *conditio sine qua non* in the establishment of the European Union as an actor on the international scene. The underlying normative reasoning of these institutional structures has had a direct impact on member states’ interests, which have become increasingly ‘European’, despite the continued existence of national interests. Consequently, despite a certain degree of persistence of intergovernmentalism in EU Foreign Policy, a parallel process of supranationalisation has been set in motion – the construction of a ‘European’ interest.

However, it needs to be acknowledged that there are limitations to the arguments in the article. Firstly, the construction of a ‘European’ interest is yet only partial. One may be able to observe this process in EU-US counter-terrorism relations, but it is not a process which is observable in the entire EU-US security relations. The War in Iraq demonstrated the existence and reification of national interests in matters that concern ‘war or peace’. In these areas, national sovereignty is still predominant in the strategic thinking of the foreign policy and diplomacy elites of EU member states. However, as the case of EU-US counter-terrorism relations demonstrates, this existence of national interests has been over-emphasised in its importance. While this empirical fact must be acknowledged, it must also not be overstated. EU-US relations have evolved very significantly since the end of the Cold War. Despite the fact that the EU is certainly not the only actor in the international relations of Europe with the USA, it must be recognised that it has become one actor – with increasing importance.

Nonetheless, further research on the EFP and the AFSJ is still needed (at least) two dimensions: (1) what is the importance of the EU in other aspects of EFP? It is well established in the literature that the EU is becoming a trade power (Meunier, 2005), but how important is it becoming in other security areas?; (2) How important is the EU in other fields of its external relations in the AFSJ, such as asylum and migration? How important is the difference between first pillar and third pillar competences?. However, these questions will be left for future research.

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