Institutional coordination and consistency in European Union Counter-Terrorism

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Abstract
The emergence of counter-terrorism as a policy domain has produced a significant expansion at the European level of bureaucratic actors with competing competencies. These processes have resulted in severe coordination demands that have the potential to undermine the European Union effectiveness as a counter-terror actor. This paper addresses these issues with an analysis of the internal coherence of the institutional framework that has emerged since 9/11 by adapting the work of Nuttall and Christiansen on institutional coherence to the study of EU’s cross-pillar anti-terrorist structure. It provides an overview of the EU’s institutional actors in the field of counter-terrorism, examines the different mechanisms established to address intra and inter-institutional coordination and analyses the impact on this particular dimension of coherence by the cooperative efforts initiated in recent years by member states outside the EU framework. It argues that although the Union has been unable to provide a satisfactory response to the substantial obstacles to institutional coherence existing in this area, the reforms contained in the Lisbon treaty allow a certain degree of optimism on EU’s capacity to better address these weaknesses in the near future.

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Introduction

One of the most enduring debates pervading research on European Union counter-terrorism since 9/11 has been devoted to the extent to which the European response has developed in an efficient, proportionate and holistic manner. Contributions to this question have centred on the problem-solving capacity of the Union’s institutional framework and ‘the process of advocating, formulating, deciding and implementing policies’ (Edwards and Meyer 2008). Since matters of consistency have significant implications for the effectiveness and credibility of the Union as a counter-terror actor and the output legitimacy of its policies, it is noticeable that these issues have yet to receive the attention they merit in this discussion.

Most EU literature on the question of consistency has so far circumscribed to a lively debate on the Foreign Policy arena (Tietje 1997; Duke 1999; Nuttall 2001, 2005; Gauttier 2004; Anesi and Aggestam, 2008) regarding the challenges to policy coherence emerging from the development of an increasingly complex institutional structure. Even though the question has been mostly explored in the CFSP and ESDP fields, it must be emphasised however that coherence is a central aspect in any EU cross-pillar policy space. It is in those areas where achieving ‘co-ordinated activities with the objective of ensuring that the Union speaks with a ‘single voice’ becomes a goal and a challenge, due to the need to close the gap between the intergovernmental and communitarised decision-making procedures at the EU level. Counter-terrorism, with its implicit demands on the Union’s first (i.e. terrorist financing), second (i.e. international collaboration) and third pillars (i.e. judicial and police cooperation), therefore constitutes a highly relevant case study.

Even so, the issue of institutional coordination in the Union counter-terrorism setting remains little explored (save a few exceptions as Lugna 2006 and Wesseling 2007) and, thus far, consistency has only been explicitly addressed by Bendiek (2006). Although this author has provided a concise and effective examination of the matter, it is argued here that the complexity and intricacy of this question gives room for the exploration of additional issues and a more exhaustive account of particular elements. Therefore it is the aim of this paper to focus exclusively on one specific aspect of the consistency problematic, that is to say, the extent to which decision-making actors at the European level coordinate their efforts and maintain an interoperable and effective working relationship.

Consistent with Bendiek, this paper applies Nuttall’s (2005) model of consistency in EU’s foreign policy as a basic starting point. It further refines this approach with the use of Christiansen’s (2001) work on coherent governance at the European level. Thus, Nuttall’s model has aptly framed the discussion on consistency by separating the notion into three differentiate manifestations: institutional, horizontal and vertical. Whereas the latter applies to the processes of coordination, cooperation and communication between actors at the national and European levels of governance, the horizontal category refers to whether EU policies adopted in the pursuit of particular objectives are congruent or, at least, not contradictory (Ibid: 97).

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1 This paper, echoing Nuttall (2005:92) and Duke (1999:3), uses ‘consistency’ and ‘coherence’ indistinguishably. From a legal perspective, however, Tietje (1997:212) has pointed out the different legal implications that both terms may assume: whereas ‘consistency in law is the absence of contradictions; coherence on the other hand refers to positive connections’.

On the other hand, institutional consistency, the sole focus of this paper, refers to the relations between the constituent elements of the EU’s bureaucratic apparatus operating in one particular field. In this context, Nuttall refers to the problems that arise when decisions in a single policy sector, i.e. external relations, are produced and implemented by two set of actors, i.e. the Commission and Council, each applying a different set of procedures. Inconsistencies in this category arise not due to diverging policy objectives, as with the horizontal and vertical categories, but different and, sometimes contradictory, approaches to the same problem. Under this perspective, there are three major tools that EU policymakers have available to foster consistency: legal instruments and practices (provision in the treaties for interaction, cross-pillar recourse to separate instruments), obligations (political exhortations) and structures (organisational arrangements) (*ibid:* 92).

Following from this basis, Christiansen offers a more refined approach by dividing institutional consistency into the sub-types of inter-institutional, intra-institutional and inter-level coherence. These three elements define ‘the degree to which institution(s) operate a coherent and well-coordinated process of deliberation and decision-making’ (*ibid:* 747). As shown in the figure below, this tripartite approach brings about an important analytical distinction as the separate categories are affected potentially by different factors and processes.

**Figure 1. Dimensions of institutional coherence in European governance**

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<th>Dimension</th>
<th>Focus</th>
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<td>Inter-level coherence</td>
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<td>Intra-institutional coherence</td>
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Source: Christiansen, T., ‘Intra-institutional politics and inter-institutional relations in the EU: towards coherent governance?’ *Journal of European Public Policy* 8:5, p748

Inter-level coherence is considered here as an aspect of Nuttall’s broader categorisation of vertical consistency and therefore goes beyond the analytical frame of this paper. Therefore the analysis will focus on the intra and inter-institutional coherence dimensions. The former sub-category refers to the problem of internal fragmentation, which leads to inner tensions that require substantive institutional resources for their resolution. The latter is focused on the relationship of institutional cooperation between the EU’s major policy-making institutions, the Commission and Council of Ministers, which are influenced by both informal and formal procedures and structures. Consequently, the paper will concentrate on the executive actors who ‘jointly hold the main institutional resources in the policy-making process’ (Stetter 2007:176) in the counter-terrorism space: the Commission, Secretariat and Council. Since the analysis is centred on decision-making within the EU framework and not the relationship between the European and national levels of governance, member states, the remaining executive actor in Stetter’s definition, will not be considered here.

Finally, the argument resulting from applying this model to the empirical information will be structured in the following manner: it will first examine the processes of intra-institutional coordination within the Commission and the Council. The principal sources of policy and the deliberative procedures involved in the shaping of these measures will also be considered in the process. Then the analysis will move onto the formal and informal mechanisms aimed to coordinate the work of these two executive actors. The
spotlight is subsequently turned on the weaknesses and shortcomings affecting institutional consistency in this policy domain and finally the paper concludes by taking a look at the potential impact by the Lisbon Treaty on institutional consistency.

**Intra-institutional coherence**
The EU’s two executive decision-makers in counter-terrorism, the Commission and the Council, are far from being unitary actors. Internally divided, their intra-institutional coherence has been affected since the 1990s by institutional growth as a result of enlargement, the extension of EU competencies to new areas, increasing policy complexity, and the growing specialisation and clustering of individual policy-makers in policy networks (Christiansen 2001:750). In order to tackle these generic problems and some others idiosyncratic to the counter-terrorism domain, EU decision-making institutions have formulated a number of mechanisms to enhance intra-institutional coherence.

**Coordination within the Commission**
In principle, the Commission’s aim to provide coherent policies in the field of counter-terrorism is undermined by the multidimensional character of most of these policies. This means that individual policy proposals often require the involvement of several directorates-general, ranging from Health and Agriculture (i.e. bio-terrorism) to Transport and Energy (i.e. airport, seaport and container security). Moreover, and since the large majority of Commission DGs had traditionally lacked any involvement with counter-terrorism, the structures and expertise inherited from the past have not been designed to deal with these sensitive security issues.

As a consequence the generic structures, networks and bodies available in the Commission have proven insufficient to guarantee coherence and been supplemented by specific structures set up to tackle the high coordination demands of these policies. Firstly, overall internal coordination is enhanced by the weekly meeting of the College of commissioners, and immediately below, the weekly chefs de cabinet meeting (‘Hebdo’) setting the agenda for the College. Whereas the latter looks at problem-solving, the former is more focused on strategic matters and resolving differences between DGs on individual issues. An additional central player in the coordination process is the Commission President’s Secretariat General (SG), which concentrates on guaranteeing coherence, transparency and focus on the main political priorities.

In parallel to the above standard procedures, the Commission has established two layers of coordination particular to policy formulation in counter-terrorism: an inter-service group presided at director level that gathers every two months, and a separate high level coordination group meeting twice a year at directorates-general and cabinet level.

The latter group meets every six months, before the end of each presidency and the beginning of the next, with the participation of all DGs in the Commission ³. This top layer provides strategic guidance to the work of the Commission on this field on the basis of the Action Plan, the European Strategy, the European Council Conclusions and other strategic documents. It also allocates the responsibility of managing inter-service efforts in areas related to terrorism. Most often it is the Justice, Liberty and Security

³ DG Fisheries and Maritime Affairs being the sole exception.
(JLS) DG that takes the lead in coordination as well as policy delivery. Nonetheless there are a few specific areas where other DGs assume these responsibilities with the JLS acting in a supporting role (i.e. DG Transport regarding airport security). In other cases, management is done jointly as with bio-terrorism, where Health and Safety DG and JLS DG jointly manage and chair Commission proposals.

In addition to this top level political and administrative coordination, operational organisation is the objective of a lower-level inter-service group presided over by the JLS DG Director. This group functions permanently and brings together all the DGs in the Commission with relevant responsibilities in the field of terrorism at the level of heads of units or directors. At this level policy is discussed, perspectives are reconciled, planning is monitored on a working level basis and specific initiatives are prepared.

In addition, and within the above inter-service group, there is an extra layer of subgroups that deal with differentiated areas, such as firearms and explosives, radicalisation, security economics and the protection of critical infrastructure. These subgroups have a reduced duration, are established for a particular task, and their composition is restricted on a need-to-know and effectiveness bases. As an example, the subgroup on Critical infrastructure protection is chaired by the JLS DG and involves DG Internal Market, DG Competition, DG Enterprise, DG Transport and others. These structures normally serve the purpose of preparing documents: communications, pieces of legislation, or the establishment of a new instrument. JLS manages the work on these policy outputs and their officials convene and chair the subgroups at the start and during policy formulation. These subgroups are set up to involve and inform other DGs as well as to pre-empt potential discrepancies at the inter-service consultation process before the proposal is moved up to the College of Commissioners.

Coordination within the Council
Internal coordination on counter-terrorism policy-making is a considerably more significant challenge at the Council. For a start, at the Council of Ministers issue areas are often divorced into separate deliberation procedures based on the ministers’ remits. For example, terrorism financing is discussed by finance ministers in isolation from foreign ministers, who deal separately with anti-terrorist financing clauses in third countries agreements, and the JHA Council, where the exchange of police information in this area is agreed.

At the Committee level, where working structures rigidly follow the division of pillars, internal administrative and procedural divisions come to play an important part in fostering fragmentation. Here the main responsibility is divided into two separate working parties: the second pillar COTER and third pillar Working Group on Terrorism (TWG). The former meets once a month and is fully dedicated to the external dimension of the threat, including technical support to third countries, threat evaluations of specific countries and regions, and cooperation under the framework of the United Nations. The TWG is focused on the internal aspect of the threat, meets three to five times per presidency, produces proposals and threat evaluations for the JHA Council, and acts as a forum for information exchange. It is not uncommon for both groups to present divergent angles on the same problem due to their differentiated composition and

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4 Interviews with Commission Officials, DG JLS, January 2006 & April 2008
political loyalties, the former comprising senior officials from the justice and interior ministries and the latter diplomats from foreign ministries\(^5\).

In addition, technical matters of high relevance to EU counter-terror efforts, such as the financing of terrorism or critical infrastructure protection, are dealt separately within other working groups. This means that an issue area such as radicalisation and terrorism recruitment is managed by a myriad of working groups across the three pillars. The TWG looks at the problem internally and the external dimension is covered by COTER, but other working parties are also involved, particularly the Asian regional group where aspects such as interface dialogue, trends in Islam, cultural divide and prevention of ideological polarization are discussed\(^6\).

Even within the same pillar, more than a single working group may deal with the same matter. As a good example, COTER may deal with the Comprehensive Convention on Terrorism under negotiation in the UN; but in parallel the EuroMed committee works with the Maghreb countries to build a consensus position regarding the Convention, while this task is also under the remit of an independent UN working group\(^7\). The result is that a remarkable effort must be produced to link up the work of all these different groups and provide a coherent EU position.

In order to address these coordination needs, some formal mechanisms are available to manage these matters at distinct points of the hierarchy. At the working group level, COTER and TWG organise once per presidency a joint meeting on matters of mutual interest. They also issue a consolidated assessment integrating the internal and external dimensions of the threat (Council of the European Union 2004). Moreover, the president of each WG can present the current state of play of their work in a particular issue at their counterparts’ meetings.

More recently, ad-hoc ‘Friends of the Presidency’ groups have been established for particularly complex terrorism-related matters when there is a need to involve more than a pair of WGs. These non-permanent WGs last one presidency and are established to discuss a specific issue before producing conclusions that are adopted at Council meetings\(^8\).

At the above level, coordination is also produced in parallel by the third-pillar Article 36 Committee and the Political and Security Committee (PSC) in the second pillar. In order to bridge the internal-external divide, overall cross-pillar coordination would in principle be conducted by COREPER but in this case the task is formally delegated to the counter-terror coordinator appointed under the Secretary General and High Representative of CFSP. This is ‘to make sure that each working group is aware of what’s going on in other working groups’\(^9\). The coordinator acts as an interface by attending COTER and TWG meetings to brief on the work that is being produced in

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\(^5\) As a result contrasting perspectives from both sides have emerged on issues such as the counter-terror clauses in third countries agreements, where CFSP officials have expressed concern over the impact of potential penalties in the broader diplomatic relationship.

\(^6\) Interview with Council Official, General Secretariat, January 2006

\(^7\) Interview with Council Official, General Secretariat, January 2006

\(^8\) One such group was established by the 2007 Portuguese Presidency to discuss the Commission proposal on the control of Chemical, Biological, Radiological and Nuclear (CBRN) weapons. Interview with Commission Official, DG JLS, April 2008

\(^9\) Interview with Council Official, General Secretariat, January 2006
other sectors, explain and receive feedback on his initiatives and become informed of the matters discussed in these groups. The coordinator can draw upon the resources of the Council secretariat, which assists on institutional management by providing institutional memory and servicing working groups, linking their work with other permanent EU bodies and becoming a source of proposals.

**Inter-institutional coherence**

Intra-institutional coordination is however just an element of the broader issue of institutional consistency. An alternative dimension is whether the different bodies within the Union with a stake on counter-terrorism are fulfilling their role in an interconnected manner: in other words, the achievement of inter-institutional coherence. This would indicate in practice an absence of what Nuttall (2001: 8) defines as ‘malign consistency’, the existence of struggles for institutional power or, in other words, turf wars.

Being the principal decision-making institutions in this domain, fluid communication and interaction between the Commission and Council is a crucial element in effective counter-terror decision-making. Formally, EU policy-makers have aimed to achieve this through two mechanisms present in Nuttall’s model: institutional arrangements and political exhortations.

Under the latter type of response, the EU Counter-terrorism strategy invited EU institutions to establish, during each presidency, a high level political dialogue bringing together Commission, Presidency, the Counter-terror Coordinator and European Parliament representatives to ‘consider progress together and promote transparency and balance in the EU’s approach’ (Council of the European Union 2005: 14). The first of such meetings, convened in May 2006 by the Austrian presidency, informed the EP on the state of a number of proposals prepared by the Council and Commission.

However, the convening of the dialogue depends exclusively on each Presidency and after this original meeting some presidencies have declined to continue the initiative. This leaves the impression that this dialogue is more a half-hearted rhetorical effort to improve transparency than a conscious attempt at enhancing inter-institutional communication. It is difficult not to question indeed whether such ad hoc and irregular political engagements can do enough to strengthen institutional consistency.

A similar charge can be directed to the Hague Programme’s call for a joint meeting every Presidency involving the Commission, the chairpersons of the Article 36 Committee, the Strategic Committee on immigration, Frontiers and Asylum and representatives of the Police Chiefs Task Force, Eurojust, Europol, Frontex, and the Sitcen (Council of the European Union 2005b). Again, it is arguable that two meetings per year are sufficient to address the significant challenges to cooperation in the internal security arena, where terrorism is just one of a myriad of issues.

As a result, complementing the above initiatives, organisational arrangements have also been put in place to encourage consistency. Thus, since 2005 a network of contact points consisting of one representative in each Permanent Representation have been

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10 So far it has been produced every second presidency.
appointed. The network’s mission is to improve communication between Commission and Council staff and capitals and to update the action plan (Council of the European Union 2007: 11).

Cooperation is also fostered by the participation of Commission representatives from the JLS DG in Council meetings at the Working group level including TWG, COTER, informal expert meetings or regional group meetings in the second pillar. The main rationale is to inform member state officials about the state of play of their initiatives and future projects. The Commission often uses these meetings to ‘test the waters’: to consult member states and receive feedback on draft proposals. According to a Commission official, ‘the commission does normally 40% of the talking’ in those meetings and

we are a bit more part of the group than other participants in the groups because we are part of the preparation of the groups, we elaborate, we contribute to the elaboration of the documents of the groups, we’re working directly with the presidency and our colleagues in the council secretariat 11.

In actual fact, Commission involvement depends on the individual, the subject and whether the Commission is working on a communication on the subject12. Nonetheless, the Commission’s inclusion in these groups represent an opportunity for regular contact and a two-way exchange of information at the director level, providing both sides with broad knowledge of each other’s activities.

At desk level however, there are no formal structures of policy coordination between the Commission DGs and the Council secretariat. A number of officials from both the Commission and the Council confirmed to the author that they had little knowledge of the activities of their counterparts13. Evidence from interviews with EU officials has shown that, at this particular level, and in the absence of formal mechanisms, communication and cooperation, when it occurs, is mainly informal. As a Commission official put it, cooperation has been improving in recent years ‘because there are good personal relations perhaps more than anything else’14. Interviewees at the Council also emphasised the importance of this tool: ‘An informal basis is the first form of cooperation, everything depends on who you know on the other side, who you can pick up the phone and call, you have to have some informal contacts’15.

Informality has also characterised the working relationship between the counter-terror coordinator and the JLS DG director, since the coordinator’s formal mandate is circumscribed to coordination within the Council. In those instances where the European Council has invited both the Commission and the coordinator to work on a particular issue, although formally working in parallel, discreet contacts are usually established throughout the process before the work merges at the COREPER level.

It is clear from the above that informal networking is a trust-building process that contributes to ameliorate malign consistency. It has often served to make more fluid the

11 Interview with Commission Official, DG JLS, January 2006
12 Interview with National Official, Member State Permanent Representation, April 2008
13 As an official from the Council (DG H-Justice and Home Affairs, January2006) rather graphically put it: ‘I don’t have a clue what the Commission is doing’.
14 Interview with Commission Official, DG Relex, April 2008
15 Interview with Council Official, General Secretariat, April 2008
exchange of information, increase the number of joint meetings and generate consensus around an initiative. Growing familiarity and enhanced personal relations coming from the experience of working on the same problem have expanded working relationships and helped to better delineate competence boundaries. This collegial atmosphere is facilitated by the fact that the expertise on these aspects is concentrated, at least at the director level, in a small group of officials who get to meet each other relatively often while dealing with various dimensions of the problem.\(^{16}\)

**Consistency weaknesses**

In spite of the diverse strategies that have been delineated above, there has been a general acknowledgement by policy-makers that there is room for improvement in the communication between the EU’s counter-terror actors. Officials from the Council secretariat and the co-ordinator office stressed the complexity and challenges involved in the coordination practices and the existence of a serious problem in this regard.\(^ {17}\) Commission officials themselves have officially recognised that the situation is far from ideal: ‘We have to be absolutely sure that they [EU bodies] are operating to full potential and they are operating with each other in the best possible way. Have we achieved that? No.’ (UK House of Lords 2005:48).

What emerges from the analysis of official documents and interviews is that EU institutional arrangements have struggled to address inter and intra-institutional coherence pressures in a congested organisational space. This notion needs to be further refined by articulating a number of factors that have contributed to foster deficiencies in the institutional dimension of consistency:

**Pillar Structure**

In spite of the fact that terrorism requires a multidisciplinary and complex response, the rigid legal division into pillars acts as an important obstacle to institutional consistency. For a start, as Spence (2007) perceptively argues, the three pillar system has contributed to a dispersion of efforts and, it could be added, political responsibility. In addition, the structure has impeded the establishment of a dedicated body dealing exclusively with counter-terror policy-making. This may constitute a major hindrance in policy-making particularly so in complex initiatives originating from the Commission and involving a variety of measures with unclear policy demarcations. Thus, a policy proposal on the control of explosives may encompass areas as varied as the detection of explosives at customs control points, the security of explosives used in industry or scientific research policy. Here the Commission has flexibility in producing comprehensive proposals crossing a number of areas, as inter-service groups can be established to gather expertise and allow most interests to be represented. In contrast, the rules of procedure within the Council as regards the functioning of the working bodies are much more stringent and there is no

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\(^{16}\) As argued by a High-ranked official ‘there are 50 people in Brussels working on terrorism, they know each other, we all know where to find us’. Interview with Council Official, DG H-Justice and Home Affairs, January 2006

\(^{17}\) Comments emphasising this point included: ‘there is a real big coordination problem even within the Council’, ‘[coordination] process indeed is challenging and very complex’, ‘do you want an honest answer? They don’t [coordinate]’, ‘coordination could be done better’ or ‘sometimes they just don’t know what people are doing’. These examples are by no means exhaustive. Interviews with Council and Commission Officials, January 2006 & April 2008
possibility for the establishment of similar inter-service groups. Commission initiatives must then find the way through rigidly divided ministerial formations and their corresponding sectoral committees. This means that the multiple aspects of these measures end up divorced and discussed in separated and often unconnected Working Groups and Committees of senior civil servants. As a Commission official rather bluntly put it: ‘the Council is in a mess in order to try to deal with our policies’\textsuperscript{18}.

This hampers the efficiency of the Union as a policy-maker as progress may be blocked when no Working Party takes automatic responsibility for some cross cutting initiatives. Continuing with the above example, the Commission proposal on security of explosives was paralysed for 18 months because no WP discussed the proposal until the Portuguese presidency allocated it to the Police Cooperation WP\textsuperscript{19}.

As already mentioned, the establishment of Friends of the Presidency groups has been used to address these problems on a number of occasions. Yet these are by no means a panacea since they only last for a presidency while negotiations of complex issues (i.e. the European Programme for Critical Infrastructure Protection (EPCIP), the CBRN Programme) generally take a minimum of two years. Moreover the use of this solution is problematic due to such pedestrian obstacles as the limitations on the size of the Council rooms. More importantly, these temporary working groups burden member states with the responsibility of the coordination as they must decide on which ministry would send the representative and the method for informing other departments. Coordination gaps at the national level makes common the fact that some competent actors end up outside of the deliberative practices and it does not ensure that all the actors will be involved\textsuperscript{20}. It is difficult not to agree with Nuttall (2005:96) when he argues that ‘as long as the Union organises its affairs in separate pillars consistency will need to be managed’.

\textit{Overlapping competences}

The multi-dimensionality of counter-terror decision-making has led to the involvement of a large number of actors with contrasting preferences and capabilities, resulting in a notoriously over-crowded field (den Boer, 2003). Hence, most of the Commission DGs have been involved in one way or another in this area, accompanying a large number of Council working groups and external EU agencies.

Coupled with the aforementioned pillar legal division, this overpopulation of actors is highly problematic in the sense that it over-burdens coordination bodies. As an illustration, the counter-terror coordinator office is stretched out due to the considerable number of working groups and committees within the Council that become involved periodically in specific counter-terrorist measures\textsuperscript{21}.

Moreover, the rapid growth in the number of competing bureaucratic populations is compounded by the fact that some of the EU structures in this field have been characterised by poorly defined mandates, including the counter-terror coordinator (Monar, 2006). The final result is inefficiencies in the form of overlapping competences between structures within and outside the EU framework. This is highly relevant, as

\textsuperscript{18} Interview with Commission Official, DG JLS, January 2006
\textsuperscript{19} Interview with Commission Official, DG JLS, April 2008
\textsuperscript{20} Interview Council Officials, DG H-Justice and Home Affairs, April 2008
\textsuperscript{21} Interview with Council Official, General Secretariat, January 2006
Nuttall (2005:103) points out, since duplication is symptomatic of deficiencies in institutional consistency.

There are plenty of instances where duplication of tasks and expertise occurs in this area. As a case in point, the terrorist threat to Europe is separately assessed by at least four independent bodies: the TWG submits assessments on the threat on internal security, COTER on terrorism in third countries and regions, Europol produces a Situation and Trends report and the Situation Centre at the Secretariat develops assessment reports on the internal and external dimensions of the terrorist threat.

On the other hand, technical assistance in counter-terrorism is provided by both COTER and DG Relex, the former focusing on a shortlist of seven priority countries, the latter providing 80 countries around the world with capacity-building assistance that is increasingly related to internal security components.22

In similar vein, both the Commission and the coordinator evaluate the implementation of counter-terror instruments, the latter systematically through periodic reports, the former on ad-hoc exercises covering measures that are deemed specially important or sensitive, such as the European Arrest Warrant.

Duplication may occur even within the same institution and in relation to very concrete tasks. In this way, terrorism financing within the Council is scattered across a diversity of formal and informal working groups across the three pillars: COTER, the Multi-Disciplinary Group on Organised Crime (MDG) and the Clearing House WP are all involved in this area (Council of the European Union 2004).

Moreover, an overlap of sorts also exists between the Article 36 Committee and the counter-terror coordinator in managing counter-terror matters at the Council. The Article 36 committee mandate is limited to police and criminal justice, which is at the core of the European response to terrorism, resulting in clear potential for duplication. This is more relevant for those measures that target terrorism only as part of the broader fight against serious crime, including the European arrest and Evidence warrants or the legislation on retention of telecommunication data.

The possibility for overlapping expands when structures outside the EU are considered. An interesting case is that of the Club of Berne’s Counter-terrorist Group (CTG) and the Council’s Secretariat Situation Centre (Sitcen), since some member states tend to send the same representatives to both structures23, raising interesting questions over intelligence ownership. This also leads to repetition, particularly since the CTG also sends reports to EU bodies on Radical Islam (Council of the European Union 2004).

Following this pattern, member states use both the PWGT (Police Working Group on Terrorism) and Europol as channels for the sharing of terrorism-related intelligence. Although it must be noted that security agencies have favoured informal and practitioner-created structures such as the PWGT over EU organizations for the sharing of confidential intelligence (Müller-Wille, 2008). Finally, overlap exists between the PWGT and the EU’s PCTF (Police Chiefs Task Force) as both have served as platforms

22 Interview with Commission Official, DG Relex, April 2008
23 Interview with Council Official, DG H-Justice and Home Affairs, January 2006
for high-level meetings with the heads of EU counter-terrorist units to share best practices and information.

**Bureaucratic Politics**

As a result of the aforementioned instances of duplication and overlapping responsibilities, a degree of inter-institutional friction has emerged between the Commission and Council secretariat. Although the pattern of the relationship between these two actors tends to be cooperative within the first pillar, competition has been a reality in the second pillar where demarcation lines between Commission and Council are rather blurred (Christiansen 2001). This has certainly been the case regarding the external dimension of counter-terrorism where initially DG Relex and COTER considered each other as competitors for power and responsibilities as much as partners.24

This has often come as a result of the Commission’s instinct to protect their competencies in those counter-terror areas that intersect with the common market and their independence from the Council’s institutional influence. A well-known episode in this regard was the Commission’s mixed reception to the appointment of the counter-terror co-ordinator. Keohane (2006:69) has highlighted how Commission officials perceived the decision as an attempt by national governments to curb their role in this area. Indeed, Commission representatives took great pains to emphasise that the work of the co-ordinator should be restricted to the inner workings of the Council and the overseeing of implementation. In other words, the role of the coordinator should be complementary to that of the Commission. JLS DG director Jonathan Faull has officially put that point across: ‘I do not believe that the co-ordinator has the resources, the mandate or the institutional position to co-ordinate operational action of the various bodies in the European Union’ (UK House of Lords 2005:46).

Spence (2008:18) has also argued that the origin of the Commission’s opposition to this post resides in their perception that the Council secretariat was proposing structures that would put the first and third pillars at the service of the second by locating policy initiative and coordination under Solana. The Commission’s distrust of the coordinator would then be symbolic of a broader debate on where the locus of political responsibility for this policy domain should reside.

On the other hand, inter-institutional rivalry can be detected in the critical stance of some Council officials to the quality of certain Commission proposals. A Council official described, for instance, a particular Commission initiative on intelligence exchange as ‘totally outlandish’.25 Others have pointed out that the DG JLS ‘lacked a little bit of expertise coming from the services’ and sometimes the proposals did not respond to a clear need or were not realistic. The latter is a statement corroborated by Europol representatives. The Commission’s argument is that it is precisely their role to raise issues and foster discussion:

> We have the responsibility to say there is a problem to be put on the table, we put the problem on the table, we have a discussion. If the discussion must start by 25 people pointing guns at us and shooting for hours and hours, let it be so. When they finalize

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24 Interview with Commission Official, DG Relex, April 2008
25 Interview with Council Official, DG H-Justice and Home Affairs, January 2006
shooting at us, they would have to say what they think about what is on the table, actually\textsuperscript{26}.

Even so, these sporadic struggles for institutional power in the field are highly relevant, since they highlight not only divergent approaches but also the persistence of malign consistency. Importantly, this has affected the efficiency of the European response since contrasting approaches have occasionally resulted in the production of parallel and competing legislative proposals on the same matter\textsuperscript{27}.

\textit{Extra-Community instruments: the dangers of fragmentation}

Taken together, overlapping competencies and bureaucratic politics have hampered institutional consistency and this has been aggravated by the institutional expansion on internal security cooperation outside the framework of the treaties. Amidst the slow downs in particular periods produced by the dissipation of general political will, leading member states have turned towards extra-community forms of cooperation. Flexible and informal mechanisms such as the G-6, consisting of the interior ministers of France, Germany, Italy, Poland, Spain and UK, permit closer national responses by the most powerful EU states and they do so while by-passing the twin obstacles of unanimity at the Council and the integrationist impulses of some member states and the Commission. There is certain irony in the fact that EU structures are circumvented by precisely those member states that have been the most active in this area. It reinforces the idea that while member states are aware of the necessity of a European response, they are still reticent to provide the EU with the strengthened competencies and resources necessary for truly efficient action. In this context, structures external to the Union have acted as alternative decision-making nodes, increasing over-crowdedness and amplifying the management challenge.

In doing so, instruments such as the Prüm Treaty and the G-6 engage only a subset of member-states and therefore have the potential to produce a dispersion of policies and to contribute towards the fragmentation of police and judicial cooperation at the European level. The subsequent incorporation of most of the Treaty of Prüm’s provisions into the EU’s legal framework has not avoided the \textit{de facto} solidification of enhanced cooperation: UK and Denmark have ‘opt-in’ and ‘opt-out’ and the most complex aspects of the Treaty remained outside and are only applicable to the original signatories. The growth of fragmentation and the emergence of a two-speed Europe do not only make ensuring the consistency of European efforts a much more challenging task but would also, in principle, erode harmonization efforts in combating a transnational threat.

\textit{Ineffective Coordinators}

Notwithstanding the relevance of the above factors, arguably the key factor explaining the weakness in the EU’s institutional consistency is the inadequacy of existing coordinating actors. At the apex of the structure, the European Council can put its weight behind consistency-enhancing proposals but its summity format is more suited

\textsuperscript{26} Interview with Commission Official, DG JLS, January 2006
\textsuperscript{27} Some of the most relevant examples include the Communication data retention directive, the US signing individual bilateral Visa agreements with member states or the EU-US Custom Security Initiative where the Commission even threatened to bring individual member states before the European Court of Justice.
to grand bargains and strategic decisions than to the small details of internal coordination.

On the other hand, the cross-pillar COREPER would appear well positioned to fulfil the role of overall coordination by covering all the counter-terrorism policy space in its two manifestations. Whereas COREPER II tackles JHA, CFSP, ESDP and terrorism financing; COREPER I deals with more technical matters such as transports, telecommunications and the environment. Yet COREPER cannot realistically devote more time to this particular area than it currently does, and other Council Committees such as Article 36 are placed under a single pillar and cannot assist in bridging the internal-external divide between groups of policy-makers.

Finally, and most importantly, the role of the counter-terror coordinator has been beset with problems from the start. At their roots is the vague definition of its mandate established in the 25 March 2004 European Council Declaration. As already discussed, this circumstance has led to institutional friction with the Commission. Moreover, the coordinator has also been criticised by member states’ representatives for its ambassadorial role that they believe should be played by national authorities. It is safe to say that established actors have contested any perceived move by the coordinator to step in their turf boundaries.

Inherent to this debate is the well known fact that the position has limited competencies and resources. Keohane (2006:65) has described how the coordinator has ‘few powers, a small budget and no right to propose EU legislation in this area; nor can he call meetings of national justice and foreign ministers to set the anti-terrorism agenda’. Neither can he formally coordinate the work of the Commission or the EP. The coordinator can only persuade member states to accelerate the implementation of measures but, according to the same author, ‘only ten of the 25 governments take his role seriously and listen to what he says’.

In fact, counter-terror coordinator de Vries became rather unpopular with some important member states’ interior ministers, who were displeased with the high media profile that he adopted28. Indeed the fact that part of his job was to expose member states inefficiencies in implementation did not help to endear him to the ministers29. This situation had much more to do with his decision to step down than inaccurate media reports connecting it to the critical EP report on the rendition policies30.

If his powers are limited, the formal resources are equally notorious. Formally the coordinator office is constituted just by the coordinator himself and two assistants. In contrast a similar Council unit tasked with counter-proliferation had at least a dozen members working full time. A member from the coordinator office calculated that at least 15 staff would be necessary to have a more hands-on approach on the coordination process31. Although these limitations were rejected by other EU officials who reiterated the fact that the coordinator can draw upon the General Secretariat staff for the exercising of its role, the reality is that the de Vries had no executive authority over

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28 Interview with National Official, Member State Permanent Representation, April 2008
29 Interview with Commission Official, DG JLS, April 2008
31 Interview with Council Official, General Secretariat, January 2006
them and could only cajole or persuade to get things done. This further diminishes the possibilities of the office to produce proposals, leaving all policy initiative independent from member states entirely to the Commission. In this way, the office evolved into a one stop shop that was heavily stretched to fulfil the coordination, ambassadorial and implementation oversight roles that de Vries adopted for himself.

Eventually disagreements between member states over the exact scope of the position caused the decision for his replacement to be delayed by six months. Although the abolition of the position became a possibility, the final decision was to appoint the ex-director of the Secretariat JHA DG and transform the post from a political figure to a more technical position, a high-level civil servant with a lower political profile.

**Conclusion**

The shortcomings delineated above, derived from the EU’s organisational structure and legal basis, have made experts and policy-makers to strive for solutions to deal with these deficiencies. A UK House of Lord report (2005) suggested assigning a leading role to Europol to avoid the proliferation of EU committees. Keohane and Townsend (2004) proposed the establishment of a European Security Committee (ESC), chaired alternatively by CFSP HR and the chair of the JHA Council, which would advise European heads of government on counter-terror and other security matters. Bendiek (2006) advocated strengthening the competencies and right of initiative of the CFSP HR, Sitcen and counter-terror coordinator. Lugna (2006) put forward a High-level cross-departmental Counter Terrorism committee chaired by the Presidency and the coordinator and reporting directly to COREPER.

The EU co-ordinator himself (Council of the European Union 2004) suggested COREPER a number of alternatives for institutional reform: create a High level Working Group on Counter-terrorism, merge TWG and COTER into a horizontal working party or maintain the current structure but reinforce the role of COREPER in the management of this area. The merging of TWG and COTER met a general opposition by national authorities since this would have transferred the burden of coordination to the respective national ministries. Eventually the solution was based on the setting up of more ad hoc joint meetings between the TWG and COTER with respect to cross-cutting policies such as recruitment.

In spite of these specific recommendations, the Lisbon treaty arguably represents the most realistic opportunity for those major institutional changes necessary to answer consistency weaknesses. For a start, the envisaged dissolution of the pillar system would lead to the communitarisation of the area of police and judicial cooperation in criminal matters, the core of EU counter-terror efforts. This in principle would facilitate the design of integrated policies in this area and ameliorate the rigid structural division within the Council, facilitating closer collaboration between working parties with counter-terror competencies in what are now the first and the third pillar. This change will do nothing, however, to bridge the separation between the external and internal dimension. Under the ‘shadow of the pillars’, the Union’s foreign, security and defence policy would remain intergovernmental and preserve its distinct voting and decision-making methods.

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33 Interview with National Official, Member State Permanent Representation, April 2008
The establishment of new institutional arrangements by the Treaty can impact, in principle, on the coherence of EU’s external action in counter-terrorism. In this way, the creation of a High Representative for Foreign Affairs and Security Policy merging the responsibilities of the SG-CFSP HR and the Commissioner of External Relations can arguably help to reduce duplication. The Representative will be capable of combining the diplomatic importance of the HR with the economic power and organisational assistance of DG Relex. On the other hand, it must be noted that the Representative will also act as one of the vice-presidents of the Commission and this will force the Commission to rearrange their working arrangements to ensure intra-institutional coordination.

Interestingly this also raises questions regarding the future of the counter-terror coordinator. The position is a creation of Solana’s cabinet, but it is far from certain that the new HR will keep Solana’s practice of special representatives (of which the coordinator is a special case). If the position is maintained, another interesting question is whether this would allow the coordinator’s influence to extend to the Commission. This would then truly make this position an EU co-ordinator.

Lastly, institutional consistency in counter-terrorism has the potential to be enhanced by the setting up of a standing committee on internal security (COSI) within the Council. COSI would have the task to facilitate operational collaboration between member states’ competent authorities. Even so, it is difficult to determine the capacity of this body to strengthen coherent governance, due to the sensitivity of this joint French and Spanish proposal, its composition and competences have not been detailed in the Treaty. These are dependant on how the concepts of European and National Internal Security are legally defined and the discussions are still in an embryonic stage at the Council. For this and the other reforms, only the lifting of the fog surrounding the Treaty’s future would clarify the possibility of a more institutionally coherent European response to the threat of terrorism.
References


