This paper takes stock of the achievements and limits of the EU's response to international terrorism since 9/11. Although it has become almost impossible to adequately cover the EU's extensive counterterrorism policy in a single paper, such overviews (Monar 2007) remain a necessary complement to more specialised articles on issues such as fight against the financing of terrorism (Jakob 2006) or judicial cooperation (Nilsson 2007). In particular, by providing a critical reading of the EU's Counterterrorism Strategy, this paper seeks to provide a counterpoint to the official summary of the EU's achievements. This should also help to clarify whether the EU has actually increased its 'output legitimacy' since 9/11, or whether its counterterrorism efforts have only given grounds to political controversy.

The outline of the paper is as follows. The first part presents an historical overview of the EU's response to international terrorism since 9/11. It is shown that events and historical contingency have dominated the development of the EU's counterterrorism agenda, whereas attempts to improve policy coherence and implementation records have faced persistent difficulties. The second part presents a critical assessment of policy outcomes according to the objectives set out in the EU's Counterterrorism Strategy. It is argued that the EU has gththrica   n

security professionals, whereas more conventional analysts would regard it as the fundamentally legitimate result of unanimous decision-making among the member states. The paper sides more with the latter position, and maintains that EU counterterrorism has become more mature and increasingly constrained by different political actors. Nevertheless, just as in many other policy areas there is a need for better *ex ante* control mechanisms.

1. A short history of EU counterterrorism policy

EU counterterrorism policy has been driven by events, which resulted in an uneven rhythm of policy-making. Although terrorism had plagued numerous member states in the past, 9/11 led to an unprecedented political mobilisation at the EU level (den Boer and Monar 2002). The EU's rapid 'beyond-rhetoric' response was built on a number of pre-existing policy proposals

objectives'[8], so as to improve the coherence of measures that had accumulated on the Anti-Terrorism Roadmap. The ESS was also drawn upon to better define the EU's possible role in the fight against terrorism (Commission 19/03/2004), particularly in relation to the ESDP (Council 03/11/2004).

Meanwhile, the Madrid attacks led to a further expansion of the EU's counterterrorism policy. Again, the Commission (Commission 18/04/2004) and the Council Secretariat[9] were important for driving the agenda forward. Yet member states, too, sought to act as policy entrepreneurs. For example, Sweden pulled an existing proposal for simplified information sharing between law enforcement authorities (Council 04/06/2004) 'out of the drawer'.[10] In fact, the most controversial proposal that made it on to agenda, i.e. mandatory retention of electronic communication data (Council 29/04/2004), was sponsored by several member states that operated such a system at the domestic level. After the terrorist cell behind the Madrid attacks was tracked down on the basis of mobile call records, previous objections to such a regulation at the EU-level were set aside.[11] Yet the new 'window of opportunity' in spring 2004 had its limits. For instance, the idea of a European Intelligence Agency that had been floated by Austria (European Report 21/04/2004) found no support. Instead, the EU tasked SITCEN to generate strategic threat assessments of terrorism (Statewatch 08/2004).

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[8] The objectives were already set out in the Declaration on Combating Terrorism. They were:'1. Deepen the international consensusNi ns tensep115.9273(n)-0.31462(t)-7.898237518.9771( )20.547488.85224.21

SITCEN was attractive to the member states, as it was drawn up by relatively few national experts and had no pretensions to deal with operational intelligence.[12]

In the second half of 2004 and first half of 2005 the EU sought to live up to the promises and agenda set out in the European Council Declaration and the revised Action Plan on Combating Terrorism. For instance, more regular and concise implementation reports were drawn up, and established policy areas, such as the fight against the financing of terrorism, and civil protection, were gradually extended (Council 24/05/2005). In particular, by the end of 2004 the new policy objective of critical infrastructure protection (Commission 20/10/2004) developed out of the EU's civil protection policies.

extraordinary renditions to the US.[17] 2006 saw only one major initiative, again in response to an event. The foiled plot to blow up several transatlantic flights by liquid explosives led to a corresponding change in aviation security regulations (Commission 17/10/2006). Otherwise, one could mostly observe incremental work at the technical level, such as on critical infrastructure protection or on the implementation of SISII. By early 2007 political momentum had reached a new low as the member states failed to appoint a new Counterterrorism Coordinator.[18]

However, summer 2007 saw another series of failed or foiled plots, this time in Germany, Denmark as well as the UK. Once again, this revived

2. A critical assessment of policy outcomes according to EU's Counterterrorism Strategy

Although the Counterterrorism Strategy had no direct impact on EU policy-making, it succeeded in staking out the *possible* or *desirable* contribution of the EU. The Strategy presents the EU's fight against terrorism under four objectives, namely to 'prevent, pursue, protect and to respond'. There is a clear logic to these four strands, as can be seen if they are arranged in the following two-by-two matrix.

13/04/2006) or on improved information sharing in r

Yet even if implemented, the EU instruments to aid the pursuit of terrorist have not been readily made use at operational level. For instance, even though Joint Investigation Teams were quickly made possible after 9/11, they have not spread in practice (Rijken and Vermeulen 2006). Similarly, the Police Chiefs Task Force, originally intended to create a more operational forum of cooperation, has not made any significant contribution to EU counterterrorism cooperation.[24] Moreover, the exchange of information between national police and Europol remains unsatisfactory (Hojbjerg 2004; Brady 2007), particularly in sensitive areas such as counterterrorism, which blurs the line to intelligence.[25] One national expert even expressed the view that it had been a 'huge mistake' to give EUROPOL a role in the fight against terrorism.[26] The so-called 'principle of availability' that should have ensured better cross-border access to criminal justice information has not provided a way forward either.[27] This is mainly due to the conservatism of police and judicial authorities, which renders even domestic cooperation difficult.[28] National authorities may also lack incentives to ifiho87.21089

2.2. Protect

This is the perhaps the most dynamic area of EU activity due to the intersection of member states' interest in controlling migration and US pressure for more border and transport security. As mentioned previously, the EU was basically forced to oblige on the issue of PNR and container security, but was eager to introduce biometric standards in visas and passports. In addition, it has introduced 'counterterrorism' functions to the next generation of the Schengen Information System (Council 15/03/2004). EURODAC and envisaged Visa Information System have also been linked to the EU's counterterrorism effort, and may eventually be opened up to EUROPOL and even national police authorities (Geyer 05/2008).[30] The most straightforward result of 9/11 in matters of transport security has been the extension of EU competences into the area of aviation security (Poincignon 2004). Just recently the European Parliament has agreed to a consolidation and extension of the Commission's regulatory power in this area (Council 09/04/2008), which now also touches controversial areas, such as the use of sky marshals. A parallel, if not quite as extensive, development has taken place in the management of 'maritime security'.[31]

The other and increasingly important component of the EU's 'protective' measures is critical infrastructure protection. Basically, this is intended to protect all core transport, energy and communication networks against 'all-hazards', including terrorism (Commission 12/12/2006). This still fairly new policy area has been flanked by a significant expansion of funding for research on security technology.[32] Both in security research and critical

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infrastructure protection policies are designed to improve resilience against levels of destruction that are hard to achieve by conventional terrorist attacks. This has led to the dominance of the concept of protection from 'all ha

small EU fund for projects to assist victims of 'conventional' terrorist attacks (European Report 26/05/2004).

However, the impact of these mechanisms has largely remained on paper (Lindstrom 2004; Ekengren, Matz et al. 2006). Of course, it is most

In sum, the EU has achieved a moderate level of success in the area of civil protection by adding funds and by promoting the exchange of infor

Timely intelligence is the most valuable tool in preventive counterterrorism work. Yet the EU's possible role in intelligence-sharing remains very limited (Müller-Wille 2002; Müller-Wille 2008).[44] Member states have simply refused to integrate their national security services at the EU level,[45] even though there are various informal European groups for intelligence cooperation, most notably the Club of Berne. The so-called Counterterrorism Group (CTG), which was founded after 9/11 (Council 20/09/2001), has maintained a distance from the EU.[46] The defence of sovereignty in matters of 'national security' is buttressed by a culture of secrecy and independence of these services. Confidential sources and methods of work could be compromised if intelligence was widely shared. Moreover, intelligence is also a 'currency' to obtain other valuable information or political favours. Therefore, it is not appealing to share it on the basis of general rules with all EU member states. Big member states may not be willing to share intelligence with, for instance, Greece, as the latter may have little to offer in return. Last but not least, the EU does not have any human intelligence collection capacities of its own.[47] As mentioned previously, SITCEN remains entirely dependent on voluntary contributions of information from member states' services and does not concern itself with operational intelligence work.

Given these obstacles to more operational action, the EU has defined its role in terrorism prevention in a more structural manner, i.e. to counteract processes of radicalization and recruitment to terrorism. However, this approach has been no less hampered. Contrary to the political rhetoric after 9/11 (European Council 21/

security policy (Keohane 2008). Apart from the fact it could not play a significant role in the

hotspots of the Middle East, Horn of Africa or Cent

support[50] as well as by setting up an expert working group on radicalisation (Commission 25/04/2006). However, it cannot act as an agenda-setter or introduce more binding measures in policy areas such as community policing, religious education, or integration policies of second or third generation migrants. As will be picked up on further below, these limitations are likely to remain stable.

Yet before turning to the future, the following table sums up the above assessment of the EU's functional contribution to the fight against terrorism.

	Before Attack	After Attack
Countering Intentional threats	*Prevent* **WEAK** Almost no operational intelligence role. Deep limits to structural counter-radicalisation policies due to weak foreign & integration policy capacity	*Pursue* **MODERATE** Added value due to numerous measures in criminal justice cooperation and fight against terror financing, but deficits in implementation, info-sharing & trust
Controlling structural hazards/effects	*Protect* **MODERATE** Dynamic developments in travel and border security, critical infrastructure protection & security research. Latter still new and weak, but all measures may lack relevance for terrorism.	*Respond* **WEAK** to **MODERATE** Added funds and programmes for civil protection (CBRN), emergency coordination & victim support, yet so far largely untested. Contribution of ESDP also below political rhetoric

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[50] See http://ec.europa.eu/justice_home/funding/2004_2007/radicalisation/funding_radicalisation_en.htm

3. Future trends and competing normative assessments of the EU fight against terrorism

Two basic points emerge from the previous historical and functional overview of the EU's counterterrorism policy. Firstly, the EU has been able to channel the shocks of 9/11 and 3/11 into a broad political momentum for more security policy cooperation. This was particularly the case with the issues of border and travel security, and criminal justice cooperation. Yet since the EU's extensive agenda was also strongly driven by other security interests and contingency, even seemingly 'successful' policies, such as the introduction of biometrics in travel documents, may not contribute much to an effective counterterrorism policy. Secondly, over time the EU sought to improve on its existing counterterrorism agenda instead of adding contingently available measures after each attack. However, attempts to step up implementation and to devise more targeted counterterrorism policies have run into increasing difficulties. This is partly a question of time, as the necessary cultural and legal changes are happening only slowly. Yet there are more fundamental obstacles to a stronger EU counterterrorism policy, such as the exclusion of the EU from sensitive

structures. Moreover, the exchange of sensitive police information, which is central for effective counterterrorism, is unlikely be improved markedly.[51] By contrast, measures to 'protect' against terrorist attacks will develop in a more dynamic fashion, as the Commission has become a serious player in the 'technical' issue areas of border and transport security, and critical infrastructure protection and security research. Yet just as in the past this will mostly strengthen defences against 'illegal migration' and 'all hazards' rather than against terrorism. The EU's ability to 'respond' to terrorism   also continues to be developed. Both technical capacities and policy programmes for civil protection will incrementally be improved. However, as long as civil EU protection policies have not made a more substantial contribution in real crisis situations, the profile of the EU is bound to remain low.310251(e)3.72[(c)3.72729(

Unfortunately, in the remainder of this paper I can only outline two extreme positions that can be found both in the public and academic debate. To be clear, this should be taken as a stimulus for further discussion, not as a replacement for a more thorough theoretical and normative analysis. I will also refrain from further citations so as to avoid caricaturing individual authors by placing them under one or the other stylized position.

The first, critical position is to regard the growing number of 'technical' security measures in EU counterterrorism policy as the expression of a wider historical trend for the dominance of 'security professionals' that push for ever more powerful tools for 'surveillance'.[53] The EU is part-and-parcel of this historical trend by empowering transnational expert networks at the expense of wider democratic participation.[54] In more concrete terms, national security actors have used the more removed and unaccountable EU structures to "agree on things in Brussels they would not have obtained at home".[55] Consequently, the fact that EU counterterrorism has become stable and 'technical' could be interpreted as the normalisation and institutionalisation of previously 'exceptionalist', i.e. illegitimate, practices. Therefore, the European Parliament and the European Court of Justice, as well as transnational civil society, must counterbalance the dominance of security exper

member states. Given that not all member states have been directly touched by terrorism, it is unlikely that the EU could develop a strong and focused policy in response. Instead, precisely those security measures that serve other, overlapping security interests, such as the fight against organised crime or illegal migration, make better progress. In any case, all member states are reluctant to transfer their sovereignty in matters of 'national security' to the EU. Therefore, the EU's counterterrorism policy has become more and more limited to technical and supportive policies, whereas the main responsibility of the member states has been underlined. This is not to deny that national execu

unaccountable political venues such as the EU's Third Pillar.[56] In addition, the first part of

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