



THE FACULTY OF POLITICAL SCIENCE

EU and Counter-Terrorism

A Historical institutional analysis of the
Counter-Terrorism measures of the EU

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Abstract

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The EU has during a long period of time been exposed to terrorist attacks and began institutionalizing the anti-terror cooperation between its member states in 1992. Since the events of 9/11 the cooperation has gone through a number of changes that has affected the EU institutions. The primary aim of the study is to identify what type of institutional change the measures taken within the internal and external dimension of EU counter-terrorism policy have contributed to. The internal dimension is activities relating to the EU institutions and member states. The external dimension is activities relating to EU and third countries. In order to fulfill the aim, three central features of historical institutionalism will be used as analytical tools. These features are formative moments, self-reinforcing feedback and timing and sequencing. In order to identify what type of institutional change the measures taken within counter-terrorism have contributed to, a process-tracing methodology will be used in order to find causal mechanism characterized by the features of historical institutionalism. The result showed that a less extensive institutional change were identified and characterized by layering. Furthermore, the anti-terror cooperation will remain stable and cause institutional stabilization.

Key words: EU Counter-Terrorism, Historical institutionalism, Path Dependence, Institutional change.

Terminology

AFSJ	Area of Freedom, Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defense Policy
CT	Counter -Terrorism
CTC	Counter-Terrorism Coordinator
EEAS	European External Action Service
EU	European Union
EC	European Community
ECSC	European Coal and Steel Community
HI	Historical Institutionalism
JHA	Justice and Home Affairs
PWGT	Police Working Group on Terrorism
QMV	Qualitative Majority Voting
TREVI	Terrorism, Radicalism, Extremism, International Violence

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1. Introduction

1.1 Introduction and Research Problem

“An attack against an EU citizen is an attack against all Member State citizens. An attack against a Member State is an attack against the EU. It is an attack against the values we stand for. Terrorism seeks to destabilize societies by creating tension, fear and panic. Reactions to the Madrid events of last year made it clear that a terrorist attack on any part of the EU affects the EU in its entirety”¹

President José Manuel Barroso

During the last couple of years, Europe has experienced several terrorist attacks caused by terrorist organizations like Al-Qaeda and ISIS. These organizations have grown stronger within Europe through the years.² Statistics from the Eurobarometer of 2017 shows that one of the most critical issue perceived by European citizens are the lack of safety in relation to increased terrorist attacks.³ Hence, it shows that the need for counter-terrorism policy is essential for guaranteeing the safety for the European citizens. Terrorism is not a new phenomenon and has existed in Europe for a long period of time. However 9/11 resulted in a new form of terrorism, international terrorism. This new form of terrorism have resulted in more lethal terrorist attacks as shown in terrorism trend reports from Europol.⁴ Since 9/11, several cities like Madrid, London and Paris have experienced terrorist attacks that have costed many lives.⁵ Since the attacks are seen as a direct threat against the fundamental principles, EU-politicians have agreed upon making the fight against terrorism one of the main priorities of the EU.⁶

¹ EU Delegation to the United Nations (2005) “Speech by President Barroso- Fighting terrorism together within the EU” Collected: 2017-11-13

² Europol (2017) “EU Terrorism Situation and Trend Reports (TE-SAT)” Collected: 2017-11-13

³ Eurobarometer (2017) “What do you think is the two most important issues facing the EU at the moment? *The European Commission* Collected: 2017-11-13

⁴ Europol (2017)

⁵ Europol (2017)

⁶ Keohane.D (2007) “The Absent Friend: EU Foreign Policy and Counter-Terrorism *Journal of Common Market Studies* Vol.46 No.1 p. 125-126.

Nevertheless, there is another dimension of counter-terrorism policy as well. CT-policy lies within an area of “high politics” and are seen as a national obligation rather than an EU obligation since it lies within the principle of subsidiarity. It implies that the EU-involvement within the area is limited.⁷ However, since 9/11 the obligation of counter-terrorism policy has transferred from a national level to an EU level which has affected the EU institutions.⁸

A lot of previous research regarding this transformation has been made. Still, previous research have mainly focused on measures taken within the internal dimension of counter-terrorism policy and how these are affecting the institutions.⁹ The internal dimension is activities relating to the EU institutions and member states. However, in relation to 9/11 an external dimension of counter-terrorism policy has emerged.¹⁰ The external dimension is activities relating to EU and third party countries. In turn, scholars have argued that emerge of the external dimension of counter-terrorism policy have brought the two dimensions closer to each other and created a link between them.¹¹ Nevertheless there is a lack of previous research regarding the measures taken within both of the dimensions of counter-terrorism policy and how it affects the institutions. Thus, this study aims to investigate what type of institutional change that can be identified within both the internal and external dimension of counter-terrorism policy in the outset of 9/11. This will be explored through a documents

⁷ Keohane. D (2007)

⁸ Martins.O.B & Ferreira-Perreira C.L (2012) “Stepping inside? CSDP missions and EU counter-terrorism” *European Security* p.537- 556

⁹ De Boer. M & Wiegand.I (2015) “ From Convergence to Deep Integration: Evaluating the impact of EU Counter-Terrorism Strategies on Domestic Arenas” *Intelligence and National Security* Vol. 30 No: 2-3

Occhipinti.D.J (2015) “Still going towards an European FBI? Reexamine the Politics of EU Police Cooperation” *Journal of Intelligence and National Security* Vol 30 Issue:2-3 p.234-258

Keohane.D (2007)

¹⁰ Mackenzie.A, Bures.O, Kaunert.C & Léonard.S (2013) “The European EU Counter-terrorism Coordinator and the External Dimension of the European EU Counter-terrorism Policy” *Perspective on European Politics and Society* Vol:14:3 pp.325-328 p.326

¹¹ Mackenzie.A, Bures.O, Kaunert.C & Léonard.S (2013) p.326

Kaunert. C (2010) “Towards a Supranational Governance in EU Counter-Terrorism? The Role of the Commission and the Council Secretariat” *Central European Journal of International and Security Studies* Vol. 4 No. 1 pp. 8-31 p.24

Defleum. M (2006) “Europol and the Policing of International Terrorism: Counter-Terrorism in a Global Perspective.” *Justice Quarterly* Vol.23:3 pp.336-359

Keohane.D (2007)

analysis of policy documents regarding the measures taken within counter-terrorism policy. This will be described further on in the study. Since the main focus of the study is institutions and institutional change within counter-terrorism policy in the outset of 9/11, the study will offer a historical institutionalist perspective of the problem. Thus, it can be seen as a complement to previous theoretical frameworks used by scholars within the research area, since the main theoretical framework of previous studies are integration theories.

1.2 The aim of the study and the research questions

The primary aim of the study is to identify what type of institutional change the measures taken within the internal and external dimension of EU counter-terrorism policy have contributed to. The secondary aim is to understand the role of history and how previous decisions and directives made by institutions are affecting them in a contemporary time. To be able to fulfill the aim of the study a general research question is being established followed by three precised sub questions in order to give a more thorough answer to the aim of the study.

How has the measures taken within counter-terrorism policy changed the EU institutions since 9/11 in the outset of Historical Institutionalism?

1. What measures have the EU taken within the internal and external dimension of counter-terrorism policy since 9/11?
2. What kind of institutional change could be identified within counter-terrorism policy?
3. How can the institutional change within the two dimensions of counter-terrorism policy be understood in the outset of the three central features of historical institutionalism?

1.3 Limitations

The study is delimited to focusing only on the security aspect of terrorism. In other words, focusing on the active measures taken within counter-terrorism policy, rather than how to prevent terrorism. Since the study aims to investigate the institutional change over time within counter-terrorism policy, the study is delimited to one specific period of time.

The study has its outset in the events of 9/11 in US, since it had a major impact on the development of counter-terrorism policy and has its ending point in the Charlie Hebdo attack 2015. The ending point was chosen because of its effect on the external dimension of counter-terrorism policy and also because the limitation of material after 2015. It means that the period being studied stretches over 14 years which enables to understand the role of history and how it affects institutional change.

2. Background

This chapter contains definitions' of the central terminology of the study. To be able to understand how the link internal and external dimension of counter-terrorism policy were being established and its effect on the institutions, the chapter will present a brief background of the development of Justice and Home Affairs (JHA) and the Common Security & Defense Policy (CSDP). In order to understand the context of today's counter-terrorism policy, a brief background surrounding the previous measures taken within counter-terrorism policy will be presented as well.

2.1 What is terrorism?

There is no universal definition of terrorism, yet, there is a consensus in cooperating on counter-terrorism within the EU.¹² Even though there are divided opinions regarding the definition of terrorism, the Civil Contingencies Agency of Sweden, claims that there is a common definition of terrorism within the EU. The common definition of terrorism is: "A deed which can seriously harm a national state or an intergovernmental organization"¹³ Terrorism is rubricated as a crime where the different laws decide the level of penalty depending on the severnes of the crime.¹⁴

Another important aspect of terrorism is that there are state actors and non-state actors who commits terror crimes to pursuit their objectives. State actors are powerful actors who belong to a state while non-state actors are powerful actors that do not identify themselves with a

¹² Myndigheten för Samhällsskydd och beredskap (2017) "Vad är terrorism?" Collected:2017-11-17

¹³ Myndigheten för Samhällsskydd och beredskap (2017) "Vad är terrorism?" Collected:2017-11-17

¹⁴ Riksdagen (2003) "Lag 2003:148: Lagen om straff för terrorbrott" Collected:2017-11-22

state.¹⁵ The study is focusing on the security aspect of terrorism, focusing on the active measures taken in counter-terrorism, rather than the preventive aspect of terrorism. The study is focusing on the security political consequences of the actions taken within counter-terrorism policy in relation to the terror attacks in Europe. However, the study has its venture in the events of 9/11 in US, since it had a major impact on the development of counter-terrorism policy. The definition of terrorism that will be used in the study is the common definition of terrorism within the EU, expressed by Civil Contingencies Agency of Sweden.

2.2 What is an institution?

There are several definitions of the word institution. According to the Oxford Dictionary; institutions as well as an organization can be created for economic, religious, educational, legal and social purposes whereby the assignment is to pursue a certain type of endeavor.¹⁶ Others like Geoffrey M Hudson define institutions as “systems of established and prevalent social rules that structure social interactions.”¹⁷ He argues that language, money, law, systems of measures and weight are all different types of institutions.¹⁸ John A Searle on the other hand argues that institutions are collectively accepted system of rules that enable us to create institutional facts. He argues that the creation of institutional facts is assigned by status functions, and through that, creates deontic powers.¹⁹

New Institutionalism defines institutions as an enduring collection of rules and organized practices. Institutions can be both of a formal art, including rules, laws and conventions, and of an informal art, including norms and values.²⁰ Within Historical Institutionalism which is a part of new institutionalism, two approaches to institutions can be identified, the first one is a calculus approach and the second one is a cultural approach. In the calculus approach, institutions are seen as rational and conscious institutions. In the cultural approach,

¹⁵ Trapp.N K (2015) “Shared Responsibility and Non State Terrorist institutions” *Netherlands International Law Review* Vol 62 Issue 1 pp.141-160

¹⁶ Oxford Living Dictionaries (2017) “Definition of Institution” Collected:2017-12-20

¹⁷ Hodgson M.G (2006) “What are institutions?” *Journal of Economic Issues* Vol:40:1 pp. 1-25

¹⁸ Hodgson M.G (2006)

¹⁹ Searle.R.J (2005) “What is an institution?” *Journal of Institutional Economics* Vol.1:1 pp.1-22 p.21-22 University of California Berkeley.

²⁰ Oxford Handbooks Online (2009) “ An Institutional Perspective” Collected:2017-12-13

institutions are seen as normative institutions who establish values. Historical institutionalism defines institutions both as calculus and cultural institutions, seeing institutions both as formal and informal.²¹ In the study, the definition of institutions from historical institutionalism will be used.

2.4 JHA and the internal dimension of counter-terrorism.

One of the newer areas of EU-policy are the Justice and Home Affairs (JHA) where the aim is to coordinate an approach to terrorism and other types of international crimes. JHA aims to protect the common rights through police and judicial cooperation.²²

The posed threat of terrorism during the 1970's resulted to a closer cooperation with the UN on the issue and the establishment of the intergovernmental cooperation TREVI (Terrorism, Radicalism, Extremism and International Violence) in 1976. Their assignment was to keep track of terrorist mobility.²³ In 1979 the EC established a Police Working Group on Terrorism (PWGT) which was a cooperative informal organization for fighting terrorism. The idea of a closer police and judicial cooperation started in the 1980's in relation to the establishment of the Single European Market.²⁴

However, the goals of the counter-terrorism actions and the JHA were not established until the Treaty of Maastricht. In relation to the treaty, Europol was established as an actor in the fight against terrorism. As well as the establishment of Europol as an actor in fighting terrorism, the EU established a three pillar structure where the fight against terrorism were included in the third pillar of Justice and Home Affairs. The second pillar established the Common Foreign and Security Policy (CFSP) that later included the Common Security and Defense Policy (CSDP) as well.²⁵ During this time the CSDP was not seen as a tool in fighting terrorism and there was not a clear linkage between the JHA and the CSDP.²⁶

²¹ Hay.C & Wincott.D (1998) "Structures, Agency and Historical Institutionalism" *Political Studies* Vol.46:5 p.951-957

²² McCormick. J (2011) "European Union Politics" (First Edition) Chapt: 23 p.393 *Palgrave MacMillan*: New York

²³ Wittendorp. S (2016) "Unpacking International Terrorism: Discourse the European Community and Counter-Terrorism, 1975-86" *Journal of Common Market Studies* Vol:54:5 pp.1233-1249

²⁴ Defleum. M (2006) "Europol and the Policing of International Terrorism: Counter-Terrorism in a Global Perspective." *Justice Quarterly* Vol.23:3 pp.336-359 p.341

²⁵ McCormick. J (2011) Chapt.23

²⁶ McCormick. J (2011) Chapt.23

Terrorism was seen as a national threat and a primary threat against the national security. Nevertheless, in the informal meeting of La Gomera 1995, the EU expressed the need for a more intensive EU cooperation within counter-terrorism.²⁷ In the treaty of Amsterdam, the EU was given larger authorities regarding the combat on terrorism and established the idea of an Area of Freedom, Security and Justice (AFSJ), engaging policing, judicial cooperation, border controls, immigration and Asylum.²⁸

2.5 CSDP and the external dimension of counterterrorism

The idea of a Common Security and Defense Policy (CSDP) within the EU has been discussed since the establishment of the European Coal and Steel Community (ECSC). The idea of the CSDP is founded in the idea of a Common Foreign and Security Policy. As a result of an increased economic integration in 1957, the attitude among the member states in establishing a common foreign as well as security policy changed. In relation to the further development and the expansion of EU, the discussion of further integration within the security area became central. In 1986 the cooperation regarding the CFSP was formalized and became the second pillar in the *Single European Act* (SEA).²⁹

In the treaty of Maastricht 1992 the EU agreed to implement and define a common foreign policy as well as security policy with the aim of strengthening the safety within the EU. The aim was to promote international cooperation, promoting democracy and the rule of law and respect human rights. The common foreign and security policy as well as promoting the principles of the UN created three organizational tools: common strategies, joint actions and common positions.³⁰ During this time, the CSDP was not seen as a tool for counter-terrorism measures, however, this came to change in the Lisbon Treaty and the establishment of the link between the JHA and the CSDP. Even though the common foreign and security policy were established in the treaty of Maastricht, there were still some uncertainties surrounding a

²⁷ European Parliament (1995) “La Gomera Declaration” Collected: 2017-12-20

²⁸ European Parliament (1995)

²⁹ Koutrakos. P (2003) “The EU Common Security and Defense Policy” *Oxford Scholarship Online* pp.1-21
Allen. David (2012) “The Common Foreign and security Policy” *The Oxford Handbook of the EU*

³⁰ McCormick. J (2011) p. 414-416

common security and defense policy. However, as a response to NATO the EU established the European Security and Defense Policy (EDSP) later called CSDP as a part of the CFSP.³¹

3. Previous Research

A lot of previous research regarding the development of counter-terrorism policy and its effect on the institutions have been made by other scholars. However, the main focus of previous research is the internal dimension of counter-terrorism policy. There are scholars who have illuminated the problem with the lack of research regarding the external dimension of counter-terrorism policy and have emphasized the inherent link between these two dimensions. Below, these aspects will be presented.

3.1 The external dimension of EU Counter-terrorism: EU as an international actor

Previous research made by Oliveira-Martins and Ferreira-Pereira argues that most of the security policy priorities have been made on the internal dimension of the EU.³² It has included further cooperation between the member states and the institutions, where most of the policy priorities eventually have been translated into practice. The external dimension on the other hand, has come in secondary where the policy priorities have not been implemented in the same extent. Oliveira-Martins and Ferreira-Pereira claims that the EU were more precautionous on the external dimension of counter-terrorism policy which can be explained through the fact that the member states already had a cooperation at an intergovernmental level while the external dimension of the EU counter-terrorism policy including the cooperation with other countries were more on a supranational level.³³

As well as Oliveira-Martin and Ferreira-Pereira, Jörgen Monar argues that EU already had established an intergovernmental cooperation on within counter-terrorism policy, such as the TREVI-group during the time of the 9/11 attacks.³⁴ Nevertheless, Monar argues as well as

³¹ McCormick. J (2011) p. 416-418

³² Martins.O.B & Ferreira-Perreira C.L (2012)

³³ Martins.O.B & Ferreira-Perreira C.L (2012)

³⁴ Monar.J (2015) "The EU as an International Counter-Terrorism Actor: Progress an Constraints" *Intelligence and National Security* 30:2-3 pp.333-356

Oliveira-Martins and Ferreira-Perreira that it until 9/11, there was a missing link in the external dimension of counter-terrorism cooperation. In the “La Gomera Declaration” in 1995, there was no reference to counter-terrorism cooperation between the EU and the outside world. However, in relation to the 9/11 attacks in 2001, the EU took an active international role in the counter-terrorism domain. The attacks led to the need for the EU to affirm their solidarity for other countries as well as the need for the EU to take action in a new type of terrorism; global terrorism.³⁵

Mathieu Deflem as well as Monar and Oliveira-Martins and Ferreira-Perreira argue that the external dimension of EU counter-terrorism lagged behind the internal dimension of counter-terrorism before the events of 9/11.³⁶ The events of 9/11 contributed to an increased cooperation between the EU and the outside world and contributed to EU as an international actor and opened up for an external dimension of counter-terrorism policy.³⁷

3.2 The convergence of the internal dimension of EU counter-terrorism

Previous research made by Occhipinti argues that the police cooperation within the EU, Europol is heading towards a supranational model of cooperation. He argues that there are several indicators which identify the change towards a supranational institution, for example; the qualified majority voting (QMV) in the Council, the enhanced power for the European Parliament, the Commission and the Court of Justice.³⁸ Another feature that he identifies is the increased police and judicial cooperation. He claims that it is the result of “external factors” and functional spillover which causes that the activities of Europol to be less determined by the member states. In turn, it increases the autonomy of the EU institutions. In his study “Still moving toward a European FBI” Occhipinti argues that the EU is in fact moving towards a supranational state, where the police cooperation are getting more similar to a federal cooperation.³⁹ He argues, that one of the external factors that could have affected this development, are for example; the cold war. He implies that the cold war

³⁵ Monar.J (2015)

³⁶ Defleum. M (2006)

Martins.O.B & Ferreira-Perreira C.L (2012)

³⁷ Defleum. M (2006)

³⁸ Occhipinti.D.J (2015) p.238

³⁹ Occhipinti D.J (2015)

affected the member states of the EU differently and has contributed to the wish of a closer cooperation on the internal dimension of European Security. There are several other events that have caused the movement of EU and police and judicial cooperation towards a more federal system. Occhipinti also claims that the Lisbon Treaty and the transformation of Europol to an official agency were contributing to a supranational development within European security and the EU counter-terrorism policy.⁴⁰

Monica De Boer and Irina Wiegand have a different approach compared to Occhipinti.⁴¹ They argue how the different actions taken in the fight against terrorism have resulted in an intergovernmental cooperation between the member states rather than a supranational cooperation. They argue that EU as a security actor cannot impose changes in national anti-terrorism systems. However, the EU can take recourse in coordination powers through the EU counter-terrorism coordination in the terms of governance. Hence, potential convergence between counter-terrorism systems is a result of intergovernmental initiatives rather than a result of top-down steering through supranational governance. In turn, this can be explained through the harmonization of institutions and cultural aspects.⁴² Nevertheless, they argue as well as Occhipinti, that the balance of power changed in relation to the Treaty of Lisbon and gave the EU institutions larger authorities in the area of counter-terrorism and criminal justice cooperation. The Lisbon Treaty resulted in an increased influence for the EU institutions in the Area of Freedom, Security and Justice (AFSJ). The increased influence contributed to stronger institutional power that affects the political convergence through a supranational top-down steering. It contributes to a stronger convergence of counter-terrorism policies within the EU. A stronger cooperation within the area of counter-terrorism shows that and increased cooperation within “high politics” are possible.⁴³

⁴⁰ Occhipinti, D.J (2015)

⁴¹ De Boer, M & Wiegand, I (2015)

⁴² De Boer & Wiegand (2015) p.378

⁴³ De Boer & Wiegand (2015)
Occhipinti (2015)

As well as Den Boer and Wiegand and Occhipinti, Kaunert argues that European integration is possible within areas of “high politics” such as counter-terrorism policy.⁴⁴ Even though the member states still play an important role in political processes within the EU, Kaunert argues as well as Occhipinti that the supranational institutions of the EU, particularly the Council Secretariat and European Commission, have played a significant role in the development of counter-terrorism policy.⁴⁵ Instead of arguing that intergovernmental initiatives contribute to an increased integration and convergence within the EU. Kaunert argues, that it is the significant role of the supranational institutions who contribute to an increased integration and convergence among the member states.⁴⁶

Even though much of previous research argues that the development of counter-terrorism strategies have contributed to an increased integration through either intergovernmental initiatives or supranational institutions, Den Boer and Wiegand argue that there is still a gap between the national counter-terrorism systems. The divergence of national counter-terrorism systems is causing a problem in coordinating counter-terrorism strategies between the member states. However, the increased power of the institutions within counter-terrorism policy in relation of the Lisbon Treaty, may have influenced straggled countries to catch up with the forerunner states. In turn, it could result in an increased convergence within the area.⁴⁷

While De Boer and Wiegand are describing the implementation of the actions in fighting terrorism on a national level and how it affects the member states, Daniel Keohane as well as Deflem, Monar and Oliveira-Martins & Ferreira-Perreira problematizes the diffuse link between the internal dimension (JHA) and external dimension of counter-terrorism policies (CSDP) and argues how the link should be established and who is responsible for establishing the link.⁴⁸

⁴⁴ De Boer & Wiegand (2015)
Occhipinti (2015)

Kaunert. C (2010) “Towards a Supranational Governance in EU Counter-Terrorism? The Role of the Commission and the Council Secretariat” *Central European Journal of International and Security Studies* Vol. 4 No. 1 pp. 8-31 p.24

⁴⁵ Kaunert. C (2010) p.10-11

⁴⁶ Kaunert. C (2010) p.10-12

⁴⁷ De Boer. M & Wiegand.I (2015)

⁴⁸ Keohane.D (2007)

4. Theory

The primary aim of the study is to identify what type of institutional change the measures taken within the internal and external dimension of EU counter-terrorism policy have contributed to. The secondary aim is to understand the role of history and how previous decisions and directives made by institutions are affecting them in a contemporary time. In order to give an historical perspective on institutions I have chosen *historical institutionalism* as a theoretical framework. Historical institutionalism is a relevant theoretical framework since it aims to answer big-outcome questions about political phenomenon and institutional change through historical and conjectural explanations.⁴⁹ Big-outcome questions are phenomenon such as large scaled political changes; in this case it is the institutional change within the area of counter-terrorism policy which has a large impact on the sovereignty of the member state.

4.1 Historical Institutionalism, an overview

Historical institutionalism (HI) is a part of the *new institutionalism* which focuses on the sociological view of institutions. There are different opinions regarding its emergence. Some claims that there have been a lot of previous works in analyzing institutions from a historical perspective; some of the works are written by Max Weber and Alexis Tocqueville.⁵⁰ Other claims that the HI has its origins in the intellectual movements in bringing “the state back in” in the analysis of politics and comparative politics, in order to analyze a political outcome with a greater historical sophistication.⁵¹ Further on, HI hold that institutions are often a result of long-term and large-scaled processes that do not have anything to do with modern political issues; instead the outcomes are unintended consequences. Hence, historical institutionalist is engaged in historical research to be able to trace the process and emerge of the institutions and see how the processes are influencing politics and other political outcomes.⁵² However, some historical institutionalists claim that there is a linkage between HI and rational

⁴⁹ Pierson.P & Skocpol.T (2002)” Historical Institutionalism in Contemporary Political Science” *Political Science: State of the Discipline* New York. pp. 693-721

⁵⁰ Sanders. E (2008) “Historical Institutionalism” *The Oxford Handbook of Political Institutions*

⁵¹ Amenta.E, Nash.K & Scott.A (2012) “Political Sociology” (edit.1) Vol:39 p.47 *John Wiley and Sons*

⁵² Amenta.E, Nash.K & Scott.A (2012) p.47-48

institutionalism where the political institutions are seen as rational and conscious players. It can also be connected to the historical institutionalism definition of institutions where they are seen as both rational and cultural institutions.⁵³

4.2 Central features, path dependency and branching pathways

HI has previously been used as a theoretical framework when studying the development of political economy by scholars such as Kathleen Thelen and Wolfgang Streeck as well as Stijn Oosterlynck.⁵⁴ HI has been used in comparative politics by scholars such as Jörgen Broschek, who used it when comparing different political systems.⁵⁵ HI have also been used when studying other political processes for example by one of its greater sympathizer Paul Pierson. He used it as a theoretical framework when studying European integration.⁵⁶ Since this study are focusing on the political process of counter-terrorism policy and how it have contributed to an institutional change, three central features established by Pierson will be used as analytical tools in the study. The central features are: *formative moments*, institutionalization through *self-reinforcing processes* and *timing and sequencing*.⁵⁷ *Formative moments*, are events that occur that have an effect on institutions, usually causing collective actors, such as institutions to establish new rules. Institutions tend to select a certain pathway as a result of political conflicts and power relations that emerge in relation to a formative moment.⁵⁸ *Self-reinforcing processes*; are processes that are generating *path dependency*. Path dependency implies how the set of decisions one faces is limited by the decisions that were made in the past. It is the self-reinforcing effects that contribute to the fact that institutions are

⁵³ Katznelson.I & Weingast.R.B (2005) "Preferences and Situations: Points of Intersection between Historical and Rational Choice Institutionalism." (First Edition) p.1-2 *Russell Sage Foundation*: New York

⁵⁴ Thelen. K & Streeck.W (2005) "Beyond Continuity: Institutional Change in Advanced Political Economic" *Oxford University Press*: Oxford

Oosterlynck.S (2012) "Path Dependence: A Political Economy Perspective" *International Journal of Urban and Regional Research* Vol.36:1 pp.158-165

⁵⁵ Broschek.J (2010) "Federalism and Political Change: Canada and Germany in Historical Institutionalism Perspective" *Canadian Journal of Political Science* Vol.43:1 pp.1-24

⁵⁶ Pierson.P (1996) "Path to European Integration: a Historical Institutionalist" *Comparative Political Studies* Vol.29:2 pp. 123-163

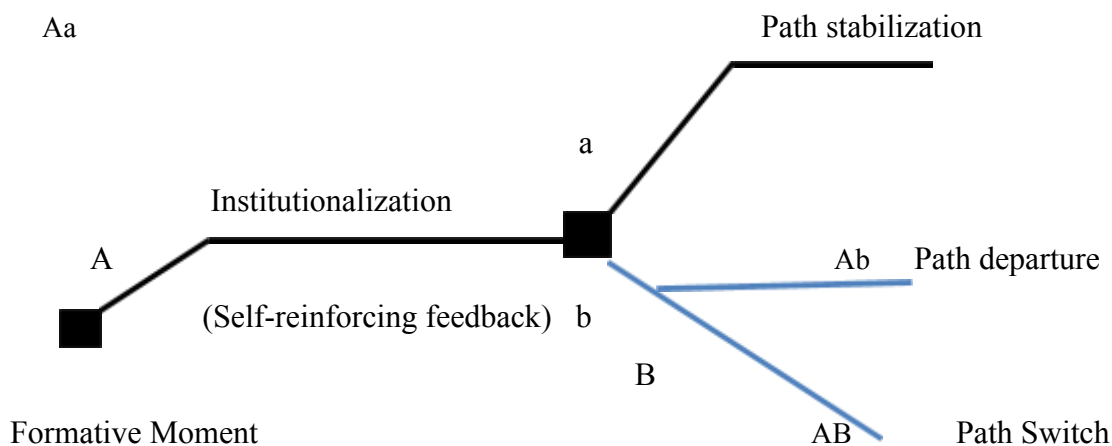
⁵⁷ P Pierson.P (2004) "Politics in time: History Institutions and Social Analysis" (First Edition) *Princeton University Press* p. 5-6

⁵⁸ Ebbinghaus. B (2005) "Can Path Dependence Explain Institutional Change: Two approaches applied to Welfare State Reform" MPiFG Discussion Paper 05/2 *Max Planck Institute for the Study of Societies* p. 16-17

following the same path and contributes to institutionalization. It can be seen as a tool which strengthens the initial decisions and contributes to an institutional locked-in effect, in other words, causing institutions to be trapped on the same path.⁵⁹ *Timing and Sequencing* implies; that the timing and sequencing of an institutional decision affect the chain of sequences and the political outcome of the institutions. In other words, depending on the timing of circumstances such as a formative moment and the sequences that are following, the institutions either follows the same pathway and by that causing path dependency, or divert from the path.⁶⁰

Through the features presented above, Ebbinghaus argues that different pathways can be distinguished and contribute to a path dependency of branching pathways. Through a graph he resemblance this process with a tree, when one branch is chosen, institutions tends to follow the branching pathways of the branch that was first chosen. Ebbinghaus are displaying this through a graph in order to clarify the different branching.⁶¹

4.3 Path Dependency: Branching Pathways



However, the graph does not display the importance of the timing and sequencing of political decisions. However, Ebbinghaus argues as well as Pierson that the temporal ordering of

⁵⁹ Ebbinghaus.B (2005) p.15

⁶⁰ Ebbinghaus.B (2005)p.15

⁶¹ Ebbinghaus.B (2005) p. 16

events or processes has a significant impact on outcomes and are important when studying this case of counter-terrorism policy.⁶²

The features presented in the section above are seen as mechanisms that contribute to different types of institutional change than leads up to a certain pathway. Historical Institutionalism refers to three different forms of institutional changes in political processes. Institutional changes can result in different paths and causes path dependency. The first institutional change is long-term *gradual changes* which can contribute to reorientations within the institutions. The other form of institutional change are *functional transformations* which focuses on institutional change as a result of a new functions which can be connected to the third form of institutional change named *layering*.⁶³ Layering occurs through addition of institutional arrangements whereby new authorities are layered upon already existing institutions.⁶⁴

4.4 Critique towards Historical institutionalism

However, despite the inherent logic of the historical institutionalism approach, there are several theoretical and analytical problems with the approach. Even though historical institutionalism might be very good in describing continuance once a political program is initiated as in counter-terrorism policy; it is less capable in explaining why the program was being adopted.⁶⁵ Even though historical institutionalism can explain why ideas emerge to some extent, through for example formative moments, it cannot explain why the institutions are acting as they do, in that case, the psychological perspective of institutions needs to be used.⁶⁶ Since the theory emerged from economics, it is important to know that part of the theory needs to be modified in order to explain other political phenomenon which makes the theory on one hand complex and difficult to understand. Hence, the historical institutionalism approach to integration and institutional change should be seen as a complement to other

⁶² Pierson (2004) p.54

Ebbinghaus B (2005) p.16

⁶³ Ebbinghaus. B (2005) p.17

⁶⁴ Ebbinghaus. B (2005) p.17

Pierson (2004) p.137-138

⁶⁵ Peters.B.G, Pierre.J & King.SD (2005) "The Politics of Path Dependency: Political Conflict in Historical Sociology,

⁶⁶ Peters B.F, Pierre.J & Kings. S.D (2005)

theoretical frameworks used in previous studies. On the other hand, the theory is complementing important pieces such as historical contextual factors to other theoretical frameworks like integration theories. Thus, the study are seen as a complement to previous research whereby further studies are needed to establish wider explanatory factors to the institutional change within counter-terrorism policy.

5. Methodology and Material

In order to answer the research questions a document analyses in a form of process-tracing methodology will be used. Process-tracing attempts to identify the intervening casual process, causal mechanism and causal chain between the cause and the outcome.⁶⁷ Since process-tracing can be used when studying processes on a macro-level, it will be applied within the case of the institutional change within EU institutions in the area of counter-terrorism policy.⁶⁸ In other words, process-tracing will be used in order to identify the variables that contribute to an institutional change within in the case of counter-terrorism policy. Since the focus of the study is to examine an institutional change over time, process-tracing is a relevant methodology because it is closely linked to a historical explanation. A historical explanation is not only a detailed description of a sequence of events; it draws on theories to explain an important step that contributes to causing the outcome.⁶⁹ The interaction between the empirical data and the theory are being categorized in an abductive approach, since they are both being used in the study. Within process-tracing the result is less important, instead the process and the identification of the causal mechanism is important it itself.

Some scholars are directing critique towards the identification of causal mechanism and imply that some mechanisms in process-tracing are unobservable. However, the critique miss the point that some causal mechanism are indeed unobservable, nevertheless, process-tracing focuses on making inferences from causal factors by looking how they collaborate with other

⁶⁷ Benett.A & Checkel T.J (2014) "Process Tracing: From Metaphor to Analytical tool" *Strategies for Social Inquires* Cambridge: Cambridge University Press p. 5-7

⁶⁸ Benett.A & Checkel T.J (2014) p. 5

⁶⁹ Benett.A & Checkel T.J (2014) p. 8

factors. Another critique towards process-tracing is that some of these causal factors can be temporally and effect the nature, timing or the magnitude of the outcome, in this case the institutional change which affect the generalizability of the result in this study.⁷⁰ Hence, the study focuses on drawing conclusions from the case that are being studied and can be seen as a complement to previous studies regarding institutional change within the area of counter-terrorism. Further research must be made on similar cases to be able to generalize the answers.

In order to trace the causal mechanisms that might contribute to an institutional change I have chosen to use an analytical schedule, including the central features of historical institutionalism presented in previous section. These features that were chosen the central features that have been presented in previous section are formative moments, self-reinforcing feedback and timing and sequencing. These three features are strongly connected and are affecting each other.

First, to be able to identify an institutional change and the causal mechanism of the change I will identify formative moments. The criteria for formative moments is that it is events, that have had an effect on institutions causing them to establish new rules. In order to identify the formative moments I will look for references in the material that refers to events that have occurred and in what level of frequency these references occur. In order to understand degree of the formative moments, the intensity of the language will be studied as well. By combining these elements I will be able to identify if these formative moments have contributed to an institutional change.

Secondly in order to identify the mechanism of the self-reinforcing feedback process, I will look for the causal mechanisms that are strengthening the initial decisions and contributes to an institutional locked-in effect. To identify these mechanisms I will study the documents carefully to be able to find references to previous documents or articles established within CT-policy and the frequency of these references. The extent of the directives will be studied as well, like for example the amount of resources that is required and if the main focus of the

⁷⁰ Bennett.A & Checkel T.J (2014) p.7 & 10

directive are the member states or other EU organizations. By looking at these aspects I will be able to identify what causal mechanisms that are reinforcing the institutions, in other words, how the decisions are affecting the power relations within the EU and if the member states or the institutions are gaining on the directives regarding counter-terrorism policy.

Thirdly in order to identify the mechanisms of timing and sequencing I will chart the chain of events of this time period, focusing on contextual factors such as history and other events that occurred during the time period of the study. The material will study as well in relation to the contextual factors to investigate if there is a connection between the contextual factors and the directives. This will be done as well by look for references in the material and find intervening causal processes. In turn, the identification of the aspects will be used in order to discover what kind of institutional change that has occurred within the counter-terrorism policy and what pathway the institutions have followed.

To clarify the methodology that will be used in the analysis, I have created an analytical schedule. Since the primary aim of the study is to identify what type of institutional change the measures taken within the internal and external dimension of EU counter-terrorism policy have contributed to, I have chosen to categorize the analytical schedule in the internal and external dimension of counter-terrorism policy. I have also chosen to categorize my analytical schedule in these two dimensions in order to clarify how the link between the two dimensions was being established as well, since it is frequently mentioned by previous scholars.⁷¹ Since, the secondary aim is to understand the role of history and how previous decisions and directives made by institutions are affecting them in a contemporary time, the analytical schedule contains the three central features of historical institutionalism. These are being used as analytical tools.⁷²

⁷¹ Mackenzie.A, Bures.O, Kaunert.C & Léonard.S (2013)

Kaunert. C (2010)

Defleum. M (2006)

Keohane.D (2007)

⁷² Pierson (2004)

Ebbinghaus (2005)

5.1 Analytical Schedule

Analytical tools	Internal Dimension of Counter-Terrorism Policy (JHA)	External Dimension of Counter-Terrorism Policy (CDSP)
Formative Moments		
Self-Reinforcing feedback		
Sequences and timing		

5.2 Material

The primary material are policy documents from EU and its institutions, collected from websites like EUR-LEX, the European Council, and the Council of the European Union, the European External Action Service (EEAS) and Europol as well as other websites funded by the EU. Due to the limited amount of time, I have selected the most relevant documents regarding counter-terrorism policy within the time frame of the study. I am aware that the selection of material can affect the result of the study since it shows only a few aspects of counter-terrorism policy. In order to be as transparent in the selection of material as possible, the documents will be presented below in chronological order: The selection of material are following:

- *The Treaty of Amsterdam (1997)*
- *Extraordinary European Council Plan of Action to Combat Terrorism (2001)*
- *The Framework Decision on Combating Terrorism (2001)*
- *EU Plan of Action On Combating Terrorism (2004)*
- *Declaration on Combating Terrorism (2004)*
- *The European Union Counter-Terrorism Strategy (2005)*

- *The Lisbon Treaty (2009)*
- *The Council Conclusions on fighting terrorism (2015)*

The material presented above was selected since it contained the most general information regarding counter-terrorism policy and in order to give as broad picture on counter-terrorism policy as possible. As mentioned before, I am aware that the selected material might show one aspect of counter-terrorism policy which affect the results. This was taken in account during the study. Secondary sources was used as well in order to give a brief background regarding previous research on the subject. However, the secondary sources were delimited since the main material primary sources such as policy documents. The secondary sources that were used were thoroughly examined with a critical approach.

6. Result and Analysis

In this section the result will be presented with outset of the three research questions. Since the research questions are both of a descriptive and analytical character, the result and analysis section will be presented together. First, the measures taken by the EU in order to fight terrorism will be presented. Afterwards, follows the identification and analyses of the institutional change. Finally, the measures taken by EU within counter-terrorism and the institutional change will be analyzed through the central aspects of historical institutionalism.

6.1 What measures have the EU taken within the internal and external dimension in order to fight terrorism?

The events of 9/11 caused a chain reaction within the area of counter-terrorism in the EU, resulted in several frameworks for fighting terrorism. In 2001 the EU launched the *Extraordinary European Council Plan of Action to Combat Terrorism*.⁷³ The document established that counter-terrorism should be one of the priority objectives of the EU. The document settled EU as an international actor in the fight against terrorism and opened up for an external dimension of counter-terrorism. In the document, they emphasized an increased cooperation with the US in combating on terrorism.⁷⁴ In 2002, the plan on fighting terrorism

⁷³ European Council & Council of the EU (2017) SN 140/01 “Conclusion and plan of action of the Extraordinary European Council Meeting on 21 september 2001” Collected 2017-12-13

⁷⁴ European Council & Council of the EU (2017) SN 140/01 p.1

was followed by a more defined framework, *The Framework Decision on Combating Terrorism*.⁷⁵

6.1.1 Measures taken within the internal dimension of counter-terrorism policy

“The Framework Decision on Combating Terrorism” called upon the Member states to take necessary action in case of a terrorist attack. The measures should be instituted whenever an act of violence is seriously intimidating the population, destabilizing or destroying fundamental structures of society (such as political, economic, constitutional and social structures) or compelling international organizations or governments to commit or not commit an action. The EU established nine criterias in order to evaluate whether an attack can be classified as a terror attack. If an act has fulfilled one of the nine criterias presented in the document, the necessary measures for combating on terrorism should be instituted.⁷⁶

Regarding what punishment terrorist offences should have, the obligation in order to decide the punishment of terrorist offences were on a national level. However, there were a few directions that were important to taken in account for the member states when establishing the penalties. The first directive emphasized that the member states were going to take the necessary measures in order to ensure that the offences referred to in the nine points were punishable by proportionate and effective criminal penalties that could entail extradition. The other directive emphasized that each member state were going to take the necessary measures whenever an offence were classified as a terrorist offence. It established what characteristics to look for when classifying a crime as a terror offence. The punishments for these kinds of offences were going to be heavier than the punishment that was established in the national law.⁷⁷

In relation to the terror attacks of Madrid 2004 the EU established an revised and version of the “Extraordinary European Council Plan of Action to Combat Terrorism” which were the “EU Plan of Action On Combating Terrorism”, where they expressed the need to maximize the capacity of the EU institutions and the member states to investigate, detect, prosecute and

⁷⁵ EUR-Lex (2017) “Council Framework Decision 13 June 2002 on Combating Terrorism” (2002/475/JHA)

⁷⁶ EUR-Lex (2017) 2002/475/JHA Article 1

⁷⁷ EUR-Lex (2017) 2002/475/JHA Article 1-4

prevent attacks as well as responding to a terrorist attack.⁷⁸ The Madrid attacks resulted in the “Declaration on Combating Terrorism” which resulted to a new position in the fight against terrorism, the Counter-Terrorism Coordinator (CTC) whose assignment was to coordinate the work of the Council in the combat on terrorism and to maintain an overview of the instruments at the EU's disposal.⁷⁹

After the attacks in London 2005, the European Council established “The EU Counter-Terrorism Strategy” where the aim was to counter terrorism globally while respecting human rights, and make Europe safer.⁸⁰ The counter-terrorism strategy was built upon four pillars; *prevent*, *protect*, *pursue* and *respond* which constituted a comprehensive and proportionate response to the international terrorist threat.⁸¹ However, since the study delimited to the security perspective of terrorism the pillar describing the measure taken to prevent terrorist attacks will be excluded from the result. In the document, they describe that the strategy requires work on a national, european and international level in order to reduce the threat of terrorism and the vulnerability of an attack. Even though, the main focus of the counter-terrorism strategy was on the internal dimension, the EU expressed the horizontal feature of counter-terrorism which displayed the external dimension of counter-terrorism policy.⁸²

By *Protect*, the EU strived to strengthen the defenses of key targets by reducing the resulting impact of an attack. With the support of European institutions, the Member states were supposed to provide an important framework where member states were able to coordinate their policies, share information, determine good practice and cooperate to develop ideas within the internal dimension of the counter-terrorism strategies. The member states had the primary obligation for improving the protection of key targets such as political buildings or other forms of protected property. However, the EU and the European Commission in

⁷⁸ European Council & Council of the EU (2017) (10586/04) “EU Plan of Action on Combating Terrorism” (10586/04) Collected:2017-12-14

⁷⁹ Statewatch (2004) “Declaration on Combating Terrorism” Article 14 Collected:2017-12-14

⁸⁰ European Council & Council of the EU (2017) “The European Counter-Terrorism Strategy” (14469/4/05 REV 4) Collected: 2017-12-14

⁸¹ 14469/4/05 REV 4 (2017) “The European Counter-Terrorism Strategy” p.6

⁸² 14469/4/05 REV 4 (2017) “The European Counter-Terrorism Strategy” p.6-7

particular, played an important role in raising standards in areas of EU security regimes, such as border and transport security.⁸³

Pursue: In order to preserve national security, which were agreed upon in the Hague Program, the member states needed to focus on the security of the entire EU. The EU supported the effort of disrupting measures taken by the member states in the fight against terrorism and encouraged them to exchange information and intelligence between them. The member states were supposed strengthen operational cooperation in law enforcement by providing common analyses of the threat. To preserve security and strengthen the internal dimension of CT, the EU was giving full use of Europol and Eurojust to facilitate police and judicial cooperation. EU as well as emphasizing cooperation between authorities, implemented common systems such as the European Arrest Warrant (EAW), the European Evidence Warrant (EEW) and the Visa Information System (VIS).⁸⁴

Respond: The EU argues that the risk for terrorist attacks cannot be reduced to zero. It means that the EU had to be able to managing the consequences of a terrorist attack whenever they occur. In order to do that, they needed to develop a well-functioning system of response. Such systems exist for other critical situations. In turn, the same systems could be used to alleviate the effect on citizens in the case of a terrorist attack. The member states had the leading role in providing emergency response for a terrorist attack. However, the EU needed to ensure that if the emergency situation overwhelms the resources of the member states, the EU should respond in solidarity and provide resources to avoid an escalation of the situation and avoid a threat to the whole EU. Another aspect of response was to develop a risk based tool for capability assessment in order to prepare for situations that are most likely to occur. In turn, it was assisting the member states to develop their capabilities in responding to an emergency situation.⁸⁵

The Lisbon Treaty gave larger authorities to judicial corporations such as Europol and Eurojust. They wanted to establish closer police cooperation between member states,

⁸³ 14469/4/05 REV 4 (2017) “The European Counter-Terrorism Strategy” p.10-11

⁸⁴ 14469/4/05 REV 4 (2017) “The European Counter-Terrorism Strategy”p.12-14

⁸⁵ 14469/4/05 REV 4 (2017) “The European Counter-Terrorism Strategy”p.15-16

competent authorities and other specialized law enforcement services in order to prevent, detect and investigate criminal offences. The mission of Europol was to support and strengthen the police authorities of the member states and other law enforcement services and their cooperation in combating and preventing serious crimes, like terrorism and other forms of organized crimes, that affects several member states. The European Parliament was supposed to; through regulations according to the ordinary legislative procedure determine the structure, tasks and field of actions of Europol.⁸⁶

Another important part of the counter-terrorism strategies in the internal dimension, established in the Lisbon Treaty was the Solidarity Clause. The Solidarity Clause implied that the member states and the EU should act in a spirit of solidarity if a member state is exposed for a terrorist attack or if they were a victim of another disaster. Should a member state be exposed to a terrorist attack, the other member states should assist at the request of its political authorities. The Solidarity Clause offers several opportunities in counter-terrorism actions for the member states both in preventing and responding and is an important dimension in the EU counter-terrorism actions both in the internal and external dimension of the EU.⁸⁷

6.1.2 Measures taken within the external dimension of counter-terrorism

In relation to the Lisbon Treaty in 2009, the three pillar structure established in the Maastricht Treaty became abolished. It contributed to the creation of a link between, the internal dimension (JHA) and the external dimension (CSDP) of counter-terrorism and opened up for new approaches.⁸⁸ The Common Security and Defense Policy were going to provide the EU with an operational capability regarding civilian and military resources. The resources should be used during missions outside the EU for conflict resolution, peacekeeping and strengthen the international security. All these missions, provided by the Common Security and Defense Policy could be used in the combat on terrorism.⁸⁹ The treaty expanded the external dimension of counter-terrorism where the CSDP was supposed to be useful in the counter of terrorism in countries outside Europe. (taking the fight to their territory) and the

⁸⁶ EUR-Lex (2007) “The Treaty Of Lisbon “ (2007/C 306/01) Article 67-68 Collected:2017-12-15

⁸⁷ 2007/C 306/01 “The Treaty Of Lisbon” Article 176

⁸⁸ 2007/C 306/01 “The Treaty Of Lisbon” Article 28-55

⁸⁹ 2007/C 306/01 The Treaty of Lisbon” Article 50:1

fight against terrorism within their territory. In relation to the Lisbon Treaty the authorities of the EU institutions became wider, instead of covering only a few areas of the Common Foreign and Security Policy, including the Security and Defense Policy, all areas should be covered. It implied that the security and defense policy that were a national matter had transcended into an EU-level.⁹⁰

As a reaction on the Charlie Hebdo attack in Paris in January, the EU established *The Council Conclusions on fighting terrorism* in February 2015. It contributed to new initiatives on the fight against terrorism which were built upon the actions that were established in the area of Justice and Home Affairs.⁹¹ In the document the EU argued that in a globalized world, terrorism can only be countered through international cooperation and determined national action. It opened up for an opportunity to strengthening the external dimension of CT-strategies. One of the initiatives was to strengthen partnerships with key countries and mainstreaming counter-terrorism in the political dialogue with countries outside the EU. In the document the EU argued that they were going to step up the external dimension of counter-terrorism, particularly in the Mediterranean area, the Middle East and the North African area focusing on fighting foreign terrorism. It established counter-terrorism as a part of EU Foreign Policy.⁹² Another initiative was to use security and counter-terrorism experts in a number of EU Delegations to strengthen the capacity to contribute to counter-terrorism efforts within the EU and to be tied more effectively with relevant local authorities and continuing building up the counter-terrorism capacity within the EEAS. The EU expressed the need for a close coordination between the internal and external dimension of counter-terrorism which would enhance the impact of the common efforts.⁹³ The aim was to promote international cooperation and implementation of relevant UN Security Council Resolutions.⁹⁴

⁹⁰ 2007/C 306/01 “The Treaty Of Lisbon” Article:25-30

⁹¹ Council of the EU (2015) 43/15” Council Conclusion on Counter-Terrorism”

⁹² Council of the EU (2015) 43/15 Council Conclusion on Counter-Terrorism”

⁹³ Council of the EU (2015) 43/15 Council Conclusion on Counter-Terrorism”

⁹⁴ Council of the EU (2015) 43/15 Council Conclusion on Counter-Terrorism”

6.2 What kind of institutional change could be identified within counter-terrorism policy?

The institutional change identified within counter-terrorism policy is characterized by layering; however, some changes are characterized by functional transformation as well. As presented in previous sections, the Treaty of Amsterdam had given the European Council a larger influence regarding counter-terrorism strategies by giving them the authority to define the principles and establish the guidelines for the foreign and security policy.⁹⁵ After 9/11, the influence of the EU institutions increased and the counter-terrorism strategies were reevaluated. In the Declaration on Combating Terrorism and the Counter-Terrorism Strategy in 2005, the EU institutions gained more power and was given new authorities within counter-terrorism by establishing new institutions, such as the Counter-terrorism Coordinator.⁹⁶

The establishment of new frameworks within both the internal and external dimension of counter-terrorism have contributed to an institutional change within an area of “high politics” which previous research made by Den Boer.M & Wiegand.I and Kaunert argues as well.⁹⁷ The path of layering is being identified in the Lisbon Treaty as well, whereby the EU institutions were given larger authorities on the combat on terrorism within the internal dimension of counter-terrorism. The Lisbon Treaty contributed to the establishment of an external dimension of counter-terrorism as well, whereby institutions and organizations were given larger authorities and new functions within the Common Security and Defense Policy by giving larger authorities a High Representative of Foreign Affairs and Security Policy as well as increased authorities for Europol and Eurojust.⁹⁸ These changes are characteristics of Layering.⁹⁹ In the Council Conclusions on fighting terrorism, the EU establish themselves as an international actor on the combat on terrorism which implied operations against terrorism in third countries. It affected the EU institutions position both internationally and

⁹⁵ European Parliament (1997) “The Treaty of Amsterdam” Article: J.3

⁹⁶ 14469/4/05 REV 4 “ The Counter-Terrorism Strategy (2005) p.17

⁹⁷ Kaunert. C (2010)

Den Boer. M & Wiegand.I (2015)

⁹⁸ 2007/C 306/01 “The Treaty Of Lisbon” Articles 48-68

⁹⁹ Busetti.S (2015) “Governing Metropolitan Transport” Chapter 2 p.32-34 *PoliMi SpringerBriefs*
Ebbinghaus. B (2005)

within Europe.¹⁰⁰ In turn, it gave larger obligations and authorities for the EU institutions whereby it is possible to identify a continual path and an institutional change in the form of Layering.

6.3 . How can the institutional change within the two dimensions of counter-terrorism policy be understood in the outset of the three central features of historical institutionalism?

When studying the development of counter-terrorism several events that could be seen as formative moments could be identified. Ebbinghaus understands formative moments as triggers to an institutional change where the collective actors, for example institutions can establish new rules.¹⁰¹ The formative moments that could be identified in the material within the internal dimension of counter-terrorism policy was the events of 9/11, the attack in Madrid and the London Bombings. Same formative moments could be discovered in the external dimension of counter-terrorism policy. However, one more formative moment could be discovered within the external dimension of counter-terrorism, the Charlie Hebdo attack in 2015. Before 9/11, a few measures had been taken in order to fight terrorism, mainly on the internal dimension. However, the events of 9/11 opened up for new paths both for the internal and external dimension of counter-terrorism, in other words, a possibility for collective actors to establish new rules. In this case, using a historical institutionalism perspective, the events of 9/11 can be seen as a formative moment which triggered the path towards an institutional change.¹⁰² However, formative moments cannot alone contribute to a certain institutional path. Pierson argues that the timing and sequencing of a decision or a formative moment are vital and causing institutions to follow a specific path. He argues that: “when a particular event in a sequence occurs, will make a big difference for the political outcome.”¹⁰³ Timing and sequencing means in what context the decisions are being established. He argues the importance of looking at history and the context of the decisions to be able to understand the political processes. It would mean, that the political context that existed during the formative

¹⁰⁰ Council of the EU (2015) 43/15” Council Conclusion on Counter-Terrorism”

¹⁰¹ Ebbinghaus. B (2005)

¹⁰² Ebbinghaus. B (2005)

¹⁰³ Pierson.P (2000) “Not Just What, but When:Timing and Sequence in a Political Process” *Studies in American Political Development* Vol 14:1 p.72-92

moment of 9/11 and the political responses to the event, are affecting the political outcome and the future path of the institutions.¹⁰⁴ At the time of the 9/11 events, the Treaty of Amsterdam had been active for two years. In the treaty of Amsterdam it was established that the EU should take collective action in the fight against terrorism.¹⁰⁵ It means that by the time the attacks of 9/11 occurred, the EU had already agreed upon cooperation on the combat of terrorism in the internal dimension. The treaty gave a stronger influence for the European Council regarding the guidelines for the Common Foreign and Defense Policy and the fight against terrorism.¹⁰⁶ The political context, in other words, the timing and sequencing of the formative moment of 9/11 affected the political outcome of counter-terrorism policy and contributed to that several directives and decisions were established by the EU.¹⁰⁷ For example, timing and sequencing of the formative moment of 9/11 contributed to the establishment of the “Plan of action on combating terrorism” and the “Framework decision on combating terrorism” and steered the EU towards a path of institutional change within. As presented in previous earlier, formative moments are seen as a way for collective actors to establish new rules where the selection of pathway is determined as a result of political conflicts or power relations. The political conflicts, in this case, are how the power relations between the institutions should be divided within counter-terrorism.¹⁰⁸

A formative moment in relation to the timing and sequencing of the event are contributing to a window of opportunity, which is often opened during a crisis. In turn, it opened up for the EU institutions to establish new rules within counter-terrorism.¹⁰⁹ Historical institutionalism as well as rational choice institutionalism would argue that the institutions of the EU made a conscious choice as a rational actor to establish new rules within counter-terrorism in relation to the formative moment of 9/11, since they saw a window of opportunity to increase their powers within an area of high politics.¹¹⁰ On the other hand, it could be argued that the decision made by the EU institutions within counter-terrorism in relation to 9/11 were a natural reaction that resulted in unintended consequences such as institutional change and

¹⁰⁴ Pierson.P (2004) “Politics in time: History Institutions and Social Analysis” p.55-58

¹⁰⁵ EUR-Lex (2017) “The Treaty of Amsterdam” Article J1 & K2.

¹⁰⁶ EUR-Lex (2017) The Treaty of Amsterdam” Article J1 & K2.

¹⁰⁷ Pierson.P (2000)

¹⁰⁸ Ebbinghaus. B (2005)

¹⁰⁹ Pierson.P (2004) p.55-58

¹¹⁰ Pierson.P (2004) p. 36.

increased institutional powers.¹¹¹ However, formative moments can also result in institutional stabilization and path stabilization where formative moments work as self-reinforcing feedback, confirming the path and cause a locked-in effect.¹¹²

Followed by the events of 9/11, formative moments such as the Madrid attacks 2004 and the London Bombings in 2005 could be identified as well, causing a type of sequence chain. These chains of events are not only a sequence of formative moments, they work as *self-reinforcing feedback* as well, that in relation to the timing and the political context of the decisions causes the institutions to follow down the same path.¹¹³ Hence, this sequence of formative moments rather stabilizes the path than changes it and work as a reinforcing power. The events of Madrid in 2004 and London in 2005 confirm that the path chosen by the institutions in relation to the events of 9/11 are the correct path and reinforces the institutions. Self-reinforcing feedback means that when a certain path is chosen and the further the institutions are following the path, the higher the cost are in reversing from the path. In other words, it is more beneficial continuing down the same path, than switching or departing from the path since the path generates increased returns.¹¹⁴

Since the formative moments are reinforcing the institutions and are affecting the power relations between the member states and the EU, the institutions tend to follow the same path. Pierson argues that formative moments usually contribute to an institutional and political change. In this case, 9/11 contributed to an institutional change characterized by layering while the formative moments of the Madrid and London attacks worked as a self-reinforcing feedback causing path stabilization.¹¹⁵ The Madrid Attacks and London attacks have contributed to a smaller institutional change within the power relations through the establishment within both the internal and external dimension of counter-terrorism policy. In turn it contributed to larger authorities for the EU institutions established in the different

¹¹¹ Pierson.P (1996) p. 123.

¹¹² Pierson.P (2004) p. 55-58.

¹¹³ Pierson.P (2004) p.134-135

¹¹⁴ Pierson.P (2004)
Ebbinghaus (2005)

¹¹⁵ Pierson.P (2004)
Ebbinghaus (2005)

frameworks..¹¹⁶ In the directives, EU established actions within both the internal and external dimension of counter-terrorism that affected the institutions and In turn, resulted in an institutional change and through self-reinforcing feedback and contributed to path stabilization.

When the EU chose to intervene in an area of high politics such as counter-terrorism and establishing frameworks of how the member states should coordinate and structure their security policy, they chose a path that is difficult to depart from because the cost is too high. Looking at the structure of the directives of counter-terrorism, a pattern can be discovered whereby the directives within counter-terrorism are built upon each other, which makes the path even more irreversible.¹¹⁷ In the treaty of Maastricht the EU establishes the three pillar structure whereby the internal dimension of counter-terrorism lies within the third pillar and the external dimension of counter-terrorism lies within the second pillar and can be seen as the beginning of the path.¹¹⁸ “The Framework Decision on Combating Terrorism” established the path for the development counter-terrorism policy, whereby the subsequent decisions and frameworks as well as the formative moments work as self-reinforcing feedback which generates path dependency. The high cost of reversing or diverting from the path are too high, and work as driving force for the institutions to continue down on the same path. By continuing the same path, historical institutionalism means that the EU institutions are gaining more influence over the security policy of the member states and the fight against terrorism, It affects the power relations in the EU between the member states and institutions and transcends the power of the member states within the Area of Justice Freedom and Security (AJFS) to an EU-level. The change in power relations and power asymmetries can be clearly identified in the documents.

In relation to the Lisbon Treaty in 2009, the authorities of the EU institutions became wider. Instead of covering only a few areas of the CSDP, all areas should be covered, and in turn affecting the external dimension of counter terrorism policy The Lisbon Treaty also widened the authorities for two important actors within counter-terrorism policy, Europol and Eurojust.

¹¹⁶ Ebbinghaus. B (2005) p.17

¹¹⁷ Ebbinghaus. B (2005) p.14-15

¹¹⁸ McCormick. J (2011) Chapt.23

¹¹⁹ As well as previous frameworks and directives, the treaty affected the power relation between the member states and the EU institutions and works as a self-reinforcing feedback as well, contributing to path stabilization. The formative moment of the Charlie Hebdo attacks in 2015 triggered further development of the actions taken within the internal and external dimension of counter-terrorism policy. During the timing of these formative moments, another contextual factor affected the two dimensions of counter-terrorism policy and made the link between the two dimensions clearer, the migration crisis. The timing of the migration crisis in relation to previous formative moments created a critical situation which affected the further development of CT within the Area of Freedom, Security and Justice.¹²⁰ It resulted in “The Council Conclusions on fighting terrorism” where the EU described that in a globalized world, terrorism can only be countered through international cooperation and determined national action. In turn this opened up for an external dimension of counter- terrorism, which established the EU as an international actor in the combat on terrorism.¹²¹ Still, the EU follows the same path, increasing the institutional powers of the EU through layering. This can be explained in the background of the theory that the EU wanted to become an international actor in the fight against terrorism, in order to distribute their values and ideas. The idea can also be traced in the line with the “EU Counter- Terrorism Strategy”, implemented in 2005 where the Council called for complete action in the fight against terrorism and it should be in full compliance with fundamental values, international human right standards and international law.¹²²

To sum up, several formative moments could be discovered in the material that in reaction to the timing and sequencing of these events as well as the self-reinforcing factors contributed to an institutional change characterized by layering and results in path stabilization. Since there is lot of similarities between the internal and external dimension of counter-.terrorism policy, a link between the two dimensions could be identified as well

¹¹⁹ 2007/C 306/01 “The Treaty Of Lisbon” Article:25-30

¹²⁰ European Parliament (2017) ”The Migration Crisis”

¹²¹ Council of the EU (2015) “Council Conclusions on Counter-terrorism”

¹²² 14469/4/05 REV 4 “The European Counter-Terrorism Strategy

7. Concluding Discussion

Previous section showed the result of the study and the analyses of the result. In the result several mechanisms within the internal and the external dimension of counter-terrorism policy could be identified. The mechanism that was identified resulted in an institutional change characterized by layering; and in turn resulted in path stabilization. Below the result will be presented in a filled in analytical schedule.

7.1 Analytical Schedule

Analytical tools	Internal Dimension of Counter-Terrorism Policy (JHA)	External Dimension of Counter-Terrorism Policy (CSDP)
Formative Moments	The Events of 9/11 Madrid 2004 London 2005	The Events of 9/11 Madrid 2004 London 2005 Charlie Hebdo 2015
Self-reinforcing feedback	<ul style="list-style-type: none"> - Formative Moments -The Treaty of Maastricht - The EU Plan of Action on combating terrorism -Counter-terrorism strategy: Establishment of the four pillar structure - Lisbon Treaty: The investment of Europol and Eurojust 	<ul style="list-style-type: none"> - Formative Moments -Lisbon Treaty: The abolishment of the three pillar structure -Lisbon treaty: The establishment of CSDP as an actor in the combat on terrorism -Council Conclusions of CT: The establishment of counter-terrorism as a part of EU Foreign Policy
Sequences and timing	<ul style="list-style-type: none"> - The Migration Crisis -The Treaty of Amsterdam - The sequence chain of formative moments 	<ul style="list-style-type: none"> -The Migration Crisis - The Treaty of Lisbon - The sequence chain of formative moments

The analytical schedule displays the causal mechanisms within the internal and external dimension of counter-terrorism policy that contributed to the institutional change of layering. The causal mechanisms were identified by the usage of the analytical tools rooted in the theory of historical institutionalism. The analytical schedule displays several similarities between the two dimensions, such as formative moments and casual mechanism of timing and sequencing that both contributes to institutional change. However the analytical schedule displays differences between the two dimensions as well, mainly within the box of self-reinforcing processes. Still, despite the differences, the majority of the causal mechanism identified in the two dimensions are similar, which strengthens the idea of the link between the two dimensions as mentioned in previous research by Keohane.¹²³ The most distinctive similarities are the formative moments of 9/11, the Madrid attacks and the London bombings could be identified in both of the dimensions, where 9/11 triggered the institutional change and the other two formative moments pursued the institutional change by working as self-reinforcing processes. These formative moments established EU both as a European actor in the fight against terrorism and in relation to the Charlie Hebdo attack in 2015, they established EU as an international actor in the fight against terrorism.

On one hand it can be argued that the subsequent formative moment affected the institutional change by establishing new power relations in the EU. On the other hand, the subsequent formative moments are seen as self-reinforcing feedback, confirming the path of the institutions. This resulted in the establishment of new frameworks/directives building upon each other that layered new authorities upon already existing institutions, such as the counter-terrorism strategy and the Lisbon treaty. In turn, it resulted in higher costs of departing from the path and caused the institutions to remain at the same path, resulting in path stabilization. The timing of the Treaty of Amsterdam in relation to 9/11 affected the institutions since an cooperation within the “Area of Freedom Security and Justice” was established which gave the institutions larger authorities within counter-terrorism policy. The timing of the Migration Crises in relation to the Charlie Hebdo attack in 2015 affected the institutions and forcing them to follow the same path and increased there authorities in the internal and external dimension of counter-terrorism policy.¹²⁴ These contextual factors are

¹²³ Keohane.D (2007)

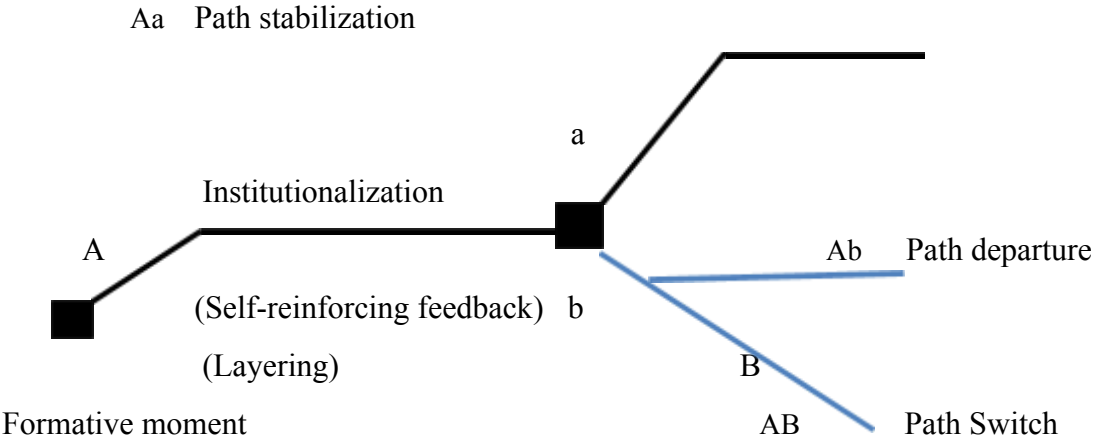
¹²⁴ European Parliament (2017) ”The Migration Crisis”

important since the “Area of Freedom Security and Justice” both includes asylum and migration policy and security policy.

To sum up, the causal mechanisms that are affecting the counter-terrorism policy are similar both within the internal and external dimension, establishing the link between the two dimensions, expressed by both Keohane and Monar.¹²⁵ Instead of distinguish the two dimensions from each other; one should establish the link between them, in other words, the link between Justice and Home Affairs and the Common Security and Defense Policy. Larger authorities were layered upon already existing institutions in relation to new frameworks/directives and caused path dependency that results in path stabilization.

The analyses of the result display the complex, but inherent logic of the political process of counter-terrorism policy. In order to clarify the inherent logic, the graph presented by Ebbinghaus will be displayed through a graph where he describes the path dependency of branching pathways and resemblance it with a tree.¹²⁶

7.2 Branching Pathways



The figure above displays the path dependency which could be identified in the development of counter-terrorism policy. The formative moment of 9/11 represents the formative moment in the graph. The framework/directives that follows the formative moment as well as the formative moments of Madrid, London, Charlie Hebdo attacks works as self-reinforcing

¹²⁵ Keohane.D (2007)
 Monar.J (2015)
¹²⁶ Ebbinghaus. B (2005) p.16

feedback and causes institutionalization through layering and contributes to path stabilization. If the EU had chosen the path of Ab or AB the outcome would have been different and could have resulted in path departure or path switch.

To conclude and to answer the general research question; *How has the measures taken within counter-terrorism policy changed the EU institutions since 9/11 in the outset of Historical Institutionalism?*

The institutional change within counter-terrorism policy can be understood through path dependency generated by formative moments, self-reinforcing processes and the timing and sequencing of the political process of counter-terrorism policy. The effects on the institutions are small, resulting in an institutional change characterized by layering, which results in path stabilization, in other words, stabilizing the institutions of the same path of layering. It is feasible to assume that the same type of institutional change can be identified in other policy areas within the EU. However in order to ascertain this assumption, further research within other policy areas are ought to be made. Since the study is focusing on a specific case, it can be seen as a complement to previous research made on the subject. The result and analysis of the study also displays the inherent link between the internal and the external dimension of counter-terrorism. It shows that an increased cooperation and institutionalization within an area of high politics, as expressed by Den Boer & Wiegand and by Kaunert in previous research, are possible even if it affects the national sovereignty of the member states.

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