Mawdsley J. [External Facets of Justice, Freedom and Security](#). In: Hadfield, A; Manners, I; Whitman, R, ed. *Foreign Policies of EU Member States: Continuity and Europeanisation*. London, UK: Routledge, 2017, pp.218-231.

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Link to book:

<https://www.routledge.com/Foreign-Policies-of-EU-Member-States-Continuity-and-Europeanisation/Hadfield-Manners-Whitman/p/book/9780415670067>

Date deposited:

02/08/2017

Embargo release date:

09 December 2018

External Facets of Justice, Freedom and Security

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[A] Introduction

In the last decade the Area of Freedom, Security and Justice (AFSJ) has been the most dynamic field of European integration (Wolff, 2008). Encompassing the policy areas of police, customs and judicial cooperation, EU citizenship, border control, immigration, asylum, combatting discrimination and the fight against terrorism, organized crime, drug-trafficking and human-trafficking, the AFSJ has developed rapidly in terms of policy areas, institutional complexity and legislation. Its external dimension has also expanded quickly, because the EU's internal security objectives can only be achieved through cooperation with third states. Both the refugee crisis stemming from conflicts in the Middle East and terrorist attacks in Paris and Brussels meant that by 2016 the external aspects of the EU's AFSJ have become major challenges for the EU. However, rather than being a strongly Europeanized external policy, the reality is more nuanced and highly politicized. The chapter aims to answer two main questions:

- What is the dominant mode of member state cooperation in this area and is this changing?
- Is the external dimension of the AFSJ becoming more Europeanized or more nationalized over time?

This introductory section will briefly explain the division of competences in the AFSJ, and outline the institutional complexity of its governance, before introducing some of the tensions that feature in its policy-making.

Until the Treaty of Amsterdam, cooperation in the field of justice and home affairs (JHA) was intergovernmental in what was known as the JHA pillar, with little involvement of the other EU institutions. The Treaty of Amsterdam moved the areas of asylum, immigration and judicial cooperation in civil matters into the Community pillar, but everything else remained in the intergovernmental JHA pillar. Policy-making was largely carried out through multiannual

programmes, whose parameters were set by the European Council, and the Commission was tasked with proposing implementation measures. The Lisbon Treaty removed the JHA pillar, meaning the AFSJ is now subject to the ordinary legislative procedure, and should have heralded changes in policy-making dynamics. Indeed Kaunert (2010) has pointed to the importance the Commission granted to securing the changes in both the Convention on the Future of Europe, and the subsequent treaty negotiations, as evidence of Commission policy entrepreneurialism in this policy area.

However, there are some important limitations. The AFSJ remains an area of shared competence, meaning that Member States retain the right to exercise their legislative prerogative where full harmonization has yet to occur (i.e. in almost all AFSJ areas). States therefore can and do, continue to conclude agreements on issues related to the external dimension of the AFSJ. Moreover, the Lisbon Treaty does not give any general competence for the EU to act in external AFSJ affairs (Monar, 2012). Since the Lisbon Treaty came into force there is also evidence of the Member States in the Council trying to reassert their prerogative to set the contours of the policy against the will of the Commission (Carrera and Guild, 2012). However, the conflict between intergovernmentalism and supranationalism is not the only tension.

The policy area is not just legally but also institutionally complex. Within the EU institutions the portfolio is divided between several Commission Directorates-General along with specialized agencies like Frontex and Europol. Each has its own institutional priorities and these do not always match, meaning that a unified position can be challenging to find. These internal Commission tensions are mirrored by disagreement between the European Parliament and the Commission and Council, on the correct balance between security and freedom, with the Parliament sometimes (if inconsistently) taking a more liberal human rights-based approach.

Monar (2012) argues that the diversity of complex and politically sensitive areas covered by the AFSJ makes it unlikely to develop into a unified EU external policy¹. It also means integration dynamics vary within AFSJ external policies. Broadly speaking however, we can differentiate between the dynamics in **border and migration control** on the one hand, and **counter-terrorism** on the other. While both policy areas have evolved largely in response to external events, they have done so in different ways. This offers an organizational logic for this chapter, so after offering a brief outline of the evolution of the external dimension of the AFSJ and an overview of member states' positions, the chapter will examine the integration dynamics of external policies on border and migration control, and on counter-terrorism.

[A] Context: Integration in the Field of Justice and Home Affairs (JHA)

Until the ratification of the Single European Act, European integration was largely based on the concept of removing economic and legal barriers to the free movement of goods, capital, services and people. The removal of internal borders, however, meant that the security of EU citizens became dependent upon the control of the EU's external borders, while simultaneously ensuring that the removal of internal borders was not abused. Huysmans (2000) suggests that this linking of external and internal borders marked the transformation of the Single Market from a socio-economic project into an internal security project encompassing the wider Union. Certainly, the emphasis on protecting external borders means there has been an external dimension to JHA cooperation from the outset, and from the Hague Programme onwards (if not earlier) this can be reasonably described as having a security focus. The intensification of the refugee crisis from 2015 onwards, coupled with terrorist attacks in Paris in 2015 and Brussels in 2016, has further strengthened security fears, leading to some states unilaterally reintroducing national border controls within the Schengen area.

[B] Evolution of the External Dimension of the Area of Freedom, Security and Justice

Although for scholars like Balzacq (2009) there is earlier evidence of an external dimension to JHA cooperation², according to Wessel, Marin and Matera (2011) three events have shaped the development of the external dimension of the AFSJ:

1. the 1999 Tampere summit,
2. the 9/11 terrorist attacks on the US
3. and the 2004 Hague Programme.

The 1997 Amsterdam Treaty stated that the EU should work internationally on JHA concerns, and the changes in this treaty enabled the 1999 Tampere extraordinary European Council Summit conclusions, which for the first time clearly articulated the link between the EU's internal security policies and external relations, and stated that all EU external relations instruments should be used to build the AFSJ (European Council, 1999). This marked the start of a policy-making mode whereby the AFSJ policy objectives were set out in multiannual programmes by the European Council. At the follow-up June 2000 Feira Summit, the European Council agreed to give priority to "external migration policy, the fight against organized crime and terrorism, against specific forms of crime, drug-trafficking, and the development and consolidation of the rule of law in countries on the road to democracy" (Wessel, Marin and Matera, 2011: 281). This set the overall direction of the external dimension of the AFSJ.

The second key event was the 9/11 attacks, which focussed attention not just on counter-terrorism but on external cooperation with the United States. This cooperation has led to unprecedented agreements on data sharing for example, but also more generally to the elaboration of cooperation with third states on counter-terrorism; an area where the tensions between freedom and security are at their strongest. It has meant that security concerns have

played an even more prominent role in shaping the external dimension of the AFSJ than might have been the case.

Finally, the Hague Programme, agreed in 2004, saw the adoption by the European Council of a coherent strategy on the external dimension of JHA in 2005, which set the parameters for this field (Council of the EU, 2005). This strategy made it clear that the primary objective of EU engagement with third countries is the fulfilment of the needs of EU citizens, conceived primarily in terms of security.

[A] Member States: The Stockholm Programme and Beyond

The Stockholm Programme was the most recent iteration of the full AFSJ programmes. Entitled ‘An open and secure Europe serving and protecting the citizens’. The Stockholm Programme stated that external action should concentrate on five areas of action: migration and asylum; security; information exchange; justice and civil protection and disaster management (European Council, 2010). It was an ambitious document reflecting the ‘depillarization’ of the ASFJ in the Lisbon Treaty. However, it was also noticeable that the Stockholm Programme was substantially based on the 2008 member state dominated Future Group report, showing the continuation of intergovernmentalism prevailing at the policy framing stage of AFSJ. While certain states were very active in framing the Stockholm Programme – the Future Group included the first three trio presidencies of the programming period: Germany, Portugal, Slovenia; France, Czech Republic, Sweden; Spain, Belgium, Hungary: along with the UK as a common law observer – this did not mean these states consistently supported Europeanization in all of the agreed areas of action. In fact, the intensely politicized nature of the policy area means that member states are inconsistent in their support or opposition, and often develop their positions based on national politics or recent events. This also means that a Member State might be classified as a laggard in one area, while being a champion of further integration in

others. Even formal treaty status is not helpful. For example, the UK is one of the more active member states on the external dimension of the AFSJ, but like Denmark and Ireland has a formal treaty opt-out from AFSJ, although the UK and Ireland can choose to opt-in on a case-by-case basis.

The implementation of the ambitious Stockholm programme was therefore not straightforward. As argued above positions in the Council fluctuated in response to recent events, but as Carrera and Guild (2012) point out that both the European Commission and the Parliament developed also specific alternative agendas, leading to a multiplicity of conflicting and overlapping strategies, agendas and legislative proposals. Although less ambitious framework guidelines were adopted in 2014 for the current programming period with the idea that ‘less is more’, they too have been overtaken by events, notably the refugee crisis and the terrorist attacks in Paris and Brussels.

Rather than a straightforward picture of Europeanization envisaged by the Lisbon Treaty, the AFSJ currently represents a confused and conflicted policy agenda, with tensions over power and policy direction. It is therefore difficult to make an overall assessment of the policy-making dynamics and whether for the Member States the policy is becoming more Europeanized or nationalized. Moreover, within the policy area the integration dynamics are differentiated between the policy areas subsumed under the external dimension of AFSJ. This chapter now will look at two key but differing policy areas: border and migration control and counter-terrorism and internal security: to assess whether any trends can be identified.

[A] Border and Migration Control: Policy Change

While its inadequacies have been made clear by the worsening of the refugee crisis from 2015 onwards, the 2008 European Pact on Asylum and Migration still forms the centrepiece of EU cooperation on asylum and migration. It represents not just a highly successful uploading by

the French EU presidency of French norms and concerns, but also, as Kostakopoulou (2009) argues, the continuing power of the Member States to frame the issue of migration, and thus cooperation with third states, through their national concerns. Domestic political sensitivity about immigration is a key political issue in most Member States, and so there is a reluctance to cede sovereignty on migration including cooperation with third states. It is difficult to portray the area of border management and migration control as other than largely characterized by intergovernmental dynamics (both Mode II and Mode IV).

Since the entry into force of the Lisbon Treaty the European Commission has tried to establish a series of narratives to enable the Europeanization of the policy area, however this has not been wholly successful. Kaunert (2009) for example suggests that the European Commission has acted as a norm entrepreneur on immigration, moving away from further securitization of asylum policy and instead focusing on adhering to international law. Their more successful narrative has been around framing external border security as a technological problem, which has permitted the growth of supranational border surveillance. While the EU border management agency, Frontex, established in 2004, reflects an uneasy compromise between the European Commission's preference for an EU border guard and member states' reluctance, the agreement on a European border surveillance system (EUROSUR), represents a supranational advance, underpinned by the Commission's growing role in the research and development of surveillance technologies. On the whole though, this has been the exception rather than the rule.

Most recently the dynamics of third country cooperation have been dominated by the rhetoric of emergency, which has strengthened the intergovernmental logic and indeed meant a return to mode IV activity. In responding to the developing refugee crisis in 2015-16, member states have been more enthusiastic about cooperating through intergovernmental policies like the CSDP or non-EU bodies like NATO than they have on proposals that would deepen European

integration. Here both mode II and IV dynamics can be observed. Since May 2015, EUNAVFOR MED Operation SOPHIA has been working in the Southern Central Mediterranean to deter people traffickers, stem flows of illegal migration and prevent deaths at sea. Ardittis (2016) claims that the Council now hopes to deploy a civilian security mission to improve Libyan police, border forces and counter-terrorism operations in a further example of Mode II policy action. NATO also agreed to deploy its fleet in the Aegean Sea in February 2016 to deter people trafficking – this decision is thought to have come at the request of Germany and Turkey, following bilateral meetings (Zhukov, 2016), showing an example of mode IV policy action. Similarly, the highly controversial 2016 EU-Turkey deal on the exchange of irregular migrants for refugees, was driven by German-Turkish bilateral negotiations (Kim, 2016). While it is tempting to see these dynamics as emergency responses, or perhaps a symptom of German hegemony in the EU, in fact they conform well to general trends about EU states' behaviour as the next section will show.

[A] Border and Migration Control Policy Performance: Action and Change

Although EU external border management policy is intended to be built on principles of burden-sharing and solidarity, in reality it is characterized by individual Member States attempting to upload migration emergencies causing domestic political tension to the EU level (intergovernmental Europeanization - Mode II), while non-affected Member States resist. However, this does not mean that states can be consistently identified as laggards or leaders as flows of migration, locations of most asylum claims, and national responses (such as tightening of immigration legislation or closing of borders) vary over time. While this pattern has been at its most acute from 2015 onwards, it is not new. As Chou (2009) points out Germany attempted to upload its domestic problems with refugees from the Balkans conflicts in the early 1990s but met with resistance, and then turned into a laggard, blocking attempts to Europeanize

asylum policy (Hellmann et al., 2005) but then in 2015 when its unilateral decision to suspend the Dublin regulation led to over 1 million asylum seekers entering Germany, it favoured compulsory quotas for all member states. Migration routes also vary meaning that the third countries that the EU and its member states must negotiate with change. For example, in 2015 attention shifted from the central Mediterranean route (Libya to Italy / Malta) to the Eastern Mediterranean route (Turkey to Greece) as the numbers using the latter increased exponentially meaning that a previous focus on agreements with Libya shifted to Turkey.

[B] Figure 1: Major Refugee Routes to Europe

Source: Deutsche Welle / Frontex

Until the refugee crisis intensified in 2015, and more states were drawn in, either as transit states or final destinations, migration flows were concentrated on Southern European states bordering the Mediterranean, and the situation for some time had been encapsulated by a North-South divide (Wolff, 2008)³. Bremberg and Britz (2009) suggest that more generally in internal security matters, there is a divide between Southern member states, which are in favour of greater supranationalization (and thus in particular burden-sharing in the form of financial and technical assistance), and Northern member states that are opposed. For the Mediterranean states badly impacted by the financial crisis, their new internal security problems especially those connected to immigration, are an additional expense that they are ill-prepared to deal

with, so some supranational proposals that would make all EU states share the burden are attractive, however here too there is resistance to ceding sovereignty. The 2015 intensification of the refugee crisis has also brought a new line of tension with many Central and Eastern European states stating outright opposition to any communitarization of individual states' migration problems and particularly rejecting national quotas for refugees (Hampshire, 2015).

While solidarity between EU states during migration emergencies remains low, there is some evidence that in calmer times, states do have some success in uploading their national concerns to the EU level. The example of the French presidency shaping the 2008 European Pact on Asylum and Migration has already been given. Southern EU states for example have also enjoyed a degree of success in Europeanising their national concerns. The 2002 Spanish Presidency was able to upload its domestic concerns about combatting drug-trafficking and immigration from Morocco, and to get agreement on the externalization of JHA policy in the Mediterranean. Since then, Wolff (2008) argues, Frontex activity has taken on a distinctly Mediterranean focus, due to continued intense pressure from EU Southern Member States. Spain, Portugal, Greece, Malta, Cyprus and Italy are periodically confronted by waves of migration from Africa, with which they are poorly equipped to cope. Wolff further points out that coordinated missions to counter illegal migration both prior to, and since the establishment of Frontex, have been concentrated on this region, and policy has accordingly been made in response to Southern European concerns (Wolff, 2008). Here we can observe a degree of intergovernmentally fostered Europeanization (mode 2). Klepp (2008) for example suggests that Southern EU Member States 'on different levels [...] are remodelling the EU-refugee regime through their "frontline perspective", pressuring for their positions in European decision-making forums and formalizing informal practices established in the border regions'

(Klepp, 2008; 19). Here too though despite some mode 2 Europeanization what can be observed is a policy being driven by crises rather than forward planning.

Paradoxically moreover, frontline states like Italy, Spain or Malta have been engaging in Europeanization by uploading their immigration, asylum and border management concerns to the EU level, while simultaneously developing bilateral relationships with North African and Middle East states on migration control, like the agreements between Italy and Libya signed in 2003 and 2007 (Wolff, 2010). Here we can observe the continuation of extra-EU policy relations (Mode IV) despite the presence of Europeanization through intergovernmental activism (Mode II). In this sense too, the national interest appears to remain paramount.

The European Commission has been endeavouring to foster enthusiasm for greater Europeanization through the provision of technical and financial assistance. EU states can apply for financial assistance from the Asylum, Migration and Integration Fund (AMIF), which aims inter alia to offer financial solidarity to those Member States, most affected by migration and asylum flows. In the budgetary cycle for 2014-20, the Commission has also established an Internal Security Fund: Borders and Visas with funding of €2.76 billion, to assist in these aspects of the implementation of the internal security strategy.⁴ This would cover all aspects of border surveillance for Schengen states.

Moreover the Commission has also attempted to frame border management as a collective technological challenge. Given that even the most resistant states accept the external border is only as strong as the weakest EU state's controls, this has met with some success. Since 2003 the Commission has been financing the development of internal security technologies, particularly surveillance technologies, through first a preparatory programme, then the Seventh Framework Programme and now Horizon 2020. Edler and James (2012) regard this action as evidence that the Commission can act as a supranational policy entrepreneur in this field, as they had no initial buy-in from any of the other actors concerned. In 2011 Frontex was given

the right to directly procure border surveillance equipment, which could create a more integrated, supranational dimension to external border control although its budget is small (European Union, 2011). A communiqué on security industry also made it clear that the Commission intended the Internal Security Fund to fund testing and validation of such technologies (European Commission, 2012). The motivation for this focus on surveillance technologies is clearly linked to the new EUROSUR border surveillance system. In this sense there is some evidence of the European Commission being able to leverage a more supranational dimension to border management through the use of existing communitarized policies such as research and development policy. It has also enabled it to present the highly political EUROSUR project as a primarily technical one.

The EUROSUR project has a substantial external element involving the externalization of EU external borders. The use of EU funding to provide border control technology to third states is not new. The Seahorse network involving Spain, Portugal, Morocco, Mauritania, Cape Verde, Senegal, Guinea-Bissau and The Gambia for example has been running since 2006, funded substantially by the Commission's framework for asylum and migration cooperation with third states. The initiative proposed and partially funded by Spain is based around a satellite-based communications network to share information on migrant movements. Here we can observe a degree of Europeanization, even if Spain and Portugal's leadership was driven by a desire to access EU funding to deal with a national problem. Similar networks exist in the Baltic and Black Seas with both EU and non-EU participants, and Spain has proposed a further one for the Mediterranean. EUROSUR, which would mark an increased supranationalization of border control policy, would bring these networks together, thus bringing the EU more firmly into these regional arrangements. Frontex would be responsible for surveillance of the 'pre-frontier' area and third countries would be supplied with the necessary technologies (backed up by the use of EU unmanned aerial vehicles) to attempt to ensure that potential migrants cannot reach

EU territorial waters (European Commission, 2008). However, it is not clear that this is compatible with international law. Moreover, the sale or provision of surveillance technologies to governments with problematic human rights records raises difficult ethical questions (Wolff, 2008; Mawdsley, 2013). Finally, the credibility of this technological solution seems in question given the extent of the current refugee crisis.

To summarize this section, the external element of border management policy reveals a confusing set of integration dynamics. Firstly, a general conclusion can be made that the policy area is predominantly marked by **intergovernmental decision-making** within the EU framework so mode two (intra-EU cooperation) in the analytical structure of this book, although the refugee crisis has shown some evidence of wholly uncoordinated national activity. Secondly however, the North-South divide means that Southern European states have been taking two rather contradictory steps. Their need for financial and technical assistance to secure their external borders has led them to support **supranational policies** and to apply for financial assistance from the available funds. However, even where there has been substantial EU assistance to reform national practices, there is still a sense that **national interests** prevail. Moreno Fuentes (2008) discussing the Spanish case for example suggests that there is a marked dissonance between rhetoric and practice. This might suggest that even where **evidence of Europeanization** can be found in terms of discourse and institutional adaptation; it does not necessarily translate into practice. This would also explain why the Southern EU states have also engaged in **bilateral activity** (Mode IV) in concluding agreements on migration control with third countries such as Spain and Portugal through the Seahorse network and the Italy-Libya agreements, which even if funded partially by the EU, resemble mode four of foreign policy-making. The section also suggested that despite a history of opposition to many of its proposals in this area, the Commission was carefully developing a successful framing tactic for more supranational integration through funding for the development and procurement of

security technologies. The EUROSUR project would represent a considerable step forward in this respect, but remains ethically problematic. Kaunert (2010) argued that the Commission had also attempted to reframe asylum issues through an international law framework. This stance has since been largely rejected by member states, but the Commission's attempts to frame external border management as technical rather than political seemed more successful at least prior to the intensification of the refugee crisis in 2015.

[A] Counter-terrorism and Internal Security: Policy Change

The interplay between the EU institutions and the member states in terms of shaping the external dimension of counter-terrorism and internal security policy is complex. While countering political extremism was the original issue that prompted intergovernmental cooperation in JHA, formal counter-terrorist cooperation was not really pursued at the EU level until after 9/11. Since then the external dimension of AFSJ counter-terrorism action has evolved quickly, sometimes through specific AFSJ policy instruments, sometimes through CFSP.

Once again it is difficult to identify a constant grouping of states due to the high levels of politicization of the policy area and the domestic political imperative to need to be seen to respond to terrorist attacks. There are various cleavages along which member states fall. Firstly, states with higher or lower levels of concern about the balance between human rights and security. Most EU proposals have been focussed on security and there has been reasonably constant reluctance from the Nordic states and the Netherlands about impairing civil liberties. More Atlanticist states like the UK and Poland have been keener to follow an agenda that has been largely set by a third state, the United States (Monar, 2012). Secondly, there is a divide between those states with high levels of competence and experience in counter-terrorism, and those that do not. The former, largely the UK and France, are more likely to try to upload their

national priorities to the EU level, but paradoxically can be quite resistant to any supranationalization of counter-terrorism because they fear the result would be less effective than their national processes and could damage intelligence-sharing with third states. With the less capable the situation is reversed.

This section intends to make two main claims about the nature of the process since 2001. Firstly, the European Commission has been able to act as a supranational policy entrepreneur on various issues and has been able to achieve agreement on previously intractable issues (Mode I). However, the Commission's agenda has been largely shaped by a non-EU state, the US. Secondly, large Member States have been reasonably successful at uploading geographical preferences for external EU counter-terrorist activity (Mode II). Britain and France have been notable in this respect. Active member states however, tend also to maintain bilateral activity in the form of extra-EU security and intelligence policy relations (Mode IV) with third states. Let us examine each of these claims in turn.

[A] Counter-terrorism and Internal Security: Policy Performance

Firstly, external cooperation on counter-terrorism has evolved rapidly as a policy field since 2001. In particular, the EU and its member states, as close allies and trading partners of the US, had to respond to the demands of its post 9/11 security agenda not just in terms of counterterrorism cooperation in third countries, but also to American efforts to secure its borders. Rees and Aldrich (2005) argue that strategic cultures related to terrorism are very different on both sides of the Atlantic. In contrast to the US which declared a global war on terror, EU states have tended to view counterterrorism as a matter of law enforcement and internal security rather than a military matter. This attitude seems to persist even after major attacks on Paris and Brussels in 2015-16. The more legalistic European approach meant that US policies like extraordinary rendition and Guantanamo Bay were controversial (Archick, 2011). Attitudes to citizens' rights on electronic surveillance and private data protection also

differ between the US and EU (Rees and Aldrich, 2005). These differences have emerged particularly in European Parliament opposition to some Commission proposals.

However, some commentators suggest that EU-US stances on counter-terrorism have now converged. In part, some suggest this is due to the more multilateral approach of the second Bush administration and later the Obama administration, which has reacted to EU civil rights concerns, particularly about the treatment of detainees (Archick, 2011). Others however stress the Commission's actions as a supranational policy entrepreneur. They point to the use that the Commission made of the shock of 9/11 to push for a rapid transfer of internal security powers to the EU level; something that Member States had traditionally been cautious about. The need for the EU to be seen to be doing something to assist the US on counter-terrorism, meant that measures which had earlier been proposed but not agreed were swiftly accepted.

This speed meant that the EU's emerging internal security policies were partially, if not primarily, constructed in response to the US' need for transatlantic cooperation (Lodge, 2004; Pawlak, 2009). Archick (2011) points particularly to the EU internal security strategy, which resembles the US homeland security concept, while Lodge (2004) considers the Commission's adoption of homeland security measures to be driven by subservience to the US rather than by internal imperatives. In this sense, we can observe the rapid emergence of a highly institutionalized, integrated policy area driven by a supranational actor, but shaped or framed by a third party. However, it is questionable whether the member states would have accepted this action had it not been for the external shocks of 9/11 and the Madrid and London bombings, and the importance that most attach to their bilateral relationships with the US. Monar (2012) argues that the UK was active in pressing for greater EU-US counter-terrorism cooperation. Moreover, there are signs that the period of the EU acting as a fairly unified actor on counter-terrorism are over. The European Parliament is emerging as a more liberal (albeit very inconsistently) actor than the Commission and Council, and has made its concerns about

internal security policy clear, particularly regarding data protection.⁵ The Parliament also raised concerns about and demanded revisions to EU-US agreements on the transfer of banking data (Swift Accord) and air passenger data (Passenger Name Record) (Archick, 2011). Brady (2010) suggests that in the post Lisbon era the Parliament's new right of co-decision means that such clashes will occur more frequently.

The second contention is that some Member States have been successful in uploading their geographical preferences for external counter-terrorism action, but simultaneously maintain bilateral extra-EU cooperation, suggesting that integration is rather limited. The states which have been able to upload preferences are usually large states, which have special interests in and thus more intense engagement with particular regions for historical reasons. Ironically, given its reluctance on AFSJ integration, one of the most successful uploaders has been the UK. Quite apart from its success in fostering intensive EU-US cooperation, Mackenzie (2012) points out that the UK has made consistent and eventually successful efforts to upload its own policy conviction that Afghanistan and Pakistan are important sources of terrorist insecurity to the EU level. It was also successful in shaping the 2012 draft Counter-Terrorism Action Plan for Yemen and the Horn of Africa, leading the House of Commons to question whether other member states actually share what appeared to be a UK-Danish vision (House of Commons, 2012). Similarly, France and Spain have been able to upload their particular concerns about the Maghreb.

However, this uploading can be secondary to national action. Although the UK has attempted successfully to upload its preference for counter-terrorism action in Pakistan, partly because it enables it to encourage action that is not enmeshed in ex-colonial tensions, it also maintains close bilateral relations (Mackenzie, 2012). This is not unusual. Despite France and Spain successfully uploading Morocco and Algeria as EU policy priorities, both North African countries prefer bilateral relations with EU states. Moreover, despite the intensity of EU-US

cooperation, in 2008 Germany signed a bilateral agreement with the US on access to biometric data and the sharing of data on known and suspected terrorists (Monar, 2012).

To sum up this section, the pattern of integration in the external dimension of EU counter-terrorism policy is decidedly mixed. On the one hand, there has been a rapid expansion of integration sponsored by the European Commission, which could be viewed as evidence of **mode one type foreign policy-making**; that is external policy-making operating within the EU framework in an **institutionalized, integrated and supranational** fashion. However, this neglects the fact that there was an upload of **Member States'** preferences for close cooperation with the US, and the fact that the Commission largely responded subsequently to a US agenda. The opposition of the Parliament to some measures regarding data sharing shows the extent of the mismatch between EU and US cultures. This means that the Commission counter-terrorism agenda sits uneasily and may as a result be less effectively downloaded into national cultures. It is hard to describe this as authentic Europeanization.

Moreover, in a counterbalancing trend there is evidence that bilateralism is thriving as individual member states negotiate counter-terrorism agreements without reference to the EU, which fits well with the model of **Mode IV (extra-EU policy relations) foreign policy-making**. This is coupled with evidence of **Mode II; intergovernmentalism**. In this sense, while member states' abilities to upload their geographical preferences for counter-terrorism activities, reinforces Europeanization, it simultaneously reinforces national policy-making dynamics.

[A] Conclusion

The conclusion to this chapter will attempt to answer two questions;

- Is the external dimension of the AFSJ becoming more Europeanized or more nationalized over time?

- What is the dominant mode of member state cooperation in this area and is this changing?

From the outset of JHA cooperation the external border has been portrayed as threatening and needing to be secured through cooperation with third states. While elements of the external dimension of AFSJ are closer to the general objectives of the CFSP, such as the global promotion of human rights, international judicial cooperation or efforts to improve data protection standards in third countries, much of the external dimension of the AFSJ is about securing the external borders, and persuading third states to cooperate in this through the provision of financial and technical assistance. The complexity of the number of policy elements involved, and the mixed messages being conveyed by the EU institutions, have potentially limited the potential for downloading the field's policy objectives to the member state level.

Attempts by the Commission to act as a supranational policy entrepreneur have seen various re-framings of AFSJ; adopting a US agenda in the early 2000s when the emphasis was on counter-terrorism, in the late 2000s through a framing of the external border in terms of human rights and international law (Kaunert, 2010), and most recently by framing external border security as a technical rather than a political issue. Despite the Commission's efforts to offer an overarching narrative, the external dimension of AFSJ remains predominantly reactive rather than proactive. While there has been a high level of activity in this field since the 1999 Tampere European Council summit, external events rather than internal imperatives have been the agents of change. The policy-making mode associated with the early JHA cooperation was intensive transgovernmentalism. While the particularities of the second pillar have been superseded by the Treaty of Lisbon, their legacy is still present.

This means that in terms of this book this foreign policy-making field can best be characterized as still more nationalized than Europeanized. Unpacking the external dimension of the AFSJ

has shown that in the absence of real agreement on the correct strategies for the EU to take in terms of controlling illegal migration and counter-terrorism, action tends to come through reaction to emergencies such as the 9/11 terrorist attacks or the refugee crisis currently impacting Europe. This reactive tendency allowed a third state, the USA, to frame the emerging EU counter-terrorism strategy. Member states do upload their own preferences and are able to frame policies in their national policy-making style. Particular examples are the French EU Presidency in 2008 uploading its national preferences to the European Pact on Asylum and Migration, the 2002 Spanish EU Presidency achieving its national goal of externalising JHA towards the Mediterranean. However, member states, who are particularly concerned about a particular issue with a third state, remain prone to concluding bilateral agreements. In short, in terms of this book's analytical framework the dominant modes of member state cooperation are intergovernmentalism within the EU framework (Mode II) and extra-EU cooperation between EU and non-EU states (Mode IV).

The European Commission is striving to create a joined-up narrative for the external dimension of AFSJ, and has made several attempts to frame it in an acceptable manner for the member states to accept supranationalism in this area. However, the high level of domestic sensitivity of the policy area and the lack of agreement on basic principles means the member states tend to block. The EUROSUR integrated border management project represents a step forward, but is controversial and raises both legal and ethical issues, which could undermine other areas of EU foreign policy.

It is not possible to consistently classify states as laggards or lead states on the external dimension of AFSJ. One would expect Denmark, Ireland and the UK given their legal opt-outs, to be laggards. In fact though, the UK in particular, has been quite activist in pushing for external action on counter-terrorism, and although as a non-Schengen member it cannot be a member of Frontex, it attends meetings by invitation and has been a strong supporter of and

participant in Frontex operations. Moreover, the North-South divide seen in border management policy does not apply to counter-terrorism. Support and dissent tend to be issue-specific and based on national interests. The issues that AFSJ tackles are too domestically sensitive across the EU for politicians to act otherwise. As the changes in policy-making adopted in the Treaty of Lisbon bed down, more established coalitions of supporters and laggards may emerge. As the issues at stake tend to be closely connected to fundamental rights, the coalitions may emerge though as party political rather than national. At present though, policy-making on the external dimension of the AFSJ remains predominantly intergovernmental, reactive rather than proactive and without clear guiding objectives other than internal security.

¹ The Treaty of Lisbon while extending the legal possibilities for ASFJ external action, also restricts them by emphasising in Article 4(2) TEU that member states have sole responsibility for maintaining law and order and national security. See Monar (2012) for a full account of this.

² Such as the Edinburgh 1992 European Council, which established principles governing external aspects of migration policy, in particular the intention to establish readmission agreements with third countries, and on coordinated action to address 'push' factors encouraging irregular migration into the EU.

³ There is also a long-standing North-South divide more generally in terms of immigration policy. In the 1990s Northern states would put pressure on Southern states to adopt stricter immigration policies (King, Lazarides and Tsardanides, 2000).

⁴ EU Internal Security Strategy:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/113055.pdf

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