

The European Parliament in the External Dimension of EU Counter-terrorism: More Actorness, Accountability and Oversight 10 Years on?

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ABSTRACT The Lisbon Treaty, which entered into force in 2009, considerably reinforced the powers of the European Parliament. This article examines to what extent the European Parliament has become an important actor in EU counter-terrorism by focusing on the external dimension of this policy. It also analyses the impact that this potentially changing role has had on the external dimension of EU counter-terrorism. This article puts forward two inter-related claims. Firstly, the role of the European Parliament in the external dimension of EU counter-terrorism has significantly grown in recent years. Following the entry into force of the Lisbon Treaty in December 2009, the European Parliament has become a fully-fledged actor in the external dimension of EU counter-terrorism. Secondly, the reinforcement of the role of the European Parliament has also led to a strengthening of both accountability and oversight in the external dimension of EU counter-terrorism, although there are still some limitations in that respect.

The EU's role in countering terrorism has been vigorously debated over the last ten years. Amongst the scholars analysing EU counter-terrorism, there have been diverging assessments as to the significance of the EU's role in the fight against the global terrorist threat. Whilst the EU has sometimes been characterised as a 'paper tiger'¹ and thereby a rather inefficient counter-terrorism actor, some scholars, in contrast, have emphasised how the EU has managed to increase counter-terrorism cooperation amongst its Member States to a

¹ O. Bures, 'EU Counter-Terrorism Policy: A 'Paper Tiger'? *Terrorism and Political Violence* 18/1 (2006) pp. 57-78; O. Bures, *EU Counterterrorism Policy: A Paper Tiger?* (Farnham: Ashgate 2011). See also R. Bossong, 'The Action Plan on Combating Terrorism: A Flawed Instrument of EU Security Governance', *Journal of Common Market Studies* 46/1 (2008), pp. 27-48.

considerable extent since 9/11.² Edwards and Meyer have even gone as far as arguing that the entire ‘governance of the European Union has been changed through its responses to international terrorism’.³ However, Zimmermann has rightly observed that ‘the Union does not have a “normal” government at the supranational level with all the requisite powers, competences, and hence, capabilities of regular government’.⁴ As a consequence, at first sight, one would not expect EU institutions to play a significant role in the development of a policy that is so sensitive and touches upon the sovereignty of EU Member States to a large extent. Writing about one of these institutions in 2006, namely the European Parliament, Zimmermann argued that it ‘is weak [...] and its endorsement for, or denial of, support for counterterrorism measures discussed at the level of the Union’s decision-making bodies is political only, and thus (usually) non-binding’.⁵ However, since then, the Lisbon Treaty has entered into force, which has led to a significant strengthening of the formal powers of the European Parliament in several respects.⁶ In particular, co-decision - now known as the ‘ordinary legislative procedure -, which makes the European Parliament a co-legislator with the Council, has been extended to various policy areas, including the former third pillar of Justice and Home Affairs. This means that the European Parliament can now co-legislate on various policy matters that are related to the fight against terrorism, such as law enforcement cooperation, judicial cooperation, criminal justice cooperation, and data protection. This

² D. Spence (ed.), *The European Union and Terrorism* (London: John Harper 2007); J. Argomaniz, ‘Post-9/11 Institutionalisation of European Union Counterterrorism: Emergence, Acceleration and Inertia’, *European Security* 18/2 (2009) pp. 151-172; J. Argomaniz, *The EU and Counter-Terrorism: Politics, Polity and Policies after 9/11* (London: Routledge 2011); C. Kaunert, ‘The External Dimension of EU Counterterrorism Relations: Competences, Interests, and Institutions’, *Terrorism and Political Violence* 22/1 (2010), pp. 41-61; C. Kaunert, ‘“Without the Power of Purse or Sword”: The European Arrest Warrant and the Role of the Commission’, *Journal of European Integration* 29/4 (2007) pp. 387-404; D. Mahncke and J. Monar (eds) *International Terrorism: A European Response to a Global Threat?* (Brussels: P.I.E. Peter Lang 2006).

³ G. Edwards and C. Meyer, ‘Introduction: Charting a Contested Transformation’, *Journal of Common Market Studies* 46/1 (2008) pp. 1-25 at p. 1.

⁴ D. Zimmermann, ‘The European Union and Post-9/11 Counter-Terrorism: A Reappraisal’, *Studies in Conflict and Terrorism* 29/2 (2006) pp.123-145 at p.126.

⁵ Idem.

⁶ E. de Poncins, *Le traité de Lisbonne en 27 clés* (Paris: Lignes de repères 2011) pp. 164-166.

extension of internal competences is particularly important because it also has an external impact. As foreseen by Article 218 of the Treaty on the Functioning of the European Union (TFEU), the consent of the European Parliament is required for the conclusion of international agreements by the EU that cover fields to which the ordinary legislative procedure applies. In other words, the EU, which now has a legal personality following the entry into force of the Lisbon Treaty, can only conclude international agreements concerning counter-terrorism after having obtained the consent of the European Parliament.

It is therefore necessary to examine the evolution of the role of the European Parliament in EU counter-terrorism, as well as the impact of this potentially changing role on the content of the policy. This article does so by focusing on the external dimension of the EU counter-terrorism policy. This can be defined as the EU's cooperation with third countries and international organisations in the field of counter-terrorism. There are several reasons for which focusing on the external dimension of EU counter-terrorism is a particularly adequate strategy. First of all, in recent years, the external dimension of the EU counter-terrorism policy has grown in scope and importance.⁷ In addition, various policy developments in the external dimension of EU counter-terrorism have proved particularly controversial and have raised important questions for the development of this policy. Finally, as there have already been important policy developments in the external dimension of EU counter-terrorism since the entry into force of the Lisbon Treaty on 1 December 2009, focusing on the external dimension allows for a comparison of the role of the European Parliament before and after the coming into force of the Lisbon Treaty. In addition, as the literature on EU counter-terrorism has tended to focus on its internal dimension, that is, the cooperation on counter-

⁷ See Monar's contribution to this special issue; Kaunert, 'The External Dimension of EU Counterterrorism Relations'; A. MacKenzie, 'The European Union's Increasing Role in Foreign Policy Counterterrorism', *Journal of Contemporary European Research* 6/2 (2010) pp. 147-163.

terrorism matters amongst EU Member States, the literature on the external dimension of EU counter-terrorism is still limited, although it has recently begun to grow.⁸ In particular, there has not been any study of the changing role of the European Parliament in the external dimension of EU counter-terrorism yet, which means that this article makes a significant contribution to the existing literature in that respect.

This article is structured into three parts. The first section develops an ‘international actorness’ analytical framework in order to more precisely assess the changing role of the European Parliament in the external dimension of EU counter-terrorism. The second section applies this framework to two cases of crucial importance in the development of the external dimension of EU counter-terrorism. The two cases examined here concern international agreements on intelligence exchange for counter-terrorism purposes signed by the EU with the US – the most important partner for the EU in the international cooperation against terrorism. The first is the case of the EU-US Passenger Name Record (PNR) Agreements, whilst the second is that of the EU-US SWIFT⁹ Agreements. Analysing the findings of the two case studies, the third section examines the impact of the changing role of the European Parliament on the external dimension of EU counter-terrorism. The article then concludes that the role of the European Parliament in EU counter-terrorism has been considerably reinforced

⁸ See Monar’s contribution to this special issue; D. Keohane, ‘The Absent Friend: EU Foreign Policy and Counter-Terrorism’, *Journal of Common Market Studies* 46/1 (2008) pp. 125-146; Kaunert, ‘The External Dimension of EU Counterterrorism Relations’; MacKenzie, ‘The European Union’s Increasing Role in Foreign Policy Counterterrorism’; M. den Boer, ‘Soft, Smart and Strategic: The International Dimension of EU Action in the Fight Against Terrorism’ in M. Cremona, J. Monar and S. Poli (eds), *The External Dimension of the European Union’s Area of Freedom, Security and Justice* (Brussels: P.I.E. Peter Lang 2011) pp. 341-363. In addition, some articles have focused on a very specific aspect of the external dimension of the EU counter-terrorism policy, such as the EU-US SWIFT Agreement – see, for example, J. Monar, ‘Editorial Comment: The Rejection of the EU-US SWIFT Interim Agreement by the European Parliament: A Historic Vote and its Implications’, *European Foreign Affairs Review* 15/2 (2010) pp. 143-151; A. Ripoll Servent and A. MacKenzie, ‘Is the EP still a Data Protection Champion? The Case of SWIFT’, *Perspectives in European Politics and Society* 12/4 (2011) pp. 390-406; M. De Goede, ‘The SWIFT Affair and the Global Politics of European Security’, *Journal of Common Market Studies* 50/2 (2012) pp. 214-230.

⁹ ‘SWIFT’ stands for ‘Society for Worldwide Interbank Financial Telecommunication’.

as a result of the entry into force of the Lisbon Treaty. As a result, the European Parliament is now a fully-fledged actor in the external dimension of counter-terrorism. This has enabled this institution to defend its policy preferences more strongly, which has led to an increase in accountability and oversight in the external dimension of EU counter-terrorism.

AN INTERNATIONAL ACTORNESS FRAMEWORK

In order to assess the changing role of the European Parliament in the external dimension of EU counter-terrorism, this article develops and applies an ‘international actorness’ analytical framework. ‘International actorness’ can be defined as ‘the capacity to behave actively and deliberately in relation to other actors in the international system’.¹⁰ This concept has occupied a prominent place in the debates on EU foreign policy.¹¹ Various scholars have vigorously debated the extent to which the EU can be considered an international actor and in which policy areas, as well as the precise criteria that should be used to measure EU actorness. Thus, the vast majority of the existing literature has examined the actorness of the EU as a whole. However, as shown by Kaunert¹², an actorness framework can be used in more creative ways and applied to EU institutions and bodies that engage in international relations, such as Europol in the case of his article. In the present article, it is proposed to apply an international actorness framework to the external relations of the European Parliament in counter-terrorism. It is argued here that an international actorness framework is particularly adequate to assess the potentially changing role of the European Parliament in the EU’s relations and cooperation with third countries and organisations in the field of counter-terrorism.

¹⁰ G. Sjöstedt, *The External Role of the European Community* (London: Saxon House 1977) p. 16.

¹¹ R. Ginsberg, ‘Conceptualizing the European Union as an International Actor: Narrowing the Theoretical Capability-Expectations Gap’, *Journal of Common Market Studies* 37/3 (1999) pp.429-454 at p.431.

¹² C. Kaunert, ‘Europol and EU Counterterrorism: International Security Actorness in the External Dimension’, *Studies in Conflict and Terrorism* 33/7 (2010) pp.652-671.

Various scholars have put forward different sets of criteria to evaluate EU actorness. The two most influential contributions to these debates have arguably been made by Caporaso and Jupille and Bretherton and Vogler.¹³ Caporaso and Jupille have identified four criteria for international actorness, namely authority (the legal competence to take action), autonomy (independence and distinctiveness from other actors), cohesion (unitary way of acting towards other actors), and recognition (acceptance of the competence to act by other actors). In contrast, the four criteria that Bretherton and Vogler have identified are as follows: a shared commitment to a set of overarching values and principles, the domestic legitimation of decision processes and priorities relating to external policy, the ability to identify policy priorities, and the availability of, as well as the capacity to utilise, policy instruments. It is argued here that, as these criteria significantly overlap, they can be synthesised into a consolidated framework, where actorness is assessed according to the following criteria:

- (1) Capacity: legal competence to act and ability to utilise policy instruments;
- (2) Initiative: ability to identify and pursue policy priorities;
- (3) Legitimacy: existence of legitimation mechanisms for decision processes and priorities;
- (4) Autonomy: commitment to a distinctive set of values and principles;
- (5) Cohesion: capacity to act in a unitary way towards other actors;
- (6) Recognition: acceptance of competence to act by third actors.

¹³ J. Jupille and J.A. Caporaso, 'States, Agency, and Rules: The European Union in Global Environmental Politics' in C. Rhodes (ed.) *The European Union in the World Community* (Boulder, CO: Westview Press 1998); C. Bretherton and J. Vogler, *The European Union as a Global Actor* (London: Routledge 2006); See also L. Dryburgh, 'The EU as a Global Actor? EU Policy towards Iran', *European Security* 17/2-3 (2008) pp. 253-271; M.L.P. Groenleer and L.G. Van Schaik 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol', *Journal of Common Market Studies* 45/5 (2007) pp. 969-998.

With its six criteria, such a framework allows for a detailed and sophisticated evaluation of the role of the European Parliament in the external dimension of EU counter-terrorism, including the evolution of this role as a consequence of the entry into force of the Lisbon Treaty in 2009. It will now be applied to two crucial cases of policy developments in the external dimension of EU counter-terrorism.

THE CHANGING ROLE OF THE EUROPEAN PARLIAMENT IN THE EXTERNAL DIMENSION OF EU COUNTER-TERRORISM: THE CASES OF PNR AND SWIFT

In order to assess the evolving role of the European Parliament in the external dimension of EU counter-terrorism, before and after the Lisbon Treaty, it is necessary to choose two cases of critical importance, since space constraints do not allow for an exhaustive examination of the external dimension of EU counter-terrorism. The two cases examined here concern international agreements on intelligence exchange for counter-terrorism purposes signed by the EU with the US – the most important partner for the EU in the international cooperation against terrorism. The first case is that of the EU-US PNR Agreements (2004 and 2007), which concern the exchange of data on air passengers.¹⁴ The second case is that of the EU-US SWIFT Agreements, which relates to the exchange of financial transaction data. These two cases have been chosen because they have been extremely important in the development of the external dimension of EU counter-terrorism. This was due to their high complexity and the significant level of controversy that they generated. In addition, they allow for an analysis of the impact of the Lisbon Treaty on the role of the European Parliament, as the EU-US PNR Agreements of 2004 and 2007 were signed before the entry into force of the Lisbon

¹⁴ A ‘passenger name record’ (PNR) is a ‘record of each passenger’s travel requirements which contains all information necessary to enable reservations to be processed and controlled by the booking and participating airlines’. See European Commission, ‘Commission Staff Working Paper “An EC-U.S. Agreement on Passenger Name Record (PNR)”’, SEC(2004) 81 (Brussels: European Commission, 21 January 2004) p. 2.

Treaty in 2009, whereas the SWIFT Agreement was adopted after 2009. By focusing on these two cases, it is possible to examine the main issues that have arisen in the development of the external dimension of EU counter-terrorism.¹⁵

The EU-US PNR Agreements: the Role of the European Parliament prior to the Lisbon Treaty

The EU-US PNR Agreements find their origins in the US Aviation and Transportation Security Act of 19 November 2001 that required airline companies operating passenger flights to, from or through the US, to provide US authorities with electronic access to PNR data, including passengers' names and addresses, bank numbers, credit card details, and information about meals ordered for the flights.¹⁶ However, this new requirement was problematic for EU Member States as it put them at risk of contravening Article 25 of Data Protection Directive 95/46/EC, which prevents the transfer of data from the EU to a country that is considered not to have sufficiently high standards of data protection.¹⁷ Air carriers were therefore faced with a dilemma: either they faced potentially hefty fines from the US authorities - up to \$5,000 per passenger whose data had not been appropriately transmitted¹⁸ - if they did not pass on the PNR data to them, or they put themselves at risk of being fined by national data protection authorities if they breached the European Data Protection Directive as a result of transferring the PNR data to the US. This difficult situation led the European Commission to open negotiations with the US in order to reach an agreement, which would

¹⁵ Another potential case, which could have been examined instead of the SWIFT Agreement, was the case of the new EU-US PNR Agreement, which was negotiated in 2011. However, at the time of writing, the European Parliament had not voted on the agreement yet, which ruled out the selection of this interesting case.

¹⁶ P. De Hert and B. de Schutter, 'International Transfer of Data in the Field of JHA: The Lessons of Europol, PNR and Swift' in B. Martenczuck and S. van Thiel (eds), *Justice, Liberty and Security: New Challenges for EU External Relations* (Brussels: VUB Press/Brussels University Press 2008) pp. 303-340.

¹⁷ European Parliament and European Council, 'Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data', Official Journal L 281 (23 November 1995) pp. 31-50.

¹⁸ E. Guild and E. Brouwer, 'The Political Life of Data: The ECJ Decision on the PNR Agreement between the EU and the US', *CEPS Policy Brief 109* (Brussels: Centre for European Policy Studies 2006) p. 1.

solve this conundrum for all EU Member States.¹⁹ The first step was to negotiate additional time for the EU Member States to comply with the new obligations introduced by the Aviation and Transportation Security Act, on the grounds that they were also required to comply with the European Data Protection Directive. As a result, the EU Member States received an extension until 5 March 2003 to comply with the obligation to transfer PNR data to the US authorities.²⁰ Thus, whilst the PNR Agreement was evidently an American initiative, the European Commission managed to carve out a significant role for itself and the EU in the PNR negotiations. In practice, after negotiating with US officials a series of requirements, it adopted a decision on adequacy based on Article 25 of the Data Protection Directive.²¹ The adoption of this decision confirmed the European Commission's conviction that the US authorities would implement adequate data protection measures when handling PNR data. As a result, the Council adopted a decision to conclude the agreement on 17 May 2004, which led to the official signing of the PNR Agreement with the US on 28 May 2004 in Washington.

However, the European Parliament had felt sidelined during the negotiations of this agreement. Because of the legal basis chosen for the EU-US PNR Agreement, it had only been involved in its negotiation through the 'consultation' procedure, which meant that it could only deliver a non-binding opinion on the agreement being negotiated. During the negotiation of the agreement, several Members of European Parliament (MEPs) had expressed strong concerns about the data protection standards underpinning the agreement.

¹⁹ J. Argomaniz, 'When the EU is the "Norm-taker": The Passenger Name Records Agreement and the EU's Internalization of US Border Security Norms', *Journal of European Integration* 31/1 (2009) pp. 119-136 at p. 123.

²⁰ C. Kaunert and S. Léonard, 'EU Counterterrorism and the European Neighbourhood Policy: An Appraisal of the Southern Dimension', *Terrorism and Political Violence* 23/2 (2011) pp.286-309 at p.297.

²¹ European Commission, 'Commission Decision 2004/535/EC on the adequate protection of personal data contained in the passenger name record of air passengers transferred to the United States' Bureau of Customs and Border Protection', OJ L 235 (6 July 2004) pp. 11-22.

The Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament adopted a very critical draft resolution by MEP Johanna Boogerd-Quaak by 25 votes to nine (with three abstentions) in March 2004. It called for the Commission to withdraw its draft decision of adequacy on the ‘undertakings’ of the US authorities as agreed during the negotiations. Despite an intervention by the Chairman of the Foreign Affairs Committee of the European Parliament, who warned about the potential negative effects of such criticisms for transatlantic relations²², the European Parliament in plenary session voted 229 votes to 202 (with 19 abstentions) in favour of the resolution opposing the adequacy decision on 31 March 2004.²³ The resolution also indicated that the European Parliament envisaged to start proceedings before the European Court of Justice should the draft adequacy decision not be withdrawn. It also reminded the European Commission of the requirement for cooperation between institutions as laid down in Article 10 of the Treaty on European Community (TEC). However, the critical stance taken by the European Parliament did not have any noticeable effect on the negotiators, who were not formally required to take this opinion into account at the time.

True to its promise, the European Parliament decided in June 2004 to seek the annulment of both the agreement and the adequacy decision of the European Commission before the European Court of Justice. The European Parliament’s formal complaint mainly focused on the choice of legal basis and the procedure applied during the negotiations (‘consultation’, rather than ‘assent’). In addition, in line with the resolution adopted in March 2004, concerns were also raised concerning possible infringements of the right to privacy and data protection,

²² Letter by Elmar Brok, Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, to Mr. Hernández Mollar, Brussels, 18 March 2004. Available at <http://www.statewatch.org/news/2004/mar/elmarbrok-let.pdf> (accessed on 10 January 2012).

²³ European Parliament, ‘Resolution on the draft Commission decision noting the adequate level of protection provided for personal data contained in the Passenger Name Records (PNRs) transferred to the US Bureau of Customs and Border Protection’, P5_TA(2004)0245 (Brussels: European Parliament 2004).

which explains the support that the European Parliament received from the European Data Protection Supervisor in the proceedings.²⁴ In May 2006, the European Court of Justice, which had refused to apply the expedited procedure to the European Parliament's complaint, decided to annul the agreement, not because of data protection considerations, but because it was incorrectly based on EU transport policy provisions²⁵ (in the then 'first pillar' of the EU).²⁶ The Court considered that the EU-US PNR Agreement specifically intended to enhance security and to combat terrorism, with the consequence that the concerned data transfers fell within the public security framework established by the public authorities.²⁷ To the surprise and dismay of data protection proponents, the Court decided to squarely focus on the narrow issue of the legal basis chosen for the EU-US PNR Agreement and the related adequacy decision of the European Commission. The judgement did not address data protection concerns, although it referred to the right to privacy as enshrined in the European Convention on Human Rights at the very beginning, but without returning to it later.²⁸ Thus, the European Parliament was successful in obtaining the annulment of the EU-US PNR Agreement, but was disappointed in the lack of attention given to the issue of data protection in the ruling of the European Court of Justice. In addition, the main consequence of the judgement was that a new agreement had to be negotiated, this time in the framework of the then 'third pillar' of the EU. This meant that, again, the European Parliament would be involved in the negotiations only through the consultation procedure.²⁹

²⁴ Guild and Brouwer, 'The Political Life of Data', pp. 2-3.

²⁵ Joined cases C-317/04 and C-318/04.

²⁶ Following the entry into force of the Treaty of Maastricht in 1993, which established the EU, there used to be three so-called 'pillars', namely the EC or 'Community' pillar for matters related to the single market, the Common Foreign and Security Policy (CFSP) pillar for foreign and external security matters, and the Justice and Home Affairs (JHA) pillar for internal security matters. The Treaty of Lisbon abolished the three-pillar structure of the EU (and thereby the EC). Only the EU remains now, which is why this article generally refers to the EU for the sake of simplicity, unless it is necessary to refer to the EC for technical reasons, such as precise references to legal instruments.

²⁷ Guild and Brouwer, 'The Political Life of Data', pp. 2-3.

²⁸ *Idem*.

²⁹ De Hert and de Schutter, 'International Transfer of Data in the Field of JHA'.

Given the tight deadline imposed by the European Court of Justice to solve the legal problem (i.e. four months), it was necessary to adopt an Interim PNR Agreement in October 2006, which ensured similar levels of data protection as the first PNR Agreement. After further negotiations to meet new demands by the US authorities, a second PNR Agreement was eventually signed in July 2007. Under this second PNR Agreement, the US authorities agreed to receive 19 fields of data - instead of 34 in the first PNR Agreement -, although it is important to note that some data categories had actually been combined, which meant that there was no significant reduction in the amount of data to be transferred.³⁰ In addition, still compared to the original EU-US PNR Agreement, the US authorities had managed to obtain the right to share the data with an increased number of federal authorities and to store them for longer, namely 15 years, instead of three and a half years. The European Parliament had again shown its disagreement with the draft revised agreement during its negotiation. It had held a public debate on the new draft agreement during a plenary session in October 2006, before US Secretary of Homeland Security Michael Chertoff had appeared before the LIBE Committee to respond to the criticisms of the MEPs, who had criticised the widened scope of the draft revised agreement. In July 2007, the European Parliament had also adopted a very critical resolution³¹, which emphasised what a majority of MEPs saw as major flaws in the draft agreement. Nevertheless, it is evident that these protests had not had any substantial effect on the negotiations.

³⁰ E. Brouwer, 'Towards a European PNR System? Questions on the Added Value and the Protection of Fundamental Rights', Study PE 410.649 (Brussels: European Parliament, Directorate General Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs 2009) p.13.

³¹ European Parliament, 'Resolution of 12 July 2007 on the PNR Agreement with the United States of America', P6_TA(2007)0347 (Brussels: European Parliament 2007).

Thus, the examination of the first EU-US PNR Agreements of 2004 and 2007 has shown that, overall, the European Parliament did not manage to play a significant role in their negotiation. Although it may have also been partially motivated by the idea of defending its prerogatives in the EU inter-institutional power relations³², it appears that its actions mainly aimed to champion the respect for fundamental rights in counter-terrorism and in the exchange of passenger data in particular. However, because the European Parliament was in a structural position of weakness inherent to the application of the consultation procedure, its opinion was not taken into account by the negotiators and was therefore not reflected in the final text of these agreements.

The EU-US SWIFT Agreements: the Role of the European Parliament after the Lisbon Treaty

Like the PNR Agreements, the EU-US SWIFT Agreements find their origins in a US policy initiative, namely the ‘Terrorist Finance Tracking Programme’ (TFTP), which was initiated by the US Department of the Treasury following 9/11³³ and remained secret for five years. This programme allowed the US authorities to require SWIFT – a Belgium-based company that controls about 80 per cent of the global financial messaging service market³⁴ – to transfer data on financial transactions to the US authorities in order to combat terrorism.³⁵ As the existence of the programme was revealed in the US media in June 2006³⁶, it also emerged that the TFTP had allowed US authorities to access European financial transaction data. This

³² On this point, see P. Pawlak, ‘The External Dimension of the Area of Freedom, Security and Justice: Hijacker or Hostage of Cross-pillarization?’, *Journal of European Integration*, 31/1 (2009) pp. 25-44 at p. 38.

³³ M. Levitt, ‘Follow the Money: Leveraging Financial Intelligence to Combat Transnational Threats’, *Georgetown Journal of International Affairs* (Winter/Spring 2011) pp. 34-43 at p. 38.

³⁴ *Deutsche Welle*, ‘US accesses European bank data under controversial SWIFT Agreement’ (1 August 2010). Available at <http://www.dw-world.de/dw/article/0,,5855750,00.html> (accessed on 11 August 2010).

³⁵ G.G. Fuster, P. De Hert and S. Gutwirth, ‘SWIFT and the Vulnerability of Transatlantic Data Transfers’, *International Review of Law, Computers and Technology*, 22/1 (2008) pp. 191-202.

³⁶ M. Wesseling, M. De Goede and L. Amoore, ‘Data Wars beyond Surveillance: Opening the Black Box of Swift’, *Journal of Cultural Economy* 5/1 (2012) pp. 49-66 at p. 49.

was largely condemned as a breach of both Belgian and EU legislation on data protection. As a result, SWIFT decided in 2007 to change its messaging architecture, so that all intra-EU financial transfer data would exclusively be processed and stored within Europe as of 1 January 2010. However, this also meant that, from that date onwards, the US authorities would no longer be able to access European financial transaction data – a change to which they objected. Following a request by the US authorities to continue to access European financial transaction data, the Council of Ministers agreed in July 2009 to negotiate an agreement to that effect with the US authorities. On the EU side, this decision was mainly prompted by the strong wish of several EU Member States to continue to receive US TFTP-based intelligence for counter-terrorism purposes.³⁷

The European Parliament showed a keen interest in the negotiation of the agreement, in line with the attention that it had already devoted to the TFTP programme as soon as its existence had been revealed in 2006.³⁸ However, prior to the entry into force of the Lisbon Treaty, the exact date of which remained uncertain for a few months, the role of the European Parliament was severely limited in the negotiation of the EU-US SWIFT Agreement as a result of the application of the consultation procedure. It initially received very little information on the actual negotiations – the existence of which had been revealed by the press in July 2009. On 17 September 2009, the European Parliament passed a Resolution that highlighted various concerns of the MEPs and listed a series of requirements that the agreement should ‘as a very

³⁷ It has been estimated that, since 2001, the EU Member States have received about 1,500 TFTP-based leads. See K. Archik, ‘US-EU Co-operation against Terrorism’, *CRS Report for Congress* (Washington, D.C.: Congressional Research Service 2011), p. 5.

³⁸ European Parliament, ‘Resolution of 6 July 2006 on the interception of bank transfer data from the SWIFT system by the US secret services’, P6_TA(2006)0317 (Brussels: European Parliament 2006); European Parliament, ‘Resolution of 14 February 2007 on SWIFT, the PNR Agreement and the transatlantic dialogue on these issues’, P6_TA(2007)0039 (Brussels: European Parliament 2007).

minimum ensure'.³⁹ However, as in the case of the PNR Agreements of 2004 and 2007, the negotiators did not appear to pay much attention to the opinion of the European Parliament. On 30 November 2009, that is, on the eve of the entry into force of the Lisbon Treaty, the Council decided to conclude the SWIFT Agreement, which was set to be applied from 1 February 2010. This decision was badly received by many MEPs, although the Commission had indicated that the agreement would be of an interim nature and that a longer-term agreement would be negotiated with the US authorities under Lisbon Treaty rules in 2010.

It was therefore not so surprising that, on 4 February 2010, the LIBE Committee adopted a very critical report on the EU-US SWIFT Interim Agreement drafted by MEP Jeanine Hennis-Plasschaert, which recommended the rejection of the agreement. It argued that the agreement 'violate[d] the basic principles of data protection law, i.e. the principles of necessity and proportionality' and that 'this [could not] be subsequently rectified by mechanisms of oversight and control'.⁴⁰ Specific concerns were highlighted, which related to the transfer of bulk data, the possible transfer of EU data to third countries, the periods of data retention, and the definition of the citizens' rights over their personal data.⁴¹ One week later, the European Parliament voted in favour of rejecting the agreement (378 votes to 196 with 31 abstentions). As was the case with the PNR Agreements, the defiant stance of the European Parliament was prompted by both concerns over the substance of the agreement, in particular the lack of adequate data protection provisions, and its strong wish to assert its position in the intra-EU balance of power. In particular, the European Parliament aimed to

³⁹ European Parliament, 'Resolution of 17 September 2009 on the envisaged international agreement to make available to the United States Treasury Department financial payment messaging data to prevent and combat terrorism and terrorist financing', P7_TA(2009)0016 (Brussels: European Parliament 2009).

⁴⁰ European Parliament, 'Resolution on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program', A7-0013/2010 (Brussels: European Parliament 2010), p. 8.

⁴¹ *Ibidem*, pp. 8-9.

emphasise its stronger powers following the entry into force of the Lisbon Treaty and the fact that its consent should not be taken for granted by the Council, the Commission or third countries. Interestingly, the European Parliament was not swayed by what Monar described as ‘an unprecedented lobbying effort that involved a phone call from Secretary of State Hillary Clinton to EP President Jerzy Buzek, a joint letter of her and Treasury Secretary Timothy Geithner to the same of 5 February, which even offered the LIBE Committee an in-depth briefing on the TFTP, a warning of Treasury Undersecretary Stuart Levey about a potentially “tragic mistake”, and threats of US Ambassador William Kennard about a potential bypassing of the EU via bilateral agreements with Member States’.⁴² It is also important to emphasise that, as already indicated in the Hennis-Plasschaert report of 4 February 2010, the European Parliament did not oppose the transfer of financial transaction data in general, but rather the lack of appropriate safeguards, in its view, in the SWIFT Interim Agreement. In its legislative resolution of 11 February 2010, with which it withheld its consent to the conclusion of the Interim Agreement, it explicitly requested the European Commission ‘to immediately submit recommendations to the Council with a view to a long-term agreement with the United States dealing with the prevention of terrorism financing’.⁴³

As the US authorities were also keen to see the adoption of a new agreement, negotiations for a revised EU-US SWIFT Agreement were promptly opened in May 2010 and progressed at an impressive pace. A remarkable change, compared to the negotiations of the Interim Agreement, was the attempt by the US authorities to engage with the European Parliament – a clear sign of recognition of its new powers in the external dimension of EU counter-

⁴² Monar, ‘The Rejection of the EU-US SWIFT Interim Agreement by the European Parliament’, p. 145.

⁴³ European Parliament, ‘European Parliament legislative resolution of 11 February 2010 on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program’, P7_TA(2010)0029 (Brussels: European Parliament 2010) p. 1.

terrorism. In addition to a visit of the members of the LIBE Committee to the US Congress and the Treasury Department⁴⁴, US Vice-President Joe Biden visited the European Parliament in May 2010 in a bid to get MEPs firmly on board for the revised EU-US SWIFT Agreement. This testifies to the symbolic recognition achieved by the European Parliament in these negotiations, as no US President or vice-President had come to the European Parliament since Ronald Reagan in 1985.⁴⁵ Likewise, the European Commission also made efforts to ‘[involve the European Parliament] from the beginning, providing information and discussing the new mandate with key MEPs’.⁴⁶ After the Council decided to conclude the agreement in June 2010, the European Parliament⁴⁷ gave its consent to the EU-US SWIFT Agreement⁴⁷ on 8 July 2010. The agreement subsequently came into force on 1 August 2010.

The European Parliament had clearly indicated that it would only consent to a revised agreement that substantially incorporated its preferences and concerns, which had been expressed in various resolutions. As a result, some important changes were introduced in the new agreement, although some were not as extensive as MEPs might have preferred. First of all, Europol, the European Police Office, was given the competence to allow or, in contrast, block transfers of European data to the US (Article 4). In addition, it was decided that a group of independent inspectors, including an EU representative appointed by the European Commission, would supervise the use of data by the US authorities (Article 12), with the competence of blocking searches breaching the safeguards listed in Article 5. Moreover, the

⁴⁴ EurActiv, ‘MEPs to restrict US access to anti-terror data’ (7 May 2010). Available at <http://www.euractiv.com/en/justice/meps-restrict-us-access-anti-terror-data-news-493714> (accessed on 21 December 2011).

⁴⁵ European Parliament, ‘Brussels plenary session, 5-6 May 2010’, press release (Brussels: European Parliament 2010). Available at <http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20100430FCS73854> (accessed on 15 December 2011).

⁴⁶ Ripoll Servent and MacKenzie, ‘Is the EP still a Data Protection Champion?’, p. 400.

⁴⁷ ‘Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program’ OJ L 195 (27 July 2010), pp. 5-14.

agreement provided for the possibility of legal and administrative redress for European citizens in the US (Article 18). New provisions regarding the retention and deletion of data were also introduced (Article 6). With regard to ‘bulk data’ transfers, which it had viewed as a particular source of concern, the European Parliament obtained the insertion of Article 11 in the EU-US SWIFT Agreement, which requests the European Commission to investigate ‘the possible introduction of an equivalent EU system allowing for a more targeted transfer of data’, that is, an ‘EU TFTP’. Thus, the text of the EU-US SWIFT Agreement provides clear evidence that the European Parliament managed to make the negotiators take its priorities into account and to significantly shape the content of the revised agreement. Nevertheless, one should not exaggerate the influence of the European Parliament, which also had to compromise on certain points. In particular, the promise of a study into the possible creation of an EU TFTP does not represent a strong and immediate response to the problem of ‘bulk data’ transfers. Here, it appears that the European Parliament also had to balance the pursuit of its own priorities, such as the respect for fundamental rights, with the necessity to behave as a responsible actor in counter-terrorism, which is also responsive to the security concerns of European citizens.⁴⁸ However, it is undeniable that the European Parliament managed to influence the outcome of the negotiations of the revised EU-US SWIFT Agreement, by ensuring that its concerns for fundamental rights, in particular the right to privacy and data protection, were satisfactorily taken into account by the negotiators.

The European Parliament: an Actor in the External Dimension of the EU Counter-terrorism Policy?

Having examined the two important cases of PNR and SWIFT, it is now possible to assess the extent to which the European Parliament has become an actor in the external dimension

⁴⁸ Ripoll Servent and MacKenzie, ‘Is the EP still a Data Protection Champion?’, pp. 400-401.

of EU counter-terrorism and how this has been influenced by the entry into force of the Lisbon Treaty. This assessment will be carried out using the six criteria for international actorness identified earlier.

With regard to *capacity*, whereas the European Parliament had only limited legal competence to act in this policy area before 2009, it has seen a significant strengthening of its legal competence with the entry into force of the Lisbon Treaty. Instead of being involved in the negotiations of international agreements related to counter-terrorism only through the consultation procedure – where its opinion could be ignored -, it is now involved in the process through the consent procedure, which gives it the right to oppose the signing of an agreement. Given the power of the European Parliament to withhold its consent and its readiness to do so if necessary as shown in the case of SWIFT, it has managed to carve out for itself a virtual seat at the negotiation table, as the officials negotiating international agreements are now required to take its opinion into account if they want the envisaged international agreement to receive the consent of the European Parliament. Thus, whilst the European Parliament had mainly access to judicial tools (i.e. proceedings before the European Court of Justice) before 2009, it now also has access to diplomatic policy tools to make its voice heard, which vastly increases its capacity in the external dimension of counter-terrorism.

As for *initiative*, the European Parliament has identified the defence of fundamental rights, including the right to privacy and data protection as one of its priorities and has consistently championed it, before and after the entry into force of the Lisbon Treaty.⁴⁹ In the European Parliament, the definition of priorities and policy positions is facilitated by the existence of

⁴⁹ See also Ripoll Servent and MacKenzie, 'Is the EP still a Data Protection Champion?' p. 392.

committees, such as the LIBE Committee in this policy area, which gather MEPs with a keen interest and significant expertise in the policy initiatives that they scrutinise. As the LIBE Committee comprises many dedicated defenders of civil liberties and human rights, it has managed to ensure a prioritisation of these issues in the policy positions taken by the European Parliament. The entry into force of the Lisbon Treaty, which has significantly increased the powers of the European Parliament in internal security-related matters, has further reinforced the standing of the LIBE Committee within the Parliament. With regard to *legitimacy*, the priorities and positions of the European Parliament are defined through processes that can be argued to be legitimate. A large share of the work is conducted within the LIBE Committee, which reaches a position on draft agreements after letting its members vote. The official position of the European Parliament is then reached through a vote in plenary session. As the European Parliament is the only European institution whose members are directly elected by European citizens, many would argue that its positions and decisions are the most legitimate of all the institutions in the European Union. Concerning *autonomy*, the European Parliament has demonstrated its distinctiveness by prioritising the respect for fundamental rights, in particular the right to privacy and data protection, over other concerns, such as close relations with the US. This prioritisation of fundamental rights has distinguished the position of the European Parliament from that adopted by the European Commission and the Council, which have sought to strike a different balance between fundamental rights and a close partnership with the US. Some may have been disappointed by the pragmatism shown by the European Parliament when it eventually gave its consent to the revised SWIFT Agreement without having reached all its objectives in terms of data protection. However, this did not mean that the European Parliament had adopted the same position as the European Commission and the Council with regard to data protection. It has

retained an independent and distinctive set of policy preferences in the field of counter-terrorism, which prioritises fundamental rights over other matters.

With regard to *cohesion*, the European Parliament has efficient decision-making mechanisms in place, such as voting in the LIBE Committee and in plenary session, to clearly define its position on international agreements in the field of counter-terrorism. As the results of the various votes on PNR and SWIFT have shown, not all MEPs share exactly the same view, but this does not prevent them from reaching a clear position, which can be communicated to third parties, such as the US authorities. Finally, as for *recognition*, the entry into force of the Lisbon Treaty also had an important impact. Before 2009, when the European Parliament was involved in the negotiation of international agreements relating to counter-terrorism only through the consultation procedure, neither the other institutions nor the US authorities identified it as a significant actor whose opinion ought to be taken into account – although it was not completely ignored either, as evidenced by US Homeland Security Secretary Michael Chertoff's visit to the LIBE Committee. In contrast, since the entry into force of the Lisbon Treaty, and the application of the consent procedure to international agreements relating to counter-terrorism, the European Parliament has increasingly been recognised as an important actor by the other institutions and the US authorities alike. In that respect, US Vice-President Joe Biden's visit to the European Parliament on 6 May 2010 was of particular symbolic importance.

Thus, it can be concluded from this systematic analysis that the six criteria for international actorhood are now fulfilled by the European Parliament following the entry into force of the Lisbon Treaty in December 2009. In other words, it can be argued that the European Parliament is now a significant actor in the external dimension of EU counter-terrorism. This

is an important development since, prior to 2009, not all criteria for actorness were fulfilled. In particular, the European Parliament did not fulfil the important ‘capacity’ criterion, as the application of the consultation procedure in that policy field meant that the European Commission and the Council could ignore its opinion. As a result, although the European Parliament tried to play a role in the development of the external dimension of the EU counter-terrorism policy - mainly that of a champion of fundamental rights -, it did not manage to do so in practice. In that light, the Lisbon Treaty was of paramount importance, as it very significantly reinforced the capacity of the European Parliament to act, which in turn further reinforced its recognition by third parties, such as the US. Nevertheless, it is important not to overstate the actorness of the European Parliament. Although it is now able to indirectly influence the negotiations of international agreements relating to counter-terrorism, given its power to withhold its consent, it does not have the higher influence that it would have should it have representatives directly taking part in the international negotiations. In spite of this limitation, it is evident that the Lisbon Treaty has significantly reinforced the role of the European Parliament in the external dimension of EU counter-terrorism, which makes this institution a fully-fledged actor in the external dimension of counter-terrorism.

THE IMPACT OF THE GROWING ROLE OF THE EUROPEAN PARLIAMENT ON THE EXTERNAL DIMENSION OF THE EU COUNTER-TERRORISM POLICY

Having established that the international actorness of the European Parliament has significantly increased in the external dimension of EU counter-terrorism since the entry into force of the Lisbon Treaty, it is now necessary to also examine which impact, if any, this has had on the external dimension of the EU counter-terrorism policy. Two main effects of this growing role of the European Parliament can be identified: firstly, a strengthened accountability of the European Commission and the Council in the negotiation of

international agreements relating to counter-terrorism and, secondly, an increase in the oversight of the activities taking place on the basis of such agreements. These two effects are examined in turn.

First of all, the reinforcement of the role of the European Parliament in the external dimension of EU counter-terrorism means that the accountability of the European Commission and the Council in the negotiation of international agreements relating to counter-terrorism has been strengthened. ‘Accountability’ refers to mechanisms that ensure that ‘both European and national actors who populate EU institutions can be – and are – held to account by democratic forums’.⁵⁰ The European Parliament is a primary example of such a democratic forum in the EU. Before the entry into force of the Lisbon Treaty, the European Parliament was only marginally involved in the negotiation of international agreements relating to counter-terrorism. During the negotiations of the first two EU-US PNR Agreements, it attempted to make the European Commission, as well as the Council, take its opinion into account, but the consultation procedure did not give it sufficient powers to be successful. The annulment of the first agreement by the European Court of Justice was not truly a success in that respect, as the European Parliament was not more involved in the negotiation of the second agreement than it had been in the discussions regarding the first agreement. This meant that, in practice, the European Parliament did not manage to hold the European Commission and the Council to account, as these two institutions were free to ignore its opinion in the course of the negotiations with the US authorities. This has significantly changed with the entry into force of the Lisbon Treaty, which has reinforced the powers of the European Parliament. Its consent is now required for international agreements

⁵⁰ M. Bovens, D. Curtin and P. ‘t Hart (eds), *The Real World of EU Accountability: What Deficit?* (Oxford: Oxford University Press 2010) p. 5.

relating to counter-terrorism. As a result, as aptly illustrated by the case of the EU-US SWIFT Agreement, the European Parliament now has more power to hold the European Commission (which negotiates the agreement) and the Council (which signs it) to account. As the European Parliament is able to withhold its consent and is ready to do so as shown by its rejection of the Interim SWIFT Agreement, it now has more leverage on the European Commission and the Council, which therefore have to take into account - at least to some extent - its priorities and policy preferences, such as respect for fundamental rights. This reinforcement of accountability in EU counter-terrorism is important on at least two counts. First of all, EU counter-terrorism is a policy area characterised by the existence of various informal networks, the legitimacy of which has often been called into question.⁵¹ In addition, and more generally, accountability is a key-dimension of democracy. The strengthening of accountability therefore contributes to tackling the so-called 'democratic deficit' affecting the EU, which has often been seen as weakening its legitimacy.⁵²

In addition, the strengthening of the role of the European Parliament following the entry into force of the Lisbon Treaty has also led to a reinforcement of oversight in the external dimension of EU counter-terrorism, as shown by the case of the SWIFT Agreements, which concern intelligence cooperation. In this context, 'intelligence oversight' can be defined as a process aiming to ensure that all intelligence-related activities are conducted in accordance with the law.⁵³ During the SWIFT negotiations, the European Parliament called for various reforms that would increase oversight over the activities of the US authorities relating to the financial transaction data transferred from Europe. In particular, it secured the insertion of

⁵¹ M. Den Boer, C. Hillebrand and A. Nolke, 'Legitimacy under Pressure: The European Web of Counter-Terrorism Networks', *Journal of Common Market Studies* 46/1 (2008) pp. 101-124.

⁵² A. Arnall and D. Wincott (eds), *Accountability and Legitimacy in the European Union* (Oxford: Oxford University Press 2002) p. 1.

⁵³ P. Gill and M. Phythian, *Intelligence in an Insecure World* (Cambridge: Polity 2006), p. 151.

Article 12 in the text of the revised agreement, which provides that the use of data, which must be exclusively for counter-terrorism purposes, is to be supervised by independent inspectors, including an EU representative. This person will have the power to request justification before any data is used and to block searches seen as illegitimate and in breach of Article 5, which prohibits data mining and other algorithmic or automated profiling or computer filtering. The European Parliament was also successful in indirectly negotiating a potentially important role for Europol, as the agency was tasked with checking that every data transfer request by the US Department of Treasury is necessary for counter-terrorism purposes and is ‘tailored as narrowly as possible in order to minimise the amount of data requested’(Article 4). In other words, Europol has been given the power to block data transfers to the US if it considers that the request does not meet the conditions set by the EU-US SWIFT Agreement. Those are important amendments to the Interim Agreement, which significantly increase oversight over this specific form of EU-US intelligence cooperation. However, it is important to recognise that there are also some limitations to these oversight measures. Before the signing of the revised agreement, the European Data Protection Supervisor had already expressed some concerns as to the effectiveness of Europol as the overseer of the US data requests, given the importance for Europol of maintaining good relations with the US authorities as it has the power to request relevant information obtained through the TFTP.⁵⁴ Since then, it has emerged that ‘bulk data’ transfers have taken place mainly because of the vagueness of some US requests, which were nevertheless authorised by Europol.⁵⁵

⁵⁴ European Data Protection Supervisor, ‘Opinion on a Proposal for a Council Decision on the Conclusion of the Agreement between the European Union and the United States of America on the Processing and Transfer of Financial Messaging Data from the European Union to the United States for Purposes of the Terrorist Finance Tracking Program (TFTP II)’ (22 June 2010) p. 6.

⁵⁵ Europol Joint Supervisory Body, ‘Report on the Inspection of Europol’s Implementation of the TFTP Agreement, Conducted in November 2010 by the Europol Joint Supervisory Body’, JSB/Ins. 11-07 (1 March 2011).

Thus, it can be argued that the reinforcement of the role of the European Parliament, due to the entry into force of the Lisbon Treaty, has led to the strengthening of accountability and oversight in the external dimension of EU counter-terrorism. It has been well-illustrated by the case of the SWIFT Agreements, where a stronger European Parliament has managed to obtain the inclusion of provisions aiming to strengthen oversight over the activities of the US authorities relating to the financial transaction data transferred from Europe. In doing so, the European Parliament was pursuing one of its main priorities, namely promoting respect for the fundamental rights of European citizens. Thus, the SWIFT case provides a good illustration of the broader trend of the reinforcement of accountability and oversight in the external dimension of EU counter-terrorism as a result of the strengthening of the institutional position of the European Parliament under the Lisbon Treaty rules.

CONCLUSION

This article set out to examine the extent to which the European Parliament's role in the external dimension of counter-terrorism has grown in recent years, especially following the entry into force of the Lisbon Treaty in December 2009, which significantly reinforced the powers of the European Parliament in general. In order to do so precisely, it developed an 'international actorness' framework based on the EU foreign policy literature and comprising six criteria, namely 'capacity', 'initiative', 'legitimacy', 'autonomy', 'cohesion' and 'recognition'. This framework was then applied to two cases of critical importance in the external dimension of EU counter-terrorism, namely the EU-US PNR Agreements of 2004 and 2007 and the SWIFT Agreements. The article demonstrated that, prior to the entry into force of the Lisbon Treaty on 1 December 2009, the European Parliament did not fulfil all the criteria for actorness, as it only partially fulfilled the criteria of 'capacity' and 'recognition'. However, following the entry into force of the Lisbon Treaty, the European Parliament has

now acquired the power to give its consent to international agreements relating to counter-terrorism. As a result, it can now be seen as also fulfilling the criteria of ‘capacity’ and ‘recognition’. Thus, the European Parliament has become a fully-fledged international actor in counter-terrorism following the entry into force of the Lisbon Treaty. In addition, this has had an important impact on the external dimension of the EU counter-terrorism policy. First of all, the Council and the European Commission have become more accountable to the European Parliament in the EU counter-terrorism external relations, which contributes to increasing democracy in this important and sensitive policy field. Moreover, given that the European Parliament largely prioritises respect for human rights, such as the right to privacy and data protection, over other concerns, the reinforcement of its role has also led to strengthened oversight mechanisms in the external dimension of EU counter-terrorism. As the European Parliament will be asked to give its consent to a new EU-US PNR Agreement in the next few weeks, it will be fascinating to observe whether it will use its power to block an agreement again in order to increase oversight and strengthen data protection in the external dimension of EU counter-terrorism.