

SECILE

Securing Europe through
Counter-Terrorism: Impact,
Legitimacy and Effectiveness

Report on Societal Understandings of Impact, Legitimacy and Effectiveness in the Counter-Terrorism Context

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SECILE: Securing Europe through Counter-Terrorism – Impact, Legitimacy & Effectiveness
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EXECUTIVE SUMMARY

This paper aims to clarify the concepts of impact, legitimacy and effectiveness from a societal perspective in the specific context of counter-terrorism in Europe. The first part of the report deals with this issues from the perspective of the changing values informing EU democratic societies. It teases out the extent to which counter-terrorism transforms the benchmarks of acceptability. Firstly, the Rule of law can be unsettled by a continuous appeal to the “exception argument”. Exception is justified as a way to circumvent normal procedures that are disregarded as cumbersome in the conditions of constant emergency under which counter-terrorism operates. A Schmittian argument is re-activated according to which the exception conditions the possibility of the rule. Secondly, liberty is re-defined so as to accommodate the overarching purpose of security. Indeed, the balance metaphor that epitomizes the relationship between liberty and security is inherently flawed. When the worst-case scenario argument can be summoned at any time, freedom is continuously reduced to an adjusting variable. Thirdly, for counter-terrorist measures relying heavily on surveillance technologies, privacy is displaced so as to allow for the proper and efficient deployment of monitoring and surveillance techniques. The trade-off model tends to reduce the stakes of such a displacement to a cost-benefit analysis that overlooks underlying societal and ethical issues.

While they change, displace and sometimes unsettle the societal values that underpin European democratic societies, the exception argument, the balance metaphor, the trade-off model and the ethics of exclusion simultaneously legitimize counter-terrorism. More specifically, they are brought in under the claim that enhanced security measures will more efficiently fight terrorism. Thus, the effectiveness of counter-terrorism can fruitfully be fathomed as a specific mode of legitimization in the context of on-going struggles amongst European security agencies. The second part of the report therefore focuses more specifically on this mutual relation between the concepts of legitimacy and effectiveness in the context of European counter-terrorism. Firstly, we contextualize counter-terrorist practices within a particular social setting, namely the European field of security professionals. The categorization of threats and the definition of legitimate methods to mitigate them are at stakes in this particular transnational universe. The modus operandi that are most favoured by security professionals feed into a series of illiberal practices amongst which risk prevention features prominently. Counter-terrorism must intervene so as to disrupt terrorist plots before they are put into motion and to thwart unknown terrorists. This rationale is deeply entrenched in European discourses in counter-terrorism, as well as in specific practices. Blacklisting and asset-freezing are cases in point, whereby fundamental rights are powerfully unsettled by the anticipatory logic of counter-terrorism. Thirdly, and finally, we hark back at some of the issues at stake with a particular focus on the notion of impact. Drawing on what we have previously shown, we try to shape a somewhat different understanding of why it is so difficult to evaluate the impact of counter-terrorist practices. Assessing impact demands accessing information that is monopolized by those very security agencies whose effectiveness is being gauged. Building an empirically-informed understanding of the effectiveness of counter-terrorist measures, an understanding which does not depend on the knowledge that security actors produce in the first place, therefore amounts to an arguably tremendous challenge.

1 Introduction

This paper aims at clarifying the concepts of *impact*, *legitimacy* and *effectiveness* of security measures from a societal perspective in the specific context of counter-terrorism in Europe.

1.1 Defining a societal perspective on counter-terrorism

This section assesses the state of knowledge on impact, legitimacy and effectiveness in societal terms by drawing on sociological literature and relevant research projects. To this extent, it sheds specific light on the issues dealt with in the overall report.

Analyzing counter-terrorism in a sociological perspective readily echoes the debate that has unraveled, in international relations literature, around the notion of “societal security”. Put forth in the early nineties by a group of researchers which later became known as the Copenhagen School, this concept participates in the broadening movement that characterizes post-Cold War security studies (Booth 2005; Bilgin 2003). Societal security departs from more traditional and conventional notions of state security insofar as society is not fathomed merely as a specific sector of state security, but rather as a referent object and as an actor in its own right. Whereas state security depicts the upholding of sovereignty in its territorial integrity, societal security accounts for the preserving of a human community in its cultural identity. In other words, societal security can be defined as the ability of a society to persist in its essential characters under changing conditions and possible as well as actual threats (Wæver 1993; Buzan, Wæver, and Wilde 1998).

As Barry Buzan and Ole Wæver made clear (Buzan and Wæver 1997), the concept was born out of a considerable dismay in the face of post-Cold War security developments which could not be accounted for within the remits of classical theories of International Relations. More precisely, the notion was brought to bear on ethno-territorial conflicts that broke out in the aftermath of the Soviet Union’s collapse (Herd and Löfgren 2001). It was sometimes hybridized with more common devices in the international relations theoretical toolbox, such as security dilemmas (Roe 2002; Roe 2005). But most importantly, societal security enhanced a more substantiated understanding of the growing linkage established in official discourse between migratory phenomena, challenges to identity, and security issues (Doty 1998; Alexseev 2011). As a matter of fact, societies do not react to the same range of threats as states do. In a societal reading, immaterial and symbolic components of the social fabric—those revolving around group and national identity—tend to be more regularly perceived as being ‘at risk’ than the material basis of state power.

Even if the definition of society put forth by scholars of the Copenhagen school readily acknowledges these interrelated subjective and objective aspects of contemporary societies, the concept has attracted a series of criticisms. A cornerstone of the societal security approach consists in attributing a certain degree of causality to identity so as to account for new forms of conflicts. This precise point was in particular brought into contention for treating as fixed what ought to be considered as an intrinsically fluid and unstable social compound, namely identity. Some theoretical leeway has been called for, so as to account for identity as a dependent variable of conflicts as well, i.e. as being susceptible of change as the result of securitization (Mcsweeney 1996; Theiler 2003).

This string of arguments and counter-arguments formed a milestone in the unraveling of a debate which has since arguably moved on. In a piece published in 2008, Ole Wæver called for a renewed agenda of research in the field of societal security (Wæver 2008) by suggesting that, instead of focusing solely on the preservation of identity over time, one needs to acknowledge that security and society are inseparably intertwined. The impact of security measures on societies must be gauged against the fact that the latter constitute a set of settled social contexts resulting from a long-term process of historical differentiation (Lahire 2012; Bourdieu 2011; Elias 1982; Tilly 1975). Thus, one should beware of too quickly attributing agency to society, as if it were a coherent, unitary and rational actor fending off threats to its identity. Rather, one needs to bring to the fore a series of

organizations, institutions or individuals taking it upon themselves to speak and act in terms of security and in the name of society. Security agencies, public institutions, private corporations and international organizations can be sources of human well-being. But at the same time, they may also undermine societal security through predatory behavior or systemic malpractice.

Against this background, it is crucial to recognize that measures taken in the name of security will play out unevenly in different social contexts. Economic well-being, political systems, and cultural traditions are unequally distributed, and the security measures that both build on them and aim to address them tend to have uneven impact. While they may have “value-added” in one specific societal sector, such measures can concomitantly yield detrimental impact in another segment (Burgess 2012). Impacts of societal security measures can be both beneficial and detrimental. While beneficial impact can be defined as an increase in the level of security achieved within society, detrimental impact refers to undesired or negative consequences. For instance, some measures taken in the name of security can provoke unease or insecurity amongst bystanders, be experienced as too intrusive or bear disproportionately upon a given social group. With this in mind, we will clarify our understanding of impact as well as its interplay with legitimacy and effectiveness in the following section.

1.2 Theoretical background: Legitimacy, effectiveness and impact in a sociological perspective

The present report aims to develop paradigmatic understandings of impact, legitimacy and effectiveness in societal terms. In order to reach this aim, the report assesses legitimacy, effectiveness and impact of European legislation in the field of counter-terrorism from a sociological perspective. As a starting point, one can define impact as the effect yielded by a specific measure, effectiveness as the degree to which the actual results of the measure coincides with the expected results, and legitimacy as the process by which expectations are allocated to the above-mentioned measure. This preliminary set of definitions arguably requires further elaboration before we can proceed to the core of the analysis. Indeed, the concept of legitimacy alone is enshrined in a complex theoretical background. By drawing on this long-standing and sustained sociological discussion, we will clarify how the three concepts involved here (legitimacy, effectiveness and impact) sociologically relate to each other. Needless to say, we do not aim at resolving the manifold conceptual ambiguities implied in this set of concepts by the means of some definitional fiat. Rather, our objective is merely to bring out the “grammar” that is established by these three notions in a sociological approach (Kratochwil 2006). The relation between legality and legitimacy warrants the first range of comments. Even though that which is legal does not necessarily bear legitimacy, one can hardly deny that formal legality simultaneously increases the chances of a measure to be perceived as legitimate (Kratochwil 2006). Furthermore, one needs to specify the legal order against which the lawfulness of a regulation is assessed. For instance, the international realm is best described as a decentralized legal order. In such a context, those norms which have a high degree of determinacy and adherence while being symbolically validated and coherent provide the most powerful pull to compliance (Franck 1990). At the European Union level, the legality of a measure depends, inter alia, on the extent to which such measure upholds the provision of EU treaties. Finally, at the national level, legality is assessed according to the legal basis of a measure in domestic legislation (Institute for Safety, Security and Crisis Management 2008).

In the Weberian tradition, this relation between legality and legitimacy is best understood at the state level. Classically, Weber accounts for legitimacy as that which facilitates domination. One can also recount the famous sentence by Jean-Jacques Rousseau, according to whom “[t]he stronger is never strong enough to be forever master unless he transforms his force into right and obedience into duty” (Rousseau 2001, 49). In this reading, legitimacy is a social norm, or system of belief, which bolsters obedience of the people towards those who rule over them (Duran 2009; Hechter 2009; Horne 2009).

This understanding of legitimacy directly derives from an acute description of the “sociogenesis” of the modern state. According to this reading, the modern state “contains” a large social order which cannot be upheld only through direct coercion, for this would be too costly (Anderson 1996). Indeed, in Weberian sociology, legitimacy is the conceptual “twin-sister” of the modern state form of domination, for the latter is defined as that which possesses monopoly over the legitimate means of violence (Weber 1978; Duran 2009).

More precisely, the German sociologist distinguishes three types of legitimacy: charismatic, traditional and legal-rational. The latter form emerges with the great state and non-state bureaucracies in the nineteenth century. It extensively resorts to legalistic and rationalist repertoires of justification. But, as many observers have pointed out, this form of legitimacy is being reconfigured in the wake of ongoing socioeconomic evolutions such as regional integrations, globalizing processes or the proliferation of levels of governance. The legal repertoire of justification tends to be increasingly challenged by new forms of legitimation, such as those provided by new public management under the forms of evaluation or financial efficiency (Duran 2009; Bezes 2007; Abrahamsen and Williams 2007; Hibou 2012). By the same token, the interventions of public administrations in the field of security provide ways of legitimizing new forms of sovereignties, such as that of the EU (Helly 2009).

Since the foundational set of distinctions put forth by Max Weber, modes of legitimation have arguably undergone an intense process of pluralization. Within the remit of these preliminary remarks, one can draw attention to two specific repertoires of justifications: democratic and organizational. Researchers have also made legitimacy an anchor-point of the theoretical apparatus that addresses the issues of organized human actions (Suchman 1995). According to the strategic analysis of organizations, organizational legitimacy can be conceived of as an operational resource that an organization extracts from its environment in a purposive, calculated and often oppositional process. From the viewpoint of the institutional school of organizational analysis however, legitimacy is on the contrary construed as a set of constitutive beliefs driving the institutionalization of a particular organization. In this latter institutional perspective, legitimacy refers to the appropriateness of an organizational action within the larger system of norms in which it is embedded. Thus, an organization is legitimate inasmuch as its values are congruent with those of its environment (Powell and DiMaggio 1991; Farrell 2001; Dulong 2012). These different approaches to legitimacy, as we will see, play out directly in the way that the legitimacy and legality of security measures related to counter-terrorism are formulated and deployed.

Democratic legitimacy comprises a range of criteria that are usually derived from different, and sometimes divergent, political theories of democracy. Amongst those, one can underline the importance of accountability which requires that measures implemented by public officials or institutions remain under the control of the people, their elected representatives or some oversight organ. Consequently, participation of citizens ought to be ensured at the different phases of decision-making processes. The political consent of the people is indeed key and entails a clear delegation of sovereignty from the voters to administrative bodies, a clear budgetary control by the parliament as well as ministerial accountability (Kröger 2007; Borrás and Conzelmann 2007; den Boer, Hillebrand, and Nölke 2008). Accountability has proved particularly important—and fragile—in the context of the wide range of counter-terrorist strategies, policies and measures enacted over the last decades.

Public debate surrounding European counter-terrorism has suggested that, against these criteria, the European Union lacks adequate democratic accountability. This is usually described under the label of “democratic deficit” (Majone 1998; Decker 2002; Crombez 2003; Moravcsik 2004; DeBardeleben and Hurrelmann 2007).

Fritz Scharpf has made a specific and influential contribution to this debate by underlining that, even if the EU lacks formal legitimacy to formulate and execute policy on the level of societal security, as far as participation of the people is concerned, it is able to derive legitimacy from the effectiveness of the public policies that it supports (Scharpf 1999; Scharpf 2003; Schmidt 2013). This argument echoes the abovementioned pluralization of repertoires of legitimization, and the emergence of new forms of organizational legitimacy codified *inter alia* by the *New Public Management* discourses. Power is no longer solely fathomed as *power over*, but also and increasingly as *power to* (Duran 2009). In other words, legitimacy becomes a bi-faceted concept, where the input of procedural validation meets the output of effective results. As a matter of fact, the legitimacy of extraordinary measures taken in the name of fighting terrorism is increasingly drawn and derived from the consequences of public policy-making, the effectiveness of which is attested by pervasive methods of result-based evaluation (Borrás, Koutalakis, and Wendler 2007; Skogstad 2003). In short, by virtue of the fact that European Union policy for the preservation of the security of its societies has positive effect, it generates *effective* legitimacy.

How do input and output legitimacies relate to each other? One must first admit that, while input legitimacy can easily be assessed *ex ante*, such an assessment is arguably more difficult to implement in the case of the output variant (Kratochwil 2006). But the answers tend to depend closely on the policy field brought under examination. Some researchers have found that input legitimacy and output effectiveness tend to co-vary in the fields of EU social or chemicals policy (Kröger 2007; Lindgren and Persson 2010). Others, on the contrary, are wary of possible trade-offs, whereby effectiveness can only be increased as a result of constrained and limited formal legitimacy. Interestingly, the argument has convincingly been brought out in the field of EU counter-terrorism policies (den Boer, Hillebrand, and Nölke 2008).

However, two factors can arguably constrain the results of such inquiries. First, it appears that, beyond the theoretical heterogeneity with which the notion is bestowed, legitimacy is also rather difficult to empirically assess with precision (Borrás and Conzelmann 2007; Hechter 2009). Second, and correlatively, any assessment of legitimacy runs the risk of being instrumentalized as part of a legitimization strategy. Construed as the articulation before a specific audience of acceptable reasons justifying concrete actions, legitimization refers to a specific social practice (Suchman 1995). It entails operations, processes and practices through which objective social relations are brought into conformity with the norms, values, beliefs and rules that are considered to be desirable within a specific society at a given time. Conversely, hierarchical and arbitrary power relations that are legitimized present themselves under the guise of naturalized, objective and fair practices, which are consequently socially accepted (Lagroye 1985; Dulong 2009). Thus, International Organizations resort to evaluation techniques as parts of auto-legitimizing moves (Spencehauer, Monnier, and Degeorges 1990). By the same token, professional groups tend to continuously legitimize their own professional practices, especially when they are recently established (Baszanger 1990). Finally, given the high degree of diversification achieved by contemporary societies, one must bear in mind that any social field will tend to bound its inner legitimization struggles (Bourdieu 1971; Bourdieu 1979; Bourdieu 1992; Catlaw and Hu 2009).

1.3 Methodological background

Before we can proceed any further, a brief note on the methodology of the report seems in order. We have selected mainly an academic literature so as to identify and trace how this set of notions has been approached over the past ten years. Although it deals primarily with mechanisms and discourses of counter-terrorism defined and adopted at European level, the empirical focus of the report remains a little broader. In some cases, it tackles developments that can be observed at the level of member-states. It also looks at some length into counter-terrorist practices that have been accounted for in the American literature.

This move is most salient in the first part of the report, where we pick up the ongoing debates on exceptionalism, balance between liberty and security, as well as trade-off between privacy and surveillance. The nesting together of American and European literatures results from the fact that the societal debates on counter-terrorism have evolved in a very closely interrelated fashion on both shores of the Atlantic Ocean. Contrary to a well-entrenched, albeit not substantiated, claim, it seems that EU approaches to counter-terrorism are not necessarily softer or more respectful of the Rule of Law than US ones. As we will show, the extensive reliance of the EU on preventive measures such as blacklisting and assets-freezing is a case in point.

2 Counter-terrorism and legitimacy in Europe

To what extent do counter-terrorism measures implemented by public authorities transform benchmarks of acceptability in EU societies? To answer this question, one must bring to the fore the changing values informing EU democratic societies. Rule of law, liberty, privacy and pluralism feature amongst societal values that can be altered, challenged or destabilized by counter-terrorist policies (Webster et al.; Guittet 2006; Boer, Hillebrand and Nölke 2008). To tease out this set of evolving relations, we will resort to a discussion that borrows heavily but not exclusively on political theory. We will also set our analysis in a context that is not strictly European but rather Transatlantic, for the impact of counter-terrorist policies on societal value spans over both shores of the Atlantic.

2.1 Counter Terrorism and the revival of the exception argument

The Rule of Law ranks high amongst the societal values most at risk of being destabilized by counter-terrorist measures. Indeed, counter-terrorism relies extensively on discursive and non-discursive illiberal practices which pave the way for the reenactment of arbitrary exceptionalism. Some scholars suspect that this exceptional claim lies at the core of the modern, liberal and democratic societal orders.

The exceptionalism argument usually starts by taking stock of the fact that the 9/11 and subsequent events (such as the 2004 Madrid and 2005 London bombings) have raised awareness of the new vulnerability of contemporary societies in the face of terrorism. Draconian counter-terrorist measures are legitimized as proper responses called for by the radical novelty and outright violence of the new generation of terrorists. The latter are widely branded as fanatic combatants, driven by a deep-seated hatred of Western values, unwilling to reason and negotiate, solely interested in inflicting grave damages upon innocent civil populations. For they disregard taboos pertaining to the choice of their instruments or targets, “new terrorists” are regarded as an existential threat to democratic and liberal societies. States are thus prompted – the argument continues – to take drastic and decisive measures in order to keep on providing security for their population (Bigo 2010; Stock and Herz 2007; Wade 2007; Goold and Lazarus 2007). This discourse simultaneously works as a way to delegitimize terrorist groups, a move that is key when put into perspective with the legitimacy struggle necessarily entailed in transnational political violence (Hermant 2005; Bigo 2005a; Bigo 1991a; Bigo 1991b; Hechter 2009).

But terrorist acts such as the attacks of 9/11 are not radically new, nor are the measures adopted in its wake (Bigo, Bonelli, and Deltombe 2008; Perier and Guittet 2005). Thus, previous experiences (such as those in Northern Ireland) ought to be interpreted not as models to be replicated, but as meaningful metaphors of the contemporary reconfiguration of security practices (Bigo and Guittet 2011). But, more to the point, the claim of radical novelty needs to be grasped as a threshold whose crossing opens up an era marked by exceptionalism. Indeed what makes the post-9/11 political time remarkable is not the expansion, intensification or radicalization of transnational violence as such, but its politicization as an event that is out of the ordinary (Huysmans 2006). The exception argument goes on; exceptional times require exceptional measures (c.a.s.e. Collective 2006; Neal 2006; Neocleous 2006; Neal 2010).

Although this line of argumentation is not necessarily compelling, it informs the legitimization of counter-terrorism as exceptional to the norm. Illiberal counter-terrorist laws are adopted under conditions of emergency. Extraordinary renditions, electronic surveillance, black-listing are justified as derogations to the norms necessary to protect the legal order (Allhoff 2009; Aradau and Munster 2009; Roach 2007). The ticking bomb argument is brought in as the most basic justification of exceptions to ordinary criminal justice procedures (Zedner 2008). Under an imminent and existential threat, regular rules of the game no longer apply.

The degree of legitimation achieved by counter-terrorist practices thus seems to depend on them being perceived “as necessary steps exceptionally taken to ensure the survival of that from which they derogate. Yet, the analysis of parliamentary debates either preceding or directly following the adoption of counterterrorist legislation in France, Great Britain and Italy shows that the exception argument does not tally with consensus within these political arenas. However, it represents an increasing part in the overall talking points tackled during parliamentary discussion dealing with antiterrorist legislation” (Tsoukala 2006b; Tsoukala 2006a).

Prior to 9/11, considerations of whether counter-terrorism measures should derogate from regular rules do not feature prominently during the few sessions of the European Parliament LIBE Commission dedicated to this issue. In the immediate aftermath of 9/11 however, arguments against or in defense of emergency rules are voiced by 12.2% of the speakers. Those who are in favor of exceptional measures affirm that terrorism is linked to immigration, demand tighter control of the web and disregard protection of human rights as facilitating terrorism. Yet, even during this highly sensitive period, the majority of the speakers recall that the upholding of human rights represents an imperative from which no derogation can be tolerated.

Interestingly though, during a subsequent debate of the LIBE Commission which is held in November 2001, 56.9 % of the speakers tackle the issue of emergency rules, either directly or indirectly. Although they less frequently link terrorism to immigration, the proponents of derogative measures claim that citizens, rather than citizens’ rights, need to be protected.. They identify democratic regimes with weakness and permissiveness. They see emergency as a condition for the survival of any democratic regime under terrorist threats. But most importantly, they begin categorizing the population on moral and, albeit implicitly, cultural grounds. Those who are morally superior deserve full protection while the rights of those who are deemed morally degraded can safely be encroached upon (Tsoukala 2004).

Even if the defense of human rights remains the most frequently voiced position, such political statements partake in the revival of the sovereign right to decide upon exceptions to the norms. Counter-terrorism indeed carries a powerful exceptionalist imperative (Perier and Guittet 2005), whose enactment reactivates the political thought of Carl Schmitt (Neal 2010). The German jurist argued that exception is constitutive of any legal order. In other words, the Rule of Law is founded on a moment of violent exception which is reenacted every time an event uncovers a lacuna within its normative system. This bears dreadful consequences on liberal politics insofar as security always trumps liberty, and the exception always trumps the norm (Schmitt 2005; Schmitt 2007; Aradau 2007; Aradau and Munster 2009; Collective 2006; Huysmans 2006).

Giorgio Agamben has played an instrumental role in the revival of Carl Schmitt’s thought. For Agamben, sovereignty is not as much a moment as it is a potentiality. It is the potential suspension of law which is entailed in any legal order. The possibility that law may be withdrawn from application constitutes the decisive feature of sovereignty in the contemporary reality (Agamben 1998; Agamben 2005; Neal 2005). Moreover, in Agamben’s perspective, the key issue is not the dichotomy between law and exception, but the ban, i.e. the sovereign ability to decide over the inclusion/exclusion of life as political being. This argument shapes a thought-provoking understanding of the abovementioned practices of categorization. Indeed, counter-terrorism unifies security while simultaneously

fragmenting liberties (Perier and Guittet 2005). For instance, when UK officials dropped the rhetoric of the “War on Terror” in late 2006, they replaced it with a discourse according to which the rights of an insignificant minority ought to be sacrificed so as to safeguard the liberties of the vast majority (Neal 2008). Some even argue that the proper locus of ethical evaluation does not lie with the norms that are suspended, but rather with the groups that are excepted from them (Allhoff 2009).

The emphasis that Agamben puts on ban also sheds a penetrating light on the terrorism-migration nexus informing counter-terrorist discourses. Although borrowing simultaneously from another repertoire of justification, namely the *politics of unease* (more on this point below), the politics of exception manufacture a discursive connection between borders security and migrant on the one side, terrorism and political violence on the other (Huysmans and Buonfino 2008). The camp represents another site where migratory control and counter-terrorism collide. A place where foreigners are locked up and kept at a distance (Bietlot 2005; Valluy 2005a; Valluy 2005b; Intrand and Perrouty 2005), the camp is also, in Agamben’s view, the privileged locus of the exception. As a piece of space lying outside of political territory, the camp indeed epitomizes that which is excluded from legal order (Neal 2005; Neocleous 2006; Dean 2010; Neal 2010; Blake 2013).

Even though Agamben and Schmitt cogently describe the rationalities underpinning counter-terrorism, their theories have been widely criticized for being over-deterministic. They reify exception as something which will *necessarily* arise from the structural limits of liberal democracy. But exception only makes sense when carefully set apart and gauged against exceptionalism, which is a politics of necessity, as opposed to an existential condition (c.a.s.e. Collective 2006; Neal 2008). Moreover, neither Schmitt nor Agamben provides any account of the concrete practices and the social processes by which exceptionalism is named and enacted (Bigo 2007a; c.a.s.e. Collective 2006). These limitations become crudely apparent when the relation between law and exception is brought under scrupulous examination.

As a symbol of contemporary exceptionalism, Guantánamo Bay is supposedly deprived of laws. It is supposed to be a place of complete and unchallenged arbitrariness, for it results from the withdrawal of law. But Guantanamo, as any institution of imprisonment, is replete with norms to be followed (Aradau 2007; Foucault 1993). Instead of being suspended, rules work within exception and around it. Violent actions are always legitimated by some kind of rule. More to the point, counter-terrorism legislation is not an exception to the law, but an exceptional enactment of the law (Neocleous 2006). On top of that, exception does not unravel solely on the limits of societies but works within its bounds. According to a topical image put forth by Didier Bigo, the topology of exception drifts away from Euclidian points and lines. It is much more accurately encapsulated by the Moebius strip, as something that is simultaneously inside and outside (Bigo 2007a; Bigo 2001).

Where Agamben and Schmitt theoretically posit exception as a highly concentrated moment, its dispersal and fragmentation come into focus if one pays attention at concrete practices. Society, indeed, is more than a mere potentiality for sovereign exceptionalism. It is rather the location of dispersed judgments, calls, decisions, opinions, practices, actions, enactments that a myriad of not-so-significant actors engage in on a daily basis. Be they vigilantes, employees of private security companies or bureaucrats of security agencies, compliant officers of financial establishment, it is they who enact exceptionalism in the name of security (Doty 2007; Doty 2010; Bigo et al. 2008; Jeandesboz 2010). These “petty sovereigns” implement a counter-terrorist tactic by which law is instrumentally manipulated so as to authorize exceptions. As such, claims of exceptionalism must be understood as utterances that performatively legitimate extra-legal practices (Butler 2006; Neal 2008).

In the formulation and implementation of counter-terrorism measures, discussions of the future impact, positive or potentially negative, are mainly absent from legislative discussion surrounding the adoption of exceptional measures (Neal 2012). In this sense counter-terrorism relies on techniques

of “policing of the future” (Bigo and Guittet 2011). Among these techniques, precautionary risk management features prominently (Aradau and Munster 2009). In this sense counter-terrorist practices are necessarily involved in a security complex that is future-oriented, aimed at preventing the occurrence of future terrorist events. The possibility of catastrophic terrorist events introduces uncertainty into the future and to the processes of democratic accountability that are ordinarily based on the continuity of time and events. Moreover, it unsettles neoliberal rationalities of power and consequently call for a politics of exceptions (Dean 2010; Di Leo, Mehan, and McClennen 2012) .

Counter-terrorism therefore reenacts a particular form of exceptionalist discourse, which destabilizes the liberal polity in general and the Rule of Law in particular.

2.2 The balance between security and liberty

These arguments surrounding societal security as a set of exceptionalist claims lead to a reframing of security as a prime value. Since it enables the other forms of freedom, security consequently and systematically trumps liberty (Etzioni 2007). It should be noted *en passant* that the assumption according to which security comes first and liberty is only a derivative of security draws on –and simultaneously alters- the traditional argument put forth by the proponents of human security as *freedom from fear* (c.a.s.e. Collective 2006; Bigo 2010; Gani, Mathew, and Bronitt 2008). Set in a more historical and theoretical perspective, the “security first” argument appears to rely also on the contractual philosophy of Thomas Hobbes which frames personal safety as a prerequisite of liberty

The particular phrasing of this exceptionalist claim has triggered a response taking its lead from a Lockean argument according to which security is only one value amongst other societal values (Meisels 2008; Kantner and Liberatore 2006; Wade 2007; Amicelle et al. 2012). According to this argument, security must be kept in check so as to avoid the destruction of the very object that it is set to protect, namely liberal democratic principles. In other words, for a political order to remain at the same time safe and democratic, a proper balance between security and liberty must be struck. Thus, the balance metaphor emerges as a response to the exception argument (Amicelle et al. 2012; Bigo 2010). This is reflected into the texts authored by two of the major proponents of this line of thought over the past ten years. The pragmatist approach put forth by Adrian Vermeule and Eric Posner is indeed framed as a criticism of the excesses that has characterized the Bush administration in the War on Terror (Vermeule 2007).

This approach assumes that liberty and security are levels that should be adjusted so as to respond the changing threat environment in which liberal states are embedded. To make their point, Vermeule and Posner borrow the image of a “frontier” from Pareto’s classical economics. In this way, they convey the idea that security and liberty can be concomitantly enhanced *up to a point*. Beyond the frontier, security can only be increased at the expense of liberty and vice-versa. In this context, decision-makers must not minimize but rather optimize the security costs that bear on civil liberties (Posner 2007; Vermeule 2007; Vermeule 2008; Vermeule 2011).

Although in Vermeule and Posner’s eyes, the balancing model is uncontroversial because it simply reflects the fact that people affect relative values to security and liberty, much criticism has been levied against this pragmatist and consequentialist rendering of the relations between liberty and security in particular, and against the balance metaphor in general. However, one needs to take stock of the consensus regarding the balance metaphor, which has come to epitomize, encapsulate and frame a great deal of the public debate pertaining to counter-terrorism practices in the post 9/11 era. The idea that the new threat environment, as revealed by the events of 9/11, prompts the need to forego some liberties in the pursuit of security has readily become commonsensical (Institute for Safety, Security and Crisis Management 2008; Amicelle et al. 2012; Aradau 2008; Bates 2009; Dragu 2011; Gani, Mathew, and Bronitt 2008; Goold and Lazarus 2007; Kantner and Liberatore 2006; Meisels 2008; Neocleous 2007; Waldron 2003; Zedner 2005).

Although the debate about the balance between liberty and security has mainly been about US practices of the War on Terror, one cannot but notice that it has also born a sizeable impact on the European Union (Wade 2007). Tsoukala has shown that the balancing of security and liberty has been the default position of the European institutions in the abovementioned debates in the LIBE Commission pertaining to counter-terrorism (Tsoukala 2004). As a matter of fact , the European Union was partially born out of an attempt to neutralize the excesses of exceptionalist nationalism that had shaken the continent in the 1930s (Perier and Guittet 2005; Cohen 2007). It has thus been constructed as a political locus that draws its legitimacy from intense appeals to the Rule of law (Bigo, Walker, and Elise 2006).

Indeed, the changing balance between security and liberty has its origins in deep social and political changes that largely pre-date 9/11 (Goold 2007). The notions of balancing and tradeoff have a rather long history, as do counter-terrorism and transnational political violence. These features make it necessary to historicize the relations between security and liberty (Bigo, Walker, and Elise 2006; Bigo, Walker, et al. 2007). The direction in which the balance tilts furthermore depends closely on cultural conditions that may facilitate or hamper the overriding of liberty by security (Loader 2007). Indeed, “balancing” is a key move of liberal politics, central to the rationality of the political Western discourse (Amicelle et al. 2012; Neocleous 2007; Waldron 2003). It is so well entrenched in the public debate that liberty is used both to oppose illiberal security practices and to legitimate them (Neal 2010; Aradau 2008). In this connection, democratic societies are supposed to be pursuing a proper balance between security and liberty at all times (Kantner and Liberatore 2006).

Nonetheless, construing the relation between security and liberty as a balancing act entails a number of assumptions that one needs to bring to the fore and which will have consequences for the ways that counter-terrorism measures are understood and justified. To begin with, the need for a new balancing implies that the balance was unsettled in the first place. Adjusting civil liberties in the face of greater and/or new risk supposes that it is possible to objectively evaluate this risk. Indeed, balancing security and liberty assumes a form of metrics that makes it possible to measure and range both values (Neocleous 2007; Waldron 2003; Amicelle et al. 2012). The metaphor furthermore implies that, once re-struck, the balance will remain stable (Ashworth 2007). On top of that, balancing is taken to be an appropriate and reasonable act in itself, regardless of what is being balanced and under what conditions. But most importantly, trading liberty against security presumes that security and liberty are homogeneous, equal and antithetical values that vary independently from one another but according to an inversed proportionate fashion (Waldron 2003).

The balancing metaphor, and the cost-benefit calculus that it implies, have been subjected to a number of criticisms. While comforting at first glance, this image is deeply misleading and oversimplistic (Amicelle et al. 2012). Firstly, it is often unclear what tipped the balance in the first place. Even more so since terrorist risks are, by their very definition, extremely difficult to evaluate with any certainty (Zedner 2005). Secondly, since the balance holds value in itself, striking one amounts to a goal that has to be achieved on its own terms, thus substituting for a real, sound and open argument (Neocleous 2007). Thirdly, the balance metaphor hypothesizes that liberty and security are commensurable goods. However, this commensurability stands in tension with the uneven distribution of security and liberty amongst different segment of the population. It is furthermore destabilized by temporal dissonances between the rights that have to be relinquished in the present for perceived insecurities pertaining to the possibility (as opposed to the probability) of future risks. These two hurdles arguably complicate the task of affecting relative worth to security and liberty (Gani, Mathew, and Bronitt 2008; Zedner 2005) .

To make matters worse, the balance metaphor plainly overlooks the possibility that security agencies, which are given more latitude to operate, may also be a source of insecurity. There are no reasons to think that the possibility of a terrorist attack would diminish the threat that liberals have historically identified in state bureaucracies (Waldron 2003; Zedner 2005; Kantner and Liberatore

2006). On the top of that, one needs to unpack the concept of liberty that is encapsulated in this metaphor. As a matter of fact, liberties are heterogeneous and may play out differently in relation to increased or decreased levels of security. If one distinguishes between rights to physical integrity, such as the freedom from torture or political imprisonment on the one side and empowerment rights such as free speech or assembly and the other, it would appear that counter-terrorist policies curtail the former but not the latter (Piazza and Walsh 2009). Therefore, instead of a balancing act, one would need to carefully define a hierarchy amongst rights because some are more sensitive to security claims than others (Ashworth 2007).

Therefore, the image of the balance, instead of being the enlightening heuristic device that its proponents advertise, comes off as a rather dangerous metaphor obscuring much of what is at stakes in contemporary counter-terrorist policies (Gani, Mathew, and Bronitt 2008). This discourse cloaks the fact that, at the end of the day, the balance is irrevocably tilted towards security. In the context of fear of catastrophic terrorism, the uncertainty entailed in the risk that one seeks to prevent from actualizing by the means of lifting individual rights definitely and necessarily unsettles the balancing act (Dragu 2011; Zedner 2005). In other words, instead of dual relation between two equal but opposite terms, we are confronted with a triangle where security must be enhanced against liberty so as to prevent risk, i.e. catastrophic future possibilities, from materializing (Bigo 2010). That is one reason why balance talk, instead of being a value-free account, cannot but endorse security measures adopted in the name of liberty (Neocleous 2007). This discourse consequently forecloses any consideration of the value of rights that must be relinquished and, more generally, silences political judgment (Ashworth 2007; Zedner 2007; Bigo, Walker, et al. 2007; Bigo 2010).

A further flaw that one may fetter out in the balancing metaphor regards the distribution of security and liberty in society. Even though this point has been hinted at in earlier comments, a more nuanced and detailed discussion is required here. The balance discourse implicitly relies on a homogeneous account of society insofar as it presumes the even distribution of both values across its different segments. Simply put, according to this discourse everyone should see their liberties curtailed and their security enhanced when the balance is re-adjusted. But this assumption overlooks two inescapable facts. First of all, the differentiation inherent to complex and modern societies weakens this claim. For instance, since security is increasingly commoditized, wealthy social groups may be in a position to afford more of it, whilst the disenfranchised may not. Relatedly, other cleavages, such as ethnicity or/and nationality, readily become relevant to the extent that only some categories (foreigners and immigrants, for instance) of the population are targeted for further scrutiny by counter-terrorist policies (Bigo, Walker, and Elise 2006; Gani, Mathew, and Bronitt 2008; Waldron 2003).

Secondly, repertoires of justification of the re-balancing act usually entail, albeit implicitly, a rather different proposition to “security and liberty for all”, namely trading the liberty of the few for the security of the many. This rhetoric was clearly put in use by the UK Labour government in late 2005, when it became apparent that the discourse of the War on Terror was becoming more and more counterproductive (Dillon and Neal 2008; Waldron 2003). It is at play every time one claims that the rights of the terrorist need to be balanced against those of the victims that the interest of the innocent wrongly accused should be weighed against the security of the rest of the population, or the survival of the community cancels out the entitlements of the individual. This uneven distribution of security measures and actual experiences of security throughout society is thus at the same time presumed and strengthened by the balancing metaphor. The instrumental role that it plays in the legitimation of counter-terrorist policies therefore comes into focus, for it is only because counter-terrorist practices only bear on a tiny part of the population that its effects can go unnoticed by the rest of us (Waldron 2003; Zedner 2005). As a practical consequence, the societal effects of security policy and related measures must be considered independently from potential negative

impacts related to weakened civil rights and other forms of liberties. The increase in one can, but does not necessarily, weaken the other.

2.3 The tradeoff between privacy and surveillance

Interestingly, a second debate has developed in parallel and in close connection to the academic discussion pertaining to the balancing metaphor between security and liberty. The tradeoff calculus underpinning the image of balance also tends to frame the analysis of the relation between privacy and surveillance (Gutwirth et al. 2011; Bellanova et al. 2012; Amicelle et al. 2012). In the aftermath of 9/11, the claim that reducing privacy protection would enhance the ability of security agencies to prevent and repress terrorism has readily gained currency in policy circles. It was claimed that privacy was creating a comfortable environment where terrorist groups would thrive away from prying eyes. The protection of privacy was therefore disqualified as a hurdle constraining the efforts of the police (Dragu 2011). More particularly in Europe, security measures such as the Data Retention Directive, which requires electronic communication suppliers to retain certain information for up to two years, was vindicated on similar allegations (SECILE D2.4 Jones & Hayes 2013; De Vries, Bellanova, and De Hert 2010; Gutwirth et al. 2011).

In a broader perspective, the debate on counter-terrorism resonates strongly with a string of issues that have been brought under examination in the field of surveillance studies (Lyon 2003a; Lyon 2003b). The use of CCTV cameras as a tool to record and prevent terrorist bombings *post facto*, are a case in point, although this practice arguably offsets the usual vindication of those methods of surveillance as a way to prevent *ex ante* risks (either criminal or terrorist) from actualizing (Wade 2007). There is an intimate connection between enhanced surveillance technologies that are brought in under the claim that they will bolster counter-terrorist efforts, and a loss of privacy. Clearly, surveillance impacts privacy, one of the cornerstones of the societal values informing democratic life (Webster et al.).

The resemblance between the balancing of security and liberty on the one side and the trade-off between surveillance and privacy on the other helps us to understand why the criticisms levied against the former share so many similarities with the objections opposed to the later. It has been argued that talk of trade-offs conceals the continuous erosion of privacy protection (Gutwirth et al. 2011; Solove 2008; Solove 2011). Surveillance trumps privacy because its excesses go unnoticed since it only concerns a minority, because it is vindicated by a discourse of risk and because judicial oversights have generally failed, even though one notable exception should be highlighted with regards to European Data Retention whose application in Germany was censored by the Constitutional Court on disproportionality grounds (1 BvR 256/08 – 1 BvR 263/08 – 1 BvR 586/08', *Bundesverfassungsgericht*, 2 March 2010; SECILE D2.4 Jones & Hayes 2013; De Vries, Bellanova, and De Hert 2010; Amicelle et al. 2012). Any curtailment of privacy protection in relation to counter-terrorism needs to demonstrate that the envisaged surveillance technology will actually deliver more security than less privacy-invasive measures, which is not necessarily the case (Dragu 2011) and that these gains outweigh costs that remain fairly distributed across the different societal segments (Gutwirth et al. 2011).

However, both arguments only overlap to some point. In a sociological perspective, surveillance is not the same as security, and privacy is not the same as liberty. Privacy entails different kind of protections and practices. The on-going debate regarding what should be covered under this particular rubric is far from being settled. Taking our lead from the state of the art delivered in the framework of the PACT Project (D1.1 Report on Theoretical Frameworks www.projectpact.eu), two main strands can be set apart in the literature. On the one hand, privacy is understood as the ability for one person to control the extent to which information pertaining to his or her personhood are disclosed, disseminated and used. On the other, privacy is construed as the capacity for one social actor to restrict access to one's personal domain for third-parties. The management of privacy and

the “right to be left alone” are distinct from one another, as clarified in the following quote; “[i]n a control theory of privacy, there is privacy even if one chooses to disclose all personal information about oneself. In an absolute restricted access theory of privacy, there is only privacy if one lives in solitary confinement without contacts to others” (Amicelle et al. 2012, 17).

Both approaches help to substantiate the claim that, instead of being at odds with the interest of the community as proponents of the security first arguments have argued (Etzioni 2007), privacy plays a central role in the constitution of social orders. As a matter of fact, privacy underpins and conditions a number of related values such as autonomy, liberty, property, anonymity or political participation in the life of the polity. This societal value of privacy considerably offsets the balancing argument that sees privacy as a luxury that needs to be dealt away when political times become stringent. It should however be remembered that privacy is not uncontroversial. Criticism has been raised on the grounds that it enables patriarchal practices such as domestic violence, that it advances a liberal notion of democracy, that it is Western-centric and that it is socially biased to the detriment of the disenfranchised (Amicelle et al. 2012; Gutwirth et al. 2011; Webster et al.).

As a precondition for democratic life, privacy is a backbone of the constitutional architecture of liberal states. It is enshrined in the European Convention on Human Rights (Article 8) as well as in the Charter of Fundamental Rights of the European Union (Article 7) as a fundamental right from which proportionate and necessary derogations are nonetheless legally possible. Beyond this legal question, which is not our focus here (SECILE D3.2 Vermeulen, Deering & McCarthy 2013), privacy should also be construed as a contextual value that evolves over time. This evolution has become particularly visible through the rise of commercial security providers and the complex regulatory challenges they generate through their collaboration with public agencies. The commercialization of societal security has, in other words, introduced changes in the provision rights since it unavoidably implies a commercialization of personal data. One could even suspect that, from being the object of security which must be protected, privacy has turned into a hurdle, if not a threat to security. Therefore, those states which do not follow the surveillance-enhancing path become weak links posing a threat to other states (Levi and Wall 2004; Gutwirth et al. 2011; Amicelle et al. 2012).

To what extent are we sleepwalking in a surveillance society? The question was raised in 2004 by the UK Commissioner Data Commissionaire (Travis 2010) and has since arguably gained even more relevance, as it is reflected in the recent PRISM affair (more on this point below). The use of surveillance devices is becoming more pervasive and displaces attitudes towards trust, privacy and identity. For instance, the “nothing-to-hide” argument, which is often mobilized to legitimate the implementation of such technologies, stands at odds with legal cultures where the burden of proof traditionally lies with the applicant and not the proposed subject of the activity. However, if surveillance is normalized to a point that it becomes possible to speak of surveillance societies, one should remain mindful of the fact surveillance refers to a complex set of practices. As a technology of social sorting (Lyon 2003a; Lyon 1994), these practices are ambiguous as they are both empowering and threatening. Furthermore, their effects do not unravel in a straightforward and automatic fashion, for they are mediated by a series of cultural, social and technological factors. Since they rely on the collection and exploitation of personal data at great scales, surveillance devices partake in a reconfiguration as well as an intensification of social control. Therefore, ethical issues pertaining to the means, contexts and uses of these data are called into questions (Amicelle et al. 2012; Gutwirth et al. 2011; Wade 2007; Webster et al.).

If surveillance largely pre-dates the counter-terrorist policies that were vindicated on 9/11 (Foucault 1993; Lyon 2006), increased technical capacities have arguably excited the imagination of policy-makers eager to make complicated matters simple by means of surveillance technologies (Bunyan 2009). The computerisation of social life presents ever-growing possibilities to encroach upon privacy for security reasons (Liberatore 2007). For instance, life-logging technologies record and stock every action of one person, thus making it possible to search his or her past without limitation (Solove

2008). If technological hurdles, such as the poor quality of data, seems to hamper the bringing together of new and existing data-sources (Callon and Latour 2006), it appears that democratic oversight has trouble keeping pace with technological innovation in this field (Amicelle et al. 2012). The development of cloud computing is a case in point (Bigo et al. 2012), as the unravelling of the recent PRISM scandal has abundantly made clear. Although it may seem rather marginal to the empirical focus of the present report, this case warrants a more detailed discussion inasmuch as it epitomizes how privacy is displaced by electronic technologies of mass surveillance that are implemented in a transnational counter-terrorist setting.

According to reports of the Guardian, PRISM has been online since 2007 (Greenwald and MacAskill 2013). This system allows the US National Security Agency to access the super-servers of nine American IT companies in order to monitor the data that is uploaded by their customers. It is thus highly enabled by the technological advance that is cloud computing, contrary to previous similar scandals such as the one pertaining to the Echelon programme in the late 1990s, which was much more narrowly focused on electronic communications. PRISM is originally justified by counter-terrorist claims but news reports have shown that it also fulfils collateral tasks such as political espionage of third countries and surveillance of headquarters of international organizations. The revelation of this programme has profoundly undermined the trust of EU citizens towards their national government and EU institutions who have failed to protect their privacy. It has revealed the loopholes of personal data protection in the context of transatlantic security cooperation. It furthermore underlines the fact that EU Member State has lost sovereignty over the personal data of their citizens.

The PRISM scandal further casts doubt on the ability of EU institutions to learn from the past regarding issues of data protection. Over the past ten years, US security agencies have aggressively and repeatedly compelled private-sector firms to grant them access to the personal data of EU citizens at a massive scale. This was reflected in the Passenger Name Records (PNR) programme, where airlines companies operating flight bound to the US were required to provide the personal information of their passengers. It is worth noting that, after hard negotiations including the European Parliament, EU institutions have yielded to most of the US demands (Argomaniz 2009; Brouwer 2009; Mitsilegas and Eberwein 2005; Bellanova and Duez 2012; Andrew Byrne 2012; Guild 2007). In the SWIFT affair, the US obtained access to the financial information managed by this European firm. This later case features common characteristics with the PNR case, insofar as EU institutions appear to have failed in protecting the privacy of EU citizens (Amicelle 2011). PRISM unsettles the mechanisms of data protection thus far adopted in the European Union to the extent that, much like PNR and SWIFT, it has unfolded in a grey area, namely the security cooperation between private and public actors in a transatlantic setting (Bigo et al. 2013). As a consequence of the increasingly close proximity of surveillance measures and societal security as it has developed in the last decades, understanding the societal context of personal data will be decisive in understanding both the value of personal data for societal security and the legitimacy of surveillance-based security measures.

3 Effectiveness as legitimization of counter terrorism

While they change, displace and sometimes unsettle the societal values underpinning European democratic societies, the exception argument, the balance metaphor and the trade-off simultaneously legitimize counter-terrorism. More specifically, they are brought in under the claim that enhanced security measures will more efficiently fight terrorism. Thus, the effectiveness of counter-terrorism can fruitfully be fathomed as a specific mode of legitimization pursued by European security agencies. Therefore, while the previous section has teased out the extent to which European core societal values tend to drift as they are put under the influence of claims embedded in

counter-terrorist policies, the present development shifts the focus of our investigation towards a more sociologically-informed argument.

We will first contextualize European policies so as to bring out the particular social setting in which they are designed, negotiated and implemented. Drawing on the Paris School, we will thus underline the genesis, the structure and, most of all, the effects of the European field of security professionals. This field yields a number of security practices amongst which risk prevention is one prominent category. Building on the elements that have been hinted at so far, we will fine-tune our analysis of these particular practices in a second part. The third move of our argument will directly tackle the issue of effectiveness. A sociologically-informed view will allow us to attend carefully to the fact that claims of effectiveness feed into the symbolic struggles structuring a social space that partakes in the definition of the “legitimate principle of legitimation” (Bourdieu 1989, 376) .

3.1 The European field of security professionals

Let us pick up our argument where we left off, in the previous section. The PNR, SWIFT and PRISM affairs testify to the fact that European and American security dynamics are becoming increasingly entangled. As will become clearer below, this coming-together of both shores of the Atlantic can fruitfully be fathomed as the effect yielded by the European field of security professionals. Like other social space of this type, this field holds a number of distinctive features. It is semi-autonomized from neighboring sectors such as, for instance, public diplomacy or the management of European external relations. As a battlefield, this social setting hosts a number of ongoing jockeying and struggles pertaining to the legitimate definition over threats, risks or dangers to which European societies are exposed, and, correlatively, to the legitimate management, containment or mitigation of these threats. The agencies and actors involved in this particular space make competitive claims regarding their capacity to enunciate authoritative categorizations and definitions of threats. These claims, however, presume a number of assumptions which constitute the *doxa* of the field. Grasped in this particular light, the field is, then, necessarily and simultaneously a field of force; although opposed to one another, security actors all agree, at a more basic level, that threats-definition is an activity worth engaging in. A third characteristic pertains to the distinctive transversal nature of this field, which transcends the traditional internal/external divide imposed by the imagery of the territorial state. Finally, this field is also a field of domination holding sway over neighboring social spaces, such as fields of politics or the media (Bigo 2001; Bigo 2005b; Bigo 2006; Bigo, Bonelli, et al. 2007; Bigo 2007b; Bigo, Walker, et al. 2007; Bigo 2008; Bigo 2010; Bigo and Madsen 2011; Bigo 2011; Bigo 2013).

The European field of security professionals is arguably not a new phenomenon. Police have been networked at local, national, bilateral and European levels for a long time. Interestingly, however, one cannot but notice that the progressive institutionalization at European level of security cooperation starts in the 1970s around the issue of political and transnational violence, which will then be dubbed international terrorism. Launched in 1973, the TREVI (Terrorism, Radicalisme, Extrémisme et Violence Internationale) is a case in point, although it will remain dormant until the mid-1980s. This cursory historical contextualization aims at reminding that not only did the EU not wake up to terrorism after the events of 9/11, but also that security cooperation in the field of counter-terrorism largely predates the institutionalization of the third pillar enshrined in the Maastricht treaty. After 9/11 however, efforts which had been until then arguably piecemeal initiatives pertaining to this issue were intensified and streamlined into a series of policy instruments, most notably the EU action plan on combating terrorism, whose first version was adopted two weeks after 9/11, and the Council Framework Decision on Combating Terrorism, adopted by the Council in December 2001. The mandate of Europol was bolstered so as to include in a more operational fashion to issue of terrorism that had already been added by the Treaty of Amsterdam (Bigo 1996; Keohane 2005; Bigo, Walker, and Elise 2006; Zimmermann 2006; Bigo, Bonelli, et al. 2007; Müller-Wille 2007; Bures 2008; Coolsaet 2010).

Such modification of the prerogatives of EU security agencies result from national and elite competitions at national and European levels. The European field of security agencies is indeed structured by an array of cleavages resulting from the fact that each bureaucracy purports specific lines of argumentation and strategic reasoning when it comes to counter-terrorism. Some consider the issue of the survival of the collective as paramount while other are committed in the routine management of individual lives. Human intelligence, relying on techniques of infiltration and a good knowledge of the field, are opposed to signal intelligence (SIGINT) which resorts to massive electronic wiretaps and data-mining of digital traces left by individuals on the Internet, for instance. The “moderns” recognize that new threats are more and more transnational in nature, thus blurring the traditional internal/external divide, and their array of correlative differentiation between military and police missions. The “classics” are reluctant to this development and recall the importance of clear lines of separation between what pertains to the domestic, civil and peaceful order on the one side, and what is lined to international anarchy on the other. Another important line of fracture separates those are attached to a traditional (criminal justice) logic whereby one has to elucidate what has already happened, and those who favor a preventive monitoring of the future (Bigo 2005b; Bigo 2007b).

These rivalries over the legitimate classification of threats are fueled by resources that are unequally distributed across the field. Three of such capitals warrant more detailed comments here. The quality of threat assessments are increasingly conditioned by the ability to host or access a database such as the Schengen Information System (SIS). The accumulation of such informational capital is one of the most powerful trends characterizing the European field of security professionals in the post 9/11 period. Furthermore, operational capacities under the form of capacities of interventions and/or investigations are equally considered as an asset, albeit slightly less attractive than informational capital. Finally the ability to engage in transnational exchange of data at a transatlantic level is increasingly valued by the actors of the field. Alliances with American counterparts allow for the enunciation of authoritative assessments of the threat situation (Bigo 2005b; Bigo 2007b; Bigo 2008; Kaunert 2009; Zimmermann 2006).

Irrespective of the quantity of capital accumulated over time, all the agencies embedded in this space tend to credit the doxa of the field with unquestioned currency. They all tend to focus on regional and transnational threats as opposed to more local ones. They all prefer technical solutions to political ones, for it is widely believed that technology is supposed to make complicated issues simpler. Tracing populations on the move is, furthermore, considered as a more pressing task than defending a fixed territorial border (Bigo, Bonelli, et al. 2007; Bonditti 2004; Bigo 2010).

What agencies partake in the European field of security professionals? This is a rather delicate question for, besides organs whose legal basis derive directly from primary or secondary European law, one also ought to take into consideration specific services of the European Commission and of the Council General Secretariat. Some national security institutions are equally involved in this field, albeit their levels of commitment vary widely. On the top of that, one also ought to pay attention at private actors, such as financial firms and banks, which play an instrumental role on the surveillance and repression of the financing of terrorist organizations. For the sake of clarity, we will focus our analysis to two of the most prominent actors, namely Europol and Eurojust.

The legal basis of Europol lies with the Maastricht treaty, in which Art. K1 makes reference to a European Police Office. The first operational unit was dedicated to drug-trafficking. Europol's mandate was then extended by the treaty of Amsterdam so as to include terrorism. Intelligence-led policing is a core tenet of Europol's institutional culture and was reinforced when counter-terrorism became of paramount importance in the wake of 9/11. A counter-terrorist programme was adopted which encompasses four pillars (networking, training, counter-proliferation and preparedness). A counter-terrorist task force was also created, cancelled and then re-established after the Madrid bombings in 2004. Most importantly, Europol developed its own database (analytical work files) and

entered in a cooperation agreement with the FBI. It exchanges strategic information on an informal basis with the agency for the control of the external border of the EU (FRONTEX). It publishes a yearly Terrorism Situation and Threat Report (TE-SAT). Besides this informational capital, Europol also has operational capacity in the form of Joint Investigation Teams with Eurojust (Bures 2008; Coolsaet 2010; Balzacq 2007b; Bigo, Bonelli, et al. 2007; Deflem 2006).

Eurojust gathers magistrates from EU Member states. It stems from the Tampere Council of 1999 but its foundation was propelled in the post-9/11 period and formally effected in 2002. Its informational capital is limited inasmuch as it only enjoys conditional access to EU databases. The operational capital is greater in the sense that a counter-terrorism team was set up as early as 2004. Since 2006, a US liaison prosecutor is hosted in the institution. As with Europol, Eurojust is committed to intelligence-led policing. Both institutions, however, struggle to impose their output legitimacy to the extent that Eurojust has so far failed at coordinating prosecutions, and Europol is continuously circumvented by bilateral operational cooperation or multilateral informal arrangements (den Boer, Hillebrand, and Nölke 2008; Bigo, Bonelli, et al. 2007; Coolsaet 2010).

The European field of security professionals is more important to understand contemporary counter-terrorist practices than naïve functionalist accounts of a necessary adaptation to “new” terrorism or over-simplistic dichotomies opposing fading nation-states to global security apparatus. This is so because this social setting yields an array of effects that shape contemporary counter-terrorism. The imbalance between security and liberty on the one hand, and surveillance and privacy on the other hand stems directly from the logics that are constitutive of this space. Beyond the many differences of approach, one can witness a convergence on the surveillance of a minority that is trapped into mobility, whilst the majority is subjected to intrusive controls to a lesser degree (which is not to say that more pervasive and discrete surveillance systems are not at a play). One can witness a convergence in threat-definition that nestles a variety of social phenomena together into a security continuum linking migration, drug-trafficking, organized crime and terrorism at a transnational level, for success in the field is strongly conditioned by the forging of alliances with counter-parts abroad, every agency is enticed into international networking. Information exchange represents a cornerstone of this relation, where access to databases is certainly one of the most attractive modalities of cooperation. This informational capital allows for policing at a distance, which is deemed necessary given the mobile and transnational nature of contemporary threats. It also is instrumental in the prevention of catastrophic futures before they can materialize (Bigo 2001; Bigo 2005b; Bigo, Bonelli, et al. 2007; Bigo 2008).

These anonymous, multiple and routinised bureaucratic practices partake in a politics of unease focused on profiling individuals so as to filter out the deviants, sorting out good movements from evil ones, and policing a future that is always at risk of being catastrophic. These illiberal practices coexist with liberal states and are manufactured within the European field of security professionals. Amongst those practices, risk prevention has gained such a prominent place that it now warrants a more detailed discussion (Bigo, Walker, et al. 2007; Bigo 2010).

3.2 Risk prevention as a key counter-terrorism practice

Illiberal practices are commonly justified by the claim that terrorist deeds yield such dreadful consequences that they jeopardize the survival of the collectivity. Terrorists must therefore be prevented from carrying out their plans. An array of difficult questions follows from this imperative. How to deal with an unknown yet potentially catastrophic future? How to thwart a terrorist who has not yet been identified? How to identify terrorist plots amongst the myriad of traces left behind by the majority of law-abiding citizens? How to “connect the dots” before the unthinkable happens? By and large, the risk prevention rationale that is built into counter-terrorist practices aim at suppressing the unease triggered by these questions (Kessler 2008; McCulloch and Pickering 2009; Amooe 2011).

As mentioned in the above, risk prevention has been one of the key counter-terrorist strategies. It has reached center-stage in the aftermath of 9/11. A range of counter-measures have been activated *ex ante*, before a terrorist attack occurs. Terrorist plots must be uncovered and suppressed from their early stages on, the imperative goes on. Preventing harm through threat anticipation is indeed the foremost rationale underpinning current counter-terrorist frameworks. But this turn towards risk assessment entails, within more traditional risk management methods, a move away from retrospective estimations of harm as they result from events that have already happened on a regular basis towards an outlook based on lowering the probability of a possible and catastrophic future (Wade 2007, 200; Mythen and Walklate 2008; McCulloch and Pickering 2009; Goede 2008; Gani, Mathew, and Bronitt 2008; Dragu 2011).

In a broader perspective, one ought to account for the fact that preventive counter-terrorism is embedded in larger shift of governmental rationalities towards risk. Counter-terrorist policies partake in a culture of prevention and risk management which has indeed become deeply entrenched in late modern societies. Prior to 9/11, this culture had taken a firm hold on neighboring social sectors such as criminal justice (Garland 2001; Ericson 1997). As a security practice, repression as a logic of reactivity has been destabilized, challenged and partially replaced by a logic of proactivity where action are taken before and offence is committed. This shift relies heavily on profiling as a detection technique. The elective affinity that risk prevention entertains with counter-terrorism must furthermore be underlined insofar as the label “terrorist” is inherently a preemptive one (Zedner 2007; Goede 2008; Gani, Mathew, and Bronitt 2008; Bigo and Tsoukala 2008; Bigo, Bonelli, et al. 2007). As regards counter-terrorism in particular, the specific historicity of this turn towards preventive rationale is worth bringing to the fore. Current preventive counter-terrorism originates in the criminalization of independence struggles, post-colonial counter-insurgency strategies and the militarization of narcotic prohibition under the heading “War on Drugs” (McCulloch and Pickering 2009; Bonditti 2008).

Putting such an emphasis on risk prevention may at first glance seem odd in a report dealing with counter-terrorism in Europe. Didn't Europe, or at least the European Union, stay cautiously clear of the United States preventive counter-terrorist practices? Although entrenched in popular imagination, this line of thought does not resist careful examination. “Europe is perhaps more part of the ‘willing’ than it is ready to admit”, (Kessler 2008, 865). One may even consider preventive terrorism as a profoundly European phenomenon. As will become clearer below, agencies embedded in the European field of security professionals have so vigorously appropriated, pursued and developed preventive security practices that they have become constitutive of the European Union as a political entity (Goede 2008; Kessler 2008).

This is all the more true when one takes European databases into consideration. The prevention rationale is indeed underpinned by two closely relative imperatives. Only intelligence-led policing can detect unknown terrorists before they act. But intelligence is merely a secondary product, derived from the collection, treatment and processing of a massive amount of information. Enhanced by computational power and bolstered by a powerful belief in the efficiency of information technologies, databases cannot, under such circumstances, but become the weapon of choice of counter-terrorist struggle. Post 9/11 preventive counter-terrorist policies have indeed greatly amplified the importance of data collection, retention and mining. This is why a powerful imperative has taken root, which demands that digital data remain available as long as possible. The EU Data Retention Directive adopted in 2006 aims at enhancing the longevity of this data afterglow (Council of the European Union and European Parliament 2006). Furthermore, existing databases such as the Schengen Information System (SIS) or Eurodac have seen their scope and their use widened far beyond their initial remits. The SIS is thus increasingly being turned into an investigative tool (Council of the European Union 2005). This move is also epitomized by the second generation of this instrument which has politically been endorsed but has not come online yet. It will for instance allow

for associative researches. A powerful trend is at work, which tends towards the networking and interconnection of still fragmented databases, thus connecting the layers of the European “surveillant assemblage” (Zedner 2007; McCulloch and Pickering 2009; Goede 2008; Bigo, Walker, et al. 2007; Amicelle et al. 2009; Bigo et al. 2008; Balzacq 2007a; Haggerty and Ericson 2000).

These database aim at collecting the greatest amount of digital traces left behind at an increasing pace by average individuals in their most mundane and routine practices. Probabilistic knowledge derived from actuarial, financial and commercial techniques is brought into play in order to detect precursory signs of a possible terrorist plot amongst these data iterative patterns. Probabilistic association rules, which must carefully be distinguished from causal determination rules, allow for the structured mining of vast datasets. In this way, data derivatives come into being. Most interestingly, these data derivative do not register any of the primary information as to personal identities, flying habits, means of payment or the likes. What they do, on the contrary, is to infer what might become of patterns as revealed by probabilistic association rules. What pattern of social practices whose digital traces were collected is correlated with possible terrorist deeds? This mining through of data at a massive scale enhances counter-terrorism insofar as they transform probable associations between people, objects or behaviors into decision-making material (Bunyan 2009; Amore 2011).

These administrative routines of massive electronic surveillance aimed at risk suppression enable an array of correlated illiberal practices. Even though a disturbing number of European member states have willingly collaborated in the US covert renditions program (Marty 2006), such hard counter-terrorist practices as targeted assassination and so-called “enhanced interrogation techniques” have not been a key feature of EU response to terrorism in the post 9/11 era. Blacklisting and asset-freezing have however represented a much more favored tool in the disruption of terrorist networks (Council of the European Union 2003; Council of the European Union and European Parliament 2005; Council of the European Union 2009a; Council of the European Union 2009b; Council of the European Union 2009a). Preventive measures aimed at suspending organizational or individual activities that are suspected to be linked to terrorism such black-listing or delisting procedures rely on intelligence provided by security agencies. This intelligence usually stem from the above-mentioned electronic data mining as well as transatlantic cooperation. Furthermore, financial institutions are also required to contribute actively in this dispositive by reporting financial movement that they deem suspicious, thus playing the role of clearing houses. Blacklisting entails drastic consequences. The financial assets of blacklisted individuals are instantly frozen but are not seized, because seizing, as opposed to freezing, does formally encroach the individual right of property. Therefore, although extra-legal in nature, blacklisting yields stern punitive consequences for targeted individuals and or organization (Hayes 2007; Sullivan and Hayes; Goede 2008; Bigo, Walker, et al. 2007; Kessler 2008; Kessler and Werner 2008; Favarel-Garrigues, Godefroy, and Lascoumes 2011).

3.3 Effectiveness and impact of counter-terrorism; a reappraisal

The previous sections have provided a cursory examination of the sociological underpinnings and actual practices of counter-terrorism in Europe. Drawing on both moves, we are now in a position to hark back to some of the claims that were brought under examination in the above. We are more precisely able to shape a somewhat clearer understanding of the notions of effectiveness and impact that are, most of the time, implicitly built in the exception argument, the balancing metaphor and the trade-off model.

As regards the last two, both claims rely on a consequentialist assumption according to which curtailing liberties will effectively and positively bear on security, and that encroaching on privacy will enhance surveillance. In other words, both arguments rest on a built-in requirement for a clear and unequivocal effectiveness evaluation so as to establish their respective legitimacy. In the words of Jeremy Waldron, “ [...] we must insist that those who talk the balancing-talk step up to the plate with

some actual predictions about effectiveness” (Waldron 2003, 210). Indeed, since one suspects that the legitimacy of counter-terrorist measures rest on an implicit tradeoff between input (democratic) and output (effective) legitimacy, something must be said on the effectiveness of the purported practices (Zedner 2005; Goldston 2006; Bigo, Walker, and Elise 2006; Wade 2007; den Boer, Hillebrand, and Nölke 2008; Amicelle et al. 2012).

In this way, the legitimacy of counter-terrorism echoes the issue of proportionality between means and ends. Consequentialist questions about the consequentialism that is entailed in the balancing metaphor and the tradeoff model ought to be raised in a straightforward fashion, although some recall that the practices thus vindicated should be rejected on principled reasons alone. To make matters worse, objections to both modes of legitimization of counter-terrorism may either play out as relatively weak ones, or end up justifying these practices (Michaelsen 2008; Gani, Mathew, and Bronitt 2008). Be that as it may, one cannot but take into account the logical requirement that follows from this; to assess the legitimacy of counter-terrorism one needs to determine whether the practices that are brought under this rubric actually *make a difference*, i.e. are effective or have an impact.

Some studies tend to support the claim that counter-terrorist policies make a positive difference as regards terrorist violence. This difference may be reflected in a variety of rather heterogeneous indicators such as decreasing number of terrorist attacks, low casualties resulting from the former, high frequency of arrests related to terrorist offences, high proportion of terrorist-related convictions, fading propaganda or terrorist “noise” over the Internet or even the mere fact that counter-terrorist measures were adopted in the first place at EU level (Adams, Nordhaus, and Shellenberger 2011; Bossong 2012; Devoic 2012). Others contend that counter-terrorist policies remain largely ineffective. Here again, indicators vary widely. Profiling techniques turn out to be either over- or under-inclusive, so that they yield disproportionate cases of false positives or negatives (Goldston 2006; Bigo et al. 2008). Terrorists may be aware of counter-measures and consequently deploy adaptive strategies to circumvent or neutralize them (Goldston 2006). Instruments crafted at EU level may be marginalized by bilateral and/or informal initiatives (Bossong 2012). Counter-terrorist policies may have a very low cost-efficiency (Lum, Kennedy, and Sherley 2006). Others, still, find that terrorism and counter-terrorism vary rather independently from each other. Reviewing a number of quantitative studies pertaining to the effectiveness of counter-terrorist strategies in Europe and elsewhere, Lum et al find that counter-terrorism does not have any discernible statistical effect on terrorist violence (Lum, Kennedy, and Sherley 2006; Adams, Nordhaus, and Shellenberger 2011). Finally, counter-terrorist policies may even have negative effectiveness to the extent that they yield counter-productive effects. Controversial counter-terrorist tactics may alienate communities whose support is highly needed to root out potential terrorist groups. Massive data-mining may divert rare resources from more traditional and effective policing. It may also generate informational noise that makes it difficult to process data into intelligence (Leonard 2010).

This methodological and qualitative heterogeneity eclipses a sheer quantitative lack of empirical evaluation. One may bemoan the absence of data pertaining to the effectiveness of dataveillance, profiling and preventive assets-freezing. In their oft-cited work, Lum et al underscore that “of the over 20,000 reports regarding terrorism that we located, only about 1.5% of this massive literature even remotely discussed the idea that an evaluation had been conducted of counter-terrorism strategies” (Lum, Kennedy, and Sherley 2006, 13; see also Spencer 2006; Webster et al.; Bigo, Walker, et al. 2007; McCulloch and Pickering 2009; Leonard 2010; Brzoska 2011; Adams, Nordhaus, and Shellenberger 2011). The cursory inquiry into the topology of the European field of security professionals shed a somewhat particular light on this lack of empirical evidence.

The absence of in-depth assessment into the effectiveness of counter-terrorist practices is instrumental in the ability of security agencies to ensure their neat reproduction over time. Amongst

the abovementioned field effect, one can observe that this social space releases a powerful pressure towards an unchecked expansion of the security activities that it hosts. The neutralization of “reality checks”, so to speak, entailed in effectiveness evaluation actively conditions the possibility of such functional growth (Spencer 2006; Leonard 2010; Brzoska 2011). A series of anonymous and unintended social processes come into play at this point. Impact assessments, dealing with the effects that a specific measure yields over a particular audience or phenomena, are replaced by outcome or output evaluations which are designed to tackle instead the institutional products delivered by the policy instrument at play (more on the distinctions between impact, outcome and output below) (Brzoska 2011).

Most importantly, the European field of security professionals efficiently insulates itself from demands originating from other social settings. The risk narratives informing the doxa of the field are indeed readily imposed over the understanding of the average person. The media and the professionals of politics lose credibility when their security claims are not backed up by one or more of the agencies of the field. Most of all, actors and institutions embedded in this social space usually succeed in imposing their symbolic products as the basic material from which any endeavor to look into their effectiveness has to be conducted. A recent doctoral thesis dealing with counter-terrorism in Europe that we have quoted in the above epitomizes this difficulty to this extent that the effectiveness of these measures are gauged against the EU Terrorism Situation and Trend Report, which is published by Europol – that is one of the institutions whose effectiveness is brought under examination (Devoic 2012). Indeed, the European field of security professionally successfully monopolizes claims over threats *as well as* claims over their management, including specific statements pertaining to effectiveness (Bigo 2005b; Bigo, Walker, and Elise 2006; Bigo, Walker, et al. 2007; Bigo and Guild 2007).

The sheer lack of empirical data engaging this issue casts doubt on the nature of counter-terrorist policies. To what extent do they partake in a kind of symbolic politics aimed at conveying the sense that “something is getting done”, irrespective of what difference this something actually makes at the end of the day (Waldron 2003; Edelman 1991)? This hypothesis is further backed by the importance of legitimacy struggles entailed in the relation between terrorism and counter-terrorism. A great deal of counter-terrorist measures rely heavily on representational strategies aimed at delegitimizing terrorist networks while, sometimes but not often, politicizing their demands (Chowdhury and Krebs 2010).

Building an empirically-informed understanding of the effectiveness of counter-terrorist measures, an understanding which does not depend on the knowledge that security actors produce in the first place, therefore amounts to an arguably tremendous challenge. Many epistemological hurdles stand in the way of the different methodological strands that one can single out in the available academic literature. Available studies tend to put the main emphasis on quantitative approaches aimed at deciphering the influence that counter-terrorist policies yield over terrorist activity. Such approaches usually endeavor to establish statistical correlations between a range of interventions that are implemented at a clearly identified point in the timeline, and variations of terrorist attacks, bombings, hijackings or hostage-takings in the subsequent temporal segment. Comparatively, qualitative data relying on the survey of relevant audiences by the means of interview, opinion polls, targeted surveys or focus groups, are arguably less frequent (Lum, Kennedy, and Sherley 2006; Spencer 2006; Van Dongen 2009; Brzoska 2011; Ellis et al. 2011; Van Um and Pisiu 2011; Devoic 2012; for an exception, cf. European Commission 2012).

Let us however point out that this methodology has been put forth in British criminology so as to assess the robustness of the “suspect community” thesis in the post 9/11 era. In particular interviews with individuals from the British Muslim conducted were conducted in order to tease their subjective perceptions of profiling practices to which they are exposed (Pantazis and Pemberton 2008; Pantazis

and Pemberton 2009; Choudhury and Fenwick 2011; . For criticism, including methodological, see Greer 2008; Greer 2010).

Besides this rather traditional qualitative/quantitative dichotomy, a promising path for further research seems to lie with the abovementioned output-outcome-impact trichotomy of effectiveness. Output-effectiveness investigates the features characteristic of a given counter-terrorist framework. For instance, the adoption of the EC directive pertaining to the freezing of financial assets would *on its own right* be considered as evidence of output-effectiveness in the struggle against terrorist financing. Outcome-effectiveness brings under examination the compatibility of that which is delivered by the policy framework with the provisions that are built into its design. In our example, the quantity of assets effectively frozen under the adopted regulation would meet the standards of proof adjudication. Finally, impact-effectiveness tackles this issue pertaining to the behavior of the targeted audience. To what extent does asset-freezing lower terrorist occurrences (Van Dongen 2009; Van Um and Pisoiu 2011; Brzoska 2011)?

Qualitative as well as quantitative approaches, whether they look into output-, outcome- or impact-effectiveness, run into the following hurdles. They tend to assume that terrorist actors behave according to an instrumental rationality, thus reacting to ecological incentives. They all treat the absence of a major attack as a definitive indicator of success, while such a peaceful period may very well correspond to the planning of a future attack. More generally, they use indicators whose reliability and validity depend closely on the type of effectiveness that is being investigated. While those measuring outcome and output dimensions are seemingly unproblematic, the indicators pertaining to impact remain broadly elusive. Harking back to what we have mentioned above, we cannot but strongly emphasize that indicators of output- and outcome-effectiveness only appear unproblematic because that they are controlled by those very actors whose organizational, institutional and professional interests are at stakes in such assessments. In other words, the access to independent, precise, reliable information remains one of the core hurdles of this kind of investigation. Finally, these studies run into problems pertaining to the attribution of causality. As a matter of fact, effects that are teased out by the means of statistical methods main only remain probabilistic artifacts, while that which is measured by more qualitative methods may turn out to be of anecdotal value (Waldron 2003; Spencer 2006; Leonard 2010; Dragu 2011; Brzoska 2011; Van Um and Pisoiu 2011; Van Dongen 2009).

4 CONCLUSIONS AND RECOMMENDATIONS

By way of conclusion, we would like to offer some reflection on the following points. Firstly, we will sum up the key elements that a societal understanding brings out in terms of legitimacy, effectiveness and impact of counter-terrorism. Secondly, we will bring to the fore the methodological hurdles and epistemological limitations that may bear on an empirical investigation of these issues. Finally, we will sketch out some of the questions that may deserve further consideration for the upcoming work packages.

Informed by both political theory and political sociology, a societal approach to the legitimacy of counter-terrorism underscores, first and foremost, the processual and contingent nature of legitimization as it is carried out by security actors. To bring out this feature, we resort both to American and European literatures. This move accounts for the fact that, although some important nuances do exist, European and American counter-terrorist policies are closely inter-related at the discourse as well, and even more so, at the practice level. By means of the rhetorical and discursive strategies that it entails, the legitimizing work of counter-terrorism draws intensively on the core values which constitute the European political order as a liberal and democratic polity. By so doing, such values as the Rule of law, liberty and privacy are reframed and displaced.

The Rule of Law is put into question by claims to exceptionality according to which the regular order must be suspended when the collectivity comes under existential threat. Responding to this “security first” argument, the balancing metaphor contends that liberal polity always seeks to strike an equilibrium between security and liberty. In the face of a more intense and relentless form of transnational political violence, the argument goes, liberty must be curtailed so as to ensure greater security. This image is readily entrenched in popular imagination and policy-making circles. But its assumptions obfuscate much of what is at stakes in current counter-terrorist practices. It furthermore reframes liberty as a commodity that may be exchanged for something else (security). Finally, privacy has also come under duress as a result of counter-terrorist (discursive and non-discursive) practices. Although this trend, like the abovementioned phenomena, largely predates 9/11, privacy has since increasingly been disregarded as a luxury that must be dealt away when political times become stringent, as a hurdle to the work of the police, and as that which allows terrorist groups to thrive, away from prying eyes. Consequently, privacy has continuously been eroded in the face of new surveillance mechanisms, as the recent PRISM affair amply demonstrates.

Although this case features extraordinary characteristics (most notably through the media attention that it has drawn), it is far from being unprecedented. The previous controversies surrounding the PNR and the SWIFT-TFTF agreements have amply testified to the strengths of transatlantic dynamics when it comes to counter-terrorism. The ability to exchange information at a transnational level has indeed become one of the heaviest trends of the European field of security professionals. The legitimization of counter-terrorist practices ought to be understood as a particular form of symbolic struggles unraveling within this specific social space. The European field of security professionals further yields an array of powerful effects shaping the form and content of contemporary counter-terrorist policies, amongst which risk prevention mechanisms feature prominently. Such practices are brought in under the claim that terrorist deeds can potentially unleash such dreadful harm and damage that they would jeopardize the survival of the collectivity and therefore must be prevented from their earliest stages. This rationale has provided a powerful justification for the creation and/or extension of massive databases. The information thus collected is then mined by the means of probabilistic association rules which are supposed to allow for the thwarting of unknown terrorists and disrupting of their plots. These routine practices of massive electronic surveillance enable illiberal practices such as blacklisting and financial-assets freezing. Although they yield drastic punitive effects affecting the lives of the targeted individuals, these measures are extra-legal. They may therefore easily slip through the protections afforded by the regular legal order of a liberal and democratic polity.

But are these measures effective and what is their impact? It must first be underscored that claims to greater effectiveness are readily built into the rationale justifying these measures. For this reason, evaluations of effectiveness and impact studies of counter-terrorist practices are deficient to an extent that is surprising only at first glance. As a matter of fact, the absence of “reality checks” enables the unquestioned reproduction of counter-terrorist practices. This stems from the fact that the European field of security professionals holds sway over any form of knowledge pertaining to threat and their management. Thereupon, security actors succeed in imposing their symbolic values as the basic material from which any evaluation of the effectiveness of the measures implemented by these very actors has to be conducted.

We cannot but insist on this point. Building an empirically-informed understanding of the effectiveness of counter-terrorist measures, an understanding of which does not depend on the knowledge that security actors produce in the first place, therefore amounts to an arguably tremendous challenge. Most of the methodological hurdles that previous studies into effectiveness or impact of counter-terrorist practices have run into, such as the availability of data, seem to stem from this core epistemological obstacle. However, a distinction between impact-, output-, and outcome-effectiveness may be able to offer some critical purchase in this matter.

Simply put, output-effectiveness gauges the ability of policy-makers to take action in response to a specific development. Outcome-effectiveness brings the design of the adopted policy under examinations. It ought to be carefully underlined that output- and outcome-effectiveness have the potential to be readily instrumentalized by security actors as part of the legitimization strategies that they develop within the European field of security professionals.

Assessments based on measures of impact-effectiveness entail the consequences, both intended and unintended, that a specific measure has actually yielded on its primary as well as on its secondary audience (those who are unintentionally impacted). Regarding, for instance, the struggle against terrorist financing, one may wonder how many plots or organization were disrupted by the drying up of their funding, due to these specific measures. Furthermore, one may also investigate what happens to those organizations which have nothing to do with transnational political violence but were all the same disrupted by those mechanisms.

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