The European fight against terrorism financing: Professional fields and new governing practices

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Chapter 1.

The European Fight against Terrorism Financing

We ought to regard the present state of the universe as the effect of its past and the cause of its future. An intelligence which at a certain moment would know all forces that set nature in motion, and all positions of all items of which nature is composed, if this intellect were also vast enough to submit these data to analysis, it would embrace in a single formula the movements of the greatest bodies of the universe and those of the tiniest atom; for such an intellect nothing would be uncertain and the future just like the past would be present before its eyes.

—Pierre Simon Laplace (1902, p. 4)

1.1 Laplace’s Demon and Governing the Future

In *A Philosophical Essay on Probabilities*, first published in French in 1814, French mathematician and astronomer Pierre Simon Laplace introduced a thought experiment involving a superhuman intelligence that later became known as Laplace’s demon. This intelligence, which could be understood as a supercomputer, would be able to know and analyse all the forces of the universe. Capturing all the possible data of the universe into one mathematical formula, this intelligence would be able to render visible both the future and the past. Laplace immediately admits that the human mind only possesses a fraction of this extraordinary calculative capacity and that this universal formula cannot be known. Instead, he suggests that humanity can gradually improve its knowledge of the world through science and in particular through probabilities.

During the past two centuries, critics of Laplace, mostly physicians and mathematicians, have successfully advanced arguments for rejecting his causal determinism in which the present is completely determined by the past and precisely predicts the future, ruling out uncertainty, free choice and chance. Nevertheless, the work of Laplace remains significant because he was one of the first modern thinkers to explain the world purely through science, instead of invoking theological arguments. His omniscient ‘intelligence’ would render the future knowable and calculable.

Taking Laplace to the twenty-first century, important parallels can be found between Laplace’s demon and the assumptions of the global War on Terror. After 9/11, the phrase
‘connecting the dots’ became a central element of this war. Political leaders—most prominently President George W. Bush, government bodies, and certain academics expressed a belief that the 9/11 terrorist attacks might have been prevented if ‘dots’ had been ‘connected’ in a timely manner (National Commission on Terrorist Attacks upon the United States, 2004, Ham & Atkinson, 2002), and that ‘we must be able to connect the dots before terrorists strike’ (Bush, 2006). In practice, this meant that the personal data held in commercial databases and the integrated analysis of these bits of data were believed sufficient, if correctly manipulated, to prevent future terrorist attacks. Hence, like Laplace’s demon, post-9/11 security practices for combating terrorism aim to make the future knowable through the collection and analysis of massive sets of data.

Moreover, from an operational perspective, data-led security practices for combating terrorism can, almost literally, be seen as the contemporary counterpart of Laplace’s demon. Like the intelligence described by Laplace, supercomputers store and analyse large quantities of data, such as travel information (for example, Passenger Name Records (PNR)), financial transactions, or Internet and telecommunication data. These personal data are then analysed by specialized software using complex mathematical models and formulas, such as risk analysis, in order to detect terrorists and prevent future plots. The great value of such high-tech, data-led initiatives in the War on Terror has often been emphasized by politicians, governments, think tanks and university scholars (see for instance Adviescommissie Informatiestromen en Veiligheid, 2007, Libiki & Pleeger, 2004, Thuraisingham, 2005).

Although Laplace does not think of his “intelligence” as something that can be created by human organisation and invention, his idea that the future is calculable and that uncertainty can be ruled out opened up the possibility of acting upon the future. Roughly two hundred years after his publications on probabilities, the desire for “an intelligence” able to calculate the future and to make uncertainty governable on the basis of present knowledge expressed in Laplace’s demon is still very present. Knowing and preventatively acting upon the future is one of the central assumptions of the War on Terror. In other words, it is assumed that future terrorist attacks can be avoided if data from the past are known and dots are connected.

The use of personal data to take security action in the War on Terror and attempts to govern through acting upon the future raise many questions. In the data-led security practices of the War on Terror the deployment of financial transaction data occupies a special place. A number of scholars have (critically) investigated the importance and the implications of counter-terrorism financing measures. Their work however mainly focuses on the US (Biersteker, 2008, Naylor, 2006, Warde, 2007) and transatlantic relations (De Goede, 2012)
and Europe has been insufficiently studied so far. For this reason, the way in which the war on terrorism financing has taken shape in Europe and its implications for European governing are the central enquiry of this thesis.

1.2 Combating Terrorism Financing: A War That No One Saw

Immediately after the terrorist attacks of 11 September 2001, the EU designed an EU Action Plan for Combating Terrorism, in which combating terrorism financing became a ‘core component’.³ Political elites, policy makers and law-enforcement officers emphasized the importance of combating terrorism financing as they considered money vital to the survival of terrorism. In the words of the former EU Counter-Terrorism Coordinator (EU-CTC), ‘terrorists need money to prepare and carry out terrorist attacks’ (De Vries, 2004). This argument has often been illustrated by the fact that the 9/11 hijackers needed money for travelling, flight training and to cover living expenses (National Commission on Terrorist Attacks upon the United States, 2004). The perpetrators of the 2005 London attacks bought bomb making equipment, paid rent, hired a car and travelled in the UK in preparation for their acts (UK House of Commons, 2006, p. 23). Following these observations and reversing the argument, it was argued that without money terrorists cannot carry out attacks and therefore, as President Bush put it in September 2001, ‘the world needed to stop payment’ (Bush, 2001b).

In addition to the observation that money is vital for terrorists, targeting their financial flows is also believed to be an effective tool for preventing international terrorism. As international terrorists are often assumed to be very mobile, it is thought that their financial transactions may uncover their identity and location prior to a terrorist act. Moreover, financial transactions may reveal to whom terrorists are (financially) connected. By following the ‘money trail’ financial investigators claim to be able to disrupt entire terrorist networks. In addition, financial information is regarded as very reliable information compared to other forms of intelligence (Biersteker & Eckert, 2008, p. 2), available before terrorist acts are committed, since people usually do not transfer money without a specific reason.

On the basis of these ideas the list of measures and initiatives to combat terrorism and its financing gradually expanded, often in direct relation to terrorist attacks on European soil, most notably the simultaneous bombings on trains in Madrid on 11 March 2004. In December 2004, a separate Strategy on Combating Terrorism Financing was developed to provide a
‘coherent and overall approach for further strengthening the fight against terrorism financing’ (Council of the EU, 2004, p. 1). This strategy, as well as, in more general terms, the 2005 EU Counter-Terrorism Strategy, prescribes an ‘intelligence-led approach and improved information sharing within and between government and the private sector’ (Council of the EU, 2004, p. 9; see also 2005, p. 12). This approach has progressively been adopted by all EU member states and continues to be a central element in European security policies, as attested by the 2010 Stockholm Programme (Council of the European Union, 2010a).

The intelligence-led approach to combat terrorism financing can be characterized as a proactive, preventative form of policing through the collection and analysis of massive sets of personal information with the help of smart technologies and in cooperation with private authorities. From an operational perspective this approach can be described as follows. Financial service providers hold a wealth of data on their customers, including, for example: first and last names, gender, passport number, place and date of birth, bank account and credit card numbers and information about the amount, place, time and destination of financial transactions. These data are monitored and analysed by specialized software programmes, often initially designed for commercial purposes, using techniques such as ‘profiling’, ‘data mining’, ‘social network analysis’, ‘risk analysis’ and other ‘predictive technologies’. On the basis of these programmes unusual or suspicious transactions can be found and subjected to a closer analysis by either compliance officers within banks or (in a later stage) law-enforcement officers and intelligence agencies. The latter can also request specific data from banks and match and crosscheck this information with a multitude of public or private databases and publicly available information.

A decade after 9/11, targeting money in order to cut off terrorists’ access to funding is considered to have a ‘proven effectiveness’ (European Commission, 2011, p. 1). Yet, the practices of tracking terrorism financing remain basically invisible – we know little about the professional practices or political implications of the turn to financial data in the context of pursuing terrorism. Moreover, European citizens seem rather unaware of the scope, possibilities and cumulative effects of the measures taken in the fight against terrorism. In contrast to controversial aggressive military operations to ‘smoke terrorists out of their holes’ (Bush, 2001a) and initiatives to combat terrorism ‘on the dark side’ (Cheney, 2001), the war on terrorism financing is:
a war that no one saw. There was no bloodshed, no guns and no soldiers. [...] This war is fought with bank accounts and financial transactions [...] tracking and attempting to dismantle terrorist organizations or rogue nations (The Washington Post, 2011).

It almost appears as if there are two distinct universes, where the reality of the ‘dirty’ War on Terror, illustrated by the thousands of deaths in the militarily and politically disastrous invasion and occupation of Iraq, or the images and stories of the humiliation, abuse and torture of prisoners, are unrelated to the ‘clean’, preventative approach using high-tech solutions offered by smart software programmes of police and intelligence services, which is perceived to be respectful of human rights, non-violent and successful.

The following chapters aim to shed light on these less visible aspects of the War on Terror and assess the assumptions on which the measures to combat terrorism financing are built. How did financial data become a central element in the global and European fight against terrorism? Is the assumption that increased data gathering is an indispensable condition for success in the fight against terrorism correct? What are the possibilities and limits of fighting the war on terrorism finance through transaction data? How does the fight against terrorism financing change European governing practices and patterns? Which controversies characterized and structured political processes and outcomes of current European counter-terrorism financing (CFT) policies?

In order to elucidate the practices of intelligence-led policing and the assumptions of the European fight against terrorism financing, it is also important to analyse the professional field that has been created in the name of this fight. This involves studying the web of institutions, rules, and practices through which dirty money is targeted. Who is involved in European efforts to combat terrorism? What are the roles of those who govern this fight? Where is decision-making power located? What kind of power is exercised? How are decisions made? Answering these questions makes it possible to account for the War on Terror as a dispersed form of power which appears to have profound implications for the meaning of sovereignty in the current international system and the rule of law within EU member states. Furthermore, some states have made agreements for data transfer with companies in other countries, completely bypassing the national governments of these countries and their sovereign power.

Public-private cooperation is another important aspect of the field of governing. As mentioned above, European legislation demands that the private sector be increasingly involved in monitoring European citizens in order to prevent terrorist acts. At the same time,
the fight against terrorist financing has led to strengthened regulation of the private sector. This apparent paradox of the reassertion of state power over deterritorialized finance through modes of governance that transfer security decisions to the private sector is one of the issues that needs to be examined. What are the consequences of charging private companies with the task of securing the ‘homeland’? To what extent are decisions regarding national security transferred to anonymous employees inside companies such as banks and insurance agencies? Subsequently one may ask whether decisions about who and what are suspicious are legitimate, transparent and accountable, when they are made by private actors from the financial services sector?

Hence, from a broader perspective, the analysis of the turn to financial data to combat terrorist financing and what the EU refers to as intelligence-led policing touches upon some important themes in the social sciences, in particular the evolving relations between liberalization and re-regulation of financial markets, the proliferation of privatised power and ‘pooled sovereignty’, and the relation between freedom and security.

1.3 European Policies for Combating Terrorism Financing

The European measures for combating terrorism financing are based on the guidelines of the Financial Action Task Force (FATF). Within two weeks of the 9/11 attacks, this informal platform, consisting of a group of OECD states, drafted eight Special Recommendations (SR) on terrorism financing. A ninth Special Recommendation on cash couriers was added in 2004 (see table 1.1). These recommendations require states worldwide to regulate all sorts of financial transactions in order ‘to detect, prevent and suppress the financing of terrorism and terrorist acts’ (FATF, 2001). The implementation and ratification of the relevant UN Conventions and resolutions are incorporated in the FATF guidelines as the first Special Recommendation.

I. Ratification and implementation of UN instruments
II. Criminalising the financing of terrorism and associated money laundering
III. Freezing and confiscating terrorist assets
IV. Reporting suspicious transactions related to terrorism
V. International co-operation
VI. Alternative remittance
VII. Wire transfers
VIII. Non-profit organisations
IX. Cash couriers

Table 1.1 FATF Special Recommendations, source: www.fatf-gafi.org.
The EU has transposed the FATF’s Special Recommendations into EU law by adopting a number of Directives and Regulations (see table 1.2). In the weeks following 9/11, the freezing and seizing of funds and financial assets on the basis of UN Security Council Resolutions (UNSCR) 1267 (1999) and 1373 (2001) were most prominent actions. These resolutions required the blacklisting of individuals and groups suspected of terrorism, in particular Osama Bin Laden, the Al Qaeda network and the Taliban. The purpose of these economic sanctions was to reduce the flow of funds to terrorists and to disrupt their activities. Moreover, according to the Council of the European Union, the listing procedures give an important political sign and have a deterrent psychological impact (2004, p. 3). However, the practices of blacklisting have also raised controversy, as they were at first not compatible with certain fundamental rights.

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<tr>
<th>EU Legislation</th>
<th>FATF Special Recommendations to combat terrorism financing</th>
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<tr>
<td>Regulation (EC) 2580/2001 freezing funds of suspected terrorists</td>
<td>SR I: Ratification and implementation of UN instruments</td>
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<td>Common Position 2001/931/CFSP</td>
<td>SR III: Freezing and confiscating terrorist assets</td>
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<td>Regulation (EC) 881/2002 implementing UN Al Qaeda and Taliban sanctions</td>
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<td>SR III: Freezing and confiscating terrorist assets</td>
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<td>Third Directive on the prevention of the use of the financial system against</td>
<td>SR I: Ratification and implementation of UN instruments</td>
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<td>money laundering and combating the financing of terrorism (2005/60/EC)</td>
<td>SR II: Criminalising the financing of terrorism</td>
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<td>SR III: Freezing and confiscating terrorist assets</td>
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<td>SR IV: Reporting suspicious transactions related to terrorism</td>
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<td>SR V: International co-operation</td>
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<td>SR VI: Alternative remittance</td>
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<td>SR VII: Wire Transfers</td>
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<td>Regulation Controlling Cash Entering or Leaving the Community (EC) No 1889/2005</td>
<td>SR IX: Cash couriers</td>
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<td>Regulation (EC) No 1781/2006 on information on the Payer Accompanying Transfers of Funds</td>
<td>SR VII: Wire transfers</td>
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<tr>
<td>Directive 2007/64/EC on payment services in the internal market, i.e. ‘Payment Services Directive’</td>
<td>SR VI: Alternative remittance.</td>
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Table 1.2 Overview of EU CFT legislation and the corresponding FATF Special Recommendations.

Surrounded by far less media attention than the economic sanctions, the other FATF guidelines required more negotiation and were transposed in the years after 9/11. These measures attempt to regulate the financial sector and track financial transactions. Seven of the nine Special Recommendations are addressed in the Directive on the Prevention of the Use of the Financial System against Money Laundering and Combating the Financing of Terrorism (2005/60/EC), also known as the Third (AML/CFT) Directive. Special Recommendations VII and IX have been transposed separately into EU law in the form of the Regulation Controlling
Cash Entering or Leaving the Community (EC) No 1889/2005 and Regulation (EC) No 1781/2006 on information on the Payer Accompanying Transfers of Funds. Additional action with regard to alternative remittance services (FATF SR VI) was taken through the adoption of Directive 2007/64/EC, the so-called ‘Payment Services Directive’.

The EU’s 2004 Strategy on Terrorism Financing explains that the two approaches for combating terrorism financing (freezing financial assets on the one hand and tracking transactions on the other) ‘are not mutually exclusive’ (Council of the European Union, 2004, p. 3). Depending on the specific situation, governments may consider it more useful not to publicly designate a terrorist (group) but silently to track their financial transactions in order to obtain more insights in their activities (ibid.). After an initial wave of designations in the wake of 9/11, the emphasis of the European efforts against terrorism financing has shifted increasingly to tracking terrorist transactions. The two most important elements in this context are the Third Directive on the prevention of the use of the financial system against money laundering, and combating the financing of terrorism, adopted in 2005, and the Terrorism Finance Tracking Programme (TFTP). These two initiatives have been selected as case studies in this thesis.

The Terrorist Finance Tracking Program was not designed as a European instrument for combating terrorism financing. This initially secret American intelligence programme was created shortly after 9/11, and consisted of gathering and analysing financial transaction data from the SWIFT system in order to detect terrorist plots and trace potential terrorists and terrorism financiers. Although the EU was not involved in the development of the TFTP, the programme merits thorough examination in the context of the European fight against terrorism for a number of reasons. First, a large part of the transferred SWIFT data concerns transactions involving bank accounts in EU member states. Second, revelation of the TFTP provoked a yearlong controversy between the EU and the US and within the EU, in which all EU institutions were greatly involved. Between 2006 and 2010 heated debates on the SWIFT affair took place in the European Parliament, and successive (interim) agreements and solutions to continue the programme have been prepared by the European Commission and the Council. Third, the TFTP is now considered a ‘powerful tool’ for both American and EU law-enforcement authorities. Moreover, a European equivalent of the programme is currently being developed in the form of the European Terrorism Financing Tracking System (TFTS). In this light, it is important to understand how the original programme operates, what assumptions underpin the programme, and what implications it has.

The Third Directive is the most comprehensive EU measure to fight terrorism
financing with a broad impact on daily financial lives of citizens and mundane transactions. It obliges professionals in the banking sector or providing financial services to increase surveillance on their clients and the accounts they may hold. Through enhanced ‘Know Your Customer’ and due diligence requirements, regulated professions have to establish the identity of their client, to record and analyse their financial transactions and to report any suspicious transaction to a national Financial Intelligence Unit (FIU). In addition to the central place of the Third Directive in the European CFT policy, two other arguments also justify the choice of this Directive as a case study. The Third Directive is a salient example of large-scale public-private security cooperation, which allows for an investigation of how the Third Directive incorporates and authorizes financial professionals as security actors. Moreover, the Third Directive is an important but largely unknown example of the data- or intelligence-led fight against terrorism in which all European citizens are involved.

1.4 Academic Debates on the European Fight against Terrorism Financing

The adoption of European measures for combating terrorism financing did not cause much debate in academia. Although the number of scholarly publications on the EU’s counter-terrorism policy strongly increased after 9/11 (e.g. Bendiek, 2006, Bures, 2006, Den Boer, 2003, Den Boer & Monar, 2002, Kaunert, 2010a, 2010b, Peers, 2003, Spence, 2007, Zimmerman, 2006), these publications often devote no or only marginal attention to terrorism financing. Literature on terrorist financing, on the other hand, generally examines the American (and sometimes the British) situation or focuses on the methods of terrorism financing deployed by terrorists (e.g. Biersteker & Eckert, 2008, Clunan, 2006, Donohue, 2006, Navias, 2002, Warde, 2007). The body of literature that specifically and profoundly analyses the European fight against terrorism financing is relatively modest. This section discusses these accounts, in order to show how the present thesis builds upon and moves beyond present literature.

William Vlcek (2005, 2006, 2007, 2008, 2009) has published extensively on the European policies combating the financing of terrorism. In his most recent articles Vlcek sees the European CFT policy in terms of financial surveillance and highlights the implications of these measures for the respect of human and fundamental rights. Examining the post-2001 requirements for identification and transaction monitoring, Vlcek states that these practices imply a ‘subtle imposition upon personal privacy’ (2005, p. 1) and that ‘the measures taken in
the financial war on terror have reduced liberty’ (2008, p. 24). He also points to the negative impact of counter-terrorism financial regulations upon civil liberties, in particular for individuals who might have difficulty accessing the formal financial system, such as migrants and the homeless (2005, 2007, 2008). ‘These individuals are not in a position to engage with formal banking structures (due as much to the cost of establishing and maintaining an account as to the requirements for documentation) and as a result may use an informal banking system’ (2005, p. 14). The attempt to regulate informal value transfer systems, such as ‘hawala’, has also been object of his research. He examined, for instance, how the European legal framework to combat terrorism financing affects migrants’ remittances to their countries of origin (2008; on the conceptualization of hawala see Vlcek, 2010). Human and fundamental rights were also central to his analysis of the difficulties of challenging the EU’s regulatory framework against terrorism financing before the European Court of Justice (2005, 2006). In addition to this critical political analysis, Vlcek’s work also investigates the effectiveness of the EU’s CFT policy. Although Vlcek’s work covers many aspects of the EU’s CFT policy – blacklisting and the regulation of the formal and informal banking sectors – his work mainly considers the (potential) impact of the outcomes of this policy. He does not consider how these policies come into being, who participates in their design, how the problem of terrorism financing is shaped during negotiations and how the banking sector chooses to implement the measures. In this thesis, the daily practices in the fight against terrorism financing are analysed in great detail, which leads to a different understanding of financial surveillance.

Anthony Amicelle and Gilles Favarel-Garrigues have studied the European CFT measures through a surveillance studies lens. Specifically, they investigate the intensified control of financial transactions that is based on techniques of traceability and risk-based regulation, and the public-private cooperation that emerges from these surveillance practices (2009, 2012, Amicelle, 2011a). In addition, they have published on the TFTP and the SWIFT affair as an example of financial surveillance (Amicelle 2011b, Amicelle & Favarel-Garrigues 2009, 2012). Separately, Favarel-Garrigues has published on the implementation of CFT policies in France (Favarel-Garrigues et al., 2008, 2009). In these works he considers how the banking industry takes up its assigned task of policing dirty money. He demonstrates how expertise on combating money laundering was developed within banks by analysing the professional background of bank employees responsible for compliance, the emergence of professional networks and training programmes and the AML procedures that have gradually been put in place. On basis of extensive fieldwork he concludes that the banks have a leading
role in combating money laundering, and that ‘their activities have become closely intertwined with those of the policing authorities’ (2008, p. 18).

Other political science or European Studies scholars have examined the CFT policy from a European integration perspective. Oldrich Bures (2010) sets out the EU framework for thwarting terrorism financing and assesses its shortcomings, its legal challenges and its effectiveness. He found that it is ‘rather difficult’ to assess the effectiveness of the European measures in this field, but that a number of internal and external obstacles that hamper the EU efforts to combat terrorism financing can be identified (p. 424). With respect to the latter, Bures refers to erroneous assumptions on which the global CFT efforts have been based and in particular the ‘heavy reliance on the “targeted/smart” sanctions and anti-money-laundering models’ (p. 426). Concerning the functioning of the CFT policy within the EU there are a number of internal obstacles. First, ‘the legal basis is far from being crystal clear’ as various decision-making procedures apply (p. 424). Moreover, implementation of the measures is piecemeal because implementation requires complex coordination within and between the public and private sectors; member states perceive the terrorist threat differently, which affects their motivation for compliance; and the measures sometimes conflict with national politics and judicial procedures (p. 425). Finally, Bures states that: ‘the fact that consensus [over CFT measures] is reached by a small circle of CFT experts excludes or renders less effective national mechanisms of democratic and judicial control’ (p. 426). According to him the EU can and the Lisbon Treaty will improve the internal shortcomings of the CFT framework.

Christian Kaunert and Marina Della Giovanna (2010) consider the role of the European Commission and the Council Secretariat as supranational policy entrepreneurs ‘in order to explore and assess the role played by the EU supranational actors in implementing post-2001 UN and FATF standards on countering terrorist financing at EU level’ (p. 277). They assert that making use of their specific powers, adopting strategies suitable to their respective roles and profiting from the window of opportunity opened by the horror of the 9/11 attacks, the Commission and the Council Secretariat ‘have played a significant role in the transposition of CFT standards into EU legislation, and overall, in the design of the EU-CFT regime’ (p. 284). Consequently, they conclude that supranational European institutions ‘can be important players’ in all aspects of counter-terrorism policy, rejecting the intergovernmentalist assumption that high politics areas such as Justice and Home Affairs remain the exclusive prerogative of nation states (p. 290).
Although these two articles provide interesting insights about the European CFT policy, they both consider the EU and the European institutions as unitary actors and restrict their focus to policy making at the European level. Their respective approaches exclude power struggles that take place within and between the European institutions during the policy making process, and in both articles the European Parliament, for instance, is completely absent. In addition, they exclude the influence of participants outside the European institutions such as the private sector, media and civil society.

Legal scholars have analysed the EU’s AML/CFT measures, but few have specifically addressed the terrorism financing aspects of these laws. An important exception is the article of Valsamis Mitsilegas and Bill Gilmore (2007), in which the authors discuss the evolution of the EU’s legal framework for combating money laundering and terrorist financing from a Justice and Home Affairs perspective. Taking into account the EU’s three Anti Money Laundering (AML) directives, the Regulation on controls of cash entering the EU and the Directive on Payment Services in the internal market, they analyse the changes in the subsequent AML/CFT measures and the challenges these have raised with respect to EU constitutional law. Moreover, they stress the strong relationship between instruments and initiatives taken by international organisations, most notably the FATF and the UN and the EU.

Furthermore, various scholars (Amicelle & Favarel-Garrigues, 2009, 2012, Bulterman 2005, Guild 2008, 2010, Tappeiner, 2005, Vlcek 2005, 2006) have published on the controversial ‘terrorist lists’ requiring the freezing of financial assets of listed individuals and their implementation in EU law. Illustrated by the well-known Yusuf, Kadi, Al Barakaat and OMPI (Organisation of Modjahedines People of Iran) court cases, they highlight a number of shortcomings of both the EU and the UN terrorist lists. These include: the lack of democratic and judicial oversight by the European Parliament and the European Court of Justice, respectively; the lists’ incompatibility with certain human rights, such as the presumption of innocence; and their inefficiency in putting a halt to terrorism. On the basis of recent modifications to the listing processes, Guild asserts that ‘legal order is beginning to work its way into what appears to have been an arbitrary mechanism of designation’ and ‘the rule of law is beginning to make its way to the shady world of lists of suspected terrorists’ (2008, p. 190).

These accounts provide important insights into aspects of the EU’s efforts to combat the financing of terrorism upon which this thesis aims to build further. On four significant points it expands the existing literature. First, the existing literature on the EU’s efforts to
combat terrorism financing is critical with regard to the legality, legitimacy and efficiency of this policy but it does not sufficiently question the assumptions underpinning the War on Terrorism Financing. Bures for instance states that the logic of combating terrorism financing is ‘straightforward’ (2010, p. 418). Likewise Kaunert and Della Giovanna assert that in the immediate aftermath of the 9/11 attacks it became apparent that finance was of ‘crucial importance to the survival of Islamist fundamentalist organisations such as Al Qaeda’ (2010, p. 275). I propose to extend the critique by questioning the assumptions and underpinnings of the European fight against terrorism financing. As Michel Foucault put it: ‘a critique is not a matter of saying that things are not right as they are. It is a matter of pointing out on what kinds of assumptions, what kinds of familiar, unchallenged, unconsidered modes of thought the practices we accept rest’ (1988, p. 154). By denaturalizing the efforts to combat terrorism financing, and ‘making strange’ security practices that appear to be common sense, it becomes possible to step outside the existing frames and think things differently (ibid.). As such, a broader set of political questions can be raised about security programmes targeting daily financial behaviour, going beyond effectiveness and judicial and procedural correctness.

Second, most studies take a conventional approach to the actors involved combating terrorism financing. They mainly focus on the EU institutions and sometimes the role of one or more member states that are considered unitary actors, for instance, the FATF, the European institutions or the EU. While it can be difficult to avoid these generalizations and they may sometimes be correct, they also obscure struggles and controversy within these organizations. Moreover, this conventional approach excludes the role of non-institutional actors. Among the works discussed above, Amicelle and Favarel-Garrigues do consider thoroughly public-private cooperation. However, Bourdieus field theory, the theoretical model adopted here (see chapter 2), also includes other actors (participants) such as journalists, civil society, business associations and other private sector stakeholders. As discussed in detail in the next chapter, field theory permits an examination of the exercise of power beyond pre-established institutional structures or formal legal competencies. Considering the European fight against terrorism financing in terms of a professional field implies analysing a fragmented social space that is structured by shared beliefs, practices, and professional and bureaucratic power relations rather than by institutional, sectorial, or geographic boundaries.

Third, the existing literature offers a critical analysis of the political outcomes but does not consider the political processes leading to these outcomes. For instance, Bures (2010) states that ‘it is not surprising that the Financial Action Task Force on Money Laundering
nowadays sets and promotes the adoption of global standards to combat both money laundering and terrorist financing’ (p. 421). Yet, I will show that this choice was not self-evident at first, but rather the product of intense negotiation. A deeper understanding of the political process preceding decisions and adaptations of the law, for instance, the inclusion of terrorism financing in AML law, reveals the gaps, contradictions, and insecurities in the security programmes designed to target terrorist financing. It prevents the current situation from being considered natural and reminds us that alternative solutions existed but were discarded. Thus, such an analysis allows the development of a critical perspective on current policy initiatives for combating terrorism financing that have largely come to be accepted as effective, legitimate, and even ‘self-evident’.

Fourth, instead of focusing on just the legal, political, or operational aspects, a more comprehensive governmentality approach is taken in this thesis. The Foucauldian notion of governmentality refers to the modes of thought or rationality that underpin practices of governing. It implies investigating the techniques of government—this includes institutions, procedures and tactics—that are deployed to exercise power and considering its legal, political, and operational aspects. Moreover, it means that both the political decision-making process and the operational practices of combating terrorism can be subject to investigation. Finally, a governmentality approach goes beyond a legal and operational approach in order to analyse how power is shaped and what is being governed. How does the fight against terrorism financing govern through the identification and prescription of mundane financial normalities and abnormalities? As Amoore and De Goede (2008a) highlight, these are important questions, because contemporary security action based on the minutiae of daily life and the classification techniques on which they rest constitute an almost invisible form of violence and have political implications. These four points are taken up in the following chapters. The next section provides an overview of the themes discussed in each chapter.

1.5 Chapter Overviews

This thesis is further divided into three parts. The first part, consisting of chapters 2 and 3, introduces the theoretical tools with which the European fight against terrorism financing will be studied here. Chapter 2 discusses how the fight against terrorism financing leads to the creation of a field of governing that goes beyond institutional, sectorial and geographic boundaries and how this professional field can be studied. It also introduces the
Foucauldian notion of governmentality, which entails the study of rationalities and practices through which citizens are governed. Chapter 3 offers a historical perspective tracing a genealogy of the European fight against terrorism financing. This chapter considers the structure of the discourse on countering terrorism financing and the framing of terrorism financing as a (European and international) problem. Examining the genealogy of the European fight against terrorism financing has two objectives. It aims to make visible the assumptions on which the post 9/11 fight against terrorist monies is based, and it offers theoretical guidelines that will be used throughout the thesis.

The second part, which is the heart of the thesis, consists of three empirical chapters. In these chapters two case studies are examined in order to identify specific fields of governing that have emerged from the European fight against terrorism finance. Chapters 4 and 5 investigate the Terrorism Financing Tracking Programme (TFTP), also known as the ‘SWIFT affair’. Chapter 4 offers a content analysis of press articles, political debates and official documents that followed the revelation of the TFTP in the US and EU. It shows how discourse surrounding the programme was structured, and how certain aspects of the programme become politicized and led to a policy response, while others were ignored and forgotten. Chapter 5 examines questions that were left unanswered in the SWIFT affair. Opening the TFTP’s black box, so to speak, it considers how the programme probably works and what tangible results and implications it has generated. Chapter 6 addresses the implementation of the EU’s Third AML/CFT Directive. Adopting the metaphor of the theatre, this chapter makes visible the daily governing practices developed in name of the European fight against terrorism financing and opens them up for questioning.

Chapter 7 forms the third and concluding part of the thesis. In this chapter, the focus is broadened by considering the European fight against terrorism financing in terms of financial surveillance. Conclusions are drawn by comparing and summarizing the key findings of the two case studies as examples of financial surveillance.