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

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Money is the lifeblood of terrorist operations. Today, we're asking the world to stop payment.
—President George W. Bush (2001)

For money is the oxygen of terrorism. Without the means to raise and move money around the world, terrorists cannot function.
—Colin Powell, US Secretary of State (2001)

3.1 Introduction

Political leaders have often referred to combating the financing of terrorism (CFT) as an important front in the War on Terror. As illustrated by the quotes of former President George W. Bush and former Secretary of State Colin Powell, money is seen as the lifeblood for preparing and carrying out terrorist operations, and it is emphasized that without money terrorism cannot survive. Similar views have been expressed by European politicians. Like his American counterparts, British Chancellor of the Exchequer (later Prime Minister) Gordon Brown stated that ‘the ready supply of finance is the lifeblood of modern terrorism’ (UK Treasury, 2001) and more provocatively, ‘if fanaticism is the heart of modern terrorism, then finance is its lifeblood’ (BBC, 2001). Other European politicians and policymakers have usually used less sensationalist language but they equally consider money indispensable for undertaking acts of terrorism. At a joint conference between the EU and the Gulf Cooperation Council, former EU Counter-Terrorism Coordinator Gijs de Vries stated that ‘the amounts will vary according to the strategies and methods adopted by the terrorists. [. . .] But they all need funds, if only for day-to-day living expenses’ (2005).

Few academics have questioned the assumptions that place combating terrorism financing at the centre of the War on Terror. Biersteker and Eckert (2008), for instance, examine the appropriateness and efficiency of the current measures to combat terrorism financing in their renowned book *Combating the Financing of Terrorism*. Yet, from page one they assume that ‘new financial measures have been among the most powerful tools deployed by the United States and the international community’ and that ‘there is little doubt that such controls can have important effects’ (p. 1). In a similar vein, in *Terrorism Financing and State
Responses, Giraldo and Trinkunas (2007) start with the observation that ‘financial and material goods are correctly perceived as the lifeblood of terrorist operations, and governments have determined that fighting the financial infrastructure is key to their defeat’ (p. 1).

The frequent use of metaphors such as ‘oxygen’ and ‘lifeblood’ to emphasize the essential role of money for terrorists is significant in two ways. First, it indicates a homogenization of the dominant discourse. Many politicians, policymakers, and academics define the problem along the same lines and in strikingly similar terms. Secondly, the use of the words ‘oxygen’ and ‘lifeblood’ shapes our understanding of terrorism financing in a particular way. The words evoke an image of terrorist money continuously circulating over the world like blood through the body, and imagine terrorism as a body that can be starved off by depriving it of oxygen or blood. Michael Chertoff, at that time the head of the Criminal Division of the US Department of Justice, made this reasoning explicit when he said ‘the lifeblood of terrorism is money, and if we cut off the money, we cut off the blood supply’ (Associated Press, 25 October 2001).

Although the use of metaphors may initially aid the understanding of an intangible concept by changing it into a more familiar and often tangible equivalent, some subtle meanings may be lost where the metaphor and reality part company (Paul, 2010, p. 1). Hence, understanding terrorism financing appears to become easier when the seemingly obscure and intangible practices of terrorism financing are transformed into more familiar concepts of the body. However, speaking about terrorism financing in terms of lifeblood and oxygen also makes combating terrorism financing appear as something obvious and uncontroversial, as if it emerged from laws of nature. It shapes our understanding of combating terrorism financing as a natural response to terrorism, erasing other interpretations.

This chapter challenges the perception that this new focus for fighting terrorism is natural and self-explanatory. Instead, it considers the European fight against terrorism financing, or CFT policy, as a construction reflecting certain political choices. Inspired by Foucault’s concept of genealogy, the objective of this chapter is to make the evolving representation of terrorism financing visible by providing a critical historical perspective. Examining this fight through what Foucault has called a ‘history of law’ (2008, p. 35), it traces when, why, and how finance came to be seen as crucial for the EU’s current fight against terrorism, while it was considered irrelevant when various European countries struggled with persisting terrorism in the 1960s and 1970s.
In addition, writing a genealogy goes beyond legal analysis or questions of efficiency; it entails denaturalising and destabilising the European fight against terrorism financing. This involves analysing the construction of truths and highlighting the counter-discourses concerning the European CFT policy that disappeared during the negotiation process and in the written legal outcomes. It entails mapping shifts in meaning and taking into account the societal and political context in which the decision-making took place. Furthermore, it means looking beyond the ‘9/11’ attacks and connecting the current European CFT policy with pre-existing policies and policy debates.

In the broader context of this thesis, the theoretical concepts and the methodological principles presented in this chapter underpin and enable the subsequent chapters. As a theoretical tool, genealogical analysis draws attention to the rationalities that shape practices of governing. It helps in questioning and opening up a subject. Consequently, if terrorism financing is not assumed to be the lifeblood of terrorism, other questions can be raised and it becomes possible to criticize (the prominence of) the fight against it. What are for instance the political and societal implications of this fight? Do the measures taken in the name of this fight affect ‘ordinary citizens’, and if so, how? What forms of governing do they create and is this desirable? Writing a genealogy helps to analyse the rationality of government (i.e., governmentality as a representational practice). It is complementary to the professional field in two ways. While the field approach concentrates on the practical aspects of governing, writing a genealogy provides an analysis of the construction of techniques of governing. In addition, like field theory, it focuses on the importance of struggles and negotiation in the exercise of power.

This chapter is divided into four sections. The following section introduces the meaning of genealogy and a corresponding methodology proposed by Foucault in more detail. The subsequent section presents a genealogy understood as Herkunft (on this term and the contrasting term Entstehung, see below). This means tracing the descent or the multiple beginnings of the EU’s fight against terrorism financing. How has terrorism financing emerged as a problem and how has what constitutes terrorism financing been defined? Next, genealogy is understood as Entstehung, examining the history of ideas leading to the emergence of the EU’s fight against terrorism financing. This section considers and questions the dominant discourses of combating terrorism financing and examines the position of these discourses in relation to other discourses in society. The last section of this chapter discusses how the birth of the EU’s fight against terrorism financing ‘became possible’ (Foucault, 2008, p. 33).
3.2 Genealogy and the Genealogical Method

In his essay ‘Nietzsche, Genealogy, History’, Michel Foucault introduces the concept of genealogy and, in his lectures at the Collège de France, he suggests a methodology for analysis. The common understanding of genealogy is that of tracing the ancestry of an individual. The further one traces back the family tree the more diverse the ancestors will be and the lesser the relations between one another. Yet, the individual relates to all these different ancestors. Foucault argues that this practice of tracing of origins can also be used to question objects or concepts that ‘we tend to feel [are] without history’ (Foucault 1977, p. 139) and to examine them in new ways. The objects examined or suggested by Foucault and many of those inspired by him include, among others, ‘love, conscience, instincts’ (Foucault, 1977, pp. 139-140), reason and freedom (Foucault, 1977, p. 142), the market (Foucault, 2008, p. 35), finance (De Goede, 2005), benchmarking (Larner & Le Heron, 2004), and capital (Pasquino, 1991).

This chapter offers a genealogical analysis of the European fight against terrorism financing and studies how this fight became constituted as an object of governing in the European Union. Compared to some of the more abstract objects cited above, this is a more specific object. Its scope is limited by the focus on the EU and the initiatives to combat terrorism finance and in particular the use of financial data. It also needs to be emphasized that a genealogy of the fight against terrorism financing is different from a genealogy of terrorism financing. In fact, the understanding of terrorism financing and the emergence of CFT policies do not necessarily mirror the actual practices of terrorism financing but they rather relate to the perception of how terrorism is financed, framed in such a manner that a particular response becomes possible.

Genealogical analysis implies looking differently at objects that are often thought of as stable by investigating their construction. It does not claim to search for ‘the truth’ but considers the construction of truths that are always controversial. It means making visible that objects acquire their meaning in a piecemeal fashion. It emphasizes that meaning is shaped in line with certain interests and necessities. Struggles, negotiations, and incidents define what becomes considered as priorities and what as trivial. What counts at a particular moment and what does not count? In other words, writing a genealogy may reveal relations of power that structure our understanding of the world.

Moreover, carrying out a genealogical analysis means refusing to understand history as a set of linear developments pointing in one clear direction. On the contrary, it stresses the
changes in meaning, the conflicts, and the discourses constructing the object that occurred over time. Objects may even disappear from societal discourses when they are (temporarily) considered irrelevant. Foucault argues that even those instances when an object is absent or the moment when it remains unrealized should be defined to underline the discontinuities that have taken place in the history of the object (1977, p. 140). However, although a non-linear approach may strengthen alternative understandings of the object, there is inevitably a limit to the number of perspectives and the timeframe that can be taken into account. Moreover, too much detail may obscure as much as a univocal linear analysis of the object. Foucault’s statement that it is equally important to highlight discontinuity and absence must therefore be qualified. But while it might prove very difficult to answer the question why something did not exist or was not considered relevant, describing and explaining absence does reveal something about how we structure the world.

In addition, writing a genealogy entails showing how something ‘became possible’. This involves ‘taking up a history of truth under different angles’ (Foucault, 2008 p. 33), or rather, ‘taking up a history of truth that is coupled, from the start, with a history of law’, (ibid., p. 35). In other words, it implies mapping which discussions took place and which other options were considered before a decision was taken or a law was adopted. Genealogy also investigates how the making of law, and consequently what is legal and illegal, is coupled to ‘truth’ and how this influences our understanding of the world. Analogous to Foucault’s assertion that certain conditions in the rules of medicine had to be met to hold a discourse on madness (2008, p. 36), there is a need for an investigation of how and when terrorism finance became perceived as a problem that required governing on an EU level. Essentially this implies mapping the (shifts in) meaning of the object over time and the conditions facilitating the construction of the object.

Instead of searching for the origin of an object, Foucault asserts that writing a genealogy rather involves an examination of their Herkunft and Entstehung. Although these two German words can both be translated as ‘origin’, Foucault emphasizes that they have distinct connotations. Herkunft refers to group affiliation and stresses the documentation of the genealogy of the object, which may have sprung from countless beginnings or origins (Foucault, 1977, p. 145). To examine the Herkunft of an object is to destabilize a univocal and stable understanding of that object by reintroducing parallel developments and moments of prioritization, redefinition, and absence. On the other hand, Entstehung signifies the emergence of ideas resulting from negotiations, discussions and struggles reflecting the relations of power and domination in a particular instance (ibid., p. 148). By bringing back
forgotten contexts, marginalized discourses, and shifts in meaning, the political choices upon which the object is constructed become visible.

In his lectures on *Security, Territory and Population* at the Collège de France in 1977-1978, Foucault sets out three methodological principles for genealogical analysis. These principles help to look at objects in a different manner and to make the relations of power visible. I will now describe the three principles and the questions that they may raise in the context of this thesis.

The first principle involves a shift of the locus of analysis to the outside of the institution (Foucault, 2007, p. 116). Instead of analysing the institution from within, for instance its structures, its institutional destiny, and the deployment of specific knowledge, Foucault suggests analysing institutions from the outside, in interaction and in relation to a broader framework directed to society as a whole. The displacement of the institution entails ‘going behind the institution and trying to discover in a wider and more overall perspective what we can broadly call a technology of power’ (Foucault, 2007, p. 117). As such, the institution not only governs but it is placed in a broader framework in which it also becomes an instrument of governing. During his lecture Foucault illustrates this shift through the example of a psychiatric hospital. He argues that the psychiatric hospital can only be understood as an institution on the basis of something external and general that is the psychiatric order, or beyond that, public hygiene (2007, pp. 116-117). From the latter perspective the psychiatric hospital is a means to intensify medical power and to realise the psychiatric order.

Similarly, instead of only studying the laws, initiatives, and statements that make up the European fight against terrorism financing, to step outside the institution means placing this fight in the broader framework of the War on Terror and global processes of securitization. How does the European fight against terrorism finance enable the objectives of the War on Terror and which forms of power and domination are exercised through the fight against terrorism financing? In the following chapters of the dissertation this shift outside the institution is realised through the notion of the field, which allows for analysing a broader set of participants. The last section of this chapter considers the shifts in the understanding of terrorism financing that took place in response to the declaration of the global War on Terror. The last chapter of this thesis considers how power is exercised through the European fight against terrorism financing in the context of the War on Terror.

The second principle is to substitute the external point of view of strategies and tactics for the internal point of view of function (Foucault 2007, p. 118). Foucault takes up the case
of the prison to describe what he calls the displacement to the outside of the function. He asserts that it is necessary to resituate the prison in the general economy of power by contrasting the expected (ideal) functions of an institution and the optimal way of exercising them against the real functions assured by that institution (ibid., pp. 117-118). Drawing a historical assessment of what is intended and what is actually achieved allows for highlighting the technologies of power that are at work. As such we discover that the functions of the prison go beyond individual punishment; the prison exercises a much broader power of normalization over society (Foucault, 1995).

In a similar vein, one may investigate the ideal and the ‘real’ or alternative functions of the EU’s fight against terrorism finance. As discussed in the introduction of this thesis, the stated objectives of the fight against terrorism financing can be summarized as preventive, deterrent, and investigative. However, whether consciously created or not, the implications of this regulatory framework go beyond these ideal functions and affect society as a whole. For instance, by defining what normal or suspicious financial transactions are, these measures exercise a normalizing power over people’s financial behaviour. The case studies and the last chapter in this thesis will address the ‘real’ functions of the EU’s CFT policy in more detail. This chapter will highlight how the ideal functions of the fight against terrorism financing came into existence.

The displacement of the locus of analysis outside of the object constitutes the third methodological exercise. A shift outside the object means questioning ready-made definitions of an object and investigating the field of truth by which the object was constituted. For clarification Foucault uses the example of madness. On the one hand, madness is not a tangible object and it can be argued that it does not exist, at least not in a material manner. On the other hand, material absence does not mean that madness is nothing (2007, p. 118). It is a constructed phenomenon that was able to surface under certain circumstances and of which the meaning or definition may change over time.

With respect to the EU’s fight against terrorism financing, an examination outside the object implies asking how terrorism financing emerged as an important aspect of the fight against terrorism and which preconditions were needed to make this fight possible. The next sections of this chapter will reconstruct how targeting terrorists’ money became a crucial aspect of combating terrorism and which discussions, struggles, and negotiations took place for CFT to become a security issue and an official EU policy in 2001.

In sum, the three displacements proposed by Foucault’s methodology are tools for conceptualization that help to look at objects differently. Questions following from the
displacement of the institution, the function, and the object offer three approaches to make technologies of power more visible. Analytically separable, Foucault’s methodology actually results in much overlap when one tries to ‘apply’ the methodology in a structured manner. Placing the function in a broader perspective automatically entails taking into account more institutions. Describing shifts in the object is very difficult without relating it to either functions or institutions. Hence, the three forms of displacement are strongly interrelated and exact labelling of these displacements is neither self-evident nor of key importance. Rather than rigidly applying the proposed methodology for genealogical analysis, these thinking tools can be used in a more flexible manner to discuss the genealogy of the European fight against terrorism finance in terms of Herkunft, Entstehung, and birth.

3.3 The Construction of Terrorism Financing as a National Security Issue

Accounts of policies combating the financing of terrorism often identify the 9/11 attacks as the origin of, or as a major turning point in, thinking about terrorist money as an urgent security issue. Although some authors briefly mention earlier initiatives such as the adoption of the UN Convention on the Suppression of Terrorism Financing in 1999, these initiatives are often presented as rather insignificant to decisions that were made after 11 September 2001. While claims that the attacks ‘precipitated a sea change’ (Eckert, 2008, p. 210), ‘changed the international approach dramatically’ (Biersteker et al., 2008, p. 236), or ‘changed everything’ (Meyers, 2005, p. 34) are not necessarily incorrect, they do obscure a number of other interpretations. Identifying the 9/11 hijacking attacks as the origin offers a reduced and linear explanation and justification for the existence of a European CFT policy. This is problematic since it excludes earlier or parallel developments from consideration. Moreover, a focus on origins pushes questions about the construction of the content of the policy to the background by making it appear as if combating terrorism financing descends from that particular day without any connection to the past.

Investigating the Herkunft, or descent, of an object highlights the multiple ideas and initiatives that have shaped its meaning. ‘The search for descent is not the erecting of foundations: on the contrary, it disturbs what was previously considered immobile; it fragments what was thought unified; it shows the heterogeneity of what was imagined consistent with itself’ (Foucault 1977, p. 147). By tracing both the terminology and the practices of the European fight against terrorism financing, its multiple beginnings can be placed further back in time. Yet the purpose of this exercise is not merely to look beyond the
Writing a genealogy understood as *Herkunft* disturbs the univocal understanding of an object, it makes shifts in the meaning of the object visible, and it provides a deeper understanding of the assumptions and decisions the current understanding of an object is based on. In order to do this, the *Herkunft* of the European fight against terrorism financing must start at the moment that terrorism became an important political issue in Europe and the first international and European initiatives to combat terrorism were developed.

Although terrorism has been present in many societies and has existed for centuries, political and academic preoccupation with terrorism increased considerably in the 1960s and much more so in the 1970s (Wilkinson, 2011). In response to a series of terrorist acts various international organizations adopted legal instruments. The United Nations adopted a first Convention on aircraft safety in 1963. In the 1970s, two other conventions were adopted related to aircraft safety and one by the end of the decade on hostage taking. Furthermore, beginning with the Bonn Summit in 1978 terrorism appeared officially on the agenda of the G7 countries (Masciandaro, 2004, p. 5), which aimed to put an end to air hijacking by furthering international cooperation on issues such as transportation security, denying arms and free movement to terrorists, and improving the exchange of information.

In the mid-1970s, both the Council of Europe and the twelve member states of the European Community (EC) took initiatives to combat terrorism. The former adopted a Convention for the Suppression of Terrorism in 1977, encouraging the extradition of suspected terrorists. The EC member states responded to domestic terrorism, for instance the *Brigate Rosse* in Italy and the *Rote Armee Fraktion* in Germany, by creating the informal and initially secret TREVI (Terrorisme, Radicalisme, Extémisme et Violence Internationale) group for ad hoc police cooperation against terrorism. Following a decision of the EC Ministers of Interior in 1976, five working groups were established, but only the one on terrorism played a prominent and operational role. In this framework, Interior Ministers and national top security officials met on a regular basis and established counter-terrorism policies (Den Boer, 2003, p. 1). More specifically, they produced joint analyses of terrorist threats and shared strategies and tactics to counter international terrorist groups; they also set up a fax system for information exchange (Bunyan, 1993, p. 2).

Academic literature from the 1970s mainly consists of case studies of terrorist groups that operated in various countries as well as some attempts to theorize terrorism. The main issues discussed in this literature were: the causes of terrorism (Crenshaw, 1981), the definition of terrorism, and the creation of typologies of terrorism (see for instance Wilkinson,
Later studies of counter-terrorism efforts in the 1970s demonstrate that in Italy, Germany, and the Netherlands, governments were initially reticent to adopt specific counter-terrorism legislation or a coherent counter-terrorism strategy (Abels, 2007, De Graaf 2010). Only at a later stage did Germany and Italy adopt a range of specific counter-terrorism measures, which included increasing police forces and competences, improving the exchange of information among government services, and lowering the requirements for investigations and arrests (De Graaf, 2010).

Despite all the concern with terrorism, the legal, political, and academic response to the terrorist attacks throughout Europe in the 1970s did not include combating the financing of terrorism. States did not consider financing as a priority at that time as the amounts of money involved in terrorism were modest and investigating financial flows prior to the growth of the modern banking and credit industries would have been difficult (Donohue, 2006, pp. 326-327). Moreover, the debates on terrorism were structured around the question of the causes of terrorism. As the terrorism of the time was largely understood to stem from ideological struggle, decolonization, and opposition to autocratic or alien regimes, there was quite a bit of understanding of the causes of terrorism, and the political agendas of terrorists were taken seriously. In this context, focussing on the (il)legitimacy of the terrorists’ claims, the question of terrorism financing was considered pointless. Hence, in order to frame the financing of terrorism as a security concern and to have a discourse on combating terrorist finance, the understanding of terrorism itself needed to change.

In the 1980s a less tolerant stand, pointing out the devastating effects of terrorism, became the norm. This shift is nicely illustrated by contrasting the writings of terrorism researcher Paul Wilkinson from 1974 with an academic essay from an American perspective on the Western approach to terrorism from US diplomat Paul Bremer published in 1993. The former stresses that:

much of the dedicated support given to dangerous (and sometimes suicidal) international terrorist missions stems from conviction, anger, hatred and despair. [. . . ]The underlying causes of international terrorism are to a large extent to be found in political, social and economic problems that have defied attempts to resolve them by national governments, regional organisations and the United Nations. (Wilkinson, 1974, pp. 146-147)

Seventeen years later, Bremer states:
To nurture political will, the West had to change the whole dynamic of the international discussion of terrorism. We had to move away from the early 1970s defensive, muddled reaction to terrorist violence [. . .] We had to shift the public debate on terrorism from understanding the ‘root causes’ to condemning crimes terrorist commit. (Bremer, 1993, p. 257)

Hence, by actively framing terrorism as a crime, understanding the motivation of terrorists becomes redundant and is excluded from the debate.

Analogous to Woodiwiss’s (2003) analysis of the concept of organised crime, it can be argued that terrorism had become ‘a threat to society rather than a part of society’ (p. 3). In order to fight this threat, terrorists themselves, rather than the causes they were said to strive for, became central in the discourse. Consequently, the relevant question became how to stop these individual groups of evildoers from committing attacks on society. Part of the response to this question appeared in journalistic work from the late 1970s and 1980s. For instance, a slightly sensationalist book by the journalists Christopher Dobson and Ronald Payne (1979), with full colour pictures of weapons commonly used by terrorists, includes a chapter on terrorist money or ‘the budget of death’. Another journalist, James Adams (1986), wrote a less passionate book called The Financing of Terror, involving detailed research into the financial sources of terrorist groups. He states that ‘much has already been written concerning the motivation, structure and operations of international terrorist groups but one essential part of the terrorist equation has so far been ignored—money’. In these books money is considered as either ‘the fuel of terrorism’ (Dobson & Payne, 1979, p. 78) or as a tool for understanding the nature and workings of terrorism by following the money chain (Adams, 1986).

Although Adams’s book is occasionally quoted and praised in academic work, scholars in the 1980s and 1990s did not generally take up the issue of terrorism financing. Mainstream academic literature (Crenshaw, 1995, Freedman et al., 1986, Kushner, 1998, Laqueur, 1987, 1999, Schmid & Crelinsten 1993, Wilkinson, 1986a) often briefly mentioned terrorism financing but only in the margins of the larger debate on terrorism. When financing was discussed, it was mainly in relation to the issue of ‘state-sponsored terrorism’, which became a popular term in the 1980s. State terrorism having become ‘a major preoccupation of Western governments’ (Roberts, 1986, p. 11), Iran, Iraq, Libya, Syria, Cuba and to a lesser extent Sudan and North Korea were often mentioned as state sponsors of terrorism. Interestingly, three of these countries, Iran, Iraq, and North Korea, were later included in the ‘axis of evil’ in President George W. Bush’s terminology of the ‘War on Terror’. Although state-sponsored terrorism has existed for centuries, making states explicitly responsible for terrorist groups operating on their territory made it possible to deal with terrorism in the
Westphalian normative system of international relations. Consequently, hostile states, instead of certain violent groups or movements without a recognized status in international law, could be pointed out as the real cause of terrorism and could hence be sanctioned according to UN guidelines (Crenshaw, 1995, p. 10).

The concept of state-sponsored terrorism made it possible for states to issue international sanctions in order to eliminate terrorism. The purpose of these sanctions was to change the attitude of states supporting terrorism as well as to stigmatize terrorism (De Jonge Oudraat, 2003, p. 167). Individual states, most prominently the US, but also groups of states such as the EC’s TREVI group, have adopted various diplomatic, economic, or even military sanctions to combat the funding of terrorism by states (see, e.g., Jimenez, 1993, Kash 1998). Since terrorism financing was defined as being intimately related to states and because of the freedom of the UN to respond to a wider range of threats after the Cold War, the UN Security Council could also take action.

Throughout the 1990s, which has been called the ‘sanctions decade’ (Cortright & Lopez, 2000), the UN issued three sanctions regimes combating state support for terrorism. In 1992 and 1993, sanctions, including travel restrictions, an arms embargo, and the freezing of Libyan funds and financial resources in other countries, were issued against Libya in response to the 1988 Lockerbie attack. In 1996 Sudan faced diplomatic sanctions and the threat of travel restrictions, punishing the country for offering shelter to the suspects in the attempt to assassinate Egyptian President Mubarak. In 1999, the UN Security Council adopted resolution 1267 against the Taliban regime in Afghanistan for sheltering Osama bin Laden and his associates who were accused of, among other things, the 1998 US Embassy bombings in Nairobi and Dar-es-Salaam and of providing sanctuary and training international terrorists. An amended resolution was adopted in 2000 (UNSCR 1333) expanding the travel ban and asset freezing to Osama bin Laden, the Al Qaida network, and their associates. This sanctions regime is significant for the shift towards more selective ‘smart’ sanctions targeting individuals rather than states. Moreover, after 9/11 resolution 1267 constituted one of the first measures on which the War on Terror was built.

Parallel to the international law approach to terrorism financing, another ‘beginning’ emerged in the 1980s and 1990s in the field of law enforcement. During these years terrorism financing appeared first as an aspect of the War on Drugs and subsequently in relation to organised crime. In the early 1980s ‘narco-terrorism’ became a fashionable term linking terrorism and (revenues from) the drug trade. Initially, the term was coined to describe the violent attacks of drug dealers against the Peruvian anti-narcotics police (Smith, 1991), but
quickly the understanding of the US government became predominant, defining narco-terrorism as the involvement of terrorist organizations in the production and trafficking of drugs. Groups that were typically mentioned in relation to narco-terrorism included Colombian movements such as the FARC and M19, but also groups like the Palestine Liberation Organization (PLO), the Irish Republican Army (IRA), and, beginning in the 1990s, the Taliban.

In the 1990s, terrorism became increasingly linked to the overstretched notion of organised crime. This ‘major threat package’ (Beare, 2003, p. xv) referred to a range of threats including drug trafficking, corruption, and money laundering and justified a multitude of national and international measures. Although there was no strong empirical evidence that a nexus between organised crime and terrorism really existed, the mainstream opinion seemed to be that ‘to find examples of cooperation’ [. . .] ‘would be hardly surprising’ (Williams, 2008, p. 127). For instance, the UN’s Economic and Social Council did not ascertain that any significant links existed but it considered both phenomena as dangerous and a formidable challenge to governments (UN, 1996a). Organised crime and terrorist funding was also discussed in parallel during the G8 Justice and Interior Ministers’ virtual meeting on 15 December 1998, which was exclusively dedicated to this topic.

Although most academic literature in the 1990s discussed terrorism financing in terms of state sponsorship and devoted only a few sentences or paragraphs to other fundraising techniques, two influential scholars published on the link between organised crime and terrorism. In a comparison, Schmid (1996) concluded that although terrorism and organised crime are distinct phenomena, ‘there are links’ between them (1996, p. 40). Lacqueur (1999) dedicated a whole chapter of his book The New Terrorism to the relation between terrorism and organised crime, asserting that ‘in some cases a symbiosis between terrorism and organised crime has occurred that did not exist before’ (1999, p. 211).

The association with the declared War on Drugs and the war on organised crime added a new dimension to the understanding of terrorism. As the attitude towards criminal behaviour changed in the mid-1980s, governments and law-enforcement agencies became increasingly interested in punishing and deterring criminals rather than considering their economic, psychological, and social conditions. Highlighting the potential links between terrorism and the drug trade or organised crime helped to stigmatize and delegitimize terrorist organizations and those who help them as evil criminals. The attractiveness of this strategy for political purposes is illustrated by Adams’s examples of Israeli propaganda exaggerating the PLO’s involvement in marijuana exportation through Lebanon and of a US Senator accusing Cuba of
Machiavellian support of terrorist groups’ use of the drug trade to try to destabilize American society (1986, pp. 215-234).

Moreover, it became possible to extend governments’ responses to the drug trade and organised crime, in particular their anti-money laundering initiatives, to terrorism. In the 1980s follow-the-money practices became a central objective in the fight against drugs and organised crime. Governments justified this focus on money on the one hand by arguing that the financial power of drug syndicates and organised crime groups could be a potential danger for global financial institutions, the formal economy, and society in general (Gilmore, 2004, Tsingou, 2010). On the other hand, it was believed that in order to deter and punish criminals and terrorists, they needed to be deprived of their motive, in terms of profit, and/or their means, in terms of operating capital (Naylor, 1999). In the words of Warren Christopher, US Secretary of State at that time, it was not enough to condemn the terrorism of Hamas, Hezbollah, and other extremists. ‘A real penalty must be imposed. We must join together to turn off all foreign sources of funding for terrorism’ (speech of 1994 quoted in Kash, 1998, pp. 48-49, emphasis added). This association of terrorism financing and the follow-the-money philosophy constituted an essential step in the construction of the post-9/11 fight against terrorism financing.

It must be emphasized, however, that although the international and national initiatives against money laundering flourished, most notably through the creation of the Financial Action Task Force (FATF) in 1989, terrorism and its financing were not central in these initiatives. In the absence of a suitable definition of terrorism, only a few states undertook action to criminalize terrorist funding (Gilmore, 2004, Pieth, 2002). The UK, for instance, in response to the conflict in Northern Ireland, had already adopted laws criminalizing the financing of terrorism in the form of the Northern Ireland Emergency Provisions Act in 1973 and the Prevention of Terrorism Act in 1974. In the 1980s the provisions in these acts were gradually expanded and strengthened and included: the forfeiture and freezing of terrorists’ assets, the obligation to report information on money allegedly related to terrorism, and the criminal liability of those who (help) fund terrorism (Bonner, 1993, pp. 180-181, Donohue, 2006, pp. 325-343). In 1996, the US adopted the International Crime Control Act, expanding the list of money-laundering predicate crimes to include terrorism (Kash, 1998, p. 167). The FATF anti-money laundering guidelines left it up to the member states to decide on including terrorism as one of the predicate offences. This was also the case for the EC’s First Anti-Money Laundering Directive of 1991 (Mitsilegas, 2003, p. 99).
In the 1990s, terrorism finance also started to be defined as a crime in itself, autonomous from drug trafficking or organised crime. In 1992, the UK hosted seminars within the TREVI framework during which the Judicial Cooperation Working Group started investigating terrorist funding and laws in each country (Bunyan, 1993, p. 2). One year later, Jimenez (1993) declares in his study of terrorism in Spain that ‘international action needs to be taken to cut the flow of funds to terrorist groups. It becomes essential to investigate financial resources of these groups’ (1993, p. 118). In the mid-1990s the funding of terrorism was discussed during several G7/G8 summits and states were encouraged to take measures to prevent terrorists from raising funds (G7 1995, 1996a, 1996b, G8, 1998). At the 1996 Sharm el-Sheikh Summit for instance, the G7 called for ‘the ending of terrorism by cutting the flow of money from private Arab individuals to terrorist groups’ (quoted in Kash 1998, p. 169).

Political leaders, especially in the US, were increasingly concerned about wealthy Arab businessmen and Islamic leaders, such as Osama Bin Laden, financing terrorist groups throughout the Middle East (Donohue, 2006, p. 350, Kash, 1998, p.169, Laqueur, 1999, p. 182). At the same time, the prevention of terrorism funding also made its first appearance in a UN resolution on Measures to Eliminate International Terrorism (1996 UN Res. 51/210).

It is important to highlight that by defining terrorism financing as a separate problem, it became possible to add a new element to its definition. It opened up the understanding of terrorism financing for funding unconnected to criminal activity. Consequently, it became possible to discuss the use of charities as a vehicle for financing terrorists. Beginning in the mid-1990s states were urged to

prevent and take steps to counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have, or claim to have charitable, social or cultural goals, or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing, and racketeering. (G7, 1996b, UN 1996b)

The understanding of terrorism financing as being either legally or illegally acquired money for the purpose of preparing or committing terrorist acts is still an important assumption in the War on Terror.

The 1999 UN Convention for the Suppression of the Financing of Terrorism, proposed by France and supported by the G8, was a milestone for the construction of the notion of terrorism financing in the sense that it established combating terrorism financing as an object of international law. Compared to previous UN counter-terrorism conventions, ‘the Terrorist Financing Convention is in fact a radically different instrument which breaks new ground with regard to not only the obligations of states but also, in particular questions of individual
criminal responsibility’ (Letho, 2008, p. 344). As a legal instrument it is remarkable in the sense that it criminalizes behaviour that is non-violent in itself and not necessarily illegal. Unlike terrorism, which consists of violent acts committed in the name of a political ideal, the act of terrorism financing does not involve violence and does not make victims in a direct and obvious manner. Moreover, the sources of terrorist money may consist of legal donations to charities or revenues from legitimate businesses that only become criminal due to the intention or knowledge that the money will be used for terrorism.

Another important element of the Convention is its focus on prevention (Letho, 2008). Instead of prosecuting suspected terrorists and punishing state sponsors of terrorism after the occurrence of a terrorist act, the Convention has been designed effectively to cut off financial flows of terrorist networks in order to prevent terrorist acts from happening. In this respect it can be argued that the Convention introduces into international law the focus on prevention and non-state actors that characterize the follow-the-money methods. After the 9/11 attacks, the rapid ratification of the Convention became one of the priorities in the early days of the War on Terror.

The investigation of the beginnings of the fight against terrorism financing shows that the role of the European Union in the definition of the problem of terrorism financing is strongly tied up with international initiatives undertaken in the context of the UN, the G7/G8, and the Council of Europe and propelled by the US but also by EU member states, like France and the UK, and to a certain extent the TREVI group. The analysis of international initiatives and academic literature has shown that to frame the financing of terrorism as an urgent security problem, the perception of terrorism needed to be shifted. Instead of understanding the root causes of terrorist acts, terrorist groups and their financing were increasingly qualified as criminal and a threat to (democratic) society. Subsequently, a link was made between terrorism and state sponsorship permitting this threat to be dealt with in the framework of international law, notably through economic sanctions. Parallel to this, first on a national level in some countries and then ‘exported’ to an international level, terrorism was debated in relation to the War on Drugs, organised crime, and financial crime measures. Through the image of wealthy terrorist organisations and donors, terrorism financing was redefined as a crime on its own, opening up new possibilities of governance. Understanding these multiple beginnings through which terrorism financing was defined and tracing the evolution in the understanding of terrorism financing is essential in order fully to appreciate the CFT policies that emerged after 11 September 2001, when terrorism financing became an issue of national security.
In the first hours after the 9/11 attacks the perception of terrorism shifted again. Terrorism was no longer perceived as a criminal act but was interpreted as a declaration of war. Within two weeks of these attacks ‘financial warfare’ (Navias, 2002, Shields, 2004) or a ‘financial war on terror’ (Warde, 2007) became one of the prominent tools for combating terrorism. This new terminology and the sudden urgency of combating terrorism opened up a new range of policy opportunities; but the declared war on terrorism financing also built upon the earlier shifts discussed in this section. The (dis)continuity in the understanding of terrorism financing after 9/11 will be discussed in more detail in section 3.5. The next section provides a fuller picture of the importance of terrorism financing in relation to other societal issues prior to 9/11.

3.4 The Emergence of Dominant Discourses on Terrorism Financing

In her influential book *Terror Inc.: Tracing the Money Behind Global Terrorism* (2004), Loretta Napoleoni argues that the financing of terrorism has developed over the recent decades into a ‘new economy of terror’. Starting her analysis from the Cold War, she discusses how terrorist organizations were first financed through direct state involvement and state sponsorship, followed by a phase of ‘privatization’ of terrorist financing, for example through narco-terrorism, to become highly sophisticated private enterprises using advanced business techniques and financial vehicles in the last decade of the millennium. Although her analysis is impressively detailed, the structure of her book represents terrorism financing as a linear development reflecting the successive mainstream discourses on terrorism financing and disregarding information that does not seem to fit within the story line.

The reconstruction of the *Herkunft* of terrorism finance as an object requiring governing, on the contrary, does not suggest a sequence of different phases but rather parallel and unrelated beginnings from various sources. Yet, the reconstruction of *Herkunft* remains a rather smooth story deprived from debate and controversies. While filtering out these debates enhances clarity and readability, the construction of the notion of terrorism financing obviously did not take place in a political and societal vacuum. In this section genealogy is understood as *Entstehung*. It further destabilizes the linear narrative by investigating the struggles, negotiations, and incidents that contributed to shaping the understanding of terrorism financing and the fight against it.
Genealogy, understood as an analysis of Entstehung, investigates the emergence of ideas and the relation between different forces, ‘the hazardous play of dominations’ over time (Foucault, 1977, p. 148). Hence, it must trace the interaction of mainstream discourses with alternative discourses, and with absences and discontinuities. Entstehung is a continuous process of transformation of the meaning and purpose of objects. In order to provide a fuller understanding of the political context from which today’s CFT measures in Europe emerged (see chapter 1), this section traces some of the discourses that have been overshadowed or abandoned in favour of more dominant discourses, it recalls the uncertainties and controversies that have been forgotten, and it highlights alternative political choices and conclusions that were not drawn.

When terrorism finance became a concern in the 1980s, political leaders and academics understood terrorism financing as an activity carried out by states. Stressing the importance of state involvement, Wilkinson asserted that over 25% of terrorist attacks were state-sponsored or state-directed, ranging from moral and diplomatic encouragement to providing weapons, training, funds, and sanctuary (1986a, p. 275, 1986b, p. 47). However, this means that the remaining almost 75% of the attacks were not financed through states. Donohue’s examination of Northern Irish paramilitary funding illustrates these numbers. In the 1970s the Provisional Irish Republican Army (PIRA) received some money, arms, and equipment from Libyan dictator Moammar Gaddafi, but Irish terrorist groups raised most of their money through donations, tax fraud, extortion, drinking clubs, black taxis, smuggling operations, drug trafficking, and kidnapping (2006, pp. 314-321). Yet the importance of financial sources beyond states seemed to be entirely ignored in the discourse on terrorism financing at that time. In a similar vein, the issue of state-sponsored terrorism became absent or marginal as the focus of terrorism financing shifted in favour of links between terrorism and organised crime or charities in the 1990s and to alternative remittance systems like hawala after 9/11. Nevertheless, as evidenced by Wittig’s (2009) case study of the Chechnya conflict and the report of the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission) (2004), states continue to sponsor terrorist movements. Likewise, the Commission’s report also states that ‘[its] investigation uncovered no evidence that the 9/11 conspirators employed hawala as a means to move the money that funded the operation’ (2004, p. 516).

In the 1980s and 1990s, the increasing popularity of the follow-the-money methods in the War on Drugs and against organised crime with which terrorism became associated overshadowed critical perspectives that questioned the effectiveness and logic of attacking
financial assets. Naylor (1999), for instance, challenges the assumptions on which the proceeds-of-crime theories are based. He argues that seizing assets is not a strong deterrent to criminal behaviour because criminals are on the one hand not only motivated by profits and on the other hand taking away their profits may even force them to continue their crimes as they may have few alternative career paths. Moreover, seizing assets does not punish criminals very severely, as they often consider illegally earned income as ‘easy-come, easy-go’. Likewise, Naylor states that the investment of illegally earned money in the legitimate economy is unlikely to corrupt markets and legitimate businesses. He is also critical of the idea that asset seizure takes away the capital essential to commit future crimes (pp. 11-15). These arguments are perhaps even truer for terrorists, as self-enrichment is usually not their main objective. Yet, arguments against follow-the-money methods remained marginal in this period.

The definition and recognition of terrorism financing as a problem for international politics has also been source of intense and fundamental debates. Notwithstanding the relatively swift negotiations and the unanimous adoption of the 1999 UN Convention for the Suppression of Terrorism Financing, ‘terrorism financing was not a familiar concept’ and it was ‘not easily accepted or readily understood’ (Letho, 2008, p. 357). As mentioned above, it was not evident how terrorism financing constituted a crime since the criminality of the act is purely based on terrorist intent and it does not (necessarily) involve illegal transactions or violence. Therefore, some Western European States questioned the need for a separate convention on terrorism financing, as they considered that financiers of terrorism should be deemed accomplices of terrorism as defined in other international conventions. Other states in Western Europe and beyond were in favour of establishing terrorism financing as a principal offence by adopting a new convention, because they considered that financiers should face the same treatment as terrorists (Aust, 2001, p. 288).

A second important contentious issue was the definition of terrorism on which the crime of terrorism financing fully depends. So far, states had not succeeded in reaching an internationally accepted definition of terrorism due to its political sensitivity. However, if one were to criminalize terrorism finance, it was not possible anymore to elude the definition of terrorism. Two approaches were advanced: a list enumerating specific terrorist offences circumventing the debate on the definition of terrorism, and what was called a mini-definition of terrorism – a definition of terrorism that goes beyond the listing of specific terrorist offences but that does not touch upon the question how terrorists differ from freedom fighters. Despite the fear of some states that the latter would delay or threaten the adoption of the
convention, it proved to be not too difficult to reach a consensus on a generic mini-definition of a terrorist crime (Aust, 2001, 292, Letho, 2008, p. 358). To emphasize the instability of terrorism financing as a natural object of international law, it is important to emphasize that the negotiation of the Convention was a ‘torturous path’ that ‘required creative thinking to overcome some new problems’ (Aust, 2001).

This examination demonstrates that the understanding of terrorism financing was not always clear-cut and that it was shaped in relation to other ideas and interests at stake in the debates. The conventional understanding of the European fight against terrorism financing can be further destabilized by a displacement to the outside of the object by widening the perspective of combating terrorism financing to the broader security debate. Then, it becomes clear that terrorism financing was considered a marginal topic before September 2001. To be sure, beginning in the mid-1980s small groups of ‘experts’, including journalists and academics, policy makers and politicians, contributed to the framing of terrorist financing as a security issue and advocated actively the adoption of strict financial counter-terrorism measures. States affected by terrorist violence and occasionally the UN and the G7/G8 adopted measures to combat terrorism financing. However, terrorism financing was never considered as a very urgent matter until the 9/11 attacks.

Several other discourses were given more priority in the 1990s, which thwarted terrorism financing being considered a crucial issue in the EU (see figure 3.1). First, with the exception of the United Kingdom, until the mid-1980s the question of cutting off terrorists from their money was not a political or law-enforcement priority since it was still believed that the amounts of money involved in terrorism were too insignificant to justify a great deal of effort in combating terrorism financing. As a result, in 2001 a legal framework dealing terrorism financing was close to non-existent in most EU member states. Moreover, in many member states terrorism was not a crime under the penal code because arriving at a definition of terrorism was too contentious. Indirectly, the EU’s Second Anti-Money Laundering Directive, adopted in 2001, would have covered the financing of terrorism if terrorism were nationally defined as a serious organised crime. However, according to two EU officials, ‘before 2001 terrorism financing was not in the minds of the European legislators’ (interview 10).
Secondly, governments and the private sector were not very keen on introducing additional burdens on the financial sector through enhanced monitoring and control. Supported by the ideology of free markets and deregulation, the financial sector argued that this extra administrative work would too heavy be a burden on businesses and would negatively impact on the national economy due to reduced competitiveness. These economic considerations were also taken into account in the UN resolutions and G7/G8 declarations on terrorism financing. These state that to combat the financing of terrorism regulatory measures may be adopted as long as they do not impede ‘in any way the freedom of legitimate capital movements’ (UN 1999).

A third important discourse concerned civil liberties. In 1999, the US Treasury proposed strengthened Know Your Customer (KYC) regulations. These proposals faced stiff opposition in the US Congress for anti-regulatory reasons, but the main issue at stake was concerns over privacy (Eckert, 2008, p. 213, Napoleoni, 2004, p. 219). The US Treasury received more than 200,000 negative responses to its proposal from all political backgrounds objecting to the proposed requirements for banks to obtain extensive private information (Donohue, 2006, p. 359). The KYC proposal was also criticized for being a potential source of mistrust and resentment of government, particularly among immigrants and minority groups, as well as an undesirable form of generalized spying and reporting on citizens (Cato Institute, 1999).
Fourthly, the use of sanctions became an object of debate in the late 1990s. Only sparsely used during the Cold War, sanctions became a popular tool to alter the behaviour of certain states in the 1990s. Yet, the use of general trade sanctions became a controversial issue given the devastating humanitarian consequences they have on the general population. Some countries refused to respect the sanctions out of concern for human rights, while others advocated the use of targeted or ‘smart sanctions’. Moreover, many states failed effectively to enforce economic sanctions for economic reasons. Some states even benefited from the economic sanctions as they took advantage of the reduced competition with other states that respected the sanctions and froze their trade with the sanctioned state. Vetschera mentions in this respect the case of Austria, which strengthened its economic and political ties with Libya while Libyan leader Gaddafi was subjected to sanctions for supporting terrorism (1993, p. 221).

The lack of urgency concerning terrorism and its financing was enhanced by the absence of major terrorist attacks on European or American soil during the 1990s. Although combating terrorism was featured under the third pillar of the Treaty of Maastricht as well as in a number of joint declarations and recommendations issued in the 1990s, the EU never intensified the intergovernmental cooperation initiated in the mid-70s through the TREVI group. With only a few EU member states affected by terrorism domestically in the 1990s, ‘it seemed as if the issue had temporarily disappeared from the stage’ (Den Boer, 2003, p. 1). Hence, the European institutions were dedicated to the issue only on paper, treating the threat as ‘rather hypothetical’ (Tsoukala, 2004, p. 418). Moreover, the fact that prior to 9/11 the EU member states had never agreed on a common definition of terrorism or on developing a common strategy, let alone a separate policy combating terrorism financing, demonstrates the insignificance and the politically controversial nature of the topic.

Similarly, Eckert (2008) asserts that at that time the issue received little public attention in the US; only a few regulatory programmes indirectly addressed the issue and its working remained mainly of interest only to a small group of experts (p. 209). Significantly, until 9/11 no one on the White House’s National Security Committee was working full-time on countering terrorism financing. Until then, terrorism-related issues were part of a broader set of transnational threats (interview 18).

The attacks of 11 September 2001 substantially changed the urgency and importance assigned to these different debates. The relative insignificance of the amounts of money involved in terrorism, the burden on the financial sector, the civil liberties implications of strengthened regulation, and the doubts about the use of UN economic sanctions, all became
subordinate to the increased urgency of terrorism. Although the 9/11 Commission would estimate in 2004 that the total costs of the attacks was between $400,000 and 500,000 and concluded that the costs of the attacks were relatively low compared to the amounts of daily financial transactions worldwide (2004, pp. 186-189), a radically different conclusion was drawn in the immediate aftermath of the 9/11 attacks. Starving terrorists of their money had become a key objective within global governance. Likewise, financial regulation, such as Know Your Customer requirements, had been strengthened with little opposition from politicians, civil society or the financial and banking sector. Their current scope exceeds by far any previous initiative, making the contentious proposals of the 1990s look soft. Civil liberties, it was now widely accepted, had to be traded in if they constituted an opportunity for terrorists to ‘hide’.

The atmosphere of emergency and emotion after the attacks was also a very political moment. The need to take symbolic and visible action and the enormous momentum for adopting new measures led to renewed attention to the ratification and implementation of earlier initiatives and openness towards new ones. As expressed by a former civil servant of an EU member state: ‘In the days and weeks after the attacks in the US, the Minister of Finance wanted the latest news on the financing of terrorism. Every morning at 8:30 he wanted to know what he could do, which measures to take. For him this was a moment to exist, a moment of political visibility’ (interview 19). Terrorism finance did not emerge immediately as a key priority in what soon became the War on Terror. It took a few weeks for terrorism financing to become visible as a tool for combating terrorism, but the War on Terror began with ‘a strike on the financial foundation of the global terror network’ (Bush, 2001b).

Within a few weeks and months a comprehensive global framework against the financing of terrorism started to take shape. The pre-9/11 reluctance of most countries untouched by terrorism towards combating terrorism financing was abandoned for a frenetic search for policy responses immediately after the attacks. Two weeks after the attacks UN resolution 1267 (adopted in 1999) was invoked to cut off the financing of Al Qaeda and its associates. A few days later the UN adopted resolution 1373 to suppress the financing of terrorism in general. Moreover, in the months after 9/11 a ratification wave took place with regard to the Convention on the Suppression of Terrorism Financing. The number of countries that had ratified the convention went from only four on 11 September 2001 to 158 countries, including the US, by 2007 (Biersteker, 2008, p. 235). This strong commitment to implement and further elaborate existing CFT instruments reflected the profound changes caused by the 9/11 attacks.
A similar transformation can be noted with respect to other international organizations and bodies such as the G7/G8, the World Bank, and the FATF. While their involvement in the fight against terrorism financing may seem important and natural today, this was not the case before and in the first days after the 9/11 attacks. Despite the G7/G8’s continuous attention and efforts to stigmatize terrorism in the international community prior to 9/11, its initiatives remained optional and they generally faced a low level of implementation. Likewise, other international forums such as ‘the World Bank, the IMF and the FATF did not consider terrorism financing as a pressing concern nor a topic with which the organization should be dealing’ (interview 18). The designation of the FATF as a key player in the fight against terrorism financing is revealing in this context. Despite the claims of the US Treasury Secretary at that time that ‘FATF is uniquely positioned to take up the challenges of terrorist financing’ (O’Neill, 2001) and of the FATF President that its ‘mission is to strangle and cut the supply of money and assets that is the lifeblood of terrorists’ (FATF, 2001), several options were on the table in the first weeks after the attacks. In France for instance there were very intense discussions as to ‘whether the FATF was the appropriate forum’ (interview 3). The Ministry of Finance strongly supported a global response through the FATF since it would strengthen the power of the Ministry of Finance. On the other hand the Ministry of Foreign Affairs was in favour of charging the UN with this responsibility, as this would simultaneously increase its own power. Another proposal was to create a new structure to deal with terrorism finance, but it was taken off the table as too ambitious to set in motion. Moreover, according to a civil servant, at that time ‘the initial reaction of the FATF, then presided by Hong Kong, was very reluctant’. ‘They didn’t want to deal with terrorism financing because it was too political. However, ‘the US, France, and the UK pushed for it to happen’. In the words of this same civil servant

I picked up my phone and called the Executive Secretary of the FATF and told him: “I think it is going to happen. The political pressure is incredibly strong so my advice is that you give a call to the FATF President and tell her that if she doesn’t want to do it, she is going to be pushed aside and completely out-maneuvered; we will do it (interview 19).

Despite these controversies and negotiations within international organizations and national bureaucracies, actors rapidly took up their new roles and their involvement in combating terrorism financing appeared to be widely accepted. Their reaction can be described as a mix between implementing and extending existing measures to combat terrorism financing, adopting measures that were already in the pipeline, and improvising new policy instruments. Parallel to and sometimes ahead of global efforts, European governments
and the EU institutions also felt a great urgency for joint action. This led to the conception of a European fight against terrorism finance.

3.5 The Birth of the European Fight against Terrorism Finance

The previous sections show that the first steps towards a European fight against terrorism financing were taken in a context in which both the understanding and the importance of terrorism (financing) had changed. Terrorism became defined in terms of war and the fight against it became the dominant discourse. From a policy perspective, the 9/11 attacks provided the political momentum to launch pre-existing initiatives that lay dormant within various national and European bureaucracies. This section discusses the birth of the European fight against terrorism financing and shows how it qualitatively differs from earlier initiatives in three ways. It became securitized, preventative, and partly privatized.

From the first days following the 9/11 attacks, statements made on behalf of the European Union explicitly included terrorism financiers in their condemnations of the attacks. In particular, representatives of the Council of the EU emphasized that ‘there will not be a safe haven for terrorists and their sponsors’ (EU Presidency, 2001, Council of the EU, 2001a, 2001b). The European Union urged member states urgently to ratify and implement pre-existing measures with regard to terrorism financing. In September 2001, only the Czech Republic, Greece, and Italy had signed the UN Convention for the Suppression of Terrorism Financing and the UK was the only member state to have ratified it. Hence, in an extraordinary meeting of the EU Justice and Home Affairs Ministers on 20 September 2001, all EU member states were invited once more ‘to ratify as soon as possible the relevant conventions to prevent and combat the financing of terrorism [. . .] and to take the implementing measures necessary” (Justice and Home Affairs Council, 2001). Within two weeks after the attacks of 11 September the European Union adopted the comprehensive EU Action Plan for Combating Terrorism. In this piece of soft law, ‘putting an end to the funding of terrorism’ featured for the first time as one of the ‘decisive aspects’ of the European fight against terrorism (Council of the EU, 2001c).

Instead of a crime with which states and the international community had to deal, terrorism financing was now mainly presented as an emergency security threat. It acquired ‘a shared critical salience [. . .] marked by the imperative of acting now’ (Balzacq, 2011, p. 32). The securitization of terrorism financing was attractive for politicians in the US and in the EU because financial measures could be adopted much more rapidly and results could be obtained
much easier and faster compared to any form of military retaliation. Financial investigators had quick successes by tracing the money trails of the 9/11 perpetrators, and by announcing the amounts of frozen terrorist assets political leaders could claim progress.

It is in this context that President Bush made the statement that money is the lifeblood of terrorism, quoted at the beginning of this chapter, and announced a first strike on the financial foundation of the global terror network with the stoke of a pen (Bush, 2001b). In what became called the ‘Rose Garden Strategy’, the Bush administration made regular announcements about the freezing of assets of suspected terrorism-related organizations and individuals. According to the New York Times, about 66 groups and individuals were blacklisted by the White House and officials claimed to have seized about $24 million in assets linked to suspected terrorists a month after the 9/11 attacks (Kahn & Miller, 2001). Five years later officials of the State Department claimed that approximately $142 million had been frozen and $65 million seized in countries around the globe since 11 September 2001 (Eckert, 2008, p. 230). The European member states also started blacklisting and freezing assets immediately after 9/11 and member states regularly communicated about the amounts of frozen assets in the media. However, figures on the amounts of frozen assets in the EU were not officially announced. Estimates vary from $2 million to $35 million between 2001 and 2004 (Bures, 2010, p. 423).

In addition to its initial focus on asset freezing, we have seen that the fight against terrorism financing was built on pre-existing anti-money laundering efforts as well as international economic sanctions. Many scholars have argued that the post-9/11 incorporation of CFT into the AML framework is problematic as these practices follow very different logics (see, inter alia, Donohue, 2006, Pieth, 2002, 2006, Roberge, 2007, Warde, 2007). Their main criticisms can be summarized as follows. Money laundering is driven by profits and the process takes place after illegal funds have been obtained. Terrorism financing, however, takes place before the crime and becomes criminal money after the transfer to an individual or group associated with terrorism. This is also called reverse money laundering or money dirtying. Contrary to money laundering, terrorism financing is considered as mainly driven by political goals. It usually involves small amounts of money and as mentioned above this money is not necessarily illegally derived. Moreover, including terrorism financing in the AML framework also assumes that terrorists use the formal financial sector to the same extent as money launderers.

Independent of the question whether the AML framework is suitable for combating terrorism financing, the detection of terrorist money through this framework also implied a
shift towards the prevention of terrorism. Although prevention was already part of the pre-9/11 follow-the-money vocabulary and practices, it must be stressed that a transformation had taken place. As rightly emphasized by Foucault, we should not assume words have kept their meaning and that ideas retained their logic (1977, p. 139). Before 9/11 anti-money laundering strategies were preventive in the sense that they were supposed to make crime less attractive as the laundered profits would be frozen or confiscated. AML regulation could not prevent the underlying crime from happening but aimed to detect the money-laundering process. After 9/11 financial regulation became preventive not only in the sense of dissuasion but rather as a precaution. The detection of terrorist monies would prevent attacks from happening and terrorists could be stopped before they could strike.

Taking a broader perspective, the measures to combat terrorism financing listed in the EU’s Action Plan can also be characterized by their preventive nature. The difficulties in agreeing on a common definition of terrorism that existed before 9/11 and that constituted an obstacle to adopting CFT legislation were rapidly resolved in the last months of 2001. In June 2002 the EU Framework Decision on Combating Terrorism was formally adopted. This Directive was strongly inspired by and built upon the preventive approach adopted in the 1999 UN Convention (Letho, 2008, p. 347). The Directive defines ‘terrorist acts’ and broadens the scope of terrorist offences by including preparatory activities that may contribute to terrorism either in or outside the EU and subjecting these offences to severe penalties (Letho, 2008, pp. 396-397).

The third significant shift is the strong involvement of the private sector in what has become a national security issue. Although the private sector was already involved in combating certain forms of crime prior to 9/11, the measures taken in name of the European fight against terrorism financing placed a different responsibility upon it. These measures not only expanded the scope of private actors involved in this fight but also required them to contribute to the security of the nation.

To conclude, the genealogical analysis in this chapter has shown that the birth of the fight against terrorism financing as an object of European governing was gradually constructed from the 1980s through international political negotiation and was subject to discussion and struggle. Active political intervention was needed to define terrorism financing as a separate crime and the activities that constitute this crime have been redefined and expanded progressively. Moreover, only after the 9/11 attacks did combating terrorism financing emerge as a dominant discourse. Before the attacks combating terrorism financing was a marginal issue restricted to small groups of experts, and other considerations such as
civil liberties and the interests of the financial sector were dominant and prevented the adoption of strict CFT legislation in most EU member states.

In the following chapters genealogical analysis is used to reconsider the modes of thought that underpin the current efforts of the EU in its fight against terrorism financing. These modes of thought are expressed in the practices of governing, as ‘practices do not exist without a certain regime of rationality’ (Foucault (1991), quoted in Heng & McDonagh, 2008, p. 561). In both case studies the practices of governing are investigated in order to understand the rationality of the fight against terrorism financing and the new forms of exercising power that have been developed in name of this fight. The following two chapters on the SWIFT affair consider the representation of the TFTP in the debates that followed its disclosure, trace the different discourses that emerged in the SWIFT affair, and bring to light the aspects of the TFTP that were absent from the debate.