



The European Arrest Warrant as a Counter-Terrorism Measure

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Date of Completion 25 February 2019

The Hague University of Applied Sciences

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European Studies

19096 words

Thank you

to my supervisor Isabel Düsterhöft

for her ongoing positivity, guidance and knowledge

to the experts

who have contributed to and helped tremendously with this research

to my friends and family

for the moral support and encouragement

Executive Summary

This dissertation is focused on three main topics, namely judicial cooperation in the European Union, the European Arrest Warrant and the European Union Counter-Terrorism Strategy. The recent rise in terrorist threats emphasises the need for a European Union that cooperates closely, which in turn makes it important to establish how these three main topics interact and what obstacles terrorist threats pose for the European Arrest Warrant in the judicial cooperation framework.

This examination is carried out through a combination of literature research and qualitative expert interviews. In the Literature Review section, a theoretical framework is established by analysing the three main topics and the most relevant concepts within each. The legal bases together with challenges and relevant actors are explained through the examination of primary and secondary sources.

The qualitative expert interviews are laid down in the Results section. Here, the three main topics are linked to each other and to terrorist threats. The most relevant findings from this chapter are combined with the results from the Literature Review in the Discussion where discrepancies and similarities are observed and analysed.

It is concluded that terrorist threats do not pose an obstacle to the European Arrest Warrant in the judicial cooperation framework, as terrorist threats lead to situations where the Member States are more inclined to cooperate and act in a more flexible manner regarding the laws and regulations.

Obstacles concerning the European Arrest Warrant and judicial cooperation can be found in a lack of mutual trust. In the course of this dissertation it becomes apparent that differing interpretation is one of the identifiable barriers when it comes to trust between Member States. Although this is not specifically related to terrorist threats, it lies at the basis of judicial cooperation since mutual trust is needed for the driving force of judicial cooperation – mutual recognition. In this way, issues with the principle of mutual trust eventually have consequences for the whole scope of judicial cooperation and therefore also for the European Arrest Warrant.

In order to overcome the divide in terms of mutual trust, it is suggested that Member States enhance their mutual understanding about each other's judicial apparatuses. Institutions of the European Union, such as Eurojust, are important actors in this regard and should be given a more substantial role.

List of Abbreviations

| | |
|--------|--|
| AFSJ | Area of Freedom, Security and Justice |
| CT | Counter-Terrorism |
| CTS | Counter-Terrorism Strategy |
| EAW | European Arrest Warrant |
| EJN | European Judicial Network |
| EPPO | European Public Prosecutor's Office |
| EU | European Union |
| FD-EAW | Council Framework on the European Arrest Warrant |
| JHA | Justice and Home Affairs |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| TREVI | Terrorism, Radicalism, Extremism and Internal Violence |
| MS | Member State |
| US | United States |

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1. Introduction

1.1 Background

Cooperation in the field of Justice and Home Affairs (JHA) in the European Union (EU) emerged rather quickly and suddenly (McCormick, 2015). Before the *Treaty of Maastricht* (1992), or officially the *Treaty on European Union* (TEU), there was no mention of cooperation in this field. However, the following sentence emerged in the TEU: “to develop close cooperation on justice and home affairs” (European Union, 1992, p. 8). Cooperation in JHA affects matters in the following areas: asylum, external borders, immigration, drug addiction, fraud, judicial cooperation in civil and criminal matters, customs and policing (European Union, 1992).

Although this was the first example of cooperation in the field of JHA inside the EU’s institutional framework, it was not the first manner of cooperation between the Member States (MSs) in this field (Monar, 2012). According to Monar (2012), the actual beginning of official MS cooperation in JHA dates to 1975 when the ministers of interior formed the Terrorism, Radicalism, Extremism and Internal Violence (TREVI) network as a reaction to a growing need to respond to terrorism (McCormick, 2015). This focus was the result after various MSs, such as Germany, fell victim to terrorist attacks in the 1970s (Puntscher Riekmann, 2008) when a type of terrorism emerged that was more internationally oriented and was crossing borders (Bunyan, 1993). The TREVI network was later integrated into the TEU and the JHA pillar.

With the abovementioned aim introduced in the TEU and the introduction of the different fields mentioned above in this area of JHA, the EU was at the start of becoming a political union (European Council, n.d.). JHA was one of the three pillars introduced by the TEU, next to the European Community pillar and the Common Foreign and Security Policy pillar. The MSs were not willing to give up their sovereignty, however, they did acknowledge the need for and benefits of cooperation (McCormick, 2015). Therefore, cooperation in the fields of JHA was intergovernmental and decisions needed to be made unanimously (ibid).

In the *Treaty of Amsterdam*, which came into force in 1997, the name JHA changed into Police and Judicial Cooperation in Criminal Matters (European Union, 1997), transferring some areas that formerly fell under JHA to the first pillar (the European Community) and giving it more supranational characteristics, since the European Commission is the only actor with the right of initiative in the first pillar¹ (Joutsen, 2006). In addition to this, decision-making moved from consensus between the MSs towards the European Commission (ibid). However, the most

¹ Instead of the European Council in the third pillar (Joutsen, 2006).

significant change was made in the *Treaty of Lisbon*, which was signed in 2007. The pillar system of the EU was abolished and JHA became a part of the Area of Freedom, Security and Justice (AFSJ) with the areas of external borders, asylum, immigration and judicial cooperation in policing, civil and criminal matters (European Union, 2007), making the AFSJ supranational in its entirety (Woods et al., 2017).

This historical overview emphasises the significant changes in the area, such as the adjustments in EU law, and the growing importance of cooperation in the past, with the EU playing an increasing role in this cooperation. However, this does not mean that development has come to a standstill. There are challenges and changes that the EU faces which put pressure on the operation and the future of this same Union. According to Archick (2018), some of the challenges that stand out the most are Brexit, the continuation of migrant and refugee flows, an increase of threats from Russia, and an intensification of terrorist threats. This last point is particularly relevant in the AFSJ.

However, this intensification of terrorist threats does not mean that it is a new phenomenon. As stated earlier, since the beginning of the cooperation between European states, terrorism has been an integral part of cooperation. Although it is difficult to present a specific date, some scholars like Archick (2018) and the European Commission (2017a) argue that 2015 can be seen as the point where the current increase in terrorist threats in the EU started. The European Union Situation and Trend Report 2015 from Europol (2015) confirms a rise in terrorist incidents in 2015 when compared to the same report a year earlier (Europol, 2014).

Nevertheless, the EU's response to terrorism mostly accelerated rapidly after an earlier event, namely, the terrorist attack in the United States (US) on 11 September, 2001. Although at that time there was an area of JHA established in the treaties, the EU was lacking concrete and precise policies, decision-making methods, legislation, and overall cooperation to combat terrorism and provide a solution to terrorist threats (Argomaniz, 2011). The attacks in the US as well as terrorist attacks in the EU's territory – mainly the 2004 Madrid attacks and 2005 London attacks – exposed the fact that the EU lacked a sufficient level of cooperation, with an effective response to terrorist threats, and comprehensive policies (European Commission, 2017a; Kaunert & Leonard, 2013). Therefore, the EU made terrorism and counter-terrorism (CT) one of its main priorities (Wensink et al., 2017).

Within just a few months of the 9/11 attacks in the US, the EU adopted a framework on mutual recognition of judicial matters – the European Arrest Warrant (EAW) in 2002 (Joutsen, 2006) – which is often seen as one of the most successful elements that came out of the JHA. It should be noted that although the 9/11 attacks in the US contributed to this acceleration of decision-making,

they cannot be seen as the sole motivator (Janssens, 2007). In addition to this, although the EAW was essentially meant to equalise extradition procedures between MSs, it is important to keep in mind that the EAW does not specifically focus on terrorism but covers almost the whole area of criminal law (ibid).

Shortly after the EAW came into force in 2004, the terrorist bombings in Madrid and London took place (McCormick, 2015). These two events emphasised the lack of proactive CT measures (Wensink et al., 2017). Therefore, in the same year as the London bombings, 2005, the EU agreed on a Counter-Terrorism Strategy (CTS) which is based on four aims: prevent, protect, pursue, and respond (McCormick, 2015).

Both the EAW and the CTS fall under the area of JHA. They are both set up with the aim to safeguard EU citizens; the EAW through better and efficient judicial cooperation, and the CTS by combatting terrorism (European Union, 2018).

1.2 Research questions

Many different concepts are introduced; concepts that have been important in the past, that are important today and that will, most likely, also be important in the future. These concepts have led to the central question of this dissertation:

What obstacles do terrorist threats create for the European Arrest Warrant in the judicial cooperation framework?

In order to answer this central question, the following sub-questions are designed:

- What is judicial cooperation in criminal matters in the European Union?
- What does the European Arrest Warrant encompass?
- What is the European Union's Counter-Terrorism Strategy?
- What is the response of the European Union and in the European Union to terrorist threats?
- Have recent terrorist threats made the application of the European Arrest Warrant more difficult or different? If so, what are these difficulties or differences?
- What should be changed in the European Arrest Warrant in order to be more appropriate in light of recent terrorist threats?

1.3 Key concepts

Firstly, it is important to define terrorist threats, as well as obstacles. It is, however, somewhat difficult to lay down a precise definition of terrorist threats since there is no universally accepted definition of terrorism (Whittaker, 2007). The EU has formulated a definition of terrorist

offences in its *Council Framework Decision of 13 June 2002 on combating terrorism*, which states that acts that “may seriously damage a country or an international organisation where committed with the aim of seriously intimidating a population”, “unduly compelling a Government or international organisation to perform or abstain from performing any act”, or “seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation” are seen as terroristic (Council of the European Union, 2002b, p. 2). Furthermore, nine actions² that, when performed with one of the aims mentioned above, are considered terrorist offences. The ninth and last point is especially relevant as it specifies that threatening these actions is also regarded as a terrorist offence, and is significant since it emphasises that terrorist threats go further than only actual attacks (ibid). For example, failed or foiled attacks, suspicion of terroristic activities or affiliation with terrorism also falls under terrorist threats (Europol, 2018). This definition is crucial because it shows the wide scope that is being covered throughout this research regarding terrorism.

Secondly, a definition of obstacles is needed. This is important because this is essentially what this dissertation is measuring, and a lack of clarity in description can cause confusion on what the dissertation is aiming to achieve. In this research, conditions – for instance, changes, actions or situations – that obstruct the EAW from moving forward are seen as obstacles (Guild & Marin, 2009).

1.4 Structure

The concepts, questions, and definitions mentioned above are used to answer the central question. In order to do so, firstly, the Literature Review section provides a foundation by explaining relevant topics and theories. Secondly, the Methodology chapter presents the research methods that are used, how these research methods are used, and why these methods are chosen. Based on the foundation established in the Literature Review section, qualitative semi-structured interviews are carried out and the results are described in the Findings section. Next, the information attained in the previous chapter, together with the retrieved knowledge through the Literature Review section is analysed in the chapter called Discussion to eventually answer the central research question. Lastly, all the findings are summarised in the Conclusion.

² The nine actions being deathly attack, physical integrity attack, kidnapping or hostage taking, instigating public destruction, seizure of modes of transport, research or any other affiliation with weapons (of mass destruction), exposing lives to dangerous substances, fire, floods or explosions, jeopardising lives through the disruption of fundamental natural resources, or threatening to carry out one of these acts (Council of the European Union, 2002).

2. Literature Review

In order to assess the potential obstacles that terrorist threats pose for the EAW, a framework of relevant concepts must first be established. This chapter seeks to enhance the understanding of these relevant concepts by presenting and examining existing literature.

For this purpose, the first part of this chapter examines judicial cooperation in criminal matters in the EU. Key concepts, the institutions and players involved, and the advantages and disadvantages are discussed. Secondly, the EAW is explained by exploring its scope and the initial intentions of the legislator. In addition to this, the EAW is reviewed considering its application in practice. Lastly, this chapter lays down the EU's CTS and discusses its role by analysing related policies, legislation and approaches.

2.1 The legal basis of judicial cooperation

In order to understand judicial cooperation in criminal matters and all related components, it is crucial to lay down the legal basis. This legal basis is provided by Title V of the *Treaty of the Functioning of the European Union* (TFEU) of 2008 (European Union, 2008). In the third paragraph of the first Article of this title, Article 67(3) TFEU, the aim of judicial cooperation in criminal matters is specified:

“The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgements in criminal matters and, if necessary, through the approximation of criminal laws.”

2.1.1 Mutual trust

The legal basis to ensure this high level of security is given through Article 82 to 86 TFEU (European Union, 2008). Article 67(3) TFEU, together with Article 82 TFEU, makes it clear that judicial cooperation is based on mutual recognition, explained by Joutsen (2006, p. 22) as “recognising the validity of a decision taken by a foreign authority or court, and enforcing it as such”. In order to understand mutual recognition, the principle of mutual trust must be examined first.

Vermeulen (2010) argues that in order to achieve mutual recognition it is essential to establish a high level of mutual trust. However, this level of trust is currently inadequate, according to Sievers (2008). This distrust is frequently the result of the view that the legal systems in other MSs are too different to recognise mutually (Sievers, 2008).

A possible explanation for the lack of trust is provided by Hirsch Ballin (2010) who argues that there are deficiencies in shared values. Legal systems of MSs require a certain amount of similarity in which common norms need to exist (Sievers, 2008). When norms and values are not identical throughout MSs it is difficult to establish trust (Hirsch Ballin, 2010) since one MS may then place its own legal system above the legal systems of another MS (Sievers, 2008). In a report from Clingendael (2018), Schout and Luining state that Poland and Hungary especially have ongoing problems with the rule of law. In Poland, for example, the judicial system has been subject to significant changes (ibid). The government is seeking to impose legislation to lower the age of retirement for judges, in order to be able to appoint new judges who will probably be of like mind with the government, giving the same government more judicial power regarding the principle of the rule of law (Cienski, 2018). The norm, in this instance the rule of law, is no longer identical in the MSs and can therefore trigger a decline of trust between MSs (Hazelhorst, 2018).

According to Fichera (2011), it is not possible to provide a clear yes or no answer to the discussion of whether or not mutual trust prevails throughout the EU. He explains that many factors influence this answer. One MS, for example France, may trust another MS, for instance Belgium, but it is possible that it does not trust a different MS, Italy for example (Fichera, 2011). It can also happen that trust exists in one area but not (or less so) in another area (ibid). Gless (2011) remarks that there seems to be more mutual trust in civil matters than in criminal ones. The same applies to the trust of different levels of legal institutions and governments (Fichera, 2011): trust may exist between national governments but not between judicial institutions or law enforcement agencies (Hirsch Ballin, 2010). Additionally, trust is subject to change. Good practices from the past may increase and solidify trust, whereas negative experiences can lead to a decline in trust (Fichera, 2011).

2.1.2 Enhancing mutual trust

Considering the above evaluation of mutual trust, it is useful to determine how this mutual trust can be enhanced.

The European Commission (2011a) states that in order to attain mutual trust, MSs should sufficiently understand each other's national legislative system, in which the Union may be of assistance (Guild & Geyer, 2008). On the other hand, MSs must acknowledge that differences between legal systems are not necessarily negative, and these differences do not make one MS's legal system secondary or inferior to another's (Sievers, 2008).

The most effective method to increase the understanding of each other's legal system is judicial training, according to Mak et al. (2018) and Morgan (2010). The exchange of knowledge can contribute to transparency and understanding, and this can be achieved by meeting each other

through, for instance, judicial training sessions (Hirsch Ballin, 2010). These are explained in the next sub-paragraph.

2.1.3 Eurojust

The EU is vital in assisting MSs with enhancing understanding, since mutual trust cannot occur without the help of institutions of the EU (Misoski & Rumenov, 2017). Next, the most relevant institution and how it supports the MSs is presented.

In order to overcome the difficulties regarding the sharing of judicial enforcement and to strengthen judicial cooperation, as described by Vlastník (2008), on 28 February 2008, there was an agreement on the *Council Decision setting up Eurojust* (The Council of the European Union, 2002a). According to the European Commission (n.d.-a), Eurojust carries out three tasks, namely, the coordination of investigations and prosecutions in cross-border cases, settling disputes between MSs regarding jurisdiction, and the assistance in the application of the EAW. These tasks can also be found in Article 85 TFEU and the *Council Decision setting up Eurojust* with the view to reinforce the fight against serious crime (Council of the European Union, 2002a; European Union, 2008). The main aim of these tasks is to promote trust and enhance knowledge (Vlastník, 2008), for instance, by facilitating meetings between public prosecutors, law enforcement and judges (Fichera, 2011), when they need assistance with their cooperation (ibid).

One relevant organisation inside Eurojust's framework is the European Judicial Network (EJN). Although the EJN has been working on promoting judicial cooperation in criminal matters since 1998 (Spapens, 2010), the new legal basis was enforced in 2008 in *the Council Decision on the European Judicial Network*. The EJN mainly supports MSs with requests for mutual legal assistance (ibid). This is done by organising regular meetings for national judicial authorities responsible for cooperation with other MSs (Joutsen, 2006). In these meetings, case studies are conducted and evaluated (ibid). EJN also assists MSs when they want to get in contact with the judicial authority of another MS (Spapens, 2010).

However, Eurojust is lacking enforcement power; this makes it a rather weak organisation, meaning that they can, for instance, not sanction MSs who do not comply with previous agreements (Vlastník, 2008). The powers of Eurojust lie with the national members of which the organisation is constituted, and these powers must be transferred to Eurojust as a central organisation first before it can be effective (ibid). The main impact of this lack of power can be found in information-sharing (Vermeulen et al., 2005): MSs cannot be forced to share information which is essential for meaningful cooperation (ibid).

2.1.4 Approximation

Besides the aim of mutual recognition, there is a goal to approximate rules and regulations of MSs as much as possible (European Union, 2008), for instance, by constituting minimum rules on definitions of sanctions and criminal offences, as described in Article 83(2) TFEU (ibid). According to Guild & Geyer (2008), it is important to note here that approximation does not imply a unification of rules and regulations. MSs still have their own national laws; however, they want to achieve a connection between and acceptance of each other's national laws (Guild & Geyer, 2008), such as by accepting judgements in every MS (ibid). Nonetheless, in the Tampere European Council meeting of 1999, it became clear that the EU and the MSs should strive for mutual recognition in every stage of judicial cooperation, which closes the gap in legal disparities (Council of the European Union, 1999). In contrast, Joutsen (2006) explains that the EU has a desire to gradually move away from mutual recognition into harmonisation, which is extensively laid down in a Green Paper of the European Commission (European Commission, 2004). Thus, approximation can be seen as the tool to move from past judicial cooperation to where the EU wants judicial cooperation to be in the future (Militello & Mangiaracina, 2010).

Vermeulen (2010) questions the added value of approximation. He states that it is almost impossible to approximate every theme falling under criminal matters; it is a very sensitive topic which makes it difficult to find consensus between MSs (Vermeulen, 2010). Furthermore, despite the legal basis and efforts of the EU, approximation has not occurred thus far (Jimeno-Bulnes, 2010). One reason that approximation has not occurred in practice yet could be due to the fact that it is limited by the aversion of national governments towards giving up sovereignty³ (Maduro, 2008). As stated in the introduction, the principle of sovereignty is often an issue for MSs, since sovereignty needs to be set aside in order to cooperate (Janssens, 2007). The idea that sovereignty is more important than cooperation is still present in many MSs (Albers et al., 2013).

The earlier discussed shared values could also be grounds for the possibility, as reported by Joutsen (2006), to approximate criminal law. The MSs should be able to achieve at least a minimum amount of approximation of criminal law (Joutsen, 2006). Joutsen (2006) assumes that the EU has a substantial level of shared values on which it should be possible to have equal laws. Approximation could result in higher levels of trust and subsequently recognition (ibid) since it is easier for a MS to trust a legal system that is designed similarly to its own system (Borgers, 2010). Despite this aim, Jimeno-Bulnes (2003) posits that the MSs will not be able to agree on this minimum amount of approximation and on what should be seen as criminal. Janssens (2013)

³ Sovereignty is the unlimited power to govern the own state internally, as well as in the external sphere (Heywood, 2015).

acknowledges this and illustrates with the example of abortion. On a principal and often sensitive issue such as abortion, the MSs currently have a wide variety of laws and it will, in the future, be complicated to merge these incoherent views (Janssens, 2013).

Nevertheless, Fichera (2011) does not fully agree with the view of Jimeno-Bulnes, who states that approximation has not occurred and is also not likely to occur. Fichera (2011) outlines the two ways to accomplish approximation: the EU can force it on the MSs by establishing a framework with rules and regulations, or the MSs can establish more informal contacts through which approximation naturally occurs. Fichera (2011) argues that it is possible to see this last approach gradually taking place within the EU, and therefore approximation is already present.

2.1.5 Mutual recognition

Now that the principle of mutual trust is explained, the question remains in what way mutual recognition exists and what position it has in the EU.

Sotto Maior (2009) states that in order to know if mutual recognition exists, it needs to be evaluated which instruments have been set up based on this principle. Within these instruments, it then has to be identified to what extent the judicial decisions from other MSs are recognised (Ouwkerk, 2011). In order to evaluate this (and considering conciseness), the EAW, which can be thought of as the first instrument of mutual recognition (ibid), is now explained and assessed.

2.2 The legal basis of the EAW

The most relevant and most advanced type of judicial cooperation is the EAW⁴ (European Commission, n.d.-b). A definition of the EAW is given in Article 1 of the *Council Framework Decision⁵ on the European arrest warrant and the surrender procedures between Member States* (FD-EAW):

“The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.” (Council of the European Union, 2002c, p. 2).

The aim of the EAW is to replace formal extradition agreements, to accelerate the process of arrest and surrender in order to either prosecute or to execute a sentence already imposed (Marcu, 2016).

⁴ All the types are explained in Annex I: Types of judicial cooperation.

⁵ Framework Decisions could be adopted by the Council in the area of Police and Judicial Cooperation in Criminal Matters, as introduced in Article K.6 in the *Treaty of Amsterdam* (1997). They were binding, however, they did not have direct effect. In the *Treaty of Lisbon* (2007), the Framework Decisions were replaced by directives and regulations.

As Article 2 of the FD-EAW displays, mutual recognition is an important principle for the EAW (Council of the European Union, 2002c). Van der Mei (2017) explains that mutual recognition is of great importance for the EAW due to the fact that when a MS issues an EAW, the MS that receives the EAW is obliged to enforce it. That this, however, does not always happen, and is subject to exceptions, is outlined throughout the rest of this chapter.

2.2.1 Political involvement

According to the Commissioner for Justice, Consumers and Gender Equality, Věra Jourová (2017), the principle of mutual recognition is beneficial since it takes out any political involvement, with the result that it becomes a solely judicial affair (Sievers, 2008). This can, for example, be done by establishing clear and precise rules on when an EAW can be issued. Two conditions are clarified in Article 2(1) of the FD-EAW for when someone can be subjected to an EAW (Council of the European Union, 2002c). These conditions are that a person is suspected of a crime with a minimum sentence of one year, or that a person has already been prosecuted for a sentence of more than four months (ibid). It is also important to note that an EAW can only be issued when the requested person is suspected of one of the 32 offences provided by Article 2(2) of the FD-EAW (ibid).

Contrary to what Jourová (2017) states, Mak et al. (2018) claim that MS can be influenced by the legislation of another MS and factor this into their own legislation. In addition to this, the judicial apparatus can be influenced by political issues and refrain from cooperation and mutual recognition, especially considering serious circumstances and changes (Mak et al., 2018). Fichera (2011) sees no evidence for this claim; in this view, national judiciaries are not influenced by political issues and even less so when it concerns serious situations (Fichera, 2011). Guild (2006) agrees that political influence is unusual since requesting an EAW can be linked to political interests while executing an EAW is isolated from political interests. Guild (2006) concludes that even if political involvement did occur, there is no politically influenced response and hence no reason for concern.

2.2.2 Proportionality

MSs who issue an EAW should fulfil a proportionality check (Jourová, 2017) to ensure that there is no overload of issued and potentially irrelevant EAWs (Haggenmüller, 2013). Before issuing an EAW, judicial authorities should consider if the offence is serious, what kind of sentence will be imposed on the requested citizen, and the probability that the imposed sentence will be executed (Jourová, 2017). Haggenmüller (2013) explains this as the proportionality check regarding human costs. In addition, an evaluation should be made as to whether the advantages of the EAW will be higher than the costs (Jourová, 2017). This aspect of the proportionality check is defined by

Haggenmüller (2013) as the evaluation regarding the potential burden of the process on the resources of MSs.

Nevertheless, in practice, it is observed that EAWs are requested for minor offences even though the proportionality check should prevent this (Haggenmüller, 2013; Morgan, 2010; Sotto Maior, 2009). For some MSs such as Poland, this is possible since their national laws do not require the EAW to be solely intended for serious offences (Magyar, 2012). At the same time, there are only general agreements on the execution of the proportionality check (European Commission, 2011b), however, it is not mentioned in the FD-EAW (Magyar, 2012) and is therefore not binding (Haggenmüller, 2013).

Consequently, in some cases it is not the issuing MS but the executing MS which carries out the proportionality check (Magyar, 2012). Sotto Maior (2009) takes Ireland as an example which has several checks in place, throughout several agencies and departments, to analyse the received EAWs before issuing them. These checks could potentially be harmful for the mutual recognition of EAWs since it undermines the intentions of the EAW framework (Magyar, 2012).

2.2.3 Grounds for refusal

In 2015, a total of 16,144 EAWs were issued (European Commission, 2017b), however in the same year only 5,304 requests were executed (ibid). A reason for this gap between requested and executed EAWs can be found in the fact that grounds for refusal are written into European legislation. The FD-EAW provides three grounds on which the executing MS must refuse the request:

- when the offence falls under amnesty in the requested person's country
- when the requested person is a minor, or
- when the person has already been prosecuted for the same offence for which he or she is requested (Council of the European Union, 2002c).

In addition to these mandatory grounds for refusal⁶, there are also optional grounds for refusal; for instance, when the person is also being or has been prosecuted in the executing MS for the same offence, when the offence is statute-barred, when the goal of the issuing MS is to extradite the requested person to a non-EU country, or when the requested person is a national of the executing MS (ibid).

This web of grounds for refusal does not differ greatly from the grounds for refusal that were in force under traditional extradition agreements (De Groot, 2005), while it was this

⁶ Which are also not always implemented into national laws; for example in the United Kingdom where amnesty is not transposed into the legal system (Fichera, 2011).

cumbersome process of traditional extradition that invoked the need to establish the EAW (Marcu, 2016). Furthermore, the implementation of different grounds for refusal into national legislation was not the intention of the initial draft (Fichera, 2011). The grounds for refusal should be unnecessary since the EAW is based on mutual recognition (Ouwerkerk, 2011); that they are placed in the framework is the outcome of a compromise since consensus had to be found throughout the whole EU, which can be difficult with 28 different positions (Fichera, 2011).

The optional grounds for refusal provided by the FD-EAW are implemented into the national legislation of many MSs, but in addition to this, extra grounds of refusal that have not been provided by the FD-EAW are added into legal systems of some MSs (Janssens, 2007). An example of this can be found in Glerum's book (2013) in which he compared the grounds for refusal stated in the FD-EAW with the ones implemented in the Dutch law. If a requested person states that he can prove that he is not guilty of what he is suspected and the court agrees after investigating, the request will be refused (Glerum, 2013; Uitleveringswet, 1967).

Fichera (2011) argues that the grounds for refusal make the EAW framework ineffective and sees the grounds for refusal as barriers to mutual trust and mutual recognition. Inefficiency can be, for instance, caused when the judiciary acts as safeguards (Sievers, 2008); judges of a MS can enforce extra checks when evaluating an EAW request which hinders smooth cooperation (ibid). In 2013, Böse researched perceptions of MSs on the EAW and the additional principles. He affirms that the base of the EAW is to always accept an issued warrant and refusal should only happen in exceptional cases (Böse, 2013). Refusal can be therefore seen as contempt of the MS (ibid), or as Joutsen (2006, p. 34) puts it, as an expression of "insufficient trust and confidence in the criminal justice systems of other Member States".

In contrast, Sievers (2008) posits that differences in implementation do not necessarily mean that these changes affect cooperation and mutual recognition since the common goal is more important than the way in which it is reached.

Regardless of whether mutual recognition is affected by implementing grounds of refusal, Panainte (2015) notes that this implementation jeopardises the aim of the FD-EAW to make extradition exclusively a judicial matter as described above, since there is a degree of political involvement when a MS changes its national legislation when implementing the EAW. This contradiction is explored further in the Results section, where terrorist threats are also considered.

2.2.4 The EAW in practice

Van Sliedregt (2007) concludes that the main aim of the FD-EAW to abolish the former time-consuming way of extraditing can be perceived as a success. It simplified and hastened extradition, which made the EAW efficient (Panainte, 2015) and an instrument that is used often

(Long, 2009). However, the FD-EAW is also subject to deficiencies of implementation (ibid), of which a few are described below.

Implementational problems have been visible from the beginning (Wouters & Naerts, 2004) and the FD-EAW has been controversial from the start (Van der Mei, 2017). The FD-EAW had to be transposed into national legislation by 31st December 2003 as laid down in Article 34(1) of the FD-EAW (Council of the European Union, 2002c). However, only eight MSs acted in compliance with this requirement (Wouters & Naerts, 2004). This could be due to the fact that the EU does not have any enforcement power regarding framework decisions and cannot force MSs to implement the FD-EAW into national legislation (Sinn & Wörner, 2008). Furthermore, as stated in Long's 2009 report for the European Parliament, some MSs have amended matters from the FD-EAW before implementing it into their own legislation. The abovementioned grounds for refusal and the proportionality checks are examples of this.

Consequently, full mutual recognition regarding the EAW can be ruled out (Weyembergh, 2017) and will likely never happen (Ouwkerk, 2011). In Ouwkerk's conclusion based on case studies from 2011, she determines that no matter how close cooperation is, sovereignty concerns will never be eliminated (Ouwkerk, 2011).

The ways in which the implementation differences described in this chapter can be overcome and how future problems could be prevented is explored, together with the role of institutions, in the Results section.

Now that the EAW, its implementation problems and the impact on the practical level of judicial cooperation are examined, the next step is to explore the EU's CTS. This is done by firstly establishing the legal basis of the CTS. Next, difficulties and challenges regarding the execution of the CTS are considered before moving to the implications that these challenges bring concerning implementation. This is done by first looking at the MS level before switching to the EU level.

2.3 The legal basis of the EU CTS

As discussed in the introduction and emphasised in the report by Albers et al. (2013), the rise in terrorist threats caused the need for the EU to create new standards and bolster existing standards on cooperation in combatting terrorism. One of the approaches the EU had was the formation of the EU CTS in 2005. This was the first effort to institutionalise, formalise, and unify CT projects (Wensink et al., 2017).

The CTS (Council of the European Union, 2005), has four different focus points. The first is to prevent citizens from turning to terrorism by preventing radicalisation and recruitment (ibid). The second pillar is the protection of people and goods by decreasing the vulnerability in case of an attack (ibid). The impact of attacks will be limited when external borders are secure, when

transport security is improved, when strategic targets are protected, and when the exposure of critical infrastructure is reduced (Wensink et al., 2017). The third point is to pursue and disrupt terrorists, also across the borders of the EU (Council of the European Union, 2005). An interesting part of this aspect is the aim to enhance judicial cooperation and mutual recognition of judicial decisions, for example, by fully implementing the EAW which was put into force almost a year before the CTS (Wensink et al., 2017). The final point refers to the response in case a terrorist attack does occur and how to minimise the consequences (Council of the European Union 2005; Wensink et al., 2017).

Since 2015, the EU has been filling in the CTS framework through the development of policies, legislation, schemes, internal and external measures and so on, which is still an ongoing process (European Commission, 2017a). Examples are the passenger name record (PNR) directive, which supports the transferring of personal data from airlines between MSs (European Union, 2016b) or the revision of the strategy for combating radicalisation and recruitment into terrorism from 2008 (Council of the European Union, 2014).

2.3.1 The broadness of the CTS at the MS level

What is described here is a broad strategy. A reason for this broadness, according to Coolseat (2010), is the unwillingness of the EU to make the CTS supranational⁷: it desires to complement the approaches and policies of the MSs. Since MS are not eager to pool sovereignty, as explained earlier, the assisting role of the EU can also be seen as a technique in itself, since proposals with supranational characteristics are unlikely to be adopted and implemented by the MS (Wensink et al., 2017). However, the question then arises as to what extent this intergovernmental approach exceeds the approach in which the EU as a whole would take decisions and implementation as equal in every MS. In order to assess this, the strengths and weaknesses of the broad approach are examined, first at the MS level and thereafter at the level of the EU.

Not all MSs have identical views on the threat of terrorism, which can occasionally make the current approach of the CTS in which the EU purely assists (Bensahel, 2003) ineffective (Coolseat, 2010). Monar (2007), explains this statement by stating that countries which encounter terrorism and terrorist threats more often are more likely to put CT high on the political agenda since they affect the political interest of not only the government but also its citizens. Countries that do not have the belief that terrorism poses an immediate threat are less likely to agree to

⁷ Supranational authorities are 'above' the parties that the authority consists of in the sense that sovereignty is transferred to the supranational body (Heywood, 2015). Instead, in this case, an intergovernmental approach is chosen where sovereignty remains with the involved parties and decisions are based on cooperation (ibid).

invasive measures since they do not regard this as useful for their own country (Monar, 2007; Wensink et al., 2017).

2.3.2 Implementation challenges at the MS level

Different perceptions lead to difficulties in implementation (Archick, 2018), and these difficulties and poor implementation of agreed measures can cause problems (Monar, 2007). Poorly implemented measures could be, for instance, not implemented within the transposition time, differently implemented or not implemented completely (ibid). This could result in challenging cooperation between MSs since the MSs are not at the same stage in the process of implementation (Wensink et al., 2017). Consider, for instance, the EAW, which was only implemented by eight of the fifteen MSs at its transposition date and restricts the working of the EAW and its initial goals (Bures, 2006).

2.3.3 The broadness of the CTS at the EU level

Although the broadness of the CTS can be a difficulty, it can also be useful considering a wide variety of internal and external measures are achievable under a broad framework (Monar, 2007); there are also complications that arise out of the multidisciplinary possibilities.

On the one hand, there are other related overarching frameworks, policies and legislation, meaning that CT is not a delineated area but overlaps with other policy fields (Wensink et al., 2017 & Bossong, 2008). Having a strong external outlook, Barros (2012) states that CT is also found as an element within many other policies, an example being the AFSJ and its External Action Service, which has its own CT division that is focussed on the existing and desired cooperation with non-EU countries and organisations (European Union's External Action Service, 2016). In this way, CT measures are found in a wider field than just the CTS (Wensink et al., 2017).

On the other hand, from the CTS, many sub-strategies emerged (Wensink, et al., 2017). This could be expected since that is an aim of the CTS, nonetheless, this also causes difficulties under certain circumstances (ibid). The first is the tangle that can be a result of all these different strategies that exist interchangeably (ibid). Coolseat (2010) states that different strategies may not always function parallel to each other, but can sometimes cross paths. According to Argomaniz (2011), this can lead to challenges with the management of cohesion among the many different strategies and measures that are rooted in various policy fields. Hence, the difficulty is that it can be unclear who is in charge since various measures mean various institutions and players that may not strictly fall under the CTS framework (Bossong, 2008; Wensink et al., 2017).

2.3.4 Implementation challenges at the EU level

Next to the role of the MS in implementation problems, the European Commission (2017a) and Monar (2007) describe the lack of enforcement power of the EU institutions as another reason for poor implementation, although this has improved over the last few years (Kaunert, 2009). The European Commission, for example, can now take a MS to the European Court of Justice, which was not possible before the *Treaty of Lisbon* (ibid). However, unequal implementations from the past can still have an effect on current situations (Argomaniz, 2010). This makes Argomaniz (2010) slightly hesitant about the improved impact of EU institutions. He argues that although the European Court of Justice and the European Commission were given more competences, it is questionable whether they will use these competences since frequent use can decrease the level of trust between the MS and the European Commission (Argomaniz, 2010). Additionally, the AFSJ falls under the shared competence⁸ between the EU and the MS (European Union, 2008; Wensink et al., 2017). Together with Article 72 TFEU, which states that the EU institutions do not have powers “with regard to the maintenance of law and order and the safeguarding of internal security” (European Union, 2008, p. 74), the role of the EU is difficult since it is hard to act without touching upon this national security responsibility (Argomaniz, 2010 & Peers, 2011), or without breaching the borders of competencies (Wensink et al., 2017). This results in CT legislation primarily staying as a national matter for MSs (Hillebrand, 2013).

2.3.5 Institutions

Again, EU institutions can have an important role in overcoming implementation deficiencies (Den Boer et al., 2008). How this can be done is examined in more depth in the Results section. What is, however, already clear is that solutions cannot be found in specific powers, due to the lack of enforcement power described above (Lugna, 2006).

2.4 Conclusion

This chapter explains the most relevant concepts in order to answer the main question of the dissertation. The legal bases of judicial cooperation in criminal matters, the EAW and the EU CTS are outlined and it is clear that cooperation finds its basis in mutual recognition. However, many difficulties and challenges regarding the existence of mutual recognition are found throughout this research and it is apparent that the principle of mutual trust, which is needed for mutual recognition, is not self-evident. At this time, the main areas of this dissertation are somewhat fragmented and need to be linked together. Therefore, in the Results section, the links between terrorist threats and the EAW together with judicial cooperation are made. In order to

⁸ MS can legislate on matters where the EU has chosen not to legislate (European Union, 2016a). The areas of shared competence are embedded in Article 4 of the TFEU (European Union, 2008).

make this link, questions must be answered, such as whether or not terrorist threats have an impact on political involvement, if mutual trust is affected and if it influences the practical application of the EAW. It is also necessary to examine how to solve problems of implementation and potential lack of trust, in addition to the role of institutions therein. However, before that, the methodology applied during this research is explained.

3. Methodology

The previous chapter of this dissertation seeks to contribute to the readers' understanding by illustrating relevant policies and strategies, as well as by establishing a conceptual framework. This chapter presents the methods applied throughout this research. Thereafter, the ethics and limitations of this research are reviewed.

3.1 Research methods

The first steps in conducting research are to determine which types of methods are used and to justify these methods. An important decision to make is whether inductive or deductive approaches are applied throughout the research. For this dissertation, an inductive approach is chosen. First, an observation is made (Gilbert, 2008); in this case, that terrorist threats are creating obstacles for the EAW. After this observation, research is conducted to further the theory (Bryman, 2016). Different aspects of the observation are then explored before coming to a conclusion or theory at the end (Zacharias, 2004). As opposed to the inductive approach, the deductive approach operates the other way around: research begins from a specific theory. With this theory, an observation is made (Bryman, 2016) and a statement is proved right or wrong (Zacharias, 2004). However, the deductive approach is not used in this research, since the data is used to ground the theory, and there is no use of an already existing theory since there is no prior knowledge to do so (Spicer, 2004). Nevertheless, choosing the inductive approach does not always mean that the deductive approach is not applied at all. Bryman (2016) calls this phenomenon iterative. In some examples of research, it is necessary to go from the research to theory and then back to research. Due to time limitations and the fact that this is a relatively small dissertation, the iterative approach is not used.

Another important decision to make is whether to apply quantitative or qualitative research. A simple distinction between the two research designs is that quantitative research regards the measurements of numerical data while qualitative data is directed at describing and analysing data (Gilbert, 2008). Although quantitative research is more precise and less vulnerable to interpretation, qualitative research seems the better option in this case. There is no need for numerical description in this dissertation, but rather a description of cause and effect (ibid). This dissertation aims to create an overview of relevant developments and happenings, as well as an examination of current policies, in order to analyse these research outcomes and provide possible and reasoned improvements.

3.2 Literature research

The next step is determining which methods should be used to collect data. This dissertation combines different research methods. Firstly, literature research is used to find out what judicial cooperation in criminal matters encompasses, to explore which rules and regulations have come out of it, which institutions and players are involved, which framework is being used, the history, developments, its aims and functions, and so on. Secondly, the EAW and its implications are described with further literature research. Who are the stakeholders, what are the advantages and disadvantages, and how is it implemented? Lastly, literature research is also used to investigate the EU CTS and how this strategy translates into the EAW. Literature research seems the best way to find qualitative information, to learn as much as possible, to lay down a conceptual framework for the main question, and to provide a critical examination of data that already exists (Ebeling & Gibbs, 2008; Bryman, 2016).

Subsequently, it is essential to establish what kind of sources are used and how these sources are selected. For this dissertation, information that the EU provides is a good usable primary source since the EU is the creator of these original documents (Gidley, 2004), making these sources descriptive and uninterpreted. This information includes the TFEU, which contains articles concerned with the cooperation, general pages with information that describe the framework of judicial cooperation, as well as the official FD-EAW. These primary sources give the information needed to provide a description of what these phenomena encompass. Additionally, secondary sources used in this literature research provide a more in-depth analysis of the primary sources (Zacharias, 2004). They may evaluate or interpret the primary sources, in order to learn about relations, changes or consequences, for example. For secondary sources in this dissertation, academic sources provided by different databases and libraries are used.

The aforementioned Literature Review is classified as secondary research, as already existing data is used (Bryman, 2016). This secondary research is used as footing for the primary research (Crowther & Lancaster, 2012); new, self-conducted research which in this case, is done through interviews (Bryman, 2016).

3.3 Interviews

With the knowledge obtained in the Literature Review, it is possible to move forward to the next section. For this Results section, qualitative primary research in the form of interviews is conducted. These interviews clarify the challenge of terrorist threats and provide a deep-level analysis on how it impacts the EAW and judicial cooperation. Specifically, they clarify any new obstacles or changes caused by terrorism, and in what ways this influences applicability in practice. This deeper-level analysis appears not to be possible by only doing literature research, or with other

research methods. For this reason, research methods such as focus groups or observations are ruled out, since the expertise of the interviewees is needed, and to extract this expertise, asking specific questions is necessary which is not possible merely through observations or through discussions in focus groups (Verhoeven, 2018).

Four semi-structured interviews are conducted, where questions are prepared beforehand, but it is also possible to expand on the questions and to go deeper into a subject (Wilson, 2012). This seems the best type of interview since there is already some basic knowledge (established with the literature research) about the issue. In a semi-structured interview, this obtained knowledge is useful. In alternative interview methods, this knowledge is less valuable. With structured interviews, it is not possible to ask further questions as a response to the answer of the interviewee, since a standardised questionnaire is used (Saunders et al., 2008). Another alternative is unstructured interviews, which are designed to gather more general information. However, after the literature research which is conducted, a more in-depth analysis is needed than an unstructured interview can provide. Nevertheless, the obtained knowledge can also pose a problem; the interviewer can have an impact on the given answers (Fielding & Thomas, 2008) by asking leading questions or showing preference (Saunders et al., 2008).

Moreover, the selection of interviewees is also an argument for choosing semi-structured interviews. Potential interviewees are selected and contacted based on their expertise. This research covers three different areas of expertise: terrorism, judicial cooperation and the EAW. It is unlikely that multiple experts who would agree to be interviewed would have knowledge of all three subjects. Furthermore, different experts are asked about different topics; experts on terrorism are asked about matters and consequences of terrorism, while specialists in the fields of European policies, extradition or, specifically, the EAW are asked to answer different questions. Therefore, a standardised questionnaire is meaningless. However, a general interview guide is used to make sure every topic is addressed (Gilbert, 2008). Before each interview, this guide is revised to make it relevant for the specific interview. This interview guide can be found in the Appendix.

After selecting and contacting experts, the four following experts are interviewed. The first, Olivier Ribbelink, worked at the T.M.C. Asser Institute and was the project leader of the research team at the large Asser-AGIS project for the EU on the then-new EAW. The second expert, Stef Wittendorp, works as a researcher at the Institute for Security and Global Affairs for both the Leiden University and the International Centre for Counter-Terrorism. The third expert, Ben Polman, is a criminal defence lawyer at the firm Cleerdin & Hamer. Lastly, the fourth expert Wim Wensink is the Managing Director at the consultancy firm Twynstra Gudde and specialises in national security.

Although the interviews would preferably be conducted in a face-to-face setting, the experts are given the choice in which way they prefer to be interviewed. In-person interviews are preferred over interviews via email or phone since it can be difficult to have a dialogue via email (University of Sheffield, 2012) and over the telephone it is not possible to observe non-verbal cues, such as those displayed when someone does not fully understand a question (Bryman, 2016). Ribbelink, Wittendorp and Wensink choose the in-person interview while Polman chooses a telephone interview. In addition to the choice of interview method, the interviewees are also given the choice if they want to be recorded or not. This is explained in more depth in the next paragraph, however, during the interviews with Ribbelink, Wittendorp and Polman, the interviews are recorded, while notes are made during the interview with Wensink. After the interviews, the recordings are stored on an external drive without any attached personal information.

Once the interviews are conducted, the recordings are transcribed. Transcribing can be beneficial to recall what precisely the interviewee said since at the time of the interview the researcher is focused on the answers and following up on these answers (Bryman, 2016). This focus is also a reason for favouring recordings over taking notes during the interview. The method of denaturalised transcription is chosen over the naturalised method. In the denaturalised method precedence is given to the content of the interview over the conversation during the interview (Oliver et al., 2005). The interviews are conducted in Dutch and therefore first transcribed in Dutch. For the Dutch transcriptions, the denaturalised approach means that transcription notations, which are symbols that demonstrate matters as emphases, breath and pauses are not added, contrary to the naturalised approach (ibid). Afterwards, the transcripts are translated into English. In this process, matters such as stutters and unnecessary repetition of words are taken out. Because of the denaturalised method, a fluent and easily readable text is created (ibid).

3.4 Ethics

Conducting research requires certain responsibilities. According to Bulmer (2008), research and the formulation of new knowledge should always occur in line with ethical and truthful practices. In this dissertation, the relationship with participants is particularly paramount. Experts should not feel pressured or obliged to participate or to answer questions (Seale, 2004). The participants are also entitled to know what will happen with the information that they provide. This is done with the Informed Consent Form in which the description and aims of the research are stated. Furthermore, the option to participate anonymously is provided. This option relates to the respect for privacy, which is especially important in sensitive matters. In terms of this dissertation, the topic of terrorist threats can be perceived as a sensitive matter, with experts being less willing to be interviewed or only under certain conditions. Therefore, it is important that the researcher

ensures confidentiality and complies with the prior agreements between the researcher and the interviewee. Nevertheless, none of the interviewees choose to remain anonymous. As stated before, Wensink chooses not to be recorded during the interview; as such, notes are taken instead. Additionally, Wensink does not want to be directly quoted and wishes to read the Results chapter before the research is submitted. Therefore, the Informed Consent Form is amended to formally comply with these wishes.

The ethics of the researcher themselves must also be addressed. For this purpose, the researcher signs an Ethics Form. In this form, the description and aims of the dissertation are declared, displaying ethical consciousness. The researcher is responsible for delivering a dissertation that has a sufficient level of quality and the researcher should be aware that personal background can affect this (Bryman, 2016). Personal background could result in making particular decisions where others in the same situation would perhaps choose otherwise, for instance, choosing other interview questions (*ibid*). This existence of personal bias should be known to the researcher, and this is achieved through the Ethics Form.

3.5 Limitations

Earlier the potential subjectivity of the researcher and sensitivity of the research topic are described. However, there are other matters that can pose risks and limitations to this research.

Due to time and resource restraints, only a small number of interviews are conducted for this dissertation. This can be problematic for the generalisation of the findings (Bryman, 2016); it is unlikely that the outcomes of the four interviews can be generalised to a further context than the dissertation itself. To be applicable further, more research needs to be conducted.

As already briefly mentioned earlier in this chapter, this research is rather fragmented. Different topics are involved to which different sources are applied and different experts are interviewed. This fragmentation can potentially cause a lack of comprehension. Without comprehensive answers, the researcher's own analysis and interpretation might overshadow the facts, risking the validity and reliability of the research. To overcome this fragmentation, it is important that the key concepts found in the Literature Review are linked to every separate topic during the interviews, in order to establish whether or not there are links between different topics that are further analysed in the Discussion chapter. In addition to this, it is important to keep in mind that the absence of any link can also be a potential answer or outcome.

The last limitation relates to the difficulty to acquire representatives from relevant European institutions such as Eurojust. It is difficult to get in touch with these officials and the goal to conduct interviews with these official representatives is eventually not reached due to the lack

of response. A combination of these representatives together with other non-EU officials would be preferred to gather data from multiple perspectives, instead of somewhat one-sided information.

4. Results

Now that a framework of relevant concepts has been set up, the next step is taken in this chapter where the link between explained concepts and terrorist threats is made. In order to do so, interviews with experts in different fields are conducted and this chapter presents the key findings of these interviews. The experts that are interviewed are already introduced in the previous chapter.

The results are again structured by the main topics and relating concepts, covering judicial cooperation, the EAW and the EU CTS. Additionally, the impact of terrorist threats on these topics are examined. Thereafter, these results are, together with the Literature Review, analysed to eventually answer the main question of the dissertation.

4.1 Mutual recognition and harmonisation

A concept that is already presented in the Literature Review section is that of mutual recognition. However, it remains rather unclear how mutual recognition works in practice, what it means for the functioning of (CT) policies and measures and whether or not it is somewhat optimistic to assume that mutual recognition is the cornerstone of cooperation between MSs.

Firstly, it becomes clear that there is a fine line between harmonisation⁹ and mutual recognition. Mutual recognition gives a certain degree of a decent level of security which is needed for cooperation, but is a fragile principle with possible severe consequences when it goes wrong (W. Wensink, personal interview, December 19, 2018, p. 132). Wensink remarks that mutual recognition must be accompanied by a good system of monitoring and peer review (ibid). In addition to this, mutual recognition is a step below harmonisation and is the highest level of MS cooperation possible since many matters in the field of cooperation are still highly controversial (S. Wittendorp, personal interview, November 14, 2018, p. 109). This means that it is somewhat optimistic to build on that principle (W. Wensink, personal interview, December 19, 2018, p. 132). However, Wensink also agrees with Wittendorp that mutual recognition is the best achievable outcome, since harmonisation is often not an option. Wittendorp says that MSs still have their own criminal law culture and are reluctant to harmonise this, because they feel that harmonisation could not do justice to the specific aspects of the national context in which their criminal law operates (S. Wittendorp, personal interview, November 14, 2018, p. 109). Furthermore, harmonisation is not always an option since it must be taken into account that civilian citizens are

⁹ Harmonisation is not the same as approximation, however, harmonisation is aimed for by approximating rules and regulations.

not likely to agree with the idea of harmonisation (W. Wensink, personal interview, December 19, 2018, p. 133).

In the opinion of Ribbelink, mutual recognition as a cornerstone is not a miscalculation or too optimistic. The assumption exists that there is a basis of mutual recognition and it should not be forgotten that the decision to build on this principle is made by the MSs themselves (O. Ribbelink, personal interview, November 7, 2018, p. 104). It is very easy to say that Brussels imposed it, especially when something is found to be bothersome, however the MSs must ask Brussels to act on something with Brussels agreeing to do so (ibid). In this instance, the ministers of Justice ask the European Commission to propose legislation before it goes through the legislative procedure. Furthermore, it is not only the government which is involved; professionals such as judges, scholars and jurists also give their expertise and opinions on the matter. Eventually it is decided at the MS's governmental level which policies are proposed, studied, negotiated and adopted (ibid), and it is not a decision of the EU as an entity. Ribbelink adds to the abovementioned point by stating that situations in MSs change which can possibly make mutual recognition more difficult (O. Ribbelink, personal interview, November 7, 2018, p. 105).

4.1.1 Implementation problems and harmonisation

In the previous paragraph, it is already stated that cooperation can pose a problem; in this case, judicial cooperation in criminal matters. When it comes to new legislation on sensitive issues, it turns out that MSs have different ideas about what actions should and should not be punished. Wensink and Wittendorp both give the same explanation for this when it comes to terrorist threats; some MSs have more experience than others when it comes to terrorism (W. Wensink, personal interview, December 19, 2018, p. 131; S. Wittendorp, personal interview, November 14, 2018, p. 109). Currently, jihadism is seen as the biggest threat, however, that is only for certain MSs. Eastern European states are, for instance, not really concerned with jihadism. They have other priorities; therefore, CT in the context of Islamic terrorism is not a top priority for these MS (ibid). The fact that not every MS sees CT as a priority can cause a lack of support for CT measures overall (S. Wittendorp, personal interview, November 14, 2018, p. 109). As well as different priorities creating a lack of support, laws can also differ. This is discussed in further detail when discussing the EAW in practice (sub-paragraph 4.4.3) and in the next chapter.

The lack of support can lead to different situations in MSs. Every MS implements measures differently into their national legislation, and different approaches can lead to difficulties (S. Wittendorp, personal interview, November 14, 2018, p. 109). This creates space for more freedom and compromises (W. Wensink, personal interview, December 19, 2018, p. 131). EU policy on terrorism is a good example of this: Wittendorp explains that the *Directive on Combating Terrorism*

of 2002 required the MSs to put a legal definition of terrorism in their national legislation (S. Wittendorp, personal interview, November 14, 2018, p. 110). However, because of the degree of implementational freedom explained by Wensink, this legal definition is not exactly the same in every MS (S. Wittendorp, personal interview, November 14, 2018, p. 109). There needs to be a definition of terrorism, but the exact definition and which approach to use is left to the MSs to determine themselves (ibid). Even if the definition was the same in every MS, and thus harmonised, it is by no means certain that MSs will act the same in each case, since law is very susceptible to interpretation (W. Wensink, personal interview, December 19, 2018, p. 133). Wittendorp explains that similar cases can still be conducted with different parts of legislation (S. Wittendorp, personal interview, November 14, 2018, p. 110). Later in this chapter, in sub-paragraph 4.4.3, interpretation is clarified in more detail when it is linked to the EAW and terrorism threats.

Returning to the idea of harmonisation, again this raises questions. An examination needs to be made as to which problems harmonisation solves and what challenges arise from it (W. Wensink, personal interview, December 19, 2018, p. 133). The impact of harmonisation is rather significant since not only do laws have to be amended, but it also impacts judges and law enforcement as they will need to work with these new laws (ibid). These people would need to receive various types of training in order to become familiar with the new laws, a process which would require time, resources and expertise (ibid).

Understanding the concepts of this paragraph is important since they are the basis of the EAW relating to judicial cooperation. Deficiencies combined with terrorist threats can eventually pose obstacles for the EAW. This is the same for the next subject: the EU CTS.

4.2 The EU CTS and implementation problems

In the Literature Review, the broadness of the EU CTS with its advantages and disadvantages has been presented. The question remains what this broadness means in practice and what the possible consequences are. Wittendorp argues that the CT framework is complicated, however, that arises out of the need to create an overarching framework in which CT can be practised. This overarching framework with sub-strategies is needed since CT is a complex matter and impacts all aspects of society. All kind of different themes need to be included and that makes it complex in its entirety (S. Wittendorp, personal interview, November 14, 2018, p. 107).

Additionally, the CTS is what the EU *can* do and what the MSs *want* to do: national security is a competency of the MS (W. Wensink, personal interview, December 19, 2018, p. 131), and although the EU can create law and regulation, it is ultimately up to the MSs to implement it and sometimes they lag behind with this implementation. An example of what the EU can do and the MSs want to do is the sharing of different types of data – mainly intelligence (ibid). The EU proposed

legislation and the MSs agreed hesitantly but lagged behind with the implementation of measures (ibid). Problems regarding implementation are discussed more broadly later in this section.

According to Wittendorp, in practice, the comprehensive and complex CTS also has a mobilising effect. CT is a matter that everyone can support which makes it easier to bring CT policy measures to the attention at the political level (S. Wittendorp, personal interview, November 14, 2018, p. 108). When CT is added as a justification for a measure that one party wishes to implement, it can be easier to create consensus or to adopt new policy since other MSs might be more inclined to vote in favour of such a measure (ibid). Wensink agrees with the explanation of Wittendorp that people are more prone to approve a measure when it has a CT element in its justification (W. Wensink, personal interview, December 19, 2018, p. 131). What this means, specifically regarding terrorism, is further explained in paragraph 4.3 and the Analysis section.

However, this CT element cannot always be proven in relation to the adopted measure (W. Wensink, personal interview, December 19, 2018, p. 131). To clarify, Wensink provides an example: the European Travel Information and Authorisation System was sold as a CT measure; however, according to a Commission feasibility study, it cannot be proven to be effective against terrorism (W. Wensink, personal interview, December 19, 2018, p. 131). Another example is the PNR Directive which was adopted in the aftermath of the Paris attacks of 2015, although in that case the terrorists did not enter into the country by aeroplane (ibid).

An advantage of a broad framework, such as the CTS, can be found in its flexibility. If threats change, the CTS can always remain topical since it has the flexibility to be easily adapted to new circumstances. Measures are and can be set up relatively quickly (W. Wensink, personal interview, December 19, 2018, p. 132) and the CTS is therefore always current (S. Wittendorp, personal interview, November 14, 2018, p. 112). This is also one reason that the CTS is still considered relevant after 13 years.

Although this ability to create new measures relatively quickly makes the CTS current, it also presents an implementation problem. The implementation power of the EU is more long-term, and it would, therefore, be more useful if there is an analysis of what is already established and what is still needed, instead of installing a measure shortly after an incident (W. Wensink, personal interview, December 19, 2018, p. 131). In paragraph 4.3, there is a further explanation of this statement.

Another problem that arises when implementation of CTS measures lags behind is that the desired cooperation does not happen because MSs are on different levels (W. Wensink, personal interview, December 19, 2018, p. 131). Some MSs act according to the rules set out by the old measures while other MSs act according to the rules set out in the new measures, making

cooperation more difficult (ibid). However, Wensink also adds that the measures are new instruments and not being able to make use of the new measures does not leave big gaps. New instruments simply cannot be used; hence the older instruments must still be utilised.

4.2.1 Cooperation, trust and institutions

The different approaches and legislation described in the previous paragraphs and the emerging implementation problems as a result foster the rise of overlapping systems, after which cooperation schemes need to be created (W. Wensink, personal interview, December 19, 2018, p. 131). Different EU institutions play an important role in assisting MSs with this cooperation. According to Wittendorp, it is important that especially jurists develop mutual understanding of each other and of each other's legal systems (S. Wittendorp, personal interview, November 14, 2018, p. 110).

One reason for deficiencies in mutual understanding can be found in a lack of trust. Wittendorp emphasises that distrust does not go as far as completely distrusting other MSs in the sense that their laws are not solid enough (S. Wittendorp, personal interview, November 14, 2018, p. 110), rather, a fear that other MSs may make different interpretations of identical cases (ibid) which is explained earlier in sub-paragraph 4.1.1 and later in paragraph 4.4.3. Polman agrees that complete distrust, as described by Wittendorp, is about the bigger picture of the legal system and not about smaller aspects of a particular policy that another MS might not agree with (B. Polman, personal interview, December 11, 2018, p. 124).

Apart from a lack of trust, unfamiliarity also plays a role. MSs may not have a thorough understanding of new legislation since parts of it have not been tried yet (S. Wittendorp, personal interview, November 14, 2018, p. 110).

A possible solution is that EU institutions, mainly Eurojust, could more actively introduce the public prosecutors from the various MSs to each other (S. Wittendorp, personal interview, November 14, 2018, p. 110-111). One way to remedy ignorance and perhaps also distrust could be organising study sessions in which the public prosecutors investigate a case, examine how the case is perceived in different MSs, learn how such a case would come to court in another MS and review the consequences of the decisions made on the case (ibid).

One downside of these institutions is that MSs must indicate themselves that they want the institution to get involved. If a MS wants judicial coordination from Eurojust, they must ask Eurojust to engage in a case. The EU is however also working on the European Public Prosecutor's Office (EPPO) which would have the ability to take over certain cases from the MSs when the cases concern EU budget issues (W. Wensink, personal interview, December 19, 2018, p. 133; S. Wittendorp, personal interview, November 14, 2018, p. 111). EPPO gives the EU more authority

over its own funds (W. Wensink, personal interview, December 19, 2018, p. 133). However, some MSs question the legality of this, since there is no EU criminal code and therefore no legal basis on which the EPPO can act (*ibid*).

Comprehending the EU CTS and its notions is not only important in order to assess how the EAW is affected by terrorist threats, it is also essential to evaluate the worth of the EAW under this CT umbrella.

4.3 Terrorism and cooperation

After the Literature Review, a description of the effect of terrorism on cooperation is still missing. It remains unclear how MSs react to terrorist threats and what the consequences for judicial cooperation are.

Polman, Wensink and Wittendorp all agree that following terrorist threats, countries draw closer to each other (B. Polman, personal interview, December 11, 2018, p. 127; W. Wensink, personal interview, December 19, 2018, p. 132; S. Wittendorp, personal interview, November 14, 2018, p. 112-113). The danger of terrorism makes the MSs willing to cooperate more intensively and raises awareness of the need to cooperate. Wittendorp and Polman both add that attacks can lead to a new impulse to start working together more since MSs, including those that are not subject to threats, become nervous and are willing to cooperate more in order to make sure that terrorist threats do not occur in their country (B. Polman, personal interview, December 11, 2018, p. 127; S. Wittendorp, personal interview, November 14, 2018, p. 113). Polman illustrates this willingness with an example: Polman had a client from Belgium who had to be handed over after the attacks in Brussels (B. Polman, personal interview, December 11, 2018, p. 127). Belgium closed the borders, however, Belgium communicated very well about who could and could not enter the country and under what circumstances. Nevertheless, reactions vary between different MSs. In the United Kingdom, society returns to normal relatively quickly, whereas terrorist threats have a larger impact in Belgium (W. Wensink, personal interview, December 19, 2018, p. 132).

In addition to a greater willingness to cooperate, an impetus in new and improved CT measures can be seen. It can be observed that at the EU level a range of new measures are added, that measures are changed or that measures are upgraded (S. Wittendorp, personal interview, November 14, 2018, p. 112). Wensink and Wittendorp both wonder if that impetus is necessary. Wittendorp questions this since, in his opinion, governments already have enough powers to combat terrorism because of the strong development of the CTS since 2001, and new measures will probably have little added value (S. Wittendorp, personal interview, November 14, 2018, p. 116). In paragraph 4.2, it is already stated that Wensink argues that it would be better to first analyse whether a new measure is needed, due to the impulse to create relatively fast and

sometimes unrelated CT measures (W. Wensink, personal interview, December 19, 2018, p. 131). It would be better to examine if these new and improved measures will add value to combatting terrorism before the adaptation and implementation of these measures (ibid). However, this may not happen since the EU needs to show decisiveness, and a time-consuming analysis does not fit in this context (ibid).

There is also an internal political dynamic where the governments under pressure feel the need to show society that they have a grip on the problem and that they are in charge (S. Wittendorp, personal interview, November 14, 2018, p. 112-113). They show this, for example, by formulating new plans. Wensink clarifies that a risk of these governments under pressure is that they show unnecessary strength, while other MSs are likely to be more willing to cooperate when the government has relaxed its stance (W. Wensink, personal interview, December 19, 2018, p. 132).

At the same time, after a terrorist attack, the society of the affected nation will experience fear and anger, with the citizens becoming strained and possibly acting irrationally (S. Wittendorp, personal interview, November 14, 2018, p. 113). For example, it is seen that following jihadist attacks, people affected may besmirch mosques or start talking to Muslims about subjects and actions for which they are not responsible at all. Implementing and formulating new policies and measures is one way the government can show society that they are taking the problem seriously (ibid).

4.3.1 Data sharing and institutions

One important component of cooperation is data-sharing, in which institutions are of importance. Europol¹⁰ often complains about MSs not sharing enough data which means they cannot be effective (S. Wittendorp, personal interview, November 14, 2018, p. 113). After terrorist attacks, an impetus is seen in MSs sharing more data. This also occurred after the terrorist attacks in London in 2005 when intelligence services shared more data with Europol and other platforms. Sharing more is not necessarily positive in itself, as the large amount of data and information needs to be processed (ibid). Therefore, more staff must be employed, and an already insufficient amount of staff members can create new problems.

However, the urgency to cooperate fades after a while and MSs become preoccupied with their own goals again (W. Wensink, personal interview, December 19, 2018, p. 132; S. Wittendorp, personal interview, November 14, 2018, p. 114). Wittendorp clarifies that a consistent flow of

¹⁰ Europol has not been explained throughout this dissertation since it is an institution involved in police cooperation and therefore does not fall under the scope of judicial cooperation. However, this example is important since it also displays the circumstances at institutions concerned with judicial cooperation.

information depends on which MS is in charge; who holds the presidency. Under the Dutch presidency of the EU in 2016, a roadmap for the improvement of information exchange was established; a very detailed list of all the things that had to be changed and implemented (S. Wittendorp, personal interview, November 14, 2018, p. 114). The Netherlands has been actively promoting this, and if it happens then it may eventually have a real long-term effect. Moreover, there is a permanent development that MSs tend to share more with each other since MSs are increasingly convinced that data should not be kept for themselves, in order to efficiently counter terrorism (ibid). A culture of automatic sharing must be in place instead of sharing on a basis of need-to-know (ibid). Nevertheless, this gigantic mountain of information poses a risk that crucial matters may be overlooked.

4.4 The EAW in practice

After describing the EAW, together with corresponding concepts in the Literature Review, there are still some gaps in the practical application of the EAW and its consequences, as well as questions regarding grounds for refusal and mutual trust which are looked at in this paragraph.

When discussing the EAW in practice vis-à-vis in theory, Ribbelink states that the intention of the EAW was to make it very simple. When a person is accused of something, the requesting MS just ticks one of the 32 boxes on the standard EAW form¹¹ where it is briefly described which crime the person is suspected of (O. Ribbelink, personal interview, November 7, 2018, p. 103). The MS then sends the requests and within a few days, that person is handed over (ibid). However, there are differences between the law and the implementation in practice (B. Polman, personal interview, December 11, 2018, p. 122). Polman takes the Netherlands as an example. The Netherlands applies its extradition law; however, it partly deviates from the FD-EAW and is not implemented in full into the national legislation (ibid). Article 2 of the FD-EAW is, for instance, different in Dutch law as opposed to how it is provided in the EAW framework. In addition to this, the Netherlands also added protection for Dutch nationals, something that the EAW does not require (ibid). This is examined further in the next chapter where this argument and the literature are combined and analysed. Nevertheless, Polman emphasises that this not is necessarily a bad thing, but it does show differences between the FD-EAW and national law (ibid).

Adding obstacles or additional conditions into national legislation, such as protection for nationals, was not intended in the creation of the original EAW (O. Ribbelink, personal interview, November 7, 2018, p. 98). Ribbelink also explains that it is difficult to say if that has negative consequences for the functioning of the EAW (O. Ribbelink, personal interview, November 7, 2018,

¹¹ List provided in Annex II: List of offences which give rise to surrender

p. 99). Looking at the intention of the original authors of the EAW, it can be regarded as negative since the original intention was to make the EAW very simple (ibid). Others will say that it is positive because the original arrangement was wrong (ibid). From the beginning, even when the EU was still working on the FD-EAW, people such as scholars and jurists raised concerns about the simplicity of the EAW. They foresaw that MSs would be hesitant to blindly follow up requests without building safeguards and guarantees into their national legislation (O. Ribbelink, personal interview, November 7, 2018, p. 100-101).

Nevertheless, Ribbelink nuances his statement by saying that establishing these guarantees can also be a result of events (O. Ribbelink, personal interview, November 7, 2018, p. 102). Recent developments in Hungary and Poland where the government intervenes in the legal system disrupting impartiality of the government and the judiciary are examples of occurrences which can cause a MS to create extra conditions (ibid).

Despite the original intentions and the possible and eventual consequences, it is a given by now that extra conditions exist and that MSs build in guarantees (O. Ribbelink, personal interview, November 7, 2018, p. 99).

4.4.1 Mutual trust

The question remains if the differences in the application of the EAW lead to problems regarding trust between the MSs. Looking at the previous statement of Ribbelink, it is now a normal and accepted situation that MSs add differences into the national legislation and that this gives the MSs more confidence in the EAW procedure (O. Ribbelink, personal interview, November 7, 2018, p. 93). Extradition under the FD-EAW is still a standard procedure (O. Ribbelink, personal interview, November 7, 2018, p. 97) and as stated before, differences in specific parts of a law will not damage mutual trust or affect cooperation (Polman, personal interview, December 11, 2018, p. 124; S. Wittendorp, personal interview, November 14, 2018, p. 110).

Furthermore, the EAW has been in practice since 2004 and since that time case law has been established and is still being established. Conflict in regular and minor cases is likely to be minor since there is usually some jurisprudence on it, and there has been more discussion and exchange around those themes (S. Wittendorp, personal interview, November 14, 2018, p. 115). More likely to affect mutual trust are differences in major substantial matters. High-profile cases, for example those that involve well-known people, or politically sensitive cases such as the case regarding Catalan leader Puigdemont, are more likely to have a destabilising effect on trust (O. Ribbelink, personal interview, November 7, 2018, p. 99; S. Wittendorp, personal interview, November 14, 2018, p. 115).

4.4.2 Mutual trust and requested EAWs versus executed EAWs

In the Literature Review, substantial differences can be seen concerning incoming EAWs and EAWs that receive follow-up. During the interviews, these dissimilarities are examined, and it is evaluated whether or not it affects mutual trust.

A possible explanation for EAWs that do not receive follow-up is that the extradition request does not fulfil the requirements, for instance, when the standard form is not completed correctly (B. Polman, personal interview, December 11, 2018, p. 125). If an incomplete or incorrect form is submitted by the requesting MS, the EAW cannot be processed and will therefore not be followed up. (ibid).

Another explanation is when the requesting MS withdraws the EAW (B. Polman, personal interview, December 11, 2018, p. 125), which may be done when the issuing MS has additional penalties against a person and wants to combine them.

Additionally, a feature of the EAW is the requirement of double criminality, which means that a person can only be extradited when the crime they are accused of is punishable in both the requesting and the executing MSs (B. Polman, personal interview, December 11, 2018, p. 127). However, it does happen that EAWs are issued for offences that are not punishable in both MSs and in that instance an EAW will not be executed (ibid).

Again, the differences in implementation also play a role in the amount of executed EAWs. Polman takes the example of Poland, which refuses to implement the requirements of Article 5(1)¹² of the FD-EAW (B. Polman, personal interview, December 11, 2018, p. 125-126). This article states that if a suspect is not present at the hearing and has not been informed properly, “the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment” (The Council of Europe, 2002c, p. 4). If Poland does not provide this guarantee when issuing the EAW, the responsible Dutch judicial authority refuses the EAW and there is no extradition (B. Polman, personal interview, December 11, 2018, p. 126).

Nevertheless, these points will probably not have an effect on mutual trust, which is explained in the next chapter where this argument is combined with other results.

¹² In the interview, Polman stated that this is article 12, however, after analysis it was discovered that it is actually article 5(1).

4.4.3 Mutual trust and interpretation

It is mentioned above that law can be easily affected by interpretation and that these interpretations influence the level of mutual trust. Focusing on the EAW, the 32 boxes on the standard form which stand for 32 offences¹³ can be interpreted differently (O. Ribbelink, personal interview, November 7, 2018, p. 99). The description provided by those 32 points is a general theme instead of a definition of a criminal offence (S. Wittendorp, personal interview, November 7, 2018, p. 109). This means that it differs per legislation what that offence entails and what conduct is included (O. Ribbelink, personal interview, November 7, 2018, p. 103), and this in turn is dependent on the culture of justice of the particular MS (S. Wittendorp, personal interview, November 14, 2018, p. 117). It is also observed that some MSs apply certain laws more quickly to extradite people than other types of law under which the suspect could also be convicted and perhaps also would be in another country (*ibid*).

To further clarify this, terrorist offences are taken into account. In considering under which charges a suspect of a terrorist offence is convicted and possibly also extradited (S. Wittendorp, personal interview, November 14, 2018, p. 110), some countries tend to apply terrorism legislation more quickly than other legislation under which the conduct of the suspect could also fall (S. Wittendorp, personal interview, November 14, 2018, p. 116), since MSs are more willing to interpret terrorism legislation differently (B. Polman, personal interview, December 11, 2018, p. 123).

Now that mutual trust is examined, the last noteworthy concept is that of political involvement.

4.4.4 Political involvement

As already described in the Literature Review, the intention of the EAW was to take any political involvement out of the process (Literature Review, p. 10). Ribbelink explains that the EAW was designed to be purely a technical, technocratic solution (O. Ribbelink, personal interview, November 7, 2018, p. 101). However, it can also be seen that in practice, the exclusion of political involvement is not always self-evident (Literature Review, p. 11). MSs started to build in safeguards, such as testing the EAWs or even requesting the minister to intervene (O. Ribbelink, personal interview, November 7, 2018, p. 101). In the Netherlands for example, a minister has the authority to deviate from the courts' judgement in cases concerning asylum and expulsion (*ibid*).

The question remains whether or not terrorist threats have an impact on political intervention. Wittendorp states that terrorist threats have a political effect - however, not in the current situation but rather when the EAW was at its starting point (S. Wittendorp, personal

¹³ List provided in Annex II: List of offences which give rise to surrender

interview, November 14, 2018, p. 118-119). The EAW was negotiated at the end of the 1990s and was a very controversial dossier because it had a strong impact on the protection of human rights. It had been negotiated for years between the MSs but when the 9/11 attacks took place it was pushed through with great speed (ibid). In this way, terrorism had the effect of bringing the EAW into existence.

Nonetheless, looking at it now, terrorism suspects can be simply extradited and sentenced under existing terrorism legislation and under the EAW (S. Wittendorp, personal interview, November 14, 2018, p. 119). As mentioned before, terrorist threats have an impact on the willingness to cooperate, however, this does not change anything for the EAW since new terrorist cases fall under the same pre-existing legislation and are therefore unlikely to have an impact on the EAW (ibid). Furthermore, Wittendorp does not think that the search for security (as laid down in paragraph 4.3) affects the EAW since this is done by implementing new measures (ibid). Moreover, it should also be considered that the average citizen has never heard of the EAW and thus it does not really contribute to the feeling of security within society.

4.4.5 Success?

In the previous section, a variety of advantages and disadvantages of the EAW are described. During the interview with Wittendorp, an attempt is made to determine the possible success of the EAW considering the pros and cons.

Wittendorp states that the EAW does not particularly make the EU safer since the EAW comes into play after a crime has already been committed, and is focused on extraditing people and having them stand before a court (S. Wittendorp, personal interview, November 14, 2018, p. 116). Therefore, the EAW has little added value when it comes to prevention. It should not be forgotten that although it is easy to extradite a suspect of a terrorist threat (B. Polman, personal interview, December 11, 2018, p. 127), the EAW is not designed as a CT measure (O. Ribbelink, personal interview, November 7, 2018, p. 102). It is, however, a sensible instrument in the sense of pursuing conviction (S. Wittendorp, personal interview, November 14, 2018, p. 116).

The EAW is a framework that has partly already proven its effectiveness; this can be found in its success in the simplification of extradition, but not in countering terrorism (S. Wittendorp, personal interview, November 14, 2018, p. 119). Changing or adapting the framework will probably not make it more effective in regards to CT, since this is not the aim of the EAW. Effectiveness must be looked for in mutual understanding (S. Wittendorp, personal interview, November 14, 2018, p. 120), which is already discussed.

This evaluation of success is returned to in the next chapter where the results, as laid down in this chapter, are combined with the Literature Review and are discussed. After the Discussion, the answer to the main research question is provided in the Conclusion.

5. Discussion

In the previous chapter, the findings from the expert interviews are presented. This chapter seeks to analyse these results together with the information derived from the literature research. This analysis is then used to draw conclusions and answer the initial research question regarding what (if any) obstacles terrorist threats pose for the EAW.

In the first part of this chapter, the foundations and the key concepts found within the framework of judicial cooperation, the EAW and the EU CTS, are analysed. Secondly, terrorist threats are considered in terms of what they mean for cooperation and the relationship with the EAW. Lastly, an outlook on how cooperation can be improved is given.

5.1 Key principles in practice

Although there is an aim for harmonisation through the approximation of criminal laws and regulations throughout the EU, this is too ambitious. As described in the Literature Review section and in the Results section, criminal areas are often sensitive and not equally important for every MS (Vermeulen, 2010; S. Wittendorp, personal interview, November 14, 2018, p. 109). This is also the case for terrorist threats, which are not equally common throughout the EU. A prominent example, as derived from the expert interviews, is the current threat of jihadism. However, as reported in the Results section, not every MS experiences jihadism as a significant threat, such as the eastern European MSs, who do not perceive terrorist threats as a top priority. This dissimilarity in priorities results in different views on how to best deal with terrorist threats (W. Wensink, personal interview, December 19, 2018, p. 131; S. Wittendorp, personal interview, November 14, 2018, p. 109). Additionally, MSs and their citizens are reluctant to share their competences on combatting terrorism since national security is still very much a national matter for individual MSs (Maduro, 2008; Vermeulen, 2010; W. Wensink, personal interview, December 19, 2018, p. 131). It can therefore be determined that harmonisation of criminal law is currently not present in the EU (W. Wensink, personal interview, December 19, 2018, p. 132; S. Wittendorp, personal interview, November 14, 2018, p. 108-109).

5.1.1 The existence of mutual recognition

On the basis of the conducted research, it appears that mutual recognition is a more appropriate alternative than harmonisation. This principle is more accepted in sensitive fields and the best possible manner of cooperation since criminal laws are not equalised; rather, decisions of the foreign judiciary based on the national laws are recognised and enforced (S. Wittendorp, personal interview, November 14, 2018, p. 109). The TFEU assumes that mutual recognition exists between the MSs as stated in Article 67(3). In the Results section, different beliefs on the existence

of this principle appear. While Wensink states that it is rather optimistic to assume the existence of mutual recognition since it is clear that it is not present (W. Wensink, personal interview, December 19, 2018, p. 131), Ribbelink claims that it is not too optimistic since the assumption comes from the MSs themselves (O. Ribbelink, personal interview, November 7, 2018, p. 103). Ribbelink raises a point that is easily forgotten, namely that the EU is made up of the MSs, rather than the EU being a sole operator or entity that has decided to base judicial cooperation on mutual recognition. So, if the MSs themselves have decided to put mutual recognition at the base of judicial cooperation, it is supposed to exist; otherwise the MSs would not have opted for this approach.

5.1.2 The existence of mutual trust

Founded on the Literature Review, this discrepancy in expert views can be further examined, since in order for mutual recognition to exist, a high degree of mutual trust is necessary (Vermeulen, 2010). It is hard to say if full mutual trust exists since it can differ between various countries, levels, topics or situations (Fichera, 2011). For example, one MS, for instance Luxembourg, may acknowledge and enforce every EAW from Malta, but this does not mean that Luxembourg recognises every EAW from Spain or that it also enforces every other decision from the judicial cooperation instruments¹⁴ of Malta.

Mutual trust is also not a fixed principle since it is subject to different situations, as stated above. Throughout this dissertation, examples of situations which could have an impact on trust are given. High-profile cases such as that of Puigdemont, and significant changes in MSs such as the developments in Poland and Hungary, can have an impact on mutual trust (Hazelhorst, 2018; O. Ribbelink, personal interview, November 7, 2018, p. 99; S. Wittendorp, personal interview, November 14, 2018, p. 115). In Poland and Hungary, changes in the judicial system led to the shared value of the rule of law being affected. Shared values are needed for mutual trust in legal systems and not having those shared values throughout the EU can therefore lead to a decline in trust (Hirsch Ballin, 2010; Sievers, 2008). However, there are different views on where mutual trust should start and where a lack of trust becomes a problem, since Ribbelink and Wittendorp argue that distrust relates more to differences in interpretations of criminal cases and which law is used to convict a suspect, rather than a possible perception of legal systems not being solid enough due to the lack of similarities (O. Ribbelink, personal interview, November 7, 2018, p. 103; S. Wittendorp, personal interview, November 14, 2018, p. 110). In the next paragraph, this concept and its importance is explained in more detail.

¹⁴ As described in Annex I: Types of judicial cooperation.

It is important to comprehend all the different influences on mutual trust, for two reasons. Firstly, difficulties with mutual trust can have an effect on the whole scope of judicial cooperation, since it forms the basis for mutual recognition and, as stated above, mutual recognition is the basis for judicial cooperation. This also affects the EAW since it falls under the umbrella of judicial cooperation. With harmonisation not being an option, it is important that mutual recognition functions to its fullest extent, and therefore mutual trust needs to exist on a high level. The second reason why the examination of the impacts on mutual trust is important is because of solutions; without understanding which circumstances affect mutual trust, it is impossible to provide methods and answers to overcome gaps in mutual trust.

5.2 Mutual trust concerning the EAW

To know whether or not full mutual recognition in judicial cooperation exists, every instrument under the umbrella of judicial cooperation must be examined and investigated concerning mutual trust. That is not possible in the span of this dissertation and, therefore, the focus is narrowed to the EAW.

On the basis of the research conducted, it is clear that the EAW is a tool to make extradition simple and fast and that it is again based on the principle of mutual recognition. This procedure is in theory highly functional, taking out any political involvement, disproportionate requests and obstacles. Mutual trust is the basis of the EAW and if full trust existed between the MSs this theory would also be reflected in practice. However, mutual trust does not exist if there are significant differences in interpretation of laws (O. Ribbelink, personal interview, November 7, 2018, p. 99; S. Wittendorp, personal interview, November 14, 2018, p. 110). Significant dissimilarities that can be observed are discussed, and after this, the different interpretations are examined.

5.2.1 Implementation problems

Focusing on the EAW, significant dissimilarities can be observed. These dissimilarities are primarily found in the implementation of the FD-EAW into the national legislation where safeguards in order to additionally test the received EAWs (such as the proportionality check and grounds for refusal) are installed. As described in the Literature Review and the Results section, MSs have implemented safeguards that are not stated in the FD-EAW, MSs have chosen not to implement safeguards that are stated in the FD-EAW, and MSs have implemented safeguards after altering them from what is stated in the FD-EAW (Fichera, 2011; Glerum, 2013; B. Polman, personal interview, December 11, 2018, p. 122; Wouters & Naerts, 2004).

The discrepancy in perhaps the most prominent safeguard, the grounds for refusal, is possibly the main example presented in this research regarding implementational problems. Introducing grounds for refusal can lead to a decline of trust in other MSs, since the refusal of an

EAW can be regarded as distrust of an MS (Böse, 2013). In practice it could lead to other MSs reacting by also implementing grounds of refusal, which only leads to the process of the EAW becoming less automatic and more politically involved. However, in accordance with the conducted research there seems to be no evidence of implementation problems affecting mutual trust and cooperation. As a consequence of difficulties with implementation, matters such as political non-involvement and an uncodified proportionality check at the requesting side may not exist as intended in the FD-EAW. Nevertheless, this deviation from the original plan does not seem to trigger a decline in trust. Different interpretations of laws have a more significant impact on mutual trust.

5.2.2 Interpretations

Returning to what is stated in the previous paragraph, and as earlier reported in the Results section, mutual trust and different interpretations of laws can also be considered an obstacle to the EAW. Choosing under which law the responsible judicial authority wants to convict and also extradite someone can differ between MSs. The interpretation of which criminal offence may be relevant to a suspect's conduct can be very different, and can therefore lead to different outcomes in similar cases (O. Ribbelink, personal interview, November 7, 2018, p.103; S. Wittendorp, personal interview, November 14, 2018, p. 109). Looking at the offences under which someone can be extradited¹⁵ it not only shows that most offences are given more of a general description rather than a specific description of a criminal conduct, which leaves room for interpretation in national law, it also shows offences that are somewhat overlapping. One of the offences is unlawful seizure of aircraft/ships, however, this criminal conduct could also fall under terrorism (an offence under which extradition is possible) when the seizure of the aircraft or ship was conducted with a terroristic purpose. The room given to the MSs to elaborate on these general descriptions with specific definitions has a significant effect on what is punishable and under which law it is punishable. When a MS does not agree with the given interpretation, these differences in interpretation can thus lead to a decline of trust.

5.2.3 The extent of mutual trust

Nevertheless, the fact that there is not complete trust between MSs does not mean that there is complete distrust between MSs. The Results section shows that there are many cases in which extradition occurs without any problems and while the gap between requested and executed EAWs as described in the Literature Review (p. 11) may imply that MSs do not comply with the

¹⁵ List provided in Annex II: List of offences which give rise to surrender

obligation to execute a request (Van der Mei, 2017), reasons other than a lack of trust are provided by Polman (B. Polman, personal interview, December 11, 2018, p. 125-127).

When considering and comparing the reasons for a possible lack of trust described throughout this dissertation, such as the adding of safeguards, other implementation problems and the double criminality requirement, the problem of interpretation appears to have the most impact. A possible reason for this could be the uncertainty it can bring. In contrast to the other reasons, which are definable and visible to the MSs since they are implemented in national law or EU legislation, interpretations are not codified in laws or legislation. This means that interpretations can be unclear, unpredictable and susceptible to change, resulting in a situation where MSs do not know where they stand or what to expect.

It is difficult to say precisely how significant this issue with interpretations and mutual trust is, as conceptions and effects are not easy to measure, and research of a much wider scope would need to be conducted first. However, based on the research carried out, it is safe to say that full mutual trust in the scope of the EAW does not exist since diverse interpretations on laws, criminal conduct and legal definitions cause an uncertain situation in which trust declines.

Now that, based on this research, it is established that mutual recognition is not on the level which the EU aims for and where mutual recognition exists in full, the next topic that needs further discussion is that of CT policies.

5.3 CT policies

Throughout this dissertation, the overarching EU CTS with its sub-strategies is explained and evaluated, concluding that the broadness of the EU CTS can be useful when it comes to implementing policies related to terrorism and CT but can also lead to plenty of difficulties.

On the one hand, CT is still a controversial subject with conflicting opinions such as the previously mentioned differences in prioritisation of CT strategies (W. Wensink, personal interview, December 19, 2018, p. 131; S. Wittendorp, personal interview, November 14, 2018, p. 109). In this instance, the broadness of the EU CTS can be considered as beneficial since a broad range of actions is possible and the EU can use multiple instruments, cooperation schemes and measures to combat terrorism. One of the main aims when developing the EU CTS was to unify CT projects under one umbrella (Wensink et al., 2017) but it is evident that the strategy lacks coherence, due to the fact that a considerable amount of matters overlap – not only with other policy areas, but also with tasks and matters in the same area of CT. Furthermore, the content and aims of the matters under this CTS umbrella cannot always be traced back to CT.

On the other hand, differences concerning implementation cannot be found only in the FD-EAW but also in the EU CTS. Before elaboration on this, reactions to terrorist threats must be

clarified first, as differences in prioritising CT between MSs are described several times, and although this leads to problems with implementation, it is clear that these problems do not necessarily arise regarding the adoption of CT measures but more regarding the implementation of CT measures.

5.3.1 Reactions to terrorist threats

The research conducted shows that in reaction to terrorist threats in the EU, MSs are more willing to cooperate closely; not only when the threat occurs in the MS's own territory but also when it happens in another MS, which could have a possible impact on the functioning of judicial cooperation and the EAW. In the next paragraph, the impact of terrorist threats on the EAW is explained in more detail. Internal and external measures are decided on to show society that the problem is dealt with (S. Wittendorp, personal interview, November 14, 2019, p. 113). This behaviour is mostly present at the EU level since countries realise that terrorist threats are not limited by internal borders and measures are also possible under the broad and flexible framework of the EU CTS. As a result, the establishment of new and renewed proposals increases. One factor in this increase is adding terrorism to the justification of these proposals, which makes it easier to receive support and have these proposals adopted (W. Wensink, personal interview, December 19, 2018, p. 131; S. Wittendorp, personal interview, November 14, 2019, p. 108). Throughout this dissertation, it appears that the adoption of CT proposals, or proposals warranted as CT measures, is rather easy since these proposals are mostly formed after a terrorist threat when governments are situated in a vulnerable position where not only society is calling for action but the government itself is in a state of panic and becomes increasingly anxious about possible future scenarios.

These quickly adopted measures which are created out of the panicked reactions after terrorist threats or attacks make the EU CTS event-driven and susceptible to a possible overload of unused and irrelevant provisions. This in turn can make the adopted CT measures rather weak, which brings this paragraph back to the statement about implementation problems from the previous paragraph; measures are easily adopted, which can make them weak. This can eventually lead to implementation problems, since MSs do not want or do not feel the need to transfer weak measures into the national legislation combined with the often-seen behaviour of MSs to cooperate less after the initial urgency fades.

Based on the reported research, it appears that implementational problems and differences in national legislation can be complex for judicial cooperation since the unequal implementation of CT policies and measures can lead to differing definitions, interpretations and actions. It would be better to first examine what is really necessary in order to manage terrorist threats, since MSs are probably more willing to implement measures that have more thought

behind them and which are adapted to their existing needs (W. Wensink, personal interview, December 19, 2018, p. 131).

The last important element to analyse before considering improvements is that of the added value of the EAW regarding terrorist threats.

5.4 The EAW as a CT measure

One of the measures that was adopted with the justification of terrorism and after terrorist threats is the EAW. The EAW was already under development for some time, and after the 9/11 attacks the justification of the EAW contributing to CT was successfully added (Janssens, 2007; S. Wittendorp, personal interview, November 14, 2018, p. 118-119). Looking at the research which is carried out here, the EAW can probably join the examples given by Wensink (W. Wensink, personal interview, December 19, 2018, p. 131) as a measure that cannot be proved to be effective against terrorism, since the functions and aims of the EAW are not related to terrorist threats but simply to extradition. Additionally, it appears that since the EAW is a standard procedure, it does not seem to be affected or changed by external factors such as terrorist threats. Throughout this dissertation, all kind of different factors are examined, evaluated and analysed regarding the possible obstacles to judicial cooperation and the EAW, such as adding grounds for refusal and other safeguards. All of these obstacles, with the exception of interpretations, seem to have either a small impact or no impact on the functioning of the EAW, since the cornerstone of cooperation, mutual trust, is not affected. The same goes for terrorist threats; based on the increased willingness to cooperate, terrorist threats do not seem to affect mutual trust and thus also not the fixed framework of the EAW. This makes it sometimes difficult to remember that the FD-EAW is not actually a CT measure since the EAW is not explicitly established regarding terrorist threats (O. Ribbelink, personal interview, November 7, 2018, p. 102). Terrorist threats helped with the FD-EAW being adopted, but it has little to do with combatting terrorism (S. Wittendorp, personal interview, November 14, 2018, p. 119).

Nevertheless, it is important to not overestimate the EAW in general. Due to the lack of enforcement power of the EU, MSs can decide themselves how they want to implement the FD-EAW. As described in this research, the FD-EAW is not implemented as it was intended and can vary greatly between the MSs. This means that the aim of automatic acceptance of an EAW is not achieved and that national judicial authorities often have a say throughout the process. It is also important to not overestimate the EAW as a CT measure due to the reasons described above. Terrorist threats lead to more cooperation and can make the responsible judicial authorities less static with their safeguards and checks, resulting in more requested EAWs receiving follow-up.

However, based on the conducted research, terrorist threats do not impact the EAW to the extent that it can be perceived as an effective CT tool.

The last element that needs to be analysed before answering the main question of the dissertation in the Conclusion concerns possibilities to enhance the functioning of the EAW.

5.5 Outlook

It is clear that in order to enhance judicial cooperation, the functioning of the EAW and to overcome implementational deficiencies, mutual recognition and therefore mutual trust must be improved. To strengthen mutual trust, mutual judicial understanding should be developed. Therefore, it is important that the responsible judicial authority actually knows and understands the substantiation of a decision of the other party and comprehends their interpretations. This can particularly be achieved through the task of Eurojust and the EJM, which are explained in the Literature Review (Literature Review, p. 7). These institutions, in their judicial training sessions, can facilitate the exchange of knowledge (Hirsch Ballin, 2010; Joutsen, 2006; S. Wittendorp, personal interview, November 14, 2018, p. 110-111). That the EU is increasingly aware of the importance of its role as coordinator can be seen in the development and adaptation of institutions, such as the establishment of the EPPO (W. Wensink, personal interview, December 19, 2018, p. 133).

However, judicial cooperation must ultimately come from the willingness of the MSs themselves since they cannot be forced to cooperate. MSs can also not be forced to share data and information which is needed for substantial cooperation (Vermeulen et al., 2005; S. Wittendorp, personal interview, November 14, 2018, p. 111). For data exchange to be a constant and significant factor in cooperation – and not only for a short period after terrorist threats – the MSs must realise that cooperation without the extensive sharing of information is unproductive, and the institutions need to know how to manage the data.

Now that all the sub-questions are answered, all the information is used to provide a conclusion and an answer to the main question of the dissertation.

6. Conclusion

To answer the main question of *What obstacles do terrorist threats create for the European Arrest Warrant in the judicial cooperation framework?*, six sub-questions are outlined in the Introduction. In the Literature Review section the three main topics of this research are introduced: judicial cooperation, the EAW and the EU CTS. In the Results section, the three main topics are further explained through expert interviews and additionally the implications of terrorist threats are added. By combining these two chapters in the Discussion, answers to the last three sub-questions are provided.

Terrorist threats undoubtedly lead to a greater willingness of the MSs to cooperate, giving rise to the adaptation and implementation of new and improved CT measures. This happens under the CTS umbrella, is done by the EU and is carried out in the MSs. Moreover, most of the difficulties concerning the three main topics, such as implementation problems, political involvement and the proportionality check appear to not be negatively affected by terrorist threats.

The biggest challenge appears to be mutual trust. However, mutual trust is an issue throughout the whole scope of judicial cooperation and not only in regard to the EAW. At the core of mutual trust lies mutual understanding and that is what the MSs seem to have difficulties with. Every MS has its own laws with different interpretations of offences, conducts and sentences. European institutions are important actors in the process of MSs enhancing their knowledge about each other's choices and interpretations. Furthermore, mutual trust is also not necessarily negatively affected by terrorist threats, and MSs are prone to interpreting terrorist cases in a more flexible manner.

Again, in the past it has been shown that terrorist threats have a positive impact on judicial cooperation since MSs draw closer to each other. Additionally, the EAW can be regarded as a fixed framework that is not subject to external occurrences and is therefore unlikely to have terrorist threats posing an obstacle. Possible solutions and prevention of problems must be sought in the wider context of judicial cooperation by enhancing mutual understanding that eventually leads to mutual trust and mutual recognition. Only then will judicial cooperation operate to its fullest throughout the EU.

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Annexes

Annex I: Types of judicial cooperation

- *Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)* (European Commission, n.d.-c);
- *Regulation on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union* (European Commission, n.d.-d)
It is not particularly designed in the framework of judicial cooperation since it has a wider scope than criminal offences;
- *A Council Act on Mutual Assistance in Criminal Matters between the Member States of the European Union* and extradition agreements with third countries (European Commission, n.d.-e);
- Different agreements on the taking of evidence in other MSs, falling apart in evidence in criminal cases, a regulation on evidence in civil and commercial cases and the *Directive regarding the European investigation order in criminal matters* (European Commission, n.d.-f). In a press release from the European Commission (2017c), it is explained that an MS can issue a request to another MS to execute one or multiple actions in relation to the investigation. Moreover, the agreement includes the promise to set up an electronic evidence system (European Commission, 2017c);
- Three Council Framework Decisions on the detention and transfer of prisoners (European Commission, n.d.-f):
 - o *Council framework decision on applying of the principle of mutual recognition for judgements imposing custodial sentences or measures involving deprivation of liberty;*
 - o *Council framework decision on applying the principle of mutual recognition for judgments imposing deprivation of liberty for the purpose of their enforcement in the European Union;*
 - o *Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.* This Council Framework Decision is also named the European Supervision Order and entails agreements to facilitate detention in the own MS, probation and alternatives to pre-trial imprisonment and sanctions;
- Judicial cooperation in the field of freezing and confiscating illegally obtained assets is outlined in two different Council Framework Decisions. The first is the *Council Framework Decision on the execution in the European Union of orders freezing property or evidence* and

the second is the *Council Framework Decision on the application of the principle of mutual recognition to confiscation orders* (European Commission, n.d.-g). Since November 2018 there is also the *Regulation on the mutual recognition of freezing orders and confiscation orders* considering that the Council Framework Decisions are slow, ineffective and bureaucratic (European Parliament, 2018);

- In the *Council framework decision on applying of the principle of mutual recognition to financial penalties* the EU simplifies the enforcement of financial penalties of non-residents of that MS (European Commission, n.d.-h);
- *Council framework decision on the European arrest warrant and the surrender procedures between EU countries* (European Commission, n.d.-i);
- The mutual recognition of judgements governed by the *Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters* (European Commission, n.d.-j).

Annex II: List of offences which give rise to surrender

This list is provided in the *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States* (Council of the European Union, 2002c, p. 16).

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting of currency, including the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;

- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.