Policy without politics?
Policy domain definition and institutional dynamics in the internal security policies of the European Union

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Abstract: Policies in the area of Justice and Home Affairs (JHA) and the Common Foreign and Security Policy (CFSP) has in spite of the formal separation between the second and third pillar become ever more integrated with each other as well as with the policies of the first pillar. The aim of the paper is to conceptualize the inter-institutional processes of legitimation shaping these developments. It is suggested that the authority to legitimately define policy issues in these areas hinges on the ability of institutions to establish connections with already existing policies and legal provisions. The paper presents an analytical framework which incorporates insights from the securitization literature with an organisational view of political institutions, thus acknowledging the specificity of the dynamics of security politics while taking seriously the legal-institutional context in which security policies are formulated. In doing so it provides a firmer theoretical grounding to studies of securitization while confronting the prevalent idea of EU security policies as flowing from unambiguously defined challenges against European security.

Introduction
The EU policies in Justice and Home Affairs (JHA) and the Common Foreign and Security Policy (CFSP) has come to acquire an increasingly central position in the EU. In spite of the formal separation between the second and third pillar, these policies has moved ever closer to each other as well as becoming more integrated with the policies of the first pillar (Cf. Bigo 2000; Commission 2005; Duke and Ojanen 2006; Stetter 2007; Solana 2003). That is, while the policy agendas of the second and the third pillar are overlapping to an increasing extent, security as a political theme has also become a part of an ever increasing number of policy areas, including those in the first pillar. In recent discussions related to EU civil protection policies, conventionally concerned with prevention of natural disasters and coordination of disaster relief, terrorism and terrorist acts have been included under the rubric of ‘man-made
disasters’ (Rhinard and Boin 2008; Commission 2008). Immigration policies have increasingly, since their inclusion in EU efforts, been connected to issues like terrorism and organised crime, a development given additional impetus after 9/11 and the subsequent bombings in Madrid 2004 and London 2005. Yet other policy areas in which security, through the theme of terrorism, has figured in policy debates is that of education as well as development aid (Council 2005; 2007). The question then is how should we understand the growing but uneven expansion of security into seemingly ever new policy domains?

A premise of this paper is that we should regard relations between institutions not only in terms of struggles over competence regarding more or less well defined issues, but as a process through which the issues themselves are defined. An increasing number of scholars argue for the importance of bureaucratic and institutional dynamics in understanding policy making in the EU. Much institutional and bureaucratic analyses of the EU has been to establish where power is located in the political system, and to uncover the mechanisms through which bureaucratic institutions become important actors in the policy process. As Christiansen has noted a supranational body like the Council Secretariat has acquired influence through generating specialized, ‘technical’ knowledge, in particular legal expertise on CFSP issues (2002: 46-47). Lewis (2005) points to the importance of socialization in another Council body, the Committee of Permanent Representatives (COREPER), showing how such processes make issues of national turf much less prominent than in other EU institutions. M. E. Smith has also emphasized the creation of common norms in studying the gradual institutionalization of EU foreign policy cooperation (2004). However, while studying bureaucratic and institutional dynamics have become an important part of EU scholarship there is a tendency to overlook how problems and solutions are shaped by the relations between different institutions. In studying second and third pillar policies there is a clear scholarly tendency to treat security issues as a more or less technical concern. This, it is argued here, risks obscuring the definitional processes that are an inherent part of formulating policy issues.

To address the question of how security has come to be a part of a growing number of policy areas we need to be attentive to how bureaucratic institutions produce the legitimacy to speak authoritatively on specific issues in a given environment. In the new institutional literature on organizations this has been a topic for research for a long time (Cf Meyer and Rowan 1977; March and Olsen 1989; 1998). The claim that bureaucratic institutions tend to develop
agendas that does not correspond fully to, or sometimes diverge considerably from, the agendas they where set up to manage has almost become part of the very definition of bureaucracy in some scholarly fields. Consequently there has also been much focus directed at investigating how bureaucracies gain the authority to redefine their goals and means, and become actors in their own right. Barnett and Finnemore (2004) have shown how studying international organizations as bureaucracies is key to explaining how such organizations gain autonomy and how they sometimes come to diverge drastically from the goals they where initially set up to attain. Within the principal-agent field of institutional analysis concepts like ‘creeping competence’ and ‘agency loss’ point in this direction (Pollack, 1994; 2003; Tallberg 2002). Scholarly interest in how bureaucratic institutions increase their autonomy in relation to their principals and widen the scope of their decision making competence has produced important insights. However, what often remains unclear is how these processes are shaped by the legal-institutional environment in which they take place.

In the case of EU internal security it is suggested here the authority to formulate security policies within the JHA (as well as within the CFSP) is highly dependent on the ability of institutions to latch on to already existing policies and legal provisions, existing in particular within the first pillar. As Fligstein and Mara-Drita argue, institution building and policy developments are always partially path-dependent in the sense that already existing institutions always have an effect upon the shape and form of new ones (1996: 4). Thus, while it is essential to acknowledge the internal mechanisms through which, for instance, technical expertise contributing to the authority to speak on issues is established it is important to complement the analysis of bureaucratic institutions with the dynamics that occur as institutions endeavour to fit their expertise to the environment in which they act. Consequentially, we should not conceive of such expertise as simply information and a tool of influence, but also something that has been shaped as a response to the institutional environment, as understood by the actors in the process.

In the following this paper discusses some prevalent ways of studying EU security policies, focusing specifically on the problems attached to what is identified as its more or less overtly stated ambitions of institutional engineering. Subsequently, an analytical framework is proposed which includes insights from the constructivist security studies literature but situates these insights within a new-institutionalist framework which identifies political institutions’ search for legitimacy as one of the most important driving forces behind policy development.
More specifically, two overarching analytical categories of institutional legitimacy defined at the EU level are brought in: bureaucratic and constitutional legitimacy. It is suggested that these categories allows us to understand important aspects of how institutions and policies develops in the internal security field of the EU.

**Security policy without politics?**

A significant part of scholarly work focusing on EU security cooperation and the policies that has appeared as a result, treats security, implicitly or explicitly, as a management problem. This perspective is preoccupied with assessing the achievements of the EU in security as well as analysing the merits of different possible approaches in unambiguously defined ‘challenges to European security’. There is a tendency to take for granted the unambiguous character of exogenous pressures to which specific policies are seen as responding more or less rationally. Examples of this would be arguments describing the creation of new institutions and policies as a more or less unmediated result of disasters and disruptions (Missiroli 2006). However more nuanced, Rhinard and Boin’s (2008) description of the challenges facing European societies also seem to take the unambiguous and manifest character of threats more or less at face value, making the effectiveness of measures a matter of technicalities rather than a matter of political debate. A problematic aspect of conceptualizing security issues as more or less unambiguous problems is that it blocks the view of an analysis that focuses on the claims for legitimacy as an opening into the study of the policy process. Instead, it tends to reproduce the problem definitions of actors in the policy process, interpreting their legitimating strategies as statements about real world conditions. Thus, from a scholarly perspective, it mirrors predominant definitions of policy problems rather than exploring problem formulations in the context of the processes through which they have been formed. The point here is that what is often regarded as mere struggles over competence should also be seen as a definitional process through which the very character of policy issues is altered.

Along with much of the constructivist security studies literature this paper holds that in the context of studying security politics one should not make the mistake of thinking about the concept of security as being mainly about security itself, in the sense of a need or a value that states, political institutions or individuals strive for (C Fierke 2007; Edkins 2004). Rather, we should investigate how this concept is invoked in the context of specific political processes, on what grounds and with what effects. The literature on securitization, both in its original Copenhagen School variant (Waever 1995; Buzan et al 1998) as well as the more
sociologically inclined versions of this literature, concentrates on how threats are formulated and how the social practices through which threats are defined impact on political procedures as well as the substance of policies (Cf. Bigo 1996; 2000; Huysmans 2000; 2006). Problematizing representations of threats has been a fruitful entry point in studying security in the context of the European Union. However, as will be argued further down, the securitization literature suffers from some serious shortcomings when it comes to theorectization around political institutions.

While not as pronounced in the broader institutionalist EU literature there is still a tendency to rely on the somewhat orthodox instrumental view of institutions as rational instruments or technical systems arising due to the complexity of specific issues (Cf. Meyer, Scott and Deal 1992), which in this case would be the complex technical work of supplying security to the EU. Both Smith (2004) and Stetter (2007) purportedly include new-institutionalist elements, in Stetter’s case a pronounced reference to sociological institutionalism. However, while acknowledging that social interaction produces and alters norms and preferences, the actual policy problems around which such preferences revolve are seemingly left intact. This is also the case with Turnbull and Sandholz (2001) as well as Monar (2001) who, while supplying considerable insights into how new institutions are formed within the field of EU internal security do not make the definitional process a part of their analyses. So, while the importance of institutions is emphasized by a wide spectrum of authors, the exogenous pressures to which institutions are seen to respond often appear as self-evident. This is something which this paper takes issue with. It is argued in the following that any reference to such pressures in terms of a factor existing independently from the institutions which are in place to handle them is fundamentally mistaken about the processes through which the policies within the domain of JHA and CFSP have acquired their shape and form. Thus it is suggested here that instead of resorting to the idea of unambiguously defined policy problems, we should investigate how the legal and institutional context in which policies are formulated shape the very definition of policy problems, and the domains in which institutions can legitimately act.

The absence of politics and institutional dynamics
The neglect of the political and normative character of security policy among scholars also reflects the general reluctance, if not fear, by political elites of Members States to formulate EU policy in terms of politics. This is true both for the seemingly apolitical necessities driving common market integration (Hay and Rosamond 2002) as with internal security
which has been widely formulated as a necessary complement to the market project. Among elected politicians in EU Member States the issue of security obviously offers an extremely delicate tightrope between national sovereignty and EU competence in one of the traditionally most sensitive issues of the nation state. The most prevalent strategy to deal with this issue, or not dealing with it, as it were, has been to side-step it by simply formulating security issues as technical questions. This is also connected to the unclear relationship between Community law and national law, where an increasingly vocal debate among EU scholars have expressed concerns regarding the significant and unaddressed tensions between these often competing systems (Cf. Scharpf 2007; Bartolini 2005; Gustavsson 2008). The risk of spreading the political crises made obvious in the controversies surrounding the Constitutional Treaty and the subsequent Lisbon Treaty is thus kept at arms length. In short there is a growing sense that too profound disagreements or polemic debates might open up a Pandora’s Box of unresolved tensions, potentially paralyzing the whole integration process. The lack of national debates on EU’s internal security policies, reinforced by the idea of security as technical issues, might have contributed to the relative insulation of this area with respect to substantive political debates on how specific issues should be formulated and addressed. Another aspect of this is also that security issues are not as easily placed on the traditional left-right political scale, and thus it is not always evident where political fault lines could be drawn. While no conclusive evidence has been produced in this matter it might be plausible to think that this has, if not contributed to, at least not constrained the tendency of institutions and agencies at the EU level to formulate policies increasingly with reference to their institutional environment, rather than to their ‘principals’.

On several levels it is thus possible to identify a drive to formulate security issues as flowing naturally from the policies already in place at the EU level, in particular first pillar policies. These tendencies are also strengthened by the organizational feature of a ‘multi-organization’ like the Commission with its various sub-units spread over the three pillars (Cram, 1997: 162). The Commission is constantly engaged in struggles for legitimacy concerning its competences in relation to Member States (Boswell 2008: 477) as well as in struggles of legitimacy between its many subunits (Christiansen 2001: 751) regarding the proper borders of policy domains, shaping the formulations of solutions and problems. It is argued here that in these processes first-pillar policies has become a crucial reference point in the formulation of EU security policies, internal as well as external. Institutions as well as Member States need to, in defining the proper policy domain in which they should operate, represent
themselves as well as their policies as authoritative and legitimate. Important parts of these processes of legitimisation occur with respect to the immediate environment of institutions (Meyer and Rowan 1977; Radaelli 2000). In the context of the EU this means that the ability of actors to devise policies as being connected to the institutions and the issues of the first pillar can be seen as a central source of legitimacy when security issues are being formulated within the Union.

**Security across the pillars**

An increasing number of scholars have recognized that maintaining the strict separation between policy areas or pillars does not correspond well to the processes through which policies are formulated within the framework of the EU (Cf. Mörth 2003; Smith 2004; Stetter 2004; 2007). As the JHA and the CFSP where not introduced in an institutional void but where incorporated in already existing institutions they were from the start inextricably linked, functionally as well as institutionally to the ‘first pillar’ policies of the common market (Stetter 2007: 73). Thus, in spite of the formal intergovernmental logic of these policy areas, they have been and continue to be shaped by how they are linked to each other as well as first pillar issues of the EC (Smith 2004: 48). Smith (2001) has also pointed to the increasing involvement in the Court in both the CFSP and the JHA, not least because of their overlapping with the legal order of the EC, in issues like visa/asylum, sanctions and export controls (p. 97). Several writers have argued against resorting to the polemic supranationalism versus intergovernmentalism in understanding the dynamics of EU policy making, prompting Howorth to speak of ‘supranational intergovernmentalism’ even in such as sensitive area as security and defense policy (Howorth 2005). Tonra, in his analysis of the committee system of the CFSP also argues that it is unhelpful to conceptualize this area in either intergovernmental or supranational terms, but prefers to speak of an ‘adapted intergovernmentalism’ with important bureaucratic logics (Tonra 2000: 158). Thus, the “cross-pillar” dimensions of these policy areas have become increasingly clear, something which is also reflected in the argument of this paper.

However, in line with the conceptualization of security as a management problem, cross-pillar dynamics are sometimes discussed from a point of view where the (in)effectiveness or incoherence of organizational features of the institutional set-up are addressed (Pawlak 2009). As honourable a task as this is, it misses the point argued for here, namely that the connections that are invoked between policy areas through, for instance the concept of cross-
pillar politics are a central part of the process through which solutions and problems are defined in the first place. “Cross-pillarization” often points to a statement about functional overlaps of different institutions and consequently the way in which the EU addresses policy problems using all available tools at its disposal. The point argued for in this paper is that rather than conceptualizing the relations between different institutions as simply the ways in which the EU addresses predefined problems as effectively as possible it should be acknowledged that the very definition of problems are shaped by what ‘tools’ are available to solve them (Cohen, March and Olsen 1972; Kingdon 1995). Thus, it is argued that ‘cross-pillarization’ is not just an outcome of the policy process but an integral part of the definition of policies pointing to the processes of legitimation across formal policy domains.

**Towards a framework for the analysis of EU Security Policy: putting the politics back in security policy**

The rest of this paper discusses ways in which such processes can be analysed bringing central insights of the securitization literature within a new-institutionalist framework. Originally coined by Ole Waever (1995) the concept of securitization has had a central place in recent work on constructivist security studies and is at the base of what is often referred to as the Copenhagen School of security studies. While being employed in a range of contexts the Copenhagen School version of this term is quite specific. ‘Security’ in this school is regarded as a speech act with performative aspects. The securitization of an issue signifies the act through which an issue becomes the object of an extreme form of politization which moves it from the normal procedures and politics of deliberation, into an exceptional realm in which the ordinary agreed upon ‘rules of the game’ do not apply (Waever 1995; Buzan, Waever and de Wilde 1998; Williams 2003). Securitization is not just about security in general, but what is signified here is the invocation of *existential threats* which justifies the use of exceptional measures to deal with them. However, the Copenhagen School approach to studying security politics is by definition a top-down approach. From this perspective security as a political concept generates legitimacy in and of it self, in the sense that it does not need any external source of legitimacy. As a political concept ‘security’ is privileged and the source of its legitimacy can be thought of as more or less endogenous and self-contained. The exclusive focus is on how political elites formulate and politicize threats, with the rest of society assuming the rather passive role of an audience giving support or protesting. Arguably, this does not correspond well to how security policies, internal or external, have evolved within the EU framework. Quite conversely, rather than the result of an extreme form
of politicization, the development of EU security policy has been enabled by a depoliticization of security issues. That is, the general reluctance of Member states as well as EU officials to formulate security issues as political, instead framing them in terms of technical issues, has created a situation in which the institutional dynamics at the EU level has become increasingly important.

**Technocratic securitization**

If the Copenhagen school focuses on the high profile speech acts of politicians, writers like Bigo (1996; 2000; 2001) and Huysmans (1998; 2000; 2006) de-emphasize the importance of the ‘spectacle’ part of policymaking focusing more on the micro processes through which security professionals acquire the authority to define problems and solutions in terms of security. Bigo’s seminal 1996 study of the emergence of a European security field map how networks of security professionals increasingly gained the authority to transform and redefine conceptions of internal security in Europe from the seventies to the early nineties. Thus, in contrast with the Copenhagen school the securitization of an issue in this version is conceptualized as the slow and not always so purposeful technocratic processes through which the legitimacy to speak authoritatively on specific issues is established. Here then bureaucratic processes and the role of professional expertise in policy making is emphasized. Both Bigo (1996) and Huysmans (2000; 2006) have for instance pointed to the way in which connections between the construction of the common market and security issues have been produced by the pan-European security sector. Security from this perspective then produces legitimacy through the connections that it establishes to other political concepts such as welfare or immigration (Huysmans 2000) and can as such be thought of as exogenously defined legitimacy. However, the focus of these studies suffers from a tendency to award too great an autonomy to the security sector when it comes to transform the political landscape, a problem that will be elaborated upon in the following section.

**Securitization and the absence of political institutions**

While the writers in the broader constructivist security studies field theorize the dynamics of security politics in quite different ways they all ignore a crucial component for the understanding of the production of security policy. This concerns the concrete institutional environment in which such policies are formulated. There is a general neglect of theoritization of institutional dynamics, a neglect that, it can be argued, stems from the exclusive focus on the security field and the actors within it. As was mentioned above, the very idea of securitization is to capture the transformation of an issue into a security issue. This is of
course not problematic in itself. What is problematic however, is that it produces an inclination to award the security field as operating with an intrinsic expansionary logic or in the case of Bigo, formulating the security field as a ‘field of domination’ (2000: 197). When acknowledging the importance of institutions these accounts, in resemblance with discursive analyses of policy, often conceptualize institutions as an end product, as for instance the institutionalization of discourse (Cf. Hajer 1995), rather than a part of the process through which threats are defined. The production of security policies is in a certain sense thought of as decontextualized, as if they where formulated in a conceptual as well as institutional void, which they arguably are not. While some recent contributions have worked towards more clearly contextualizing processes of securitization (Stritzel 2007; McDonald 2008) as well as pointing to the specifics of such processes (Balsacq 2008) none has done this in the sense of concrete contexts of legal institutional environments argued for here. Huysmans and Bigo, while differing on many points from the Copenhagen School implicitly rely on the idea that security is what might be referred to as a privileged concept, that is a concept that when used overrides, blocks out or renders secondary most other political concepts. Thus, with the existence of long standing Europe wide cooperative efforts on security issues, the existence of bureaucratic institutions, political institutions and community agencies, producing and disseminating professional knowledge, every aspect of the Union should by now revolve around security. This is of course not the case.

One way of handling this problem is to supplant the idea of the security field as a ‘field of domination’ and instead acknowledge the notion of security as a changing albeit inescapable presence in modern politics that can take a variety of shapes and forms (Dillon 1996; Behnke 2004). Such a perspective enables an analysis that is not limited to the processes of securitization in terms of an ever ongoing annexation of new policy issues but captures the way in which the formulation of threats and their remedies are shaped, circumscribed and conditioned by other political fields. The problem with the idea of securitization is thus not the conceptualization of the internal logics of security; rather it is the lack of theoretization of the conditions under which security can be invoked, whether as a part of the discourse of elite politicians or within the less visible confines of bureaucracies and agencies. What these accounts lack then is a conceptualization of how the formulations of threats by specific institutions are shaped by policies and institutions that are not necessarily occupied with security issues. That is, these writers fail to identify the often considerable constraints, institutional as well as conceptual to which the formulation and legitimating of any kind of
policy is subjected. In the context of policy making in the EU we can thus ask ourselves if it is appropriate to speak of a securitization of the Single Market or a ‘marketization’ of the security field.

**Bringing institutions back in: institutional dynamics in EU security policy**

Constructivist security studies supplies a range of fruitful opportunities to the study of security policy in the EU. It challenges prevalent ways of thinking about threats and security; it is sensitive to the implications in terms of social and political effects of formulating an issue in terms of security; and it helps us understand otherwise taken for granted assumptions underlying security policy. However, the general failure in this literature to take seriously the role of political institutions and the environment in which such institutions operate curtail its potential, and gives a one-eyed view of the dynamics through which security policy is formulated. This is exceedingly clear when considering such policies within the context of the EU. In this context the basis for legitimacy can not be understood without taking into account the relationship between different parts of the EU bureaucracy and how policies in this area are, to a considerable degree produced as a result of such relations. Furthermore, and equally important, the formulation of security policies is also connected to the institution in which it is formulated as legitimacy is invoked not only through the arguments underlying the policies themselves but through the representation of institutional characteristics.

The point of departure here, as was mentioned above is that there are two pressures which has been central to how security policy has been shaped in the EU. First, there is an internal logic of the field of security policy in which the internal and foreign aspects of EU security feed of each other, and as such moves ever closer together. This is the process through which internal and external security come to encompass security agendas that resemble each other to an increasing degree. The other pressure comes from the policies of the first pillar. Not only does this pillar contain the fundamental *raison d’être* for the EU, the functioning of the internal market, with the free flow of capital, services, goods and people. It is also within these policies that formal competencies of the EU are the most wide-ranging. As Pollack (1994) has argued from a slightly different perspective, Member States are also more likely to accept legally binding EU legislation if it is formulated as necessary for the functioning of the common market, and not so much for their own sake. The formulation of internal security policies as being intimately connected to and dealing with issues produced by the realization
of the Single Market has been central for making Member State ease the grip on these sensitive issues (Rees 2005).

**EU institutions and their environments**

A fundamental condition for the survival of organizations is the degree to which they adapt to, or in a more technical term become isomorphic with their institutional environment (Meyer and Rowan 1977; Radaelli 2000). By incorporating externally legitimized organizational myths political institutions demonstrate that it pursues publicly valued goals, through the appropriate means (Ibid. p. 349). Thus, in the creation of new institutions these myths often become a part of the standard operating procedures of bureaucratic institutions. As pointed out by Scott, there is never only one institutional environment, but several (Scott 1991: 167). In light of the diverse sets of policies and institutions that make up all three pillars, one can hardly expect that any isomorphic processes will simply be about the general convergence around a narrowly defined market logic. However, a general insight can be drawn from theorizing around the concept of organizational fields, and that is that, as the relation between organizations become closer and more structured, activities tend to become more shaped by these relationships, rather than the actual issues they where set up to manage (DiMaggio and Powell 1983: 148).

Meyer, Scott and Deal argue that formal organizational structures arise mainly as a result of wide spread social institutions or on the other hand complex technologies social environments such as markets (1983 p. 46). It would be absurd to deny the technical complexities of many issues on the political agenda of advanced political systems. However, it can also be stated that professional specialization is not only the answer to such complexities but creates and reinforces them through the production of specialized knowledge. Bureaucratic institutions are usually organized so as to evaluate their own activities, develop competencies in their specific field, thinking of ways in which their competences can be applied in new fields, as well as thinking about the new instruments that might be needed for the development of policies.

However, as Boswell has noted, there is an increasing recognition among civil servants within the Commission that legitimation cannot be based solely with reference to expertise knowledge (Boswell 2008). EU practitioners has in many instances diverged from a purely technocratic logic instead mobilising other ways of legitimating, more based on a political
vision of the EU thus blurring the lines between technical and political ways of legitimizing policies (Fouilleux, Maillard and Smith 2005). The increasing involvement of the European Parliament in many issues can also be seen to strengthen this tendency. Thus, we should be careful to argue from the presupposition of any clear-cut opposition between technocratic policy making and politicization. Politicization and technocratic policy making are interdependently linked forms of politics as they draw on each other to provide legitimate representations of issues and their solutions (Huysmans 2006: 82). Thus, when Den Boer points out that the JHA policy process is primarily motored by highly politicized events rather than based on expertise knowledge (Den Boer 2000), she misses the crucial point. Namely that the formulation of these events as security problems are intimately connected to, and one might say, made possible by, already institutionalized ways of conceptualizing threats, to a considerable extent shaped by such knowledge.

In line with the above discussion, and drawing on the distinction made by Kohler-Koch (2000) between two types of legitimacy we can identify two overarching ways in which the institutions of the EU tend to represent themselves as legitimate actors; in terms of problem solving tools adapting to external demands, invoking expertise and drawing on discourses of bureaucratic rationality or in terms of constitutional legitimacy, representing the institution as the guardian of a path to a preferred end state of the Union.

**Bureaucratic legitimacy**
As security policy is generally considered as a policy area preoccupied with regulatory, rather than redistributive policies, the authority to define knowledge relevant for a given issue is of great importance, as ‘knowledge, rather than budgets is the crucial resource’ in this context (Radaelli 1999: 759). However, rather than discovering the inherent complexity of specific issues bureaucratic organizations produce increasingly specialized knowledge and develop technical understandings of issues; know-how which they then seek to apply in different settings. This enables representations of issues which are not perceived as being political at all, but simply flowing from the authority of widely recognized professions, supporting the representation of institutions as a problem solving tools (Cf. Edelman 1977: 136). This has particularly been the case with EU agencies such as the European Defense Agency (EDA) European Police Office (Europol) and Frontex, the agency tasked with the management of the external borders of the EU. These institutions are becoming increasingly important through their information centralizing capacities. However another aspect of these institutions is worth
mentioning here, namely the way that they all straddle the line between being instruments focused on security and instruments geared towards the functioning and strengthening of the common market. This is perhaps most obvious in the case of the EDA with the explicit mission of developing European military capabilities, as well as ‘creating a competitive European defense equipment market’ (Council 2004a).

While anti-terrorism measures have to a considerable degree been politically driven, it can be argued that the EUs increasing turn to preventive measures aimed at combating terrorism has in many cases taken on a bureaucratic logic. This tendency is epitomized by the concept of cross-pillar coordination that was briefly discussed above, an idea that opens up for a range of new instruments as well as new sites in which distinct problem formulations are developed. Thus, terrorist prevention can be regarded as an area of EU policy making in which the redefinition of policy domains has become increasingly clear. The Commission as a whole has for instance, in a 2005 communication regarding measures to prevent terrorist recruitment, emphasized precisely its broad competencies ranging a number of different areas as a way to present itself as a highly suitable actor to deal with these issues (Commission 2005b). The communication covers everything from law enforcement and external relations, to media, education and the fostering of ‘inter-cultural dialogue’. Thus, the organizational set up of the institution figures prominently in these legitimizing efforts, and it is precisely the fact that the Commission is an institution that covers issues across the pillars that makes it appear attractive in this context. Thus, this exemplifies the invocation of bureaucratic rationality in struggles for legitimate authority. What is significant is of course that the set-up of the organization with its many policy domains invariably feeds into the definition of terrorism as well as into the solutions that are regarded as plausible.

**Constitutional legitimacy**

If bureaucratic legitimacy points to the inner workings and organizational features of institutions, constitutional legitimacy is more outward looking. As was mentioned above this analytical category is devised to capture the legitimizing efforts that are directed at framing institutions and their policies as necessary for the fulfillment of the grander political project of the EU. As such it is more clearly connected with the central proposition of this paper that security measures are to a considerable degree legitimized with reference to the Single Market. This comes out when examining the legal basis for some of the EUs anti-terrorist efforts. An appropriate example the Council regulation aimed at the freezing of funds of
suspected terrorists (Council regulation 2580/2001). This is a measure connected to the regulation and functioning of the internal market as it targets the funds of individual people and organizations, and it derives its legal basis on articles 60, 301 and 308 of the Treaty establishing the European Community (TEC). While Article 60 and 301 concerns economic relations with third countries, Article 308 is more openly formulated as allowing the Council to take the appropriate measures to ensure the attainment of the goals of the community ‘in the course of the operation of the common market’. As a consequence the European Court of Justice has also become an actor involved in the implementation of the regulation, as individuals and organizations that have become the object of a decision of sanctions can appeal to the Court to be brought of the list. Even if the judgment of the Court is primarily directed at procedural aspects it can also be noted that the procedures are often hard to distinguish from the actual determination of what is sufficient ‘evidence’ or what is proportionate action in a given context. For instance in the case of People’s Mojahedin Organization of Iran vs. the Council of the European Communities (European Court of Justice 2008) the Court ruled not only on procedural aspects such as the deprivation of the right of the organization in question to a proper legal defense, or the failure of the Council to produce certain documents at a particular time, but the Court also contested the attempt of the Council to explain its actions as resulting from the urgency to take a decision aimed at the organization. This is interesting in the sense that the literature on securitization often emphasizes the institutionalization of speedy decision making when it comes to security issues, as the invocation of security is often used to legitimize an expedited decision making process. Apparently the Court did not, in this case, buy into this particular way of legitimizing the implementation of the regulation. Paradoxically then, the connection with the EC framework which can be regarded as initially reinforcing the legitimacy of this particular regulation has also involved an institution which in some cases hamper the attempts of securitizing individuals and organizations.

The 2004 agreement concluded between the US and the EU concerning US access to Passenger Name Records (PNR) which took as its basis Article 95 TEC (Council 2004) is a similar example, while perhaps pertaining more to the field of external relations than internal security. While this agreement was criticized for having many problematic aspects (Cf. Mendez 2007; Data Protection Working Party 2003) what is interesting here is precisely the fact that it derived its authority from a part of the treaties which has arguably very little to do with cooperation on security matters but is above all a harmonizing instrument for the market.
This was also one of the points on which the Court later relied when it annulled the agreement (European Court of Justice 2006). Thus, we can argue that this agreement was an example where institutions, in this case the Commission and the Council attempted to latch on to wide spread conceptions of the primary functions of the EU to legitimize a decision.

Arguably, the institutions of the EU that have been central in formulating security policies have appealed to both sources of institutional legitimacy, bureaucratic and constitutional. The representation of security policies as technical issues; as apolitical issues that only needs proper managing, has perhaps led to a stronger emphasis on representing institutions as living up to ideals of bureaucratic rationality. However, there are also, as already mentioned, clear signs that this image of problem solving tool is dependent on quite specific, albeit sometimes unstated visions of what the EU is and what it should be. This points to the path-dependent aspect of EU policy making in the sense that new policies are partially conditioned by the already existing legal-institutional framework. However, as was made obvious by the PNR-agreement (as well as regulation 2580/2001), resorting to constitutional legitimacy can turn out to be a double edged sword. By invoking legitimacy through connecting measures to first pillar provisions, the agreement landed within the jurisdiction of the Court, who consequently judged that it should be annulled. The agreement that was eventually reached with US in 2006 was instead based on second and third pillar provisions of the TEU, out of reach of the Court (Mendez 2007; Balzacq 2008). The very attempt to initially base this agreement in EC law however, should signal that the there is an important path dependent aspect to internal security policy development. However, such dependencies are far from deterministic as there is considerable room for interpretation with regards to the legal institutional environment, not least the founding treaties.

**Conclusion**

This paper has argued that to explain the shape of EU security policy, internal as well as external we need as a first step challenge the idea of security as a technical question which only needs proper management. It was suggested that employing the imagery of security as a technical question hinders our ability to study the process through which policies are forged, and the way in which different institutions gain the authority to formulate issues and consequently redefine the specific domains of EU policy making in which they can legitimately act. From the point of view of the securitization literature the formulation of threats always entails a process of definition. However, the conventional way of
conceptualizing processes of securitization needs to be modified. Thus, rather than to investigate exclusively how the security sector mobilizes knowledge and represent issues, attention must be turned to how such knowledge relates to the political setting in which it is formulated. It was suggested that drawing on insights from the (not so) new-institutionalist writings on bureaucracies and organizations can help us confront these shortcomings. Without denying the central role played by Member States in shaping cooperation on internal security issues, we need to take into account the institutions at the EU level to come to terms with the specific developments in this area. What emerges is a dynamic process in which the institutions of the second and third pillar assign meaning to the concept of security and formulate threats in response to their legal-institutional environment and in particular first pillar policies. Rather than a clear cut expansion of security into new areas, as would be the conventional way of understanding these developments from a securitization perspective, we can see how the invocation of security, and the reconfiguration of policy domains, alter the very meaning of security issues like terrorism. These processes also bring in new institutions, like the Court, altering the landscape of those authorized to speak on these issues.

References


European Court of Justice (2008) *People’s Mojahedin Organization of Iran vs. the Council of the European Communities*, Case T-284/08.


