Introduction

This chapter examines the developing governance of the third pillar and how the justice and home affairs (JHA) dimension of European Union (EU) external relations has been affected by the events of September 11th 2001. The EU’s legal and strategic policy frameworks for integration in JHA had already been established, respectively within the Treaty of Amsterdam and at the Tempere European Council (European Council 1999), however these were substantially unrealised despite a number of innovations that sought to overcome the limits of governance within JHA cooperation (Norman, 1999). The innovations included greater strategic continuity for the multiannual planning of work programmes but also the development of meso level policy communities within and
outside the EU, to implement to the strategic objectives of the European Council (and
the Group of Eight) particularly in action against ‘organised crime’. But the
participation of the EU in the ‘war on terrorism’ in the aftermath of September 11th, and
the consequent elevation of counter terrorism as a ‘major policy objective’, proved to be
a significant turning point for comprehensive attainment of the EU internal security
objectives and its projection externally.

The EU’s ‘roadmap’ against terrorism agreed in the aftermath of September 11th
was ambitious. Internally, the EU and its Member States launched a significant
programme to realise a diverse range of criminal police and judicial policy initiatives,
operational action and institution building with political agreement on contentious
issues such as the abolition of extradition and the establishment of the judicial
cooperation agency EuroJust. The speed and cross pillar breadth of this response
following the attacks was remarkable given the discontinuous pattern of crises and
institutional inertia that had characterised EU JHA cooperation since its inception
(Norman, 1999). However, more than this, den Boer and Monar also highlight that
‘September 11 must be regarded as the first truly ‘cross pillar’ test of the Union’s role as
a security actor’ (2002, p. 11). Therefore September 11th provided an opportunity to the
EU for radical action to implement strategic objectives in the field of criminal police
and judicial cooperation, in the name of counter terrorism, but extending into the EU’s
Common Foreign and Security Policy (CFSP) and with a more structured deployment of
external relations instruments to support achievement of JHA policy objectives. This
second focus, on the field of JHA action in the EU’s ‘external relations’ in relation to
third states, will be examined in relation to the United States (USA) and Russia.
The reinvigoration of the external relations dimension of JHA highlighted, albeit obliquely, one of the main limitations of EU JHA cooperation up to that point – a heavy focus upon the internal security of the Union and the challenge of ten new entrants in 2004 (Monar, 2000). Tackling international and transnational offending, whatever its form, requires a broad scope of action, and one not hindered by the policy silos of specific Councils of Ministers. As will be seen below, EU counterterrorism has required a reappraisal of strategy across the pillars of the Union, and in relation to EU external relations with third states and other international organisations. Despite the forging of ambitious plans in 2002 and 2003, the 2004 train bombings in Madrid again highlighted some loss of momentum within the EU JHA field after a hiatus of political agreement on the development of policies and institutions to tackle cross border crime and terrorism. Madrid refocussed the minds of Heads of States within the European Council (European Council, 2004), with a recognition that despite the internal and external rancour over the invasion of Iraq the threat was not just ‘out there’ and that concrete sustained action was still required to implement political agreements and undertakings. Therefore to provide a broad overview of governance in the third pillar this chapter will examine the EU’s third pillar, but in relation to both counter terrorism and external relations.

Third pillar governance 1993 to 2001

The development of third pillar governance during this period can be regarded as a number of integration phases where treaty changes or Presidency initiatives have overcome ‘legislative blockages’. Many of the Council Presidency initiatives have been
the most politicised attempts to move the Union forward in the field of JHA, the stimuli
often being responses to unplanned events, with the EU’s response to September 11th
being the latest. The main ‘pushes’ commenced with the decision, anticipating
ratification of the Maastricht Treaty on European Union (TEU), to create the
hierarchical Council formation for intergovernmental cooperation for police, customs
and immigration services in 1992. The pressure for such change came from the abolition
of internal border controls in the Single European Act and realisation that security and
law enforcement coordination across a range of criminal investigation and border
control agencies was critical to secure the ‘external frontiers’ of the Union and to
maintain the perceived levels of internal security (Home Affairs Committee, 1990). The
ratification of the TEU in November 1993 formalized a process underway to create a
hierarchical and more transparent system of governance (Hayes-Renshaw & Wallace,
1997, p. 94) but fractured by the three ‘pillars’ – the community method within the EC
treaties (first pillar) and intergovernmental cooperation within the ‘Common, Foreign
and Security Policy’ (second pillar) and Justice and Home Affairs (third pillar). The
TEU introduced a formal framework for EU cooperation and a justicable legal basis for
international agreements between the Member States of the EU (Art. K.6). For the
inaugural third pillar, the model was overwhelmingly intergovernmental, reliant upon
unanimous agreement, with an attenuated role for the Commission and no meaningful
practical role for the European Parliament, let alone national parliaments, in the scrutiny
of legislative initiatives (Art. K.11). This new policy domain of JHA cooperation was
capped by the collective political authority of the justice and interior ministers from the
Member States in a new JHA Council.
The first JHA governance arrangements proved to be disappointing. The early decision making processes of the third pillar were characterised by tortuous negotiations and extended delays, exemplified in the drafting two key legal texts, the Europol Convention and the Convention on Mutual Legal Assistance. Decision making based on principles of unanimity resulted in a lack of agreement on the appropriate role of the European Court of Justice, the inability to agree uniform standards of data protection, the demand for meaningful external accountability mechanisms, and ultimately no common view at which way Europol should develop in the future. The growing crisis in third pillar governance was exacerbated by the UK's obstructionism during the BSE crisis (Statewatch, 1996), and its ideological predilections against the European Court of Justice (Duff, 1997, pp. 186-187). It was widely seen that a flawed system of JHA governance had encumbered Member States where a single 'Eurosceptic' administration could exploit the weaknesses of intergovernmental cooperation, prevent agreement and ultimately the attainment of the objectives of the Union.

The Treaty of Amsterdam introduced a revised legislative process with a number of attractive innovations that forged links between the JHA Council with other EU institutions, including a formal consultation role for the European Parliament (Art.39.1). The political will to improve what had become a dysfunctional JHA policy process spurred the Irish Presidency in the latter half of 1996 to initiate change in advance of ratification of the Treaty of Amsterdam. But the focus of the second major policy push came weeks afterwards, in the Irish Presidency’s response to the seemingly domestic issue of the assassination of an investigative journalist Veronica Guerin early in the Presidency period (International Press Institute, 2000). That event spurred the Irish government to promote domestic legislation, but also broadbased EU action against
‘organised crime’, the creation of the EU’s first JHA High Level Group (on organised crime) and subsequent EU Action Plan Against Organised Crime (Norman, 1999) with its enhanced focus on the achievement and implementation of agreed policy outcomes. This novel but sustained Irish Presidency initiative uniquely established the institutional space for the General Secretariat of the Council, servicing national Member States cooperating in the Council of the EU, to develop ongoing specific expertise in the field with the seconding of ‘eight national experts and practitioners’ (Council of the EU, 1997, p. 6) thereby providing the technical prerequisites for increased continuity between, and support for, the rotating Presidencies in the JHA sphere – a role performed by the Commission under the first pillar.

Crucial to the success of this second JHA policy push by the Irish Presidency was the effective depoliticisation of policy formation, legislative development and institutional construction in the decisive move to selective horizontal policy integration, underpinned by the informal devolution of executive responsibility to the ‘High Level’ group. This provided for the first time strategic orientation to the third pillar, but at the operational level also ensured concrete action on a wide front. The 1996 Irish Presidency, in the name of action against ‘organised crime’, was key to changing third pillar governance and gained high level endorsement at the European Council (Dublin II) in December 1996. This important outcome somewhat unconventionally circumvented the problematic third pillar structures - in creating the ‘High Level Group on Organised Crime’ – and provided the temporary policy ‘cement’ for the coordination of JHA policy development and implementation across the three pillars. The Council’s review of the effectiveness of the Action Plan on Organised Crime (updated at Vienna in December 1998) acknowledged that ‘the Plan of Action helped to create the political
and professional climate required on both the EU level and the national level to take and implement the necessary decisions’ (Council of the EU, 2000, p. 2). This expedient corraling of a wide range of stalled legislative initiatives in the ordinary criminal police and judicial cooperation sphere in terms of concerted EU action to combat ‘organised crime’ proved to be a deft Presidency ruse that assuaged the anticipated domestic political opposition to deepening JHA integration and brought much needed strategic direction to the JHA Council in the Action Plan’s fifteen Political Guidelines. The JHA Council sanctioned a successor to the High Level Group, the Multidisciplinary Group (MDG) on Organised Crime, in July 1997 providing for a continued focus on strategy and its implementation and crucially in external relations, principally with reference to the accession states.

The MDG signalled a nascent strategy focus on external relations in JHA, developing a close working relationship and ultimately a meso level policy community with the ‘Group of Eight’ (or G8) Senior Experts Group on Transnational Organised Crime facilitated by the UK’s concurrent Presidency of both the EU and the G8 (Norman, 1999, pp. 110-14; Wrench, 1997). Focusing on ‘transnational organised crime’, and later ‘cyber crime’, the resulting overlapping networks of state actors ‘possessing specialist skills and expertise’ empowered within the transnational context of EU G8 (Norman, 2001; 1999). Remarkably, some of the EU ‘working methods’ during this interregnum entailed tabling G8 agreements at JHA Councils for adoption once again bypassing the third pillar policymaking processes entirely (Ibid., 113).

The move from the formal intergovernmentalism of the original third pillar, to a reliance on non treaty based mechanisms designed to enhance effectiveness and efficiency of the JHA policy domain, thereby increased its ‘output legitimacy’ (Horeth,
1999, p. 251) but also had a clear transnational impact. The EU’s growing orientation towards globalised crime concerns keyed into the TransAtlantic Partnerships with the USA and Canada, to the G8 and to a lesser extent the Council of Europe (Norman, 1999, pp. 114-17). This period, mediated by the Irish then UK Presidencies, was the precursor to the development of a more systematic and gradated network of transnational relationships that moved from informality to more a formal basis with a number of ‘Common Strategies’ and the development of six monthly Presidency work programmes concerning external relations in JHA, and regular monitoring of these by the European Council. This developing external orientation significantly broadened the scope of the EU JHA integration vision, particularly with ratification of the Treaty of Amsterdam and the special Justice and Home Affairs European Council (Tempere) in October 1999 focussing upon cross border crime issues and relations with other states. Given the above Council mechanisms focused upon organised crime the overall coherence of third pillar policy development, implementation and institution building was now underpinned by two parallel tracks of activity, that on organised crime on the one hand and an Area of Freedom, Security and Justice on the other (Monar, 2001, pp. 758-60). In reality, there was significant overlap in the criminal police and judicial cooperation components of the Action Plans, ultimately resulting in a decision to merge the twintrack approach with a new Strategy for the Beginning of the New Millennium published in May 2000. In common with the original High Level Group’s approach, this sought to provide overall strategic coherence to the governance of JHA cooperation with a series of Political Guidelines, specific recommendations and delineated institutional responsibilities. Further, the Commission’s new found cross pillar role under the provisions of the Treaty of Amsterdam introduce formal pressurepoint to ensure
Member State implementation of JHA policies. Most visible was the transparent six monthly Commission ‘Scoreboard’, of measures outlining progress made towards the attainment of the ‘Area of Freedom, Security and Justice’ (Commission, 2002a).

This period of dynamic development of third pillar governance was recognised tangentially in the Commission’s White Paper on European Governance (Commission, 2001a) via proposals on strategic guidance for the third pillar, consultation in legislative processes and the discipline of an ‘impact assessment’ for legislative proposals. Clear strategic guidance to the JHA Council on the Union’s ultimate integration ambitions come to the fore with the High Level Group on Organised Crime and latterly in the ambitions in the Treaty of Amsterdam. Contrary to the Second Pillar (TEU, Art. 13) the European Council is not formally cited in the provisions of the TEU and thus does not have a routine obligation to provide strategic guidance to the third pillar/JHA Council (Curtin, 1993, p. 27; O’Keefe, 1995, pp. 895-7). This ‘omission’, rectified in the Constitution for Europe, had placed greater responsibilities upon the rotating Presidency, most particularly in the phase prior to the Treaty of Amsterdam when the Commission had limited powers of legislative initiative (excluding police and judicial cooperation in criminal matters and customs cooperation, TEU, Art. K.2). Elsewhere it has been argued that this ‘depoliticised’ and thereby facilitated EU action but at some cost to transparency and accountability (Norman, 1999, pp. 106-10) which Anderson and Burns have characterised as an ‘an instance of post-Parliamentary governance’ (1998, p. 227) where ‘negotiations, policy making and implementation takes place in thousands of specialised policy settings’ (Ibid, p. 229). In this case, they were also conducted in an increasingly transnational context placing a greater weight of
responsibility upon national political executives to provide strategic guidance (and de facto legitimacy) (Commission, 2001a).

By the time of the June 2002 Seville European Council it was clear that the Council’s own efforts to reform its institutional arrangements in advance of enlargement (European Council 2002, Annex II) had been accepted with immediate effect. For the European Council this entailed a ‘substantial change to present practices in the direction of enhancing the efficiency of the institution’ (European Council, 2002, p. 2). Specifically the reforms to governance of the third pillar included the development of a ‘multiannual strategic programme’ dovetailed to the ‘annual operating programme of activities’ for each of the Councils but, crucially, agreed by the next two Presidencies. In JHA External Relations this innovation had already been in place since January 2001 with an annual Presidency work programme for external relations in JHA being endorsed by three Presidencies (Presidency of the Council of the EU, 2001, p. 1). Before examining this deepening and developing external relations focus to JHA across a broader geographic terrain the specific impact of September 11th on JHA governance will now be briefly assessed.

11 September 2001 and third pillar governance

Throughout the period of 1993 to 2001 the profile of EU counter terrorism was extremely low - September 11th changed all that. Overnight the domain of EU counterterrorist cooperation became one of the most high profile areas of cooperation between EU Member States and as will be seen below perhaps one of the most effective
accelerators to JHA integration. Within days of George Bush declaring ‘war on international terrorism’ the Commission prepared two key proposals on **Combating Terrorism** setting common EU definitions of terrorist offences, and the **European Arrest Warrant** effectively abolishing extradition between EU Member States (Commission, 2001b; 2001c). The JHA Council met on the 20th September to agree the ‘EU counterterrorism roadmap’, endorsed on 21st September by a special European Council meeting (European Council, 2001a). The unprecedented speed and breath of the EU response merits detailed assessment in light of the above analysis of third pillar governance. The EU’s actions were a major stepchange in decision taking and the tight timetable set out in the ‘roadmap’ required an ‘accelerated consultation procedure’ to be put into place to meet its formal consultation obligations to the European Parliament. It was seen above that implementation is now one of the key impediments to effectiveness in third pillar governance and this aspect will be addressed in considering the EU’s response to September 11th.

The JHA Council **Conclusions** of the 20th September set out a far reaching ‘roadmap’ of EU action in four main areas: counterterrorism within the EU, cooperation between EU police and intelligence agencies, the financing of terrorism and EU US cooperation (JHA Council, 2001). The roadmap is now continuously updated iv with allied initiatives and actions, recording progress made by the EU institutions and the Member States (Presidency of the Council of the EU, 2002). The main elements will be examined with reference to actual EU action and the analysis of third pillar governance affecting three main areas relevant to the current focus: the effectiveness of policy formation, institution building and the legislative process.
In examining the effectiveness of policy formation there has been a substantial deepening of criminal legal integration allied to concerted efforts to secure Member State implementation of a wide range of international legal commitments (for example signed but unratified EU, Council of Europe and UN agreements) as part of efforts ‘stepping up the fight against terrorism within the EU’. The EU responded both to early indications of European links to the al Qaeda terrorist suspects, as well as to ambitious plans to secure unanimous agreement on the replacement the current extradition arrangements between EU Member States with a ‘European Arrest Warrant’, ratification of two EU extradition conventions and agreement on ‘common definition of terrorism and penalties’ (JHA Council, 2001). Agreeing a definition of terrorism is key to the whole strategy and this Framework Decision was adopted on 13 June 2002, albeit six months after political agreement (Presidency of the Council of the EU, 2002, p.13). The EU wide definition of terrorism set the basis for facilitating extradition of suspects between EU Members States, etc. but it also raised the problem of distinguishing between ‘internal’ domestic terrorist groups (which may offending internationally or transnationally) and ‘international terrorism’. The extent of the Commission’s suggested common list of terrorist groups showed that ‘internal terrorism’ had been initially excluded and that the list was also dominated by Arab groups (Commission, 2001d, Annex 1). Whilst understandable in the immediate aftermath of September 11th, the initial focus on Arab groups did fuel criticism of the measures by not encompassing other groups deploying political violence from around the world, partly assuaged by the final Council Decision (Council of the EU, 2001). Further, the scope of the definition of terrorism appeared to include environmental and animal rights activists (Commission, 2001b, Arts. 3f. & 3h) despite the European Council’s laborious presentation of the
measures as a response to UN Security Council Resolution 1373 passed in the immediate aftermath of September 11th (European Council, 2001b, para.17).

The EU extradition conventions of 1995 and 1996 demonstrate how Member State implementation of EU conventions has been problematic with extended delays in securing national ratification. On September 11 only two thirds of Member States had ratified both, but by July 2002 progress had been made with thirteen Member States ratifying both, with France and Italy still outstanding on both conventions. These conventions have now come into force between those ratifying Member States who ‘made a declaration to that effect’ (Presidency of the Council of the EU, 2002, p. 13).

The UN Security Council’s focus upon the financing of terrorism after September 11th resulted in EU agreement on measures that cut across all pillars with, for example, the ‘automatic information transfer between national financial intelligence units’ and the EU extension of the freezing of assets to those charged with terrorist offences (JHA Council, 2001; Presidency of the Council of the EU, 2002, p. 13). Further, in EU’s foreign and external relations portfolios the roadmap spurred efforts to increase third state ratification of UN legal instruments, with the threat of ‘measures’ against those states failing to comply with Financial Action Task Force orders relating to money laundering legislation and enforcement, etc., a strategy reminiscent of G8 action during the 1990s against organised crime and money laundering (Norman, 1999). In the event COREPER did agree a common text to be included in all EU third party agreements but recoiled from the use of sanctions, instead favouring dialogue and assistance in building capacities in individual states including through regional agreements such as EuroMediterranean Partnership (Commission 2002d; Council of the EU, 2002d).
In examining the third pillar institution building measures included in the roadmap the immediate priority was extension of the remit of EU’s nascent judicial cooperation institution (or ‘ProEuroJust’) from criminal policing to counterterrorism (by 15 October 2001) with full operation of the EuroJust (JHA Council, 2001) achieved in February 2002. In practice it was July before rules of procedure and agreement on Community funding had been settled (Presidency of the Council of the EU, 2002, p. 12). The more operationally oriented investigative measures to facilitate ‘cooperation between the police and intelligence services’ focused upon the creation of institutional structures between the EU bodies of Europol and EuroJust and the Members States’ authorities. These included the Tempere counterterrorism Joint Investigation Teams composed of police and magistrates (European Council, 1999, para. 43) agreed in June 2002 and anticipating Article 13 of the unratified EU Convention on Mutual Assistance in Criminal Matters (Council of the EU, 2002c).

In assessing the legislative process during this period it is seen that many of the political agreements made and announced in December 2001 by the Council were successfully translated into third pillar legislative instruments during 2002. The apparently facilitative environment established by the EU’s response to September 11th has perhaps extended mutual recognition most significantly with the introduction of the European Arrest Warrant and the establishment of EuroJust (Monar, 2002, pp. 129-32). But increasingly attention is being focused upon further powers for Europol – such as the power to request that Member States initiate criminal investigations – and even the replacement of the Europol Convention with a Framework Decision (the legal basis for EuroJust) so that amendments could be made more expeditiously without the need for national ratification. It could be said that the measures put into place after September
have finally resulted in the death of the EU third pillar convention for institution building – a keen intergovernmental brake on JHA integration - with a consequent shift in the balance of powers between the JHA Council and national legislatures.

Evaluation of the implementation of EU Member States’ third pillar agreements was seen above in the ‘peer evaluation’ mechanisms as part of a Council strategy, mediated by the General Secretariat of the Council, to ensure Member State compliance with third pillar agreements and commitments. Perhaps indicative of the qualitative change in the operation and working culture of the third pillar the counterterrorism roadmap extends these mechanisms to national counterterrorism efforts a somewhat ambitious foray into a nationally sensitive area of policing (JHA Council, 2001) with all Member States being examined by the end of 2002 (Presidency of the Council of the EU, 2002, p. 18).

The extension of the additional formal legal and investigative powers within the counterterrorism roadmap was great and many of the ambitious political agreements have resulted in successful legislative outcomes in 2002. These have significantly deepened integration on mutual recognition in the ‘security’ aspects of the EU’s creation of an Area of Freedom, Security and Justice (Monar, 2000, pp. 140-41; Grabbe, 2001, pp. 73-75) and also transformed the EU’s JHA External Relations vision into an increasingly practical reality between the EU’s ‘privileged partners’ and increasingly its near neighbours and its trading partners. This area will now be examined in relation to the development of JHA external relations.

Developing impact of external relations in JHA
Both the USA, a ‘traditional partner’, and Russia have been selected to illustrate how JHA External Relations have developed before and after September 11th. Writing soon after the attack on September 11th den Boer and Monar highlighted how the reaction of the EU would be seen as a cross pillar security test for the EU. However, this had also to be seen in relation to preceding efforts to develop the external impact of EU JHA policies, so that context will also be reviewed. Before examining each example, it is relevant to note that the EU’s counter terrorism ‘roadmap’ required significant cross pillar coordination by the General Affairs Council and since the attacks the EU has issued its own (cross pillar) European Security Strategy (European Union, 2003). Its drafter, the High Representative for CFSP, now also has counterterrorism responsibilities (overseen by a new Terrorism Intelligence Coordinator) and the position of JHA External Relations has been reinforced to the extent that the Council’s Three Year Strategic Programme 2004-6 aims for complete integration of JHA concerns in all external relations policies (Presidency of the Council of the EU, 2004, p. 3). Further, the 2004 accession of ten new countries has concurrently shifted the proximate boundaries of concern closer to Russia and the Mediterranean, notwithstanding the increased importance per se of these areas, which are witnessing upsurges in politically motivated violence.

United States of America
The basis for cooperation with the USA is the EU’s ‘Transatlantic Dialogue’ under the provisions of the 1996 New Transatlantic Agenda and accompanying Action Plan (EU USA, 1995; 1996, pp. 7-8 & pp. 23-26). Since then, six monthly EU US Summits have provided the focal point cooperation with ministerial and official meetings taking forward the JHA agenda. In the criminal policing field this contact has principally concerned organised crime and the coordination of the substantial work programme in this area within the G8 (Norman, 1999). Since September 11th the frequency of contacts, and the breadth and depth of cooperation, between the USA and the EU has changed dramatically (Council of the EU 1999; Council of the EU 2004a). The EU’s counter terrorism roadmap identified EU US cooperation as one of the four key areas of activity both at an operational level and at a strategic one (JHA Council 2001). For example, this resulted in formal agreement for US participation in EU Counterterrorist Task Forces and the counterterrorist cooperation unit established at Europol in the aftermath of the attacks but also the informal encouragement of immediate exchange of intelligence with the US authorities in anticipation of a formal agreement. This was later realised extending to all forms of serious crime for non personal, but also personal data in December 2002 (Peers, 2003). In the judicial sphere, agreements based on Article 38 of the TEU on extradition and mutual legal assistance, the first of its kind in the JHA field, were again extended beyond terrorism to serious crime in general (Statewatch, 2002). The legal agreements were widely regarded as controversial given the death penalty in the USA but was again envisaged at Tempere (European Council, 1999, para. 60). By June 2003 negotiations had been completed and detailed work is now being undertaken to implement these agreements (Council of the EU, 2004a, p. 19).
In examining contemporary EU US cooperation it is clear that high level cooperation and liaison now routinely takes place specifically on counterterrorism, as well as the traditional agenda of action on organised crime. The commitments made in 2001 were further enhanced at the 2004 EU US Summit following the Madrid bombings (EU USA, 2004). Aside from the Summits, high level joint meetings now take place with US Attorney General, the Secretary for Homeland Security and on the EU side the EU CounterTerrorism Coordinator and European Commission (Ibid). At the practical level, joint training programmes between criminal police and judicial practitioners were launched in 2004, presaging implementation of the EU US agreements on extradition and mutual legal assistance, but also intelligence exchange between US law enforcement authorities and Europol.

Overall it is seen that after September 11th the JHA external relations between the US and the EU have now undertaken a stepchange and become embedded in JHA specific joint legal agreements, and deepened into the cooperation agreements on practical police and judicial cooperation criminal matters. This range of strategic, legal and operational EU third country agreements with the USA clearly sets the pace and tone in terms of the EU JHA External Relations with its partners, with similar agreements likely with Canada in due course (Presidency of the Council of the EU 2004a, pp. 19-20). However, the key to understanding the possibilities, limits and ultimately impact of EU External Relations in JHA are how the gradated relationships are now being formally established, not only with transatlantic partners but also other third countries. To help illustrate these differing dimensions to EU external relations in JHA, EU cooperation with Russia will now be examined.
The first formal basis for cooperation between the EU and Russia was the 1999-2004 \textsuperscript{vii} Common Strategy. Within the joint aims to tackle ‘common challenges’ in Europe including those on ‘organised crime, money laundering, illegal trafficking in human beings and drug trafficking’ (European Council, 1999b, Pt. I) the focus in JHA External Relations has been upon judicial and police cooperation against organised crime, and administrative and judicial reform, but strategically linked to the external relations ambitions set out in the Tempere European Council \textit{Conclusions} (Council of the EU 2002e, s. 1). The parameters of police and judicial cooperation is set out in an action plan on organised crime signed in 2000 (Council of the EU, 2002e) including the enhancement of cooperation between Europol and Member States’ liaison officers with the Russian authorities (European Council, 1999b, pt. II 4e). Even after September 11\textsuperscript{th}, and joint statements on terrorism in October 2001 and November 2002, practical results in the JHA field have been stalled by a range of issues including apparent economic bargaining and coupling of ‘dossiers’ by the Russian authorities, and increased tensions from the Russian side over the newly imposed visa regime for Russians entering the eastern and central European countries now in the EU, in particular the impact on Russians in the enclave of Kaliningrad (Council of the EU, 2003).

Despite the problems, it is clear that there is a strategic determination on the part of the EU, despite ongoing concerns over political violence in Chechnya, to develop its relationship with Russia including the JHA field (Council of the EU, 2004b, p. 5). Since 2004 this has been focused upon the ‘four spaces’ within the EU Russia Permanent
Cooperation Council, established to increase the frequency of interaction and boost official cooperation at all levels, ensuring it is both ‘efficient and transparent’ (EU Russia, 2003, p. 2). In this reinvigorated political context moves ‘Towards the common space of freedom, security and justice’ now promise ‘vigorous’ implementation of the Action Plan on Organised Crime, now some four years old, and attempts to realise the practical benefits of the 2003 agreement between the Russian Federation and Europol (Ibid.).

Conclusion

This chapter has examined third pillar governance through the policy sectors of counter terrorism and JHA External Relations. It was evident that the mid 1990s marked the development of transnationalisation of JHA in general, but in particular with the traditional partners and the Group of Eight. However, this should be regarded as an informal precursor to the accelerated formal development of JHA in External Relations after September 11th. What is now observed is the development of gradated transnational networks of cooperation, policy development and operational action at various stages of maturity and strategic intent. Whilst the vision was set out in 1999 at Tempere the practical political realisation and institutional infrastructure to support the longevity of strategic alliances is now being constructed. This change has also seen JHA develop into a genuine cross pillar endeavour spurred by the counter terrorism policy and institutional development and the increased transnational soft security role and responsibilities of the EU’s foreign policy coordinator.
The progressive realisation of the JHA External Relations vision has also increased the importance of technocratic policy groups vis-a-vis parliamentary settings, and in particular at the national level in relation to JHA. Institution building, as has been seen after September 11th with EuroJust, now requires no national ratification procedures, in stark contrast to the genesis of Europol in the 1990s. Multiannual strategic planning now provides long term continuity and impetus between Presidencies – key in JHA – but also limits intrusion of oversight, debate and accountability over this increasingly important transnational policy domain. Whilst the benefits of international cooperation in JHA can now be increasingly realised in advance of the European Constitution, it is also clear that the EU and its Member States need to realise the benefits of enhanced democratic accountability not only within an expanded Union, but also in its transnational engagements in the name of EU External Relations and counterterrorism.
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i As noted by O'Keefe, this is not strictly intergovernmental as Title VI cites connections between the third pillar and other European Union institutions such as the European Parliament, the Commission and the Court of Justice. In addition, expenditure under this pillar may be charged to the Community budget. (O'Keefe, 1995, pp. 903-4).

ii The Treaty of Amsterdam only partly addressed this bind by allowing conventions to come into force when half the Member States have completed their national ratification procedures (Article K.6.2.(d)).

iii These included Russia, Ukraine, the Mediterranean region and the western Balkans. (Presidency of the Council of the EU, 1999, p. 1).

iv By COREPER. Versions include those of October 2001 (12800/01 REV 1), April 2002 (7686/02), May 2002 (8547/02), July 2002 (10773/02 REV 2), June 2004 (10586/04) and November 2004 (14330/04).

v 1995 Convention on Simplified Extradition between Member States of the EU (covering "voluntary" agreement to extradition) and the 1996 Convention relating to Extradition (covering "involuntary" extradition).

vi Amendment of the Europol Convention was required, for example, to allow Europol to participate in the Joint Investigation Teams.

vii The 1999 Common Strategy expired in June 2003, but was extended for one year until June 2004. (Council of the EU, 2003)