



The Institutional Future of the EU within and beyond the Lisbon Treaty

Justice and Home Affairs

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STRUCTURE

- 1. Justice and Home Affairs: Background**
- 2. The 'Lisbonisation' of the 'Area of Freedom, Security and Justice'**
- 3. Issues and Challenges of 'Lisbonisation'**
- 4. Future Adjustments of EU Legal Frameworks?**



1. Justice and Home Affairs: Background

- Justice and Home Affairs **the most dynamic** EU policies
- 20 years of cooperation (Maastricht Treaty) and 30 years since Schengen Agreement
- **Unaccountable, secretive and intergovernmental** → EU Third Pillar' / 'EC First Pillar'
- **JHA Council** in driver's seat decision making and policy programming
- **Democratic and Judicial Deficits:** European Parliament and Court of Justice of the European Union **limited role**



2. The Lisbonisation of the AFSJ

- **‘De-pillarization’**: formal end of the Pillar Divide and brought under the Community Method of Cooperation
- **Title V TFEU (AFSJ)**
 - *Chapter 1: General Provisions* (Art. 67 - 76)
 - *Chapter 2: Policies on Border Checks, Asylum and Immigration* (Art. 77 – 80)
 - *Chapter 3: Judicial Cooperation in Civil Matters* (Art.81)
 - *Chapter 4: Judicial Cooperation in Criminal Matters* (Art. 82-86)
 - *Chapter 5: Police Cooperation* (Art. 87-89)
- **Part TWO TFEU** (Non-Discrimination & Citizenship of the Union)
- **EU Charter of Fundamental Rights** legally binding

- Lisbon Treaty has re-shaped the **institutional ownership** of the **AFSJ policy** beyond the Council rooms

- **KEY TREATY INNOVATIONS ON AFSJ:**
 1. Commission enlarged competences and right of initiative

 2. European Parliament as co-legislator (*ordinary legislative procedure*) and right of veto in international agreements

 3. Court of Justice of the EU full jurisdiction to review and interpret EU JHA law

 4. European External Action Service (EEAS)*



PROTOCOL 36 EU Treaties

- **Transitional Period** for measures in '*police and judicial cooperation in criminal matters*' before Lisbon Treaty entry into force
- **FIVE-YEAR period limiting (December 2009-2014):**
 1. **Enforcement powers** by the European Commission and **judicial scrutiny** by the CJEU
 2. Full display of **the legal effects** of pre-Treaty of Lisbon legislative measures
- Liberalization of 'who monitors trust in the AFSJ*

- Lisbon Treaty allows for **Flexibility, 'Exceptionalism' and Differentiation:**
- **FIRST**, the '*opt-outs*': The UK and Ireland broadened their non-participation in EU JHA policies
- Previously it only included borders, asylum and immigration → after Lisbon *all AFSJ policies* (**Protocol 21 on the position of the UK and Ireland**)
- **UK to opt-out of pre-existing police and criminal law measures** as of 1 December 2014

SECOND, Expansion ‘*differentiated integration*’ in sensitive areas for national sovereignty

First, ‘Brake Clauses’:

...would affect fundamental aspects of its criminal justice system

- Criminal Justice (Art. 82.3 TFEU)
- Rules on definition of criminal offences/sanctions (Art. 83.3)

Second, ‘Accelerator Clauses’ / Enhanced Cooperation
(Art. 20 TEU and Art. 326 - 334 TFEU)

....if at least nine Member States...and comply with Treaties

- Criminal Justice Cooperation (Art. 82.3 TFEU)
- Criminal offences/sanctions (Art. 83.3)
- European Public Prosecutor (EPPO) (Art. 86.1)

3. Issues and Challenges of Lisbonisation

- Has 'Lisbonisation' delivered? **What are the outstanding Challenges?**

CHALLENGE 1: EU DECISION-MAKING AND SHAPING

- European Parliament as co-legislator and policy-setter
- Relations with Commission / Council, **e.g.** international agreements
- Accountability in *ordinary legislative procedure*: First reading agreements, informal 'trialogues' or tripartite meetings
- Transparency challenges inter-institutional cooperation and JHA agencies

CHALLENGE 2: CONSISTENCY AND INCOHERENCY

- Differentiation: HOW MANY Areas FSJ? **Is there a COMMON AFSJ?**
- ‘*Exceptionalism*’ and **avoiding EU scrutiny**:
 - Position of the UK in EU Criminal Justice Policies
 - National security (Art. 4.2 TEU)
 - Nationality as the Key to EU Citizenship (Art. 20 TFEU)
 - Rule of law (Art. 2 and 7 TEU)
- **Principles into Practice?**
 - Solidarity and fair sharing of responsibility between EU MS (Art. 80 TFEU)
 - Evaluation implementation of JHA policies (*the principle of*₁₀
mutual recognition) (Art. 70 TFEU)



CHALLENGE 3: EU Charter of Fundamental Rights and EU Citizenship

- **Challenges 1 and 2** impact over fundamental rights and EU Citizenship rights and freedoms
- EU citizens facing ***competing AFSJ*** and ***fragmented areas of protection depending on WHERE they are!***
- **Differential treatment/Discrimination**
- Fundamental rights protections **by EU Member States and European Institutions/Agencies** cannot be taken for granted

4. Future adjustments of EU Legal frameworks?

- Priority given to address these three challenges: **HOW?**
- **FIRST**, more accountable, democratic and transparent EU decision-making
- **SECOND**, '*putting principles into practice*', ensuring consistency and addressing current GAPS
- **THIRD**, strengthening fundamental rights protection and mainstreaming EU Charter in decision-making