



AN AREA OF FREEDOM, SECURITY AND JUSTICE: GENERAL ASPECTS

The Treaties attach great importance to the creation of an area of freedom, security and justice. In 2009, several important new features were introduced: a more efficient and democratic decision-making procedure that comes in response to the abolition of the old pillar structure; increased powers for the Court of Justice of the EU; and a new role for national parliaments. Basic rights are strengthened by the legally binding Charter of Fundamental Rights of the European Union.

LEGAL BASIS

Article 3(2) of the Treaty on European Union (TEU). This article, which sets out the EU's key objectives, attaches greater importance to the creation of an area of freedom, security and justice (AFSJ) than the preceding Treaty of Nice, as this aim is now mentioned even before that of establishing an internal market.

Title V of the Treaty on the Functioning of the European Union (TFEU) – Articles 67 to 89 – is devoted to the AFSJ. In addition to the general provisions, this title contains specific chapters on:

- Policies on border checks, asylum and immigration;
- Judicial cooperation in civil matters;
- Judicial cooperation in criminal matters;
- Police cooperation^[1].

Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU ([Protocol 22](#) – ‘opt-out’ – exempts Denmark from participating in the policy). It has nonetheless been implementing the Schengen acquis since 2001 on an intergovernmental basis. Concerning judicial cooperation in civil matters and the rules regulating which courts have jurisdiction in legal disputes of a civil or commercial nature between individuals residing in different Member States ([‘Brussels I’ Regulation](#)), on 19 October 2005 the Kingdom of Denmark and the EU concluded an [agreement on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters](#). According to Article 3(2) of the agreement, whenever amendments are adopted, Denmark must notify the Commission of its decision whether or not to

[1] See Fact Sheets [4.2.2](#), [4.2.3](#), [4.2.5](#), [4.2.6](#), [4.2.7](#)



implement the content of such amendments. Ireland only participates in the adoption and application of specific measures after a decision to 'opt in' ([Protocol No 21](#)).

As well as those provisions, mention should also be made of other articles inextricably linked to the creation of an AFSJ. These include Article 6 of the TEU on the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms^[2], Article 8 of the TFEU on the elimination of inequalities, Article 15(3) of the TFEU on access to the institutions' documents, Article 16 of the TFEU on the protection of personal data^[3], and Articles 18 to 25 of the TFEU on non-discrimination and citizenship of the Union^[4]. But the TFEU has also introduced a number of 'brake clauses' for when a Member State considers that draft legislation would affect fundamental aspects of its criminal justice system (Article 82(3) of the TFEU), and common minimum rules concerning the definition of criminal offences and sanctions for particularly serious crimes with a cross-border dimension (Article 83(3) of the TFEU). The way in which this works in practice is as follows: A draft directive is submitted to the European Council and the ordinary legislative procedure is suspended. Should a consensus be reached, the European Council will, within a period of four months, refer the draft back to the Council, which will terminate the suspension of the ordinary legislative procedure.

OBJECTIVES

The objectives for the AFSJ are laid down in Article 67 of the TFEU:

- 'The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States;
- It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals;
- 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 judgments in criminal matters and, if necessary, through the approximation of criminal laws;
- The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.

[2]See Fact Sheet [4.1.2](#)

[3]See Fact Sheet [4.2.8](#)

[4]See Fact Sheet [4.1.1](#)



ACHIEVEMENTS

A. Main new features introduced by the Lisbon Treaty

1. A more efficient and more democratic decision-making procedure

The Lisbon Treaty abolished the third pillar, which was based on intergovernmental cooperation, thus generalising the Community method in the AFSJ. As a rule, legislative proposals are now adopted under the ordinary legislative procedure set out in Article 294 of the TFEU. The Council acts by a qualified majority, and the European Parliament, as co-legislator, delivers its opinion via the codecision procedure.

2. A new role for national parliaments

Article 12 of the TEU and Protocols No 1 and 2 lay down the role of the national parliaments in the EU. National parliaments now have eight weeks in which to examine any given legislative proposal in the light of the subsidiarity principle; until that period has expired, no decision can be taken at EU level on that proposal. With regard to the AFSJ, if a quarter of the national parliaments so request, a proposal must be reviewed (Article 7(2) of Protocol No 2).

Proceedings for annulment may be brought before the Court of Justice if the principle of subsidiarity is infringed by a legislative act.

National parliaments are involved in the evaluation of Eurojust and Europol (Articles 85 and 88 of the TFEU).

3. Increased powers for the Court of Justice of the European Union^[5]

The Court of Justice may now give preliminary rulings, without restriction, on all aspects of the AFSJ. Following the end of a five-year transitional period from the entry into force of the Lisbon Treaty (i.e. as of 1 December 2014), acts in the field of police cooperation and judicial cooperation in criminal matters adopted under the previous Treaty can also be the subject of such proceedings. The same system applies to proceedings for failure to fulfil an obligation (Protocol No 36).

4. A more prominent role for the Commission

The fact that the Commission may bring proceedings for failure to fulfil an obligation against Member States which do not comply with provisions concerning the AFSJ is an important new feature conferring a new power in terms of monitoring the application of legislation.

5. Potential involvement of Member States in the evaluation of AFSJ policy implementation

Article 70 of the TFEU states that the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of AFSJ policies by Member States' authorities.

[5] See Fact Sheet [1.3.10](#)



B. The European Council's planning role

Alongside the changes brought about by successive Treaties, the European Council has played a particularly important role in the developments and progress that have taken place in various fields of the AFSJ.

The Tampere European Council in October 1999 included a special meeting to discuss how an area of freedom, security and justice might be established by drawing to the full on the opportunities afforded by the Amsterdam Treaty.

In November 2004, the European Council adopted a new five-year action plan, the Hague Programme.

On 10 and 11 December 2009, the European Council adopted the Stockholm Programme. This multiannual programme for the period from 2010 to 2014 focused on the interests and needs of citizens and other people to whom the EU has a responsibility.

The Lisbon Treaty formally recognises the European Council's preeminent role of '[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice' (Article 68 of the TFEU). In June 2014, the European Council defined these guidelines over the coming years. They are in line with the priorities set in the strategic agenda for the EU, which was also adopted in June 2014.

C. Establishment of specialist AFSJ management bodies: the agencies

Various agencies have been set up to help oversee policies in a number of important areas of the AFSJ: [Europol](#), for police cooperation; the [European Union Agency for Law Enforcement Training](#) (CEPOL); [Eurojust](#), for judicial cooperation in criminal matters; the EU [Fundamental Rights Agency](#) (FRA), which deals with fundamental rights and discrimination; the [European Monitoring Centre for Drugs and Drug Addiction](#) (EMCDDA); the [European Border and Coast Guard Agency](#) (Frontex), which is responsible for coordinating external border control; the [EU Agency for Asylum](#) (EUA); the [European Public Prosecutor's Office \(EPPO\)](#)^[6] and the [EU Agency for the Operational Management of Large-Scale IT Systems in the AFSJ](#) (eu-LISA).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has a range of tools and powers that enable it to perform its role to the full:

- Legislative competence to the extent that, since the entry into force of the Lisbon Treaty in 2009, Parliament acts as co-legislator under the ordinary legislative procedure. This has become the general rule, but with a number of exceptions. These include measures intended to ensure 'administrative cooperation between the relevant departments of the Member States' (Article 74 of the TFEU), which are still subject to a 'special legislative procedure' with Council acting on a proposal of the Commission or a quarter of the Member States, and after consulting Parliament. What is more, a special legislative procedure (Council acting unanimously after consulting Parliament) applies concerning measures

[6] See Fact Sheet [4.2.6](#)



laying down the conditions and limitations for police cooperation (Article 89 of the TFEU) or provisions on passports, identity cards and residence permits (Article 77(3) of the TFEU);

- Budgetary competence, the European Parliament being jointly responsible, with the Council, for laying down the EU budget for programmes in the AFSJ field;
- Scrutiny of activities of the EU agencies operating in this policy field, for example by sending delegations to the Member States or to the EU external borders in order to identify problems and to verify how legislation adopted at EU level is being implemented;
- The power to bring proceedings for annulment before the Court of Justice, which the European Parliament exercised, for instance, in order to request the annulment of certain provisions of legislative acts;
- The power of political initiative, which Parliament exercises by adopting own-initiative reports and resolutions on such subjects as it might choose to address.

The main priorities on which Parliament has constantly laid emphasis over the past years can be summed up as follows:

- Recognising and taking account of the growing importance of the AFSJ in the context of the EU's development;
- Abolishing the third pillar and bringing the areas of police and judicial cooperation in criminal matters within the scope of EU procedures and legislation so as to enable the European Parliament to play its full democratic role in the legislative process;
- Doing away with unanimity in the Council in order to facilitate decision-making;
- Maintaining a fair balance between the protection of citizens' and residents' fundamental rights and security and counterterrorism requirements, and ensuring that this balance is reflected in legislation and in implementation;
- Strengthening the protection and promotion of fundamental rights, in particular through the adoption of the legally binding Charter of Fundamental Rights of the European Union and the establishment of a Fundamental Rights Agency, as well as through the establishment of the [committee of inquiry to investigate the use of Pegasus and equivalent surveillance spyware](#), which evaluated how the use of spyware against EU citizens affected democratic processes and individual rights of citizens in the EU.

This fact sheet was prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

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