Area of Freedom, Security and Justice

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The AFSJ

Civil Cooperation

Visa

Criminal Cooperation

Border Controls

Policing and Security

Immigration (regular and irregular)
Lecture 1 – Monday 2015-10-26

The historical background: framework prior to the Maastricht Treaty, framework in the Maastricht Treaty, the Amsterdam Treaty, the path to the Lisbon Treaty. Institutional framework and general overview of the AFSJ.
Lecture 2 – Tuesday 2015-10-27

AFSJ and Home Affairs; Schengen, Cooperation in migration: general overview and interplay with other EU law, legal migration; cooperation in migration. Judicial cooperation in criminal matters.
Lecture 3 – Thursday 2015-10-29

Legal migration and its implications for the internal market
Judicial cooperation in criminal and civil matters and its implications for the internal market
Lecture 4 – Friday 2015-10-30

Judicial cooperation in criminal and civil matters and its implications for the internal market (continued)
• AFSJ surrounding/encompassing free movement of persons and internal market
• The AFSJ is a result of spill-over effects
• Specified issues:
  ✓ institutional framework and development
  ✓ cooperation in criminal matters
  ✓ European Judicial Cooperation (Eurojust)
  ✓ cooperation in migration matters and EU asylum policy
History and Development of AFSJ

- **1975:** the **TREVI** (Terrorisme, Radicalisme, Extrémisme et Violence Internationale) group was created, composed of member states' justice and home affairs ministers. Forerunner of the Justice and Home Affairs Pillar of the EU.

- **1985:** **Schengen Agreement**

- **1990:** **Schengen Implementing Convention** opened up EU's internal borders and established the Schengen Area.

  In parallel the **Dublin Convention (1990) / Dublin Regulation** (today: Regulation No. 604/2013 „Dublin III“) furthered police cooperation in certain fields (asylum etc.)
• **Maastricht Treaty** formally introduced cooperation in immigration and police cooperation policies
  - Justice and Home Affairs (JHA) as one of the EU's "three pillars" was established

• Justice and Home Affairs pillar in Maastricht Treaty
  - organized on an intergovernmental basis with little involvement of the EU supranational institutions
  - 1995: EUROPOL
  - 1998: European Judicial Network in criminal matters (EJN)

All three organizations are supranational

- ECSC
- EC (former EEC)
- EURATOM

Foreign and Security Policy
(Intergovernmental cooperation and coordination – not supranational but partly making use of the same institutions)

Justice and Home Affairs
(Intergovernmental cooperation and coordination – not supranational but partly making use of the same institutions)
1999: Treaty of Amsterdam introduced namely the idea of an area of freedom, security and justice

The first working program putting it into effect was agreed at Tampere, Finland in Oct. 1999

The pillar structure remained

Treaty of Nice enshrined Eurojust in the EU treaties

The Hague program, agreed in November 2004 was the follow-up program of Tampere with further objectives to be achieved between 2005 and 2010.
2009: **Treaty of Lisbon** abolished the pillar structure:

- reuniting the areas separated at Amsterdam
- The European Parliament and Court of Justice gained a say over the whole area while the Council changed to majority voting for the remaining PJCC matters *(PJCC: Police and Judicial Co-operation in Criminal Matters)*

As the **Treaty of Lisbon** came into force, the European Council adopted the **Stockholm Programme** to provide EU action on developing the AFSJ over the following five years.
Where in TFEU/TEU are AFSJ rules?

- Article 3(2) TEU
- Title V of the TFEU – Articles 67 to 89
- Articles inextricably linked to the creation of an AFSJ:
  - Article 6 TEU (human rights)
  - Article 8 TEU (neighbourhood policy)
  - Article 15(3) TFEU (access to documents)
  - Article 16 TFEU (data protection)
  - Articles 18 to 25 TFEU (non-discr. / citizenship)
  - Protocols, e.g. 19, 23 and 24
New features introduced by Lisbon Treaty

- More **efficient** and more **democratic** decision-making procedure
- New role for national parliaments
- Increased powers for the **ECJ**
- More prominent role for the Commission
- Potential involvement of Member States in the evaluation of AFSJ policy implementation
- **Basic rights** are strengthened by binding Charter of Fundamental Rights and by obligation on the EU to sign up to the European Convention for the Protection of Human Rights and Fundamental Freedoms

**Principle of subsidiarity**
(Art. 5 III TEU + Protocol)
(see also: Art. 69 TFEU)
The European Council’s planning role

The Lisbon Treaty formally recognizes the European Council’s pre-eminent role of

‘[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice’

(Article 68 TFEU)
Stockholm Programme

- provides a roadmap for EU work in AFSJ 2010-2014
- contains guidelines for common politics on:
  - protection of fundamental rights
  - privacy
  - minority rights and rights of groups of people in need of special protection
  - citizenship of the European Union
- various areas are addressed:
  - homeland and public security
  - migration (European pact on immigration and asylum)
  - combat against organized crime
  - family law, private law, inheritance law and others
Stockholm Programme

- new European security architecture through the extension of cooperation in the following areas:
  - Police
  - military and secret services
  - border-crossing data exchange between state authorities
  - surveillance of the internet
Role of the Parliament in the AFSJ

main priorities on which the European Parliament has constantly laid emphasis:

- taking account of growing importance of the AFSJ in context of EU’s development
- bringing areas of police and judicial cooperation in criminal matters within scope of EU procedures and legislation to enable the EP to play full democratic role in legislative process
- maintaining fair balance between protection of citizens’ fundamental rights and security and counterterrorism requirements
- strengthening fundamental rights
Structure of the policy field of AFSJ
(actually a bundle of different policy fields or types of policies)

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<th>General provisions (Art. 67-76 TFEU)</th>
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<td>→ Concerned with: aims, guidelines, basic principles, institutional aspects</td>
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<th>Policies on border checks, asylum and immigration (Art. 77 – 80 TFEU)</th>
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<th>Judicial Cooperation in Civil Matters (Art. 81 TFEU)</th>
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<th>Police Cooperation (Art. 87-89 TFEU)</th>
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Agencies as a governance tool of the European Union (Excursus)
Execution of EU legal acts

- As a basic principle, the member states and their administration have to carry out EU legal acts.
  
  **Art. 291 TFEU**

- The EU is supervising the implementation of EU legal acts in the member states, but traditionally own EU administrative organs implementing legal acts have been rare.

- However, certain fields require specific coordination, collection and exchange of data, management of separate funds or even direct action vis-à-vis citizens, companies etc.
Governance by Agencies

- In many policy fields, the EU today uses agencies as a governance tool.
- This is also true for the field of the AFSJ.
- Agencies are established by legal acts (i.e. secondary law of the EU), they can, however, be mentioned in primary law (see e.g. Art. 88 TFEU).
- Primary law in this case contains an obligation to establish the agency, to specify its structure and its tasks in accordance with the framework set out by primary law.
- The AFSJ knows a number of such agencies.
Agencies (over 40)

- Independent legal entities under European public law, distinct from the EU institutions
- Important role in implementing EU policies
- Especially tasks of technical, scientific, operational and/or regulatory nature
- Free up the EU institutions, especially the Commission, to concentrate on policy-making
- Support cooperation between the EU and national governments
- By pooling technical and specialist expertise from both the EU institutions and national authorities
Types of EU-Agencies

**Decentralised Agencies**
- carry out technical, scientific or managerial tasks assisting the EU in policy implementation
- assist the member states by providing bundled expertise

**Executive Agencies**
- help the European Commission manage EU programmes
- limited period of existence

**Euratom Agencies**
(belong to the Euratom Treaty)

**European Institute for Innovation and Technology**
(an academic and research oriented institution)
Examples for Agencies:

- Agency for the Cooperation of Energy Regulators (ACER)
- European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)
- European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)
- European Asylum Support Office (EASO)
- European Aviation Safety Agency (EASA)
- European Banking Authority (EBA)
- European Centre for Disease Prevention and Control (ECDC)
- European Centre for the Development of Vocational Training (Cedefop)
- European Environment Agency (EEA)
- European Fisheries Control Agency (EFCA)
- European Food Safety Authority (EFSA)
- European Institute for Gender Equality (EIGE)
- European Police College (CEPOL)
- European Police Office (EUROPOL)

There are many more, covering almost every policy field of the EU
Specialist AFSJ management agencies:

- **Europol** for police cooperation
- **Eurojust** for judicial cooperation in criminal matters
- **EU Fundamental Rights Agency**, which deals with fundamental rights and discrimination
- **Frontex**, which is responsible for external border control
- **European Asylum Support Office**

→ Understanding the concept of agencies is necessary in order to understand the functioning of the AFSJ.
→ For further details see the case studies later in this lecture.
I. Schengen Area and Border Management
Schengen Area

- Based on the earlier Schengen Agreement and Convention under public international law

- Today see: Art. 77 ff. TFEU and Prot. 19, integration of the Schengen acquis into EU law, it is now only part of a broader policy field, covering also asylum and long-term stays in the EU

- Schengen Area extends also to non-EU states
Schengen Area

- The Schengen borders code (Regulation 562/2006 and amendments)

- Abandonment and reintroduction of internal border checks

  - External border checks

- Internal police powers and police checks are not abandoned
ENTERING THE EU BORDERS & VISAS

THE SCHENGEN AREA OF FREE MOVEMENT
An area without internal borders where EU citizens and non-EU nationals may move freely

- 644 airports
- 7702 km of land borders
- 41915 km of maritime borders

EU Schengen States
- AT: Austria
- BE: Belgium
- BG: Bulgaria
- CH: Switzerland
- CY: Cyprus
- CZ: Czech Republic
- DE: Germany
- DK: Denmark
- EE: Estonia
- EL: Greece
- ES: Spain
- FI: Finland
- FR: France
- HU: Hungary
- IE: Ireland
- IS: Iceland
- IT: Italy
- LI: Liechtenstein
- LT: Lithuania
- LU: Luxembourg
- LV: Latvia
- MT: Malta
- NL: Netherlands
- NO: Norway
- PL: Poland
- PT: Portugal
- RO: Romania
- SE: Sweden
- SI: Slovenia
- SK: Slovakia
- UK: United Kingdom

Non-Schengen EU States

Non-EU Schengen States
Please note: Schengen borders are not borders in a political sense. The political borders of the EU and the borders of the Schengen area are not identical! Thus, it is possible to enter the EU without entering the Schengen area and leaving the EU without leaving the Schengen area (e.g. in Norway).

### THE SCHENGEN AREA OF FREE MOVEMENT

An area without internal borders where EU citizens and non-EU nationals may move freely.

- **EU Schengen States**
- **Non-Schengen EU States**
- **Non-EU Schengen States**

Borders between EU states and other Schengen states (yellow) are internal Schengen borders.

Borders between EU countries who are members of Schengen acquis and other EU states (violet) are external Schengen borders.

Sea borders are external borders, however, if a ship travels from one Schengen country to another, no external border is considered to be crossed. The same is true for airspace and airtravel.

Borders with third countries (like Turkey) are external borders (exception: countries marked in yellow).
Preparation for FRONTEX

Please read the Frontex Regulation and try to answer the following questions:

1) What are the tasks of Frontex?
2) What is the legal status of Frontex?
3) Can Frontex be held liable?