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POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

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**Implementing
the Lisbon Treaty
Improving the Functioning
of the EU on Justice
and Home Affairs**

STUDY FOR THE AFCO COMMITTEE



DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CONSTITUTIONAL AFFAIRS

Implementing the Lisbon Treaty Improving the Functioning of the EU on Justice and Home Affairs

STUDY

Abstract

This Study examines the functioning of EU Justice and Home Affairs (JHA) cooperation in light of the reforms and innovations introduced by the Lisbon Treaty since the end of 2009. It identifies the main challenges and deficits characterising the practical and effective implementation of these transformations and suggests specific ways for the European Parliament to address them. The Study recommends that any future legislative reform or Treaty change should not promote or enable further differentiation in the next generations of EU AFSJ cooperation. It should neither allow for restricting or 'lowering down' existing EU rights and freedoms enjoyed by European citizens and residents in EU JHA law. The Parliament should give priority to devising a *mutual trust-building agenda* for EU AFSJ cooperation based on three main policy actions focused on improving and strengthening: First, implementation and evaluation; Second, accountability, transparency and fundamental rights; and third, the rule of law and fundamental rights.

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EXECUTIVE SUMMARY

The functioning of EU Justice and Home Affairs (JHA) policies has been subject to important institutional and legislative reforms after the entry into force of the Lisbon Treaty in 2009. This study has examined the most important changes brought about by this new Treaty framework on European cooperation covering the Area of Freedom, Security and Justice (AFSJ) and explored concrete ways to make their implementation more effective.

The Lisbon Treaty introduced six main transformations to previous JHA cooperation setting which aimed at ensuring more legitimate, democratic and accountable EU decision-making in the JHA policy field: First, the end of the former (First/Third) pillar divide and the expansion of the Community method of cooperation to a majority of JHA fields; second, a stronger democratic accountability via an enhanced role played by the European Parliament and national parliaments; third, a legally binding EU Charter of Fundamental Rights; fourth, a wider judicial scrutiny by the Court of Justice of European Union (CJEU); fifth, the establishment of new EU security and justice agencies; and finally, the development of new external dimensions of JHA policy.

During the last five years the EU has adopted more than two-hundred legal acts falling under Title V (Area of Freedom, Security and Justice) of the Treaty on the Functioning of the European Union (TFEU). Yet, the above-mentioned innovations have been subject to exceptions and differentiation. These have covered the use of enhanced cooperation and special legislative procedures, a privileged position ('opt out'/'opt in' method) by the UK and Ireland, and transitional limitations affecting the enforcement powers by the Commission and the CJEU over police and criminal justice judicial cooperation and which came to an end in December 2014. This study has signalled four main challenges affecting the implementation and effective operability of EU JHA cooperation as foreseen in the Lisbon Treaty:

A first challenge relates to the inconsistency emerging from differentiation and variable geometry in European cooperation. While enhanced cooperation has been used in very limited occasions, furthering differentiation in JHA through the use of 'integration or concentric circles' could lead to the emergence of various 'areas' where different degrees of freedom, security and justice would exist. Such a fragmented picture would contravene the Treaty objective of establishing one "common Area" where EU citizens enjoy the same European standards and rights across the Union's territory. It would also challenge the practical effectiveness of EU JHA law *acquis*. Furthermore, discussions on the feasibility and desirability of different paths of integration for different countries draw attention away from the fact that much remains to be done to fully implement those Treaty articles playing a key role in strengthening the *commonality* of the EU AFSJ.

A second challenge relates to the negative impact that 'variable geometry' inflicts on EU citizens and residents' rights and freedoms. The proliferation of parallel, concentric and even competing 'areas' of JHA cooperation may lead to a lack of legal protection or cases of discriminatory treatment depending on which area the individual happens to be or exercise free movement EU fundamental rights and freedoms enshrined in the Treaties and the EU Charter of Fundamental Rights should not be geographically conditioned to *where* an EU citizen or resident is across the EU. Moreover, any future legislative reform or Treaty change should not leave the door open to lowering down existing EU citizenship rights and freedoms.

There are important practical issues and obstacles in the full exercise of democratic accountability throughout the application of the ordinary legislative procedure. The last five years have demonstrated that a number of barriers still persist towards the full acceptance and recognition of the EP as co-legislator and policy-setter in AFSJ policies. A case in point is the external dimensions of JHA. Another issue relates to the actual ways in which the ordinary legislative procedure works in practice, which is often subject to flexibility, informalities (e.g. 'trilogues') and early compromise agreements which pose internal

barriers towards transparency and accountability in legislative procedures. There is also not enough attention paid to the fundamental rights compliance of the EP's internal legislative work and fundamental rights impact assessments in all relevant phases of the drafting of legislation.

A final challenge concerns the lack of effective instruments or mechanisms to duly safeguard the foundations of the EU AFSJ and its legal principles enshrined in Articles 2 and 6 TEU. The presumption of mutual trust between the Member States on their compliance with rule of law and fundamental rights has been increasingly at stake during the last five years of implementation of the Lisbon Treaty. This is especially so in those EU JHA legal domains working on the basis of the principle of mutual recognition of judicial and administrative decisions. The EU faces a 'Copenhagen dilemma' consisting of the lack of an effective and legally binding monitoring/supervisory mechanism of EU Member States' compliance with rule of law principles and fundamental rights *after* accession. If EU Member States cannot guarantee an independent and impartial judiciary able to test whether the EU State to which an EU citizen who is a suspect in criminal proceedings or a third country national seeking asylum are going to be sent to complies with fundamental rights, how can the principle of mutual recognition stay valid?

The Study suggests that any future legislative or Treaty change should not promote or enable further differentiation or fragmentation in the next generations of EU AFSJ cooperation. It should neither allow for restricting existing EU rights and freedoms enjoyed by European citizens and residents. The European Parliament should give priority to devising and ensuring the effective implementation of a *mutual trust-building agenda* in the next generations of EU AFSJ cooperation. The agenda would focus on the following three trust enhancing policy actions:

First, *implementation and evaluation*: The European Parliament should focus on ways to ensure more timely, consistent and effective implementation of EU JHA legislation by EU Member States authorities. The relevant Parliament Committees could play a more active role in following up the ways in which the Commission enforces the transposition JHA law. A new evaluation system should be developed on the basis of Article 70 TFEU to better ensure the full application of the principle of mutual recognition and strengthen mutual confidence in domains such as judicial cooperation in criminal matters and asylum policies.

Second, *accountability, transparency and fundamental rights*: The European Parliament should adopt an internal strategy aimed at strengthening internal accountability, transparency and fundamental rights compliance in the operability of the ordinary legislative procedure and other relevant legislative processes on JHA cooperation.

Third, *the rule of law*: The Parliament should call for the adoption of a new 'EU Copenhagen mechanism' to ensure independent and regular monitoring of rule of law compliance by EU Member States after accession. This mechanism should be based on independent academic expertise. It could be linked the monitoring processes and results of the European semester cycle on economic governance. This could take place through a 'rule of law, democracy and fundamental rights Copenhagen Policy Cycle' which would formalize EU inter-institutional coordination. The Parliament should play an active role. A new Copenhagen (rule of law) mechanism should not remain a purely inter-governmental process under the remits of the Council or an agreement between EU Member States. Instead it could be legally built under the current Article 7 TEU by mainly focusing on further elaborating and making more transparent the ways in which this provision is triggered by Council, Commission and/or the European Parliament. No Treaty change would be required for such an instrument to be established. From a longer-term perspective, democratic accountability and judicial controls of such an instrument could be further ensured and formally foreseen in the Treaties, which could in turn imply Treaty change.

INTRODUCTION

This study examines the functioning of Justice and Home Affairs (JHA) cooperation in the European Union (EU) in light of the reforms introduced by the Lisbon Treaty since December 2009. The 'Lisbonisation' of JHA policies was expected to ensure more legitimate, democratic and accountable EU decision-making in these policy domains. The study seeks to identify and assess the main challenges characterising the practical operability and implementation of the transformations and innovations introduced by the Lisbon Treaty on JHA. The following questions are addressed: First, would a Treaty change and/or legislative reform be the most effective way to improve and reach the full potential in the functioning of the EU JHA legal field? Second, is it desirable to develop further differentiation and variable geometry on JHA? And third, what should be the limits of differentiation and what should be the priorities in any future legislative reform or potential Treaty change affecting these domains?

A first cross-cutting issue affecting the effectiveness of EU JHA cooperation in a post-Lisbon Treaty landscape relates to the application of flexibility and exceptions to the Community method of cooperation. While the Lisbon Treaty has formally expanded the application of the ordinary legislative procedure – the joint adoption by the Council and the European Parliament of a legislative act presented by the European Commission – to almost every policy under the rubric of the Area of Freedom, Security and Justice (AFSJ), important exceptions still apply. These allow for the use of differentiation and special legislative procedures (e.g. Council acting unanimously after consulting the European Parliament) in areas of a sensitive nature for Member States' national sovereignty. Differentiation grants the possibility for small groups of EU Member States to 'go ahead' in supranational cooperation on AFSJ, when general consensus is lacking in the Council. It also foresees the option for some EU Member States not to participate in every common policy, e.g. the UK and Ireland.

A second horizontal issue relates to the solidity of the premises upon which the EU AFSJ has been founded and works in practice. These relate to the principle of mutual trust among EU Member States' authorities. There is a presumption that they respect and comply with the values enshrined in Article 2 of the Treaty on the European Union (TEU), in particular the rule of law and fundamental rights. The importance of that confidence becomes ever more critical in EU JHA policy fields that function on the basis of the principle of mutual recognition of judicial and administrative decisions between EU Member States' authorities. These include crucial policy areas such as judicial cooperation in criminal matters and asylum. That notwithstanding, the first five years of implementation of the Lisbon Treaty have shown that the rule of law cannot be taken for granted and that the Union faces a 'Copenhagen dilemma', i.e. there is no EU instrument to monitor or evaluate EU Member States' compliance with the rule of law and fundamental rights *after* accession.

What are the main challenges emerging from these two issues, and in which ways could they be addressed in the years to come? The study ultimately argues that any reflection and debate on the added value of future legislative reforms or Treaty change should be cautious about leaving the door open for injecting further differentiation in EU AFSJ cooperation, or restricting and thus negatively affecting existing EU rights and freedoms enjoyed by European citizens and residents. It should also pay special attention to developing a *mutual trust-building agenda* aimed at strengthening and better safeguarding the respect by EU Member States of the rule of law and fundamental rights which lie at the basis of EU JHA law. On the basis of the analysis, we suggest a set of policy recommendations for addressing the challenges posed by differentiation and rule of law issues and improving the implementation of the Lisbon Treaty on JHA.

The study is structured in five main parts: Section 1 starts by examining the historical background of EU JHA cooperation. Section 2 follows by outlining the innovations and most

important reforms introduced by the 'Lisbonisation' of JHA cooperation, chiefly the disappearance of the 'pillars divide' and the expansion of the Community method of cooperation over a majority of these areas. Section 3 moves into an assessment of the main Treaty provisions allowing for differentiation, exceptions and variable participation by EU Member States in the specific JHA field. Section 4 studies the challenges characterising the practical implementation of the Lisbon Treaty innovations covering JHA policies. Section 5 concludes and puts forward some policy recommendations for addressing current challenges, and optimising European integration in these domains.

1. JUSTICE AND HOME AFFAIRS COOPERATION IN THE EU

Justice and Home Affairs (JHA) policies have been amongst the most dynamic of European cooperation (Guild, Carrera & Eggenschwiler, 2010). This has come as a surprise for many due to the inherently national nature of these domains, which stand close to Member States' competences and national sovereignty. The progressive path towards an EU Area of Freedom, Security and Justice (AFSJ) during the past 20 years (see Graph 1 below) has led to the development of a large and complex body of legislation and policy on issues such as migration, asylum, borders and visas, judicial cooperation in criminal and civil matters and police cooperation (Monar, 2012; Peers, 2011).

One cannot fully grasp the nature and fundamentals of JHA without looking at the origins of the Schengen regime and the lifting of internal border controls in the Union. The signature of the Schengen Agreement in 1985, and the Convention which implemented it in 1990 (which entered into force in 1993), brought about a profound transformation of existing understandings and practices on borders and frontiers in Europe. The Agreement constituted an illustration of a 'multi-speed Europe' initiative, falling outside the European Community Treaty framework and developing as an intergovernmental initiative originally involving a small group of Member States.¹

While the original rationale behind the lifting of internal border controls was driven by a Ministries of Transport economic logic (to remove barriers to cross-border trade), the freedom of circulation soon created security concerns and opened the door to agendas by Ministries of Interior, which mainly concerned security threats that the freedom of circulation was expected to bring about, chiefly irregular immigration (Bigo, 1996). The 1990 Schengen Convention called for the need to adopt a set of 'compensatory/flanking measures' to Schengen Europe which were designed to address these insecurities. These 'flanking measures' comprised the progressive development of a common EU external borders policy, the setting up of the 'Schengen Information System' (SIS), the adoption in 1990 of the Dublin Convention on determination of responsibility for asylum applications and the setting up of the Eurodac database on asylum seekers' fingerprints, as well as the establishment of a common EU visa policy.

The entry into force of the Maastricht Treaty in November 1993 (former Treaty on the European Union, TEU) shaped European integration into a Greek temple structure. Such a structure divided the various policy domains into 'pillars' corresponding with different decision-making procedures. The First Pillar covered areas subject to Community competence and method of cooperation. The Second Pillar addressed the Common Foreign and Security Policy (CFSP) (Title V former TEU), and the Third Pillar comprised JHA (Title VI of former TEU). The Maastricht Treaty also first introduced the status of citizenship of the Union, which along with the freedom to move has since then developed into one of the building blocks of European integration.

Under the former Treaty landscape, JHA cooperation was by and large characterised by unaccountable, complex, secretive and intergovernmental decision-making methods (Apap & Anderson, 2002). EU Member State governments, and particularly experts from national Ministries of Justice and Interior, were in the driver's seat on supranational cooperation. Moreover, JHA cooperation suffered from legal uncertainty. The EU acts resulting from European cooperation did not qualify as 'normal' EU legal instruments. They were *sui generis* policy and legal instruments with a diverse and obscure legal nature.²

¹ Originally, it involved the Netherlands, Belgium, Luxembourg, Germany and France. At present, there are only 22 EU Member States that are part of the Schengen Area and four non-EU Member States (Iceland, Norway, Switzerland and Liechtenstein). For more information refer to http://ec.europa.eu/dqs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm.

² Some such acts have even been defined as 'quasi-legislative' or 'quasi-legal' (Framework Decisions), others were binding, even if not within more ordinary pieces of EU legislation (international conventions), or their nature has remained uncertain (Joint Actions).

JHA fell altogether outside the Community Method of Cooperation. The European Commission had no or limited right of initiative and enforcement powers. It was affected by profound democratic and judicial accountability deficits. The European Parliament had no recognised role of democratic scrutiny and the Court of Justice of the European Union (CJEU) held no jurisdiction to review and/or interpret any adopted legal acts.

This weak and unfinished institutional setting required reform. A first step in that direction took place in May 1999, with the entry into force of the Amsterdam Treaty. The Amsterdam Treaty included a new Title IV, establishing the European Community (TEC) (First Pillar) on 'Visas, Asylum, Immigration and free movement of persons', and judicial cooperation in civil matters, which transferred these policies into the Community method realm (Carrera, Guild & Balzacq, 2010). This effectively meant the integration of Schengen into (shared) competence between EU Member States and the European Community. It also represented the expansion of the Community method – the co-decision procedure (Article 251 TEC) – to these domains (Peers, 2011).

Title IV TEC (First Pillar) envisaged a transitional period of five years from the entry into force of the Amsterdam Treaty to abandoning the unanimity rule in the Council for the adoption of legal instruments in these areas. This took place in December 2004, when the Council agreed to act by qualified majority voting and co-decision procedure for measures under this title, with the exception of those related to 'legal immigration'. That notwithstanding, questions related to criminal justice and police cooperation remained under the old 'Third Pillar' (Title VI of former TEU).

The Amsterdam Treaty envisaged for the first time the possibility for 'variable geometry' or the creation of various 'circles of cooperation' among EU Member States on JHA cooperation. The UK, Ireland and Denmark were conferred special status. Protocols included in the Treaty allowed these countries not to participate in Schengen, and to exercise 'opt outs' when measures falling within the remit of the First Pillar would be adopted, with the UK and Ireland being given the option to 'opt in' on a case-by-case basis (Papagianni, 2001).

The next milestone in JHA cooperation and the construction of an EU AFSJ took place with the entry into force of the Nice Treaty in December 2000. The Treaty introduced the EU Charter of Fundamental Rights, which was formally adopted in December 2007 (Guild, 2010). It also recognised the possibility for the European Parliament to present at its own initiative preliminary rulings before the Luxembourg CJEU in these domains.

When assessing the development of JHA cooperation, it is of particular importance to highlight one of its specificities. JHA policy has developed according to two main tracks: first, a legislative or harmonisation approach and, second, a policy programming approach. The 15 years that followed the entry into force of the Amsterdam Treaty have witnessed the adoption of multi-annual policy programmes by the European Council, setting the thematic policy priorities to guide EU action in these domains.

The first EU multi-annual (five-year) programme on JHA was the so-called 'Tampere Programme', adopted under the Finnish Presidency of the EU in the second half of 1999. It provided a set of milestones and a scoreboard for EU action "*towards a European area of freedom, security and justice*".³ This was then followed by The Hague Programme in 2004 and the Stockholm Programme in 2009,⁴ where the Council continued with the process of

³ European Council, Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels.

⁴ Brussels European Council, Presidency Conclusions, 4 and 5 November 2004, 14292/1/04, Brussels, 8 December 2004, Annex I, "The Hague Programme: Strengthening Freedom, Security and Justice in the European Union", point 1.5 (2005/C53/01, OJ C53/1, 3.3.2005). See also European Commission Communication, The Hague Programme: Ten priorities for the next five years – The Partnership for European renewal in the field of freedom, security and justice, COM(2005) 184, Brussels, 10.5.2005. Council of the European Union, The Stockholm Programme: An open and secure Europe serving and protecting citizens, 5731/10, Brussels, 3 March 2010. European Commission, Communication, Delivering an area of freedom, security and justice for Europe's citizens: Action Plan implementing the Stockholm Programme, COM(2010) 171 final, Brussels, 20.4.2010.

setting policy priorities and the adoption of specific actions for the years to come (Carrera, 2012).

Furthermore, 'Europeanisation' has advanced in flexible ways in areas where EU legal competence has not been expressly conferred to by the Treaties, or even falling within the exclusive remits of Member States' competences. This has occurred through the use by the European Commission of 'soft-law' or policy coordination frameworks and non-legally binding tools. These methods of supranational cooperation have been referred to as 'experimental', as they fall outside the remits envisaged by the Treaties (Carrera, 2013).

A key deficit characterising these atypical methods of European cooperation has been a weak or even lack of democratic accountability by the European Parliament. This has included cooperation in areas such as integration policies of third-country nationals (EU Integration Agenda),⁵ corruption (EU Anti-Corruption Report),⁶ rule of law (EU Framework to Strengthen Rule of Law) (see Section 4.4 below),⁷ and questions concerning the quality and independence of justice systems (EU Justice Scoreboard).⁸

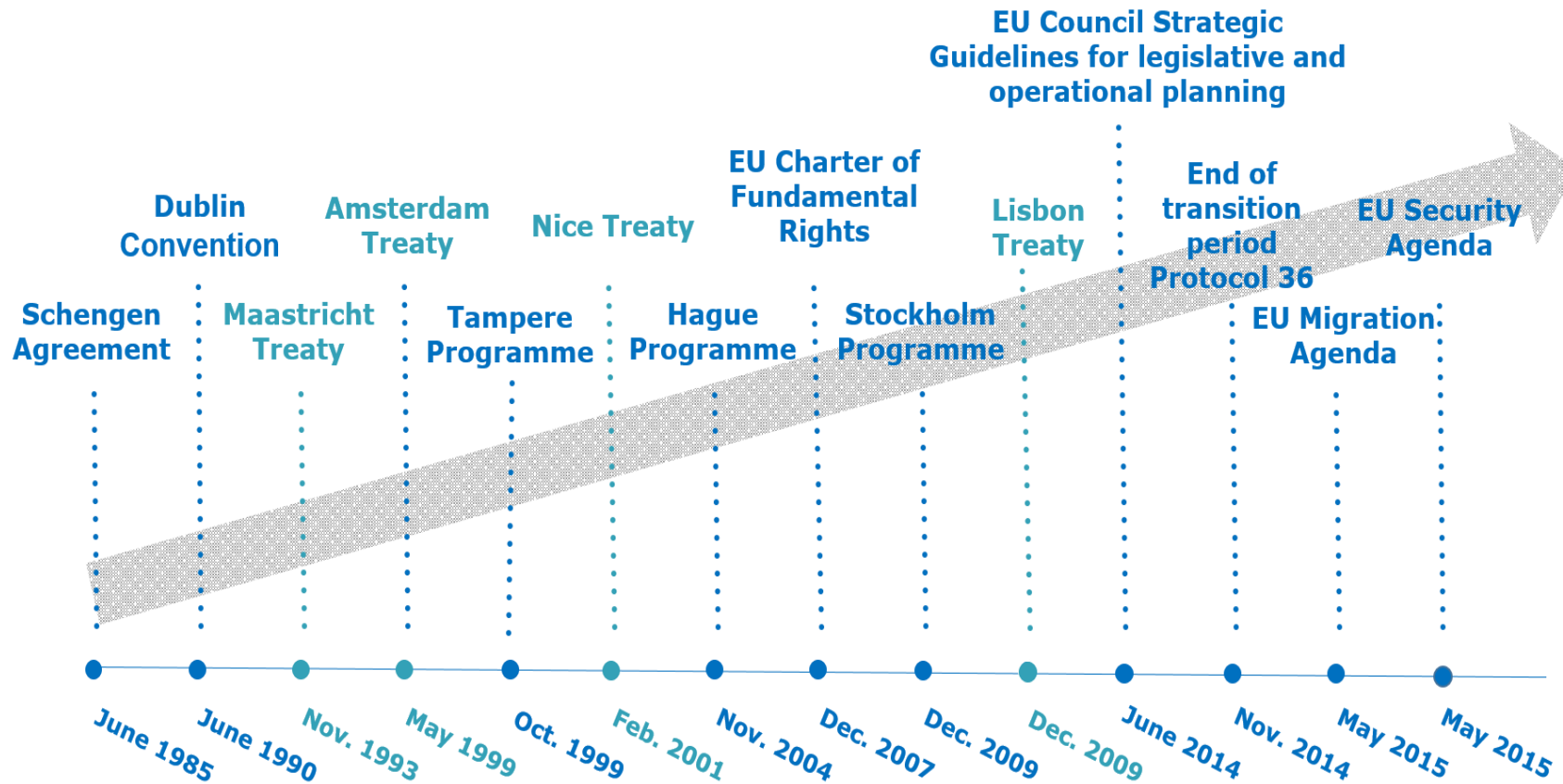
⁵ European Commission, European Agenda for the Integration of Third Country Nationals, COM(2011)455 final, 20.7.2011.

⁶ European Commission, EU Anti-Corruption Report, COM(2014)38 final, 3.2.2014. For more information refer to http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm.

⁷ European Commission, Communication, A New EU Framework to Strengthen the Rule of Law, COM(2014)158, 11.3.2014, See also http://europa.eu/rapid/press-release_SPEECH-15-4402_en.htm.

⁸ European Commission, Communication, 2015 EU Justice Scoreboard, COM(2015)116 final. See http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm.

Graph 1: The Path towards an Area of Freedom, Security and Justice



Graph 1: The path towards an EU Area of Freedom, Security and Justice

2. THE 'LISBONISATION' OF JUSTICE AND HOME AFFAIRS: TOWARDS AN AREA OF FREEDOM, SECURITY AND JUSTICE

What has the Lisbon Treaty meant for EU JHA cooperation, and what have been the main transformations brought about by the new Treaty framework? The processes of Treaty reform which took place under the auspices of the Convention on the Future of Europe between 2001 and 2003 paid special attention to questions related to JHA. This was seen as a unique opportunity to address the previously identified institutional, decision-making and legal deficits, in particular those related to the lack of legal, democratic and judicial accountability.

The failure in adopting the resulting draft Constitution for Europe, led to its reformulation and the subsequent presentation of the Lisbon Treaty, comprised by a new version of the TEU and the Treaty on the Functioning of the European Union (TFEU). The Lisbon Treaty entered into force in December 2009 (Craig, 2013). While the word 'constitution' did not formally appear in its title and substantive parts, it did bring about a process of quasi-constitutional reforms and far-reaching innovations to the Union and particularly JHA cooperation (Carrera & Guild, 2006), which in this study we refer to as 'Lisbonisation'.

The following six reforms can be highlighted: first, the scrapping of the pillars divide or 'de-pillarisation' (Section 2.1); second, enhancing the role of the European Parliament and national parliaments, and facilitating democratic accountability (Section 2.2); third, the legally binding nature of the EU Charter of Fundamental Rights (Section 2.3.); fourth, the expansion of the Court of Justice of European Union (CJEU) jurisdiction to review and interpret EU JHA law (Section 2.4); fifth, the progressive establishment of new EU security and justice agencies (Section 2.5); and, finally, a new institutional and policy nexus between home affairs and foreign affairs in the external dimensions of JHA policy (Section 2.6).

2.1. The Scrapping of the Pillars Divide

The TFEU introduced a new and unique Title V on the entire 'Area of Freedom, Security and Justice'. By doing so it put an end to the previous framework composed by the EC First Pillar and EU Third Pillar and has injected 'de-pillarisation' in JHA cooperation. Article 67.1 TFEU states, "*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*". This statement is elaborated in the following five thematic chapters: Chapter 1: General Provisions (Articles 67-76); Chapter 2: Policies on Border Checks, Asylum and Immigration (Articles 77-80); Chapter 3: Judicial Cooperation in Civil Matters (Article 81); Chapter 4: Judicial Cooperation in Criminal Matters (Articles 82-86); and Chapter 5: Police Cooperation (Articles 87-89).

Article 4.2 TFEU states that the Union now shares legal competence with Member States in the AFSJ. This needs to be read along with Article 2.2 TFEU which stipulates that when the Treaties conferred on the Union 'shared competence', EU Member States shall exercise their competence "*to the extent that the Union has not exercised its competence*". Furthermore, the Lisbon Treaty has simplified the legal acts used in the development of the EU AFSJ. Any new legislative measures adopted in any of these fields will take the form of ordinary legal acts of the Union (Regulations, Directives, Decisions, Recommendations and Opinions), and will display the 'normal' effect under EU law, including direct effect and supremacy.

2.2. Enhancing Democratic Accountability

The expansion of the Community method of cooperation (the ordinary legislative procedure formerly known as 'co-decision' is envisaged in Articles 289/294 TFEU) is now the general norm across all JHA fields.⁹ It means the application of qualified majority voting (QMV) in the Council and the granting to the European Parliament of the role as co-legislator in a majority of these domains. This has come along with the right of veto/consent on association agreements and agreements between the EU and third countries and international organisations (Article 218 TFEU). The European Parliament has during the last five years become a co-owner of the AFSJ and a policy-setter actor in JHA domains (Carrera, Hernanz & Parkin, 2013).

This has come along with a reinforced role conferred on national parliaments, which according to Article 12 TEU and Article 69 TFEU are responsible for ensuring that any legislative proposal submitted under Title V of the AFSJ complies with the principle of subsidiarity, in light of the provisions foreseen in a special Protocol laying down the conditions on the application of the principles of subsidiarity and proportionality. Moreover, during the last five years, a series of Interparliamentary Committee meetings have been held on various issues dealing with JHA-related domains.¹⁰

2.3. The 'Constitutionalisation' of Fundamental Rights in the EU Legal System

The EU Charter of Fundamental Rights is now legally binding in the EU legal system. It sets out a Bill of Rights to which EU citizens and residents are entitled (Guild, 2010). Article 6 TEU conferred on the EU Charter the same legal value as the Treaties.¹¹ It directly applies to and is binding upon all European institutions, agencies and bodies as well as EU Member States when implementing EU law (Article 51 EU Charter).

The Charter specifically states that insofar as it contains rights that correspond to those in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the meaning and scope of the charter rights shall be the same as those of the ECHR rights. However, this provision expressly does not prevent Union law from providing more extensive protection (Article 52.3 EU Charter). Article 6 TEU also recognises that fundamental rights, as guaranteed by the European Convention for the ECHR and as they result from EU Member States' constitutional traditions, constitute general principles of EU law.

The post-Lisbon version of TEU also recognised the EU's single legal personality and expressly included a call for the Union to accede to the ECHR.¹² The exact implications of the CJEU Opinion 2/13 of December 2014,¹³ which concluded the lack of compliance of the

⁹ See www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf.

¹⁰ Refer to www.europarl.europa.eu/webnp/cms/pid/11.

¹¹ Article 6.1 stipulates, "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions."

¹² Article 6.2 TEU states, "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties."

¹³ See <http://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=EN>.

draft EU's accession treaty to the ECHR with EU law,¹⁴ are still subject to policy and academic debates.

2.4. Securing Judicial Control

The CJEU has been formally recognised with the jurisdiction to review the legality of acts and legislative instruments adopted under Title V TFEU and their interpretation. During the last five years, the CJEU has played an increasingly prominent role in the judicialisation of the AFSJ policies. That notwithstanding, and as will be shown in Section 3 below, the full powers of the CJEU in the enforcement dimension of EU Member States' implementation of European law have been subject to a transitional period of five years (Protocol 36 TFEU), which expired in December 2014.

The Luxembourg Court has played a fundamental role in the development of the EU AFJS. This is only expected to increase in the years to come in areas such as judicial cooperation in criminal matters (see Section 3.3 below). The more the Member States will act 'within the scope of EU law', the more the CJEU will be called upon to interpret and review EU policies and their implementation by Member States. This will include their compatibility with the EU Charter of Fundamental Rights, which is expected to increasingly position the CJEU as a fundamental rights tribunal (Carrera, De Somer & Petkova, 2012).

2.5. New EU Security and Justice Actors

Title V TFEU stipulates the setting up of two new EU level security and justice actors: The European Public Prosecutor Office (EPPO) from Eurojust (the EU Judicial Cooperation Unit), and the Standing Committee on Operation Cooperation for Internal Security (COSI).

EPPO, which is currently under inter-institutional negotiations, will aim at combating crimes affecting the financial interests of the Union (Article 86 TFEU). It is to be responsible for "*investigating, prosecuting and bringing to judgment the perpetrators of offences against the Union's financial interests...and shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences*". The Treaty also confers the possibility for the European Council to extend the powers of a future EPPO to include "*serious crime having cross-border dimension*" (Article 86.4 TFEU).

Article 71 TFEU envisaged the creation of COSI,¹⁵ "*a standing committee within the Council in order to ensure that operational cooperation on internal security is promoted and*

¹⁴ Paragraph 258 of the Opinion reads as follows: "*It must be held that the agreement envisaged is not compatible with Article 6(2) TEU or with Protocol No 8 EU in that: – it is liable adversely to affect the specific characteristics and the autonomy of EU law in so far it does not ensure coordination between Article 53 of the ECHR and Article 53 of the Charter, does not avert the risk that the principle of Member States' mutual trust under EU law may be undermined, and makes no provision in respect of the relationship between the mechanism established by Protocol No 16 and the preliminary ruling procedure provided for in Article 267 TFEU; – it is liable to affect Article 344 TFEU in so far as it does not preclude the possibility of disputes between Member States or between Member States and the EU concerning the application of the ECHR within the scope *ratione materiae* of EU law being brought before the ECtHR; – it does not lay down arrangements for the operation of the co-respondent mechanism and the procedure for the prior involvement of the Court of Justice that enable the specific characteristics of the EU and EU law to be preserved; and – it fails to have regard to the specific characteristics of EU law with regard to the judicial review of acts, actions or omissions on the part of the EU in CFSP matters in that it entrusts the judicial review of some of those acts, actions or omissions exclusively to a non-EU body.*"

¹⁵ See Council of the EU, Future Role of COSI, 6954/14, 25 February 2014. This document states, "*COSI should have the permanent capacity to influence the strategic choices of the EU on Internal Security related issues, namely while facing a new threat or unexpected evolutions on major and serious criminal phenomena. COSI should seek complementarity, coherence and consistency between the developments of EU internal security related policies by also taking into account the external dimension and regional cooperation*", p. 1.

strengthened within the Union" between EU Member States' authorities as well as other existing EU JHA agencies and bodies such as Europol (European Police Office),¹⁶ Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union)¹⁷ and CEPOL (European Police College).¹⁸

2.6. The External Dimensions of JHA under New Guises

The Lisbon Treaty has also drawn further into the spotlight foreign affairs and military professionals at EU level, taking us into new territory in the EU's external relations with third countries, often denominated as the external dimensions of JHA (Guild, Carrera & Balzacq, 2010). The increasing relevance of foreign affairs dimensions in JHA discussions is the direct result of the establishment and consolidation of the European External Action Service (EEAS), and the strengthened role of actors such as the European Defence Agency (EDA),¹⁹ which is headed by the High Representative for Foreign Affairs and Security Policy, Federica Mogherini.

Since 2011 the EEAS has been recognised as the EU diplomatic service assisting the High Representative in Common Foreign and Security Policy (CFSP). Mogherini is both the High Representative and Vice-President of the European Commission. In the new EU institutional configurations and the current Juncker Commission (Carrera & Guild, 2014), the High Representative also coordinates the Commissioners' external relations in the scope of the 'Europe in the World Project',²⁰ which includes the Commissioner who holds the portfolio of migration and home affairs. Foreign affairs actors are using the above-mentioned scrapping of the First, Second and Third Pillar divide resulting from the Treaty of Lisbon – de-pillarisation – as a tool to gain legitimacy and authority in the setting of priorities, financial resources and policies in some JHA domains (Carrera & den Hertog, 2015).

The increasing inputs and contributions of foreign affairs and defence actors on JHA-related policies are visible, for instance, in the recently published European Agendas on Migration²¹ and Security.²² One of the most visible outputs of the post-Lisbon external dimensions of JHA in the scope of the European Agenda on Migration is the recent launching of the naval military CSDP operation EUNAVFOR Med in the Mediterranean.²³ The operation constitutes

¹⁶ For more information see www.europol.europa.eu.

¹⁷ <http://frontex.europa.eu>.

¹⁸ www.cepol.europa.eu.

¹⁹ Refer to www.eda.europa.eu/home.

²⁰ Refer to http://ec.europa.eu/about/structure/index_en.htm#ta.

²¹ European Commission, A European Agenda on Migration, COM(2015) 240 final, 13.5.2015. The Agenda states as a priority "Working in partnership with third countries to tackle migration upstream", emphasising, "The EU can also take immediate action to intervene upstream in regions of origin and of transit. The Commission and the European External Action Service (EEAS) will work together with partner countries to put in place concrete measures to prevent hazardous journeys". Specific foreign affairs/defence-led initiatives include: first, regional development and protection programmes; second, a pilot multipurpose centre in Niger; third, migration will become a component of the Common Foreign and Security Policy missions already taking place in Mali and Niger; and fourth, this will be combined with initiatives to promote stability in Libya and Syria. See p. 5 of the Communication.

²² European Commission, The European Agenda on Security, COM(2015) 185 final, 28.4.2015. The Agenda states, "[W]e need to bring together all internal and external dimensions of security. Security threats are not confined by the borders of the EU. EU internal security and global security are mutually dependent and interlinked. The EU response must therefore be comprehensive and based on a coherent set of actions combining the internal and external dimensions, to further reinforce links between Justice and Home Affairs and Common Security and Defence Policy. Its success is highly dependent on cooperation with international partners. Preventive engagement with third countries is needed to address the root causes of security issues...We should maximize the added value of existing policy dialogues on security conducted by the EU...EU Delegations in third countries are important for the dialogues on security...", p. 4.

²³ www.consilium.europa.eu/en/press/press-releases/2015/06/22-fac-naval-operation. The Press Release states, "EUNAVFOR Med will be conducted in sequential phases, in full compliance with international law, including humanitarian and refugee law and human rights. The first phase focuses on surveillance and assessment of human

one of the most immediate actions taken by the EU in response to the challenges posed by migration in the Mediterranean. It currently awaits the green light from the United Nations. The Operation, whose primary objective is fighting the 'business models' of smugglers and traffickers of human beings, has been subject to controversy. It has been described as sending the wrong message: using military force to address migration challenges, under dubious rule-of-law and accountability frameworks.

smuggling and trafficking networks in the Southern Central Mediterranean. It is planned that the second stage of the operation provides for the search and, if necessary, seizure of suspicious vessels. A third phase would allow the disposal of vessels and related assets, preferably before use, and to apprehend traffickers and smugglers. The Council will assess when to move beyond this first step, taking into account a UN mandate and the consent of the coastal states concerned, and subsequent phases will be conducted accordingly." For more information visit www.eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/index_en.htm.

3. DIFFERENTIATION, FLEXIBILITY AND EXCEPTIONS

The institutional and legal regime explained in Section 2 above is subject to a number of exceptions and derogations, of which the following three have more far-reaching implications: first, brake clauses, enhanced cooperation and special legislative procedures (Section 3.1); second, the position of the UK and Ireland (Section 3.2); and, third, the transitional limitations in the enforcement powers by the European Commission and the CJEU over police and judicial cooperation in criminal matters (Section 3.3).

3.1 Brake Clauses, Enhanced Cooperation and Special Legislative Procedures

'Differentiation' has been defined as "*the facilitation or accommodation of a degree of difference between Member States or regions in relation to what would otherwise be common Community or Union policies*" (de Witte, Hanf & Vos, 2001). In this same vein, the European Council Conclusions of 24/25 June 2015, which as stated above, outlined the strategic guidelines for legislative and operational planning for the coming years within the AFSJ for the next five years to come, stated that that *"...different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further."*²⁴

The Lisbon Treaty allows the full reach of the Community method of cooperation not to cover every AFJS policy sector and embraces differentiation in multiple ways. In fact, the ordinary legislative procedure does not apply to every area included in Title V TFEU. There are a number of important derogations affecting European cooperation in a specific set of fields and which inject differentiation in the EU AFSJ (Peers, 2015).

Enhanced cooperation and so-called 'emergency brakes' are possibilities expressly foreseen, and to a large extent even expanded, by the Lisbon Treaty. These extend over a number of domains considered to be especially "*sensitive*" in nature for EU Member States' sovereignty, in particular those related to police and judicial cooperation in criminal matters.

The TFEU has, for instance, introduced a number of 'brake clauses' or 'emergency brakes' when a Member State considers that a draft directive *"...would affect fundamental aspects of its criminal justice system"*. This is stipulated in cases related to judicial cooperation in criminal matters (Article 82.3 TFEU), and common minimum rules concerning the definition of criminal offences and sanctions in the areas of *"particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis"* (Article 83.3 TFEU).

The way in which this works in practice is as follows: The draft Directive will be submitted to the European Council and the ordinary legislative procedure shall be suspended. After discussion, and in case of consensus, the European Council shall within a period of four months after the suspension refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure (Article 82.3 TFEU).

In cases where there is disagreement or lack of consensus inside the Council, the Lisbon Treaty offers the possibility to use accelerator clauses or enhanced cooperation. Where at

²⁴ European Council, Presidency Conclusions, 26/27 June 2014, EUCO 79/14, Brussels. The Conclusions stated in paragraph 27 that *"The UK raised some concerns related to the future development of the EU. These concerns will need to be addressed. In this context, the European Council noted that the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further. Once the new European Commission is effectively in place, the European Council will consider the process for the appointment of the President of the European Commission for the future, respecting the European Treaties."*

least nine Member States wish to use enhanced cooperation, integration will move forward. These Member States need to notify the European Parliament, the Council and the Commission. A similar option for enhanced cooperation is envisaged in the setting up of a European Public Prosecutor (EPPO) (Article 86.1 TFEU).

While enhanced cooperation was first envisaged in the Amsterdam Treaty, the Lisbon Treaty has taken it a step further. The exact number of Member States necessary for enhanced cooperation to take place were increased to nine (Article 20 TEU and Articles 326-334 TFEU). According to Article 326 TFEU, "*Any enhanced cooperation shall comply with the Treaties and Union law. Such cooperation shall not undermine the internal market or economic, social and territorial cohesion.*" As Craig (2013, p. 448) has rightly argued, enhanced cooperation provisions under the Treaties have always faced 'two conflicting impulses': "*the desire that all Member States should be brought on board as the EU moves forward, tempered by the unwillingness to allow resistance by one or more Member States to prevent advances desired by a significant group of other States*".

Enhanced cooperation is to be used as a 'last resort' (Article 20.2 TEU), which sends a clear message from the Lisbon Treaty framers about the preference for moving forward European cooperation under the Union as a whole. While spurring great discussion in the academic literature, in practice, enhanced cooperation has been used in very limited and casuistic instances during the last five years (Peers, 2014). This has been the case, for example, in the field of the choice of law in divorce and legal separation (Decision 2010/405) of July 2010 (See Annex 2 of this study for a full overview of Legal Acts of the Union adopted under Part Six (Institutional and Financial Provisions), Title III, Enhanced Cooperation (TFEU)).

Another Lisbon Treaty-based exception relates to measures aimed at ensuring "*administrative cooperation between the relevant departments of EU Member States*" (Article 74 TFEU), which are still subject to a 'special legislative procedure' foreseen in Article 76 TFEU. Here the Council shall act on a proposal by the European Commission or a quarter of Member States, and after consulting the European Parliament.

A different special legislative procedure (Council acting unanimously after consulting the European Parliament) applies in what concerns measures laying down the conditions and limitations for police cooperation "*including police, customs and other specialized law enforcement services in relation to the prevention, detection and investigation of criminal offences*" (Article 89 TFEU). In the same vein, a similar procedure is applicable to provisions on passports, identity cards, residence permits or any such document (Article 77.3 TFEU), and the setting up of the EPPO (see Section 2.6 above).

3.2 The Position of the UK and Ireland

The Lisbon Treaty allowed for a further expansion of the 'opt outs' granted to the UK and Ireland to cover not only immigration, asylum and borders (First Pillar), but also EU Third Pillar instruments. As mentioned in Section 1 above, the 'opt out' enjoyed by Denmark already covered nearly the entire spectrum of JHA cooperation in the Treaties (Santos Vara & Fahey, 2014).

Protocol No. 21 on the position of the UK and Ireland in respect of the AFSJ attached to the Lisbon Treaty applies the 'opt out' method to the whole range of AFSJ policies covered by Title V, including those amending existing measures where they participate. That notwithstanding, and as a consequence of UK and Irish participation in pre-Lisbon Treaty Third Pillar measures, this same Protocol envisages certain safeguards:

Article 4a.2 of this Protocol stipulates that in cases where the Council, acting on a proposal from the Commission, determines that the non-participation in an amended version of an existing measure where the UK and/or Ireland are already parties makes the application of

the entire measure inoperable for other Member States or the Union, two things may happen: first, it may lead to the situation where the measure shall no longer be binding or applicable to the UK/Ireland; second, they may bear the direct financial consequences “*necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure*”.

3.3 Who Monitors Trust in the EU AFSJ?

Another exception to the ‘Lisbonisation’ of the EU AFSJ relates to the enforcement powers granted to the European Commission and the CJEU, which during the last five years have been constrained. During a transitional period of five years since the entry into force of the Lisbon Treaty, and which came to an end in December 2014, the Commission had no power to start infringement proceedings against Member States in breach of their obligations to duly and timely implement criminal justice and police cooperation laws. The CJEU had full jurisdiction to review and answer questions from the Member States’ national courts on the interpretation of these subject matters (with the exception of those Member States which had expressly accepted such jurisdiction).²⁵

This was based on Protocol 36, entitled “*Transitional provisions concerning acts adopted on the basis of Titles V and VI of the former version of the TEU prior the entry into force of the Treaty of Lisbon*”, attached to the Lisbon Treaty. Article 10 of this Protocol provides that as a transitional measure for five years after the entry into force of the Lisbon Treaty, the CJEU powers and those of the European Commission in Third Pillar domains (police cooperation and judicial cooperation in criminal matters) were restricted to the version in force before the entry into force of the Lisbon Treaty. However, in case acts covering these fields are amended after the entry into force of the Lisbon Treaty, the transitional rules cease to apply for such acts. Since December 2014 the Lisbon Treaty finally has liberalised who monitors trust in the AFSJ (Mitsilegas, Carrera & Eisele, 2014).

Protocol 36 also conferred on the UK the possibility to notify the Council at the latest six months before the expiry of the transitional period (by 1 June 2014) that it did not accept the full enforcement powers of the Commission and the CJEU (Article 10.4 of the Protocol). In such a case, all pre-Lisbon Treaty criminal justice and police cooperation instruments would cease to apply to the UK as from December 2014, unless those acts have been amended and the UK has opted in to these acts. The UK remains free to opt in to those acts in which it wishes to participate, any time afterwards.

There has been controversy following the UK’s officially invoking the ‘block opt out’ in 2013. The country finally decided to ‘opt back in’ to a majority of criminal justice mutual recognition measures that are part of the old Third Pillar *acquis* (a total of 29 non-Schengen measures including the European Arrest Warrant), as well as participation in EU JHA agencies, such as Europol and Eurojust, and exchange of information/databases, which received the green light respectively by the European Commission and Council.²⁶

²⁵ The following EU Member States had not accepted CJEU jurisdiction: Bulgaria, Denmark, Estonia, Ireland, Malta, Poland, Slovakia and the UK.

²⁶ Refer to http://europa.eu/rapid/press-release_IP-14-2266_en.htm. See also www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145981.pdf. For a full list of ‘lisbonised’ ex-Third Pillar acts for the UK, see <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2014:430:FULL&from=EN>.

4. WHAT ARE THE CHALLENGES?

The legal and policy components characterising the post-Lisbon Treaty JHA cooperation frameworks raise four main challenges related to: first, consistency (Section 4.1); second, citizens' fundamental rights and freedoms (Section 4.2); third, efficiency and democratic accountability in decision-making (Section 4.3); and fourth, mutual trust and the rule of law (Section 4.4).

4.1 Consistency: How many EU 'Areas' of Freedom, Security and Justice?

The Lisbon Treaty talks about "a common Area" where EU citizens and residents enjoy freedom, security and justice (Article 67.1 TFEU). Divergences or variable participation of EU Member States in JHA legislative initiatives and proposals may lead to the further emergence of various 'integration or concentric circles' or 'areas' where different degrees of freedom(s), security(ies) and justice(s) exist depending on *where* the individual actually is or moves to (Carrera & Geyer, 2008). While flexibility may overcome obstacles posed by some Member States when moving forward in supranational cooperation, it may bring about risks of parallel and even competing 'Areas' across the Union, which will add to dispersion, legal uncertainty and fragmentation of European integration and potentially undermine the Treaty goals and the EU *acquis*.

A majority of fields falling under the rubric of the EU AFSJ are now covered by European law. As mentioned in Section 2 above, Article 2.2 TFEU emphasises that EU Member States shall exercise their competence "to the extent that the Union has not exercised its competence". The AFSJ is composed by a large body of EU legal acts which in turn provide common European standards and rights. These need to be read in close combination with the EU Charter of Fundamental Rights. The Union has progressively exercised legal competence in many of these domains, which in turn constrains what EU Member States can do internally as well as in their relations with third countries and other regional organisations in these same areas.

As Table 1 and Graph 2 below show, and based the detailed information provided in Annex 1 of this Study (Legal Acts of the Union adopted under TITLE V: Area of Freedom, Security and Justice (TFEU)), since the entry into force of the Lisbon Treaty in the end of 2009 the EU has adopted approximately 200 pieces of legislation covering JHA policies.

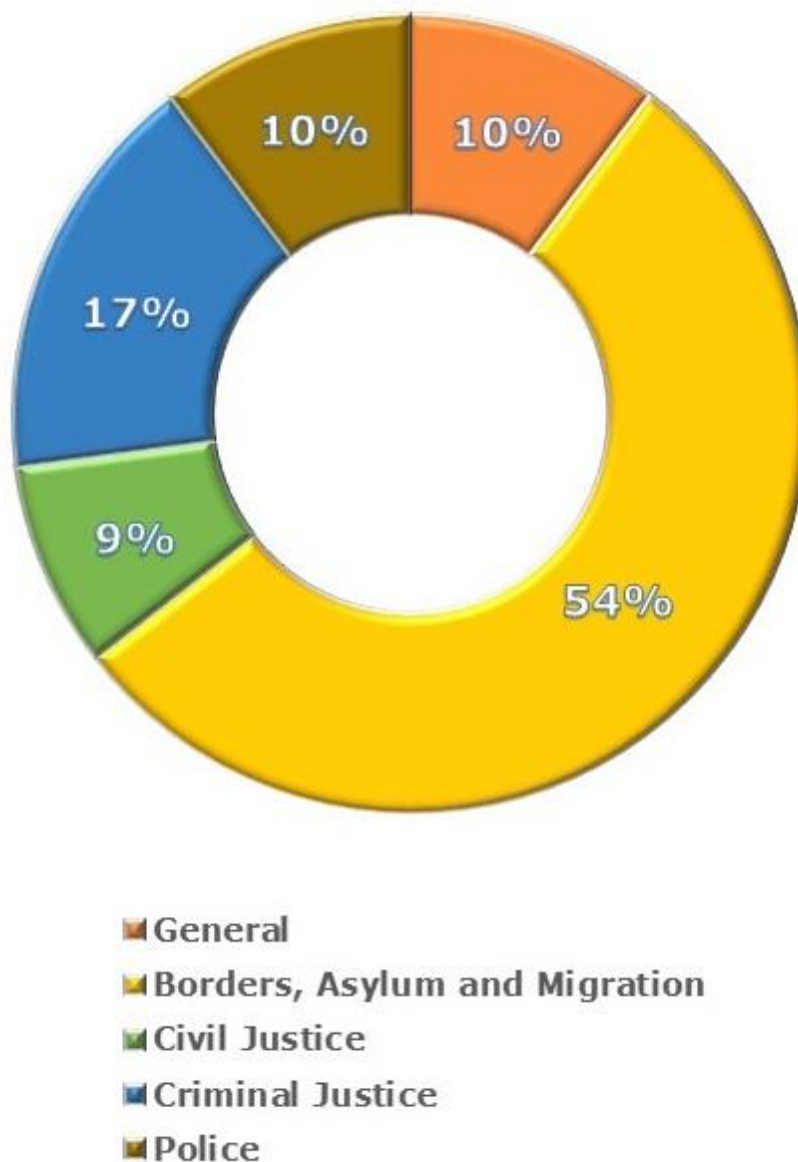
Table 1: Adopted Legal Acts on Justice and Home Affairs (Title V TFEU)

Policy Domains	No. of adopted legal acts
General Provisions (Arts. 67-76)	21
Borders, Asylum and Migration (Arts. 77-80)	110
Civil Justice (Article 81)	17
Criminal Justice (Arts. 82-86)	34
Police Cooperation	21
TOTAL	203

The adoption of legal acts has been most dynamic in domains covering borders, visas, asylum and migration (Chapter 2 of Title V TFEU), with a total of more an 100 pieces of legislation adopted, followed by those related to judicial cooperation in criminal matters (Chapter 4 of same Title), with 34 acts being passed.

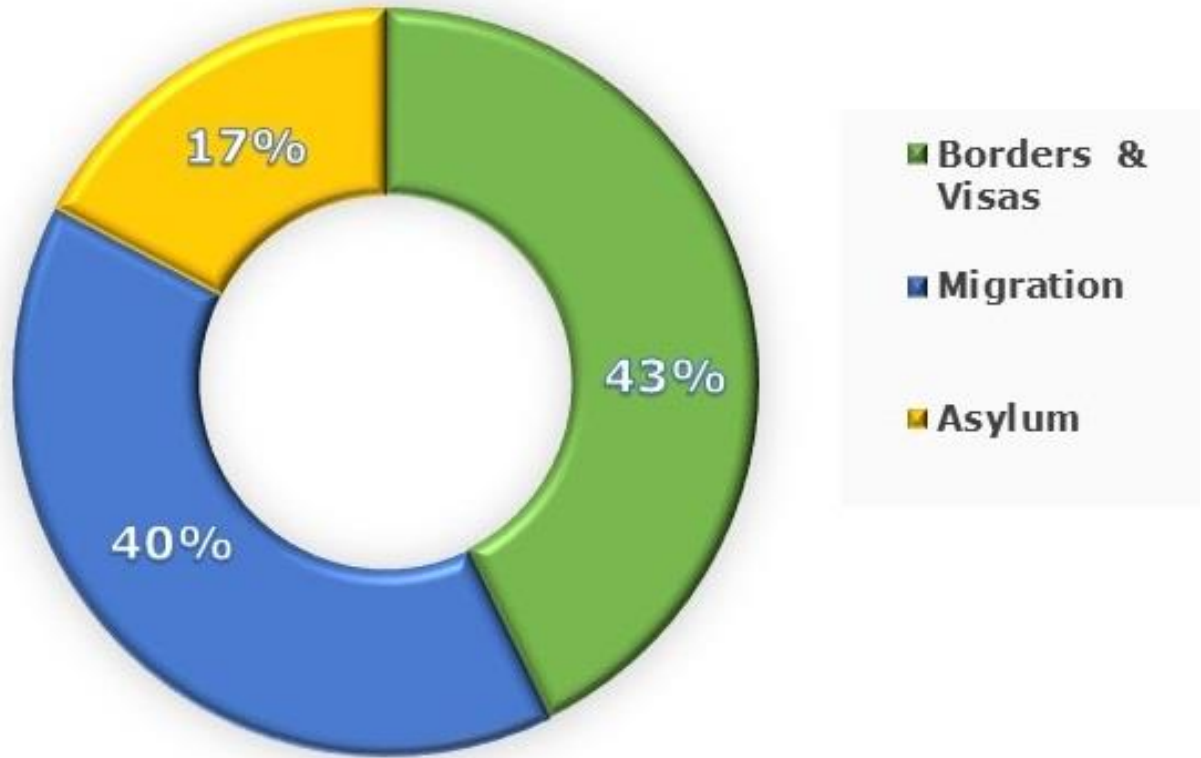
Graph 3 further illustrates the policy domain where more legal acts have been adopted during the last five years has been borders and visa policies, with more than one hundred acts adopted. Indeed, the comparative account provided in Graph 4 of the frequency in use of all the articles comprising Title V AFSJ shows that the provisions which have been more used in practice as legal basis relate to these same domains (i.e. Articles 77-79 TFEU).

Graph 2: Legal Acts adopted under Title V AFSJ (TFEU)



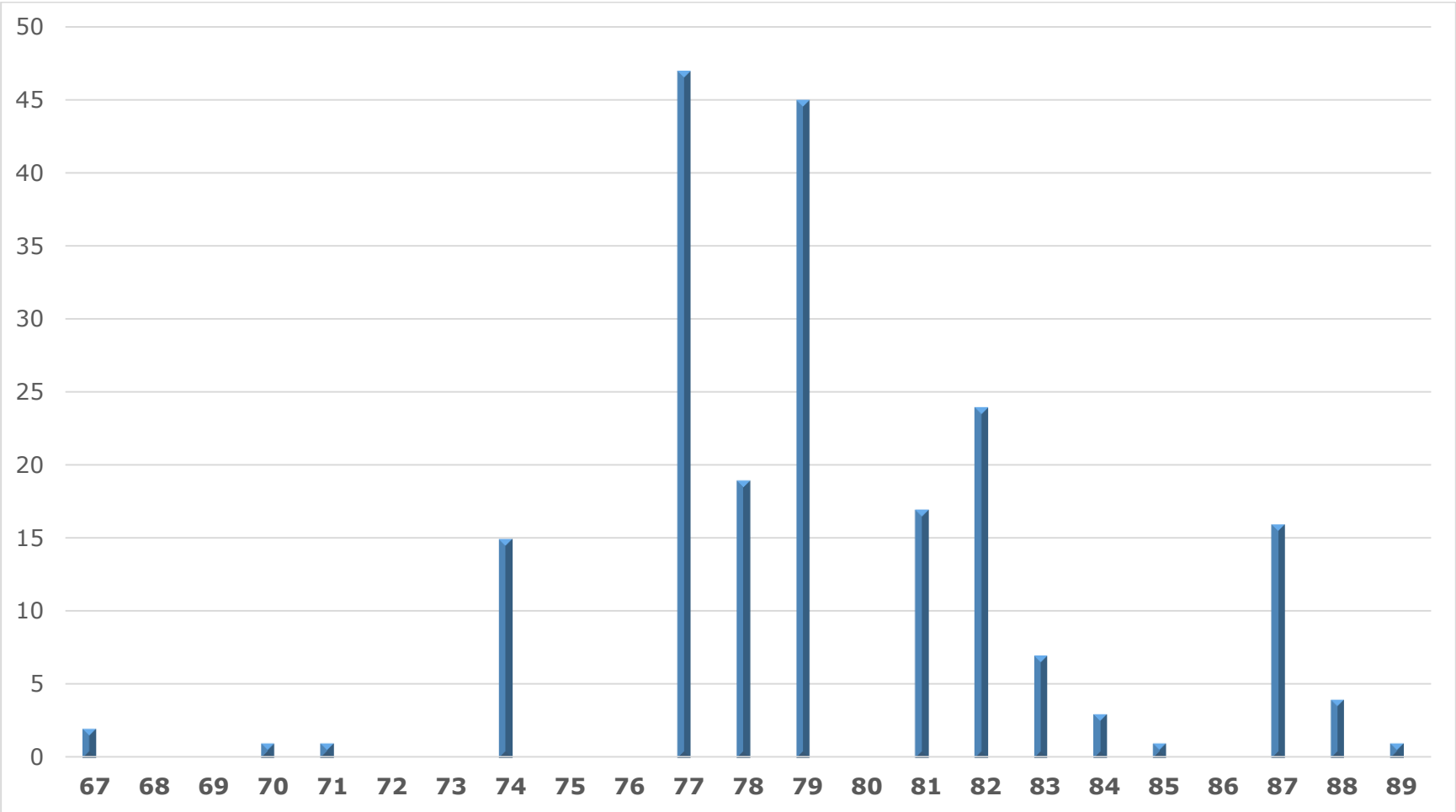
Source: Authors' elaboration (See Table 1 above)

Graph 3: Legal Acts adopted under Chapter 2, Title V TFEU



Source: Authors' elaboration (See Table 1 above)

Graph 4: Frequency of Use (Article-by-Article) Title V TFEU – entry into force Lisbon Treaty until Present



Source: Authors' elaboration (See Annex 1 of this study)

EU Member States and European institutions have the additional duty to comply with the principle of sincere and loyal cooperation enshrined in Article 4.3 TEU (previously Article 10 EC Treaty and former Article 5 EC Treaty before the entry into force of the Amsterdam Treaty in 1999).²⁷ This article obliges EU Member States to abstain from adopting measures jeopardising the Union's objectives (Mortelmans, 1998). The principle of sincere cooperation extends also to areas of intervention in domains of 'overlapping' or shared competence between the Union and national arenas, such as those falling under the AFSJ rubric.

Moving ahead with a kind of European integration driven by a 'concentric' or even competing circles method would pose a far-reaching challenge to the Union's objective of creating a *common* Area of Freedom, Security and Justice, and the commonality and effective operation of European standards and rights which currently exist in EU JHA law and give substance to that 'Area'. Moreover, furthering or deepening fragmentation could jeopardise the practical operability and effectiveness of EU JHA law *acquis*. Any future use of differentiation should therefore take into careful consideration its consistency with existing EU legislation and its practical effectiveness, as well as its compliance with the principle of loyal and sincere cooperation in respect of the Union's 'Common or Single Area' objective laid down in the Treaties.

Debates on furthering flexibility and variable participation by EU Member States in AFSJ-related domains draw attention away from the fact that much remains to be done to fully implement the currently foreseen provisions under Title V TFEU. This is especially so in respect of articles playing potentially a key role in strengthening the *commonality* of the EU AFSJ. A case in point relates to JHA domains such as judicial cooperation in criminal matters, which are driven by the principle of mutual recognition of judicial and administrative decisions across EU Member States (van Ballegooij, 2015).²⁸ A clear example where the Lisbon Treaty has been so far under-utilised relates to Article 70 TFEU, which states:

...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 the Union policies* referred to in this Title by Member States' authorities, in particular in order to facilitate full application of *the principle of mutual recognition*. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation [emphasis added].

The development of such an evaluation system would be in line with the end of the transitional period envisaged in Protocol 36 of the Lisbon Treaty, and the expansion of the enforcement powers by the European Commission and the Luxembourg Court (see Section 3.3 above). It would also give priority to ensuring better monitoring of the implementation by EU Member States of existing pieces of EU JHA legislation. This would correspond with the priority set by the Council's strategic guidelines for legislative and operational planning for the coming years within the AFSJ,²⁹ which in paragraph 3 stated, "[T]he overall priority

²⁷ Article 4.3 reads as follows: "Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member State shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardize the attainment of the Union's objectives."

²⁸ Article 82.1 TFEU states, "Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83." Article 67.3 TFEU emphasises, "The Union shall endeavor to ensure a high level of security...through the mutual recognition of judgments in criminal matters".

²⁹ www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf.

now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place."

4.2 Citizens and Residents' Fundamental Rights and Freedoms

The existence and potential proliferation of parallel, concentric and even competing circles or 'areas' of European cooperation on JHA domains would equally inflict negative consequences over EU citizens and residents rights and liberties. These EU fundamental rights and freedoms are now enshrined in primary law and the Treaties, and anchored in the EU Charter of Fundamental Rights. They have also been further delineated in EU secondary legislation and the jurisprudence of the Luxembourg CJEU. Two cases in point relate to EU citizens' rights to free movement³⁰ and the rights of suspects in criminal proceedings.³¹

The common and uniform application of these EU rights and standards can be seen as playing a key role in establishing an area without internal frontiers and granting every citizen of the Union the right to move and reside freely within the territory of the Member States as enshrined in Article 26.2 TFEU.³² Moreover, the EU is committed to ensuring that "*in all its activities*" the principle of equality of its citizens is duly observed and protected (Article 9 TEU). These can be profoundly challenged by variable participation.

A case in point is European judicial cooperation in criminal matters. In the current picture of European integration, the UK still participates in most of the EU (old Third Pillar) criminal justice measures focused on repression or extradition of suspected criminals (e.g. European Arrest Warrant).³³ However, the UK does not take part in the above-mentioned set of accompanying EU legislative measures providing a parallel framework of protection for suspects' rights in criminal procedures (e.g. access to a lawyer Directive).³⁴ Under the current EU extradition or surrender regime foreseen by the European Arrest Warrant an EU Citizen may be forced to 'move back' to another EU Member State where s/he is suspected to have committed a crime. S/he will be subject to a level of protection of suspect rights which may be lower than the one at home or in other EU Member States. This situation creates a protection gap which is the direct result of differentiation and the existence of various Areas of Justice across the EU.

One could raise the question as to whether *all* rights are to be completely identical and equivalent wherever an EU citizen/resident is or moves to at a given time across the Union. The answer to that question becomes most pertinent when read from the perspective of citizenship of the Union and the exercise of the freedom to move across the enlarged Schengen area. When an EU citizen exercises the freedom to move to and reside in a

³⁰ Directive 2004/38 of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. See also European Commission Communication on Free Movement of EU Citizens and their families: Five Actions to make a difference, COM(2013)837, 25.11.2014, Brussels.

³¹ See for instance Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings; Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings; Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings.

³² Article 26.2 TFEU stipulates, "*The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.*"

³³ Council of the EU (2002), Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, 2002/584/JHA, Official Journal L 190, 18.7.2002.

³⁴ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings.

second Member State, that person benefits from EU protection against discrimination on the basis of nationality (Article 18 TFEU). Not only the EU citizen and her/his family member enjoy equality before the domestic law in comparison to nationals of the receiving Member State. S/he also enjoys equal treatment on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU).

Variable geometry should not create or incentivise an uneven landscape of fundamental rights across the Union, allowing for a lack of legal protections and even discriminatory treatment depending on the location of the person involved in the EU. These are now supranational rights enshrined in the Treaties and the EU Charter of Fundamental Rights, whose scope of application should not be geographically conditioned to *where* an EU citizen or resident is in the EU.

Current debates on Treaty reform are also driven by some EU Member States agendas to renationalise or restrict existing EU citizenship rights and freedoms,³⁵ which would allow them to apply restrictions and exceptions to free movement of a clear unlawful nature under current Treaty configurations. Opening a Treaty reform process would risk a 'race to the bottom' as regards Union citizenship rights and freedoms. It would take differentiation a step further by allowing certain EU Member State governments to renegotiate and reshape citizens' rights and freedoms in ways which would put at risk the foundations of European citizenship and fundamental rights.

4.3 Efficient and Accountable Decision-Making

As studied in Section 2 above, the Lisbon Treaty has introduced a number of welcomed transformations to the traditional Treaty and decision-making configurations pertaining to EU JHA cooperation. One of the most distinguishing innovations has been the expansion of the Community method of cooperation and the so-called 'ordinary legislative procedure' to the entire remit of AFSJ policies. However, the practical and effective application of the ordinary legislative procedure and the Parliament's involvement in the external dimensions of JHA cooperation call for careful assessment and consideration. Has the expansion of the Community method delivered on its promises?

A previous assessment of the role played and contributions made by the European Parliament during the five past years as co-legislator in the EU AFSJ shows a number of important achievements, but also the existence of dilemmas and obstacles as regards the ways in which its role as 'co-legislator' has taken place and developed in practice (Carrera, Hernanz & Parkin, 2013). While the Treaties have formally conferred on the European Parliament that legislative role, during the previous legislature there were several instances that demonstrated hearts and minds in the Council and Commission have not yet fully internalised the full scope of the Parliament's new authority in JHA domains (de Capitani, 2011).

Furthermore, the Lisbon Treaty granted the Parliament a binding say (consent) in the conclusion of international agreements on the external dimensions of the EU AFSJ. However, the Parliament has often expressed concerns about its own insufficient involvement and the non-systematic transparency and consultation in international and regional agreements on judicial cooperation in criminal matters and policing.³⁶ The Lisbon

³⁵ See for instance www.euractiv.com/sections/uk-europe/juncker-says-eu-needs-britain-cant-change-basic-treaty-312950.

³⁶ The Parliament called on the Council and the Commission to consult it "in respect of each international agreement based on Articles 24 and 38 TEU when the agreements affect the fundamental rights of Union citizens and the main aspects of judicial and police cooperation with third countries or international organizations". It also insisted on the need to keep the Parliament informed of negotiations on agreements covering the AFSJ, and to ensure that the Parliament's views were "duly taken into consideration, as provided for by Articles 39 and 21 TEU

Treaty has strengthened its role and the Parliament is *"in a strong position to insist politically that its views be taken into account during the definition of the negotiating mandate by the Council and during negotiations themselves"* (Corbett, 2012). This new role played by the Parliament has, however, proved to be particularly contentious in respect of the EU-US cooperation on data processing for the purposes of the so-called 'fight against terrorism' (Carrera, Hernanz & Parkin, 2013).³⁷

Indeed, an effective performance of democratic accountability has become even more challenging with the increasing role played by the External Action Service in JHA-related domains, and the merging of internal and foreign affairs actors in areas such as those of migration and terrorism. By falling under the remits of CFSP and defence policies, the role of democratic scrutiny by the European Parliament, as well as the judicial control by the Luxembourg CJEU, are by and large excluded. This has been the case, for instance, of the previously mentioned EUNAVFOR Med naval operation on the fight against smugglers (Section 2.7 above). Serious consideration should therefore be given to ways in which the increasing blurring between foreign affairs and JHA could be clarified within proper rule of law and effective democratic and legal accountability frameworks.

Another related issue corresponds to the actual ways in which the ordinary legislative procedure works in practice. It has often led to the emergence of frameworks of decision-making with greater flexibility, informalities and early compromise agreements with the rotating Presidency and Council in the course of legislative procedures.³⁸ This has come along the 'technocratisation' and a large degree of 'depoliticisation' of its internal working methods (through so-called 'trilogues' and early first reading agreements). These stand in a difficult relationship with transparent and accountable decision-making.

Furthermore, enough attention has not yet been given to improving and strengthening internal working habits and procedures inside the Parliament, including fundamental rights compliance of its internal legislative work and fundamental rights impact assessment in all relevant phases of the drafting of legislation. Both the Commission and the Council have published internal strategies on the respect of fundamental rights.³⁹ The Parliament has so far not devised a carefully designed strategy for better implementing Rule 36 of the Parliament Rules of Procedure.⁴⁰ Moreover, it is currently not possible to closely and thoroughly monitor the compatibility and impact with the EU Charter of legislative

and by Article 300 TEC". Point 2 of the 2007 Resolution on an area of freedom, security and justice: Strategy on the external dimension, Action Plan implementing the Hague programme.

³⁷ This was the case in relation to the SWIFT Agreement between the EU and the US, now called TTFP. See Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the EU to the US for purposes of the Terrorist Finance Tracking Program, OJ L 195/5, 27.7.2010. See also the European Parliament Press Release, "Parliament gives green light for SWIFT II", 08.07.2010.

³⁸ The issues characterising the development of informal and non-transparent legislative procedures in the work of the European Parliament (including 'early agreements' and 'trilogues') have been the focus of attention of previous reports, see: European Parliament, Report on Legislative Activities and Inter-institutional Relations, Working Party on Parliamentary Reform, PE 406.309/CPG/GT, (www.europarl.europa.eu/eplive/expert/multimedia/20090326MLT52708/media_20090326MLT52708.pdf), and European Parliament, Report on amendment of Rule 70 of Parliament's Rules of Procedure on interinstitutional negotiations in legislative procedures, 20.9.2012, Committee on Constitutional Affairs, Rapporteur: Enrique Guerrero Salom, A7-0281/2012.

³⁹ See European Commission (2010), Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, Brussels, 19.10.2010; as well as Council of the EU (2011), Draft conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union, Council document 6387/11, Brussels, 11 February 2011.

⁴⁰ The Rule states that the Parliament shall respect in all its activities the fundamental rights as laid down in the EU Charter, as well as the general principles stipulated in Articles 2 and 6 of the TEU. Furthermore, Rule 36.2 states, *"Where the Committee responsible for the subject matter, a political group or at least 40 Members are of the opinion that a proposal for a legislative act or parts of it do not comply with rights enshrined in the Charter of Fundamental Rights of the European Union, the matter shall, at their request, be referred to the committee responsible for the interpretation of the Charter. The opinion of that Committee shall be annexed to the report of the committee responsible for the subject matter."* The Parliament Committee responsible for its practical implementation is the LIBE Committee. Refer to Carrera, Hernanz & Parkin (2013).

proposals amended or changed throughout the various phases in the legislative and drafting processes.

4.4 Mutual Trust and Rule of Law

An additional challenge affecting the functioning of the post-Lisbon Treaty framework is the lack of effective instruments to properly safeguard the foundations upon which the EU AFSJ has been built and operates, in particular those provided in Article 2 of the Treaty on the European Union (TEU). This Article stipulates that the Union is founded on the respect of the rule of law and human rights.⁴¹ The EU checks Member States' compliance with these principles *before* accession to the Union in what has been denominated the 'Copenhagen criteria'.⁴² There is no similar instrument playing that role *after* accession takes place. This is based on the presumption that all EU Member States comply with these values on the basis of the principle of mutual trust. As the CJEU has recently stated,⁴³

...the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.

That notwithstanding, the first five years of implementation of the Lisbon Treaty have provided a wealth of evidence showing that fundamental rights and the rule of law cannot be taken for granted across EU Member States. Examples include the constitutional controversies regarding the situation in Hungary,⁴⁴ the French policies on forced evictions and expulsions of EU Roma citizens of Romanian and Bulgarian nationality (Carrera, 2013), or the complicity by some EU Member States in US-led large-scale pre-emptive surveillance programmes (Bigo et al., 2013) or extraordinary renditions and secret detentions (Carrera, Guild, Soares da Silva & Wiesbrock, 2012).

The lack of any proper instrument for monitoring rule of law compliance has been an issue of concern during the last five years of implementation of the Lisbon Treaty. This gap has been often referred to as the 'Copenhagen dilemma' (Carrera, Guild & Hernanz, 2013). Indeed, the only Treaty-based tool for monitoring and evaluating EU Member States' compliance with the rule of law is Article 7 TEU, which foresees a preventive and sanctioning approach.⁴⁵ This provision, which has never been used in practice, provides

⁴¹ Article 2 TEU reads as follows: "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*"

⁴² Refer to www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72921.pdf, which states, "*Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.*"

⁴³ Opinion 2/13 on the compatibility of the draft agreement on the EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) with the EU and TFEU Treaties of 13 December 2014, CJEU, para. 191.

⁴⁴ www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0//en.

⁴⁵ Refer to European Commission (2003), Communication on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final, 15 October 2003, which states, "*[I]f a Member State breaches the fundamental values in a manner sufficiently serious to be caught by Article 7, this is likely to undermine the very foundation of the EU and the trust between its members, whatever the field in which the breach occurs*".

excessively high thresholds for its activation and is simply too political in nature and ambition.

While Article 7 TEU involves the various European institutions, the discretion enjoyed by the Council remains very large indeed. The Council is not under any obligation to conclude that there is a clear risk or a serious or persistent breach, or to apply penalties (Von Bogdandy et al., 2012). Furthermore, the role of the Parliament remains limited. It only gives 'assent' before the Council may proceed and has no role in assessing the existence of any risk or threat to the rule of law and fundamental rights. The CJEU contribution is equally marginal, by exclusively holding the competence to review the lawfulness of the procedure and not the decision itself.⁴⁶

Mutual trust plays a decisive role in EU JHA cooperation. The EU AFSJ is based on the premise that EU Member States fully respect the rule of law (e.g. the independence and quality of the judiciary) and fundamental human rights. This is especially so in respect of AFSJ policies relying on the principle of mutual recognition of national judicial and administrative decisions, such as criminal justice and asylum. On the basis of this principle, EU citizens and residents, i.e. suspects in criminal proceedings or asylum seekers, may be transferred from one Member State to another without effective guarantees of fundamental rights compliance in the receiving State.

The CJEU has accepted that the presumption of EU Member States' compliance with fundamental rights may be rebuttable.⁴⁷ The test as to whether the person can be transferred or not to another EU Member State relies on the role of an independent and impartial judge and therefore the quality of justice at the national levels of the EU Member State concerned. If EU Member States cannot properly ensure an efficient, human right-compliant and independent judiciary to carry out that test, how can the principle of mutual recognition stand in EU JHA law?

Against this background, the European Parliament has called for a regular, objective and exhaustive monitoring process which would take the form of a 'Copenhagen Mechanism' and which would focus on EU Member States' compliance with Article 2 TEU common values.⁴⁸ On this basis, and following calls by the Council,⁴⁹ the previous European Commission published a Communication in March 2014 on a New EU Framework to Strengthen the Rule of Law, COM(2014)158.⁵⁰ According to this Communication the purpose of this new EU Framework would be

to enable the Commission to find a solution with the Member State concerned in order to prevent the emerging of a systemic threat to the rule of law in that Member State that could develop into a 'clear risk of a serious breach' within the meaning of Article 7 TEU, which would require the mechanisms provided for in that Article to be launched.⁵¹

⁴⁶ Article 269 TFEU outlines the exact role played by the CJEU in the scope of Article 7 TEU.

⁴⁷ Court of Justice of the European Union, Joined Cases C-411/10 and C-493/10, N.S. and M.E., 21 December 2011. Para. 80 states "[I]t must be assumed that the treatment of asylum seekers in all Member States complies with the requirements of the Charter, the Geneva Convention and the ECHR." And para. 104 states, "In those circumstances, the presumption underlying the relevant legislation, stated in paragraph 80 above, that asylum seekers will be treated in a way which complies with fundamental rights, must be regarded as rebuttable." And para. 106 reads, "Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision."

⁴⁸ www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0051+0+DOC+XML+V0//EN. See para. 9 of the report for more details on the nature and scope of the 'Copenhagen mechanism' which was called upon.

⁴⁹ Refer to www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf.

⁵⁰ European Commission, Communication, A New EU Framework to Strengthen the Rule of Law, COM(2014)158, 11.3.2014.

⁵¹ Ibid., p. 6.

The Communication states, “While not excluding future developments of the Treaties in this area – which will have to be discussed as part of the broader reflections on the future of Europe –, it is based on Commission competences as provided for by existing Treaties.”⁵²

The Framework would be triggered in situations where EU Member States are adopting measures or tolerating situations which could be expected to systematically and adversely affect or constitute a threat to the integrity, stability and proper functioning of their institutions in securing the rule of law. This would include issues related to constitutional structures and separation of powers, the independence or impartiality of the judiciary, or their system of judicial review.⁵³

In those cases where there would be clear indications that there is a ‘systematic threat’ to the rule of law in one Member State, the Framework would allow for the initiation of a formal ‘structured exchange’ between the Commission and the Member State at hand. That exchange would be organised in three stages: first, a Commission assessment, where it would issue a ‘rule of law opinion’ substantiating its concerns and granting the EU Member State the possibility to respond; second, a Commission ‘rule of law recommendation’ would be issued in cases where the controversy is not resolved, which would provide a fixed time limit for addressing the concerns and specific indications on ways and measures to address them; and third, a follow-up or monitoring of the rule of law recommendation, which if not satisfactorily addressed could create the possibility for activating the Article 7 TEU mechanism. As regards the role of the Parliament and the Council, the Communication highlights that they would be kept “regularly and closely informed of progress made in each of the phases”.

While the EU Framework to Strengthen the Rule of Law can be seen as a step in the right direction, it has a number of profound limitations:

First, the monitoring dimension would be rather weak in nature. It would not constitute a comparative and regular/periodic assessment by relevant thematic area (corresponding with the fundamental rights enshrined in the EU Charter) for each individual EU Member State, so as to have a country-by-country assessment on the state of the rule of law (Carrera, Guild & Hernanz, 2013b).

Second, the ways in which the Commission would use existing information and knowledge on specific EU Member States and whether it would launch a ‘rule of law opinion’ or a ‘rule of law recommendation’ remains rather discretionary. The assessment would not be carried out by a fully independent academic expert, which would ensure full impartiality in the findings. Nor does it provide any judicial and democratic accountability method (i.e. specific role for the Parliament and the CJEU) for the Commission to take any further step in any of these stages.

Third, the framework does not propose any specific model, internal strategy or policy cycle⁵⁴ for EU inter-institutional coordination between the findings resulting from the rule of law assessment, and those from other EU monitoring or evaluation processes of EU Member States’ performances, such as the European semester cycle and soft economic governance.⁵⁵

The Communication was acknowledged by the General Affairs Council meeting of 18 March 2014.⁵⁶ Yet it has not been followed up by Council since then. Instead, EU Member States’ representatives raised several institutional and procedural questions regarding the Commission’s initiative which were examined by the Council Legal Service in an Opinion

⁵² Ibid., p. 9.

⁵³ Ibid., p. 7. The Communication states, “The Framework will be activated when national ‘rule of law safeguards’ do not seem capable of effectively addressing those threats”.

⁵⁴ As proposed by European Parliament (2012), Resolution on the situation of fundamental rights in the EU (2010-2011), P7_TA(2012)0500, Rapporteur: Monika Flašíková Beňová, 22 November.

⁵⁵ See also European Parliament (2015), Draft Report on the situation of fundamental rights in the European Union (2013-2014), (2014) 2254 (INI), Rapporteur: Laura Ferrara, 6 March 2015.

⁵⁶ Press Release, Council meeting, General Affairs, 3306th, Brussels, 18 March 2014.

issued in May 2014.⁵⁷ The CLS emphasized that “*the respect of the rule of law by the Member States cannot be the subject matter of an action by the institutions of the Union irrespective of the existence of a specific material competence to frame this action, with the sole exception of the procedure described in Article 7 TEU*”. It concluded that Article 7 TEU cannot constitute the appropriate basis to amend this procedure and that the Commission’s initiative was not compatible with the principle of conferral. It also stated that

It follows that there is no legal basis in the Treaties empowering the institutions to create a new supervision mechanism of the respect of the rule of law by the Member States, additional to what is laid down in Article 7 TEU, either to amend, modify or supplement the procedure laid down in this Article. Were the Council to act along such lines, it would run the risk of being found to have abused its powers by deciding without a legal basis.

The CLS suggested as an alternative the conclusion of an intergovernmental international agreement designed to supplement EU law and to ensure the respect of Article 2 TEU values. This agreement could envisage the participation of European institutions, and specify the actual ways in which EU Member States would commit to draw from a ‘review system’. Kochenov and Pech (2015) have convincingly expressed critical concerns about the CLS Opinion and rightly argued that

... since the Commission is one of the institutions empowered, under Article 7 TEU, to trigger the procedure contained therein, it should in fact be commended for establishing clear guidelines on how such triggering is to function in practice. In other words, a strong and convincing argument can no doubt be made that Article 7(1) TEU already and necessarily implicitly empowers the Commission to investigate any potential risk of a serious breach of the EU’s values by giving it the competence to submit a reasoned proposal to the Council should the Commission be of the view that Article 7 TEU ought to be triggered on this basis. Moreover, given the overwhelming level of interdependence between the EU Member States and the blatant disregard for EU values in at least one EU country, the Commission fulfilled its duty as Guardian of the Treaties by putting forward a framework that would make Article 2 TEU operational in practice.⁵⁸

The General Affairs Council of 16 December 2014 adopted Conclusions on ensuring respect for the rule of law.⁵⁹ The Council committed itself to establishing a dialogue among all EU Member States to promote and safeguard the rule of law “*in the framework of the Treaties*”. The Conclusions underline that this ‘dialogue’ will be based on the principles of objectivity, equality and non-discrimination between EU Member States, and it will be driven by an evidence-based and non-partisan approach. The Council also agreed that this dialogue will take place once a year in the Council General Affairs configuration and prepared by COREPER (Presidency), and consideration will be given to launching debates on thematic subject areas. By the end of 2016, the General Affairs Council will evaluate the experience.

It is not clear the actual outputs such a dialogue will produce or the ways in which the principles of objectivity, evidence-based approach and non-politicisation will be guaranteed in practice. Such an inter-governmental framework of cooperation cannot be conducive to effectively address current rule of law challenges across the Union.

⁵⁷ Council of the EU, Commission’s Communication on a new EU Framework to strengthen the Rule of Law: Compatibility with the Treaties, Doc. 10296/14, Brussels, 27 May 2014.

⁵⁸ See D. Kochenov and L. Pech (2015), *Upholding the Rule of Law in the EU: On the Commission’s Pre-Article 7 Procedure as a Timid Step towards the Right Direction*, EUI Working Papers, RSCAS 2015/24, Florence, page 11.

⁵⁹ www.consilium.europa.eu/en/meetings/gac/2014/12/16.

The new Juncker Commission has underlined the importance given to the rule of law and fundamental rights in its political guidelines,⁶⁰ as well as in the appointment for the first time of a First Vice-President responsible for these very domains (Frans Timmermans).⁶¹ At present it is not certain whether the new European Commission is going to take forward and effectively implement the proposed EU Framework to Strengthen the Rule of Law, independent of the Council's response. Neither it is certain the role (if any) that it will play in the above-mentioned dialogue in the context of the General Affairs Council.

⁶⁰ The Political Guidelines highlight, "Our European Union is more than a big common market. It is also a Union of shared values, which are spelled out in the Treaties and in the Charter of Fundamental Rights. Citizens expect their governments to provide justice, protection and fairness with full respect for fundamental rights and the rule of law. This also requires joint European action, based on our shared values. I intend to make use of the prerogatives of the Commission to uphold, within our field of competence, our shared values and fundamental rights, while taking due account of the diversity of constitutional and cultural traditions of the 28 Member States. I intend to entrust a Commissioner with specific responsibility for the Charter of Fundamental Rights", p. 8. Political Guidelines for the Next European Commission, A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, 15 July 2014, retrievable from http://ec.europa.eu/priorities/docs/pg_en.pdf#page=9.

⁶¹ https://ec.europa.eu/commission/2014-2019/timmermans_en. See also his speech at http://europa.eu/rapid/press-release_SPEECH-14-1701_en.htm.

5. POLICY RECOMMENDATIONS

Any reflection on the need for and value added of further legislative or Treaty reforms should take due account of these challenges and exercise caution. Such a process should not promote or enable further differentiation or fragmentation in the future generations of EU AFSJ cooperation. Neither should it allow for restricting or lowering down existing EU rights and freedoms enjoyed by European citizens and residents. The European Parliament should instead give clear priority to developing a *mutual trust-building agenda* in EU AFSJ cooperation. This agenda should consist of the following trust enhancing and strengthening policy actions:

First, implementation and evaluation: Priority should be given to better ensuring Member States' timely and effective implementation of EU JHA law and existing European standards and citizens' rights, including that covering areas related to judicial cooperation in criminal matters and policing. The Parliament should more closely follow up the ways in which the European Commission monitor and follow up the transposition and enforcement of the transposition of EU JHA law by EU Member States (Piedrafita & Blockmans, 2014), as well as further implementation of key Treaty provisions presenting more implementation potentials.

As a way of illustration, the European Parliament should call for fully implementing Article 70 TFEU and develop an effective and independent evaluation system to facilitate the full application of the principle of mutual recognition in domains such as judicial cooperation in criminal matters and asylum policy (Mitsilegas, Carrera & Eisele, 2014). This system should aim at better ensuring a full and effective monitoring of the practical uses of European legal instruments through a scientifically rigorous methodology, an improved system of statistical collection and independent (Member State-by-Member State) assessment of key developments and main challenges in practical implementation. The Parliament should be entrusted with an active role in the system, in particular when it comes to the follow-up of and provision of information on the evaluation results, and in the implementation or follow-up.

Second, accountability and fundamental rights: The European Parliament should grant more attention to devising an internal strategy focused on ensuring and strengthening internal accountability, transparency and fundamental rights in legislative procedures (Carrera, Hernanz & Parkin, 2013). This strategy should focus on developing new ways to guarantee more democratic accountability of its own legislative procedures, and a horizontal mainstreaming of fundamental rights compliance during the different legislative phases.⁶²

Third, the rule of law: The Parliament should reiterate its previous calls for the need to establish an 'EU Copenhagen mechanism' that would ensure independent and regular (Member State-by-Member State) monitoring of rule of law compliance by EU Member States after accession (Carrera, Guild & Hernanz, 2013).

The Parliament should also ensure that the Commission's EU Framework on Rule of Law is effectively followed up and implemented in practice. The European Commission should be called to present a new legislative initiative laying down the EU Copenhagen (rule of law) mechanism based on Article 7 TEU. No Treaty change would be required for such an instrument to be established. The proposal should focus on developing the activation phases preceding the usage of Article 7 TEU. This provision recognizes the power to trigger the existing procedure not only to one third of the EU Member States, but equally to the Commission and the European Parliament. The Parliament also needs to give its consent to

⁶² As argued in Carrera, Hernanz & Parkin (2013), this would correspond with limiting the uses of informal and early agreements in the ordinary legislative procedures, in order to ensure more transparency and accountability in the decision-making process. This should go hand-in-hand with a more effective implementation of the current set of internal Parliament guidelines and codes of conduct in the development of 'trilogues' and conclusion of early and first reading agreements in the ordinary legislative procedure.

a reasoned proposal determining that one or several EU Member States are threatening Article 2 TEU values.

The findings of a new EU Copenhagen mechanism, which should be based on independent academic expertise, could be linked to those resulting from the European semester cycle on economic governance, where the EP's views would be taken directly into consideration when drafting recommendations to specific EU Member States. This should go in hand to the launching of a 'rule of law, democracy and fundamental rights Copenhagen Policy Cycle' which would aim at formalizing EU inter-institutional coordination between the currently ongoing reporting processes related to fundamental rights, good governance and rule of law.

From a longer-term perspective, democratic accountability and judicial controls of such an instrument could be further ensured and formally foreseen in the Treaties, which would in turn imply an amendment of Article 7 TEU in the EU treaties. The activation phase of the rule of law mechanism could be also improved and secured by opening up its current activation threshold which is restrictive and not easy to overcome in practice. The discretion enjoyed by the Council could be more balanced by ensuring the accountability by the Parliament in all stages. The CJEU should be also part of the process and be granted a more direct role, so as to ensure judicial control in both in preventive and sanction phases of the instrument.

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ANNEX 1

Legal Acts of the Union adopted under TITLE V: Area of Freedom, Security and Justice (TFEU)

CHAPTER 1: GENERAL PROVISIONS

Article 67	Article 70	Article 71	Article 74
Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012	Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27-37	(2010/131/EU): Council Decision of 25 February 2010 on setting up the Standing Committee on operational cooperation on internal security, OJ L 52/50, 3.3.2010. (Adopted on the basis of Article 240.3 TFEU)	Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304, 22.11.2011, p. 1-17
Council Resolution of 13 December 2011 on the future of customs law enforcement cooperation, OJ C 5, 7.1.2012, p. 1-3			Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1-17
			Regulation (EU) No 439/2010 of the European Parliament and of the

Article 67	Article 70	Article 71	Article 74
			Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29.5.2010, p. 11–28
			2014/344/EU: Council Decision of 19 May 2014 on the conclusion of the Arrangement between the European Union and the Principality of Liechtenstein on the modalities of its participation in the European Asylum Support Office OJ L 170, 11.6.2014, p. 49–49
			2014/301/EU: Council Decision of 19 May 2014 on the conclusion of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office, OJ L 157, 27.5.2014, p. 33–34
			(2014/194/EU): Council Decision of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland on the modalities of its participation in the European Asylum Support Office, OJ L 106, 9.4.2014, p. 2–3
			(2014/186/EU): Council Decision of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Principality of Liechtenstein on the modalities of its participation in the European Asylum Support Office, OJ L 102, 5.4.2014, p. 3–4
			(2014/185/EU): Council Decision of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office, OJ L 102, 5.4.2014, p. 1–2
			2012/193/EU: Council Decision of 13 March 2012 on the conclusion, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis, OJ L 103, 13.4.2012, p. 3–3
			2012/192/EU: Council Decision of 12 July 2010 on the signing, on behalf of

Article 67	Article 70	Article 71	Article 74
			the Union, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis, OJ L 103, 13.4.2012, p. 1-2
			Council Decision of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons, OJ L 160, 18.6.2011, p. 19-20
			Regulation (EU) No 493/2011 of the European Parliament and of the Council of 5 April 2011 amending Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network, OJ L 141, 27.5.2011, p. 13-16
			2010/490/EU: Council Decision of 26 July 2010 on the conclusion, on behalf of the Union, of the Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 243, 16.9.2010, p. 2-3

Article 67	Article 70	Article 71	Article 74	
			Council Regulation (EU) No 541/2010 of 3 June 2010 amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II), OJ L 155, 22.6.2010, p. 19–22	
			Council Regulation (EU) No 542/2010 of 3 June 2010 amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II), OJ L 155, 22.6.2010, p. 23–26	
			Council Regulation (EU) No 1272/2012 of 20 December 2012 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast), OJ L 359, 29.12.2012, p. 21–31	
			Council Regulation (EU) No 1273/2012 of 20 December 2012 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast), OJ L 359, 29.12.2012, p. 32–44	
Implementation Potentials				
	Article 70 could be used for the development and adoption of an objective and impartial evaluation system in other areas where the principle of mutual recognition operates, i.e.: judicial cooperation in criminal matters and asylum policy			

Source: EUR-lex (<http://eur-lex.europa.eu/advanced-search-form.html?qid=1442906337941&action=update>)

CHAPTER 2: POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 189, 27.6.2014, p. 93–107	Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150, 20.5.2014, p. 168–194	Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1–22
Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC, OJ L 157, 27.5.2014, p. 23–30	Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112–142	Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150, 20.5.2014, p. 168–194.
Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC, OJ L 150, 20.5.2014, p. 143–167	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013, p. 96–116	Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112–142
Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), OJ L 295, 6.11.2013, p. 11–26	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by	Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014, p. 375–390.

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
	a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31-59	
Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304, 22.11.2011, p. 1-17	Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1-30	Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p. 1-9
Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list, OJ L 287, 4.11.2011, p. 9-12	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60-95	Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1-17
Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1-17	Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1-17	Council Decision of 23 June 2014 on the signing, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other party, OJ L 278, 20.9.2014, p. 6-7

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Council Decision (EU) 2015/1033 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and Grenada on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 28–29	Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29.5.2010, p. 11–28	Council Decision of 14 April 2014 on the conclusion of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, OJ L 134, 7.5.2014, p. 1–2
Council Decision (EU) 2015/1036 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Independent State of Samoa on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 55–56	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26	Council Decision of 12 May 2014 on the conclusion of the Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part, as regards matters related to readmission, OJ L 145, 16.5.2014, p. 3–4
Council Decision (EU) 2015/1035 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 46–47	Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15.9.2015, p. 146–156	Council Decision of 14 April 2014 on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation, OJ L 128, 30.4.2014, p. 15–16
Council Decision (EU) 2015/1030 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Democratic Republic of Timor-Leste on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 1–2	(2014/344/EU): Council Decision of 19 May 2014 on the conclusion of the Arrangement between the European Union and the Principality of Liechtenstein on the modalities of its participation in the European Asylum Support Office, OJ L 170, 11.6.2014, p. 49–49	Council Decision of 14 April 2014 on the conclusion of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part, as regards matters related to readmission, OJ L 125, 26.4.2014, p. 46–47

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
<p>Council Decision (EU) 2015/1037 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Republic of Trinidad and Tobago on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 64–65</p>	<p>(2014/301/EU): Council Decision of 19 May 2014 on the conclusion of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office, OJ L 157, 27.5.2014, p. 33–34 (</p>	<p>Council Decision of 14 April 2014 on the conclusion on behalf of the European Union of the Political Dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, of the other part, as regards Article 49(3) thereof, OJ L 111, 15.4.2014, p. 2–3</p>
<p>Council Decision (EU) 2015/1031 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and Saint Lucia on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 10–11</p>	<p>(2014/194/EU): Council Decision of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland on the modalities of its participation in the European Asylum Support Office, OJ L 106, 9.4.2014, p. 2–3</p>	<p>Council Decision of 11 February 2014 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation, OJ L 59, 28.2.2014, p. 4–4</p>
<p>Council Decision (EU) 2015/1034 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and Saint Vincent and the Grenadines on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 37–38</p>	<p>(2014/186/EU): Council Decision of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Principality of Liechtenstein on the modalities of its participation in the European Asylum Support Office, OJ L 102, 5.4.2014, p. 3–4</p>	<p>Council Decision of 22 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Armenia on the readmission of persons residing without authorisation, OJ L 289, 31.10.2013, p. 12–12</p>
<p>Council Decision (EU) 2015/1032 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Commonwealth of Dominica on the short-stay visa waiver, OJ L 173, 3.7.2015, p. 19–20</p>	<p>(2014/185/EU): Council Decision of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office, OJ L 102, 5.4.2014, p. 1–2</p>	<p>Council Decision of 7 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation, OJ L 282, 24.10.2013,</p>
<p>Council Decision (EU) 2015/785 of 20 April 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement</p>	<p>Decision No 281/2012/EU of the European Parliament and of the Council of 29 March 2012 amending Decision No 573/2007/EC establishing</p>	<p>Council Decision of 21 December 2011 on the signing, on behalf of the European Union, and provisional application of certain provisions of the</p>

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<p>between the European Union and the United Arab Emirates on the short-stay visa waiver, OJ L 125, 21.5.2015, p. 1–2</p>	<p>the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows', OJ L 92, 30.3.2012, p. 1–3</p>	<p>Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part, OJ L 204, 31.7.2012, p. 18–19</p>
<p>Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 149, 20.5.2014, p. 67–70</p>	<p>Council Decision of 7 March 2011 on the conclusion of a Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, OJ L 160, 18.6.2011, p. 37–38</p>	<p>Council Decision of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other part, OJ L 137, 26.5.2012, p. 1–2</p>
<p>2014/242/EU: Council Decision of 14 April 2014 on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas, OJ L 128, 30.4.2014, p. 47–48</p>	<p>Decision No 458/2010/EU of the European Parliament and of the Council of 19 May 2010 amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions, OJ L 129, 28.5.2010, p. 1–2</p>	<p>Council Decision of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part, OJ L 134, 24.5.2012, p. 4–4</p>
<p>Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 105, 8.4.2014, p. 9–11</p>	<p>Decision No 258/2013/EU of the European Parliament and of the Council of 13 March 2013 amending Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund for the Integration of third-country nationals as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their</p>	<p>Council Decision of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, OJ L 134, 24.5.2012, p. 3–3</p>

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	financial stability, OJ L 82, 22.3.2013, p. 1-5	
Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 347, 20.12.2013, p. 74-80		Council Decision of 13 March 2012 on the conclusion, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis, OJ L 103, 13.4.2012, p. 3-3
Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, OJ L 295, 6.11.2013, p. 1-10		Council Decision of 12 July 2010 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis, OJ L 103, 13.4.2012, p. 1-2
2013/628/EU: Council Decision of 22 October 2013 concerning the conclusion of the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas, OJ L 289, 31.10.2013, p. 1-1		Council Decision of 6 December 2010 on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons as regards the replacement of Annex II to that Agreement on the coordination of social security schemes, OJ L 209, 17.8.2011, p. 1-11
2013/521/EU: Council Decision of 7 October 2013		Council Decision of 7 March 2011 on the

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<p>on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union, OJ L 282, 24.10.2013, p. 1–2</p>		<p>conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons, OJ L 160, 18.6.2011, p. 19–20</p>
<p>Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council, OJ L 182, 29.6.2013, p. 1–18</p>		<p>Council Decision of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating in particular to judicial cooperation in criminal matters and police cooperation, OJ L 160, 18.6.2011, p. 1–2</p>
<p>2013/296/EU: Council Decision of 13 May 2013 on the conclusion of the Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, OJ L 168, 20.6.2013, p. 1–2</p>		<p>Regulation (EU) No 493/2011 of the European Parliament and of the Council of 5 April 2011 amending Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network, OJ L 141, 27.5.2011, p. 13–16</p>

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<p>2013/297/EU: Council Decision of 13 May 2013 on the conclusion of the Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJ L 168, 20.6.2013, p. 10–10</p>		<p>Council Decision of 18 January 2011 on the conclusion of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, OJ L 52, 25.2.2011, p. 45–46</p>
<p>2012/508/EU: Council Decision of 24 February 2011 on the conclusion of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports, OJ L 255, 21.9.2012, p. 3–3</p>		<p>Council Decision of 21 October 2010 on the position to be taken by the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 28–28</p>
<p>2012/193/EU: Council Decision of 13 March 2012 on the conclusion, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis, OJ L 103, 13.4.2012, p. 3–3</p>		<p>Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 1–1</p>
<p>2012/192/EU: Council Decision of 12 July 2010 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its</p>		<p>Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, with regard to the adoption of</p>

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
executive powers as regards the implementation, application and development of the Schengen acquis, OJ L 103, 13.4.2012, p. 1-2		provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 14-14
Regulation (EU) No 154/2012 of the European Parliament and of the Council of 15 February 2012 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), OJ L 58, 29.2.2012, p. 3-4		Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 21-21
Regulation (EU) No 1342/2011 of the European Parliament and of the Council of 13 December 2011 amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area, OJ L 347, 30.12.2011, p. 41-43		Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 8-8
Council Decision of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and		Council Decision of 21 October 2010 on the position to be taken by the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 35-35

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
movement of persons, OJ L 160, 18.6.2011, p. 19–20		
2011/305/EU: Council Decision of 21 March 2011 on the conclusion, on behalf of the European Union, of an Agreement between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein on supplementary rules in relation to the External Borders Fund for the period 2007 to 2013, OJ L 137, 25.5.2011, p. 1–2		Council Decision of 8 November 2010 on the signing, on behalf of the European Union, of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, OJ L 294, 12.11.2010, p. 9–9
2011/157/EU: Council Decision of 24 February 2011 on the conclusion of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports, OJ L 66, 12.3.2011, p. 1–1		Council Decision of 7 October 2010 on the conclusion of the Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation, OJ L 287, 4.11.2010, p. 50–51
2011/117/EU: Council Decision of 18 January 2011 on the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas, OJ L 52, 25.2.2011, p. 33–33		Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, OJ L 85, 31.3.2010, p. 1–4
Regulation (EU) No 1211/2010 of the European Parliament and of the Council of 15 December 2010 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 339, 22.12.2010, p. 6–7		Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection Text with EEA relevance, OJ L 132, 19.5.2011, p. 1–4
Regulation (EU) No 1091/2010 of the European Parliament and of the Council of 24 November		Council Decision of 21 March 2013 on signing, on behalf of the European Union, of the Agreement

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2010 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 329, 14.12.2010, p. 1-2		between the European Union and the Republic of Armenia on the readmission of persons residing without authorisation, OJ L 87, 27.3.2013, p. 1-1
2010/706/EU: Council Decision of 3 June 2010 on the signing, on behalf of the European Union, of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas, OJ L 308, 24.11.2010, p. 1-2		Council Decision of 26 June 2012 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, OJ L 244, 8.9.2012, p. 4-4
2010/622/EU: Council Decision of 7 October 2010 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports, OJ L 275, 20.10.2010, p. 3-4		Decision No 258/2013/EU of the European Parliament and of the Council of 13 March 2013 amending Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund for the Integration of third-country nationals as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability, OJ L 82, 22.3.2013, p. 1-5
2010/621/EU: Council Decision of 8 October 2010 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports, OJ L 273, 19.10.2010, p. 2-3		Council Decision of 4 February 2013 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation, OJ L 37, 8.2.2013, p. 1-1
2010/490/EU: Council Decision of 26 July 2010 on the conclusion, on behalf of the Union, of the Arrangement between the European Community,		Council Decision of 6 December 2012 on the position to be taken on behalf of the European Union within the Stabilisation and Association

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
<p>of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 243, 16.9.2010, p. 2–3</p>		<p>Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 340, 13.12.2012, p. 1–6</p>
<p>Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, OJ L 85, 31.3.2010, p. 1–4</p>		<p>Council Decision of 6 December 2012 on the position to be taken by the European Union within the Cooperation Committee set up by the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and the Republic of San Marino, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 340, 13.12.2012, p. 13–18</p>
<p>2013/2/EU: Council Decision of 17 December 2012 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas, OJ L 3, 8.1.2013, p. 1–2</p>		<p>Council Decision of 6 December 2012 on the position to be taken on behalf of the European Union within the Stabilisation and Association Council set up by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 340, 13.12.2012, p. 7–12</p>

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
<p>2012/353/EU: Council Decision of 22 June 2012 on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, OJ L 174, 4.7.2012, p. 4-4</p>		<p>Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, OJ L 344, 29.12.2010, p. 1-3.</p>
<p>2012/649/EU: Council Decision of 15 October 2012 concerning the signing, on behalf of the Union, of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union, OJ L 288, 19.10.2012, p. 1-1</p>		
<p>2012/428/EU: Council Decision of 23 July 2012 on the signing, on behalf of the European Union, of the Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJ L 199, 26.7.2012, p. 1-2</p>		

Article 77 (Borders and Visas)	Article 78 (Asylum)	Article 79 (Migration)
<p>Decision No 259/2013/EU of the European Parliament and of the Council of 13 March 2013 amending Decision No 574/2007/EC with a view to increasing the co-financing rate of the External Borders Fund for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability, OJ L 82, 22.3.2013, p. 6–9</p>		
Implementation Potentials		
<p>Article 77.1.c "a policy with a view to the gradual introduction of an integration management system for external borders"</p> <p>This provision could be important in future discussions related to the feasibility of establishing a Common European Border Guard</p>	<p>Article 78.2.e TFEU offers potential in what concerns the further development of a common European asylum system including "<i>criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection</i>".</p> <p>This article could be important in discussions foreseen about a potential revision of the Dublin asylum system</p>	<p>Labour Immigration and Rights of third country nationals: Article 79.2.a and b TFEU (conditions for entry/residence and rights of legally residing), while respecting Article 79.5 TFEU ('volumes of admission' remain under exclusive national competence but everything else is now shared competence)</p> <p>This article could play an important role in future discussion concerning legal immigration to the EU for employment-related purposes</p>

Source: EUR-lex (<http://eur-lex.europa.eu/advanced-search-form.html?qid=1442906337941&action=update>)

CHAPTER 3: JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81
Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015, p. 19–72
Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189, 27.6.2014, p. 59–92
Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020 Text with EEA relevance, OJ L 354, 28.12.2013, p. 73–83
Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4–12
Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32
Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, p. 107–134
Council Decision (EU) 2015/1023 of 15 June 2015 authorising certain Member States to accept, in the interest of the European Union, the accession of Andorra to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, OJ L 163, 30.6.2015, p. 29–31
Council Decision (EU) 2015/1024 of 15 June 2015 authorising certain Member States to accept, in the interest of the European Union, the accession of Singapore to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, OJ L 163, 30.6.2015, p. 32–34
2014/887/EU: Council Decision of 4 December 2014 on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements, OJ L 353, 10.12.2014, p. 5–8
2014/888/EU: Council Decision of 4 December 2014 on the approval, on behalf of the European Union, of the Protocol to the Convention on

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International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007, OJ L 353, 10.12.2014, p. 9–12

Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice, OJ L 163, 29.5.2014, p. 1–4

2014/218/EU: Council Decision of 9 April 2014 amending Annexes I, II and III to Decision 2011/432/EU on the approval, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, OJ L 113, 16.4.2014, p. 1–16

2013/434/EU: Council Decision of 15 July 2013 authorising certain Member States to ratify, or to accede to, the Protocol amending the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, in the interest of the European Union, and to make a declaration on the application of the relevant internal rules of Union law, OJ L 220, 17.8.2013, p. 1–2

2012/23/EU: Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof, OJ L 8, 12.1.2012, p. 13–16

Council Decision of 9 June 2011 on the approval, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, OJ L 192, 22.7.2011, p. 39–50

2011/220/EU: Council Decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, OJ L 93, 7.4.2011, p. 9–9

Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343, 29.12.2010, p. 10–16

See also (Related Legal Acts adopted under Article 328 TFEU on 'Enhanced Cooperation'):

2014/39/EU: Commission Decision of 27 January 2014 confirming the participation of Greece in enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 23, 28.1.2014, p. 41–42

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2012/714/EU: Commission Decision of 21 November 2012 confirming the participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 323, 22.11.2012, p. 18–19

Implementation Potentials

A key area relates to family Law with cross-border implications (Article 81.3 TFEU)

Source: EUR-lex (<http://eur-lex.europa.eu/advanced-search-form.html?qid=1442906337941&action=update>)

CHAPTER 4: JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 82	Article 83	Article 84	Article 85
<p>Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014, p. 93–111</p>	<p>Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive), OJ L 173, 12.6.2014, p. 179–189</p>	<p>Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014, p. 93–111</p>	<p>Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011</p>
<p>Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112–142</p>	<p>Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA, OJ L 151, 21.5.2014, p. 1–8</p>	<p>Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112–142</p>	

Article 82	Article 83	Article 84	Article 85
<p>Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1–36</p>	<p>Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39–50</p>	<p>Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020 Text with EEA relevance, OJ L 354, 28.12.2013, p. 73–83</p>	
<p>Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39–50</p>	<p>Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, OJ L 218, 14.8.2013, p. 8–14</p>		
<p>Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020 Text with EEA relevance, OJ L 354, 28.12.2013, p. 73–83</p>	<p>Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1–14</p>		

Article 82	Article 83	Article 84	Article 85
<p>Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1–12</p>	<p>Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1–11</p>		
<p>Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, OJ L 338, 21.12.2011, p. 2–18</p>	<p>2013/744/EU: Council Decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation, OJ L 333, 12.12.2013, p. 73–74</p>		
<p>Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework</p>			

Article 82	Article 83	Article 84	Article 85
Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1-14			
Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1-17			
Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57-73			
Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1-10			
Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1-11			
Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1-7			

Article 82	Article 83	Article 84	Article 85
<p>2014/835/EU: Council Decision of 27 November 2014 on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, OJ L 343, 28.11.2014, p. 1–2</p>			
<p>2013/744/EU: Council Decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation’s Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation, OJ L 333, 12.12.2013, p. 73–74</p>			
<p>2012/472/EU: Council Decision of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security, OJ L 215, 11.8.2012, p. 4–4</p>			
<p>2012/381/EU: Council Decision of 13 December 2011 on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service, OJ L 186, 14.7.2012, p. 3–3</p>			
<p>Council Decision of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the</p>			

Article 82	Article 83	Article 84	Article 85
Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating in particular to judicial cooperation in criminal matters and police cooperation, OJ L 160, 18.6.2011, p. 1-2			
2010/616/EU: Council Decision of 7 October 2010 on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters, OJ L 271, 15.10.2010, p. 3-3			
2010/482/EU: Council Decision of 26 July 2010 on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, OJ L 238, 9.9.2010, p. 1-2			
2012/380/EU: Council Decision of 22 September 2011 on the signing, on behalf of the Union, of the Agreement between the European Union and Australia on the processing and transfer of passenger name record (PNR) data by air carriers to the Australian Customs and Border Protection Service, OJ L 186, 14.7.2012, p. 2-2			

Article 82	Article 83	Article 84	Article 85
<p>2012/305/EU: Council Decision of 7 June 2012 on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto, OJ L 153, 14.6.2012, p. 1–2</p>			
<p>2012/471/EU: Council Decision of 13 December 2011 on the signing, on behalf of the Union, of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security, OJ L 215, 11.8.2012, p. 1–3</p>			
Implementation Potentials			
<p>Article 67.3 TFEU (the mutual recognition of judgments in criminal matters and "<i>the approximation of criminal laws</i>") in combination to Article 82.2.b TFEU (minimum rules on the rights of individuals in criminal proceedings) could be of central importance in moving forward with the rights of suspects in criminal proceedings</p>			

Source: EUR-lex (<http://eur-lex.europa.eu/advanced-search-form.html?qid=1442906337941&action=update>)

CHAPTER 5 (POLICE COOPERATION)

Article 87	Article 88	Article 89
<p>Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014, p. 93–111</p>	<p>Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1–30</p>	<p>Council Decision of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating in particular to judicial cooperation in criminal matters and police cooperation, OJ L 160, 18.6.2011, p. 1–2</p>
<p>Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112–142</p>	<p>Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1–17</p>	

Article 87	Article 88	Article 89
<p>Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1-30</p>	<p>2010/412/: Council Decision of 13 July 2010 on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 195, 27.7.2010, p. 3-4</p>	
<p>Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, 1.11.2011, p. 1-17</p>	<p>2010/411/: Council Decision of 28 June 2010 on the signing, on behalf of the Union, of the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 195, 27.7.2010, p. 1-2</p>	
<p>Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences, OJ L 288, 5.11.2011, p. 1-15</p>		

Article 87	Article 88	Article 89
Regulation (EU) No 543/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Decision 2005/681/JHA establishing the European Police College (CEPOL), OJ L 163, 29.5.2014, p. 5–6		
2013/744/EU: Council Decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation’s Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation, OJ L 333, 12.12.2013, p. 73–74		
2012/472/EU: Council Decision of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security, OJ L 215, 11.8.2012, p. 4–4		
2012/381/EU: Council Decision of 13 December 2011 on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service, OJ L 186, 14.7.2012, p. 3–3		
Council Resolution of 13 December 2011 on the future of customs law enforcement cooperation, OJ C 5, 7.1.2012, p. 1–3		
Council Decision of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and		

Article 87	Article 88	Article 89
<p>the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating in particular to judicial cooperation in criminal matters and police cooperation, OJ L 160, 18.6.2011, p. 1-2</p>		
<p>2010/482/EU: Council Decision of 26 July 2010 on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, OJ L 238, 9.9.2010, p. 1-2</p>		
<p>2010/412/: Council Decision of 13 July 2010 on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 195, 27.7.2010, p. 3-4</p>		
<p>2010/411/: Council Decision of 28 June 2010 on the signing, on behalf of the Union, of the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 195, 27.7.2010, p. 1-2</p>		

Article 87	Article 88	Article 89
<p>2012/380/EU: Council Decision of 22 September 2011 on the signing, on behalf of the Union, of the Agreement between the European Union and Australia on the processing and transfer of passenger name record (PNR) data by air carriers to the Australian Customs and Border Protection Service, OJ L 186, 14.7.2012, p. 2-2</p>		
<p>2012/471/EU: Council Decision of 13 December 2011 on the signing, on behalf of the Union, of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security, OJ L 215, 11.8.2012, p. 1-3</p>		
<p>Implementation Potentials</p>		
<p>Article 86 TFEU will be important in the setting up of an EPPO and the possibility to expand its competences to all "<i>serious crimes having a cross-border dimension</i>")</p>		

Source: EUR-lex (<http://eur-lex.europa.eu/advanced-search-form.html?qid=1442906337941&action=update>)

ANNEX 2

Legal Acts of the Union adopted under Part Six (Institutional and Financial Provisions), Title III, Enhanced Cooperation (TFEU)

Article 329	Article 331
2011/167/EU: Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection, OJ L 76, 22.3.2011, p. 53–55	2014/858/EU: Commission Decision of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis, OJ L 345, 1.12.2014, p. 6–9
2010/405/: Council Decision of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 189, 22.7.2010, p. 12–13	2014/298/EU: Commission Decision of 22 May 2014 on the confirmation of the application to Ireland of the respective agreements on readmission between the Union and the Macao Special Administrative Region of the People's Republic of China, the Republic of Albania, the Democratic Socialist Republic of Sri Lanka, the Russian Federation, the Republic of Montenegro, the Republic of Serbia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, the Republic of Moldova, the Islamic Republic of Pakistan, and Georgia, OJ L 155, 23.5.2014, p. 22–23
2013/52/EU: Council Decision of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax, OJ L 22, 25.1.2013, p. 11–12	2014/39/EU: Commission Decision of 27 January 2014 confirming the participation of Greece in enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 23, 28.1.2014, p. 41–42
	2011/692/: Commission Decision of 14 October 2011 on the request by the United Kingdom to accept Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (notified under document C(2011) 7228), OJ L 271, 18.10.2011, p. 49–49
	2012/714/EU: Commission Decision of 21 November 2012 confirming the participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 323, 22.11.2012, p. 18–19

Source: EUR-lex (<http://eur-lex.europa.eu/advanced-search-form.html?qid=1442906337941&action=update>)

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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