

Cooperation in the Fields of Justice and Home Affairs

Justice and home affairs cooperation between the Member States has been integrated by the Maastricht Treaty, the Amsterdam Treaty has significantly changed its regulatory framework, and the Lisbon Treaty has made it uniform by abolishing the pillars. Achieving an area of freedom, security and justice is an important objective of the European Union. The results in the area of judicial cooperation in civil matters have been extremely positive, with the European Union's rules of private international law effectively helping to resolve cross-border disputes in a large number of areas. Since the entry into force of the Treaty of Lisbon, the European Union has also had a real success in the area of cooperation in criminal matters, and there have also been many good results in the field of customs and police cooperation. However, there are major differences of opinion between Member States on policies relating to border control, asylum and immigration. The new Asylum Pact is on the agenda and many other challenges of the 21st century need to be resolved.

Historical development of the policy

The normative framework for cooperation in justice and home affairs was established by the Treaty establishing the European Union¹ (hereinafter: TEU), so until the Maastricht Treaty, cooperation between Member States could only be considered a precursor to this policy area. The primary aim of European integration was to establish economic cooperation and the internal market between Member States. Justice and home affairs did not appear in the policies, nor were they originally covered by the founding treaties,² but the four freedoms³ did however feature in the rules.⁴ At first, the practical implementation of these rules was only facilitated by the procedural rules of Member States. A single judicial organisation was not established within the EEC, which would have dealt with disputes involving cross-border elements the same way in all the Member States, and

¹ The 1992 Maastricht Treaty on European Union, which entered into force on 1 November 1993.

² The founding treaties are usually considered to be those treaties that have played a decisive role in the development of the European Economic Community, the European Communities and the European Union, including the Treaty of Paris (the founding treaty of the European Coal and Steel Community, ECSC), adopted in 1951 and signed in 1952. The two international treaties signed in Rome in 1957 (the Treaty of Rome establishing the European Economic Community, EEC [hereinafter referred to as the "EEC Treaty" or "TEC"] and the Treaty of Rome establishing the European Atomic Energy Community [hereinafter referred to as the "Euratom Treaty"]), which entered into force on 1 January 1958.

³ Article 3(c) of the TEC provides for the abolition of obstacles to the free movement of goods, persons, services and capital between Member States.

⁴ Article 2 of the TEC provided for the creation of a common market, and to this end Article 3 set out the activities in which Member States were to cooperate.

there were no rules on home affairs which would have led to integration. Until the Treaty of Maastricht establishing the European Union, cooperation in the fields of justice and home affairs was almost entirely outside the integration framework.⁵

Initial steps

The first organisational forms of cooperation in the fields of justice and home affairs emerged in the field of criminal law. This was the so-called TREVI⁶ cooperation, established in the mid-1970s. This cooperation has an inspirational value for the future development of institutions, and its importance is based on the realisation that the cross-border spread of terrorism and other forms of behaviour that threaten internal security can only be countered by coordination between Member States, the exchange of information and experience, and the development of organised and institutionalised forms of cooperation.⁷

The Single European Act set the objective of creating the internal market, an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. The free movement of persons and the abolition of controls at internal borders is a very sensitive issue, entailing serious security risks for the Member States. To counterbalance this increased security risk, Member States have therefore called for closer cooperation in the fields of justice and home affairs. Institutional cooperation, which had already begun at the institutional level, mainly in criminal matters, was extended in the 1980s to include the fight against irregular migration and organised crime,⁸ and organisational progress was made with the creation of the Unit for the Coordination of Fraud Prevention (UCLAF)⁹ in 1988 and the setting up of the Schengen system.¹⁰ To implement these tasks, Member States set up working groups, which continued to operate outside the EC at intergovernmental level.

⁵ GOMBOS et al. 2005.

⁶ TREVI is an acronym, short for Terrorism, Radicalism, Extremism, Violence Internationale – International Terrorism, Radicalism, Extremism and Violence. It was an intergovernmental cooperation outside the EC framework in the field of justice and home affairs.

⁷ See in more detail KENGYEL 2016: 391.

⁸ FEJES 2008: 68.

⁹ PAYRICH 2019: 195–205.

¹⁰ The Schengen Agreement was signed on 14 June 1985 by Belgium, France, Germany, Luxembourg and the Netherlands (Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders). The Agreement is supplemented by the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 by the same States and which entered into force in 1995. These and related agreements and rules are collectively referred to as the “Schengen acquis”.

The Treaty of Maastricht

The 1992 Treaty on European Union (hereinafter referred to as the TEU)¹¹ established the European Union in three pillars. In addition to the first pillar, which had previously comprised the European Communities, the integration framework introduced a new element of the common foreign and security policy, the second pillar and a third pillar, cooperation in the fields of justice and home affairs. From that moment judicial and judicial cooperation in justice and home affairs is also explicitly mentioned as a form of cooperation within the European Union. The Treaty of Maastricht did not define the concept of cooperation in the fields of justice and home affairs, but in Article K1 of Title VI of the Treaty, the areas which the Member States considered to be of common interest outside the competence of the European Communities (First Pillar) in order to achieve the objectives of the European Union have been listed.¹²

Cooperation in the fields of justice and home affairs was a third pillar matter, but rules on some of its areas could be found elsewhere. For example, the crossing of the external borders of the Member States and the fight against drugs were covered by the third pillar, while the Treaty establishing the European Community (hereinafter referred to as the TEEC), which was part of the first pillar, also contained provisions on visa policy and the fight against drugs. The drawing of borders led to considerable controversy. Another problem was the role of the Community institutions. Despite the inclusion of cooperation in the fields of justice and home affairs in the institutional structure of the European Union, the role of the Community institutions under the Treaty of Maastricht remained very limited and they did not have sufficient influence on the decisions of the Member States. The Court of Justice's¹³ power to scrutinise Community legislation in this area therefore remained minimal. The European Parliament, which was granted consultation powers by the Treaty, was only informed of decisions afterwards and had no influence on the process. The European Commission's power of legislative initiative covered only six areas and was shared with the Member States. In the areas of judicial cooperation in criminal matters, police cooperation and cooperation between customs authorities, only the Member States had the power of initiative. All decisions in the Council required unanimity, which often paralysed decision-making.

¹¹ The Treaty on European Union, which was signed on 7 February 1992 and entered into force on 1 November 1993, is also known as the Maastricht Treaty, referring to the place where it was signed.

¹² This included the following areas: refugee policy; control of the crossing of the external borders of the Member States; immigration policy, policy on third country nationals; fight against drug addiction; fight against international fraud; judicial cooperation in civil matters; judicial cooperation in criminal matters; customs cooperation; police cooperation in the fight against terrorism, drug trafficking and organised crime.

¹³ Formerly known as the Court of Justice of the European Communities. Its successor, renamed at a later date, is the Court of Justice of the European Union (Court of Justice).

The Treaty of Amsterdam

The Amsterdam Treaty¹⁴ has significantly restructured the third pillar. As a result, the name of the third pillar (Title VI TEU) was changed to judicial and police cooperation in criminal matters. With this amendment, the intergovernmental nature of the third pillar was now more narrowly interpreted to cover only the areas of police and judicial cooperation in criminal matters. The other elements of justice and home affairs (asylum and immigration policy, external and internal border controls, judicial cooperation in civil matters) were transferred to the first pillar, bringing them under the competence of the Community institutions. Following the Treaty of Amsterdam, when justice and home affairs issues were split between the two pillars, the European Union has adopted the concept of an area of freedom, security and justice as one of its fundamental objectives.

One of the main objectives of the Treaty of Amsterdam, which deepened integration, was the creation of an area of freedom, security and justice based on the free movement of persons, to be pursued by means of coordinated measures under the first and third pillars. Achieving an area of freedom, security and justice¹⁵ means the following: freedom means not only the free movement of persons, but also the protection of their fundamental rights and the fight against all forms of discrimination. Security is essentially the fight against crime and its reduction. Justice in this context includes equal access to justice.¹⁶

The changes made by the Treaty of Amsterdam were based on three main elements. Certain areas of the former third pillar cooperation have been upgraded to Community level. The effectiveness of cooperation in the areas remaining under the EU's third pillar has been increased and the Schengen *acquis* has been incorporated¹⁷ into the Union framework. The area of "visas, asylum, immigration and other policies related to free movement of persons" has been created as a separate title in the EEAS. The change was of major importance, as it brought visa policy, external border controls, asylum policy, immigration policy and other policies related to the free movement of persons (mainly judicial cooperation in civil matters) under Community (supranational) competence. In these areas, the Community institutions, the European Commission, the Council, the European Parliament and the Court of Justice, have a key role in the formulation, implementation and monitoring of the common EU policy. After the amendments adopted in the Amsterdam Treaty, the areas listed under the Title on Police and Judicial Cooperation in Criminal Matters continued to be governed by the provisions of the TEU relating to third pillar cooperation. The remaining third pillar cooperation covered police, customs and criminal justice cooperation, the fight against international fraud and joint action against racism and xenophobia.¹⁸

¹⁴ The Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts was signed on 2 October 1997 and entered into force on 1 May 1999.

¹⁵ For a comprehensive answer to this question see FLETCHER et al. 2016.

¹⁶ WALKER 2004.

¹⁷ The Protocol annexed to the Treaty of Amsterdam made it possible to strengthen the Schengen *acquis*.

¹⁸ GOMBOS 2020: 45–47; GOMBOS 2014: 27–28.

The Treaty of Amsterdam has enabled the European Community institutions to legislate in this area of law in the first pillar. The general legal basis for the creation of secondary legislation was Article 95 TEC, which provided for the obligation to approximate legislation. The legal basis for secondary legislation was Article 61(c) and, subject to Article 67, Article 65 TEC. The exclusive jurisdiction of the Court of Justice to interpret secondary legislation in this field was a major step forward. However, compared with the general rule of Article 234 TEC, Article 68 TEC was a special provision which created the possibility for the Court of Justice to give preliminary rulings in cases falling under Title IV TEC. A highly problematic rule, however, was the existence of special procedural rules in this area of law compared with the classical system of preliminary rulings under Article 234 TEC. In fact, not all courts were entitled to refer a question to the Court of Justice in cases pending before a court or tribunal of a Member State concerning the interpretation of this Title or the validity or interpretation of acts of the Community institutions based on this Title.¹⁹ The rule was that only courts against whose decisions there was no judicial remedy under national law were entitled to refer questions under this Title for a preliminary ruling. The Court of Justice also accepted referrals from this area of law in cases where there was a doctrinal dispute under national law as to whether there was a judicial remedy²⁰ against the decision of the referring court in the particular case.²¹

In the third pillar, the jurisdiction of the Court of Justice to give preliminary rulings was regulated by Article 35 TEU. This power was limited in that, for these cases, each Member State had to make a separate declaration of acceptance of the jurisdiction of the Court of Justice.²²

In addition to the above criticism, the revision of the Treaty of Amsterdam also introduced a number of changes which foresaw an improvement in the quality of the subsequent legislation. After the Treaty of Amsterdam, justice and home affairs issues were split into two pillars, and the European Union adopted the concept of an area of freedom, security and justice as one of its fundamental objectives.

The Tampere and Hague Programmes and the Treaty of Nice

After the Treaty of Amsterdam, the overall objective was the establishment of an area of freedom, security and justice. This included tasks in both the communitarised and third pillar areas. The Council's action plan on this subject gave substance to this objective

¹⁹ The solution to this problem has had to wait until 1 December 2009, after which date this provision of the TEC will no longer apply.

²⁰ Judgment of 7 December 2010 in Joined Cases C-585/08 and C-144/09 *Peter Pammer v. Reederei Karl Schlüter GmbH & Co KG* (C-585/08) and *Hotel Alpenhof GesmbH v. Oliver Heller* (C-144/09), paragraph 33.

²¹ Judgment of the Court of Justice of the European Union of 25 June 2009 in Case C-14/08 *Roda Golf & Beach Resort SL*, paragraphs 24–30; GOMBOS 2014: 39.

²² Hungary has made this declaration, so that the jurisdiction of the Court of Justice to give preliminary rulings in third pillar matters is maintained.

and set out a timetable and a list of priorities for the next five years in the areas of asylum, immigration, visa policy, police and judicial cooperation in criminal and civil matters. The priority given to justice and home affairs and the importance of the objective of an area of freedom, security and justice were confirmed by the fact that the extraordinary Tampere European Council in autumn 1999 was entirely devoted to this subject. At the Tampere Summit, the Heads of State and Government decided on a package of measures known as the Tampere Programme and on the establishment of Eurojust, a unit to promote cooperation and exchange of information between the law enforcement authorities of the Member States, modelled on Europol and institutionalised by the Treaty of Nice.²³

The Treaty of Nice, which entered into force in 2003, added a number of provisions to the policies regarding the cooperation in the fields of justice and home affairs, both in the first and in the third pillar. In the area of the first pillar, the Treaty of Nice brought about a change in the decision-making system by extending qualified majority voting and the co-decision procedure to some extent. In the third pillar, it amended the conditions for enhanced cooperation.

The next multiannual package of measures was agreed at the EU Heads of State and Government meeting in November 2004, which focused on justice and home affairs. The document, called the Hague Programme, set out ten priorities for five years (2005–2010) to strengthen the area of freedom, security and justice. In order to implement the Hague Programme, the Commission and the Council adopted an Action Plan setting out the concrete measures needed to implement the priorities, including the creation of a European area²⁴ of justice.²⁵

The Treaty of Lisbon

The amendments to the Treaty of Lisbon²⁶ have removed the pillar structure of the European Union and created a legal personality for the European Union itself. As a result, cooperation in the field of justice and home affairs is now also regulated at supranational level, with the possibility of regulating this area of law without distinction, through the same secondary sources of law of the same normative force and the same name, and the European Union is also entitled to conclude international conventions and to accede to existing conventions. The Union is an area of freedom, security and justice,²⁷ where fundamental rights and the different legal systems and traditions of the Member States²⁸ are respected.²⁹ Regulation in this area is a policy of shared competence,³⁰ which means

²³ GOMBOS 2020: 48–49; GOMBOS 2014: 28.

²⁴ FAZEKAS 2012: 26–48.

²⁵ GOMBOS 2020: 48–49; GOMBOS 2014: 28.

²⁶ The Treaty of Lisbon, which was signed on 13 December 2007 and entered into force on 1 December 2009, amended the Treaty on European Union and the TEC.

²⁷ The rules are set out in Article 3(2) TEU, Articles 67–89 TFEU and Article 276 TFEU.

²⁸ Article 3(2) TEU.

²⁹ Article 67 TFEU.

³⁰ Article 4(2)(j) TFEU.

that both the Union and the Member States have regulatory powers in this area, with a specific division of labour. The provisions relating to the area of freedom, security and justice concern border control, asylum and immigration policies, judicial cooperation in civil matters, judicial cooperation in criminal matters³¹ and police cooperation.³²

The Treaty of Lisbon abolished the three-pillar structure, allowed for the adoption of regulations, directives and decisions in former third pillar matters (direct applicability, direct effect, applicability of the principle of primacy over national law), changed the unanimity rule and extended the jurisdiction of the Court of Justice to cover more former third pillar justice and home affairs matters. The entry into force of the Treaty of Lisbon completes the homogenisation of cooperation in the fields of justice and home affairs within the European Union. The different source of law regimes of the third pillar have been abolished and the number of former types of source of law has been significantly reduced. The sources of law are grouped according to whether they are legislative, delegated or implementing acts, rather than according to the pillar under which they were adopted.³³

In an area of freedom, security and justice, persons can move freely. The Union shall ensure that persons are exempt from checks at internal borders and shall develop a common policy based on solidarity between Member States in the areas of asylum, immigration and external border controls,³⁴ ensuring fair treatment of third country nationals and stateless persons.³⁵ The Union shall seek to guarantee a high level of security. This is achieved through the adoption of measures to prevent and combat crime, racism and xenophobia, coordination between police, judicial and other competent authorities, mutual recognition of judicial decisions in criminal matters and approximation of criminal legislation.³⁶ It also aims to facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.³⁷

The European Council has a specific task: to define strategic guidelines for the planning of legislative and operational programmes in the area of freedom, security and justice.³⁸ National Parliaments are responsible for ensuring that legislative proposals and initiatives in the fields of police and judicial cooperation in criminal matters are in accordance with the Protocol on the application of the principles of subsidiarity and proportionality.³⁹

Major decisions in the area of freedom, security and justice have previously been taken with the unanimous approval of the Council. The Treaty of Lisbon has made

³¹ See more details in BOGENSBERGER 2019: 870–874; IGLESIAS SÁNCHEZ – GONZÁLEZ PASCUAL 2021: 251–370; KARSAT 2023.

³² See more details in HOLZHACKER–LUIF 2014: 1–11.

³³ GOMBOS 2020: 50.

³⁴ Nowadays, 23 of the 27 EU Member States (Bulgaria, Ireland, Cyprus and Romania are EU countries, except for Bulgaria and Romania) and the 4 countries of the European Free Trade Association, EFTA (Iceland, Liechtenstein, Norway and Switzerland) are members of the Schengen area.

³⁵ Article 67(2) TFEU.

³⁶ Article 67(3) TFEU.

³⁷ Article 67(4) TFEU; GOMBOS 2014: 30.

³⁸ Article 68 TFEU.

³⁹ Article 69 TFEU; GOMBOS 2020: 50–51.

decision-making more democratic and transparent, requiring the participation of the Parliament for certain acts and significantly extending the areas where qualified majority voting is sufficient for Council voting. The Union can adopt measures under the ordinary legislative procedure to approximate the laws, regulations and administrative provisions of the Member States in the fields of border control, asylum and immigration, judicial cooperation in civil and criminal matters and police cooperation. In the area of the former third pillar criminal justice and police cooperation, the Commission has been given the right of initiative by at least a quarter of the Member States, in addition to the Commission.⁴⁰ The Member States are free to organise, among themselves and within their own sphere of competence, the forms of cooperation and coordination between the competent departments of their administrations responsible for the protection of national security in the Member States, in the way they consider most appropriate.⁴¹

The Treaty on the Functioning of the European Union (TFEU) extended the jurisdiction of the Court of Justice of the European Union to former third pillar justice and home affairs matters. However, the Court of Justice of the European Union does not have jurisdiction to review the validity or proportionality of measures taken by the police or other law enforcement services of a Member State or to review the exercise of powers by Member States relating to the maintenance of law and order and the safeguarding of internal security.⁴²

The Stockholm Programme

In December 2009, the European Council adopted the Stockholm Programme, which set out a comprehensive plan for the EU's law enforcement and security policies for the period 2010–2014. In total, this programme contained 170 initiatives. Grouped around four broad priorities, the programme contained concrete proposals on how to make the positive benefits of cooperation in the fields of justice and home affairs more effective and tangible for citizens. Thus, priority was given to enhanced legal protection for EU citizens, making life easier for citizens, protecting citizens and promoting an inclusive society. The aim of enhanced protection is to make the European Union a single area of protection of fundamental rights, including respect for the individual and human dignity and other rights enshrined in the Charter of Fundamental Rights, and protection of privacy (in particular personal data). Making life easier for citizens means, in particular, putting in place mechanisms to facilitate their access to justice and the exercise of their rights anywhere in the Union. Improving cooperation between professionals working in the field of justice is also an important objective. The right legal instruments must also be put in place in the field of trade in order to better exploit the benefits of the internal market. A strategy on internal security has also been decided to further improve security

⁴⁰ Article 76 TFEU.

⁴¹ Article 73 TFEU; GOMBOS 2014: 30–31.

⁴² Article 276 TFEU; GOMBOS 2014: 31.

in the European Union to protect citizens. This action strategy implies strengthening cooperation in police and criminal matters and making access to European territory even more secure. More concrete and coordinated action is needed in the fight against organised crime and terrorism. An important priority is to consolidate and effectively implement an immigration and asylum policy that ensures solidarity between Member States and creates partnerships with third countries, ensures a clear and common status for legal immigrants, develops stronger links between immigration and the needs of the European labour market and a targeted integration and education policy, and improves the tools available to fight irregular migration. The European Union must also move towards a common asylum system and ensure shared responsibility and solidarity between Member States in this area.⁴³

The Europe of Rights is an area in which EU citizens can exercise their right to free movement. It respects diversity and protects the most vulnerable groups of people (children, minorities, victims of violence), while fighting racism and xenophobia. It safeguards the fundamental values of due process and the guarantee of procedural rights by legal means. The Europe of Rights promotes citizens' participation in transparent decision-making, access to documents and the right to good administration, and ensures citizens' right to consular protection outside the EU, by broadening the concept of EU citizenship.

A European area of justice means proper access to justice, better cooperation between judicial authorities and the free movement of judicial decisions within the EU. To this end, EU Member States should use e-Justice, adopt common minimum standards and strengthen mutual trust. The EU should also strive to achieve coherence with the international legal order in order to create a secure legal environment for dialogue with countries outside the EU.⁴⁴

The Post-Stockholm Programme

In order to define the future of the area of freedom, security and justice, the European Council adopted the guidelines for the Post-Stockholm Programme⁴⁵ in June 2014. This programme slowed down the momentum that had been built up to date and could be described as a decision to deepen existing cooperation rather than to regulate new areas, based on the principle of less is sometimes more. It set out as strategic guidelines the need for consistent and effective implementation of agreed measures, closer cooperation, a greater role for EU agencies and the exploration of the potential of new technologies. In the area of justice, the main objective was to ensure that European citizens were properly informed, had access to information and were more aware of the issues at stake. European justice legislation also had to be put at the service of growth (justice for growth),

⁴³ See more on these issues in HANKISS 2012: 58–63.

⁴⁴ GOMBOS 2014: 32–33.

⁴⁵ Council of the European Union 2014.

which means both a generational review of existing sources of law (some had already undergone their second or third generation of review) and their adaptation to new 21st century challenges. The latter also includes the strengthening of the data protection approach and the general shift towards a fundamental rights approach and fundamental rights jurisprudence.

During this period, the EU *acquis* in the area of civil judicial cooperation has been a set of legal instruments that have both created direct EU enforcement possibilities for legal entities and ensured direct cooperation between courts and competent authorities of the Member States, sometimes with the creation of an institutional network.

The EU decided to establish the Justice programme⁴⁶ by Regulation (EU) No 1382/2013⁴⁷ and the Rights, Equality and Citizenship programme by Regulation (EU) No 1381/2013.⁴⁸ Both programmes were designed to promote the creation of a single area of justice in the European Union. The programme has also made use of new tools for electronic dissemination (e.g. the European e-Justice portal⁴⁹) and has also aimed to improve the legal knowledge of European citizens and businesses and the exercise of their rights by setting up a number of advisory bodies (e.g. SOLVIT⁵⁰) and taking steps to improve access to justice. The Rights, Equality and Citizenship 2014–2020 programme⁵¹ focused on ensuring non-discrimination, equal opportunities and human rights. Particular emphasis has been given to instruments to combat racism, xenophobia, homophobia and other forms of intolerance, measures to protect vulnerable groups such as children, young people, women (Daphne), and legal action to protect children's rights in general. Data protection, the protection of European civil rights and the protection of consumer rights have been given much more prominence than in the past.⁵²

How did the policy issue feature among the priorities of the 2011 Hungarian Presidency and what were the results?

Hungary took over the rotating presidency of the European Union from Belgium in January 2011 and handed it over to Poland in the second half of 2011.⁵³ The combined programme of the three successive presidencies (Spain, Belgium and Hungary) from 1 January 2010 to 30 June 2011, covering the period January 2010 to June 2011, included

⁴⁶ European Commission s. a.a.

⁴⁷ 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.

⁴⁸ Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020. Text with EEA relevance.

⁴⁹ Further details at <https://e-justice.europa.eu/home.do>

⁵⁰ Further details at <https://ec.europa.eu/solvit/>

⁵¹ European Commission s. a.b.

⁵² GOMBOS 2020: 53–57.

⁵³ In line with the Council's revised rules of procedure, the incoming Polish, Danish and Cypriot presidencies have also been consulted on strategically important issues.

objectives regarding the cooperation in the fields of justice and home affairs.⁵⁴ The first part of the programme set out longer-term strategic objectives, and the second part contained an operational programme setting out the issues expected to be addressed during the 18-month period. The themes covered in the area of justice and home affairs were:

1. In the home affairs area
 - asylum and immigration
 - legal immigration
 - integration of third country nationals
 - irregular migration
 - visa policy
 - Schengen area
 - international protection
 - cooperation with third countries under the EU Global Approach
 - Internal Security Strategy
 - fight against terrorism
 - fight against trafficking in human beings
 - fight against drugs
 - police and customs cooperation
 - prevention of and fight against serious and organised crime
 - exchange of information
 - civil protection
2. In the field of judicial cooperation
 - practical cooperation in judicial matters
 - judicial cooperation in criminal matters
 - judicial cooperation in civil matters
 - external relations in the area of freedom, security and justice

The first version of the programme of the 2011 Hungarian Presidency of the Council of the European Union was first discussed by the government in summer 2010 and the final programme, which was adopted in December 2010 under the slogan “Strong Europe”, was published on 10 January 2011. The third of the four main themes of the planned programme (growth and jobs for preserving the European social model; a stronger Europe; a citizen friendly Union; enlargement and neighbourhood policy), entitled “Citizen Friendly Europe”, dealt with justice and home affairs. The presidency programme originally included the continuation of the implementation of the Stockholm Programme to strengthen cooperation in justice and home affairs, but this element was dropped from the final programme. During the Hungarian Presidency, the classic areas of justice and home affairs were given less emphasis, mainly in the fight against organised crime and Schengen borders. On 20 January 2011, at an informal meeting of EU home

⁵⁴ A note on the 18-month programme of the Spanish, Belgian and Hungarian presidencies is available in Council of the European Union 2009.

affairs ministers, the strengthening of the fight against organised crime, integrated border management and the EU's multiannual budget for home affairs after 2014 were discussed. No legislative needs were identified on the issues discussed at the meeting, but the Hungarian position in this area was that the strengthening of the fight against organised crime should be kept on the agenda, in line with the central place of this issue in the Hungarian Presidency's home affairs programme. In February 2011, Council conclusions on the Internal Security Strategy⁵⁵ were adopted, followed by Council conclusions⁵⁶ setting out the EU's priorities for the fight against organised crime for the period 2011–2013. The presidency has developed a handbook to assist in the fight against organised crime.⁵⁷ A draft directive on the exchange of data on road safety offenders was also prepared, with a view to facilitating the establishment of liability even where the traffic offence was committed in a member state other than that of the driver's nationality.⁵⁸

The other important topic discussed was border security and integrated border management, which on the one hand concerned the issue of exploiting the opportunities offered by modern technologies, on the other hand the modernisation of the Schengen system, including the reform of the Schengen evaluation mechanism, and the possibility of extending the Schengen system.

During the Presidency, unexpected events occurred, requiring a rapid response to the uprisings known as the "Arab Spring",⁵⁹ which generated significant changes in international relations and required a reaction from the European Union as an organisation. In the area of justice, it is worth mentioning that the EU sanctions package against Libya, based on the 1970 UN Security Council Resolution, but in many respects going beyond it, was drafted by the RELEX working group under the Hungarian Presidency, and the Council decided to impose sanctions on the basis of this package.⁶⁰

Under the Hungarian Presidency, important progress was made in the broader area of justice and home affairs, in terms of justice for European citizens. On 23 May 2011, the General Affairs Council adopted Presidency conclusions which reaffirmed the reference to national minority rights⁶¹ and the importance of cultural and linguistic diversity in the context of the Charter of Fundamental Rights. Alternative responses to migration include

⁵⁵ The European Union adopted the European Security Strategy in December 2003, which was complemented by the adoption of the Internal Security Strategy by the Council in February 2010, during the six-month Spanish Presidency. The Strategy was endorsed by the European Council on 25–26 March 2010 (European Commission 2010).

⁵⁶ Council Conclusions of 24–25 February 2011 on the Commission Communication on the Implementation of the Internal Security Strategy for the European Union.

⁵⁷ In June 2011, a handbook of good practices from EU Member States was published entitled "Complementary Approaches and Measures to Prevent and Combat Organised Crime".

⁵⁸ On 25 October 2011, the EU legislators adopted Directive 2011/82/EU on the basis of the draft, but it was annulled by the Court of Justice of the European Union in its judgment C-43/12 of 6 May 2014.

⁵⁹ There have been popular rebellions in Tunisia, Egypt, Libya, Yemen, Bahrain and Syria.

⁶⁰ GAZDAG 2011: 72–85.

⁶¹ On the enforcement of minority rights see CZIKA 2011: 98–118.

the adoption by the Employment, Social Affairs, Health and Consumer Affairs Council (EPSCO) during the Hungarian Presidency of a Council Conclusion on “The impact of reconciling work and family life on demographic trends” at its meeting in June 2011.⁶²

The current state of the policy issue, opportunities and challenges

Today, cooperation in the fields of justice and home affairs can be structured according to criteria other than the classical separation of justice and home affairs. Based on the concept introduced by the Treaty of Amsterdam, the area of freedom, security and justice, which is the objective to be achieved, can be considered a separate area with three strands (freedom, security and justice). The Charter of Fundamental Rights, which was elevated to the status of a founding treaty by the Treaty of Lisbon, has significantly transformed the case law, and a strong fundamental rights approach is therefore applied regarding justice and home affairs policy (manifested in the political expression of fundamental values and the rule of law argumentation⁶³). A global approach to the challenges of the 21st century is needed (in particular in the areas of migration and asylum,⁶⁴ the fight against terrorism and the protection of personal data) and cooperation between Member States should be deepened (e.g. in the effective and correct application of the European Arrest Warrant). Effective and consistent implementation of existing legislative achievements (e.g. mutual recognition of decisions and judgments can be enhanced) is necessary, as it is strategically paramount that Member States implement the measures adopted consistently and effectively, especially in the current problematic area of cooperation in the fields of justice and home affairs. This recognition is reflected in the fact that, since the Stockholm Programme, in practice, no new regulatory objectives have been set, but rather existing achievements have been deepened (e.g. several regulations in this policy area have been and are being revised and modernised).

In the area of judicial cooperation, the objective of creating a genuine area of justice, where access to justice is guaranteed, the principle of mutual trust is applied and different legal and judicial systems are respected, remains unchanged. To achieve this, rules on simplifying access to justice and on Alternative Dispute Resolution (ADR) can also be of great importance.⁶⁵ A challenge in the area of justice is to ensure conditions of access to justice, even in specific areas of law (see e.g. “Climate justice”⁶⁶). The challenge is also to create the technical and human (even combined with AI systems) conditions for e-Justice.

⁶² Compare FÜRÉSZ–MOLNÁR 2023: 35.

⁶³ See more details in GOMBOS 2022: 4–21.

⁶⁴ See FERNÁNDEZ-ROJO 2021.

⁶⁵ See more details in SELNICEAN 2020: 2125–2144.

⁶⁶ SZEGEDI 2023: 41–54.

In terms of migration, asylum and border protection, there is a great opportunity for the EU to take advantage of the benefits that legal migration brings. The ageing of Europe's population can be addressed in this way, in addition to the means of influencing demographic change in a positive way. On the other side of this issue, one of the major challenges facing the EU is tackling the problem of irregular migration. Those in need must be given protection on a humanitarian basis, in accordance with the principles of solidarity and fair sharing of responsibility, and in accordance with the principles of international law, and this requires a consistent application of European asylum policy. In the field of justice, this implies that asylum seekers enjoy the same procedural guarantees and protection in all EU countries. The issue cannot be effectively addressed without strengthening and extending regional protection programmes. It also requires more decisive action by the EU and its Member States to properly address the problem of smuggling and trafficking of human beings, and to reflect on the development of an effective common return policy.

One of the challenges in the area of border control and visa issues is that, in the absence of internal border controls, the effective protection of the EU's common external borders can only be achieved by strengthening them and modernising border management.⁶⁷ The existing institutional framework should be given a greater role (Frontex,⁶⁸ Eurosur⁶⁹), and the existing instruments could be complemented by a new structure, a European Border Guard system.⁷⁰ The modernisation of the common visa policy will also significantly reduce security risks.

To protect the security of European citizens, there is a need for a coherent internal security strategy that responds well to 21st century challenges (e.g. cybercrime), and to prevent radicalisation and the spread of extremist ideas, the fight against terrorism and

⁶⁷ See more details in HAUZINGER–TÖTTÖS 2022: 315–316.

⁶⁸ Frontex, established by Council Regulation (EC) No 2007/2004, has undergone a major overhaul since the start of the migration crisis in 2015, with Regulation (EU) 2019/1896 establishing the European Border and Coast Guard, which is composed of the national authorities responsible for border management in the Member States, the national authorities responsible for return and the European Border and Coast Guard Agency. The main tasks to be carried out within this organisational framework are: implementing the multi-annual strategy for European integrated border management; surveillance of the external borders; carrying out risk and vulnerability assessments; rapid border intervention; responding to situations requiring urgent intervention at the external borders; providing technical and operational assistance to persons in distress at sea; and organising, coordinating and conducting return operations and interventions.

⁶⁹ The European Border Surveillance System was established in 2013 to improve integrated border management and prevent cross-border crime and irregular migration [legal basis: European Parliament and Council Regulation (EU) No 1052/2013 of 22 October 2013 on the establishment of a European Border Surveillance System (EUBCS)]. Eurosur has been integrated into the operation of the European Border and Coast Guard since 4 December 2019 [see also: Commission Implementing Regulation (EU) 2021/581 of 9 April 2021 on the status report on the European Border Surveillance System (EUROSUR)].

⁷⁰ COMAN-KUND 2020.

organised crime should continue to be a priority.⁷¹ Eurojust,⁷² Europol,⁷³ OLAF⁷⁴ and the recently established European Public Prosecutor's Office could be of particular importance⁷⁵ in the context of crimes affecting the EU budget.⁷⁶

Strategic agenda until 2024

Most of the opportunities and challenges are well outlined in the Strategic Agenda for the Area of Freedom, Security and Justice 2019–2024, adopted by the European Council in June 2019,⁷⁷ which has four building blocks: respect for values and the rule of law, mutual trust and protection of our common European area, and the mastery of new technologies and the use of artificial intelligence. Since the adoption of the Treaty of Lisbon, the European Union has focused its attention on developing legislation that provides a solid legal framework in the area of cooperation in the fields of justice and home affairs. The focus is now on implementing and consolidating the legal instruments and policies already in place. The objective is to achieve greater coherence between the Union's internal and external policies, particularly in areas with a global dimension (data protection, AI regulation).

⁷¹ For the institutional context of cooperation see FARKAS 2017: 282–283; KÜHL–SPITZER 2014: 235–236; LIGETI 2004: 138–139; KERTÉSZ 2014: 1; COVOLO 2012: 83–84.

⁷² The decision to set up Eurojust (Judicial Cooperation Unit), which was taken by Decision 2002/187/JHA, was a fundamental decision on criminal cooperation taken at the Tampere Summit. From 2019, Eurojust is the European Union's Agency for Judicial Cooperation in Criminal Matters, which coordinates the work of the national authorities of EU Member States and third countries involved in the investigation and prosecution of international crime, under Regulation 2018/1727. The tasks of Eurojust have recently been amended [by Regulation (EU) 2022/838].

⁷³ Europol was set up as the European Police Office and has now become the European Union Agency for Law Enforcement Cooperation. Its mission is to assist Member States' law enforcement authorities in combating serious transnational crime and terrorism. Europol is a modern information platform and an EU centre of expertise in law enforcement. It provides on-the-spot support for law enforcement operations when needed and provides criminal analysts to assist national law enforcement authorities (see more details in KÖNIG 2022).

⁷⁴ The OLAF [the successor entity to the former UCLAF, which after 1999 was given investigative powers, in cooperation with other law enforcement agencies and networks (see for example Europol, European Judicial Network in Criminal Matters)] investigates fraud against the EU budget, corruption and serious misconduct in the EU institutions, and uses administrative means to combat illegal activities affecting the EU's financial interests (see more in BRÜNER–SPITZER 2014: 775; FARKAS 2005: 19–20; for its organisation and tasks see FARKAS 2001: 121; PAYRICH 2019: 195–205).

⁷⁵ On the relationship between OLAF and the EPPO see UDVARHELYI 2022: 5–23.

⁷⁶ The European Public Prosecutor's Office (EPPO) was established by Regulation 2017/1939. The EPPO is an independent prosecution service of the European Union, competent to investigate, prosecute and bring to justice offences affecting the financial interests of the Union. It will start its tasks from 1 June 2021. 22 EU Member States participate in the enhanced cooperation establishing the EPPO. Ireland, Hungary, Poland and Sweden have an occasional opt-out, which means that they can make an opt-in declaration for accession at a later stage. Denmark has a permanent opt-out right in this cooperation.

⁷⁷ Further details at www.consilium.europa.eu/media/39917/a-new-strategic-agenda-2019-2024-hu.pdf

The Commission's six priorities for 2019–2024 also include, under the heading “Promoting a European Way of Life”, the development of judicial cooperation as a step towards protecting citizens and our values. In the field of judicial cooperation, this means in particular building mutual trust and a genuine European judicial area by interconnecting the legal systems of the Member States. The implementation of the objectives set out under the priority of fundamental rights is intended to protect the rule of law, fundamental rights, consumers and to increase consumer awareness of goods, services and foodstuffs. The objective is also to create a legislative environment that works towards increasing consumer awareness, ensuring that consumer protection provisions⁷⁸ are effectively enforced, and that legislation is fit for the digital age. A major challenge for a Europe ready for the digital age is to reform data protection legislation, to increase the role of internet-based networking, in particular in terms of cooperation in the fields of justice and home affairs, and to consider the use of digitalisation and artificial intelligence in judicial administration.

Impact of the policy issue on economic and social development

Cooperation in the fields of justice and home affairs has a direct impact on social development. Until recently, Europe was a place where people felt free and safe.⁷⁹ The intersection of justice and home affairs with the preservation of freedom and security is the shaping of migration policy and the protection of common external borders. Effective external border control is essential to guarantee security, maintain public order and ensure the proper functioning of European policies. To this end, a comprehensive migration and asylum policy must be developed to ensure that the European Union has real control over who enters its territory. The new draft Pact on Migration and Asylum, published on 23 September 2020, aims to achieve this goal. Legislative progress has already been made, but several proposals in the Pact are still under negotiation. The creation of a new EU Asylum Agency⁸⁰ is an operational element of the scheme. Other elements of the scheme include: a new Regulation on asylum and migration management;⁸¹ the introduction of common rules on asylum applications;⁸² new rules on migration and asylum crisis situations and force majeure;⁸³ better reception conditions; the adoption of a new Regulation on pre-screening; the further development of the EU fingerprint database; and the creation of a new EU resettlement framework. The adoption of the whole package is expected in April 2024.

⁷⁸ FAZEKAS 2018: 304–308.

⁷⁹ On its links with other policies see VARGA 2023: 21–33.

⁸⁰ As a result, the European Asylum Support Office (EASO) was replaced on 19 January 2022 by the European Union Asylum Agency (EUAA) as a “whole EU agency”.

⁸¹ Legislative proposal to amend the Dublin rules, supported by the Council on 13 July 2023 (Council of the European Union 2023a).

⁸² Council of the European Union 2023b.

⁸³ Council of the European Union 2023c.

This issue is closely linked, because of the security risks, to the fight against irregular migration and trafficking in human beings, as well as to the fight against terrorism and cross-border crime, which can serve social development if combined with appropriate cooperation and active solidarity between Member States.

Justice benefits primarily from judicial cooperation in civil and commercial matters, and also indirectly affects economic development, in particular through the focus on consumer rights regulation, because of the impact on economic life, private law, commercial law and competition law. In this context, consumer protection has become one of the leading areas of justice and home affairs regulations. The main purpose of consumer protection is to redress the imbalance between businesses and consumers by means of its own system of instruments, by establishing substantive and procedural rules. In order to overcome the disadvantage caused by economic asymmetry, it establishes rules to support and assist consumers, requires the provision of information necessary to make informed consumer choices and prohibits unfair consumer influence and unfair terms. The European Union has been at the forefront of legislation to protect consumer rights.⁸⁴ There are also a number of new challenges for the 21st century because of the widespread use of new technologies, the shift of some retailing to the online space⁸⁵ and the emergence of new types of digital services. There has been a significant shift in EU legislation away from the minimum harmonisation found in previous directives towards a higher level of protection of consumer rights. At the same time, the *acquis* has not lost its scope for national autonomy, while respecting the principle of subsidiarity, as the reformed regulatory framework gives Member States the flexibility to maintain or adopt national rules to further enhance consumer rights.

Legislation in general, and civil procedural rules in particular, facilitate enforcement at both EU and Member State level, and because of their exemplary nature, sources of law can also have indirect effects on non-EU legal systems by way of indirect regulation, and in the case of many EU rules of universal application, the scope of the legislation can also directly apply to legal relations with third countries. This is why the EU civil procedural *acquis* can be put at the service of social development objectives.⁸⁶ These objectives promote the effective and highly efficient administration of justice and fundamental rights through procedural instruments such as increasing party autonomy, decision-making and freedom of choice,⁸⁷ procedural tools to eradicate poverty, equal access to justice,⁸⁸ procedural assistance and support mechanisms, alternative dispute resolution techniques, simplification of the recognition of judgments⁸⁹ and more effective enforcement.⁹⁰

⁸⁴ See more on consumer policy in KOZÁK 2022: 217–230.

⁸⁵ See more details in STRIHÓ 2020a; STRIHÓ 2020b: 1829–1837.

⁸⁶ GOMBOS 2021: 13–25.

⁸⁷ KIRÁLY 2018: 509–515.

⁸⁸ SZABÓ 2015: 307–325.

⁸⁹ MÁDL–VÉKÁS 2018: 555.

⁹⁰ BURIÁN 2012: 177–185.

Hungary's interests in the future development of the policy issue

At the meeting of the General Affairs Council on 27 June 2023, the competent ministers of Spain, Belgium and Hungary presented the programme of the Trio.⁹¹ One of the priorities of the Spanish–Belgian–Hungarian trio – in line with Hungarian interests – is to address the European challenges of migration, as a European response to this issue is justified, rather than a Member State-by-Member State one. Therefore, the objective is to continue the reform of the Common European Asylum System and the Pact on Migration and Asylum. The Commission's legislative package on the Pact on Migration and Asylum, consisting of ten proposals and legislative acts, is based on two main pillars. Its primary objective is to improve the efficiency of asylum procedures. Second, the legislative package aims to harmonise solidarity based on the principle of fair sharing of responsibilities and flexible solidarity. Based on the evaluations that have been published, the Hungarian Government cannot accept the package of proposals. According to the Hungarian position, border protection, assistance to third countries and stopping migration outside the EU's external borders remain priorities.⁹² The trio's programme is also clear that the proper functioning of the Schengen area (Schengen 2.0 concepts, strengthening of the Eurodac system⁹³) must remain on the agenda and that particular attention should be paid to strengthening external borders.⁹⁴

In the area of police and judicial cooperation in criminal matters, the fight against cross-border organised crime and terrorism could be a priority. In particular, the fight against sexual abuse of children, violence against women, hate crimes, racism, anti-Semitism and xenophobia should be given particular attention. The promotion of EU values and human rights has an inescapable role to play in this. This is closely linked to the issue of addressing the demographic challenges facing the European Union. The terms “Old Continent” or “Old Lady” are now not only a reference to Europe's 2,000 years of shared history, but also a descriptive name for the process of finding answers to the problems of the European Union's increasingly older average age societies. Social and family support measures must be a key element in addressing these demographic challenges.⁹⁵

The trio's programme focuses on judicial cooperation in civil and commercial matters and in criminal matters. Further steps to digitise justice and facilitate access to justice and to improve the efficiency and flexibility of judicial systems are appropriate and necessary, in particular in the area of horizontal cooperation. Strengthening the effectiveness of cooperation on these issues is also in Hungary's interest.

⁹¹ Council of the European Union 2023d.

⁹² TÁRNOK 2020.

⁹³ The Commission presented on 4 May 2016 a package of proposals to amend the Eurodac Regulation, which – accepting the Hungarian initiative on the use of additional biometric identifiers – now already includes the Hungarian proposal (see more in HEGYALJAI 2016: 101–114).

⁹⁴ For evaluation see HEGYALJAI 2023: 213–218.

⁹⁵ FÜRÉSZ–MOLNÁR 2023: 37.

Among the priorities of the trio is the need to review the EU Customs Code in the framework of customs cooperation to ensure that it is fit for the future to achieve a more harmonised performance. Another important objective in this area of cooperation is to strengthen cooperation with market surveillance and law enforcement authorities to protect the digital single market.

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