



AN AREA OF FREEDOM, SECURITY AND JUSTICE: GENERAL ASPECTS

The Lisbon Treaty attaches great importance to the creation of an area of freedom, security and justice. It introduced several important new features: a more efficient and more democratic decision-making procedure that comes in response to the abolition of the old pillar structure, bringing more accountability and legitimacy; increased powers for the Court of Justice of the European Union; and a new role for national parliaments. Basic rights are strengthened by a Charter of Fundamental Rights that is now legally binding on the EU and by the obligation on the EU to sign up to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

LEGAL BASIS

Article 3(2) TEU reads as follows: ‘The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.’ It should be noted that this article, which sets out the EU’s key objectives, attaches greater importance to the creation of an area of freedom, security and justice (AFSJ) than the preceding Treaty of Nice, as this aim is now mentioned even before that of establishing an internal market.

Title V of the TFEU — Articles 67 to 89 — is devoted to the AFSJ. In addition to the general provisions, this title contains specific chapters on:

- policies on border checks, asylum and immigration;
- judicial cooperation in civil matters;
- judicial cooperation in criminal matters;
- police cooperation^[1].

Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU, while the United Kingdom and Ireland only participate in the adoption and application of specific measures after a decision to ‘opt in’ (Protocols No 21 and 22).

As well as those provisions, mention should also be made of other articles inextricably linked to the creation of an AFSJ. These include Article 6 TEU on the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8 TFEU on the elimination of inequalities, Article 15(3) TFEU on access to the institutions’ documents, Article 16 TFEU on the protection of personal data, and Articles 18 to 25 TFEU on non-discrimination and citizenship of the Union.

[1] See Fact Sheets [5.12.2](#), [5.12.3](#), [5.12.4](#), [5.12.6](#), [5.12.7](#).

OBJECTIVES

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

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

ACHIEVEMENTS

A. Main new features introduced by the Lisbon Treaty

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

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

2. A new role for national parliaments

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

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

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

3. Increased powers for the Court of Justice of the European Union

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

4. A more prominent role for the Commission

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

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

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

B. The European Council's planning role

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

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

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

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

The Lisbon Treaty formally recognises the European Council's pre-eminent role of '[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice' (Article 68 TFEU). In June 2014, the European Council defined these guidelines over the coming years. They are in line with the priorities set in the strategic agenda for the EU, which was also adopted in June 2014. The strategic guidelines build on the progress achieved by the Stockholm programme. A mid-term review of these guidelines will take place in 2017.

C. Establishment of specialist AFSJ management bodies: the agencies

Various agencies have been set up to help oversee policies in a number of important areas of the AFSJ: Europol, for police cooperation; the European Police College (CEPOL); Eurojust, for judicial cooperation in criminal matters; the EU Fundamental Rights Agency, which deals with fundamental rights and discrimination; the European Monitoring Centre for Drugs and Drug Addiction; Frontex, which is responsible for coordinating external border control; the European Asylum Support Office; and very recently, the EU Agency for the management of large-scale IT systems in the AFSJ (eu-LISA).

ROLE OF THE EUROPEAN PARLIAMENT

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

- legislative competence to the extent that, even before the Lisbon Treaty, the European Parliament acted as co-legislator under the codecision procedure, with its involvement in third-pillar matters confined to delivering advisory opinions;

- budgetary competence, the European Parliament being jointly responsible, with the Council, for laying down the EU budget;
- the power to bring proceedings for annulment before the Court of Justice, which the European Parliament exercised, for instance, in order to request and secure the annulment of certain articles of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status^[2];
- the power of political initiative, which the European Parliament exercises by adopting ‘own-initiative’ reports and resolutions on such subjects as it might choose to address^[3];
- the option of sending delegations to the Member States in order to identify problems and to verify how legislation adopted at EU level is being implemented. The European Parliament exercised this option in regard to the admission arrangements for asylum seekers applied in some Member States^[4].

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

- recognising and taking account of the growing importance of the AFSJ in the context of the EU’s development;
- abolishing the third pillar and bringing the areas of police and judicial cooperation in criminal matters within the scope of EU procedures and legislation so as to enable the European Parliament to play its full democratic role in the legislative process;
- doing away with unanimity in the Council in order to facilitate decision-making;
- maintaining a fair balance between protection of citizens’ fundamental rights and security and counterterrorism requirements;
- strengthening the protection and promotion of fundamental rights, in particular through the adoption of a legally binding EU Charter of Fundamental Rights and the establishment of a Fundamental Rights Agency to provide an effective source of support and expertise in the field of fundamental rights.

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[2]CJEU, Judgment of 6.5.2008, Case C-133/06.

[3]E.g. resolution on homophobia in Europe, 18.1.2006.

[4]Resolution of 5.2.2009.