

Cooperation in the fields of justice and home affairs

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Cooperation in the fields of justice and home affairs

The establishment of the single market along with the abolition of internal border checks gave rise to the problems of the consequences of the free movement of persons. The single European area must not encourage illegal trafficking from one Member State to another or from a non-member country. The national legislative and regulatory provisions and national regulations of the Member States, often very different, were to be coordinated in the areas of immigration, combating terrorism, drugs and arms trafficking, trafficking in works of art and organised crime. A certain degree of intergovernmental cooperation had already been achieved in judicial and police matters, but it was highly inadequate. During negotiations on the Treaty of Maastricht, the German Chancellor, Helmut Kohl, insisted on the need to control the movement of persons more effectively, particularly since Germany was forced to accommodate many immigrants from Eastern Europe.

The Treaty on European Union addresses these concerns through the establishment of a third pillar concerning cooperation in the fields of ‘justice and home affairs’ (JHA), following the first pillar consisting of the ‘European Community’ (EC) and the second pillar establishing ‘common foreign and security policy’ (CFSP). Areas of common interest are listed: asylum policy, rules governing the crossing of the Union’s external borders, immigration policy and policy regarding third-country nationals, combating drug addiction and fraud on an international scale, judicial cooperation in civil and criminal matters and customs and police cooperation. It is stated, however, that the Member States will maintain their responsibilities with regard to preserving law and order and safeguarding internal security.

The intergovernmental method is used, since these are highly delicate matters involving sovereignty. The European Commission is ‘fully associated’ but does not possess the exclusive ‘right to propose legislation’ to the Council as it does in the Community system. Member States may also put forward proposals and are the only ones authorised to do so in sensitive areas such as customs and police cooperation and judicial cooperation in criminal matters. The Council of Ministers unanimously adopts common positions and may agree upon joint action, the implementing measures of which may be taken by a qualified majority, if so decided in a unanimous vote. Yet, unlike the Regulations and Directives of the Community system, joint action obliges governments only to submit proposals to their respective parliaments, which are free to adopt or reject them. In fact, few of the many joint actions adopted have been implemented by the Member States.

The establishment of links between the JHA pillar and the Community pillar on the single market and free movement is planned, given their interlocking powers. Therefore, a common visa policy is required to ensure that an influx of immigrants does not actually occur in a country with lax legislation, leading to their subsequent movement into neighbouring countries. Thus, the European Community is responsible for managing visa policy, with the Commission preparing the decisions upon request from each Member State. The decisions are ultimately taken by a qualified majority, since the unanimity requirement may well make the adoption of a common policy impossible. On the other hand, the Coordinating Committee responsible for laying the groundwork for the Council’s activities carries out those tasks pertaining to JHA as efficiently as it does for those powers falling within the competence of the Community.

Finally, the Treaty provides for a ‘Community bridge’, the aim of which is to guarantee greater efficiency by allowing the transfer of issues falling within the JHA pillar to the Community pillar, barring judicial cooperation in criminal matters and customs and police cooperation. The Treaty of Amsterdam, signed on 2 October 1997, will determine this ‘bridge’.

The former cooperation method laid down by international conventions — already employed to a considerable extent by the Council of Europe and set out in the Treaty of Rome — is referred to in the Treaty of Maastricht with regard to the JHA pillar, which aims to strengthen the former cooperation method by the adoption of implementing measures by a majority vote and allowing for the possibility of intervention by the Court of Justice of the European Communities.