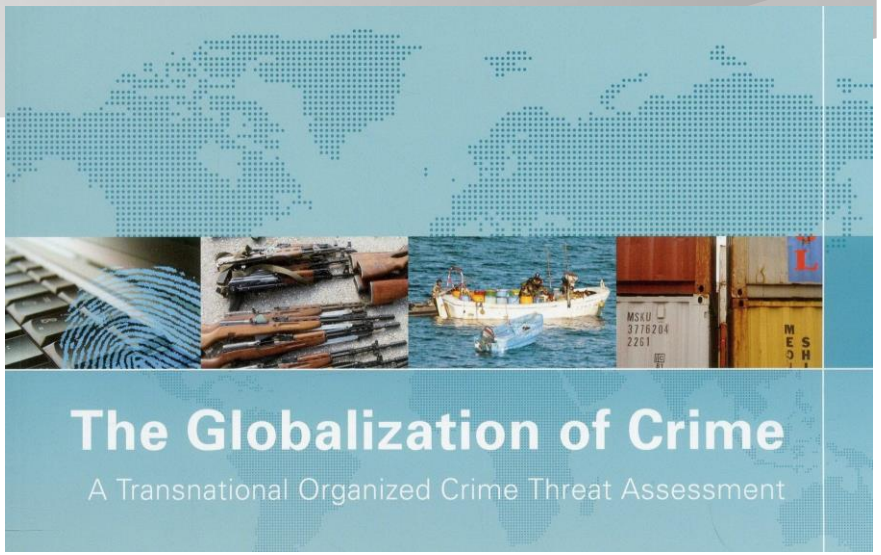
# European Union Politics

SESSION 6: **AREA OF FREEDOM, SECURITY AND JUSTICE**

# From ad hoc cooperation to community method?

- Intergovernmental (unanimity) / supranational (QMV) struggle
- Sovereignty / integration (if integration then what kind? ↑)
- Transparency / efficiency
- Many exceptions to general rules
- Spawned many AGENCIES to help execute = a fragmented field

# Old and new security threats in Europe




- No longer strict divisions between:

| Military | Political |
|---|---|
| External | Internal |

- Globalization, end of CW changed the nature of conflict too
- **Criminals also** adjust to liberalization, new open horizons
- Internet allows **ideas** (and ideologies) to spread far and wide
- People travel and **migrate** looking for new jobs and opportunities

# Security within the EU

- Military conflict among the member states is unthinkable
- Organized crime does not constrain itself to a territory of one state, it operates internationally beyond and across state borders
- **Free movement of persons** and abolition of border controls makes it easier for citizens to travel and seek work, also makes it easier for smugglers, criminals and traffickers to move freely too!

  -> spillover into public order policies

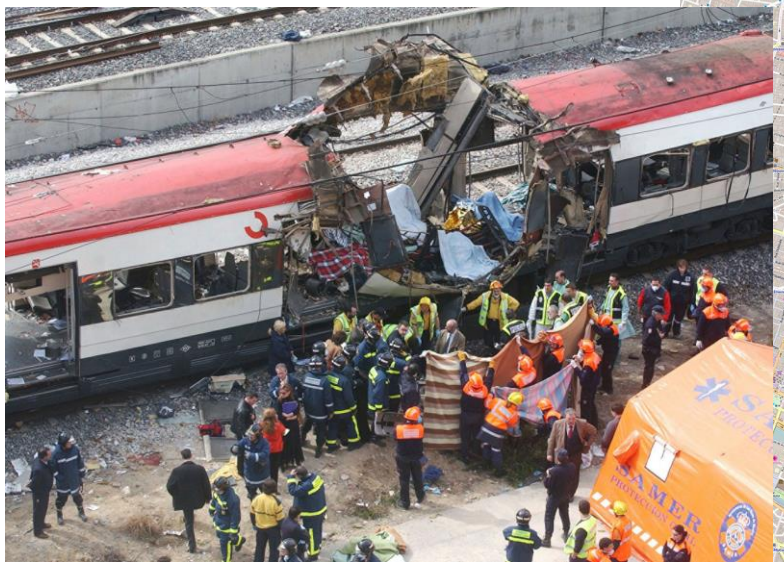
- Dimensions of security: political, economic, societal, environmental

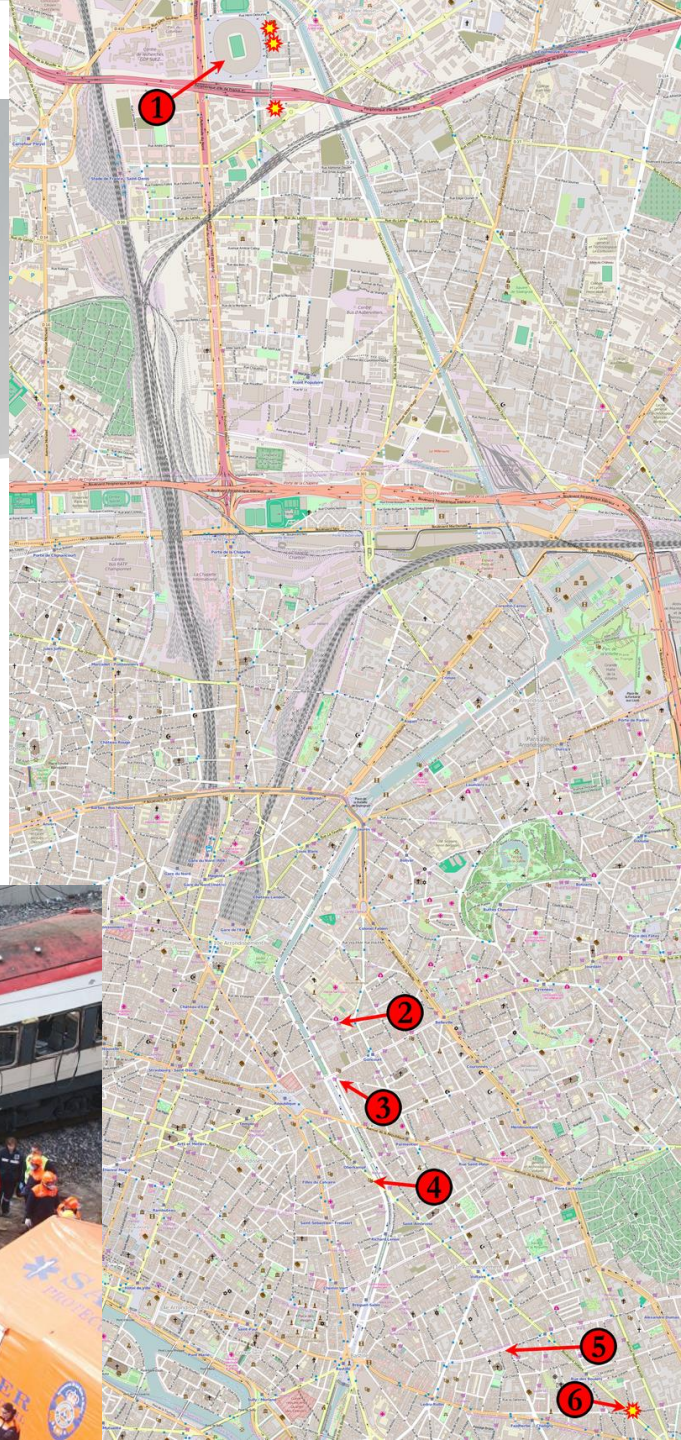
# Domestic and international TERRORISM

- Separatist groups such as Irish Republican Army (Ireland), Euskadi Ta Askatasuna (ETA, Spain), Rote Armee Fraktion (WG)
- 1972 – Israeli athletes taken hostage and massacred during Munich Olympic games by Black September

**Attacks in response to EU member states' foreign policies**

- 2004 Madrid train bombings
- 2005 London bombings
- 2015 Charlie Hebdo shootings
- 2015 Paris bombings (Bataclan club)
- 2016 Berlin Christmas market attack
- 2017 London Bridge attack





# Legal and illegal immigration

- Countries of the European Union are **target countries** for im*migration* and *asylum seekers*
- Migrants, non-nationals from former colonies (FR, NL, UK, GER) looking for:
  - Higher income
  - Social security
- Asylum seekers have to prove political persecution in their home country
  - Turks, Armenians, North Africans, Arabs (Syria, Afghanistan), Vietnamese, South Asians and others

# Organized crime

- Introduction of the **Single Market** (1986 - 1992) and the **Schengen Agreement** (1985/1995) opened up new horizons for organized crime as well!
- Smuggling of goods, trafficking of illegal as well as prescription drugs, trafficking of people, slave trade and prostitution, tax evasion, tax havens, money laundering, car thefts, corruption, extortion
- Mafia goes international too!
- Illegal money can be used to finance terrorism too

# ..the usual… violence

- From murders, serious injuries, to hooliganism, divorce proceedings, civil obligations etc.
- Perpetrators could “freely” hide in a different EU member state

# Obstacles
# to common internal security framework

→ Diverse roots of cooperation often outside of Eur. Communities

## LEGAL OBSTACLES

- **Sovereignty: state** is the guarantor of security of its inhabitants, persons and their property (it has a monopoly on the use of force)

## TECHNICAL OBSTACLES

- **Differences in legal traditions** – *continental* law (codified law) and *common* law tradition (precedent law)
- Definitions of offences and sanctions
- Organization of police forces and administration of justice
- **Trust** and will to integrate

# Council of Europe (not an EU institution!!)

- **Est. 1949**: 'to achieve greater unity between its Members for the purposes of safeguarding and realizing the ideals and principles which are their common heritage'
- Intergovernmental framework (no sovereignty infringement)
- Established *fundamental elements of pan-European legal and judicial space* with emphasis on legal instruments in the *fight against cross-border crime*
- Conventions later becoming part of the EU *acquis*:
  - *European Convention on Extradition (1957)*
  - *European Convention on Mutual Legal Assistance in Criminal Matters (1959)*
  - *European Convention on the International Validity of Criminal Judgments (1970)*
  - *European Convention on the Suppression of Terrorism (1977)*

# Organization for Security and Co-operation in Europe

OSCE

- **Since 1973** regional branch of the UN in Europe; East-West dialogue during the Cold War
- Intergovernmental organization

Office for Combating Trafficking in Human Beings

Today three dimensions:

- Politico-military dimension -> arms control, conflict prevention, combating terrorism
- Economic and environmental dimension
- **Human dimension** -> anti-trafficking, democratization, elections, education, human rights, media freedom, rule of law, gender equality, tolerance and non-discrimination

The OSCE provisions are non-binding, the final acts represent a political commitment rather than a binding treaty

# ‘TREVI’ group 1975

*Terrorisme, Radicalisme, Extrémisme et Violence Internationale*

- Launched **informally** near the Trevi fountain in Rome
- Reaction to the 1972 Munich Olympics massacre
- **Intergovernmental cooperation** on anti-terrorism *outside* the European Communities as part of the semi-formal foreign policy process – **European Political Cooperation**

- TREVI provided the EC member states with a framework in which they could gradually develop their cooperation
- TREVI I-IV later developed into --> **EUROPOL**

# Schengen Agreement 1985

- **Since 1985** – Schengen Agreement: W Germany, France and BeNeLux
- **Short-term goal:** gradual abolition of **internal borders** balanced by more effective surveillance of **external border**
- **Long-term goal:** harmonisation of legislation provisions regulating drugs and arms trafficking, police cooperation and *harmonisation* of visa policies

- Not all EC members wished to take such a radical step
- Developed **outside** the EC Treaties
- 1990 Italy joins

# EU Internal Affairs predecessors

# Schengen Convention 1990-1995

"Convention implementing the Schengen Agreement" signed 1990

- strengthen external border checks
- define specific procedures for issuing **uniform visas**
- **responsibility for asylum application processing**
- **harmonize policies regarding the right of asylum**
- establish a **Schengen Information System**

Date of implementation was planned on January 1993, but due to difficulties had to be delayed. **Schengen area was implemented in 1995**

COUNTRIES SIGNING IN

- **1990** Italy
- **1991** Spain and Portugal
- **1992** Greece
- **1995** Austria
- **1996** Sweden, Finland, Denmark, Iceland and Norway
- **2003** Estonia, Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia
- **2004** Switzerland
- **2008** Liechtenstein
- **2011** Croatia

# Today: 29 Schengen countries

Not all EU MS are in Schengen, some countries are in Schengen but not in EU

# Schengen Information System (SIS)

- European System for **Information Sharing** since 1995
- **Database** of individuals and certain goods upon which an **alert** has been issued
  - People: arrest warrants + missing persons
  - Items: lost, stolen or misappropriated fire arms, vehicles, identity documents, blank identity documents
  - Banknotes
- Over 46 518 578 entries by 1/1/2013

- **SIS II**: second technical version of the system, new types of data, more countries and more institutions (Europol) launched since 2013

# Schengen Information System II

## WHAT TYPE OF ALERTS CAN BE ISSUED?

### EXISTING ALERTS

- Refusal of entry or stay of third-country nationals
- Persons wanted for arrest
- Missing persons
- Persons in order to assist with a judicial procedure
- Persons and objects for discreet or specific checks
- Falsified documents
- Objects for seizure or use as evidence in criminal procedures

### NEW ALERTS

- Return decisions
- Wanted Unknown Person alerts on the basis of fingerprints left at crime scenes
- Persons and objects for inquiry checks
- Preventive alerts to signal children at risk of parental abduction (under strict conditions)

# Situation in the 1990s

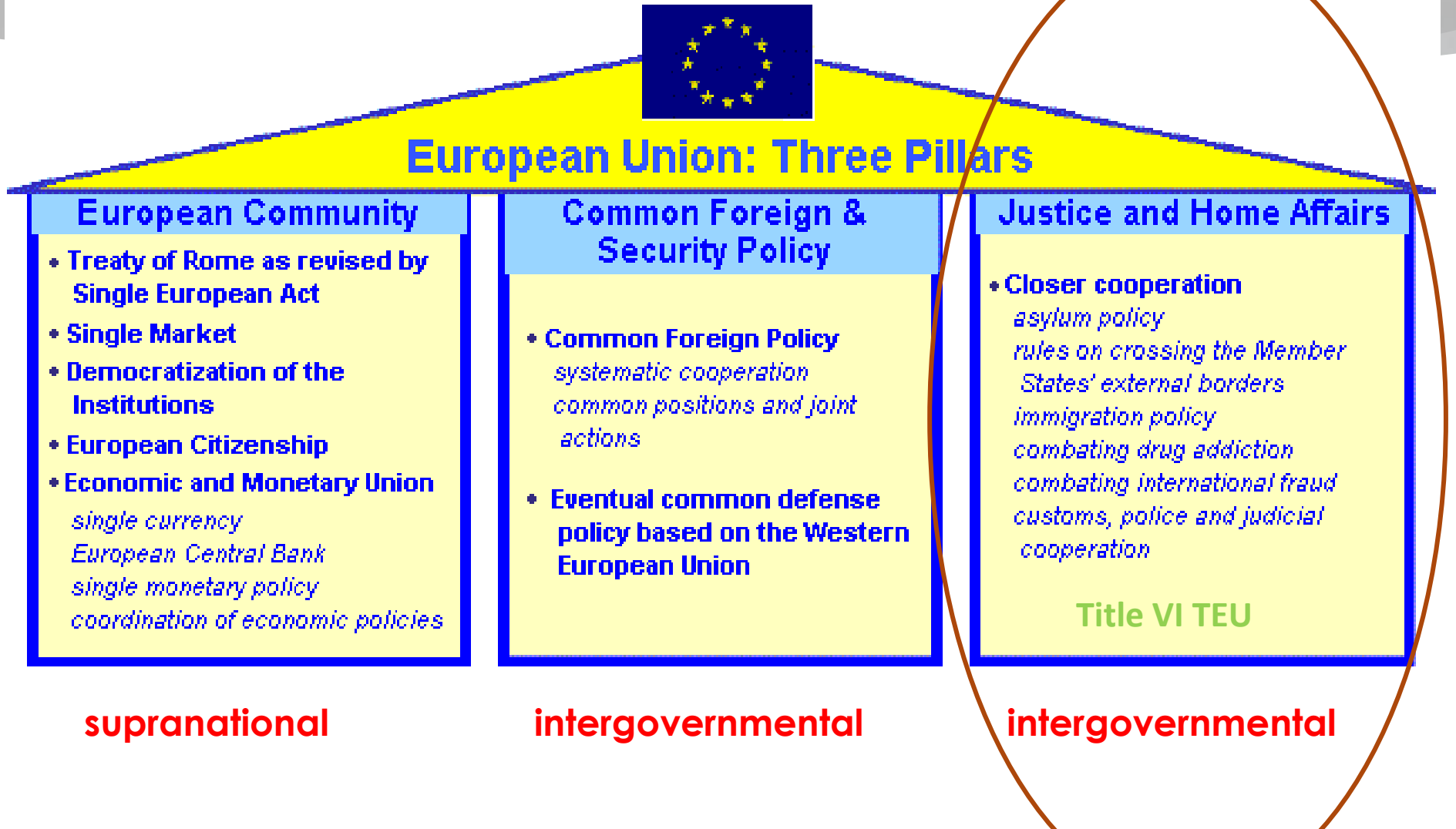
- Dissatisfaction with the extended but **fragmented cooperation** and disorganized system
- Uneasy interaction between European Communities and outside EC law
- Mounting requirements of the **Internal Market**
- New post Cold War external challenges to the member states' internal security

**1990/91 IGCs leading up to Maastricht treaty**

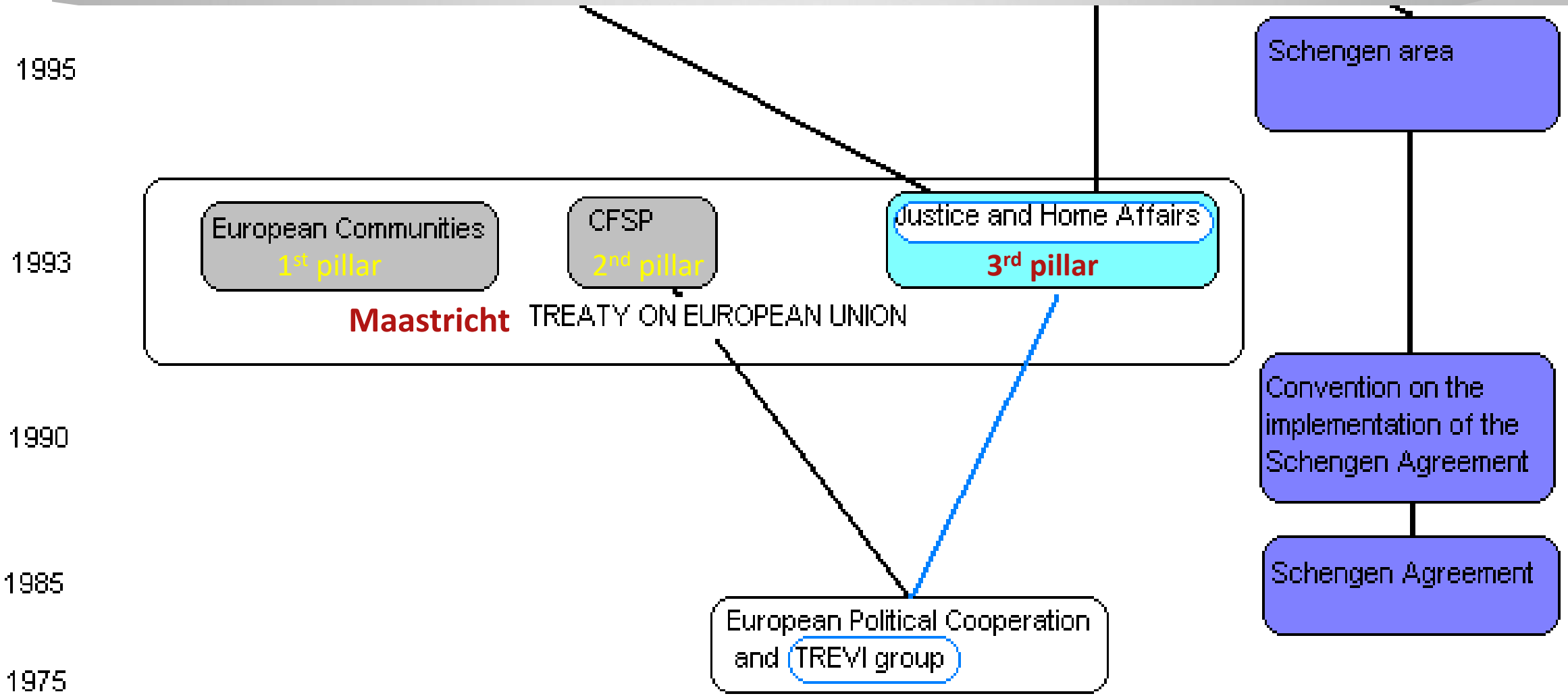
→ In favor of *communautarized* JHA matters (German unification - new permeability of its eastern border) wanted to see more progress at the European level)

→ limited Justice and Home Affairs areas in the Treaty (UK – infringement on national sovereignty!)

# Maastricht Treaty 1993



# Maastricht Treaty 3rd pillar (but Schengen stays out)



# Between Maastricht ‘93 and Amsterdam ‘99

- Critique of the **intergovernmental** principle
- Inadequacy of instruments
- **Low implementation** of policies – because of **unanimity**

  (like Lux. compromise and the common market in the 1970s)
- **Deficits in democratic and judicial control**
- Very **few legally binding texts** have been adopted and implemented

- **Exclusion of the Schengen system from EU - more and more problematic**
- **SIS** proved to be the most useful instrument of border safety and law enforcement
- Prospect of Enlargement lead some members to push for incorporation of Schengen into the Union *acquis*

# Amsterdam Treaty (1999)

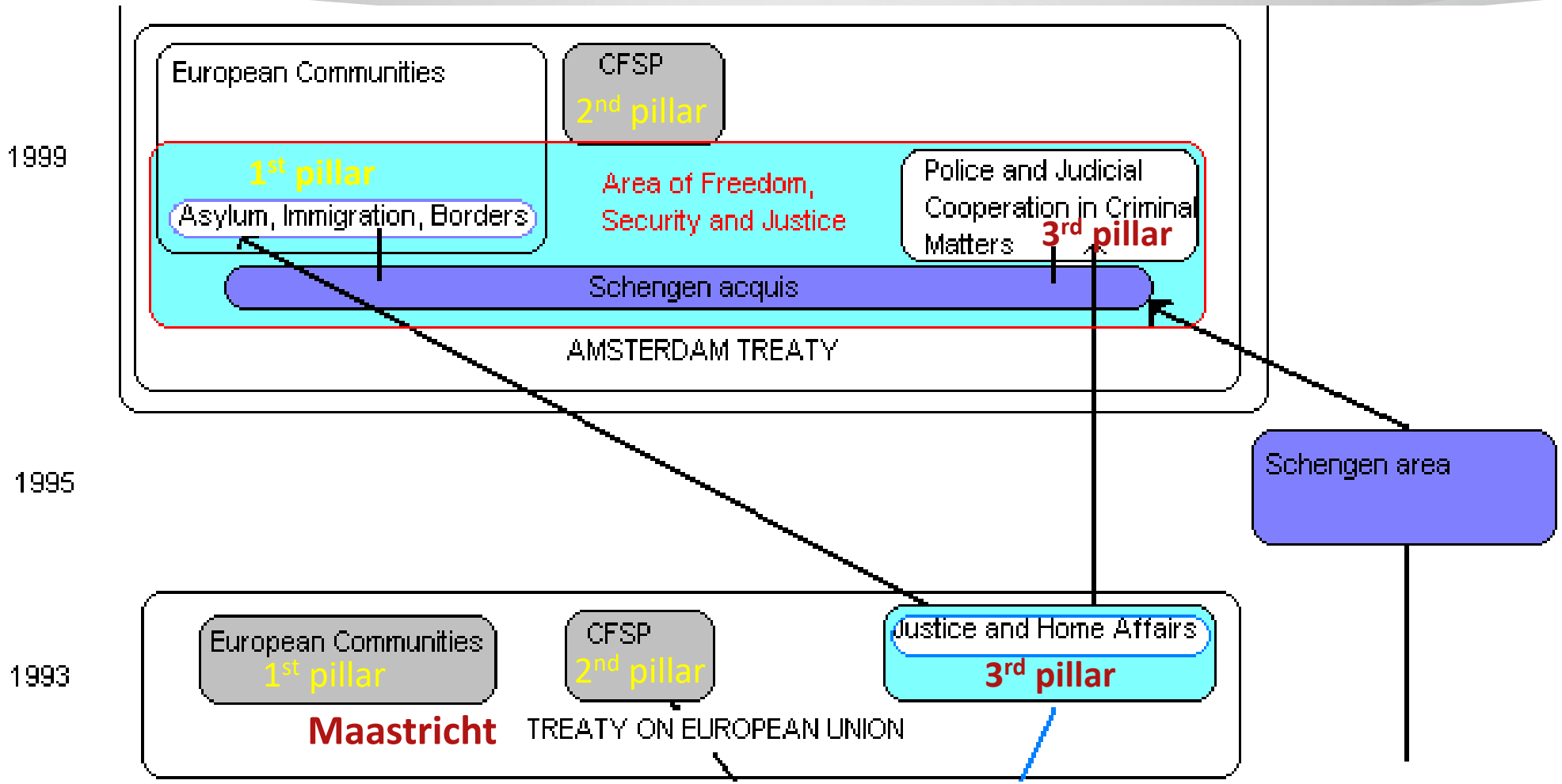
## Created an "Area of Freedom, Security and Justice"

- **Title IV** asylum, immigration and border control moved from 3rd -> 1st pillar
- **Title VI** "Provisions on police and judicial co-operation in criminal matters" remained in the 3rd pillar
- **Integration of Schengen *acquis* into EU legal framework**!

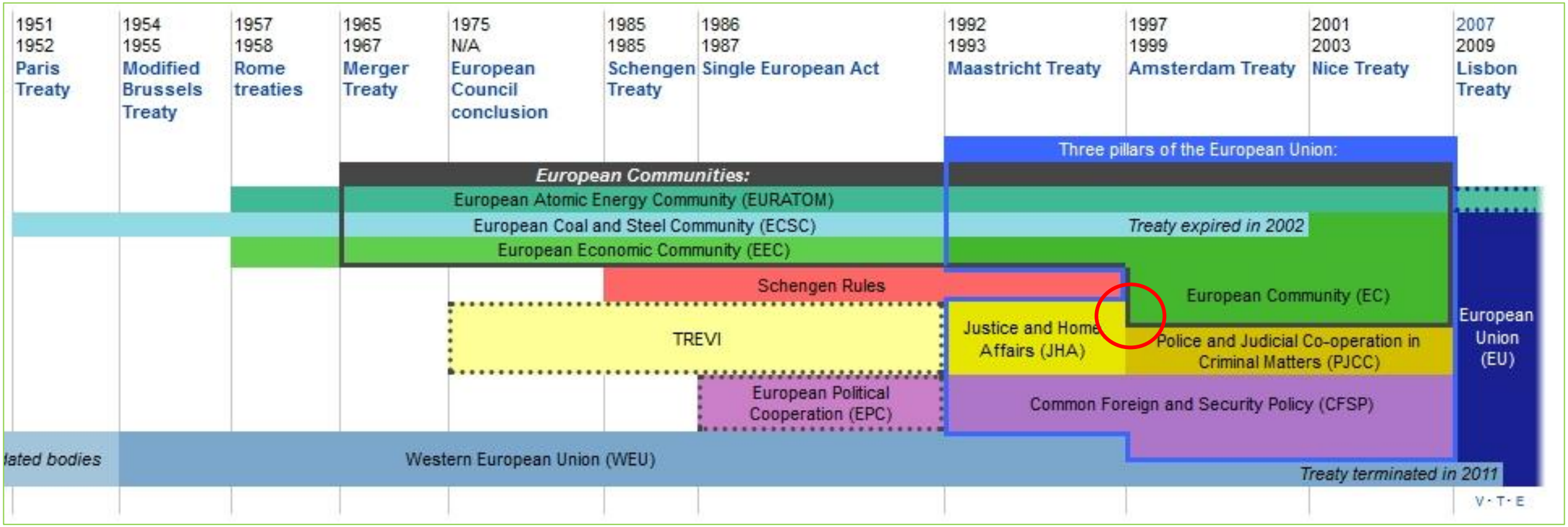
AFSJ policy-mode a **common policy with intergovernmental "peculiarities"**

- *Common positions* – define approach to an issue
- *Framework decisions* – approximate laws, countries decide how to implement them
- *Decisions* – used to achieve objectives other than by harmonizing member state laws
- *Conventions* – general agreements, had weak implementation potential -> framework decisions are preferred

# Amsterdam Treaty
# Schengen becomes *acquis;* 3rd pillar is split into two



# Split of pillar 3 into 1 and 3



# AFSJ Improvements
## 1999: The **Tampere** Presidency Conclusions

- **Policy orientations and priorities to achieve AFSJ**

- To draw up a **Charter of Fundamental Rights of the EU (2000)**

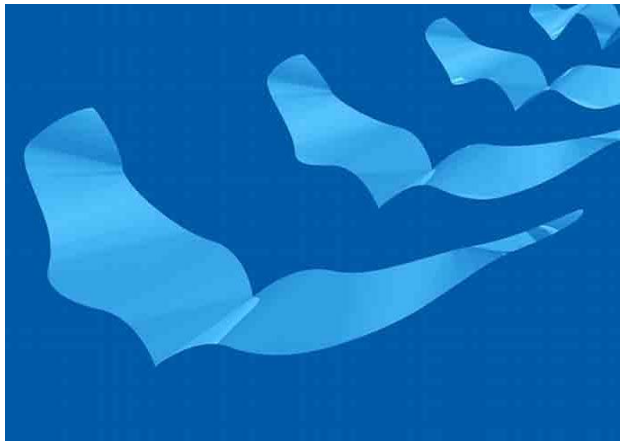
- **Right to move freely** across the EU in conditions of security and justice accessible to all

- **Common approach to third country nationals → Common European Asylum System**

- Compatibility and **convergence between the legal systems** of Member states to fight crime

- The Area of freedom, security and justice should be based on the **principles of transparency and democratic control**

- Co-operation with Council of Europe, OSCE, OECD and the UN



# AFSJ Improvements
# 1999: The **Tampere** Presidency Conclusions

## A. **Common EU Asylum and Migration Policy**

- Partnership with countries of origin (legal migration)
- **Common European Asylum System** (including Geneva Convention on Protection of Refugees, uniform status)
- Fair treatment of third country nationals (integration, non-discrimination)
- Management of Migration Flows (information, human trafficking)

## B. **Genuine European Area of Justice**

- Better access to Justice in Europe (minimum level of legal aid in cross-border cases, victims of cross-border crimes)
- **Mutual recognition** of judicial decisions (and approximation of legislation both for civil and criminal judgements)
- Greater convergence in civil law (fees, taking of evidence, divorces etc.)

## C. **Unionwide Fight against Crime**

- Prevention of crime at the Union level (national prevention programmes, exchange of best practices; juvenile, urban and drug crime prevention)
- Stepping up co-operation against crime (Europol, Eur. Police Chiefs Task Force, Eurojust, Eur. Police College)

# AFSJ Improvements
## 2004: The **Hague** Programme

- **Further development** of Area of freedom, security and justice in the EU

- Improve the common capability to **guarantee fundamental rights**,

- Minimal procedural safeguards and **access to justice**,

-To provide protection in accordance with the **Geneva Convention** on Refugees,

- To **regulate migration** flows → cooperation with third countries

- To **control external borders** of the Union,

- Fight organised cross-border crime,

- To repress the threat of terrorism,

- To realize the potential of **Europol and Eurojust**,

- To carry further **mutual recognition** of judicial decisions

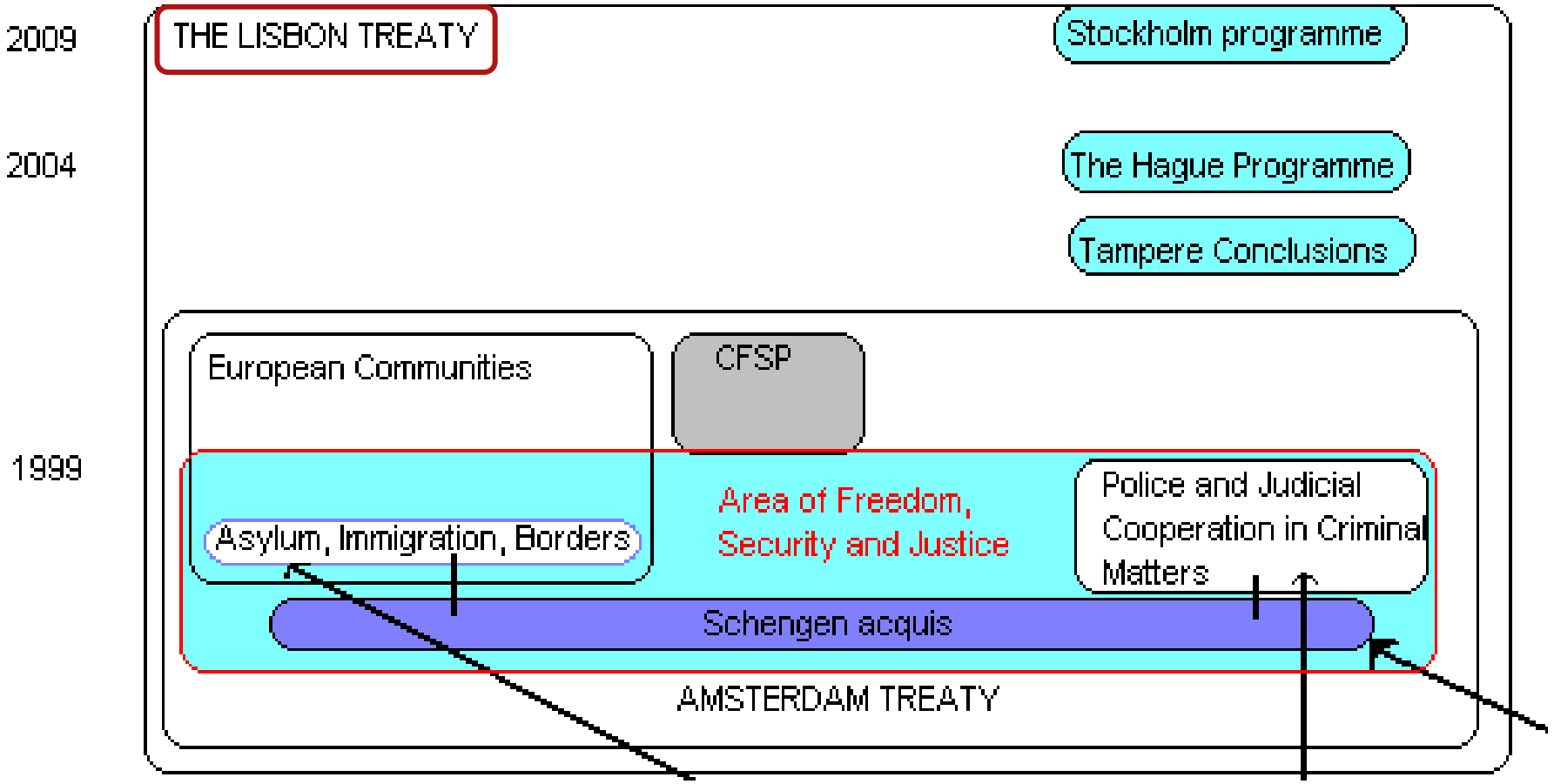
**How? Through implementation of Common European Asylum System**

- conditions for asylum-seekers;
- qualification to become a refugee,
- common asylum procedures;
- which country is responsible for the asylum-seeker (Dublin regulation)

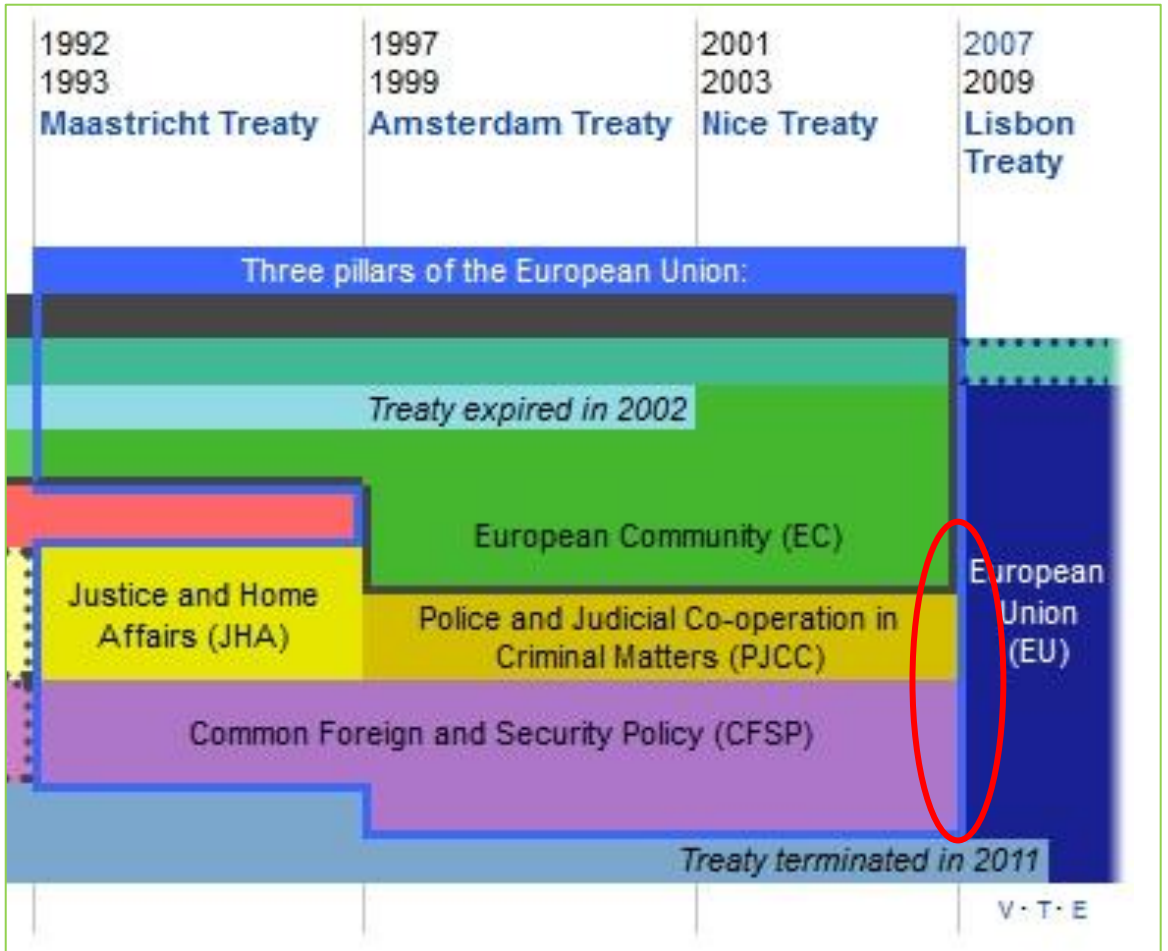
# AFSJ Improvements:
# 2009: The **Stockholm** Programme

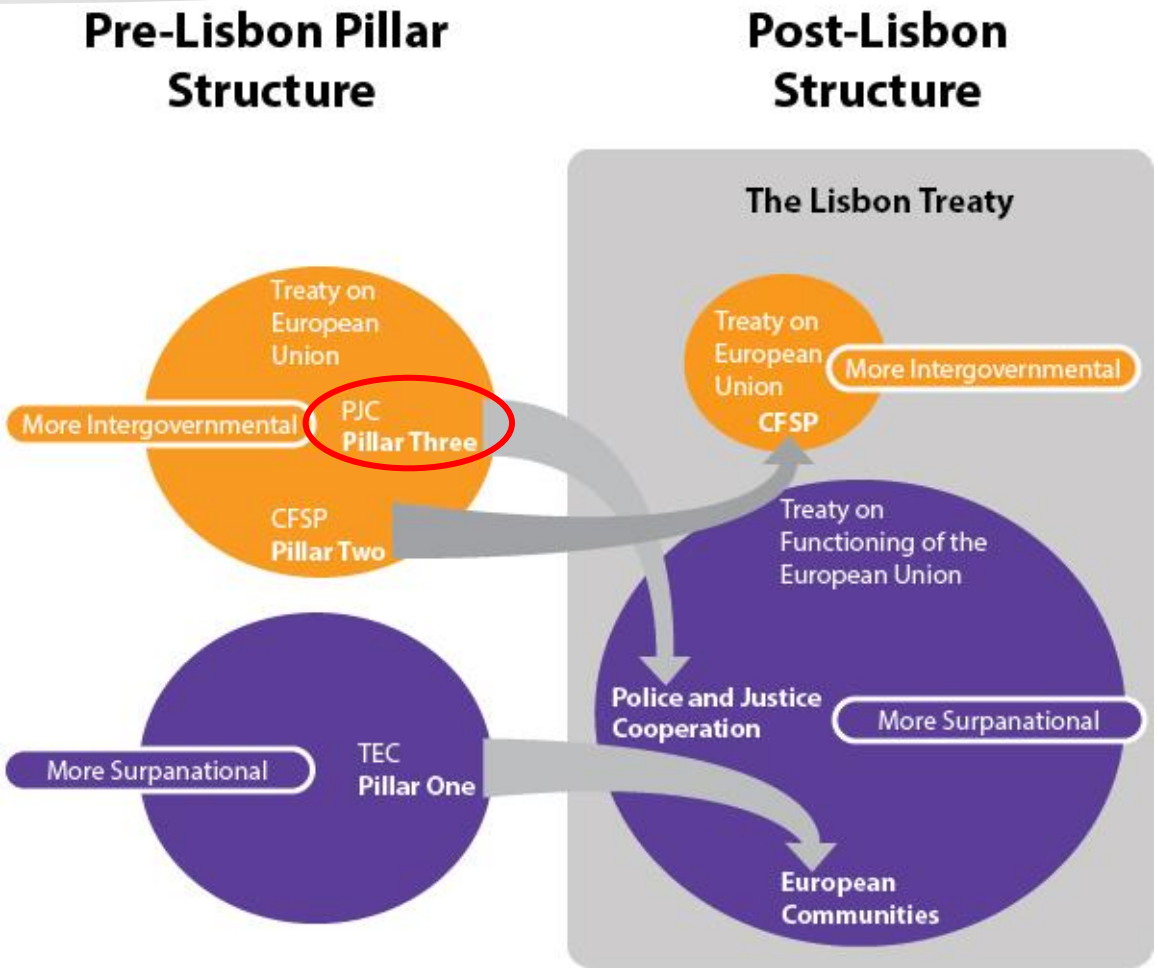
- Identifies **progress** in the AFSJ area
- Promote **citizen's rights** (*Charter of Fundamental Rights of the EU*)
- Europe of law and justice (facilitate better access to courts, so that citizens can enforce their rights)
- A Europe that **protects** (development of an ***Internal Security Strategy*** every 5 years)
- A Europe of responsibility, solidarity and partnership in migration and asylum matters (forward-looking policy, **flexible and demand-driven labour immigration policy**; safe and **efficient asylum procedures**)
- Europe in a Global World (full **coherence with other EU policies**; implementation of the objectives is crucial)

# Lisbon treaty (2009)
# bringing it all under one roof!



# Post Lisbon organisation



# Lisbon Treaty (2009)

- End of the Pillar Structure!!!!
- Brought the dispersed ASFJ legislation under one heading: **Title V** of the TFEU (5 chapters)

- general provisions
- policies on border checks, asylum and immigration
- judicial cooperation in civil matters
- judicial cooperation in criminal matters
- police cooperation

**GENERAL PRINCIPLES:**

- **Cooperation** and **coordination**
- **Mutual recognition** of judgments
- **Approximation** of criminal laws (if necessary)
- The **European Council** defines the strategic guidelines (not the Commission)
- **National parliaments** and the European Commission conduct objective and impartial evaluation of the implementation
- **Legislative initiative**: from European Commission or ¼ of Member States

# Lisbon Treaty (2009)
# Procedural and decision-making mechanisms

- Consequence of the restructuring will be **expansion of the Community method**

- Commission but also MS initiative

- **Ordinary legislative procedure also on asylum and migration, cooperation in civil matters**

- EXCEPT(!) in police and judicial cooperation in criminal matters

- 1st pillar regulations, decision, directives will replace 3rd pillar terminology of framework decisions, common positions, conventions etc..

- …**the 'old' legal instruments of the 3rd pillar, however, will remain in force** until amended or annulled
- Reforms should lead to higher efficiency, legal certainty, accountability and more democratic control
- National Parliaments take part in evaluation of implementation of AFSJ policies and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities

# Agency: EUROPOL

- Operational since 1999
- **Intelligence exchange and analysis**, cooperation and support in the fight against organized crime
- **Expert knowledge**: drug trafficking, illegal immigration, counter-terrorism, forgery of money, financial and property crimes, money laundering
- **Support MS** in their fight against serious international crime
- **1400+ staff**
- **European Police Chiefs Task Force** = personal information, trust-building

- **Organised crime and threat analysis reports**
  - TE-SAT (Terrorism, Situation and Trends)
  - SOCTA (Serious Organized Crime Treat Assessment since 2006)
  - IOCTA (Internet Organized Crime Treat Assessment, new)
  - EUROPOL Annual reviews and stats

- Cooperation with other agencies: Eurojust, Eur. Police Chiefs TF, but also 3rd countries and organisations (Columbia, Frontex, Albania, FYROM, Switzerland, USA, SITCEN, Montenegro..)
- The Hague programme (2004) put Europol at the centre of EU law enforcement

# European Arrest Warrant

- In force as of 2004, based on mutual trust, rule of law
- Applies **only within EU** territory
- **Replaced *extradition* procedures between MS**
- Issued by a MS national judicial authority: **mutual recognition of judicial decisions!**
- Offence with **at least 1 year in prison** penalty
- EAW faster and simpler procedures without political involvement (no diplomacy)
- MS can no longer refuse to surrender their citizens, who have committed serious crime, to another MS on the ground that they are nationals

**Categories of serious offences:**

*participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in arms, ammunition and explosives, corruption, fraud including fraud pertaining to the financial interest of the European Union, money laundering and counterfeiting of money including the euro, fraud, corruption, rape, racketeering and extortion, murder, sabotage*

# Agency: EUROJUST

- Operational since 2002
- Coordination of cross-border investigations and prosecutions at EU level in areas delimitated by primary law
- Legal experts, prosecutors, judges working as a team in the same building
- Advise where to look for information from another country, **how to proceed in cross-border cases**
- Help administratively pointing out authorities responsible for action

- Helps establish "Joint Investigation Teams"
- Work with OLAF, EUROPOL

# Agency: EURODAC

- Operational since 2003
- Database of fingerprints for identifying incoming **asylum seekers** & **irregular border-crossers**
- Automatic fingerprint identification system – central unit at the European Commission
- **First contact principle** (Dublin Convention)
- Only one try at asylum within the AFSJ

Law and Order: Captain Nemo Unit

# Agency: FRONTEX

FRONTEX
EUROPEAN BORDER AND COAST GUARD AGENCY

**Operational since 2005**

RaBITs – Rapid Border Intervention Teams (since 2007)

**Six main tasks:**

- **Coordinate** operational cooperation between Member states (implementation of Community measures)
- **Assist** member states in the **training** of national border guards (common standards)
- Carry out risk **analyses** (risk assessment)
- Follow up on the **development of research** relevant for the control and surveillance of external borders (technology)
- **Assist** Member States in circumstances requiring increased **technical and operational assistance at external borders** (pre-structured rapid intervention packages)
- Provide Member States with the necessary **support in organizing joint return operations** (identifying best practices on the acquisition of travel documents and the removal of illegal third country nationals)

# External Borders of the Union

**Three principles from Schengen**

- No third country nationals should enter the Union if he/she is a **threat** to security
- **Mutual recognition** of short term visas
- **Freedom of movement** for third country nationals once they are in the Union

**Six Instruments**

- The Schengen Information System (SIS)
- The Visa Information System (VIS)
- The External Border Agency - Frontex
- Carrier sanctions and passenger data transmission
- A common list of countries for visa waiver
- A common format for EU Visas

# Dublin Regulation III

- Determining MS responsibility for processing asylum applications
- **1 asylum application** in AFSJ, examined by 1 MS in line with Geneva Convention on Protection of Refugees
- Checked by Eurodac fingerprinting
- Family considerations etc, **country of first contact for irregular migrants**

- Discriminating if periphery states face increased migration pressure

**So, application of Dublin Regulation is often a poker game**

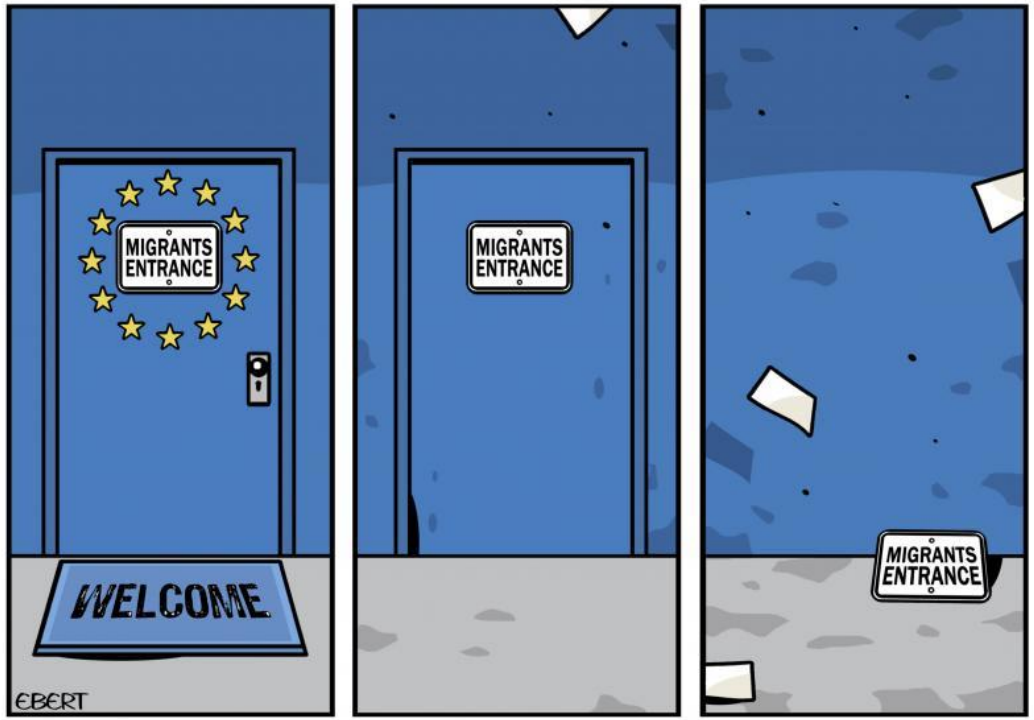
Plantu, Le Monde, 14.09.2015

# Common European Asylum System

- EU as an area of protection for people fleeing persecution
- In line with Geneva convention
- Set minimum common standards for asylum application rules (MS *should* reach the same result on application)
- Aided by **European Asylum Support Office** (EASO) agency (only about 100 employees) to provide analysis and train staff

- Conditions of **reception** (housing, food, access to healthcare for asylum seekers)
- **Qualification** directive (conditions for asylum)
- **Dublin Regulation** (which MS examines the application)
- **EURODAC** (prevent multiple applications)

# Common European Asylum System



01 A clear and functional process to determine which country is responsible for examining an application for protection;

02 A set of common standards to inform fair and efficient asylum procedures;

03 A set of common minimum conditions for the dignified reception of applicants for protection; and

04 Convergence on the criteria for granting protection statuses and for the content of protection associated with those statuses.

Scandals, EU border guards pushing migrants back into sea…

# Migration crisis 2015

- Student presentation

# Fortress Europe – EU Security Union

- Strengthening borders – FRONTEX
- Reform migration: New Pact on Migration and Asylum politically agreed
- Surveillance and fight against terrorism
- Organized and cross-border crime
- Cyberattacks and disinformation
- Build and use databases and big data to flag danger

# Pact on Migration and Asylum (2023)

- More effective procedures
- Tighter external borders
- Solidarity
- Legal pathways to get to EU
- Cooperation with third countries
- Flexibility / resilience

DW news link

New compulsory pre-entry screening to establish status swiftly on arrival:

- identification
- health checks
- security checks
- fingerprinting and registration in the Eurodac database

New, faster asylum border procedure:

- Where applicable, followed by swift return procedure, to speed up decision-making and make asylum procedures more efficient

Better migration and border management system:

- Improved Eurodac database, contributing to the fight against irregular migration
- Focus on **applicants** rather than application to determine responsibility for asylum claims
- Deter unauthorised movements to other Member States
- Facilitate relocation and better monitoring of returnees
- Track support for voluntary departure and reintegration

Legal guarantee:

- **Independent monitoring mechanism** to ensure respect of fundamental rights, supported by the Fundamental Rights Agency, Frontex and the new EU Agency for Asylum
- **Individual assessment of asylum claims** and essential guarantees protecting access to asylum, the right to liberty, the rights of the child, as well as the right to an effective remedy

# Solidarity …MS can choose HOW to take part

- **Flexibility** for Member States:
- Relocation of recently-arrived persons
- Immediate operational **support**
- Longer-term support to build capacity on asylum procedures
- Reception of newcomers or return operations
- Assistance in responding to specific migratory trends affecting Member States through cooperation with non-EU countries

# Enduring dilemmas
# ….of justice and home affairs integration

- Human **rights or security**/surveillance? Organized hypocrisy?
- National **sovereignty vs** supranational **integration**?
- **Convergence** of police, judicial, migration attitudes vs **harmonized** efficiency?
- **Transparency vs sensitivity**?
- European **solidarity** vs national **identity**?