- Intergovernmentalism captures best the influence of certain member states in advancing the case for EU policy.
- Neofunctionalism explains the active role that the Commission, the ECJ, and the EP have played in shaping the content of environmental policy.
- Governance theories are better equipped to explain the multiplicity of actors currently taking part in EU environmental policy and the fluidity of the current policy environment.

FURTHER READING

For excellent overviews of EU environmental policy see **J. McCormick**, *Environmental Policy in the European Union* (Basingstoke: Palgrave Macmillan, 2001), and **J. Burchell and S. Lightfoot**, *The Greening of the European Union? Examining the EU's Environmental Credentials* (London and New York: Sheffield Academic Press, 2001). A review of the use of NEPIs at both the national and EU levels is provided in **R. K. W. Wurzel, A. R. Zito, and A. J. Jordan**, *Environmental Governance in Europe* (Cheltenham, UK, and Northampton, MA: Edward Elgar, 2013). On EPI see **A. Jordan et al.**, 'The European Union' in *Innovation in Environmental Policy? Integrating the Environment for Sustainability* (Cheltenham, UK: Edward Elgar: 2008), pp. 159–79. Additionally, the collection of seven articles published in the special themed issue of *Environment and Planning C: Government and Policy* (Volume 17: 1), entitled 'European Union Environmental Policy at 25', shed light on all major issues of the EU environmental policy ranging from theory to issues related to the use of NEPIs, implementation concerns, and the rise of the EU as a global actor in this policy area.

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Chapter 24
Freedom, Security, and Justice

Chapter Overview

The policy activity of the European Union (EU) in Justice and Home Affairs (JHA) was given formal recognition in the 1992 Treaty on European Union (TEU). Through subsequent reforms, latterly the implementation of the Lisbon Treaty, the policy has been recast around creating an area of freedom, security, and justice (AFSJ). This chapter initially explores the emergence and growth of JHA policy in the EU, and the Treaty reforms that led to the emphasis on creating an AFSJ. It looks at the policies related to the AFSJ, as well as the associated political struggles. Finally, it explores the debates and interpretations that have been offered for the policy area's dynamics. A key feature of this policy area's evolution has been the use of 'laboratories' outside the EU and of EU measures that have not involved all of the member states.

Context

Freedom, security, and justice are areas that have traditionally been understood as the core responsibilities of the nation state. It is an indication of the wide-ranging nature of the integration process that these policy areas have come under the EU's umbrella. Introduced principally by the Maastricht Treaty of 1992, the policy area initially was termed JHA and was located in its own 'third' pillar of the EU (on pillars, see Figure 12.1). However, the Amsterdam Treaty moved immigration and asylum policy to pillar one as part of an aim to create an AFSJ. The AFSJ was greatly enhanced by the Lisbon Treaty, which ended the separate existence of the third pillar and also consolidated police and judicial co-operation into the AFSJ. Reflecting this move, this chapter is entitled 'Freedom, Security, and Justice', although the early part is framed in terms of JHA. The policy area has matured over time, even though it remains contested because of the way in which it strikes at national sovereignty. The AFSJ has developed its own governance arrangements, including a range of agencies. A key characteristic of JHA and AFSJ has been the use of differentiated integration, whereby not all member states participate in all of the arrangements.

The chapter explores the history, culminating in the AFSJ becoming the overarching policy framework under the Lisbon Treaty. It considers the AFSJ's institutional character and policy content. Finally, it explores the key explanations and debates relating to this policy area.

History

Early Co-operation: Before the Treaty on European Union

The founding Treaties of the 1950s made few provisions relating to what has emerged since the 1990s. The commitment to the free movement of persons, and specifically of workers, was notable (Article 48 EEC Treaty). However, this provision only became significant with the developing momentum in the mid-1980s to create the single market (see Chapter 20). Other very limited rights bestowed on individuals in the early decades of integration were economic- and market-related. Even with the fragmented policy initiatives of the 1980s, there was no indication of the scope that the AFSJ would take in the EU of today, where two Commission directorates-general oversee a range of policy issues (see Insight 24.1).

Until the 1990s, the driving forces behind co-operation lacked real salience. In consequence, the policy responses resembled a patchwork. Accordingly, one of the key characteristics in this early period, and still relevant today, was the use of a 'laboratory' approach to the policy area (Monar 2001: 748–52). Co-operation thus took place in different forums and was not confined to the European Community (EC)/EU. Three particular 'laboratories' undertook experiments that prepared the ground for the rapid policy advances of the 1990s. These were the Council of Europe, 'Trevi', and the Schengen group.

The Council of Europe's texts on extradition, mutual legal assistance in criminal matters, the international validity of criminal judgments, and the transfer of sentenced persons—some dating back to the late 1950s—were to become central to JHA

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co-operation between EU member states. Indeed, they have become part of the *acquis* that applicant states are required to adopt before they can become new members (Monar 2001: 749). Perhaps more importantly, though, through co-operation in the Council of Europe, the traditionally parochial outlook of interior ministries began to be broken down. National officials gained experience of working co-operatively with European counterparts. Awareness was raised of national sensitivities and peculiarities, and of the problems involved in co-operation. 'Trevi' was a loose form of co-operation within the European political co-operation (EPC) machinery (see Chapter 26). It was an intergovernmental process comprising EC member governments, set up in 1975 as a response to increasing terrorist activity in Europe. It was later extended to the fight against drugs trafficking and organized crime. It paved the way for more structured co-operation once the TEU was put into effect in 1993. The work of Trevi was particularly influential for the development within JHA of Europol (the European Police Office) (see this chapter, The Area of Freedom, Security, and Justice).

The third 'laboratory' comprises the 'Schengen group' of member states that agreed to eliminate internal border controls. This initiative can be traced back to Franco-German efforts in 1984 to include some components of JHA activity in what became the Single European Act (SEA). It became clear that one of the core components—the lifting of passport controls to accompany the opening of the single market—was not acceptable to Britain, Ireland, and Denmark. In consequence, the Schengen group emerged outside the EC as a laboratory for developing a passport-free zone (see Insight 24.2). The implications of removing passport controls proved to be more far-reaching than envisaged and the scope of JHA co-operation widened to include compensatory control measures.

The Schengen 'laboratory' undertook valuable work that paved the way for JHA agreements on asylum and policies, extradition, and police co-operation. It also created a 'culture of co-operation' (Monar 2001: 752) and laid the basis for the **transnational networks** of police and judicial authorities that are essential to the successful implementation of JHA measures. The EU's Amsterdam Treaty (1997) incorporated policy agreed under the Schengen provisions into the EU Treaties, giving it a new legal personality.

One consequence of the Schengen arrangements was the need to start work on complementary external measures. The Dublin Convention, signed in 1990 and coming into force in 1997, was designed to stop asylum seekers making more than one application to enter the EU, trying to find the easiest point of access: a tactic known as

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Insight 24.1 The Scope of the Area of Freedom Security and Justice

Home Affairs	Justice
Immigration	Fundamental rights
Common European Asylum System	EU citizenship and free movement
Schengen, borders and visas	Civil justice, criminal justice, effective justice
Internal security	Data protection
Organized crime and human trafficking	Gender equality
Crisis management and terrorism	Tackling discrimination
Police co-operation	Drug control policy
The international dimension of the above	External relations on the above

Full details of the policy measures in force are obtainable at the webpages of the Commission's directorate-generals for justice and home affairs, respectively:

http://ec.europa.eu/justice/index_en.htm#newsroom-tab;

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/index_en.htm;

http://ec.europa.eu, © European Union, 1995–2014.

Insight 24.2 The Schengen Area

The name 'Schengen' comes from a small town in Luxembourg located at the border with both Germany and France. The signing of the Schengen Agreement on 14 June 1985 took place on board the pleasure boat, *Princesse Marie-Astrid*, moored on the river Moselle, which, at Schengen, forms the boundary between Luxembourg and Germany. Initial members were France, Germany, Belgium, Luxembourg, and the Netherlands. The Agreement's implementing arrangements were agreed in 1990 through the Schengen Convention. The term Schengen is still utilized to denote the area comprising those states that have given up border controls with each other (see Figure 24.1).

'asylum shopping'. Unlike with the Schengen arrangements, however, Britain, Ireland, and Denmark chose to participate. In 2003, the Convention was revised and subsequently became known as the Dublin Regulation.

Policy Dynamics and JHA Structures under the Treaty on European Union

How did the policy co-operation in these laboratories culminate in the creation of the JHA 'pillar' within the EU, as agreed at Maastricht in 1991? A number of overlapping dynamics were at play and became irresistible during the negotiation of the TEU. First, the Treaty was negotiated when European integration had attained a new level of dynamism from the SEA and creation of the single market. Giving JHA prominence in the new Treaty was part of this dynamic and was championed by the German Chancellor, Helmut Kohl. At the same time, specific consequences of the single market, with its removal of border controls, gave new urgency to intensified co-operation in order to provide alternative means of control over illegal immigration and cross-border criminality. Free movement of goods could facilitate smuggling, especially of goods such as cigarettes that attracted very different levels of tax in different parts of the EU. Free movement of people could allow criminals to commit a crime in one member state and retreat to another to evade detection and capture. Free movement of capital could facilitate financial crime, including the 'laundering' of money obtained from criminal activities. Also, individuals and businesses that took advantage of the single market to buy or sell in other member states found it difficult and prohibitively expensive to gain access to another state's system of justice if things went wrong. These potential threats necessitated a collective policy response.

A third dynamic arose from the interaction between globalization and the redefinition of notions of security. While the single market raised the scope for cross-border criminality, this was part of a larger-scale phenomenon. The end of the Cold War dramatically increased the opportunity for international crime and cross-border migration from the former communist states, although the scale of the threat was not as great as some of the predictions (Geddes 2006: 453). Economic migrants and asylum seekers were drawn to EU states. The civil wars in former Yugoslavia led to increases in asylum applications. Subsequently, the threat from terrorism took on particular salience with the Al-Qaeda '9/11' terrorist attacks in the United States in September 2001 and subsequent bombings in Madrid (March 2004) and London (July 2005). These actions produced further rapid escalation in JHA policy making within the EU. Alongside these developments, the growth of the Internet has introduced new challenges associated with 'cyber crime'.

The new global challenges were intrinsically linked to a redefined security agenda. Traditionally, security was seen as how states guaranteed their defence in military terms: as part of foreign policy in a state-centred system of international relations. However, this understanding has been challenged on two fronts. First, security has come to be understood in different ways: for instance, as societal security. Issues such as cross-border criminality or illegal immigration have taken on greater importance on the political agenda. Second, the international concern with terrorism after 9/11 has emphasized the role of non-state actors, such as Al-Qaeda and its affiliates, in internal

security. Thus, security has established itself as a key theme in *home* affairs policy—or to use the academic terminology, home affairs policies have become 'securitized'.

A final dynamic for JHA policy came from a small number of states that, recognizing such dynamics, advocated the development of the EU's capacity to address the new internal security agenda. Foremost among these was Germany, the member state with the largest number of borders with different states: a situation exacerbated by the opening up of frontiers to its east with end of the Cold War. At the same time, its relatively liberal asylum policy was attracting increasing numbers of applicants. The Kohl government sought to utilize the EU as an argument for making its asylum rules more restrictive and thus justifying the necessary domestic reforms.

These stimuli were making the case for EU responsibility stronger. The laboratories discussed earlier and a growing number of other intergovernmental agreements were creating multiple (and messy) institutional arrangements. According to Jörg Monar, the interior and justice ministry officials, the police, and the customs authorities gradually came to realize that they were 'increasingly sitting in "the same boat" as regards a broad range of issues' (2001: 754). There was therefore a strong logic to providing a common EU framework for the policy responses.

The agreement reached in the Maastricht Treaty was to create a separate intergovernmental 'third pillar' within which JHA co-operation could be developed. The Treaty identified many of the main areas detailed in Insight 24.1. However, the institutional arrangements proved far from satisfactory. During the Maastricht negotiations, a majority of states had unsuccessfully favoured integrating JHA policy into EC business, but failed to agree on how to achieve this. At the same time, a few states, but primarily Britain, were insistent on not giving authority to the European Commission and other supranational bodies, notably the Court of Justice. Consequently, the institutional arrangements in the third pillar were a compromise.

The JHA Council and the Commission shared the right to initiate policy. Much of the detailed work was undertaken under the auspices of three steering groups, which reflected sub-areas of JHA work: asylum and immigration; police and customs co-operation (the busiest); and judicial co-operation in civil and judicial matters (den Boer and Wallace 2000: 502–3). Officials from different national agencies, including customs and the police, as well as the judicial authorities, worked more intensively than in the past, leading to changes in their working practices as well as those of interior and justice ministries. Some non-governmental organizations concerned with human rights and asylum issues began to emerge at EU level in response to the EU's new powers.

The main policy-making difficulty, however, was that JHA showed the pitfalls of an intergovernmental system. Decision making was slow and unwieldy; decisions, if taken, tended towards the lowest common denominator. In addition, the visibility of JHA decision making was low and parliamentary control virtually non-existent. Dissatisfaction led to pressure for institutional reform, which came about with the 1997 Amsterdam Treaty.

The Reforms of the Amsterdam Treaty

The Amsterdam Treaty brought about a number of significant changes to JHA policy. Of central importance was the new overarching mission to create an AFSJ

> **Insight 24.3 The Key Changes to JHA in the Amsterdam Treaty**
>
> Visa, asylum, and immigration policies were 'communitarized'—that is, transferred from the third pillar to the first pillar.
>
> The residual responsibilities in the third pillar were confined to police and judicial co-operation in criminal matters (PJCCM), although provisions were enhanced.
>
> The Schengen conventions and associated decisions within that framework were to be transferred to the responsibility of the EU.

(see Insight 24.3). This terminology was used in order to present the reforms as a major new programme in integration that, according to the Amsterdam Treaty, 'would provide citizens with a high degree of safety'. The AFSJ therefore sought to engage with the European public on the emerging new security agenda. Once again, the new arrangements represented a compromise between the different member governments in the Treaty negotiations (for details, see den Boer and Wallace 2000: 513). The **Benelux** states were among the most supportive of communitarization of JHA policy into the first pillar. Britain, by contrast, was opposed.

The most important institutional change was the transfer of visa, asylum, and immigration policies to the first pillar. The policy provisions went hand in hand with new decision-making rules: namely, **qualified majority voting (QMV)** in the Council. These rules in fact only came into operation from January 2005, by which time much legislation was agreed, but on the basis of unanimity. Pillar three remained, but with a narrower set of JHA responsibilities: namely, police and judicial co-operation in criminal matters (PJCCM).

At a relatively late stage in the negotiations leading to the Amsterdam Treaty, several states proposed the incorporation of the Schengen system into the EU. The Dutch government, which held the presidency of the Council in the first half of 1997, was extremely influential in securing this outcome. However, the exact 'outcome' was not entirely clear for some time because 'there was indeed no definitive or agreed text of the Schengen *acquis*' (den Boer and Wallace 2000: 514). Hence, a major immediate task in JHA policy making, once the Amsterdam Treaty came into force in May 1999, was to actually catalogue the accumulated decisions taken within the Schengen 'laboratory'. This task was made complex by the fact that some of the decisions and associated policy instruments were matters for the first pillar and others for the third pillar.

What was at first clearer about the incorporation of the Schengen provisions into the EU was that the British and Irish governments had negotiated opt-outs in view of their non-participation in the Schengen system. These opt-outs, it should be noted, stemmed primarily from UK governments' preference to maintain passport controls, a position usually justified by reference to the country's island status. In order to maintain its common travel area with the UK, Ireland maintained a similar opt-out. Denmark's participation in the Schengen zone had by this time increased, since the 1995 enlargement had brought in other states within the Nordic passport area. In effect, the Nordic passport area became part of the Schengen zone, the rules of which consequently were extended to Iceland and Norway.

The Area of Freedom Security and Justice (AFSJ): From Amsterdam to Nice

The ambition to develop the AFSJ as a new 'project' for the EU bore fruit. The European Commission began to build up its policy capacity, reflecting its enhanced powers of initiative arising from the Amsterdam Treaty. It reorganized its existing task force, creating in October 1999 a fully fledged Directorate-General (Directorate-General for Justice, Freedom, and Security). The European Parliament (EP) was given consultation rights on first pillar JHA decision making during the transition period. It increased its policy engagement and strengthened its committee, eventually called the Civil Liberties, Justice, and Home Affairs Committee. The European Court of Justice for the first time obtained some very restricted powers in relation to first-pillar JHA policy. Finally, the Council of Ministers also underwent some reorganization. Since JHA policy was located in two separate pillars of the EU, two separate committee structures were established under the authority of the Justice and Home Affairs Council. A final key institutional development arose from the engagement of the heads of government. In October 1999, the European Council, meeting in Tampere (Finland), was devoted to the development of the AFSJ. It agreed on a substantial programme of work for the period ahead and set in train a pattern of five-yearly programmes underpinned by scorecards and other mechanisms to ensure that momentum would be maintained. The Hague Programme (2004) and the Stockholm Programme (2009) were agreed subsequently by the European Council to maintain the policy momentum.

The Treaty of Nice made less fundamental changes to JHA. QMV was extended to limited parts of judicial co-operation as well as to anti-discrimination measures and matters relating to refugees. The first two of these were also to be covered by the co-decision process, thus making small inroads into a policy area in which the EP had historically lacked real powers. With one exception, the other main JHA-related changes arising from the Treaty of Nice were general institutional reforms, prepared for the forthcoming enlargement. The exception was the Charter of Fundamental Rights of the European Union. The Charter comprised six chapters spelling out a set of principles. They covered dignity (for example, the right to life and the prohibition of the death penalty); freedoms; equality; solidarity; citizens' rights; and justice. The British government was opposed to the Charter of Fundamental Rights being given legal status as part of the Treaty of Nice. Consequently, the Charter was 'solemnly proclaimed' at Nice in December 2000. For the time being, its status was to be political, but it was then subject to discussion as part of the subsequent constitutional debate.

The Lisbon Treaty

The Lisbon Treaty brought about some fundamental institutional reforms to JHA policy (Duff 2009: 95–102; Kietz and Parkes 2008) (see Insight 24.4). The first point to note is the new, upgraded commitment that:

> **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.

(Article 3 TEU)

Symbolically, this objective was located ahead of such priorities as the single market and the single currency. In addition, the abolition of the three-pillar system meant that those parts of JHA that remained in the third pillar—namely PJCCM—were brought into the '**Union method**' (see Chapter 12, The Decision-Making Institutions (the Union Method)). The 'third pillar' was abolished and incorporated in a single part (or 'Title') of the Treaty on the Functioning of the European Union (TFEU) on the AFSJ. Thus, the whole of JHA policy in principle moved back to a single pattern of policy making: one in which the Treaty provides for QMV in the Council, co-decision rights for the EP, and, with some restrictions, the jurisdiction of the European Court of Justice (ECJ). The work of agencies was brought under closer parliamentary scrutiny.

At first glance, it appears as if the whole of JHA policy, including PJCCM, is now conducted within a supranational framework. However, a number of exceptional arrangements are written into the Treaties and reflect the fact that the member governments were unwilling to give up their powers quite so easily:

- the Commission continues to be denied the exclusive right of initiative on some AFSJ matters, notably PJCCM, since a quarter of the member states may also launch initiatives;
- the European Council is given the powers to set the strategic guidelines of policy (such as it has done with the five-yearly programmes, latterly the 2009 Stockholm Programme);
- an 'emergency brake' procedure has been introduced into PJCCM whereby a member state can declare a matter to be of national interest through appeal to the European Council;
- PJCCM is only fully subject to the Union method after a five-year transition period and there are some special exceptions because member states wished to limit the possible impacts on their systems of criminal justice;
- Britain, Ireland, and Denmark have secured new opt-outs from PJCCM.

Insight 24.4 The Key Changes to the AFSJ in the Lisbon Treaty

Abolition of the third pillar and transfer of police and judicial co-operation (PJCCM) into a new chapter within the TFEU's provisions on the AFSJ;

All proposals in the AFSJ to be adopted by the 'Union method', but with five-year transitional rules for PJCCM as well as various other exceptional policy-making rules;

EU Charter on Fundamental Rights becomes legally binding, but with special provisions weakening its application in the UK, Poland, and the Czech Republic;

New opt-out provisions for the UK, Ireland, and Denmark.

The Area of Freedom, Security, and Justice

In exploring the post-Lisbon AFSJ we review first the range of policies covered and then the institutions delivering them and the political struggles that they reflect.

AFSJ Policy Measures

Many of the policy activities entailed by the AFSJ can be identified from the evolution of JHA co-operation and are reflected in the work of the EU's executive agencies. Table 24.1 summarizes the policy work as well as indicating the relevant agencies.

Free movement of persons enshrines the right of all EU citizens to travel freely around the member states of the EU and to settle anywhere within the EU. This provision means that no special requirements are needed other than a valid travel document to enter the member state concerned. The same principle is extended to Norway, Iceland, and Liechtenstein (as member states of the European Economic Area; see Insight 27.2) and to Switzerland on the basis of a bilateral accord. For the Schengen zone

Table 24.1 An Overview of the AFSJ

Policy area	EU-level Agencies or Other Bodies Involved	'Pioneer Groupings'
Free movement	None directly	Schengen zone, including Schengen Information System
Immigration and asylum	Frontex, European Asylum Support Office	Prüm Convention
Judicial co-operation in civil and criminal matters	Eurojust, European Judicial Network	
Police and customs co-operation	Europol, European Police Chiefs' Task Force, European Police College (CEPOL)	Schengen provisions, Prüm Convention
Combating organized crime	Europol, Eurojust	
Combating terrorism	Europol, Eurojust, European Police Chiefs' Task Force	
Combating the drugs trade	Europol, Eurojust	
Combating human trafficking	Europol, Eurojust, Frontex	
Fundamental rights and anti-discrimination	Fundamental Rights Agency, European Institute for Gender Equality	

states (see Figure 24.1), internal border checks have been abolished. Their abolition has been accompanied by harmonized controls at the external frontiers of the Schengen zone, supported by the Schengen Information System (see later in this section).

The EU member states have committed themselves to a common *immigration and asylum* policy. Large numbers of legal and illegal migrants, as well as asylum seekers, have sought to come to the EU. Asylum is granted to a person who fears persecution for reasons of race, religion, nationality, membership of a particular social group, or

Figure 24.1 Member State Participation in the Schengen Zone 2014
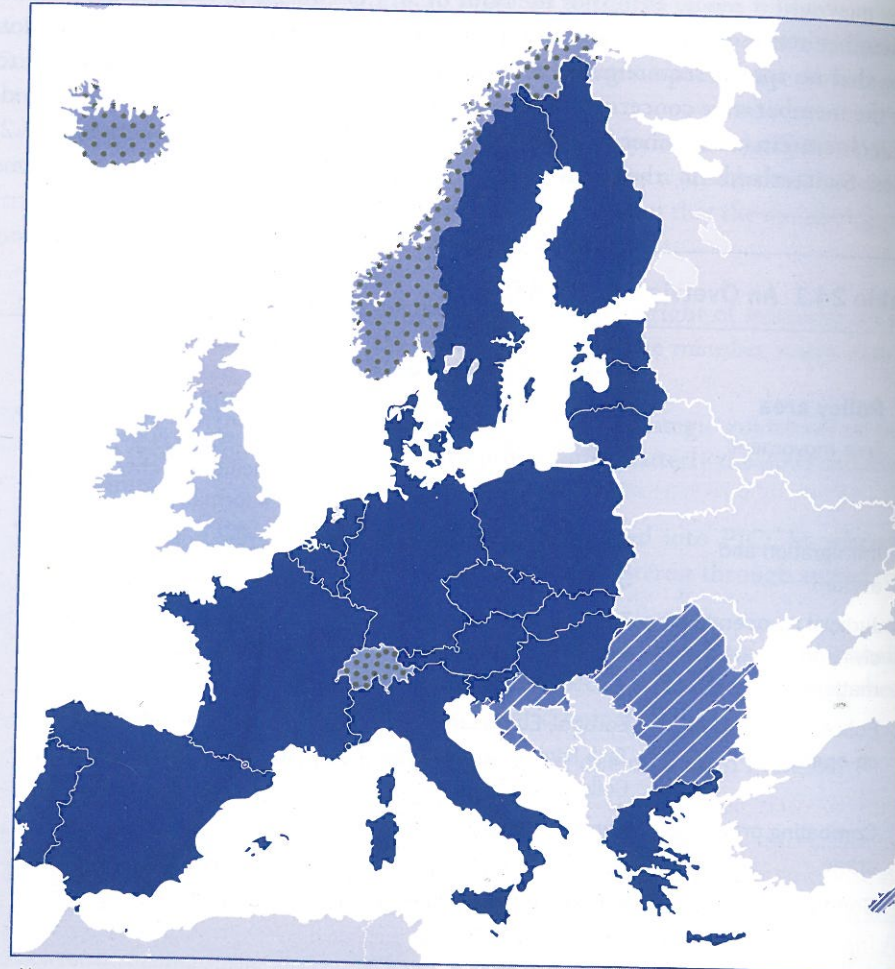
Key

■ Fully Schengen members (EU member states that have implemented the Schengen Agreement)

▦ Associated Schengen members (non-EU member states that have implemented the Schengen Agreement)

▨ Other EU member states (EU member states that have not implemented the Schengen Agreement yet)

▪ EU member states that apply only some Schengen laws and are not in the passport-free zone

political opinion and should be in conformity with the international standards set by the **Geneva Convention**. The EU aims to have a fully harmonized system in which applicants for asylum would receive equivalent treatment across member states. Work continues on creating this common system under the 2009–14 Stockholm Programme, as the 2012 deadline was missed. At the end of 2009, it was agreed to set up a European Asylum Support Office in 2010, based in Malta, with the role of facilitating member states' co-operation in implementing the EU's common asylum system.

The work on immigration entails: spelling out who may legally enter the EU, for example as an economic migrant; monitoring 'illegal' immigration and developing an action plan against it; and encouraging policies to enable integration of legitimate immigrants within member states. In May 2009, the EU adopted a so-called 'blue card' visa system to attract young, highly skilled workers to Europe in areas in which their skills are needed. The scheme drew on the US green card system, but the colour was changed to reflect the EU flag. The card gives recipients a specified set of rights. Danish, British, and Irish opt-outs apply. However, the member states control a key component: determining the numbers of economic migrants who will be allowed to enter their country.

Judicial co-operation in civil and criminal matters has not proceeded as rapidly as with asylum and immigration, although a priority of the Stockholm Programme. Member governments have taken longer to recognize the EU's role in justice matters: hence the intergovernmental processes of the third pillar until implementation of the Lisbon Treaty. Member states have agreed to 'approximate' the definition of, and the level of sanctions for, specific types of offence, in particular those with transnational aspects. Second, mutual recognition of decisions taken by judges in other member states is set to become the cornerstone of judicial co-operation in criminal matters. Finally, the EU is starting to be perceived as an international actor in judicial co-operation.

It was particularly in this part of policy that new momentum was gained following the 11 September 2001 bombings in the United States. This culminated in the best-known development, the European Arrest Warrant (EAW), which has replaced conventional extradition between member states with a judicial procedure (Baker 2009: 842). The challenge faced by the EU was that in areas in which cross-border crime takes place it is possible for criminals to exploit differences in criminal justice systems to their advantage. Areas in which the EU has identified this problem as requiring action extend beyond terrorism to include human trafficking, child pornography, financial crime (for example, money laundering), cyber crime, environmental crime, and racism and xenophobia. The transfer of judicial co-operation to the Union method under the Lisbon Treaty was designed to enable a better EU response.

Similar principles underpin action in civil law, except that it is usually in recognition of the rights of citizens and companies. For instance, greater mobility has increased the number of international marriages/partnerships and these may result in the need for access to another member state's system of justice, such as over child custody when a relationship breaks down. Similarly, the increase in cross-border commerce results in the need for access to justice beyond the 'home' member state. As with co-operation on criminal matters, policy making has taken on a new legislative

character following implementation of the Lisbon Treaty. The European Judicial Network, which has set up national contact points in each of the member states, is a means of facilitating judicial co-operation and access to justice in other member states. Eurojust is the agency enabling co-operation between prosecuting authorities in the member states.

Police and customs co-operation has become increasingly necessary as a result of European integration itself but also because of globalization and the securitization of home affairs. Police co-operation concentrates on crime prevention, as well as specific tasks on terrorism and combating cross-border hooliganism at international sport events. Operational co-operation of police forces is the task of Europol, while the European Police Chiefs' Task Force provides a top-level arena for discussion between police forces. CEPOL (the European Police College) was set up as an EU agency in 2005. Its task is to bring together senior police officers from across the EU in a network enabling cross-border co-operation in the fight against crime, and promoting public security and law and order. It does so specifically by organizing training activities and presenting research findings.

More intensive police co-operation can take place under the auspices of Schengen, including the 'hot pursuit' by police authorities of suspected criminals into the territory of a neighbouring Schengen state. Such measures are a logical consequence of removing border controls, otherwise escape across borders would obstruct criminal justice. Nevertheless, 'hot pursuit' is a clear departure from traditional notions of national sovereignty. It also necessitates a strong degree of trust between police forces, possibly including joint patrols or investigation teams in border regions, as well as a likely need for language training. Customs administrations of the member states also contribute to the fight against cross-border crime through the prevention, detection, investigation, and prosecution of illegal movement of goods, the trafficking of prohibited goods, money laundering, and so on.

Combating organized crime, terrorism, drugs, and human trafficking represent four areas of intensive co-operation in which member state police and customs authorities play a key role. In each area, a strategy and programme/action plan has been agreed. For instance, the fight against terrorism has numerous component parts, focused around prevention, protection, prosecution, and response. Detailed measures include: analysis of radicalization and disrupting terrorist-related flows of money (prevention); countering chemical and biological threats (protection); information exchange between law-enforcement agencies and retention of telecommunications data (prosecution); and improving 'consequence management' (response).

As can be seen from the above, internal security looms large in many of the EU's policy measures. However, there is more to the 'freedom' component of the AFSJ than free movement. A key contribution comes in the form of the protection of *fundamental rights*, which is closely linked with action taken to *combat discrimination*, such as racism and xenophobia. These components of AFSJ complement the more security-focused policy activities.

The EU's role in assuring fundamental rights has been far from straightforward. On the one hand, a core of fundamental rights is associated with the 1950 European Convention on Human Rights. The Convention, which all member states have signed, is attached to the Council of Europe (the quite separate European organization, based in Strasbourg; see Insight 5.2). Principles of non-discrimination were agreed in the

Amsterdam Treaty enabling the EU to 'combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation' (now in Article 19 TFEU). On the other hand, as Joseph Weiler (1999: 102) notes, 'the definition of fundamental human rights often differs from polity to polity'. Consequently, a few member states have been concerned about the development of the EU's profile on fundamental rights, while there have also been substantive issues arising from the jurisprudence of the ECJ. Under Article 6 TEU, the EU is committed to adhere to the Convention's principles; indeed, the EU has committed to accede to the Convention in its own right (see Insight 24.5). A draft accession agreement was reached in April 2013.

The most obvious example of the different member state attitudes is the UK's unwillingness to allow the Charter of Fundamental Rights of the EU to be given legal status in the Nice Treaty. This issue became contentious again during the protracted negotiations leading to ratification of the Lisbon Treaty. Consequently, while the Charter of Fundamental Rights now has the same legal status as the Treaties, its text is still not included in them. Further, the UK, Poland, and the Czech Republic have obtained assurances in Protocols to the Lisbon Treaty that make exceptions to the 'justiciability' of the Charter (in other words, the ability to invoke the Charter in domestic courts). Historically, the German Constitutional Court challenged the primacy of European law until it embodied a set of fundamental rights.

The granting of legal status to the EU Charter of Fundamental Rights, as well as the EU's eventual accession to the European Convention of Human Rights, should place its commitments on these matters beyond doubt. In March 2007, the EU's

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Insight 24.5 The EU and Fundamental Rights

(1) The Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms, and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

(2) The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

(3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Source: Article 6 TEU.

Fundamental Rights Agency was established to: collect information and data; provide advice to the European Union and its member states; and promote dialogue with civil society to raise public awareness of fundamental rights. It built on the work of the European Monitoring Centre on Racism and Xenophobia, but the remit was widened to reflect the EU's explicit concern with fundamental rights after 2000.

Further related areas of work include children's rights and data protection.

Citizenship is the final area of rights-related policy on the part of the EU. The Maastricht Treaty initiated the notion of EU citizenship, which supplements rather than replaces national citizenship of a member state. By developing fundamental rights in EU law and in political declarations, as outlined above, the objective is to flesh out what it means to be an EU citizen. The four specific citizenship rights provided for in the Maastricht Treaty are set out in Insight 24.6.

All of the above have an *enlargement-related* dimension. Accession states have to meet the EU's human rights requirements to secure entry. Equally, they need to demonstrate that they can meet EU standards on such matters as secure external frontiers, standards of justice, and policing systems. Financial assistance and training programmes have been available to accession states to help them to adapt to the *acquis communautaire* in JHA/AFSJ policy.

Finally, many of the security measures outlined above have an *external dimension* beyond enlargement (Lavenex 2010: 474–5). In this sense, the AFSJ has given a new dimension to the EU's foreign policy. Some of these external activities have already been outlined: the liaison of Europol and Eurojust with US authorities in combating terrorism, for example, and of Frontex with states from which there are significant flows of illegal immigrants. Initially developed in a somewhat ad hoc manner, the Hague Programme called for the development of a strategic approach covering all external aspects of the AFSJ. The document—*A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice*—was adopted by the Council in

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Insight 24.6 Citizenship of the EU

Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

Source: Article 20 TFEU.

December 2005 (Council of the EU 2005). Themes addressed include combating corruption, organized crime, terrorism, illegal immigration, drug production, and trafficking. In geographical terms, the immediate focus is on stability in the western Balkans and preparing candidate states to meet EU standards; freedom, security, and justice work in relation to the European Neighbourhood Policy (see Chapter 25, The European Neighbourhood Policy); co-operation with strategic partners such as the USA or Russia; and working with international organizations, such as the United Nations.

Andrew Geddes (2008: 170–85) outlined the evolution of the external dimension of immigration and asylum policy and highlighted two phases of development. Its initial concern was with enlargement (ahead of the 2004 and 2007 expansions). In a second phase, policy attention shifted to the European 'neighbourhood': an arc of states bounding the EU from Belarus on the north-eastern flank to Morocco on the southern one. In order to try to discourage illegal immigration, various measures have been taken: information campaigns in the sending states; financial aid to try to improve economic conditions in the sending states; the creation of a 'return fund' to repatriate illegal immigrants; and financial support for the integration of third-country nationals in the EU. As Geddes (2008: 184) notes, while it was straightforward to obtain the co-operation of accession states, since the incentive of membership was clear enough, the EU's leverage on other countries addressed by the external dimension of asylum and immigration policy is both reduced and very variable between states. The Arab Spring revealed the limitations of the attempts to prevent immigration from the EU's southern flank when that area was suffering political turmoil (see Insight 24.7).

AFSJ Institutions and Politics

The AFSJ is a policy area comparable to others of the EU in that it shares a common problem of balancing member state sovereignty with a competing functional logic that suggest many problems can be better tackled by collective action. Even following the Lisbon Treaty the member governments maintain strong powers because, distinctively, the Commission does not have the exclusive right of initiative. In addition, the European Council signs off on the overall strategy, such as the Stockholm Programme. Insight 24.7 gives a flavour of the continuing importance of national interests in the AFSJ policy area. Like a number of other policy areas, AFSJ has seen less formal methods of governance consistent with the Open Method of Co-ordination introduced (see Chapter 12, Implementation) alongside rule by law (Cardwell 2013).

The AFSJ is also characterized by strong traits of differentiated integration: the UK, Ireland, and—to a lesser degree—Denmark do not apply the full set of rules. In 2013, the UK government was considering withdrawing from further AFSJ measures—as provided for in a Protocol to the Lisbon Treaty—but in the process exposed disagreements between coalition partners and with authorities like the police. Romania, Bulgaria, and Croatia are not deemed to have high enough standards to be admitted to the Schengen border control system. In 2010, enhanced co-operation was used in this policy area for the first time when fourteen states agreed to legislation in judicial co-operation on matters relating to divorce and separation. This use of enhanced co-operation or pioneer groupings—see Table 24.1—is a variation within the EU of the

> **Insight 24.7 The Arab Spring's challenge to the AFSJ**
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> (1) The Arab Spring posed major challenges for the AFSJ because of an acceleration of migratory flows to the EU to flee turmoil in North Africa and the Middle East. Italy was particularly exposed to the former via the island of Lampedusa, where 14,000 Tunisians were reported to have arrived in March 2011 alone. Italy felt exposed because of weak burden-sharing measures offered by EU partners and its government proposed to grant temporary visas that would be valid throughout the Schengen area. The French government became alarmed that those visa holders might want to join a large Tunisian immigrant community in France. It introduced border controls at a major frontier post with Italy, thus challenging the principles of the Schengen travel area. Denmark also toughened border controls. Eventually, the issue was dampened down even though migratory flows accelerated again after the civil war in Libya. However, the broader issue of solidarity remains, since northern European states are not immediately affected by the migratory flows and therefore have different interests from states such as Italy and Malta that have to contend with the immediate problem of arriving migrants.
>
> (2) The European Commission subsequently proposed legislation whereby it would be the institution to decide on the implementation of emergency measures and the deployment of border guards in such circumstances. The proposal was blocked because of resistance from many member state governments. Subsidiarity concerns that such proposals intervened in member state powers led to threats by national parliaments to invoke the 'yellow card' procedure (see Chapter 12, Decision-Making Procedures). In 2012, the Danish Council presidency took an initiative on emergency measures with a view to breaking the deadlock. It chose a different legal base under which the EP only needed to be informed. The EP was hostile to this step as it challenged the democratic control measures introduced by the Lisbon Treaty. A fundamental breakdown of relations occurred between the EP and Council, affecting other AFSJ legislation as well. National sovereignty and inter-institutional politics were at stake.
>
> (3) The Arab Spring thus increased mistrust among Schengen states, fuelled by populist sentiment in some member states. It revealed the persistence of different national interests despite the progress made by AFSJ, as well as the nature of inter-institutional politics in the post-Lisbon era.

laboratory approach that the Schengen Convention initially offered outside the EU. It also found expression in the work of the 'G5/G6' (an inner group of France, Germany, Italy, Spain, the UK, and, later, Poland) that played an agenda-setting role within JHA/AFSJ policy. A further example, more along the lines of Schengen, was the Prüm Convention. Initiated by the German government, the convention was to facilitate the exchange of data (including access to other signatories' DNA databases) for crime prevention and prosecution purposes. Signed by seven EU states on 27 May 2005, it seemed designed to circumvent possible obstruction by some states and avoid the scrutiny anticipated by the EP after treaty reform. However, it included explicit provision for later adoption by the EU, which duly occurred, albeit with some controversial provisions excluded, in the 2007 German presidency. In short, differentiated integration is more embedded in AFSJ policy than any other.

A further distinctive feature is the plethora of agencies and networks that have been developed in order to operationalize the AFSJ on the basis of co-operation between member-state administrations, as discussed in the next sections.

As for the supranational institutions, the Commission divided its AFSJ responsibilities across two directorates-general following the implementation of the Lisbon Treaty: DG Justice and DG Home Affairs. The constraints on its powers were highlighted in 2010, when its efforts to shape the Stockholm Programme into an action plan were met with criticism from ministers, who refused to endorse the plan for having departed too far from their own programme. The EP has become a more important player, flexing its muscles in February 2010, when it made first use of new powers under the Lisbon Treaty to reject, on civil liberties grounds, a counter-terrorist agreement between the EU and the United States to exchange data on bank transfer payments. The EP has emerged as an important defender of privacy, including in relation to the 2013 revelations by Edward Snowden about the work of the American National Security Agency and others in data-gathering, including allegations of spying on the Commission (*European Voice*, 25 July 2013: 4). The full effects of the Lisbon Treaty changes will only become apparent in 2015, when the transitional arrangements end for PJCCM. Thereafter the ECJ's role might become significant.

Much of the operation of the AFSJ is underpinned by data systems, agencies, and networks. As illustrations, we explore the role of the Schengen Information System, Europol, Eurojust, and Frontex.

Schengen Information System

The Schengen Convention provided for a multinational database for use by immigration, border control, police, and judicial authorities in any of the Schengen member states. This database is called the Schengen Information System (SIS). It is a key policy instrument put in place to accompany removal of border and passport controls. Another policy instrument is the 'Schengen visa', which allows the holder to visit—in the absence of border controls—any of twenty-five states (see Figure 24.1). The SIS is therefore an important instrument linking together participants' databases in order to facilitate JHA co-operation. A second-generation of the system—SIS II—came into operation in 2013 and incorporated enhanced functionality, such as biometric data.

The SIS can be used to pursue AFSJ policies in a range of situations. Someone taken into custody in one member state might be found to be the subject of an extradition request or EAW, listed in the SIS. A Schengen visa might be refused because of a ban from another member state emerging from SIS. A suspicious vehicle might turn out via SIS to have been reported stolen in another member state.

A separate database exists in relation to the asylum regime under the Dublin Regulation. Known as EURODAC, this Commission-run database is designed to identify whether an asylum applicant or a foreign national found illegally present within a member state has previously claimed asylum in another member state, or whether an asylum applicant entered the Union territory unlawfully. All twenty-eight member states plus Norway, Iceland, and Switzerland—the signatories to the Dublin Regulation—participate in EURODAC.

Europol, Eurojust, and Frontex

Europol, Eurojust, and Frontex (see Table 24.2) are three key agencies in charge of particular aspects of the AFSJ (on agencies more generally, see Lavenex 2010: 467–70; see also Table 24.1). They aim to facilitate co-operation between member-state agencies in different areas of policy that are all of centrality to achieving the AFSJ. Each has

Table 24.2 Europol, Eurojust, and Frontex

Agency	Europol	Eurojust	Frontex
Responsibility	European law enforcement agency	EU's judicial co-operation unit	Securing the external borders of the EU
Date of establishment (decision; operational)	1992; 1999	1999; 2002	2004; 2005
Location	The Hague, Netherlands	The Hague, Netherlands	Warsaw, Poland
Mode of operation	Facilitates bilateral exchange of information between all member state police forces	Facilitates co-operation between investigating and prosecuting authorities in the member states; exchange of personal data and judicial information	Exchange of information and co-operation between member states' border guards, customs, and police
Policy remit	Combating international crime: motor vehicle crime; organized crime; drug trafficking; illicit immigration networks; terrorism; forgery of money (counterfeiting of the euro); trafficking in human beings; and money laundering	Largely as for Europol	Integration of member states' national border security systems to deal with threats at the EU's external frontier. Tasks include immigration, repatriation, surveillance, border checks, and risk analysis
Staffing/structure	Almost 800 staff, including 145 police liaison officers from the member states	Twenty-eight 'national members', typically senior judges or public prosecutors (one per member state)	Approximately 310 central staff, plus member states' border guards ready for deployment to a 'hot spot'

grown in size and been allocated new tasks as policy has developed in the face of new threats and as confidence has developed between domestic agencies, such as the police.

All three agencies have developed an 'external face' as part of their work, reflecting the way in which thinking about policy has evolved. Europol and Eurojust work closely with European neighbours, such as Norway and Switzerland, but also with counterparts elsewhere, such as in the United States. Frontex's co-operation with third countries tends to focus on states that are major transit points for illegal immigrants or are the ultimate sources of the migration flows. An examination of one of Frontex's work programmes gives an indication of the focal points of its operations (Frontex 2009). These are the perceived weak spots in the EU's frontiers: the EU's external land borders in south-eastern Europe and the Western Balkans and with Ukraine; the sea borders in the Atlantic and the Western Mediterranean; and air borders at major international gateways. All of these are recognized routes for illegal immigration and, in the case of land and sea routes, for people-smuggling.

One distinctive feature of Frontex is that it can mount operations by providing short-notice assistance where a security threat emerges, for example through its 'Rapid Border Intervention Teams' (known in Frontex jargon as 'RABITs'). Frontex also has aircraft, helicopters, and patrol vessels at its disposal. For example, from 2007, Frontex sea patrols have monitored areas in which large numbers of illegal immigrants were arriving by sea: notably, the Canary Islands, Malta, and Italy. RABITs are deployed when sudden influxes of illegal migrants challenge the capacity of a particular state. For instance, in 2013 some 175 border guards were deployed to the Turkish-Greek border. In 2011, Frontex was tasked with establishing a border surveillance system, known as EUROSUR.

Explaining the AFSJ

Neofunctionalist accounts of AFSJ related policy emphasize a functional spillover from the lifting of border controls as part of the single-market project (see Boswell 2010: 281–2; Geddes 2006: 455–6). However, there do seem to be some limits to this explanation. Important early developments took place in the Schengen Agreement and not the EU. The murky procedures gave little scope for interest groups to pursue 'political spillover', never mind 'cultivated spillover' from central institutions, since they were absent from Schengen arrangements until communitarization in the late-1990s. A more plausible interpretation in terms of 'institutionalizing European space' is offered by Turnbull and Sandholtz (2001), emphasizing the early (functional) spillover but linking it to external factors (the end of the Cold War) and the advocacy role of Helmut Kohl. However, this analysis only covers the period to mid-1995.

An alternative account of policy dynamics is offered by Virginie Guiraudon (2000). It draws on the public policy literature on 'venue-shopping' and applies it to immigration policy. It is argued that interior and justice ministries sought to escape control from their respective domestic justice and rights regimes. Anticipating further migratory flows arising from greater openness of borders, they sought increased control through developing new policy arenas within an international institutional setting in

which their interests would be strengthened. This explanation looks plausible both for the EU and for the 'laboratories' such as Schengen. However, it does not sit well with the way in which it was German Chancellor Kohl and French President Mitterrand who advocated lifting passport controls. They had to put pressure on their interior ministries, who dragged their feet in the early period (Bulmer 2010). Venue-shopping becomes a much more persuasive argument for subsequent developments. The venue-shopping account acknowledges the spillover effects of neofunctionalism but places national actors in a prominent role. However, it does not correspond to intergovernmentalism because the venue-shopping account is about particular ministries trying to escape domestic control, and is thus more differentiated. It aligns better with the broader EU policy pattern identified by Helen Wallace (2005: 87), and termed 'intensive transgovernmentalism'.

A more orthodox intergovernmentalist account of policy appears to have some importance, given that member governments retained the key decisional powers for a significant period (see Insight 24.7; also Lavenex 2010: 466–7). Moreover, the continued insistence by the UK on retaining border checks is consistent with an emphasis on national government gatekeeping. However, this position has become less persuasive than was originally the case due to the communitarization of immigration and asylum policy after Amsterdam and of PJCCM after Lisbon. Multi-level governance has some limited application, but only in those states where policies relating to freedom, security, and justice straddle different levels of governance: notably, in a federal system such as Germany or devolved systems such as Spain or the UK.

Finally, a persuasive interpretation has been offered by Stephan Stetter (2000). While he acknowledged that spillover effects from the single market and from migratory pressures had some explanatory value, he suggested that 'they do not explain the specific institutions and methods which have been established at the EU level to deal with this policy area' (Stetter 2000: 81). Instead, his explanation builds on regulation and **principal–agent theories**. His argument, which is applied to immigration policy, is that the early efforts at international intergovernmental co-operation were not effective. Putting the Schengen and Dublin Conventions *into effect* was protracted. Consequently, the EU's third pillar offered a potential escape from this problem but the member governments constantly had to balance the potentially more efficient nature of delegated policy against the possible loss of domestic control. For most member states, the third pillar was ineffective as a solution to migration policy problems owing to the lack of clear objectives, timetable, and the weak legal instruments. This failure therefore led to the member states communitarizing the policy subject to a five-year transition period in which the Commission was effectively 'on probation' to ensure that control of policy was not being lost. It had become clear, as Stetter (2000: 96) puts it, that 'only Community instruments and methods could provide a guarantee that [the Amsterdam Treaty's AFSJ] objectives could be achieved'. Hence key regulatory authority has been delegated to EU institutions—in line with principal–agent theory—to tackle the shortcomings of the original, intergovernmental policy framework.

Following the Lisbon Treaty, this pattern of communitarization was repeated for the remainder of the third pillar. Furthermore, the delegation of authority moved beyond the Commission to the array of agencies described above (see Table 24.2). These developments appear to strengthen Stetter's interpretation.

Critiquing the AFSJ

A number of critical voices have engaged with the evolving area of AFSJ. Such critique has often involved the assertion that the EU promotes a 'fortress Europe' that permits free movement for 'insiders'—EU citizens—while making it increasingly difficult for 'outsiders'—migrants of various categories—to enter, reside in, and work in the EU. Such concerns have only been exacerbated by a number of tragic cases where those seeking to reach EU territory have lost their lives, such as an incident in 2013 when over 350 migrants drowned near the Italian island of Lampedusa.

Such critiques are often made via the concept of 'securitization'—a much-debated term emanating from critical security studies within international relations (Waever 1996; Bigo 2000). In its simplest form, the term refers to the way in which certain issues, such as migration, become conceived primarily through the lens of security and often at the expense of a consideration of human rights and justice. In the aftermath of 11 September 2001, and in the context of growing concerns about terrorism, scholars debated whether AFSJ policies had become securitized in this way (Boswell 2010). Exponents of this claim emphasized the ways in which experts in home affairs played upon popular insecurity to extend new controls, such as over immigration (see, for instance, Huysmans 2006; van Munster 2009; Guild et al. 2008). Other critics have claimed that when it comes to anti-terrorism measures which have encroached on the rights and freedoms of EU citizens (as well as non-citizens) the EU is 'world leader rather than reluctant follower' of the US (de Goede 2008: 162).

It has been argued that the term 'fortress Europe'—and the associated concept of 'securitization'—may be somewhat misleading when applied to the EU, since large numbers of visitors are permitted to enter legally, as do many migrants, especially for reasons of family reunification or work (Boswell and Geddes 2011: 42–3; Boswell 2007). Indeed, if the EU is a fortress, it is one that selectively opens its gates to certain 'outsiders' (for instance, note the 'blue card' scheme discussed above in this chapter) and works according to a variety of rationales which go beyond classic security concerns.

While the gates are not closed to all 'outsiders', it has conversely been highlighted that not all EU citizens as 'insiders' may be able to take advantage of the freedoms of movement and residence associated with that status. With reference to the high-profile expulsions of Roma EU citizens from France in 2010, Parker (2012b) noted that such freedoms are granted conditionally by member states—often in accordance with an economic logic—and this may be in conformity with an EU law which permits such conditions.

CONCLUSION

The development of the AFSJ has been a very significant development in European integration. Starting from modest beginnings and in large part outside the EC itself, the policy area was established as an intergovernmental pillar and then communitarized over a staged process. The development is striking given that JHA policy areas—not least the issue of border control—have traditionally been seen as key powers of the nation state. It is not surprising that these

areas of policy did not reach the EU agenda until after many others. However, it is also clear that there was some linkage arising from the dismantling of barriers to trade as part of the single market.

The analysis of AFSJ policy has not generally been oriented around the integrationist theoretical debates examined in Chapter 2. Nevertheless, it is clear that these debates are relevant, since policy dynamics have tended to be either functional or political. Member governments have been extremely reluctant to delegate their sovereign powers unless there is a clear demonstration that an issue cannot be addressed without co-operation among the EU states. Despite these concerns, the delegation of tasks to the EU has been rapid, often for functional reasons.

A number of scholars researching AFSJ focus less on its evolution as an EU competence and are more concerned with emphasizing the ways in which the EU has increasingly contributed to the establishment of a 'fortress Europe', preoccupied with security concerns often to the detriment of professed EU ideals of freedom and justice. Whatever one's view on such assertions, it is unlikely that the political and normative debates over the issues falling within the AFSJ are going to diminish in the context of the economic crisis and its aftermath.

KEY POINTS

Context

- The Maastricht Treaty brought JHA into the EU, where it had its own intergovernmental 'pillar' (the third pillar).
- In the Amsterdam Treaty, this policy area became part of an ambition to create an AFSJ, and entered the first pillar.
- The policy area has been marked by the use of differentiated integration.

History

- JHA was not envisaged in the founding Treaties.
- The initial steps in co-operation were taken in diverse forums ('laboratories'), such as the Council of Europe, Trevi, and Schengen.
- The free movement of goods and people under the SEA increased the number of problems that demanded a collective policy response.
- Globalization and changes in the international system posed new security threats. Security became more widely defined and more politically salient.
- In the TEU, JHA was made a 'third pillar' of the EU. The institutional arrangements were a compromise between those who wanted closer co-operation and those who wanted to retain more national control.
- The Amsterdam Treaty committed the EU to creating an area of freedom, security, and justice. Visa, asylum, and immigration policies were transferred to the first pillar and came under QMV. Pillar 3 became PJCCM. Schengen was incorporated into the EU.
- At Nice in 2000, the heads of government solemnly declared their commitment to a Charter of Fundamental Rights.

The Lisbon Treaty

- Lisbon abolished the third pillar and incorporated PJCCM into a Title on the Area of Freedom, Security, and Justice.

- In line with broader trends in public administration, new policy tasks have been delegated to expert bodies and new technology has been deployed.
- Important institutional developments include the SIS, Europol, Eurojust, and Frontex.

The Area of Freedom, Security, and Justice

- Creating an AFSJ is now a central objective of the EU.
- The AFSJ involves: free movement of persons; common immigration and asylum policies; judicial co-operation in civil and criminal matters; police and customs co-operation; combating organized crime, terrorism, drugs, and human trafficking; the protection of fundamental rights; action to avoid unjust discrimination; and citizenship.
- Many of these activities have implications for the enlargement process and have a wider international dimension.
- Differentiated integration is a striking characteristic of the politics of the AFSJ.
- The EP and the Commission have sought to assert their new, post-Lisbon authority but with variable results.

Explaining the AFSJ

- Neofunctionalist explanations of JHA stress spillover, but its explanatory value is limited.
- Related analyses invoke the concepts of 'institutionalizing European space' and 'venue-shopping'.
- Intergovernmental explanations were plausible for early developments, but less so with the communitarization of key JHA policies.
- Regulatory analysis and principal–agent theory have also been used to explain aspects of JHA.
- JHA is very broad in scope and has been studied independently by scholars from different disciplines, leading to fragmentation.
- More critical debates have emerged around the themes of 'fortress Europe' and 'securitization'.

Critiquing the AFSJ

- The AFSJ has been critiqued on different grounds. First it has been seen as a fortress privileging insiders over migrants from outside. Against this, it is pointed out that a significant number of outsiders are still allowed in.
- A second criticism is that, since 11 September 2001, the AFSJ has become 'securitized', that is that it has come to be dominated by security concerns, emphasizing controls of various kinds at the cost of human rights and liberties of EU and other migrants.

FURTHER READING

Useful analysis of the early evolution of this policy area is offered by: **J. Monar**, 'The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs', *Journal of Common Market Studies*, 39 (2001): 747–64. More recent analysis is to be found in: **S. Lavenex**, 'Justice and Home Affairs: Communitarization with Hesitation', in **H. Wallace, M. Pollack, and A. Young (eds)**, *Policy-Making in the European Union*, 6th edn (Oxford: Oxford University Press, 2010), 458–77; and **U. Uçarer**, 'The Area of Freedom, Security and Justice', in **M. Cini and N. Pérez-Solórzano**

Borragán (eds), *European Union Politics*, 4th edn (Oxford: Oxford University Press, 2013), 281–95. On migration, see **C. Boswell and A. Geddes**, *Migration and Mobility in the European Union* (Basingstoke: Palgrave Macmillan, 2011).

For reviews of the dynamics of the policy area, see: **C. Boswell**, 'Justice and Home Affairs', in **M. Egan, N. Nugent, and W. Paterson (eds)**, *Research Agendas in EU Studies: Stalking the Elephant* (Basingstoke: Palgrave Macmillan, 2010), 278–304; and **A. Geddes**, 'The Politics of European Union Domestic Order', in **K. E. Jørgensen, M. Pollack, and B. Rosamond (eds)**, *Handbook of European Union Politics* (London: SAGE Publications, 2006), 449–62. A useful summary of annual policy developments is provided by **J. Monar** in the special Annual Review edition of the *Journal of Common Market Studies*: for example, 'Justice and Home Affairs', *Journal of Common Market Studies: Annual Review*, 51 (2013): 124–38.

Visit the Online Resource Centre that accompanies this book for links to more information on Justice and Home Affairs: http://oxfordtextbooks.co.uk/orc.bache4e/

Chapter 25
Trade and Development Aid

Chapter Overview

Up to now, this part of the book has dealt primarily with the internal policies of the European Union (EU). In this chapter and the next, the focus shifts to policies that concern the relations of the EU with the rest of the world. This chapter looks at the external trade relations of the EU in the context of the wider framework of global trade agreements, and at its related policies on development aid, particularly with the African, Caribbean, and Pacific (ACP) states. It also looks at the combination of trade and aid policies towards the near neighbours of the EU in the rest of Europe and in North Africa. From this examination of policy, it becomes clear that too sharp a distinction cannot be drawn between economic and political aspects of the external relations of the EU.

History

From the outset, the European Economic Community (EEC) aimed to become a major international economic actor. Its main pattern of bilateral and multilateral trade relations was structured through the international institutions that were set up after the Second World War to promote the emergence of the post-war trading system. It also pursued an active policy of cultivating special relations with former European colonies, which sometimes provided a tension with its commitments under the wider trading arrangements. More recently, the EU became concerned to use economic and trade instruments to help to stabilize the economies of its near neighbours in other parts of Europe and in North Africa.

The International Context for EU Policy

When the EEC came into existence, international economic relations were governed by the agreements reached at negotiations in Bretton Woods, New Hampshire, in 1944. These agreements set up several institutions designed to help an international economic system to emerge. At the heart of the structure was a monetary system nominally based on gold, but in practice with the US dollar as the anchor. To assist the development of states' economies, the International Bank for Reconstruction and Development (IBRD), or World Bank, was created. To help states that got into temporary difficulties with their balance of payments, the International Monetary Fund