

21

The Area of Freedom, Security, and Justice

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Reader's Guide

This chapter looks at one of the most recent European policies, Justice and Home Affairs (JHA), and its subsequent transformation into the Area of Freedom, Security, and Justice (AFSJ). The AFSJ comprises the policy areas immigration and asylum, and police and judicial cooperation, some elements of which were found prior to the Lisbon Treaty in the EU's third pillar. This chapter focuses first on the early years of cooperation in this policy area, providing an introduction to the Schengen Agreement. It then reviews the procedural steps taken first by the Maastricht Treaty (1993), then at Amsterdam (1999), and subsequent institutional developments culminating in the Lisbon Treaty. The latter half of the chapter concentrates on policy output, again looking at steps taken with Maastricht, Amsterdam, and Lisbon, but also in the landmark Tampere European Council meeting, the Hague Programme, and most recently the Stockholm Programme. The chapter argues that, although some progress has already been made towards Europeanizing AFSJ policy, this field continues to be laced with intergovernmentalism and numerous challenges remain to be resolved, especially in light of broader challenges facing the Union.

21.1 Introduction

Cooperation in the Area of Freedom, Security, and Justice (AFSJ) has undergone a remarkable ascent from humble beginnings to a vibrant European Union (EU) policy. One of the newest additions to the EU mandate, AFSJ tasks the EU in the fields of immigration and asylum policy, and police and judicial cooperation. Because of the sensitive nature of the issues involved, cooperation has been slow and difficult. However, it has resulted in a body of policies that apply across the EU's internal and external borders, and which have locked previously inward-looking national authorities into a multilateral process. This has involved significant political compromise, which led to the introduction of a complicated mix of **Communitarized** and intergovernmental institutional procedures peculiar to this field. The EU is now developing a complex immigration and asylum **regime**, albeit one severely challenged recently, and is also making progress on police and judicial cooperation. Particularly after the conclusion of the **Amsterdam Treaty**, the EU's capacity to reach collectively binding decisions in this field has improved considerably, creating momentum towards further cooperation and increasing concerns about the creation of a '**Fortress Europe**' into which access is increasingly restricted. However, many challenges and tensions remain to be resolved.

21.2 Preludes to cooperation

If, in the late 1960s, government ministers responsible for home affairs and justice were told that they would soon need to consult with fellow European ministers while formulating policies on immigration, asylum, judicial, and police matters, they would no doubt have found this a very unlikely and undesirable prospect. Yet, during the 1980s and 1990s, issues falling within their mandates were increasingly of collective EU concern, inviting efforts to deal with them at the European, rather than exclusively at the national, level. Beginning in the mid-1970s and accelerating in the 1980s, these clusters were increasingly incorporated into the collective political agenda, leading to the creation of new, overlapping forums (see Box 21.1).

There were two broad sets of catalysts that drove this development. The first was the consequence

of increased cross-border movements into and across Europe. After the Second World War, Western Europe became an area of immigration. Cross-border movements increased, straining border patrols and causing delays at points of entry. With this came growing concerns about transnational crime because of weak border controls and a lack of effective communication among European national law enforcement agencies. The second catalyst was the revitalization of the European integration agenda after the **Single European Act (SEA)** in 1986 (see Chapter 20). The removal of internal EU border controls was written into the 1957 **Treaty of Rome**, even though this had not been fully realized by the early 1980s. With this goal back on the agenda, attention turned to the need to create external Community borders, and to develop coherent and common rules on access. Early efforts targeted three groups: the citizens of the European Community, and then Union, whose freedom of movement within the EC/EU was to be secured; long-term EU residents of third countries—that is, non-EU citizens who had relocated to the EU and who held residence and work permits; and **third-country nationals (TCNs)**, including labour migrants and asylum seekers seeking to enter the collective territory of the EC/EU. Early efforts to cooperate were launched not by the EU, but by the **Council of Europe (CoE)**, the membership of which comprised both East and West European countries. Judicial matters were raised often at CoE meetings. While the CoE's work was significant, the drawbacks of its processes, including slow and 'lowest common denominator' policy output, were also clear.

Given these shortcomings of the CoE, member states set up the '**Trevi Group**' in 1975 as an informal assembly to deal with cross-border terrorism through **closer cooperation** among EC law enforcement authorities. Trevi was a loose network rather than an institution, and the meetings concluded in non-binding **consultations** on organized international crime, including drug and arms trafficking. Subsequently, several other groups were established, including the Judicial Cooperation Group, the Customs Mutual Assistance Group, and the Ad Hoc Groups on Immigration and Organized Crime. These groups spanned the four JHA policy clusters that were gradually becoming Europeanized: immigration policy; asylum policy; police cooperation; and judicial cooperation.



BOX 21.1 BACKGROUND: CATALYSTS FOR EARLY COOPERATION IN JUSTICE AND HOME AFFAIRS (JHA) MATTERS

Linked to immigration

- Increase in cross-border movements between Western European countries
- Increase in labour and family unification migration into Western European countries
- Increase in applications for asylum
- Concerns about cross-border organized crime

Linked to the European integration project

- Undesirable impacts of delays at borders on economic activities
- Desire to complete the creation of the Single Market by gradually removing controls at the Union's internal borders
- Recognition of the necessity to develop common measures to apply to the external borders before doing away with controls at the internal borders

KEY POINTS

- Cooperation in Justice and Home Affairs was not foreseen in the Treaty of Rome.
- The Council of Europe (a non-EC institution) was the main forum for the discussion of JHA issues, but it worked slowly and its output was meagre.
- The Trevi Group was created in 1975 as a loose network within which terrorism might be discussed at the European level.
- The Trevi Group led to the setting up of similar groups in related areas.

information (such as criminal records and asylum applications), and which was accessible by national law enforcement authorities. Schengen's primary objective was to develop policies for the Community's external borders that would eventually remove the EC's internal borders. This was an ambitious goal of which the UK, Ireland, and Denmark remained sceptical. Despite Schengen involving only some member states, it became a model for the EC (and later the Union) as a whole.

Within the Schengen framework, significant progress was made in each of the four emergent areas of cooperation. With respect to asylum, Schengen instituted a new system for assigning responsibility to review asylum claims to one state to stop multiple asylum applications and reduce the administrative costs of processing duplicate asylum claims. It also provided the groundwork for an EU-wide visa policy through a common list of countries the citizens of which would need an entry visa, also introducing uniform Schengen visas. There was more modest output in judicial cooperation, with the easing of extradition procedures between member states. Finally, Schengen involved cooperation on law enforcement. However, since most of this work fell outside the EC decision-making structure, it was conducted away from the scrutiny of the general public and their elected representatives (see Box 21.2).

21.3 The Schengen experiment

Perhaps the most ambitious project of these early years was Schengen. In 1985, a number of EC member states decided to do away with border controls, formalized in the 1985 Schengen Agreement and later the 1990 Schengen Implementation Convention. Belgium, the Netherlands, and Luxembourg (the 'Benelux' countries), along with Germany, France, and Italy, created a new system that would connect their police forces and customs authorities. They also created the **Schengen Information System (SIS)**, an innovative, shared database that stored important

BOX 21.2 BACKGROUND: WHAT IS SCHENGEN?

Named after the small Luxembourg border town where a subset of the member states of the EC resolved to lift border controls, the Schengen system is a path-breaking initiative to provide for ease of travel between member states. In 1985, France, Germany, Italy, and the Benelux countries signed the first Schengen Agreement and were later joined by nine other EU members, bringing the total number of participating states to 15. The Schengen accords sought to remove controls on persons, including TCNs, at their internal borders while allowing member states to reintroduce them only under limited circumstances. Member states agreed to develop common entry policies for their collective territory, to issue common entry visas, to designate a responsible state for reviewing asylum claims, and to combat transnational crime jointly. They also created a novel database—the Schengen Information System (SIS)—to exchange information between the member states on certain categories of individual and property. Because the

original SIS was designed to interlink at most 18 countries, a new version, SIS II, was launched, made necessary by the enlarged EU. In 2021 the 26 Schengen countries are: Austria; Belgium; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; the Netherlands; Norway; Poland; Portugal; Slovakia; Slovenia; Spain; Sweden; and Switzerland. Four of these countries (Iceland, Liechtenstein, Norway, and Switzerland) are not members of the EU.

Ireland is not part of the Schengen system, choosing to opt in on an issue-by-issue basis. The UK, which held an opt-in prior to Brexit, is now fully outside the framework, their citizens becoming TCNs. Starting in 2022, UK citizens will need to register with the European Travel Information and Authorization System to obtain a visa waiver for EU/Schengen territory.

KEY POINTS

- The 1985 Schengen Agreement was a commitment by a subset of EC member states to remove controls at their internal borders.
- Steps were taken by the Schengen members to agree on common rules on their external borders, for example, on visa policy.
- For those countries involved, Schengen allowed national civil servants in these fields to become accustomed to European-level cooperation.
- Significant progress was made in each of the four emergent areas of cooperation within Schengen.

21.4 Maastricht and the ‘third pillar’

Efforts intensified in the early 1990s to shift decision-making towards the European institutions. With the implementation of the Treaty on European Union (TEU) in 1993, JHA was incorporated into the European Union, forming its third pillar. The TEU identified the following areas of ‘common interest’: asylum policy rules applicable to the crossing of the Union’s external borders; immigration policy and the handling of TCNs; combating drug addiction and drug trafficking; tackling international fraud; judicial cooperation in civil and criminal matters; customs cooperation; police cooperation to combat and prevent terrorism;

and police cooperation in tackling international organized crime. The Treaty also created a new institutional home for the groups that had been set up in earlier decades and created a decision-making framework. However, this new JHA pillar was the product of an awkward inter-state compromise. In the run-up to Maastricht, while most member states supported bringing JHA matters into the Union, they remained divided over how this should be done. Some argued that JHA should be handled within the first pillar, as a **supranational** policy; others preferred to keep this sensitive field as a largely intergovernmental dialogue.

The TEU reflected the institutional consequences of this political compromise. With the third pillar, the Treaty established an intergovernmental negotiating sphere that marginalized the Community institutions, particularly the European Commission, within the JHA decision-making process, thus diverging significantly from standard decision-making in the EC. The key decision-taking body became the JHA Council. The European Commission’s usual function as the initiator of European legislation (see Chapter 10) was diminished by its shared right of initiative in JHA. The role of the European Parliament (EP) did not extend beyond consultation, a situation that led to accusations that JHA exemplified the Union’s **democratic deficit** (Geddes, 2008; Uçarer, 2014; Bache et al., 2014; see also Chapter 9). The Court of Justice of the EU (CJEU), the body that might have enhanced the **accountability** and judicial oversight of policy,

was excluded from jurisdiction in JHA matters (see Chapter 13).

Although bringing JHA into the EU was an important step, critics of the third pillar abounded. Two sets of interrelated criticisms were advanced. Some lamented the lack of policy progress in the post-Maastricht period. The problem was that the post-Maastricht institutional arrangements were ill equipped to handle the projected, or indeed the existing, workload falling under JHA. Decision-making was cumbersome, with often non-binding policy instruments necessitating drawn-out (and potentially inconclusive) negotiations. All decisions in the third pillar had to be reached unanimously, leading to deadlock. When **unanimity** was achieved, the result was often a lowest-common-denominator compromise that pleased few. Negotiations were secretive and the EP remained marginalized, particularly problematic at a time when the Union was trying hard to improve its democratic image.

KEY POINTS

- The Maastricht Treaty, which came into effect in 1993, created a 'third pillar' for Justice and Home Affairs.
- The institutional framework put in place for JHA was intergovernmental and cumbersome.
- Key institutions such as the EP and the Court were marginalized in JHA decision-making.
- The JHA framework was subject to much criticism in the mid-1990s.

21.5 Absorbing the third pillar: from Amsterdam to Lisbon

In the run-up to the 1999 Amsterdam Treaty, proposals for reforming JHA included: enhanced roles for the Commission, EP, and Court of Justice; the elimination of the unanimity rule; and the incorporation of the Schengen system into the European Union. As with Maastricht, there was a fierce political debate over these issues.

The challenge was to make the Union 'more relevant to its citizens and more responsive to their concerns', by creating an 'area of freedom, security and justice' (AFSJ) (Council of the European Union, 1996). Within such an area, barriers to the free movement of people across borders would be minimized without

jeopardizing the safety, security, and human rights of EU citizens. The Amsterdam compromise led to three important changes. First, parts of the Maastricht third pillar were transferred to the first pillar, or 'Communitarized'. Second, the institutional framework for issues that remained within the third pillar was streamlined. And third, the Schengen framework was incorporated into the Union's *acquis communautaire*.

21.5.1 New first-pillar issues under Amsterdam

The Communitarization of parts of the third pillar was the most significant JHA development at Amsterdam. These provisions called for the EU Council to adopt policies to ensure the free movement of persons within the Union, while concurrently implementing security measures with respect to immigration, asylum, and external border controls. The Treaty also specified new decision-making rules. A transition period of five years was foreseen, during which unanimity was required in the JHA Council following consultations with the EP. After five years, however, the Commission would gain an exclusive right of initiative, with member states losing their right to launch policy instruments. While the EP's access to the decision-making procedure would still be limited to consultation in most cases, an automatic shift to the **co-decision** procedure (now the **ordinary legislative procedure**, or OLP), which would give the EP much more of a say, was foreseen for uniform visa rules and the procedures for issuing visas. The Court would receive a mandate for the first time, allowing it to undertake **preliminary rulings** in policy areas falling within the first pillar in response to requests by national courts (see Chapter 13). Despite these improvements, however, the new Amsterdam architecture turned out to still be a formidable maze created through masterful 'legal engineering' for political ends and opaque even for seasoned experts.

21.5.2 The left-over third pillar: cooperation in criminal matters

The Amsterdam reforms left the following criminal matters in the third pillar: combating crime, terrorism, trafficking in persons and offences against children, illicit drugs and arms trafficking, corruption, and fraud. Closer cooperation between police forces, customs, and judicial authorities, and with Europol,

the European Police Office (see Section 21.6.1, 'Post-Maastricht developments in policy') was envisaged through an approximation of the criminal justice systems of the member states as necessary.

While Amsterdam essentially retained the intergovernmental framework created at Maastricht, the Commission obtained a shared right of initiative for the first time—an improvement over its pre-Amsterdam position. The EP gained the right to be consulted, but that was all. The Treaty constrained the Court in a similar fashion in that it recognized its jurisdiction to issue **preliminary rulings** (see Chapter 13) on the instruments adopted under Title VI, but importantly made this dependent on the **assent** of the member states. While the Commission, Parliament, and Court were to continue to struggle to play an active role in the third pillar, the Council retained its dominant decision-making function and unanimity remained the decision rule used in third-pillar legislation.

21.5.3 Absorbing Schengen

After much debate, Schengen was incorporated into the EU by means of a protocol appended to the Amsterdam Treaty. The Protocol provided for the closer cooperation of the Schengen 13 (that is, the EU15 minus Ireland and the UK prior to Brexit) within the EU framework. With this development, cooperation on JHA matters became even more complicated, involving various overlapping groupings. These include EU members fully in the Schengen area, EU members with **opt outs** (Denmark) and **opt ins** (Ireland and pre-Brexit UK), EU members who plan to join Schengen (Bulgaria, Croatia, Cyprus, and Romania), non-EU members who are officially part of Schengen (Iceland, Liechtenstein, Norway, and Switzerland), and non-EU microstates that are de facto part of Schengen (Monaco, San Marino, and the Holy See) because they maintain open borders with their Schengen neighbors (See Box 21.2). One could argue that the incorporation of Schengen into the *acquis communautaire* did not result in the desired simplification, but rather maintained, if not amplified, the convoluted system of the early 1990s. Not surprisingly, some now regard this particular aspect of the AFSJ as the ultimate example of a **multi-speed**, or 'à la carte', Europe.

The Treaty of Nice made few substantial changes to these institutional developments, but extended the shared right of initiative for the Commission in the otherwise intergovernmental (residual) third pillar.

21.5.4 'Normalizing' AFSJ: the Constitutional Treaty and the Lisbon Treaty

The **Convention on the Future of Europe** and the 2003–04 intergovernmental conference (IGC), culminating in the October 2004 signing of the **Constitutional Treaty (CT)**, marked the next, if incomplete, stage in JHA reform. The CT provided for the 'normalization' of JHA by abolishing the pillar structure, greater use of **qualified majority voting (QMV)** except for judicial and police cooperation in criminal matters (JPCCM). It retained the shared right of initiative for the Commission and the member states in judicial cooperation in criminal matters, but foresaw proposals coming from coalitions composed of at least 25 per cent of the membership of the Union. These were all efforts to streamline decision-making while preserving a diminished capacity for member states to block decisions. The CT further provided for a role for national parliaments to monitor the implementation of JHA policies and for a **judicial review** of compliance by the ECJ. Finally, the Constitution retained the UK and Irish opt-ins, and the Danish opt-out. However, the CT was rejected in referendums in France and the Netherlands, and the CT was abandoned.

The AFSJ provisions in the CT were later given a new life in the Lisbon Treaty, signed in December 2007. The Lisbon Treaty contains all of the major innovations pertaining to JHA, now called AFSJ, that were present in the CT, and underscores its salience by placing it ahead of **economic and monetary union (EMU)** and the Common Foreign and Security Policy (CFSP) in the Union's fundamental objectives. The Lisbon Treaty also incorporates the 2005 Prüm Convention, a law enforcement treaty that allows signatories to share data and cooperate to combat terrorism into the *acquis communautaire*. It foresees jurisdiction for the CJEU to enforce all AFSJ decisions apart from provisions adopted under the post-Amsterdam third pillar. Since 1 December 2014, the normal powers of the Commission and the CJEU now extend to all areas of AFSJ. The EP will operate with OLP (formerly co-decision) authority in almost all cases. However, the Lisbon Treaty's transformative provisions were also brought about by compromises. Opt-outs and opt-ins remain for Denmark, the UK, and Ireland (see Table 21.1), now complicated further by Brexit, and further signalling a multi-speed Europe (see Box 21.5).

Table 21.1 JHA/AFSJ cooperation: from Trevi to Lisbon

	Pre-Maastricht JHA	Post-Maastricht third pillar	Post-Amsterdam first pillar (Communitarized areas of former third pillar) Immigration; asylum; Police and Judicial Cooperation in Civil Matters		Post-Amsterdam third pillar Police and judicial cooperation in criminal matters Title VI TEU, Articles 29–42	Lisbon Treaty Title IV TEC, Articles 61–69 Consolidated pillars
		Title VI TEU, Article K	Title IV TEC, Articles 61–69			
European Parliament	No role	Limited role, consultation	1999–2004 Co-decision	Post-2004 Consultation	Consultation	Ordinary legislative procedure
European Court of Justice	No jurisdiction	No jurisdiction	Referral for an obligatory first ruling for national last- instance courts		Preliminary rulings for framework decisions and decisions, conventions established under Title VI and measures implementing them	Jurisdiction to enforce all AFSJ decisions after 1 December 2014
Council	No direct role	Dominant actor	Dominant but Commission and EP ascendant	Shared power position in decision-making	Dominant actor	Shared power position 'Enhanced cooperation' possible
Commission	Consultative Occasional observer at intergovernmental meetings	Shared right of initiative with member states except judicial and police cooperation (no right of initiative)	Shared right of initiative. (member states asked the Commission to assume an exclusive right for asylum issues)	Exclusive right of initiative	Shared right of initiative (previously impossible)	Exclusive right of initiative
Decision- making mechanisms	Intergovernmental negotiations Non-binding decisions in the form of resolutions Binding decisions in the form of treaties	Unanimity rule on all issues	Council acts unanimously on proposals from Commission and member states for the first five years Opt-in (UK*, Ireland), opt- out (Denmark)	Council acts unanimously on proposals from the Commission Move to QMV (except legal migration) Opt-in (UK*, Ireland), opt-out (Denmark)	Council acts unanimously on proposals from Commission and member states	QMV for most decisions Opt-out (Denmark on judicial cooperation) Opt-ins (UK* and Ireland)

*Brexit terminated UK opt-ins.

Nonetheless, the Lisbon Treaty represents the most significant reform of AFSJ to rectify vexing institutional problems that were created by Maastricht.

KEY POINTS

- The Amsterdam Treaty sought to address the shortcomings of the third pillar by bringing immigration and asylum, as well as judicial and police cooperation in civil matters, into the first pillar. The third pillar, cooperation in criminal matters (police and judicial cooperation), remained intergovernmental.
- Schengen was incorporated into the Treaty, but this did not result in simplification given the overlapping memberships involved in this agreement.
- The Nice Treaty added a few changes to the Amsterdam set-up and extended a right of shared initiative to the Commission in the third pillar.
- The Lisbon Treaty entailed the most significant reform of JHA to date. It made important strides in normalizing this policy domain in the aftermath of the failed Constitutional Treaty.

21.6 Policy output: baby steps to bold agendas

There have been several spurts of policy since the beginnings of cooperation on Justice and Home Affairs (JHA), building on the early pre-Maastricht efforts, but gathering momentum after Maastricht and Amsterdam. More recently, in addition to making progress on the four main dossiers (immigration, asylum, police cooperation, and judicial cooperation), the European Union has acknowledged the importance of the external dimension of JHA and has embarked on attempts to export its emergent policies beyond the Union.

21.6.1 Post-Maastricht developments in policy

After Maastricht, member states first focused on rules to apply to third-country nationals (TCNs) entering the Union territory. The Council formulated common rules in this area for employment and education, and recommended common rules for the expulsion of TCNs. It also recommended a common format for 'bilateral readmission agreements' (which would allow

for the deportation of TCNs) between member states and third countries. Agreement was also reached on the format of a uniform visa, as well as on a list of countries the nationals of which required a visa to enter EU territory. These relatively unambitious agreements sought to develop comparable procedural steps for the entry, sojourn, and expulsion of TCNs.

The most notable development in asylum was the conclusion of the 1990 Dublin Convention, which designated one member state as responsible for the handling of an asylum claim, resting on the concepts of safe countries of origin and transit into the EU, rejecting applications lodged by the nationals of countries deemed safe or by those who had passed through safe countries en route to EU territory. Refugee rights activists frowned upon these policies as dangerously restrictive and warned that such rules could potentially weaken refugee protection.

Work also began on the European Dactyloscopy (EURODAC)—that is, fingerprinting—system, which would allow member states to keep track of asylum seekers, as well as on the negotiation of a common framework for the reception of individuals seeking temporary protection status in Union territory. The Maastricht Treaty launched the ambitious agenda to create a European Police Office (Europol, now called the EU Agency for Law Enforcement Cooperation) to enhance police cooperation and information exchange in combating terrorism and the trafficking of drugs and human beings. Based in The Hague, Europol became operational in October 1998. Ministers of the member states also signed an agreement to create a Europol Drug Unit to assist in criminal investigations.

21.6.2 Amsterdam and beyond

Following Amsterdam, progress accelerated, aided by a European Council dedicated exclusively to JHA. The goal of this summit, which was convened in Tampere (Finland) in October 1999, was to evaluate the impact of Amsterdam and to discuss the future direction of cooperation. There was a reiterated commitment to the freedom of movement, development of common rules for the fair treatment of TCNs, including guidelines for dealing with racism and xenophobia, the convergence of judicial systems, and the fostering of transparency and democratic control. Among the more far-reaching goals were better controls on, and management of, migration and the deterrence of trafficking in human beings.

On matters of immigration and asylum, Tampere advocated a 'comprehensive approach', closely linked to the combating of poverty, and the removal of the political and economic conditions that compel individuals to leave their homes. It was argued that JHA policies should be linked closely to tools of foreign policy, including development cooperation and economic relations. This called for intensified cooperation between countries of origin and transit to address the causes of flight, empowering neighbouring countries to offer adequate protection to those in flight and speeding up the removal of undocumented immigrants from Union territory.

EU member states also committed to creating a Common European Asylum System (CEAS), including standards for reviewing claims and caring for asylum applicants, and comparable rules for refugee recognition. The Commission was designated as the coordinator of policy proposals dealing with asylum and soon introduced numerous proposals, including on reception conditions for refugees, and a common set of minimum standards for the review of asylum claims, as well as common family reunification schemes for refugees. The Union also approved the creation of the European Refugee Fund, designed to aid EU recipient states during times of significant refugee arrivals, such as those experienced during the fallout from Bosnia and Kosovo. By this point, the Dublin Convention had taken effect, and the EURODAC system was now functioning. The creation of the CEAS was in progress.

In matters of judicial and police cooperation, still third pillar issues, a European Judicial Area (EJA) was foreseen in which the **mutual recognition** of judicial decisions and cross-border information exchange for prosecutions, as well as minimum standards for civil procedural law, would be ensured. Furthermore, the EU's Judicial Cooperation Unit (Eurojust), composed of national prosecutors, magistrates, and police officers, was created. Eurojust would aid national prosecuting authorities in their criminal investigations of organized crime. A European Police College (CEPOL), which would also admit officers from the **candidate countries**, and a European Police Chiefs Task Force (PCTF) were also planned. Priorities were established for fighting money laundering, corruption, euro counterfeiting, drug trafficking, trafficking in human beings, the exploitation of women, the sexual exploitation of children, and high-tech and environmental crime, designating Europol as the lead agency in these efforts. Importantly, Tampere also

established **benchmarks** and set deadlines, which enlivened the policy process. The Commission tabled new and revised initiatives relating to asylum procedures: on reception conditions for asylum seekers; on the definition and status of refugees; and on a first-pillar instrument to replace the Dublin Convention.

The next phase of cooperation involved creating an integrated border management system and visa policy, complete with a Visa Information System (VIS) database to store the biometric data of visa applicants, a common policy on the management of migration flows to meet economic and demographic needs, and the creation of the EJA. The Hague Programme that was adopted in November 2004 called for the implementation of the CEAS and the gradual expansion of the European Refugee Fund. The Council Secretariat's Situation Centre (SitCen), which would provide strategic analyses of terrorist threats, was endorsed and **Frontex**, responsible for securing the external borders of the EU, was created. The Hague Programme invited greater coordination on the integration of existing migrants, and, for the external dimension, stressed partnership with countries of origin and/or transit, and the conclusion of further readmission agreements as necessary. The Hague Programme arguably gave policy-making a push, resulting in the adoption of hundreds of texts in 2007 alone.

The subsequent Stockholm Programme guided AFSJ cooperation for 2010–14, echoing the political priorities of its predecessors: promoting **European citizenship** and fundamental rights; an internal security strategy to protect against organized crime and terrorism; integrated border management; a comprehensive Union migration policy; completing the CEAS; and integrating these priorities into the external policies of the EU. It foresees an expansion of Europol, as well as several other measures in the police cooperation realm, and further empowers Frontex.

As the 1990s progressed, the planned **enlargements** projected the collective territory outwards, making it necessary to discuss JHA/AFSJ matters with the Union's *future* borders in mind. Member states began to involve certain third countries in some of their initiatives, attempting to solidify EU border controls by recruiting other countries to tighten their own controls (Lavenex and Uçarer, 2002). This involved entering into **collective agreements** with countries of origin and transit. These attempts to recruit neighbouring countries to adopt close variations of the EU's emergent border management regime were particularly

pronounced in Central and Eastern Europe (CEE), the **Maghreb**, and the Mediterranean basin, because of the proximity of these areas to the EU. North African, Mediterranean, and African, Caribbean, and Pacific (ACP) countries were also steered towards adopting policies to ease migratory pressures into the Union. In addition to the readmission agreements negotiated by its member states, by 2015, the EU itself implemented 17 readmission agreements with third countries ranging from Albania, Cape Verde, Russia, to Turkey and Ukraine. Frontex also played a crucial role by engaging countries that are on the EU's land borders in the southeast and the Western Balkans, and on its maritime borders in the Mediterranean. Such deployments, with operational names such as 'Hermes', 'Triton', and 'Poseidon', frequently occur in the Mediterranean, particularly near Malta, Italy,

and Greece. Securing and maintaining these processes have been difficult, frequently intertwining the domestic politics of the affected countries with those of the EU (see Box 21.3).

KEY POINTS

- Activity in the field of Justice and Home Affairs (JHA) gathered momentum after Maastricht and Amsterdam.
- Post-Maastricht, the emphasis was on third country nationals (TCNs) entering the EU.
- The Tampere summit in late 1999 renewed the EU commitment to JHA and included a commitment to set up a Common European Asylum System.
- In the 2000s the EU placed greater emphasis than in the past on the external dimension of JHA.

BOX 21.3 CASE STUDY: STRAINS ON SCHENGEN AND THE FREEDOM OF MOVEMENT: POPULISM, THE REFUGEE 'CRISIS,' AND THE PANDEMIC

Schengen is arguably the most important multilateral mechanism that jump-started the AFSJ. However, it came under strain as a result of the Arab Spring. In May 2011, Schengen's provisions were temporarily suspended between Italy and France, and border checks were reinstated when Italy issued travel documents to arrivals from North Africa. Despite the principle of mutual recognition, France refused to recognize these documents as valid, reinstated border checks, and started sending individuals with these documents back to Italy. Unrelatedly, Denmark, citing a perceived increase in cross-border crime, also briefly reinstated controls at its Schengen borders as a concession to the anti-immigration **Danish People's Party**, on the cooperation of which the government relied in the legislative process. Meanwhile, while the initial stand-off de-escalated between France and Italy, President Sarkozy announced in March 2012, from the campaign trail (a month before critical national elections in France), that France might pull out of Schengen unless the EU stemmed undocumented migration. As with Denmark, this was in an effort to curry favour with nationalist, anti-immigration, and far-right electorate and political parties. Developments in the UK were likewise an example of populist backlash, with Brexit a prime example of tensions in EU and migration governance. In addition to populism, a second challenge emerged during the summer of 2015, just as Schengen was marking its 30th anniversary, hundreds of thousands of asylum seekers, mainly from Syria, entered the EU. Many EU states temporarily reintroduced border controls either completely or partially (see Chapter 27).

Finally, the COVID-19 pandemic presented a third wave of challenges to Schengen in less than a decade. Border closures,

quarantines, lock-downs, and a pivot to national efforts during the pandemic put significant strains on the Schengen system and the freedom of movement in the EU. In March 2020, 17 member states unilaterally and temporarily closed their national borders to suppress transmission of COVID-19, effectively suspending Schengen in much of its territory. The 2020 suspensions were unprecedented and caused massive disruptions at the affected borders, uncertainty for individual travellers, and negative impacts on the right to freedom of movement. Member states also responded in a divergent manner to the pandemic. The European Commission and the European Parliament spearheaded efforts to work together to 'return to normal', even when individual member states were going it alone at a time that clearly required cooperation. Problems associated with the Europe-wide rollout of a vaccination programme, and the resulting prospects of delays in opening up in individual countries frustrated efforts and underscored deficits in governance. To hasten the re-opening of the EU, the European Commission launched several efforts to collect and disseminate pandemic data. As summer 2021 approached, EU leaders supported the introduction of a 'Digital Green Certificate' (essentially a COVID vaccine passport) that would enable their holders to travel across all 27 member states (and potentially also to Schengen members Norway, Iceland, and Switzerland), restoring the opportunity to travel to vaccinated people. As of November 2021, 6 Schengen members are maintaining border controls until Spring 2022. These waves of difficulties further highlight the strains on the collective management of the Schengen area (see also Chapter 28).

21.7 EU migration and asylum policy before and after the migration crisis

The Common European Asylum System (CEAS) was the product of the aforementioned 1999 Tampere summit. It is the EU's response to its international obligations to provide humanitarian protection to refugees and a functioning asylum system across the EU (see Section 21.6.2, 'Amsterdam and beyond'; see also Chapter 26). CEAS seeks to address three challenges. First, it addresses the practice which leads asylum seekers whose application for asylum is denied in one member state to apply for asylum in another EU country. This is often termed 'forum shopping'. Second, it addresses the problem of differential asylum outcomes in different member states, leading asylum seekers to gravitate towards those countries where their application is more likely to be approved. Third, it addresses the variety of social benefits for asylum seekers that exist across EU member states, which also draws refugees to gravitate towards one particular jurisdiction.

Tampere foresaw CEAS implementation in two phases: in the first phase, the adoption of common minimum standards in the short term should lead to a common procedure and a uniform status for those granted asylum, which would be valid throughout the Union in the longer term. Thus this 'first phase' of the CEAS, which lasted from 1999 to 2004, established the criteria and mechanisms for determining the member state responsible for examining asylum applications. This replaced the earlier regime

governed by the 1990 Dublin Convention, and which included the establishment of the EURODAC database for storing and comparing fingerprint data; the definition of common minimum standards to which member states had to adhere regarding the reception of asylum seekers; rules on international protection and the nature of the protection granted; and procedures for granting and withdrawing refugee status (see Box 21.4).

In the 2004 Hague Programme, second-phase instruments and measures were foreseen by the end of 2010, highlighting the EU's ambition to go beyond minimum standards and develop a single asylum procedure with common guarantees and a uniform status for those granted protection. In the 2008 European Pact on Immigration and Asylum, this deadline was postponed to 2012. The Lisbon Treaty, which entered into force in December 2009, changed the situation by transforming the measures on asylum from establishing minimum standards to creating a common system comprising a uniform status and uniform procedures. Since Lisbon, Article 80 TFEU has also introduced the principle of solidarity and has provided for the fair sharing of responsibility among member states. EU asylum actions should, where relevant, contain appropriate measures to give effect to the solidarity principle. The new treaty also significantly altered the decision-making procedure on asylum matters by introducing the ordinary legislative procedure (OLP) as the standard procedure. Although the Commission had tabled its proposals for the second phase of CEAS as early as 2008–09, negotiations progressed slowly. Accordingly, the 'second' phase of the CEAS was adopted only after the entry into force of the Lisbon Treaty.



BOX 21.4 KEY DEBATES: THE DUBLIN CONVENTION

The Dublin Convention was first agreed in January 1990. Now in its third incarnation, the so-called Dublin III Convention entered into force in July 2013, with the aim of establishing a common framework for determining which member state decides an asylum seeker's application. This is intended to ensure that only one member state processes each asylum application. The criteria for establishing responsibility runs, in hierarchical order, from family considerations, to recent possession of a visa or residence permit in a member state, to whether the applicant has entered the EU irregularly or regularly. The arrival of numerous migrants and asylum seekers in the EU since 2013

and their concentration in particular geographical areas, has exposed the weaknesses of the Dublin System, however, since it establishes that the member state responsible for examining an asylum application will tend to be the country of the first point of irregular entry. In May 2016, the Commission presented a draft proposal—the Dublin IV Regulation—to make the Dublin System more transparent and to enhance its effectiveness, while providing a mechanism to deal with the disproportionate pressure placed on countries on Europe's southern borders, such as Greece, Italy, Malta, and Spain. The proposal has been controversial and remains deadlocked.

Set up in 2005 and revised in 2012, the Global Approach to Migration and Mobility (GAMM) is the external dimension of the EU's migration policy. It is based on a partnership with third countries and is designed to address the management of legal migration from outside the EU, the prevention and reduction of irregular migration, enhancing international protection and asylum policy, and the relationship between migration and development. The GAMM's primary focus is the Southern Mediterranean and the Eastern Partnership. Under the 'more for more' mechanism, the EU tries to persuade third countries to strengthen their border controls, restrict their visa policy, and readmit irregular migrants with incentives such as trade benefits, visa facilitation, or financial support. This is a controversial approach, and the GAMM has been criticized for omitting criteria on human rights in the selection of partner countries and for the absence of a mechanism for monitoring or suspending cooperation.

The origins of the EU migration crisis can be traced back to the events of 3 October 2013 when a boat sank near the Italian island of Lampedusa with the loss of more than 360 lives. By 2015 the EU started to see larger numbers of migrant flows resulting from the

war in Syria. There are several ways to interpret this as a 'crisis', though not everyone would interpret it as such (see Chapter 26). For example, the dominant narrative provided by the EU institutions sees this issue as both a security and humanitarian crisis, presenting the EU and its member states with a challenge to its inadequate common migration and asylum policies, focusing more on issues of security and less on humanitarian responses (please refer to Chapter 26 on the Migration and Refugee Crisis for a full discussion of the crisis). In the UK, the 'crisis' became entangled with the issue of Brexit (see Box 21.5). From 2015 most member states sought to strengthen and militarize their borders. The Commission launched the European Agenda on Migration in May 2015, which included several measures including an emergency relocation mechanism for a total of 160,000 people in need of international protection to assist Italy and Greece in particular. However, relocation rates were very low and the policy proved unsuccessful (see Chapter 26). In September 2020 the Commission launched a New Pact on Migration and Asylum, focusing on strengthened partnerships with countries of origin and transit, robust management of external borders, and internal rules to achieve solidarity and a



BOX 21.5 KEY DEBATES: BREXIT AND AFSJ

When Schengen was incorporated into the EU with the Amsterdam Treaty in 1999, the UK, along with Ireland, secured an opt out but reserved the right to opt into immigration and asylum-related policies as it saw fit. Brexit was itself driven by a desire for the UK to remove itself from the jurisdiction of the CJEU and not give up control over immigration, one of the UK Prime Minister (PM) Theresa May's red lines. When he took over as PM, Boris Johnson's negotiations retained this hard line, even at the risk of undermining the 1998 Good Friday agreement (see Chapter 27). This agreement ended the conflict in Northern Ireland and provided for avoiding a hard border between Northern Ireland and the Republic of Ireland, which was threatened by the Brexit stance of the UK government. Given this hard-line stance, Brexit has rendered the UK a third country and its citizens TCNs, less along the lines of Norway which has a close relationship with the EU, and more along the lines of Canada. Brexit was poised to impact the status of UK citizens living and working in the EU and EU citizens living and working in the UK. This was resolved by making it possible for impacted EU citizens to apply for EU Settled Status by 30 June 2020 before the end of the transition period. UK citizens already resident in

EU territory would seek similar relief in their countries of residence. A different regime applies to individuals who arrived after the end of the transition period on 1 January 2021, leaving their entry up to the discretion of the countries concerned. With respect to asylum and refugees, the UK was still bound by a number of CEAS measures after Brexit and could seek guidance from the CJEU until the end of the transition period. Since 1 January 2021, the UK has withdrawn from the EU's Common European Asylum System, including the Dublin system and its associated databases. With this withdrawal, the UK is now free to set standards lower than what was possible under CEAS. At the same time, it is no longer able to transfer asylum seekers to other member states under the Dublin system. The end of the transition period also occasions changes to criminal law cooperation, rolling back cooperation between the EU and the UK. The UK now has limited access to the EU's relevant databases, causing an important data gap for the UK. The April 2021 protests in Belfast, Northern Ireland, some of which turned violent, foreshadow feared adverse consequences of Brexit, which complicates freedom of movement between Northern Ireland and the Republic of Ireland.

balanced distribution of responsibilities while allowing sceptical countries (such as Hungary, Poland, and Slovakia) to opt out of relocation mechanisms. Given its restrictive tenor, however, the Pact has drawn sharp criticism (see Chapter 26).

KEY POINTS

- CEAS was designed to meet three key challenges facing asylum policy across the EU.
- CEAS was intended to be introduced in two phases: the first would introduce common minimum standards; the second would set up a common asylum policy.
- The Global Approach to Migration and Mobility has sought to externalize the EU's migration policy. This has proven especially controversial.
- Since the migration crisis (see Chapter 26), new initiatives have been introduced to try to improve the effectiveness of EU migration and asylum policy.

21.8 Towards a Security Union?

'Europeans need to feel confident that, wherever they move within Europe, their freedom and their security are well protected, in full compliance with the Union's values, including the rule of law and fundamental rights', opined the European Commission in its 2015 communication to the Council and the Parliament on the 'European Agenda on Security' for 2015–20. In less than a year after its adoption, the March 2016 coordinated suicide attacks in Brussels prompted Commission President Juncker to insist that the EU needed a genuine Security Union by improving information exchange and strengthening external borders. A good deal of police cooperation is necessary to achieve these ends. At the same time, such cooperation has its drawbacks and critics, even within the EU institutions, and certainly within civil liberties circles. For instance, the EU, while it now has broader powers in this arena, has simultaneously lamented the loss of a genuinely common approach to internal security, and the data protection hazards that accompany such initiatives. The Passenger Name Record (PNR) system is a case in point. In 2016, the EU adopted a directive on the use of PNR within the context of its counter-terrorism efforts. PNR collects data such as personal information and itinerary on international passengers and, as such, could be helpful in flagging potential threats. At

the same time, in order to collect information on potential threats, non-threatening individuals would also see their information compiled, and possibly shared within and outside the European Union as the EU has PNR agreements with the United States, Canada, and Australia. The European Parliament resisted this European Commission initiative long and hard until it was satisfied that adequate data protection measures were incorporated into it. Ultimately, although the institutional framework on police cooperation has become simpler since the TFEU, police cooperation (along with judicial cooperation in criminal matters) remains more loosely incorporated into the EU than the other planks of AFSJ.

The European Agenda on Security identifies three key priorities and challenges for the near future: fighting terrorism, disrupting organized cross-border crime, and tackling cybercrime. This takes us all the way back to the beginning of this chapter. JHA/AFSJ cooperation owes its genesis partly to the efforts of the Trevi Group, the main goal of which was to establish cross-border cooperation in the fight against organized crime and terrorism. These matters were subsequently incorporated into the Union. Europol was created to facilitate the apprehension and prosecution of transborder criminals, and established jointly accessible databases to enhance police cooperation. The Commission began work in late 1999 to develop an instrument that would outline the Union's position on terrorism, covering terrorist acts directed against member states, the Union itself, and international terrorism.

The EU's focus on terrorism heightened following the 11 September 2001 ('9/11') attacks. The events in the USA prompted the EU to move speedily towards adopting anti-terrorist policies already in preparation. In October 2001, the Council committed the Union to adopting a common definition of terrorist offences, a common decision on the freezing of assets with links to suspected terrorists, and establishing the **European Arrest Warrant (EAW)** designed to replace the protracted extradition procedures between EU member states with an automatic transfer of suspected persons from one EU country to another. The Council urged better coordination between Europol, Eurojust, intelligence units, police corps, and judicial authorities, and announced work on a list of terrorist organizations. The Union called for increased vigilance for possible biological and chemical attacks, even though such attacks had never previously occurred in the EU.

Finally, linking the fight against terrorism to effective border controls, the European Council insisted on the intensification of efforts to combat falsified and forged travel documents and visas (European Council, 2001). The focus on anti-terrorism measures intensified yet further after the 11 March 2004 attacks in Madrid. While no stranger to terrorist attacks from separatist Basque militants, Spain's trauma sharpened the attention to terrorism. The EU and its member states subsequently negotiated a number of cross-border initiatives to enhance their collective capabilities to combat terrorism. Among these was the Prüm Convention of 2005 which enabled signatories to exchange DNA, fingerprint, and vehicle registration data to combat terrorism. The possibility that violent acts could be perpetrated by poorly integrated migrants—highlighted by the widely publicized murder of Theo van Gogh, a prominent Dutch film director, at the hands of a Muslim who held dual Dutch and Moroccan citizenship—rekindled the integration debate. Fears about 'home-grown' terrorism hit another high with the 7 July 2005 ('7/7') London bombings and later with the attack on the French satirical weekly *Charlie Hebdo* on 7 January 2015, some of the perpetrators of which were also thought to be involved in the March 2016 Brussels attacks.

The Union is now working on improving its information exchange infrastructure to help with its anti-terrorism efforts. Along with a second-generation Schengen Information System (SIS II), a new EU Visa Information System (VIS) is now operational all over the world. Possessing interactive capabilities, SIS II includes additional information on 'violent trouble-makers' (including football hooligans, but potentially also political protesters) and suspected terrorists, and also stores biometric information (digital pictures and fingerprints) and EAW entries. In turn, the VIS collects and stores data from all visa applications in all member states, including biometric data such as digital photos and all ten fingerprints—something that is criticized for potentially falling foul of data protection measures.

The EU also now has a directive on combating terrorism, which was adopted in 2017 and replaces previous post-9/11 framework decisions. This directive offers a common definition of terrorist offences and criminalizes undertakings to prepare for terrorist acts, such as travelling abroad for training or aiding and abetting terrorist activities. The Commission also prepared, in consultation with national experts, EU

agencies and Interpol, a set of common risk indicators for foreign terrorists in an effort to assist in the work of national border personnel. A European Counter Terrorism Center (ECTC) launched in January 2016 within Europol to assist member states in fighting terrorism and radicalization. In 2016, the Commission also put forth an action plan for measures against financing terrorism, including asset freezing, anti-money laundering measures, and cooperation between financial intelligence units from member states. These measures can also be used to combat other types of transnational organized crime. In the coming years, the Commission, as spelled out in its 2020–25 EU Security Union Strategy, envisions EU legislation on, for example, stemming illicit cash movements, counterfeiting, and the movement and sale of cultural goods to achieve financing of terrorist activities. The European Public Prosecutor's Office (EPPO) will be helpful in this regard. With respect to radicalization, in 2016, the Commission identified areas of cooperation between member states, including countering online terrorist propaganda and hate speech, addressing radicalization in prisons, and promoting inclusive education and inclusive societies. The Commission also set up financial assistance to support rehabilitation, de-radicalization, and training programmes. Finally, the Commission proposed cooperation with the External Action Service, cooperation with third countries in matters of security, and counter-terrorism, deploying experts to the EU delegations of a number of Middle-East and North African (MENA) countries as well as Nigeria. To address the third realm of priorities, namely cybersecurity, the EU adopted a Cybersecurity Strategy in 2013 and also created several institutions to enhance cooperation between member states. The 2020–25 strategy also focuses on securing and protecting critical infrastructure. These efforts have also yielded some policy instruments creating a common European criminal law framework against cyber-attacks.

While the attention directed towards anti-terrorist, organized crime, and cybercrime measures is certainly warranted, the EU's efforts in this field have already attracted criticism from civil liberties and migrants' rights advocates (Statewatch, 2011). Activists caution against a possible backlash against migrants of Arab descent and argue against closing the EU's outer doors even more tightly. Anti-Islam and xenophobic rhetoric displayed by various groups, such as *Pegida* (Patriotic Europeans against the Islamisation of the West) in

Germany, and political parties such as the *Rassemblement Nationale* (National Rally) in France, capitalize on violence that can be linked to persons of migrant origin and raise concerns about further securitization of migration and asylum in Europe. As in the post-9/11 USA, European anti-terrorism measures have attracted sharp criticism from civil libertarians in Europe, who also remain sceptical about closer anti-terrorism cooperation between the USA and the EU for data protection reasons. In terms of academic analysis, it is highly inadvisable to conflate migration, security, and terrorism, even though all three are areas that fall under the mandate of AFSJ. In essence, the challenge in Europe is similar to that in the USA: developing policy instruments that meet security needs while protecting the civil liberties of individuals residing in the EU territory. The events of 11 September 2001, 11 March 2004, 7 July 2005, 7 January 2015, and 22 March 2016, and more seem to have brought JHA/AFSJ cooperation full circle to its Trevi origins. It is certain that this dossier will remain very lively, if controversial, in

the future, preserving the security narrative that sits uneasily in a multi-religion, multi-ethnic, and multi-origin Europe. At the same time, while we can chart quite a bit of progress in these highly sensitive and sovereignty-inspiring fields, the security union of which the Commission speaks is still far off.

KEY POINTS

- Cooperation in the Area of Freedom, Security, and Justice (AFSJ) has developed a significant external dimension, particularly vis-à-vis the EU's neighbours.
- The enlargement of the Union not only pushes its borders (and therefore the AFSJ) eastwards, but also commits applicant countries to adopt Justice and Home Affairs (JHA) rules before their accession.
- AFSJ policy output also has an impact on countries that are not part of the enlargement process.
- How to respond to terrorism is a key challenge facing the EU and its member states.

21.9 Conclusion

Cooperation in Justice and Home Affairs has come a long way since its obscure beginnings in the 1970s. It currently occupies a prominent and permanent position in EU governance. The European Commission now has a more active role, facilitated by the creation within it of two new Directorates-General. The status of the European Parliament and the Court of Justice of the EU has also improved since Amsterdam and Lisbon. Matters discussed in this field continue to strain the sovereign sensibilities of the EU member states and the policy remains intrinsically intergovernmental. However, few believe that the European Union can achieve its **common market** goals without making significant progress in the Area of Freedom, Security, and Justice (AFSJ). As the events of 11 September 2001 in the USA and the attacks in Madrid, London, Paris, Brussels, and the summer of 2015 clearly demonstrate, the tackling of transborder issues so typical of this dossier demands coordination and cooperation beyond the state. AFSJ is still a young field compared to the other more established **competences** of the EU. And yet, it demonstrates significant institutional change over time while maintaining consistent policy thrusts.

The EU must contend with a number of important, and sometimes conflicting, challenges specific

to AFSJ cooperation. In order to lift internal border controls on people moving within the EU, the Union must articulate and implement policies to manage its *external* borders. These policies should foster the freedom of movement of EU citizens and third-country nationals within the Union. They should also spell out common rules on the entry of TCNs. To demonstrate its commitment to basic human rights and democratic principles, the EU must protect TCNs against arbitrary actions, uphold their civil liberties, encourage inclusiveness, and deter acts of violence against them. To maintain the rule of law, the Union must press forward with judicial and police cooperation, while ensuring the privacy and civil liberties of those living in the EU. To live up to its international obligations, the EU must keep its policies in line with its pre-existing treaty obligations, particularly in the field of refugee protection. To protect its **legitimacy** and to improve its public image, the EU must take pains to address issues of transparency and democratic deficit. Finally, it must undertake these endeavours without raising the spectre of an impenetrable 'Fortress Europe', which some argue already exists. The challenges facing the policy remain substantial.



QUESTIONS

1. What are the catalysts that have led to the Europeanization of Justice and Home Affairs/Area of Freedom, Security, and Justice policy?
2. What have been the impediments to effective cooperation in JHA/AFSJ matters?
3. If the issues dealt with in JHA/AFSJ can also be addressed through unilateral decisions by individual countries, or by bilateral agreements concluded with interested parties, why is there such an effort to develop multilateral and collective responses in this field?
4. What are some of the lingering shortcomings of JHA/AFSJ cooperation?
5. What is meant by 'normalizing' JHA/AFSJ and how does the Lisbon Treaty contribute to such 'normalization'?
6. How effective has the EU's response to the migration crisis been? What does this tell us about migration governance in the EU?
7. How is the European Union dealing with terrorism?
8. What has prompted work towards a European security union? What are some of the opportunities and challenges for such efforts?



GUIDE TO FURTHER READING

Geddes, A. and Scholten, Peter (2016) *Politics of Migration and Immigration in Europe* (London: Sage). A very accessible and well-informed book on the EU's immigration regime.

Kaunert, C. (2011) *European Internal Security: Towards Supranational Governance in the Area of Freedom, Security, and Justice* (Manchester: Manchester University Press). A comprehensive recent volume that assesses European internal security and integration.

Peers, S. 'Legislative updates', *European Journal of Migration and Law*—various issues (for example, (2012) 'Legislative update, The Recast Qualifications Directive', *European Journal of Migration and Law*, 14/2: 199–221). These legislative updates capture the policy output, as well as providing insightful discussions of the decision-making process.

Ripoll Servent, A. and Trauner, F. (eds) (2018) *The Routledge Handbook of Justice and Home Affairs Research* (New York: Routledge). A comprehensive edited volume that offers theoretical, institutional, and substantive analyses of the developments in AFSJ.

Trauner, F. and Ripoll Servent, A. (eds) (2015) *Policy Change in the Area of Freedom, Security and Justice: How EU Institutions Matter* (New York: Routledge). An edited volume that explores the role of EU institutions in the making of policy in various AFSJ issue areas.



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