



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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1

MODULE 1

What is the Area of Freedom, Security and Justice?

Reading Lecture 1

Union Policy in Shared Competence: AFSJ

1. In this lecture you will learn about...

- competences of the European Union,
- main features of a shared competence,
- components of the AFSJ policy,
- specialities of the AFSJ policy with regard other policies of the EU in shared competence,
- the Treaty on the Function of the European Union (TFEU) as a legal fundament of the AFSJ policy and
- 'yellow card' procedure.

Learning time – approximately 4 hours



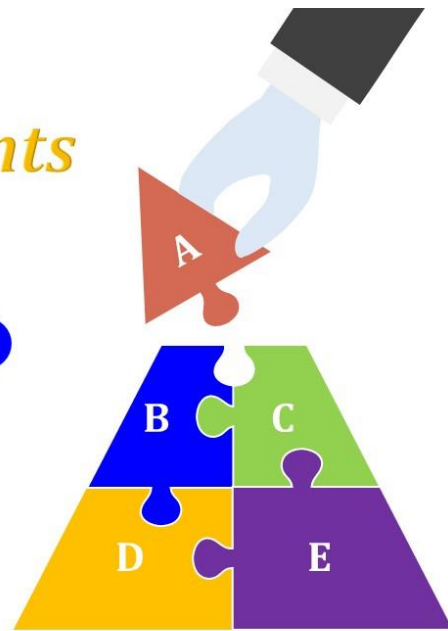
2. Union policy in shared competence: AFSJ

Watch the video lecture No 1!

2

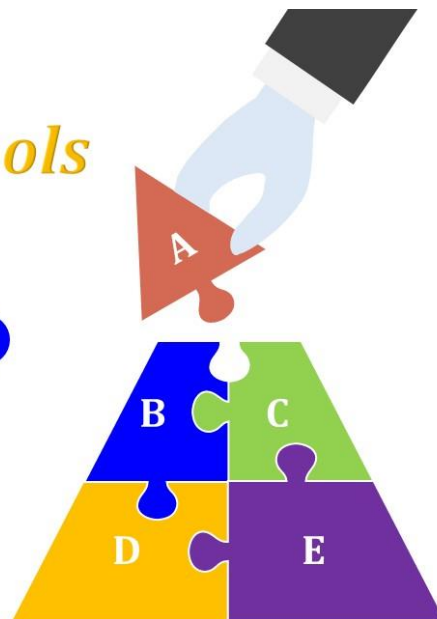
Area of Freedom *components*

- VISA** A
Common visa policy within the border-free Schengen Area
- Border Management** B
EU aims to establish a common external border management system
- Asylum** C
EU offers appropriate status for refugees and ensure compliance with the principle of non-refoulement
- Irregular / Illegal Migration** D
Prevention and reduction of irregular immigration (return policy, regulatory standards and criminal law)
- Immigration Policy** E
EU has the competence to settle the conditions governing entry into and legal residence in a MS for third-country nationals



Area of Security *measures / tools*

- Approximation of Criminal Laws** A
If needed in order to eliminate differences (crimes, sanctions, procedure)
- Mutual Recognition** B
Based on mutual trust, this legal principle should govern between MS authorities
- Combat against Crimes** C
In case of serious crimes with cross-border character if minimum legislation is needed
- Cooperation between Authorities** D
Traditional obstacles of effective cooperation between judicial and police authorities shall be abolished
- Crime Prevention** E





3. Legal texts for the aims and competences of the EU in the TEU (Treaty on the European Union) and TFEU (Treaty on the Functioning of the European Union)

Read the relevant articles below!

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Official Journal C 326 , 26/10/2012 P. 0001 - 0390

3

Treaty on the European Union - TEU

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The European values and also criteria to become MS of the EU!

Article 3

1. The Union's aim is to promote peace, its values, and the well-being of its peoples.

2. 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.

General description of the AFSJ (as one of the most important aims of the EU)



4

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social, and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

(5-6) ...

Article 4

1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

Watch this!
Originally the EU integration aimed only economical goals (according to the written law)

And today? The AFSJ as goal is in the text BEFORE the internal market...

What do you think, what has changed?

principle of conferral

solidarity



The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

principle of loyalty – one of the most important rules which ensure the integration



5

The aims of the EU have been laid down in the articles above; the area of freedom, security and justice is – since Lisbon, 2009 – a clearly declared aim which is now mentioned before that of establishing the internal market. The establishment of the area of freedom, security and justice (AFSJ), as a shared policy within the EU legal framework is an important milestone in a relatively rush and dynamic development – the first steps towards true European ideas about common policies in this field were made only 30 years ago (1992)- and today, the integration is deeper in many areas than originally expected.

And the development is witnesses of the everyday development (in criminal procedures, in the refugee true legal innovation for citizens years in the history of European demonstrating dynamic labelling ‘traditional forms’ of criminal matters as ‘European’

Concurrently, a new philosophy of cooperation emerged.

continually ongoing – we are consequences of this procedures, in refugee crises). This development a of the EU. The last twenty criminal law began by development, initially by mutual cooperation in ones, then subsequently

began to elaborate on new – singular and independent – forms of cooperation. Concurrently, a new philosophy of cooperation emerged and began gaining strength in the field of criminal law, which came to be followed in present-day legislation and in the application of law. This philosophy reworked several ‘old’ principles in the field – in a more precise manner – through the addition of new elements. Furthermore, the philosophy created new principles to this ‘European’ criminal law, such that are inevitable and essential for the everyday functioning of this field of criminal law and criminal justice, as well as for future developments. Europe’s area of freedom, security and justice is of increasing importance in contemporary EU law and legislation, as the AFSJ becomes more and more linked with mainstream EU law (shared competence).

[Eckes] By offering its citizens an Area of Freedom, Security and Justice, the EU barely linguistically disguises an aspiration to assume core state functions. The carefully chosen term AFSJ is not only loaded with social contract connotations but also contains a spatial notion of territorial unity that has a state flavour to it. The strengthening of the policy fields brought together under the AFSJ has been explained as a necessary complement to the internal market compensating the removal of frontiers within the EU. However, AFSJ



policies, arguably as all EU policies, are shaped by many pull and push forces, originating not only within the Union but also outside.¹

Treaty on the Functioning of the European Union – TFEU

Article 2

6

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.



2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.



3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.



5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.



¹ Cristina Eckes: Area of Freedom Security and Justice: How the Outside Shapes the Inside, 2013. https://www.researchgate.net/publication/262387407_Area_of_Freedom_Security_and_Justice_How_the_Outside_Shapes_the_Inside



Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

(a) internal market;

(b) social policy, for the aspects defined in this Treaty;

(c) economic, social and territorial cohesion;

(d) agriculture and fisheries, excluding the conservation of marine biological resources;

(e) environment;

(f) consumer protection;

(g) transport;

(h) trans-European networks;

(i) energy;

(j) area of freedom, security and justice:

(k) common safety concerns in public health matters, for the aspects defined in this Treaty.

(3-6)...

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.



7





4. Subsidiarity control procedure (for AFSJ issues)

Read the text of the Protocol
(No 2) on the application of
the principles of subsidiarity
and proportionality (TFEU)

The subsidiarity control mechanism applies in areas where the EU shares competence with member countries. In

cases where national parliaments consider that draft legislative acts do not comply with subsidiarity, they can send a reasoned opinion to the Commission within eight weeks.

8

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E/PRO/02&from=EN>

The effect of the reasoned opinions on the legislative procedure depends on how many national parliaments react and how many votes they represent. Each of the 28 national parliaments is allocated two votes. If there are two chambers, each has one vote. When reasoned opinions represent at least one third of all the votes allocated to the national parliaments, the Commission must review its proposal. **This threshold is lower for draft legislative acts related to justice, freedom and security – one quarter.** In both cases the Commission can decide whether to maintain, change or withdraw its proposal. The Commission must give reasons for its decision. This is known as the 'yellow card' procedure. When reasoned opinions represent a majority of the votes and the draft act falls under the ordinary legislative procedure, the Commission must review its proposal and decide whether to maintain, change or withdraw it. If the Commission decides to maintain its proposal, it must justify its decision to the EU Parliament and Council as to why the proposal complies with the principle of subsidiarity. This is known as the 'orange card' procedure. If a simple majority of members of the EU Parliament, or 55% of Council members, find that the proposal breaches the principle of subsidiarity, the proposal will not be given further consideration.²

Until today three yellow card procedures have been launched: in 2012 in the context of the freedom of establishment (rights of collective actions); in 2013 in the context of the proposed European Public Prosecutor's Office (EPPO) and in 2016 in connection with the posting of workers. [https://ec.europa.eu/info/files/communication-review-proposal-establishment-european-public-prosectutors-office_en]



5. Features of the AFSJ

Watch the video
lecture No 2!

² https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments/subsidiarity-control-mechanism_en



6. Questions for review

9

1. What is the Area of Freedom, Security and Justice? Formulate at least five correct statements about the AFSJ! Example: AFSJ is a union policy in shared competence.
2. What is the core concept of the Area of Freedom?
3. How are the freedoms of the fundamental rights regimes (Charter) and Area of Freedom related?
4. What is a 'yellow card' procedure?
5. What is the variable geometry of the EU?

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