



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

Prof. Dr. Karsai Krisztina, DSc

University of Szeged; Faculty of Law

MODULE 2

Shaping Factors for the Area of Freedom, Security and Justice

1

Reading Lecture 5

RED BADGE – Extension of Competences of the EU Organs

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

- the dynamics of evolution within the AFSJ (justice and home affairs),
- the criteria of development and
- how the reforms of the treaties have in the expansion of competence for the supranational bodies (organs) of the EU within the area of justice and home affairs.

Learning time – approximately 1 hour



Criteria of Europeanization



union law

unfolding the legal relationship between EU law and national criminal law



functional integration

protecting EU supranational interests through criminal law



ius puniendi

development of supranational ius puniendi



competence gaining at supranational level

extension of justice and home affairs competencies in the supranational framework



cooperation in criminal matters

facilitation and juridification of cooperation between MS



procedural law & fundamental rights

approximation of criminal procedure; fundamental rights context; European standards



2. Red Badge

Read the following text!

As mentioned before the red badge is a consequence, a necessary result or outcome of development, because it can be given when an EU body is given new competence in the field of justice and home affairs. Nevertheless, it should be treated as a separate criterion, as it illustrates well the characteristics and gradual expansion of supranational governance within justice and home affairs of the EU.

So what aspects can we examine from the perspective of the red badge? Briefly, this area, we can discuss the competences of the main EU bodies, i.e. the Council, the European Commission, the Parliament, the Court of Justice of the EU (CJEU) and the European Council.

The first step in the process of integration to have earned the red badge was the establishment of the EU (with the Maastricht Treaty in 1992 which came into force on 1st November 1993). As it is well-known [see Module 1 reading lecture 1] the text on the newly established EU (Treaty on the European Union, TEU) defined justice and home affairs as “matters of common interests” and consequently this topic could be addressed “officially” on an EU level.



Although the so-called third-pillar cooperation was purely intergovernmental, the European Council and the Council of the European Union gained competence to deal with such matters. Since this reform, the **European Council** (heads of state and government) defined the EU's political direction and priorities within the justice and home affairs, it sets the EU's policy agenda, traditionally by adopting 'conclusions' during European Council meetings which identify issues of concern and actions to take.



competence gaining at supranational level

extension of justice and home affairs competencies in the supranational framework

In the first version of the third pillar, the Council was the main decision-making body (it has legislative power) of the EU and drafted by the government ministers from each EU MS. The Council had many different configurations, each corresponding to the policy area being discussed. Depending on the configuration, each country sends their minister responsible for that policy area. When the Council discusses, amends, and adopts laws within the area of justice and home affairs, the ministers of home affairs and/or of justice affairs of the MS attend at the Council meeting. This situation has not changed since the beginning, **but in this first stage only the Council had the right to issue a legal act based on the TEU**, it was the sole decision-making body of the EU in the third pillar, and the European Parliament had no voice within the legislative process. Furthermore, neither the European Commission nor the Court of Justice had any competence in the third pillar.

3

Overall, this meant that this was an important step, allowing the EU to deal with justice and home affairs issues due to the competence-transfer by the Member States, but only those bodies that directly represented the Member States (European Council, Council)



European Commission

were given competence in this area had been given powers, while bodies that **could be considered supranational were not given competence.**



The next milestone which that could be assigned by the red badge is the Amsterdam Treaty (signed in 1997, came into force 1st May 1999) which reformed – among others – the third pillar. The **European Commission** had been vested competence to launch legislative processes (not only the MS as until this amendment) and the **Court of Justice** became entitled to carry out preliminary proceedings concerning





legal acts issued within the third pillar. **Migration and asylum issues, which originally belonged to the third pillar, were transferred to the first pillar**, and the powers of supranational bodies in those matters were completed- after a five-year transition period.

It is important to note the Tampere European Council (15 and 16 October 1999) because the proceedings were a milestone in terms of addressing especially and expressly the topics of that was the first conclusions addressed especially and expressly the topic of justice and home affairs under the title “**towards a union of freedom, security and justice**”. In this policy paper the heads of state and government declared that EU MS are determined to develop this area and reaffirmed the importance of this objective. The actors had agreed on a number of policy orientations and priorities which will speedily make this area a reality (the implementation program was called The Tampere Program 1999-2004; after the Tampere Program, the Hague Program (2004-2009) and the Stockholm Program (2009-2014) were introduced, but after the AFSJ has started to operate in its full scope, the need for dedicated programs has been disappeared).



European Parliament

Finally, **the latest institutional reform introduced by the Lisbon Treaty** (signed in 2007, came into force in 1st December 2009) finished this process of ‘supranationalization’: with the abolishment of the pillar structure and with defining the clear competence system, the old justice and home affairs has been transformed

into the ‘normal’ policy of the Area of Freedom, Security and Justice. The bodies of the EU continue to retain full competence under this policy and finally the **European Parliament** has been conferred competence as a decision-making body of the EU.

	Maastricht	Amsterdam (criminal matters)	Amsterdam (migration, asylum)	Lisbon (current law)
European Council	yes	yes	yes	yes
Council of the EU	yes	yes	yes	yes
European Commission	no	yes, restricted	yes, full	yes, full
Court of Justice of the EU	no	yes, restricted	yes, full	yes, full
European Parliament	no	no	yes, full	yes, full



3. Questions for Review

1. What are the so called “conclusions”? What kind of tool of governance is it?
2. When was the European Parliament granted competences in connections with cooperation in criminal matters?
3. Who had the right to launch legislative action within the third pillar prior Amsterdam?

This teaching material has been drafted at the University of Szeged and supported by the European Union. Project identification number: EFOP-3.4.3-16-2016-00014