

Living in an area of freedom, security and justice

Justice and home affairs
in the European Union



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Introduction

The European Union (EU) is much more than an economic entity. It is home to over 375 million people who are not just consumers in a vast single market but also citizens of the European Union. They expect to live without fear of persecution or violence wherever they may be within the EU's territory.

The EU legislation on 'justice and home affairs' (JHA) has been designed to address such concerns. These laws deal with complex issues of security, rights and freedom and, in many ways, they lie at the heart of the concept of European citizenship. They touch on some of the most difficult and sensitive issues currently facing all 15 EU Member States. They include political asylum, illegal immigration, organised crime, drug smuggling and terrorism. Justice and home affairs rules also govern the way the European Union's national courts work together when people are involved in legal proceedings in more than one EU country.

Within the next few years, justice and home affairs are set to become increasingly important. As more and more Europeans take advantage of their rights to move around the EU for either business or personal reasons, the need for greater cooperation between national police forces, customs services and legal systems is set to increase enormously.

Similarly, the activities of international terrorist groups and organised criminal organisations mean the EU's national law enforcement agencies must cooperate with their counterparts in other EU countries on an almost daily basis.

Elsewhere, the need for a more coordinated way of dealing with people applying for political asylum within the EU has been highlighted by influxes of refugees fleeing trouble-spots like Iraq and former Yugoslavia. This is why EU leaders have committed themselves to ensuring that the European Union develops into a real 'area of freedom, security and justice' as soon as possible.

Cooperation on justice and home affairs – a brief history

Drafting EU rules on justice and home affairs matters has never been easy. Issues such as asylum policy, crime fighting measures or approaches to border control and terrorism lie at the heart of the concept of national sovereignty and the Union's justice and interior ministries have been traditionally reluctant to give up any rights to control how policy in their domains is formulated. However, Member States now accept that common problems need common solutions.

The European Commission has since 1999 had a portfolio for dealing specifically with justice and home affairs – a sign of the increased importance of this policy area. The first Commission member to hold the portfolio is António Vitorino.



For many years, all European policy on justice and home affairs was agreed on by governments meeting in ad hoc groups outside the European Union's law-making structures.

That situation changed: first, in 1986, when the Member States decided to cooperate on the entry of third-country nationals into the European Union and on their rights of movement and residence in the EU. Then, in 1992, common rules for citizens of non-EU countries crossing the EU's external frontiers and for immigration policy were written into the Treaty on European Union or Maastricht Treaty, which became operational in 1993.

The Maastricht Treaty formally recognised that justice and home affairs were a common concern and created a special law-making structure to handle legislation linked to these questions. This is often called 'the third pillar' of the EU, as opposed to the majority of traditional EU responsibilities in the 'first pillar' and the common foreign and security policy in the 'second pillar'. Laws passed under the new rules were, in effect, intergovernmental agreements that were legally binding on the European Union.

But while bringing justice and home affairs within the ambit of the European Union was an important first step, law-making on these questions remained a slow and cumbersome process after Maastricht.

All major laws in the field of justice and home affairs took the form of international conventions that had to be agreed unanimously by EU governments and then formally ratified by each of the EU's national parliaments. This meant that only a small

handful of new laws were passed in the six years after the adoption of the Maastricht Treaty.

The next important step in the evolution of the European Union's justice and home affairs laws came on 1 May 1999, when the Amsterdam Treaty, which updated the Maastricht Treaty, entered into force. The Amsterdam Treaty moved several key policy areas, including asylum and immigration policy and issues concerning cooperation between civil courts, into the EU's normal law-making structures.

Equipped with their new Amsterdam tools, EU governments and the European Commission quickly set about drawing up plans to implement the EU's modified rules for justice and home affairs matters. At a special summit meeting in the Finnish city of Tampere in October 1999, EU governments pledged to adopt a whole series of new initiatives on asylum, fighting crime, and cooperation between courts and police forces.

They also asked the European Commission to keep track of their progress by publishing a 'scoreboard', a set of tables listing the EU's objectives in the justice and home affairs field as well as action planned and taken on each point. This is updated every six months. It is likely to be some years before all of the planned new measures are in place. EU governments argue that when they are, their goal of creating a genuine 'area of freedom, security and justice' within the EU will have been achieved.

Freedom

The right of every EU citizen to travel freely around the European Union and settle anywhere within its territory is one of the clearest signs of a united Europe with a human dimension.

If, at the start of the European Union, freedom of movement for people was only envisaged for economic reasons, for people seeking work, this right has since been extended to include all categories of citizens. In 1992, the Maastricht Treaty introduced the concept of citizenship of the European Union which confers on every EU citizen a fundamental and personal right to move and live where he or she wants, without any reference to an 'economic activity'. The aim of European citizenship is to strengthen and consolidate European identity by greater involvement of citizens in the European integration process. The Amsterdam Treaty, which entered into force in 1999, has further strengthened the rights linked to citizenship.

EU citizens also have a number of other rights. They can vote and stand as a candidate in elections to the European Parliament and in municipal elections in the EU country in which they reside. They can benefit from diplomatic and consular protection from the authorities of any EU Member State when travelling outside the European Union, in case the State of which they are a national is not represented. In addition, they have the right to complain directly to either the European Parliament or the Union's Ombudsman if they are unhappy about the way EU institutions operate.

The right to apply to the Ombudsman or to petition the European Parliament is also open to non-EU citizens residing legally in the Member States of the European Union. Similarly, everyone living in the European Union enjoys fundamental rights (see box).

The Treaty of Amsterdam has also given the European Union powers to draw up legislation to tackle most forms of discrimination against individuals or specific groups of people. Amsterdam's anti-discrimination clauses cover discrimination on the grounds of nationality, race, sex, religious belief, disability, age or sexual orientation.

Rooting out all discrimination, whether based on nationality, race or religion, is one of the basic objectives of the European Union.



In June 2000, EU governments agreed to adopt the first EU directive based on these new Treaty provisions – a law designed to outlaw discrimination in all of the above areas.

A border-free area – the Schengen Agreement

One of the most important initiatives designed to make it easier for citizens to travel around the European Union has its origins in a non-EU agreement between Germany, France and the Benelux countries, which was signed in the small Luxembourg border town

of Schengen in 1985. It removes controls on persons – irrespective of their nationality – at internal borders between Member States, harmonises controls at the EU's external borders and introduces a common policy on visas.

The original five 'Schengen States' agreed that they would create an area where people could move freely between their respective territories. They removed all internal border controls, and countries may only reintroduce them in certain well-specified circumstances.

Fundamental rights

The European Union has always stated its commitment to human rights and fundamental freedoms and has explicitly confirmed the EU's attachment to fundamental social rights. The Amsterdam Treaty has established procedures intended to secure their protection.

The Treaty has also given the Court of Justice the power to ensure respect of fundamental rights and freedoms by the European institutions.

In Cologne, in June 1999, EU leaders agreed to draw up a European Union Charter of Fundamental Rights to group the Member States' fundamental rights that are applicable at Union level by rewriting them in one consolidated document. Later, at the Nice European Council in December 2000, a Charter of Fundamental Rights of the European Union was proclaimed by the European Parliament, the Council and the Commission.

The aim of the charter is to draw together into a single easily readable text all the various personal, civil and political rights and the economic and social rights that are guaranteed to European citizens. These include rights designed to meet the challenges arising from the current and future developments of information technologies and genetic engineering, and the rights of access to administrative documents of the EU institutions and the right to sound administration. The charter will enable everyone living in the EU to find out their rights quickly and easily.



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Today, the Schengen Agreement has been fully incorporated into the EU's founding treaties. The 1999 Amsterdam Treaty ended its status as a non-EU pact. As of 2000, 10 EU countries (Belgium, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria and Portugal) fully implement the Schengen provisions. As from March 2001, also Denmark, Finland and Sweden, as well as Iceland and Norway, are expected to apply the provisions completely.

Ireland and the United Kingdom will take part in aspects of the Schengen Agreement that deal with cooperation between police forces and judicial cooperation, but have said they will not end border controls with other Schengen States. For this reason, travellers still have to show their passports when travelling between the UK or Ireland and the rest of the EU, although not between Ireland and the UK for which passports are not needed.

Whilst respecting the special position of the United Kingdom and Ireland, the Commission, European Parliament and Member States continue to work towards the adoption of a coherent and complete body of law to ensure that people, irrespective of nationality, can move and travel freely inside the European Union within five years of the entry into force of the Treaty of Amsterdam, i.e. from 1 May 2004. The 'Communitarised' benefits of Schengen – a common policy on visas and effective controls at the EU's external borders – will contribute to the protection of internal security needed in a border-free area.

Far from trying to create a fortress, these measures, in fact, make entry into and circulation or travel within the European Union easier for any legitimate person, while thwarting the activities of criminal organisations that exploit human beings.

You can travel freely within the European Union without wasting time on passport controls.

Moving freely in security

While the 'open borders' element of the Schengen Agreement is perhaps its best-known aspect, it also contains a number of other important provisions.

In order to eliminate internal border controls without lessening the level of security, it is necessary to put into place a series of other policies that are commonly called 'compensatory measures'.

Key among these is the requirement that countries at the edge of the Schengen zone ensure that the free movement area's external borders are properly policed. Once a person is inside the Schengen area, he or she is free to move around wherever he or she wants in this area. Member States have therefore argued that it is vital that border checks at the area's external frontiers are rigorous enough to stop illegal immigration, drug smuggling and other unlawful activities. In other words, each State that carries out checks at external borders has to take into account the common interest and security of all EU Member States.

The Schengen provisions also provide for better coordination between police services and judicial authorities so they are able to protect the area of free movement, and, in particular, to fight effectively against organised crime.

This is the context within which the Schengen information system (SIS) has been created. It is a complex database that enables the appropriate law enforcement and legal authorities to exchange data for investigations on persons and objects – for example, on people wanted for arrest or extradition purposes, or on information on stolen vehicles or stolen works of art. Independent supervisory authorities have been put in place in the Member States to check that information entered into the SIS does not violate data-protection rules.

At the external frontiers of the Schengen area, all EU citizens need only show an identity card or passport to be allowed to enter. The nationals of many third countries may also enter the Schengen area on presenting their passports. People from other third countries need to have a visa. EU countries are discussing the creation of a common visa valid for all Member States so that all those who meet visa requirements will only need to ask for a single visa valid for the entire Schengen area.

Asylum and immigration

Europe is growing older. The working age population (between 20 and 59 years) will decline by nearly 5% over the next 25 years, while those over 60 will increase by 8% to reach 29% of the total population by 2025. European countries are also experiencing a continued shortage of labour in a number of sectors and at different skill levels – as was shown in 2000 by Germany publicly advertising for thousands of people from India and elsewhere to come and work in high technology.

At the same time an increasing number of people have in recent years wanted to migrate to Europe, either temporarily or permanently. These include asylum-seekers, refugees, displaced persons and those seeking temporary protection, family members coming to join migrants already settled in the EU, labour migrants and growing numbers of business migrants – those who move from country to country as part of their job. For the first time in Europe's history, international migration movements now affect all Member States as countries of immigration, even those such as Greece, Spain, Italy and Portugal which had previously been countries of emigration. Many are also countries of transit.

A pressing issue facing EU governments today is how to cope in an area without internal frontiers with large numbers of immigrants while respecting Europe's humanitarian traditions of welcoming foreigners and offering a safe haven to refugees from persecution and danger.

At present, methods for dealing with these people differ considerably from one EU Member State to another. The Amsterdam Treaty, which entered into force in May 1999, gives the European Union considerable powers in relation to immigration. It specifically included asylum and immigration issues in the normal EU law-making field (the Community legal domain in the 'first pillar' of the EU). In October 1999 at a special meeting in the Finnish city of Tampere, EU leaders decided to develop a common asylum and migration policy. A cornerstone of this policy will remain the right of third-country nationals to seek asylum.



It is up to individual EU countries to decide whether to give asylum to people who claim to be persecuted in their home countries. But the EU has decided that there is a need to have one overall asylum policy so that asylum-seekers are treated similarly by all EU countries.



The situation today – asylum

The European Union does not have the power to grant asylum to persons fleeing persecution in their home country. That decision can only be taken by the national authorities in the particular EU Member State in which the asylum-seeker seeks a safe haven. What EU governments have agreed to do, however, is to harmonise their rules so that requests for asylum would be examined according to a basic set of commonly agreed principles anywhere in the European Union. At the same time, EU leaders at their Tampere Summit set a long-term objective: EU (Community) rules should lead to a common asylum procedure and a uniform status for those granted asylum, which is valid throughout the EU.

The EU countries have agreed rules about which country should handle an application for asylum, so that the same application is not treated by several countries.

EU asylum policy is now being put into place brick by brick. In May 2000, the Commission proposed that in case of a mass influx of refugees these should be given temporary protection. This would be an exceptional measure providing the displaced persons with immediate and temporary protection for a maximum of two years. If the proposal is agreed by the Council of Ministers, it will ensure they enjoy the same minimum conditions in all EU Member States. They will then be able to be employed, to have access to accommodation or housing, to receive social welfare or means of subsistence, and have access to medical treatment, the right to education for their children and the right to a family life.

In September 2000 came another brick, when the EU set up a European Refugee Fund to help Member States with the reception of asylum-seekers, the integration of refugees and with voluntary return programmes.

Other measures being discussed are the introduction of similar reception conditions, minimum standards and procedures for granting asylum, and the right of refugees to locate close relatives and to be reunited with their families.



Dublin Convention

Also in the pipeline is a proposal to revise an agreement known as the 'Dublin Convention', which was signed in the Irish capital in 1990 by the then 12 Member States of the European Union. It entered into force in 1997.

The convention sets out a series of rules for deciding which EU Member State is responsible for dealing with any particular claim for asylum. It also states that once a person has lodged an asylum claim in one EU country, he or she cannot make the same claim elsewhere in the EU – a practice known as 'asylum shopping'.

The 'Dublin' system needs improvements to find solutions to many implementation difficulties. A database called Eurodac, which will contain the fingerprints of all registered asylum-seekers in the EU, will be one of the improvement measures. It will enable officials to check if asylum-seekers have already had applications refused in other EU countries.

The situation today – immigration

Another cornerstone of the common asylum and migration policy that is currently being discussed is the integration of third-country nationals who are legally resident in the European Union. This will give immigrants rights and obligations comparable to those of EU citizens.

Governments also need to change the public perception of immigrants so they are seen as a positive factor in the economy, often leading to job creation and economic growth, as part of the social contract, contributing like everyone else, and as bringing something new and vital to the cultural life of the communities in which they live.

The Tampere Summit in 1999 also decided that a major focus of the EU's efforts should be on the more efficient management of migration flows, on more effective external border controls, and on combating illegal immigration. A coordinated effort is needed to fight criminal gangs that are smuggling, trafficking in and exploiting human beings, in particular women and children.

At Tampere, EU leaders set themselves a series of strict deadlines for introducing the necessary agreements and legislation that will be needed to put in place such a policy. The European Commission has been requested to ensure that they stick to their promises. It has therefore devised a special 'scoreboard' to keep track of progress in executing the decisions of the Tampere meeting. The scoreboard is updated every six months and is freely available for anyone to look at.

In December 1999, the Commission launched a first initiative and proposed a directive giving third-country nationals legally resident in a Member State the right to have their families reunited. This is considered to be an essential element to promote the successful integration of the third-country nationals in their adopted EU country.

Further initiatives will follow dealing with the conditions of entry and residence of third-country nationals who want to come to the EU to work or to set up business, to study or for vocational training, or for unpaid activities. The issue of the status of third-country nationals who are long-term resident will also be addressed.

The European Union is intensifying the fight against trafficking in people and against the economic exploitation of migrants. It is also engaged in negotiations with the main countries from which illegal immigrants come on their readmission so that irregular migrants in the EU can be sent back to where they came from.

Relations with countries of origin

The European Union tries to look comprehensively at the problems of asylum and immigration. It is therefore working, where possible, with the countries from which intending immigrants and asylum-seekers come ('countries of origin') to see if conditions can be improved locally so that there will be no need for people to seek a better and safer life outside their home country. Political, human rights and development issues in countries of origin and transit must be tackled. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts, consolidating democratic States and ensuring respect for human rights, in particular the rights of minorities and of women and children.

EU Member States and the Commission are working towards a greater coherence of their internal and external policies and towards creating partnerships with third countries. These partnerships should result in improvements and joint developments in order to reduce substantially the incentive for third-country nationals to seek a better life in the European Union.

Security

Crime does not respect national borders. Organised criminals are becoming increasingly sophisticated and regularly use EU-wide or international networks to carry out their activities.

Faced with this reality, EU governments and the European Commission have realised that they cannot effectively tackle international organised crime by relying solely on national law enforcement agencies.

Tracking down the proceeds of crime

EU governments have decided that one of the best ways to tackle organised crime is to give a much higher priority to tracking and confiscating the proceeds of any illegal activity or crime.

Money is crime's lifeblood. Criminal organisations exist to make money. If a particular criminal activity ceases to be profitable, they will quickly turn their attentions elsewhere. They might even decide that crime is not worthwhile.

Keeping track of illegal funds is also one of the best ways of tracking down criminals. It is for this reason, as well as to disrupt criminal organisations' finances, that the EU is currently planning a series of initiatives designed to strengthen the European Union's anti-money-laundering laws. Plans are under way to try to make more open the secretive banking traditions in some Member States, which will make it easier to trace 'dirty' money.

Police and customs cooperation is the key

The EU's police and customs agencies are at the forefront of the fight against crime. Several measures have been put in place to help them work together quickly and efficiently. The Schengen Agreement, for example, enables national law enforcement agencies to exchange information on people who may have entered the EU illegally.



An essential part of the fight against international crime is to prevent that illegal money is transformed into legal business.



EPA

Effective police work does not only take place on the beat – Europol is the agency that helps police in EU countries to cooperate in investigating cases that concern more than one country.

In June 1997, the EU Summit adopted a detailed action plan as part of a coherent strategy in the fight against organised crime. The plan contained 30 concrete recommendations. Many of these have since been implemented, and a follow-up plan (strategy for a new millennium) was agreed in May 2000 to continue the momentum.

The EU has put in place a number of programmes in this area. These include the OISIN programme, to enhance cooperation between law enforcement agencies, the STOP programme, to increase contacts between professionals working to tackle 'people smuggling' – the traffic in human beings – and the sexual exploitation of children, and the Falcone scheme, a programme of training and exchanges for people fighting organised crime.

At the heart of the European fight against organised crime is better and closer cooperation between the national and local law enforcement agencies in the European Union, in particular national and local police forces and customs authorities.

In Vienna, in December 1998, the political leaders of the EU countries agreed an action plan on how best to implement those parts of the Amsterdam Treaty that relate to making the European Union into an area of freedom, security and justice. The Tampere European Council took this further in October 1999 by deciding on a comprehensive approach to reinforce the fight against serious crime. This included a number of new initiatives designed to foster police cooperation. A European Police College should be set up, said the Tampere Summit, to train the next generation of senior police officers, to enable them to get to know their counter-

parts in other European countries and to work in a European context. The college should open initially as a network of national police colleges. It would also be open to police officers from countries currently applying to join the EU.

Other Tampere initiatives included the creation of a task force of European police chiefs that is modelled on a successful network of senior customs officials that has been in place for some time. The police chiefs' task force met for the first time in Lisbon in April 2000. It has already helped to create personal links between the heads of law enforcement agencies in EU countries. The chiefs are now more willing to lift the phone and discuss problems and joint operations with their opposite numbers in neighbouring and nearby countries. Regular meetings of the task force are expected to result in more spontaneous input and closer cooperation between national and local police forces in the EU Member States.

However, while these initiatives and the various programmes are important, by far the most important advance in EU law enforcement cooperation in recent years has been the development of 'Europol', the EU's own law enforcement agency staffed by police and customs officers.

Europol

Europol started life in January 1994 as the Europol Drugs Unit (EDU), to coordinate the efforts of national European police forces in the fight against illegal drug trafficking. Following the ratification of the Europol Convention by all EU Member States, which considerably widened its responsibilities, it took up its full activities on 1 July 1999.

Europol, based in the Dutch city of The Hague, is essentially a police coordination centre for the collation, analysis and dissemination of information. It has been set up to help law enforcement agencies (mainly police and customs) when they have to carry out investigations in two or more EU countries. As of 2000, it employs just 220 people, and that figure is only expected to rise to around 350 by 2003. At the heart of the service is a vast computer database, which, when fully operational, will make it much easier to track down, and to keep tracks on, known and suspected criminals and stolen objects. It will provide authorised law enforcement officers in all EU Member States with instant access to millions of commonly shared data files.

Europol's responsibilities have quickly expanded, and it now deals with a wide range of issues where two or more EU Member States are affected. These include illegal trafficking in drugs, in stolen vehicles and in human beings, as well as illegal immigration networks, sexual exploitation of women and children, pornography, forgery, smuggling of radioactive and nuclear materials, terrorism, money laundering and counterfeiting of the euro.

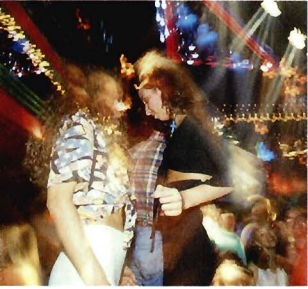
The worldwide dimension

Organised crime is by nature a world-wide rather than a solely European problem. The European Union has therefore put in place a number of initiatives designed to increase cooperation with crime fighters in countries outside the EU and in international organisations.

Plans are currently being discussed to allow Europol to tackle all aspects of money laundering and to exchange information with countries outside the EU and with worldwide bodies such as the international police agency Interpol and the United Nations International Drug Control Programme (UNDCP).

Elsewhere, EU law enforcement agencies already cooperate closely with their counterparts in the countries currently applying for membership of the EU. As part of this approach, the European Commission and the Strasbourg-based Council of Europe have set up the Octopus programme, which is designed to tackle corruption in eastern Europe. All of the EU's police and customs cooperation initiatives are also open to the applicant States.

Furthermore, the European Union has been actively involved in the UN negotiations on a convention on the fight against transnational organised crime, which it signed in Palermo in December 2000, and on three protocols. These relate to smuggling of illegal migrants, trafficking in human beings and the fight against the illicit manufacture of and trade in firearms.



Young Europeans should be able to have fun without the threat of drugs.

Drugs and the EU

All EU Member States agree on the need to try to tackle the organised criminals who either smuggle narcotics and psychotropic substances into the EU or – as is the case for certain synthetic drugs – manufacture them illegally in laboratories within the European Union.

Consequently, since 1994, Europol has been able to provide intelligence and analytical support to investigations into drug smuggling operations. This has already resulted in the apprehension of drug smugglers and the break-up of some drug smuggling gangs.

The EU has drawn up a coordinated strategy on drugs to cover the years 2000–04. It is designed to put more emphasis on prevention and on reducing drugs demand. It also aims to reinforce the fight against organised crime, strengthen police, customs and judicial cooperation, encourage the participation of non-governmental organisations, and to collect, analyse and disseminate objective and comparable data on the drugs phenomenon in the EU. It is open to candidate countries as well as to other third countries. It further aims to integrate drug control within the framework of the EU's development cooperation policy (i.e. in its relations with developing countries) and to support the United Nations' effort in this area.

An initiative that received the support of all EU governments was the decision to set up a drug observatory, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Based in Lisbon, this agency draws up regular reports on the level of drug use in all Europe. Before the observatory was created, it was very difficult to work out the scale of drug use in the EU as a whole as all Member States used different criteria for measuring the problem.

A further step in combating the illegal drug trade is an early-warning system which the EU countries have agreed to set up. It will identify new synthetic drugs, provide a mechanism for assessing the risks of these drugs and furnish a decision-making process through which these products may be placed under control in the Member States. The initiative relates to new synthetic drugs which are not currently listed in the schedules to the UN Convention on Psychotropic Substances (Vienna, 1971) and which pose a threat to public health.

Finally, the EU finances measures designed to reduce drug production and trafficking in many parts of the world.

Justice

The European Union currently has a variety of national legal systems. This is a situation that may give rise to problems when legal proceedings involve more than one Member State. Where a married couple have been divorced, for example, and the couple come from two different EU countries, their divorce needs to be recognised and enforceable in both countries. Their divorce settlement needs to be accepted as valid throughout the EU, avoiding subsequent disputes about the division of belongings or about parental rights.

It can, for example, prove difficult to take such basic decisions as to where a trial or lawsuit should take place. Differing procedures and language problems may also mean it can take a long time for documents from a court in one country to reach another court in a different Member State.

Further problems may arise when judgments handed down by the courts in one EU Member State have to be enforced in another. In the past, this has caused problems in cases of bankruptcy and of dangerous driving, for example.

As the EU's single market has developed and the Schengen Agreement has enabled people to move around the EU with ever-increasing ease, these sorts of 'cross-border' legal problems have become increasingly common.

More cooperation needed

EU governments and the European Commission have both recognised that litigating in a Member State other than one's own can create difficulties for people and businesses. In a bid to remedy this situation, they have begun to introduce a wide range of measures designed to increase approximation and cooperation between the EU's legal systems.

At the simplest level, these initiatives include exchange schemes designed to increase contacts between lawyers and judges in the EU's Member States. The Grotius programme, for example, has provided EU funds to help legal practitioners learn about how judicial systems in other Member States work, while the Falcone scheme has helped build contacts between judges, public prosecutors, police and customs officials across the EU.

Some EU legislation in place

A number of measures have been introduced to improve cooperation between national justice systems in the European Union. The objective is to get the authorities of the different EU countries to work together more effectively in order to make life easier for people involved in cross-border litigation.

As early as September 1968, the six original Member States of what later became the European Union agreed common standards on jurisdiction and the enforcement of judgments in civil and commercial matters. Known as the Brussels I Convention, this agreement

Weddings are known everywhere – but it has required new EU initiatives to ensure that divorce or rulings on child custody are also recognised in countries other than where they are made.



F. B. BALDRICA



It should be possible to use credit cards anywhere without risk of fraud.

is now applied by all EU Member States. More recently, Member States agreed to ensure that driving disqualifications in any one EU country are recognised across the EU.

In May 2000, the EU passed a law to enable judgments on divorce, separation and annulment of marriage to be accepted and enforced more easily in other EU countries and to standardise Member States' rules on jurisdiction in this field. It should improve the situation of people who have been granted a divorce with conditions on the custody of and parental responsibility for the children of both spouses. Under this regulation, those decisions will be recognised and enforced in all Member States, which will enable the courts to deal with situations where a parent kidnaps his or her child from the other parent contrary to the divorce agreement and takes the child to live in another EU country.

Also in May 2000, EU ministers for justice and for home affairs adopted a new regulation that should reduce the amount of time it takes to send documents between courts in different EU Member States.

A programme of measures for the mutual recognition of Member States' decisions in the civil and commercial area is also to be implemented.

Criminal law

The Treaty on European Union lays down that there should be quicker and closer cooperation between EU countries on criminal law, that conflicts of jurisdiction between Member States should be avoided and that measures should be taken to facilitate extradition of suspected criminals from one EU country to another.

As a result, EU governments have agreed to speed up extradition procedures between Member States wherever possible. They have also said they will do all they can to ensure that criminals cannot take advantage of differences between EU legal systems and that court judgments handed down in any one EU country are recognised all over the EU. In May 2000, the European Union adopted a convention to streamline mutual assistance and direct contacts between national courts, police forces and public prosecutors when carrying out cross-border criminal investigations.

Other key initiatives are under way to increase cooperation in the field of criminal law in relation to financial crime, environmental crime, cyber crime, etc.

Non-cash payment fraud – an example of concrete action

Back in 1998, the European Commission suggested that EU governments could work together more closely to tackle the problem of credit card fraud and other fraud concerning different non-cash means of payment. This is to avoid situations where someone's credit cards are stolen, taken to a neighbouring country and used by the thieves to obtain cash or for a shopping spree.

In September 1999, the Commission tabled a formal legislative proposal outlining how it felt this issue could be usefully dealt with at EU level. As of the end of 2000, decisions on this subject were about to be adopted.

Eurojust – coordinating judicial proceedings

At the special justice and home affairs summit in Tampere in October 1999, EU governments agreed to set up a special team of legal and judicial experts known as Eurojust to smooth the way and help coordinate the investigation and prosecution of serious cross-border crime.

The new service will work alongside the European Judicial Network (EJN), which began work in 1998. The EJN acts as a central coordinating group between EU lawyers and judges working on criminal cases and tries to help them exchange information rapidly and effectively.

Eurojust will be made up of a team of senior lawyers, prosecutors and/or magistrates from Member States. Team members will be expected to know the legal systems of their country, have rapid access to them and will be entitled to engage in direct dialogue with the national authorities. Eurojust will intervene, for example, in cross-border cases analysed by Europol that call for immediate legal advice and assistance to the investigators and prosecutors in different Member States.

European judicial cooperation in criminal matters is also extended to international organisations such as the Council of Europe, the United Nations and the G8 grouping of the world's seven richest countries plus Russia.

Better access to justice

At their summit in Tampere in 1999, EU leaders pledged to introduce a raft of new measures to improve cooperation between EU courts even further. They decided that such a

move was needed in order to ensure that EU citizens have speedy and efficient access to justice wherever they may be within the European Union.

The main objective of cooperation in civil law is to establish better cooperation between the authorities of Member States in cross-border cases. Individuals and economic operators (companies, businesses, industries) should not be prevented nor discouraged from taking advantage of their rights by the incompatibility or complexity of the judicial and administrative systems of Member States. EU citizens and companies are encouraged to live and operate where they like in the EU, so it is only right that they should have easy access to fair judicial treatment if they feel they have been wronged.

Planned initiatives include developing procedural rules for small claims. This measure should ensure that small and medium-sized enterprises as well as EU citizens who find themselves involved in legal proceedings in a Member State other than their own understand what is happening. Governments have also agreed to introduce minimum standards for legal aid, so that defendants have the right to a fair hearing throughout the EU.

The Commission has proposed the creation of a European Judicial Network for civil and commercial matters. This network aims at improving judicial cooperation between Member States and to provide the public with practical information so that they may be better informed if they are faced with litigation procedures having a cross-border dimension.

Enlargement of the EU

The European Union is currently preparing for its most ambitious enlargement ever. The aim is to reunite the European continent, to consolidate peace and democracy in Europe, and to enable all peoples to share the benefits of the increased prosperity generated by European integration. Adopting and implementing what has already been agreed and decided in the European Union on justice and home affairs is one of the conditions that candidate countries have to meet.

Thirteen countries have applied to join the European Union. Ten of these countries are in central and eastern Europe (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia and Romania), and three are more southern countries (Cyprus, Malta, and Turkey). The present 15 EU countries are in favour of this enlargement and have as early as 1993 specified the objective criteria that each candidate country must fulfil in order to become a member: it must have a stable democracy that guarantees the rule of law, respects human rights and protects minorities; it must have a functioning market economy; and it must have a public administration that is able to apply and manage EU rules.

Preparation for enlargement is more than just negotiations. It also includes a whole pre-accession strategy, one part of which is the accession partnership. This allows the candidate countries to modernise their societies with substantial financial support from the EU and through the

exchange of experience and knowledge with EU countries. This is particularly important for a policy field like justice and home affairs, in which some candidate countries have to make a major effort to bring themselves up to the standards of the EU.

EU applicants face huge challenge

In many cases, applicant countries have well-established legal systems, whilst in others they have had to start almost from scratch to create a modern system of justice. Some had legal systems dating from the communist era, with judges and courts inextricably linked to government instead of being fully independent, as EU rules require them to be. This situation has meant that several States have had to rebuild their networks of courts and tribunals and train a whole new generation of judges, lawyers and public prosecutors.

To give some idea of the size of this task, around a third of the budget for the EU's multimillion euro Phare programme (approximately 500 million euro a year) is now spent on 'institution-building' and training civil servants. Phare was set up after the fall of communism in central and eastern Europe. It was initially designed to help countries in that part of Europe develop into durable democracies with free market economies. After 1994, it was extended to include evolution in the field of justice and home affairs. It is now being used to help the applicant States in the region prepare for EU membership.

A new set of borders

It is no easy task for the candidate countries to meet the exacting requirements of EU policies on the abolition of all controls at internal borders and on effective control and surveillance of the EU's external borders if they face third countries or if, like Cyprus and Malta, they are surrounded by the sea. As they wait to join the European Union, they have to prepare for meeting these requirements laid down in the Schengen Agreement. They will be responsible on behalf of all the Member States for guarding the EU's external border against illegal immigration, drug smuggling, trafficking in human beings and a host of other criminal activities.

The Schengen requirement on external border controls will oblige many of the central and east European applicants to re-examine their border management policies. Prior to the fall of communism, the countries in central and eastern Europe had heavily fortified borders with their cold war enemies in western Europe. Even crossing the border between these countries was a long and difficult process.

These countries now need strong controls at their eastern borders and should gradually eliminate such checks at the west. Indeed, these latter controls will disappear altogether once it has been established that all requirements of the Schengen Agreement are met.

Phare lends a helping hand

The European Commission, which manages the Phare programme for the EU, has made it clear to the applicant States that they must find most



of the money for improving their border controls themselves. However, the institution has made some funds available to help the candidate countries make necessary changes.

Between 1995 and 1997, for example, 53.8 million euro in Phare funding was spent on modernising border control posts in the central and east European applicant States. A further 17.7 million euro was spent on technical assistance to the region's customs authorities.

In preparing for EU membership, the applicant countries are undergoing far-reaching modernisation in many areas.

This also makes the old EU countries a safer place in which to live.



The EU helps fund the training of police and customs officials in applicant countries.

In 1997, a multi-country management programme for the eastern border of the Baltic States – Estonia, Latvia, and Lithuania – was set up. At the end of 1997, this scheme was extended to Poland, and Phare funds have been used to help supply the Polish police with digital fingerprinting equipment.

Hungary, meanwhile, benefited from Phare to help the country computerise its border posts while the Czech Republic received funds towards a scheme to develop mechanically readable identity documents.

Training and fair pay is the key

All this new border control hardware would be useless without properly trained staff to use it, and Phare funding is set to focus on this need for quality personnel over the coming years.

The assistance scheme has already spent significant funds to help the countries in central and eastern Europe retrain their border and customs police, and more spending is planned in this area. The main objective has been on increasing expertise

and on training. This has included exchange schemes to enable customs officials to visit their counterparts in the EU's existing Member States to see how they handle different situations and to learn the latest methods of spotting and dealing with cross-border crime.

Other funds have been earmarked for police and customs training and for fighting corruption.

The Octopus programme, for example, which is jointly managed by the European Commission and the Council of Europe, has been specifically designed to help stamp out corruption in eastern Europe.

But while the European Union is keen to lend a helping hand, the Commission is adamant that the countries in central and eastern Europe must do the lion's share of the work themselves. One area where all candidate countries have been told to make improvements is on the issue of salaries for border guards. The EU argues that people working at frontier posts should be paid a decent wage to ensure that criminals wishing to smuggle illegal immigrants or contraband into the EU cannot bribe them.

Conclusions

As the EU enters the 21st century, its responsibilities in the field of justice and home affairs will become increasingly important. Without a solid judicial framework and effective law enforcement measures to support it, the single market will never be able to provide all of the economic advantages for EU citizens that its architects envisaged.

Justice and home affairs are also at the heart of efforts to forge a real concept of European citizenship. Until people are aware of their rights and freedoms as Europeans and of the benefits they get from the EU in being able to live, work and travel in safety anywhere in the EU, the European Union will remain a somewhat vague and distant concept for many individuals.

As the EU prepares to almost double in size, cooperation between national courts and law enforcement agencies is becoming more important than ever. A European Union of nearly 30 Member States will only function effectively if the various bodies designed to uphold the rule of law within its territory can work together quickly and efficiently. This is why efforts to ensure that the EU develops into an area of freedom, security and justice are so vital.

Further reading



- Documents, news, and other information on the subjects dealt with in this brochure can be found on the web-site of the European Commission's Directorate-General for Justice and Home Affairs: europa.eu.int/comm/dgs/justice_home/index_en.htm
- The EU Council of Ministers presents information on cooperation in the field of justice and home affairs at: ue.eu.int/jai/default.asp?lang=en
- Information about drugs problems is provided by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) at: www.emcdda.org

European Commission

Living in an area of freedom, security and justice
Justice and home affairs in the European Union

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European Union procedures and laws on justice and home affairs touch on some of the most sensitive questions facing the EU today. They deal with issues such as asylum, immigration, drugs, crime and cross-border legal questions. As businesses and individuals increasingly take up their right to live and work anywhere in the EU, European aspects of court proceedings and citizens' rights will become ever more important.

It is important for Europe's citizens that the objectives of justice and home affairs policies – freedom, security and justice – are interlinked and balanced, as freedom loses much of its meaning if it cannot be enjoyed in a secure environment and if it is not backed up by a fair and smoothly functioning legal system.

Other information on the European Union

Information in all the official languages of the European Union is available on the Internet. It can be accessed through the Europa server (europa.eu.int).

Europe Direct is a freephone service to help you find answers to your questions about the European Union and to provide information about your rights and opportunities as an EU citizen: 1800 55 31 88 (Ireland), 0800 58 15 91 (United Kingdom).

Information and publications in English on the European Union can be obtained from:

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