

Justice & Home Affairs

EU Integration after Lisbon

Last week's remaining question

- ▶ What are the main obstacles of a common foreign policy and defence structure, and *how likely are they to be overcome?*

Outline

Intro

JHA pre-Maastricht

JHA: post-Maastricht

Developments

Structures

Migration

Summary



JHA – the most rapidly
growing/changing sector of
EU policy?

Intro: Why co-operation in JHA

- ▶ Like CFSP, issues of border control, citizenship, civil liberties, justice and law very sensitive
- ▶ Recent (post-Maastricht) developments largely driven by *political* implications of SEM
- ▶ Dilemma
 - ▶ Different legal traditions in Europe make harmonisation difficult
 - ▶ But pressures for cooperation increase (SEM + international terrorism, organised crime, migration)

EC + Internal Security

- ▶ Early developments intergovernmental, *ad hoc* & outside treaty framework
- 1. TREVI group (1975)
 - ▶ Terrorisme, Radicalisme, Extremisme, Violence and Information
 - ▶ Ministers, senior officials police officers responsible for security
 - ▶ Met every six months; driven by 1970s international terrorism
→ JHA pillar

EC + Internal Security

- ▶ Early developments intergovernmental, *ad hoc* & outside treaty framework
- 1. TREVI group (1975)
 - ▶ Terrorisme, Radicalisme, Extremisme, Violence and Information
 - ▶ Ministers, senior officials police officers responsible for security
 - ▶ Met every six months; driven by 1970s international terrorism
→ JHA pillar
- 2. Rhodes Group of Co-ordinators (1988)
 - ▶ Internal security and immigration problems
 - ▶ (abolition of border controls)

EC + Internal Security

- ▶ Early developments intergovernmental, *ad hoc* & outside treaty framework
- 1. TREVI group (1975)
 - ▶ Terrorisme, Radicalisme, Extremisme, Violence and Information
 - ▶ Ministers, senior officials police officers responsible for security
 - ▶ Met every six months; driven by 1970s international terrorism
→ JHA pillar
- 2. Rhodes Group of Co-ordinators (1988)
 - ▶ Internal security and immigration problems
 - ▶ (abolition of border controls)
- 3. Judicial Co-operation Working Group (1992)

EC + Internal Security

- ▶ Early developments intergovernmental, *ad hoc* & outside treaty framework
- 1. TREVI group (1975)
 - ▶ Terrorisme, Radicalisme, Extremisme, Violence and Information
 - ▶ Ministers, senior officials police officers responsible for security
 - ▶ Met every six months; driven by 1970s international terrorism
→ JHA pillar
- 2. Rhodes Group of Co-ordinators (1988)
 - ▶ Internal security and immigration problems
 - ▶ (abolition of border controls)
- 3. Judicial Co-operation Working Group (1992)
- 4. Schengen Group (1985/90)

Judicial Co-operation Working Group

- ▶ Accompanied the SEM (1992)

Judicial Co-operation Working Group

- ▶ Accompanied the SEM (1992)
- ▶ Criminal matters
- ▶ Extradition co-ordination
- ▶ Counter fraud
- ▶ Counter funding of international crime and terrorism

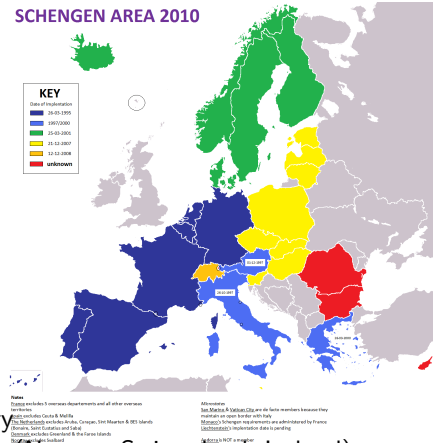
Judicial Co-operation Working Group

- ▶ Accompanied the SEM (1992)
- ▶ Criminal matters
- ▶ Extradition co-ordination
- ▶ Counter fraud
- ▶ Counter funding of international crime and terrorism
- ▶ Discontinuity, fragmentation, intergovernmentalism

Schengen Agreement/Convention

- ▶ 1985/90: Germany, France, BeNeLux
- ▶ Brought into the treaty base with Amsterdam
- ▶ Now 25 members, **but**
 - ▶ Membership not mandatory
 - ▶ Open for non EU-members (Norway, Switzerland, Iceland)

SCHENGEN AREA 2010



Internal Schengen borders



Schengen Principles

- ▶ Normally, no *internal* border controls (freedom of movement)
- ▶ **But joint external controls**, visa, immigration and asylum issues
- ▶ Plus “hot pursuit” across internal borders
- ▶ Cross-border surveillance + passport controls *anywhere* in border areas possible
- ▶ Information exchange mechanisms (computerised)

“Pillar Three” (intergovernmental)

1. Asylum policy
2. Crossing of external borders
3. Immigration and residence rights for 3rd country nationals

4. Combating illicit drugs
5. Combating international fraud
6. Co-operation on customs issues
7. Judicial co-operation in civil matters
8. Judicial co-operation in criminal matters
9. Customs co-operation
10. Police co-operation to combat terrorism, drugs and serious crime through intelligence (EUROPOL)

“Pillar Three” (intergovernmental)

1. Asylum policy → Pillar 1
2. Crossing of external borders
3. Immigration and residence rights for 3rd country nationals → Pillar 1
4. Combating illicit drugs
5. Combating international fraud
6. Co-operation on customs issues
7. Judicial co-operation in civil matters → Pillar 1
8. Judicial co-operation in criminal matters
9. Customs co-operation
10. Police co-operation to combat terrorism, drugs and serious crime through intelligence (EUROPOL)

Amsterdam

- ▶ Denmark, Ireland, UK opposed to transfer of JHA into pillar 1
- ▶ Schengen states want Agreement embedded into Acquis
- ▶ Most states want to retain some intergovernmental control

Amsterdam

- ▶ Denmark, Ireland, UK opposed to transfer of JHA into pillar 1
- ▶ Schengen states want Agreement embedded into Acquis
- ▶ Most states want to retain some intergovernmental control
- ▶ Schengen integrated into pillar 1, but complex opt-outs
- ▶ JHA reduced to “Police and Judicial Co-operation in criminal matters”
- ▶ Five-year transition period
- ▶ “Area of Freedom, Security and Justice”, but many issues still controversial/unresolved

Lisbon

- ▶ Pillar structure abolished
- ▶ All JHA matters reunited → (new) “Area of Freedom, Security and Justice”
- ▶ (Degree of) involvement of EP and ECJ
- ▶ QMV in council

Lisbon

- ▶ Pillar structure abolished
- ▶ All JHA matters reunited → (new) “Area of Freedom, Security and Justice”
- ▶ (Degree of) involvement of EP and ECJ
- ▶ QMV in council
- ▶ (Further) proliferation of “agencies”, “bodies” etc. since 1990s

EUROPOL

- ▶ European Police office
- ▶ Legal base: Maastricht; existed officially from October 1998
- ▶ Forerunner Europol Drugs Unit
- ▶ No executive powers
- ▶ Intelligence led policing / sharing of information
- ▶ Small staff but well connected
- ▶ 50% Budget increase after 9/11
- ▶ Became an EU agency in 2010 (more powers, more EP scrutiny)



EUROJUST/Schengen Information System (SIS)

- ▶ EUROJUST: another agency to enhance co-operation of public prosecutors

EUROJUST/Schengen Information System (SIS)

- ▶ EUROJUST: another agency to enhance co-operation of public prosecutors
- ▶ Schengen Information System: a common database for Schengen countries
 - ▶ If you are wanted for arrest
 - ▶ If you are on 'joint blacklist'
 - ▶ Minors/protective custody
 - ▶ Judicial authority request
 - ▶ Individuals who might be able to provide important information on criminal activities
 - ▶ Member state asks for individuals movements to be tracked

EUROJUST/Schengen Information System (SIS)

- ▶ EUROJUST: another agency to enhance co-operation of public prosecutors
- ▶ Schengen Information System: a common database for Schengen countries
 - ▶ If you are wanted for arrest
 - ▶ If you are on 'joint blacklist'
 - ▶ Minors/protective custody
 - ▶ Judicial authority request
 - ▶ Individuals who might be able to provide important information on criminal activities
 - ▶ Member state asks for individuals movements to be tracked
- ▶ New technology/scope (SIS II, 2007 → 2013), controversy over Bulgaria/Romania

“European Arrest Warrant”

- ▶ Tampere 1999 council: call for mutual recognition in law enforcement; here: simplified extradition in cases of serious crimes
- ▶ EAW (partly) replaces older bi- and multilateral agreements
- ▶ Prerequisite: mutual recognition of severe criminal acts (“double criminality”)
- ▶ Extradition *possible* without double criminality if
 - ▶ Act punishable in issuing state by sentence of at least three years
 - ▶ E. g. terrorism, trafficking, corruption, organised crime, counterfeiting, murder, racism and xenophobia, rape, fraud . . .
- ▶ “In force” since 2004
- ▶ Number of cases up, quicker extradition, but controversy

Frontex

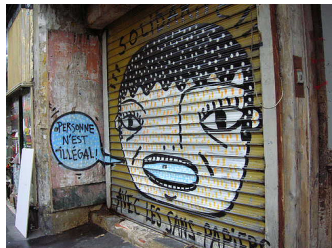
- ▶ Border security still the responsibility of the member states
- ▶ Frontex – another European Agency
 - ▶ Intelligence/co-ordination
 - ▶ Training
 - ▶ Research and standards
- ▶ Since 2007 “Assistance” (own planes, helicopters, speed boats etc) – “Rapid Border Intervention Teams”
- ▶ “Assistance” confined to the Med – “the North” doing/paying for the dirty work of keeping immigrants out?
- ▶ Controversy, lack of transparency

Migration: overview

- ▶ Push and pull
- ▶ In modern times, migration *out of Europe*
- ▶ 1950/60s and post-1990 intra-European migration, from 1980s migration from outside
- ▶ Post WW2, ((Northern) Europe one of the most prosperous regions in the world
 - ▶ Demographic decline
 - ▶ Lack of (cheap, unskilled) labour
- ▶ Neighbourhood ((Northern) Africa, Middle East)
 - ▶ Young, dynamic populations (e. g. Tunisia 41% under 25; Egypt 52% vs. Spain 25%, Germany 24%)
 - ▶ Rubbish economies, no jobs
- ▶ **But Europeans massively afraid of non-European migrants** → legislation and co-ordination

How do they get in?

- ▶ Legally from US, Canada, other OECD countries – very limited numbers
- ▶ Legally from former colonies – basically stopped in late 1960s
- ▶ Legally through bilateral agreements (Turkey, Morocco, Tunisia) – stopped in 1970s
- ▶ As asylum seekers, refugees – no or very limited legal access to labour market
- ▶ Completely illegally (“sans papiers”) – subject to exploitation and harassment



Migration: the Frontex view

Migratory trends 2008/2009

LEGEND

- EU/Schengen Associated Countries
- Third countries

FLOWS OF ILLEGAL MIGRATION DETECTIONS OF ILLEGAL BORDER-CROSSING

Central Mediterranean route

Italy:
 2009 = 9,500
 2008 = 37,000

Malta:
 2009 = 1,500
 2008 = 2,800

West Africa route

Canary Islands
 2009 = 2,200
 2008 = 9,200

Central Eastern European route

Eastern Land Borders of the EU
 2009 = 1,333
 2008 = 2,653

South Eastern European route

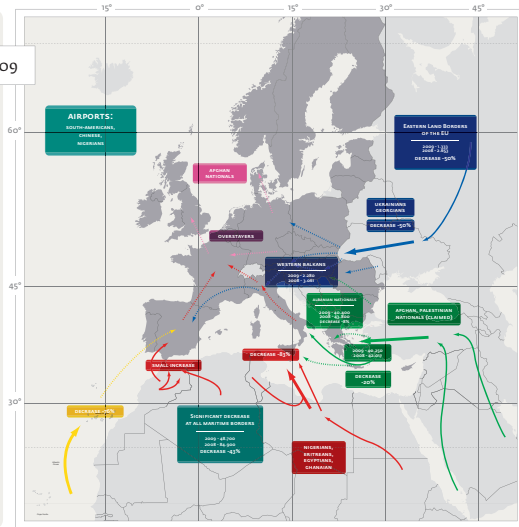
Greece sea:
 2009 = 30,400
 2008 = 31,700

Greece land:
 2009 = 49,000
 2008 = 56,000

Illegal migration within EU/Schengen Associated Countries

→ Intra EU/Schengen Associated Countries route

→ Main routes to EU/Schengen Associated Countries



Migration: the Frontex view

Current Situation at the External Borders (JANUARY - SEPT 2010)

LEGEND

- EU/Schengen Associated Countries
- Third countries

FLOWES OF ILLEGAL MIGRATION

DIRECTION OF FLUXION: BORDER CROSSING

CENTRAL MEDITERRANEAN ROUTE

Italy:
 Jan-Sept 2010 2.866 -65%
 Jan-Sept 2009 8.289
 Malta:
 Jan-Sept 2010 29 -98%
 Jan-Sept 2009 1.289

WESTERN MEDITERRANEAN ROUTE

Spain (land border):
 Jan-Sept 2010 1.089 -20%
 Jan-Sept 2009 1.369
 Spain (sea border excluding Canary Islands):
 Jan-Sept 2010 2.592 -27%
 Jan-Sept 2009 3.540

WEST AFRICAN ROUTE

Canary Islands (Spain):
 Jan-Sept 2010 16 -99%
 Jan-Sept 2009 2.232

CENTRAL EASTERN EUROPEAN ROUTE

Western Balkans (BIV, SIB, FYROM):
 Jan-Sept 2010 1.768 -24%
 Jan-Sept 2009 2.337
 Eastern Border (UKR, BLR, MDA, RUS):
 Jan-Sept 2010 828 -22%
 Jan-Sept 2009 1.059

EASTERN MEDITERRANEAN ROUTE

Greece (TUR land border):
 Jan-Sept 2010 31.024 +369%
 Jan-Sept 2009 6.616
 Greece (sea borders):
 Jan-Sept 2010 5.406* -76%
 Jan-Sept 2009 23.735

CIRCULAR ROUTE FROM ALBANIA TO GREECE

Greece (ALB, FYROM land borders):
 Jan-Sept 2010 25.294* -20%
 Jan-Sept 2009 31.563

Illegal migration within EU/Schengen Associated Countries

Intra EU/Schengen Associated Countries route

Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

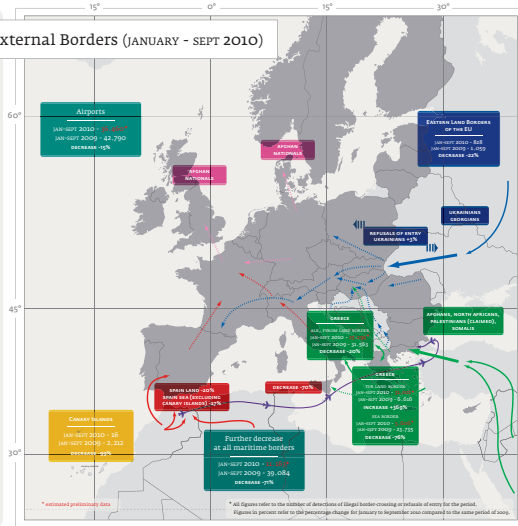
→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

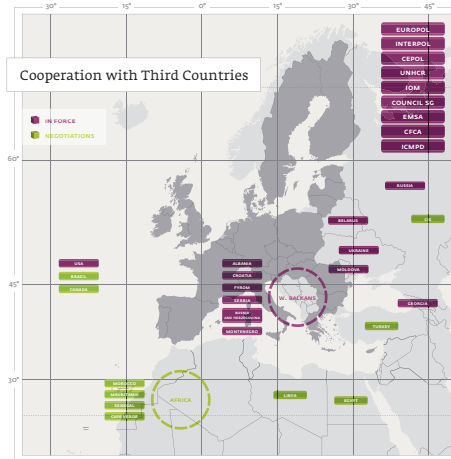
→ Main routes to EU/Schengen Associated Countries

→ Main routes to EU/Schengen Associated Countries

Data are provided through the Frontex Risk Analysis Network, except for preliminary data for Greece (ALB, FYROM) from Frontex Joint Operation Platform.
 * estimated preliminary data



Migration: the Frontex view



The European response to migration

- ▶ Asylum seekers detained outside EU where possible
- ▶ Asylum seekers entitled to have their cases reviewed only by one country
- ▶ Focus on EU external borders:
 - ▶ Tougher controls
 - ▶ Common visa policy
 - ▶ Creation of databases containing information on immigrants (EURODAC, 2003)
 - ▶ Police co-ordination (Europol)

Assessment/problems

- ▶ Co-operation in police/border/immigration matters successful, but a sensitive and highly controversial area
- ▶ Asylum/migration policy
- ▶ Co-operation in justice matters more difficult
 - ▶ Different legal philosophies/traditions
 - ▶ Different notions of what constitutes “crime” (homosexuality, divorce, abortion, racism etc.)
- ▶ Problems in dealing with terrorism
 - ▶ Different threat perceptions/strategies
 - ▶ Established patterns of bi-/multilateral co-operation
 - ▶ **Freedom vs. security**

Summary

- ▶ Ever accelerating co-operation, one of the most active fields since 1990s
- ▶ Less visible/symbolic, but arguably more successful/efficient than CFSP
- ▶ Dramatic changes introduced by ToL
- ▶ Touches on many sensitive areas
- ▶ Multitude of actors, but dominance of intergovernmental co-operation on various levels inside & outside EU
- ▶ No supranational operational structures

Summary

- ▶ Ever accelerating co-operation, one of the most active fields since 1990s
- ▶ Less visible/symbolic, but arguably more successful/efficient than CFSP
- ▶ Dramatic changes introduced by ToL
- ▶ Touches on many sensitive areas
- ▶ Multitude of actors, but dominance of intergovernmental co-operation on various levels inside & outside EU
- ▶ No supranational operational structures
- ▶ Europe really an area of Freedom, Security, Justice?

Class questions

- ▶ Why has the free movement of people been so controversial in the EU?
- ▶ How much does European Citizenship contribute to create a European identity?
- ▶ How should Europe deal with migrants?