

# Justice & Home Affairs

## *Session 2*

### *Legal Development of JHA*

#### *Assigned readings for this session:*

- *Peers (2011), pp. 41-52, 73-82, 90-92*
- *Baker & Harding (2009), pp. 28-37, 43-47*
- *Treaty on the Functioning of EU, Part Three, Title V: Area Of Freedom, Security And Justice (arts. 67-89)*



# 'Schengen'

Brief overview JHA  
development

Current legal framework

Critical issues

Presentations

Current Legal Framework

- *Title V TFEU (Part Three)*

## *Critical issues*

- *Reactivity*
- *Security bias*



Overview development

- Treaty changes and
- JHA Multi-annual programmes

Debate

*'opt-in' and 'opt-out'  
arrangements'?*

1993

Maastricht Treaty

1997

The diagram consists of a light blue arrow pointing to the right. Inside the arrow, there are three blue shapes: an oval on the left containing the year '1993', a rounded rectangle in the middle containing the text 'Maastricht Treaty', and another oval on the right containing the year '1997'.

Maastricht  
Treaty

1997

- The 'Maastricht' origins
  - separate institutional framework: intergovernmental ('Third Pillar')
  - Council dominant institution
    - Commission and EP had no role
  - legal instruments in the form of treaties
  - came into force in 1993
  - the 1985 Schengen initiative was (at the time) outside the EU

1993

Maastricht  
Treaty

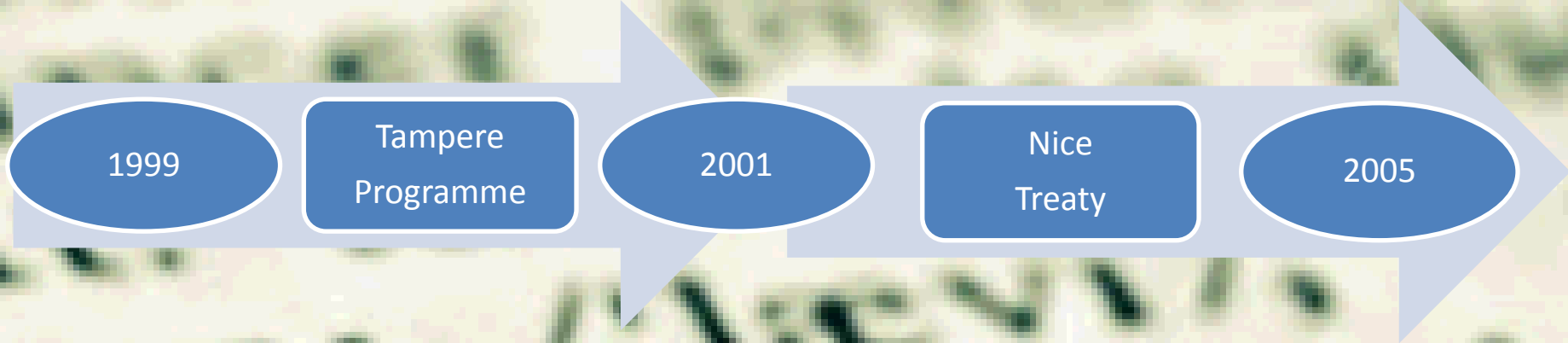
1997

Amsterdam  
Treaty

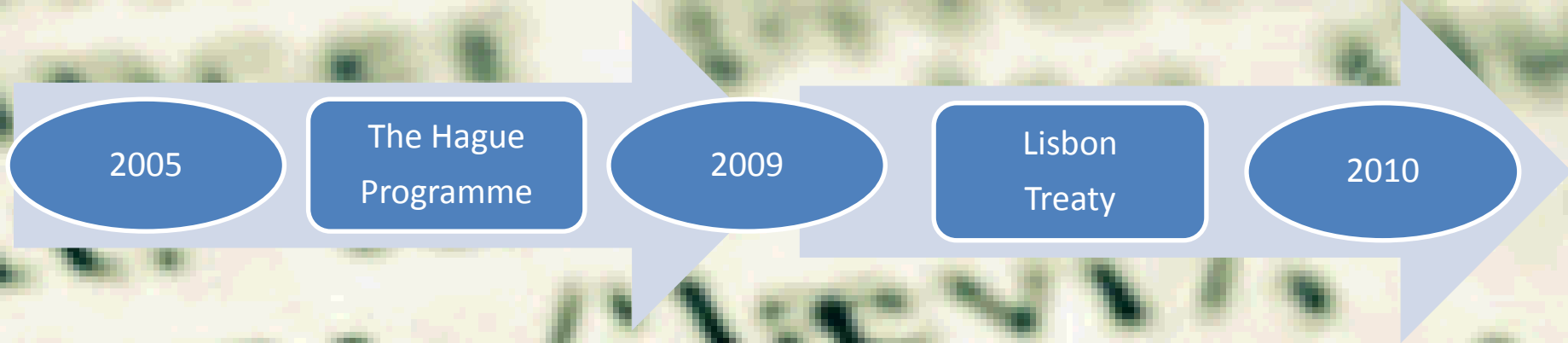
1999

- Amsterdam Treaty (1997)

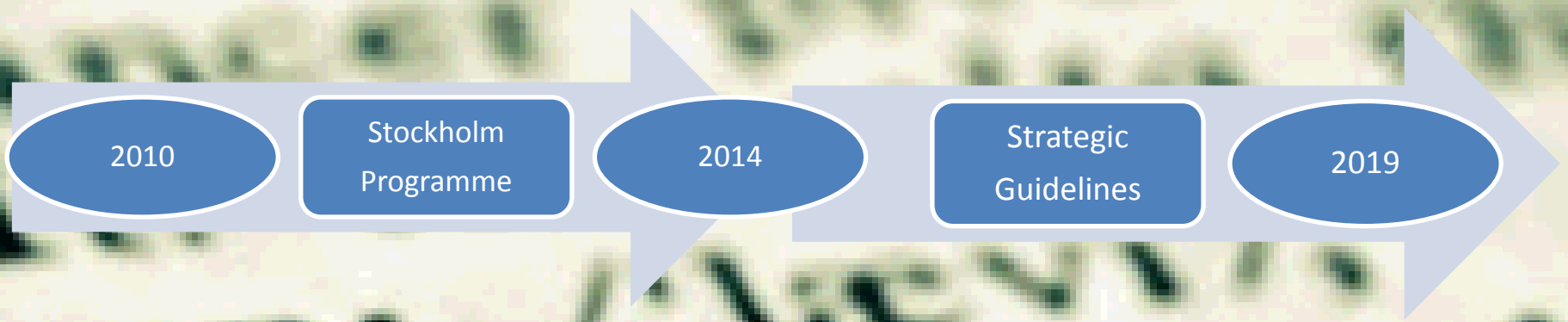
- integration Schengen acquis into EU
- transfer visa, immigration & asylum to first 'Community' pillar
- police and judicial cooperation stayed in third pillar
- introduction of 'AFSJ'
- increased presence of Commission, Parliament & Court of Justice in Third Pillar
- key legislative instrument in third pillar: 'framework decision'



- Tampere Programme (1999–2004)
  - *first in the series of multi-annual programs for implementation of JHA*
- Nice Treaty (2001)
  - *establishing Eurojust coordinating between national prosecution authorities*



- The Hague Programme (2005–2009)
  - *came about in a completely different political momentum (9/11; Spain(2004) and London (2005))*
  - *in practice: more focus on security*
- Lisbon Treaty (2009)
  - *whole ATSJ in one legal framework (Title V, TFEU)*
  - *expansion of (co-decision) 'ordinary procedure'*
  - *Directive (hence: direct effect of secondary EU law)*



- Stockholm Programme (2010)
  - *very specific recommendations on a very broad range of issues*
  - *better tools for evaluation of JHA policies*
- Strategic Guidelines (2014)
  - *more on consolidating the existing legal instruments and policy measures*

Strategic  
Agenda 2019-2024

2020

Security Union  
Strategy

today

- **Strategic Agenda 2019-2024 (2019)**
  - *Linking JHA to economy, resilience, sustainability and digital age*
  - *Its aims (therefore) also include:*
    - *increasing resilience against both natural and man-made disasters*
    - *protection from harmful cyber activities, hybrid threats*
- **2020 Security Union Strategy (2020 -2025)**
  - *Set out by Commission (not Council)*
  - *Covering much the same as previous (addressing hybrid threats; resilience of critical infrastructure; cybersecurity)*



# Lisbon Legacy: the current legal framework

## Title V (under Part Three) of TFEU

Chapter 1. general provision on the AFSJ area

Chapter 2. rules on border check, asylum and immigration;

Chapter 3. one article to arrange judicial cooperation in civil matters

Chapter 4. five articles for arranging judicial cooperation in criminal matters;

Chapter 5. regulates judicial cooperation



legislative instruments



decision making

- Commission takes initiative (art 76(a) TFEU)
- or one-quarter of member states (art 76(b) TFEU)
- national parliaments scrutinize subsidiarity (art 69 TFEU)

Unanimity in the Council & EP only consulted in a few cases, e.g. police operations (art. 87(3) TFEU)

Court of Justice now has full 'Community' jurisdiction over all JHA issues (i.e. issuing preliminary rulings, annulment of legislative acts), save for exceptions in policing (art. 276 TFEU)

### 'enhanced cooperation'

Examples: arts 82(3) on adoption measures concerning procedural criminal law and 83(3) concerning substantive criminal law.

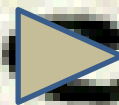
# Critical Issues

*Reactivity: lack of coherence and coordination*

*Security bias*

▼ *Centrality of Council*

- transferring national priorities and policies at EU level
  - attempting to influence the EU policy agenda with own national priorities
  - finding ways to legitimize contested national politics at EU level and/or instrumentalise EU policies for justifying national policies
- (Carrera 2011; Baker & Harding 2009)



*Institutional indicators:*

- *incoherent distribution of Union's JHA competences*
- *Treaties*
- *Unanimity rule in the Council*
- *Right for member states to initiate legislation*
- *No countervailing force to keep the Council in check and to force to share its deliberation with others.*

**Leading statement for in-class debate of tomorrow:**

***The Dublin mechanism should be based on a system of quotas.***

***(that is: refugees should be distributed amongst member-states according to a formula pre-established at EU level)***

*Leading statement for in-class debate of today:*

*Member states should (continue to) be able to participate in the JHA field through 'opt-in' and 'opt-out' arrangements*

**END**

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