

Course: Law of the European Union
**[11] Cooperation within the EU in non-
economic matters**

Filip Křepelka
(krepelka@law.muni.cz)
Masarykova univerzita

Need for cooperation and harmonization

- There are two grounds for engagement of the EU:
 - (1) Adverse effects of economic integration: free movement of goods, persons, services and capital causes more cross-border disputes of businessmen, migrants and their families, international crime etc. Big movements require simplification of cross-border activities.
 - (2) Increasing demand for involvement on European level: European Community was established for economic integration. In last decades, however, demand for involvement in non-economic areas increased together with development of political life within newly established European Union.

Development – before EU

- EC member states continued their cooperation in mentioned agendas on reciprocal basis – many bilateral treaties originated before wars or even in previous century.
- Other international organisations provided institutional support for creation and development of plurilateral and multilateral frameworks.
- Since 1949, the Council of Europe contributed to creation of many frameworks for cooperation of member states. These frameworks are applicable until today as regard non-member states of the EU.

Development – within EU

- The European Union was established for development of non-economic agendas.
- Several „reluctant“ member states of the EC feared application of legal supranationalism in these agendas. Therefore, complicated pillar structure was developed.
- 1st pillar,
- 2nd pillar: common foreign and security policy
- 3rd pillar: justice and home matters
- Amsterdam Treaty (1997) reduced scope of the 3rd pillar, moving its substantial agendas to the 1st pillar (making it police and judicial cooperation in criminal matters).

Recent framework

- „European Constitution“ expected full integration of pillars.
- Legal framework for both economic and non-economic agendas should be essentially the same.
- Lisbon Treaty has achieved it with some exceptions: common foreign and security policy has specific rules.

Reluctance to harmonize

- Many member states have centuries long tradition of private (civil) law (property, contracts, torts etc), family laws, criminal repression etc.
- Several member states have also long tradition of administrative authorities and judiciary.
- There is significantly lesser preparedness of member states for harmonization of these agendas if compared with harmonization of legislation related to economy (technical norms, taxation, customs).

Judicial cooperation in civil matters

- Number of crossborder disputes related to interstate trade in goods and services, investment and payments
- Amsterdam Treaty (1997) brought judicial cooperation in civil matters from the 3rd pillar to the 1st pillar. regulations and directive gradually replace conventions and 3rd pillar pieces of legislation.
- There is no EU court system for civil matters (exception: disputes EU v. employees, damages caused by the EU).
- The EU provides only for cooperation of judiciary and other relevant authorities.

Competence of courts in civil matters – regulation and jurisdiction

- Regulation 1215/2012 describes jurisdiction of member states (and national legislation their courts), recognition and enforcement of judgements in civil and commercial matters.
- It has replaced the Brussels Convention and regulation 44/2001.
- In general, the jurisdiction is exercised by the member state in which defendant is domiciled, regardless of nationality. There are also several special jurisdictions.

Competence of courts in civil matters – recognition, non-discrimination

- Recognition of judgements is simplified, in general automatic.
- Special national courts or authorities are charged with check of the documents delivered with the application for enforcement.
- No discrimination of foreign nationals or entities is allowed, the judgements are enforced by authorities (entitled individuals or institutions) by relevant national laws.

Procedures related to marriage and parental responsibility

Regulation 2201/03 applies for divorce, separation, marriage annulment and all decisions regarding parental responsibility.

Other aspects of personal and family law are excluded.

The regulation sets jurisdiction for both matrimonial issues and parental responsibility.

Insolvency proceedings I

- Regulation 2015/848 provides for efficient judicial cooperation in insolvency proceedings.
- National insolvency laws are retained, however their rules about cross-border aspects of insolvency (property or debts, cooperation in proceedings) are governed by the EU law.
- Efficient Europe-wide insolvency proceedings are necessary because individuals and companies or other legal entities can do Europe-wide business.

Insolvency proceedings II

- EU law defines national proceedings covered by EU coordination and cooperation.
- EU law determines competent state and thereby applicable insolvency legislation (courts are assigned by national legislation).
- Secondary proceedings are introduced in all other member states where some obligation, property etc. situated.
- The most effective solution will be EU bankruptcy judiciary (federal judiciary in the US)

Other EU measures for efficient judicial proceedings and equality

- Several regulations and directives provide for service (delivery) of documents required for civil and proceedings, minimum standards for legal aid for cross-border disputes or taking of evidence in cross-border cooperation of courts.

Cooperation in criminal matters

- In general, member states regard criminal (penal) law as an excellent example of their own power. They are not prepared to vest EU with greater competences in area of criminal law.
- The only generally shared value, now expressly mentioned in primary law, is abolition of death penalty.
- Certainly, there are many crimes punishable in all member states. Other differ significantly. Penal policies (frequency and length of imprisonment) are different.

EU criminal law?

- There are no European crimes, European courts or European prisons.
- The EU law provides for more efficient cooperation among member states.
- The most important tools are European cooperation in investigation and prosecution, including obtaining of evidence, plus enforcement of punishments.
- One controversial tool is the European arrest warrant. Many member states have no tradition of extradition of their own citizens for trial in other member states term.

Cooperation of police forces of the MS + Europol

- „European Police Office“ (Europol) was established in in year 1995.
- Now regulation 2016/794.
- Europol is no independent police unit, its officers are not empowered and equipped for their own police operations.
- It serves as liaison center (part of its personnel are liaison officers of polices of member states).
- It operates databases of fugitive criminals, kidnapped persons, stolen valuables etc. It contributes to coordination of large-scale police operations of police forces of member states.

Asylum

- The EU started harmonisation of asylum and immigration laws of member states.
- It is necessary to combat illegal immigration from Africa and Asia and widespread misuse of asylum proceedings.
- Only one member state (detailed rules for its determination) is responsible for examination of applications, multiple applications in other member states (resulting in long-term stay) are excluded.
- Asylum for nationals of other member state shall be exceptional – it indicates serious non-compliance of home member state with fundamental rights.

Visa and Long-term immigration

Due to the Schengen, member states have gradually harmonized visa policy towards citizens of non-member states.

Diplomatic and consular missions of member states grant these „Schengen visa“, not the EEAS delegations (later)

Nevertheless, the member states retain their competences to decide about numbers and origin of immigrants. It is hard to achieve harmonization, because many member states have closer ties with various non-member states and privilege their nationals.

Removal of internal border controls (the Schengen)

- Several member states decided to remove gradually controls on internal borders while adjusting the protection of external borders (Schengen Treaty).
- The law was subsequently taken over by (adopted) the EU and extended to other states.
- Now Regulation 2016/399 Schengen Border Code
- Regular controls of persons and goods crossing internal borders have been eliminated. Temporary controls can be re-introduced if necessary. States are must do efficient controls of external borders (including seas).

Pursuit by police across borders

- Under certain conditions, Schengen law allows searches and pursuits for fugitive criminals abroad by the police forces of member state crossing internal border.
- It is serious deviation from principle of state sovereignty.
- It must be impossible to inform and engage the police of neighbour member state.
- There are several detailed conditions for such cross-border pursuit.

EU foreign and security policy – origins and development

- EC and its member states realized decades ago that far-reaching economic integration requires coordination of foreign and security policy.
- Nevertheless, member states do not want to transfer competence to European institutions.
- They have their own priorities and different views and policies on situation and events.
- EU has little (if any) political legitimacy for formulation of foreign policy.

EU foreign and security policy – framework

- Principal institution for formulation is the Council.
- In general, unanimous decisions are required. Member states can thus veto.
- Result: many international events and situations are not addressed by common foreign and security policy.

Specific decisions of the European Council and of the Council express agreed policy.

- High Representative for foreign affairs and security and European Service of External Action are established by the Lisbon Treaty with delegations (EU embassies) in many countries worldwide.