

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

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Overview

- Common foreign and security policy
 - approaches, measures and sanctions towards non-member states
- Cooperation in judicial and administrative matters:
 - civil judiciary and bankruptcy
 - Prosecution of crimes and
 - police cooperation
 - Immigration and asylum
 - removal of passport controls at internal borders

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) Rising 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.
- Amsterdam Treaty (1997) reduced scope of the third pillar, while moving its substantial agendas to the first pillar of the EC.
- „European Constitution“ expected full integration of pillars. Legal framework for both economic and non-economic agendas should be essentially same.
- Lisbon Treaty has achieved it also with some exceptions.

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).
- Therefore, European Union usually sets rules for cooperation and coordination only. Harmonization within the EU is limited.
- Nevertheless, some standards are set by other European institutions or form European tradition.

Judicial cooperation in civil matters

- Number of crossborder disputes related to interstate trade in goods and services, to interstate investment and to
- 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: the Court of the First Instance hears claims involving EC or labour disputes of EC employees).
- The EU provides only for cooperation of judiciary and other relevant authorities.

Competence of courts in civil matters – regulation and jurisdiction

- Regulation 44/2001 describes jurisdiction of member states (and national legislation their courts), recognition and enforcement of judgements in civil and commercial matters (44/2001).
- It has replaced the Brussels Convention.
- 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, of equality

- Recognition of judgements is simplified. In general, it is 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 issues of personal and family law are excluded.

The regulation sets jurisdiction for both matrimonial issues and parental responsibility. Furthermore, it provi

Insolvency proceedings I

- Special regulation 1346/2000 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 EC 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 suitable solution will be EU bankruptcy judiciary (as there is 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.

Judicial 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.
- However, other aspect of criminal law in Europe differ. Certainly, there are many crimes punishable in all member states. Penalties imposed (including different terms of imprisonment) are different
- It is very difficult to establish common legal definitions.

EU criminal law?

- Now there is no proper EU criminal law (compare with the U.S.). There are no European crimes, European courts or European prisons.
- The EU law (criminal matters remained in the 3rd pillar before Lisbon Treaty) 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.

Police cooperation + Europol

- Member states of the EU have established „European Police Office“ (Europol) as separate international organisation in year 1995.
- Europol is no independent police unit, its officers are not empowered and equipped for their own police operations. It mainly serves as liaison center (significant part of its personnel are liaison officers of police forces of member states). It operates databases of fugitive criminals, kidnapped persons, stolen valuables etc. Europol contributes to coordination of large-scale police operations of police forces of member states.

Asylum

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

Visa and Long-term immigration

- Due to „Schengen“, member states have gradually harmonized visa policy towards citizens of non-member states. This policy is carried out by diplomatic and consular missions of member states.
- On the other hand, 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. Furthermore

Removal of internal border controls („Schengen“)

- In 1980ties, 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. Almost all member states belong or shall belong in near future to Schengen system. Regular controls of persons and goods crossing internal borders have been eliminated. Temporary controls can be re-introduced if necessary. Schengen states are required to maintain efficient controls of external borders (including seas).

Cross border movement of policemen

- Schengen law allows - in described circumstances - 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

EU foreign and security policy – grounds and development

- E(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.
- Ground: they have their own priorities and different views and policies for situation and events abroad
- EU has limited 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 EU common foreign and security policy.
- There were several legal instruments for common foreign and security policy.
- Lisbon Treaty simplifies rules and introduces EU minister for foreign affairs.