

Sheet 6

THE LISBON TREATY AND THE AREA OF FREEDOM, SECURITY AND JUSTICE

Since its establishment on **1st January 1993** the massive area of freedom of movement, merchandise and capital represented by the European Union **has not benefited from any co-ordination actions on the part of the various legal systems specific to each Member State.**

Apart from the daily problems that this creates (for example in terms of the shared guardianship of children after a divorce on the part of two community citizens who are living in different Member States) **the lack of co-ordination has limited the action of the European Union against international crime networks.**

The Lisbon Treaty enables the Union to **develop its own action and policies** which meet **citizens' expectations** with regard to **security and justice.**

1) THE ENHANCEMENT OF THE MEANS OF ACTION IN TERMS OF SECURITY

- The Lisbon Treaty **enhances the efficiency of the decision making process** with regard to the **area of freedom, security and justice.**



In this area the **Council of Ministers** will use the **qualified majority vote** and the **European Parliament** will have the power of **codecision.**

For example the **qualified majority rule** will now apply with regard to the **control of the Union's external borders and asylum.**



The Union will therefore be able to harmonise the rules governing the granting of asylum.

This will make it possible to:

- Put an end to the complex system whereby various rules are juxtaposed and are inapplicable in the various Union Member States;
- Develop a **common asylum policy.**

- The treaty includes the establishment of an "**integrated management system for external borders**" and the strengthening of the powers of "Frontex", the European Agency for the Management of Operational Cooperation at the External Borders.
- The treaty also strengthens the **European Union's means to fight against illegal immigration and the trafficking in human beings.**



Again decisions will now be taken by the **qualified majority** in "**codecision**" with the **European Parliament.**

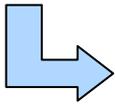
➔ This means that there will be a **common policy applied by the Union and its Member States** which aims to define the rules and conditions of immigration.

- **With regard to criminal matters the adoption of minimal rules defining the crimes and punishment for a certain number of cross-border crimes** (terrorism, drugs and arms trafficking, money laundering, sexual exploitation of women, cyber-crime, etc.) will be decided by **the European Parliament** and the **Council of Ministers** by **qualified majority.**

➔ With regard to criminal matters guarantees protect the States who may believe that their legal system might be threatened (*see point 3 on this Sheet*).

- The Lisbon Treaty acknowledges the existence of the **European Police Office (Europol)** that may **support the action of national police forces** in the collation and analysis of information. This embryonic European police force can also **co-ordinate, organise** and even **undertake investigations** and operations **together with the national police forces.**

2) THE FOUNDATIONS OF EUROPEAN JUSTICE



WITH THE LISBON TREATY

- The Lisbon Treaty establishes the principle of increased legal co-operation both civil and criminal, via the principle of "mutual recognition" (each legal system acknowledges that the decisions adopted by other legal systems of other Member States are valid and applicable).

↳ These new measures notably concern:

- co-operation in terms of **collating evidence**;
- **effective access** to justice;
- co-operation between Member States' legal authorities with regard to **criminal prosecution** and the **execution of decisions**;
- the establishment of **rules and procedures** to ensure the recognition of all forms of judgement and legal decisions across the entire European Union.

- The Lisbon Treaty also opens the way to the creation of a **European Prosecutor's Office**.

↳ It will be competent in the **search for, legal proceedings against and prosecution of criminals** even if the crimes are only limited to those having damaged the financial interests of the European Union.

↳ The European Council will be able to extend **the competence of the European Prosecutor's Court** to the fight against **serious trans-national crime** (such as terrorism, the trafficking in human beings, drugs trafficking, etc.) **via a unanimous vote**.

In addition to this and in anticipation of the establishment of the European Prosecutor's Office, **Eurojust**, which at present has simple co-ordination powers, might suggest the **launch of prosecution procedures** – which today are the responsibility of national authorities.

Eurojust

Established in 2002 **Eurojust** is a body within the European Union that is responsible for **improving the efficiency of competent authorities in the Member States with regard to their fight against serious forms of organised crossborder crime. Eurojust stimulates and improves the co-ordination of investigations and legal proceedings.** It also supports Member States in enhancing the efficiency of their investigations and legal proceedings.

3) FACILITATED EXEMPTION OPPORTUNITIES

- With regard to criminal matters the Lisbon Treaty introduces guarantees that **the fundamental principles of Member States' legal systems are respected** in this area.

↳ Some States enjoy **opt-out** clauses. This is true of the **UK and Ireland** with regard to the policies governing external borders, asylum, immigration and legal co-operation in civil matters.

➔ However they may adopt and apply the European measures decided in these areas case by case (**opting-in**).

↳ But in order to avoid any type of blockage the Lisbon Treaty has relaxed the use of "**enhanced cooperations**" to enable States to apply a specific measure if they so wish.

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