

PROGRESS AND OBSTACLES IN THE AREA OF JUSTICE AND HOME AFFAIRS IN AN ENLARGING EUROPE

Joanna Apap* & Sergio Carrera*

***ABSTRACT:** This article makes an assessment of the legislative achievements made so far of the objectives set by the Amsterdam Treaty and the Tampere European Council. A number of Justice and Home Affairs (JHA) policy areas have experienced a major degree of development or convergence more than others. Why? This is a most sensitive field of study, which has been until now guarded very much as an area primarily of national sovereignty or where sovereignty issues could be at stake. The existence of frictions and strains can be considered as the main justification for this to happen. The way in which certain frictions between member states have affected the implementation of policy as well as how these may be further exacerbated by the forthcoming enlargement will be equally analyzed. The article is divided into two main parts: the evaluation of the main progress in implementing the Tampere Scoreboard on the eve of enlargement, as well as the analysis of the reasons why some JHA policy areas have not achieved the expected level of development.*

1. Introduction

Justice and Home Affairs (JHA) has been the most dynamic policy domain in the EU since the Treaty of Amsterdam came into force on 1 May 1999. The policies grouped under the heading of JHA are numerous, as well as diverse. They are also characterised as being the most difficult and 'sensitive' areas for the EU because of the great divide between elites in Member States, European Institutions and large populations throughout the EU. In the Amsterdam Treaty, these areas were grouped together under the new Heading IV of the European Community Treaties (TEC) and enshrined under three dimensions: Freedom, Security and Justice (FSJ) and judicial cooperation in penal matters - the vestiges of the old third pillar which is found under

Heading VI of the Treaty on European Union (TEU).

The EU adopted an ambitious work programme at the Tampere European Council of 15-16 October 1999, which aimed at crystallising a proper balance between freedom, security and justice. It also outlined a timetable - the Tampere scoreboard - which set objectives as well as deadlines and gave structure to the agenda in this area.

This paper assesses the achievements made so far in the objectives set by the Amsterdam Treaty and the Tampere European Council. Some policy areas have experienced a greater degree of development or convergence than others. We will also evaluate the reasons why certain policies have not achieved the expected outcome, as well as the practical consequences

* Joanna Apap is Head of Unit and Research Fellow on Justice and Home Affairs, Centre for European Policy Studies, Brussels.
Sergio Carrera is Research Fellow Justice and Home Affairs, Centre for European Policy Studies, Brussels.

of existing frictions and strains between Member States.

2. To what extent has convergence been achieved in the JHA area?

This part analyses the key measures for achievements in the Area of Freedom, Security and Justice (AFSJ), and their development so far based on the Commission's biannual update of the scoreboard to review progress on the creation of an AFSJ area in the EU, during the first half of 2003.

2.1 Immigration

Based on the Amsterdam Treaty, the policy orientations established in the Tampere European Council of 15-16 October 1999 and the Seville Conclusions of 21-22 June 2002, the Commission has formulated the main elements needed to create a 'common policy on migration'. In the Laeken European Council in December 2001, the objective to establish a common EU policy in this area was reaffirmed. Thus, since that time the Commission has increased its authority and is becoming a prominent actor. The activity of the Commission to date has been positive and forward-looking. It merits more recognition and greater support than it has so far received. Yet these areas of policy remain governed by the unanimity rule until the end of 2004 (Art. 67, EC Treaty) and agreement is not easy on many measures, with Member States seeking to preserve as much of their authority as possible. Consensus on the general strategy for dealing with illegal immigrants has not been easy, as was demonstrated by the weak compromise reached at the June 2002 Seville Council.

Thus, even though the European Commission has already made proposals in a wide number of areas that provide the first elements for a common legislative framework, the Council has not followed up with sufficient support. This is exemplified by two Commission Communications, on a community immigration policy and on an open method of coordination for the policy. There has not been a concrete response by the Council in relation to either communication, even though their adoption would represent a key step towards the achievement of a 'common immigration policy' at EU level. This raises questions of whether or not national governments are genuinely committed to cooperate in this field.

The June 2002 meeting of the European Council in Seville highlighted the need to speed up the implementation of all aspects of the programme presented at Tampere and to develop a 'common policy on immigration'. It welcomed the comprehensive plan to combat illegal immigration and trafficking of human beings in the EU that was adopted by the Council on 28 February 2002. The plan aimed at defining a common and integrated approach to these issues and identified seven areas where action was considered necessary.¹ Consequently, a high priority was given to the fight against illegal immigration and the trafficking/smuggling of human beings. Regarding relations with countries of origin, the idea of placing sanctions on them for failing to control illegal immigration was presented as a real option. Thankfully this proposal to sanction poor countries was not considered practical, because it was recognized

¹ These seven areas include: visa policy, the exchange of information, readmission and repatriation policies, the monitoring of borders and measures to take when borders are crossed, Europol and penalties, and the adoption of measures aimed at combating immigration and trafficking in human beings more effectively.

as virtually impossible for any non-totalitarian regime to effectively control exit from its territory. It was agreed instead that migration diplomacy (to reach agreements on legal immigration to the EU) and co-development programmes (to reduce migratory pressures) should be actively pursued. The Seville European Council asked for the conclusion of these agreements to be speeded up and for new negotiating mandates to be approved.

This has been developed in the Communication from the Commission to the Council and the European Parliament, integrating migration issues in the European Union's relations with third countries, COM(2002)703 final, of 3 December 2002. The Commission is in the process of negotiating several readmission agreements between the European Community and third countries, in which both parties agree to accept the return of illegal migrants into their territory.²

Indeed, an area of increasing concern for the Member States is the prevention and fight against illegal immigration, which is essential to a common asylum policy of the EU. This is a point where the first and third EU pillars come together. A major trend towards convergence at EU level can be seen in this area since the Seville Conclusions were presented in June. Among others, the following legal instruments need special consideration:

- Proposal for a Council Directive on the short-term residence permit issued to those victims of illegal immigration or trafficking in human beings who cooperate with the competent authorities COM(2002)0071 final - CNS(2002)0043, 11 February 2002;
- Council Directive on the mutual recognition of decisions about the expulsion of third-country nationals. The Directive was adopted by the Council on the initiative of the French presidency on 28 May 2001. The main purpose of the Directive is to ensure that once an individual is expelled by one member state, s/he becomes a *persona non grata* in the whole Schengen area. Trust in the national administration of other member states for enforcing a restrictive measure does not seem to pose a problem in this field;
- Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration COM(2001)0672 final, 15 November 2001;
- Proposal for a Council Decision to adopt an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO), COM(2001)0567 final, 29 January 2002;
- Framework Decision of 19 July 2002 on combating trafficking in human beings, 2002/629/JHA, 19 July 2002;
- Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry transit and residence, 2002/946, 28 November 2002; and

² The first EC Readmission Agreement to enter into force was signed with Hong Kong on 27 November 2002. Agreements with Macao and Sri Lanka were initiated on 30 May 2002 and 18 October 2002 respectively; and are in the process of being ratified. Moreover, the Council has adopted decisions authorising the Commission to negotiate readmission agreements between the EC and Russia, Pakistan, Morocco and Ukraine. Negotiations started in November with Ukraine and informal discussions are continuing with Morocco. Further proposals to negotiate such agreements with Albania, Algeria, China and Turkey were submitted to the Council in October 2002.

- Council Directive defining the facilitation of unauthorised entry, transit and residence, 2002/90, 28 November 2002.³

2.2 Third-country nationals

Regarding non-EU citizens or so-called third-country nationals, the Treaty of Amsterdam neither framed a coherent strategy nor a comprehensive approach to them in Arts. 61, 62 and 63 TEC. After the first few years of applying these provisions, the European Commission forwarded proposals to the Council for various Directives to integrate these policy issues further. Yet once again, the response by the Council has been insufficient.

Among the legislative agenda, the following legal instruments that pertain to third-country nationals should be highlighted:

- One of the first post-Amsterdam initiatives proposed by the Commission in the area of immigration is the draft Directive on the right to family reunification, submitted to the Council on 1 December 1999. The Commission presented an amended proposal, COM(2002)225 to the Council of Ministers on 2 May 2002, that was finally adopted politically by the Council of Ministers of the European Union on 28 February 2003. Although this represents an important step, the promise of equal treatment for third-country nationals is still far from achieved;⁴
- In March 2001, the Commission proposed a Directive to the Council concerning long-term, resident third-country nationals to extend their free movement rights, on the basis of Art. 63(4), COM(2001)127 final. The proposed Directive has now been politically agreed upon by the JHA Council on 5 June 2003;
- The Commission proposed a Council Regulation to extend the provisions of Regulation EEC No. 1408/71 to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality COM(2002)59, 6 February 2002;
- The Commission proposed a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service COM(2002)548, 7 October 2002; and
- The Commission's Proposal for a Council Directive, COM(2001)0386 final, of 11 July 2001, on conditions of entry and residence of third-country nationals for the purposes of paid employment and self-employed economic activity is another move forward in the same direction.

The adoption by the Council of some of the Commission's proposals, such as the Proposal for a Council Directive COM(2002)0071 final, of 11 February 2002 (on the short-term residence permit issued to those victims of illegal immigration or trafficking who cooperate with the authorities) and the Proposal for a Council Framework Decision (on combating racism and xenophobia), COM(2001)0664

³ These three last measures have been adopted by the Council on the initiative of France.

⁴ While the Commission's Explanatory Memorandum for the proposal explains that several provisions in the proposal are based on Community law it is important to recall that none of these instruments is expressly mentioned in the legal measure itself, with the exception of Regulation 1612/68/EEC (which concerns the abolition of reverse discrimination between member state nationals and EU citizens who are using their freedom of movement).

final, as well as the others mentioned above, would represent a positive step towards the goal of harmonisation.⁵

2.3 Asylum

The European Commission proposed a Council Decision for a European Refugee Fund on 14 December 1999. The objective was a framework for 'structural measures' to facilitate the reception and voluntary repatriation of asylum seekers. Emergency aid was also included to help Member States face the financial burden in the event of an unexpected arrival of large numbers of refugees or displaced persons. The proposal establishing the European Refugee Fund was adopted as Council Decision 2000/596/EC on 28 September 2000.

The provision of minimum temporary protection for displaced persons, including residence permits, access to employment, accommodation and housing, means of subsistence, access to medical treatment, the right to education of minors, and so on, was proposed by the Commission in May 2000. The initiative aimed at harmonising the temporary protection measures across national borders in the EU, while preventing 'asylum-shopping' and simplifying decision-making mechanisms. The European Parliament approved the proposal on 13 March 2001. The Directive (2001/55/EC) was formally adopted by the Council on 20 July 2001, and became the first serious achievement towards European regulation of asylum.

Others initiatives to develop a 'common European asylum' policy include:

- Council Regulation 2725/2000 of 11 December 2000, to establish *Eurodac* for fingerprints of asylum seekers. The Eurodac system is meant to aid the application of the 'first safe haven' principle of the Dublin Convention. As agreed in Copenhagen 2002, Eurodac became operational for the 15 member states in January 2003; and
- Council Directive 2001/55/EC, of 20 July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof.

The European Commission persistently seeks to devise a comprehensive European asylum regime. In September 2000, it tabled a proposal for a Council Directive on minimum standards for procedures in Member States to grant and withdraw refugee status. The approach respects national regulatory systems and avoids the introduction of uniform procedures. The Member States have wide discretion to apply their national procedures as long as they ensure certain minimum standards with respect to granting and withdrawing refugee status. This proposal was amended on 18 June 2002 by the Commission proposal COM(2002)326, in accordance with the conclusions of the Laeken European Council.

The following recent developments should also be emphasised:

- The Commission presented a draft Directive outlining minimum standards for the reception of asylum seekers

⁵ The Commission is planning to present a Communication on the integration of third-country nationals in 2003.

COM(2001)181. This Directive has been recently adopted by the Council of Ministers of the European Union on 27 January 2003. The Member States will have to implement its provisions by 6 February 2005, following its Art. 26. Despite its general nature and the wide room for exceptions or adaptation that it allows, it represents significant progress in overcoming the difficulties caused by different standards across the Member States;

- Regarding the so-called Dublin II Regulation, the Council agreed on 18 December 2002 on the basis of the Danish Presidency compromise. On the eve of the JHA Council of 19 December 2002, it agreed on the Commission's proposal for a Dublin II Regulation. The Council Regulation (EC) No. 343/2003 was adopted on 18 February 2003, establishing the criteria and mechanisms of determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. This Convention shall replace the one that determines the state responsible for examining asylum applications lodged in one of the Member States of the European Community signed in Dublin on 15 June 1990 (Dublin Convention). It has maintained the structure of the Dublin Convention, while improving several aspects of it that proved to be unsatisfactory

The Commission is planning a progress report on work on the common asylum procedure and the uniform status, and on the implementation of the first-stage instruments

in 2003. In addition, two communications are planned to be presented at the end of 2003 that concern the examination of asylum applications outside the EU and the establishment of a single procedure for examining applications for protection within the Member States.

Again, as far as asylum matters are concerned, the main Commission proposals have not yet been adopted by the European Council, such as the Communication from the Commission to the Council and the European Parliament, towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, Brussels, 22 November 2000, COM(2000)755 final. The Communication from the Commission to the Council and the European Parliament on the common asylum policy, introducing an open-coordination method - the first report by the Commission on the application of Communication COM(2000)755 final of 22 November 2000 - is still pending. Also awaiting adoption by the Council is the Proposal for a Council Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection, COM(2001)0510 final.

Furthermore, the practical implementation by the Member States of existing EU and national legislative regimes may not fully safeguard the human rights of victims, nor offer them the necessary protection that our humanitarian traditions require (in particular the protection set out in the Geneva Convention). This has been clearly shown in the report on the situation of fundamental rights in the European Union and Member States, in which the current practices of the

different member states have been studied and criticised.

2.4 Judicial cooperation in criminal matters

After the events of 11th September 2001, the EU third pillar made internal security affairs a matter of intergovernmental cooperation between the Member States for the first time. It provided the means to develop an integrated and coherent anti-terrorist policy

The subject of 'terrorism' is primarily dealt with by the third pillar of the TEU, Title VI, Arts. 29-42. After the Amsterdam Treaty police and judicial cooperation in criminal matters remained uncovered by the Community and continue to be of an intergovernmental nature. The stated objective of the Union in this area, according to Art. 29 TEU, is to provide a 'high level of safety' by adopting common actions among the Member States in police and judicial cooperation and by preventing racism and xenophobia.

This has been the main legal framework used by the Council of Ministers to adopt the legislative measures after the events of 11th September 2001. At its extraordinary meeting on 21 September 2001, the European Council stated that "terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union". Indeed, within ten days, the JHA Council decided on a package of anti-terrorist measures in the areas of judicial and police cooperation, the prevention of financing of terrorism, improved border controls and cooperation with the United States. All of these radical measures were subject to less controversy and agreed more quickly than could have conceivably been the case without the events of 11th September 2001.

The core legislative developments in this field are:

- Framework Decision of 13 June 2002 on the European arrest warrant, 2002/584/JHA;
- Framework Decision on combating terrorism, 2002/475/JHA, of 13 June 2002;
- Regulation (EC) No. 2199/2001 amending Council Regulation (EC) No. 467/2001, and prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources relating to the Taliban of Afghanistan;
- Regulation (EC) No. 342/2003, amending for the twelfth time the Council Regulation (EC) No. 881/2002, and imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, 21 February 2003;
- Council Regulation (EC) No. 561/2003 amending, (as regards to exceptions to the freezing of funds and economic resources) Regulation (EC) No. 881/2002, and imposing specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, 27 March 2003;
- Council Decision 2003/48/JHA, on the implementation of specific measures for police and judicial cooperation to combat terrorism, 19 December 2002;
- 2001/500/JHA, the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of

instrumentalities and the proceeds of crime; and

- Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.⁶

In addition, in the aftermath of the events of 11th September, the EU was able to make progress on a number of other policy issues that are of importance in terrorist action, such as the amendment of the Directive on money laundering and the setting up of the Eurojust cross-border prosecution unit. Nevertheless, these measures clearly have a general impact that extends far beyond combating terrorism. Decisions were also taken on improved cooperation between police and intelligence services. These included charging the Police Chiefs Task Force with cooperation with third countries; guaranteeing a high level of security, particularly in air safety; and, considering the missions given to a team of counter-terrorist specialists within Europol. A further strengthening of controls at the external borders was also agreed, for which the Police Chiefs Task Force was also made responsible. The strengthening of surveillance measures under Art. 2.3, Schengen 1990, was agreed as well.

3. Main reasons for the persistence of frictions and strains in the JHA arena

In this part the potential frictions and strains that exist on the eve of enlargement are analysed. The implementation of policy related to establishing an Area of Freedom, Security and Justice has been fundamentally affected by the rise of frictions and strains among Member States, as well as their relations with the

candidate countries and the neighbouring states. These frictions can be identified as the main obstacles and/or tensions that have either prevented or negatively affected a further convergence of policies between the member states in the JHA arena.

The reasons why some JHA policy areas have not achieved the expected level of development can be summarised as follows:

1. *Weakness of political resolve in European cooperation.* The EU suffers from weak legitimacy in this area, making the cooperation of governments and citizens less than reliable. The political decision-making processes are inefficient. Member States are ambivalent, pushing for measures and then failing to implement them. As a matter of fact, very few of the Commission's ideas have so far been translated into legislation by the Member States, raising questions of whether national governments are genuinely committed to cooperate in this field. The sorry record of third pillar Conventions – with only one ratified and implemented out of the 25 negotiated – is a graphic illustration of this point. When the solution to a problem is entirely in their hands (such as the supply of criminal intelligence to Europol) the Member States tend not to live up to their commitments. Furthermore, wide variations in perceptions of problems, priorities and unresolved contradictions among the policy objectives also represent a major problem. The excessive complexity of programmes and cooperative arrangements create additional strains.

2. *Operation of national legal systems.* Different approaches to legal issues among the Member States represent potential points of

⁶ See the Order of the President of the Court of First Instance in Case T-47/03 R, *José Maria Sison v Council and Commission*.

conflict and can cause tensions between them in certain areas, for example: the use of pre-trial detention in some countries; varying standards of due process and fair trial; the existence of excessive delays; the lack of common definitions of crime (particularly of fraud); the so-called forum- or jurisdiction-shopping; the variations in sentencing practice in the different states; and, the lack of response to new European systems of coordination such as Eurojust. In the vertical information exchange (local-national-European), there is quite often a failure to communicate with Europol – which a good response to the creation of Eurojust would help to address. Each state varies in its reception of international law conventions and in non-recognition of European soft law by national courts, (which is not legally binding). Double penalisation of foreigners and the existence of collective expulsions, which are contrary to the guidelines set up by the UNHCR, are also points of contention.

3. *Police practices.* The practices and malpractices of police represent another area of friction, and may provoke hostile reactions and incomprehension between partner states, e.g. the unjustified use of firearms, illegitimate violence (particularly against suspects, and legal and illegal immigrants), or the use of riot control measures against transnational demonstrators, football fans and holiday-makers. Furthermore, the existence of police corruption in the different Member States (especially in the new applicant states) is of major importance, as is the interface of security services and police, with the former seeking or being accorded new policing roles. The marginalisation of official European channels of communication and cooperation is a problem as well. There is an absence of

information-sharing. Also, the lack of adequate training for police in handling immigrants at the borders of different Member States is another common concern.

4. *Difficulties of arriving at European policies on immigration and asylum.* The reactions in favour of a 'half-open door' immigration policy, given high structural unemployment in some Member States, put a real strain on further policy developments. In addition, the slow and inefficient asylum procedures, giving rise to a high number of persons remaining in a legal limbo for several years and the eventual need for amnesties, generates even more tension. The persistence of clandestine immigration, allegations of laxity in border controls and surveillance, and the perceived connections between the transitional period for free movement of nationals of new members and immigration of third-country nationals are also major sources of strains. Additional sources of friction are the different interpretations of a well-founded claim for asylum and the existence of the safe third-country classification, which could prevent genuine asylum seekers from presenting their claims. Finally the lack of structure in the system of work/residence permits for workers causes some to alternate between legality and illegality.

5. *Corruption.* There is a perception that closer European integration brings the risk that corrupt practices from some other Member States will become even more widespread. Attempts to impose higher anti-corruption standards in the new Member States than those practiced by some old Member States are a major cause of tension. Corrupt connections are prevalent among foreign, security and trade policies in the arms trade among others. A lack of respect for

agreed European standards in foreign trade is another example. Finally, the illegitimate interference of political and economic interests in trade and competition policy, along with the failure to implement European Directives can be qualified as one more source of friction.

6. *The lack of consistency owing to the practice of rotating EU.* The priorities change greatly with each presidency, and there is a real risk each time of substantial policy shifts. Furthermore, some countries holding the EU Council presidency still promote their own particular interests exclusively.

7. *Unsatisfactory and unclear character of the EU pillar structure.* The variety of legal instruments in each of the pillars, which are not always the most suitable instruments for JHA, contributes to the confusion. Ambiguity in the division of powers between the pillars as well as within the pillars also characterises the system, which should be replaced in the proposals for the next inter-governmental conference by a simple division of powers. This should entail transferring a maximum of competence to the first pillar (which is at the Community level), while retaining a minimum of the most sensitive areas under the exclusive responsibility of the Member States, along with some powers to be exercised solely by the European institutions. In addition, the introduction of a qualified majority voting is necessary for all JHA policies, allowing for unanimity voting only for those issues that remain the exclusive competence of the Member States. The introduction of such a system is particularly necessary after enlargement, to avoid blockages in decision-making that could result in complete stalemate on some issues.

4. Conclusion

The road to establish a genuine Area of Freedom, Security and Justice is still a long one. The widely held view that these issues are matters of national sovereignty continues to create obstacles to progress in this area. The legislative progress attained so far shows the difficulties of arriving at European policies on immigration and asylum, as well as the rights of third-country nationals. A low level of convergence towards 'freedom' concerns in these three areas can be appreciated by looking at the Tampere scoreboard. Higher levels of trust, flexibility, coordination and efficiency, in terms of cost and rapidity of response, are required to overcome the mentioned tensions and strains (see Anderson and Apap, 2002).

The right balance between Freedom, Security and Justice needs to be ensured. Security and law enforcement policies need to be developed with 'freedom' as the point of departure. A danger of the aftermath of the 11th September 2001 terrorist attacks and the current preoccupation with undocumented/illegal immigration is that a pattern may be established that leads to overly zealous security policies for European society with adverse effects on the internal cohesion of Europe. In particular, certain minority groups may feel, as they already do in some cases, which they are subject to excessive attention by security forces. In addition, it is also perceived that the terrorist attacks in the USA have radically changed perceptions of security in the EU. Undoubtedly these attacks have provided a new impetus for the development of the AFSJ. The Member States' governments, security agencies and public opinion have been made dramatically aware of the extent to which international forms

of crime threaten traditional internal security. The AFSJ provides the perfect framework for positive action to be taken. They have had, and continue to have, a powerful influence over the Justice and Home Affairs agenda. Consequently the problem of balance between security and freedom has become more acute and needs to be carefully studied, along with the policy developments and concrete legislative instruments adopted so far by the Council of Ministers of the European Union.

Progress in these areas will need constant attention, particularly as the inevitable attempts to shore up national sovereignty result in the perverse effects of undermining accountability and the rule of law. Active citizen participation, increased transparency of decision-making and a constant effort by authorities at all levels to inform and explain their actions to the public are needed. Nevertheless, these conditions are extremely difficult to fulfil.

REFERENCES

- Anderson, M. (2000), **Counterterrorism as an Objective of European Police Cooperation**, in F. Reinares (ed.) (2000), *European Democracies against Terrorism: Governmental Policies and Intergovernmental Cooperation*, *The Oñati International Institute of the Sociology of Law*, London: Ashgate.
- Anderson, M. and J. Apap (2002), **Police and Justice Cooperation and the New European Borders**, The Hague: Kluwer Law International.
- Anderson, M. and J. Apap (2002), **Striking a Balance between Freedom, Security and Justice in an Enlarged European Union**, Centre for European Policy Studies, CEPS, Brussels.
- Apap, J. (2001), **Freedom of Movement of Persons in the EU: A Practitioner's Guide**, The Hague: Kluwer Law International.
- Arendt, H. (1963), **On Revolution**, USA: Viking Press.
- Battjes, H. (2002), **A Balance between Fairness and Efficiency?** The Directive on International Protection and the Dublin Regulation, *European Journal of Migration and Law*, 4, Kluwer Law International, 159-192.
- Bieber, R. and J. Monar (eds) (1997), **Justice and Home Affairs in the European Union: The Development of the Third Pillar**, Brussels: European University Press.
- Bigo, D. (1994), **The European Internal Security Field: Stakes and Rivalries in a Newly Developing Area of Police Intervention**, in M. Anderson and M. den Boer (eds), *Policing Across National Boundaries*, London: Pinter.

- Bonnefoi, S. (1998), **Europe et sécurité intérieure: Trevi, Union Européenne, Schengen**, Paris: Delmas.
- Bruggeman, W (2000), '**Europol – A European FBI in the Making?**', lecture in the Cicero Foundation Great Debate as part of the seminar on Justice and Home Affairs: How to implement the Amsterdam Treaty, Paris, 13-14 April.
- Cha, VD. (2000), **Globalisation and the Study of International Security**, *Journal of Peace Research*, 37 (3), 391 ff.
- Cholewinski, R. (2002), **Family Reunification and Conditions Placed on Family Members: Dismantling a Fundamental Human Right**, *European Journal of Migration and Law*, 4, Kluwer Law International, 271-290.
- Christodoulidis, E. and T Scott Veitch (1994), **Terrorism and Systems Terror**, *Economy and Society*, Routledge.
- Davis, P and L. Finch (1993), **Defence Planning in the Post-Cold War Era: Going to Flexibility, Adaptiveness and Robustness of Capability**, Santa Monica, CA: Rand Corporation.
- Den Boer, M. (1998), **Taming the Third Pillar: Improving the Management of Justice and Home Affairs Cooperation in the EU**, European Institute of Public Administration, EIPA, Maastricht.
- Den Boer, M. (1996), **Police Cooperation**, in J. Monar, N. Neuwahl, D. O'Keefe and W Robinson (eds), *Butterworths' Guide to the EU 1996*, London: Butterworths, pp. 247-249.
- De Ruyver, B., G. Vermeulen and T Vander Beken (2002), **Strategies of the EU and the US in Combating Transnational Organised Crime**, Insitutite for International Research on Criminal Policy (IRCP), Ghent University Maklu (Antwerp/Apeldoorn).
- Guild, E. and C. Harlow (eds) (2001), **Implementing Amsterdam: Immigration and Asylum Rights in EC Law**, Oxford: Hart Publishing.
- Hailbronner, K. (1998), **European Immigration and Asylum Law under the Amsterdam Treaty**, *Common Market Law Review*, 35, 1047-1067.
- Hermant, D. and D. Bigo (2000), 'Les politiques de Lutte contre le Terrorisme: Enjeux français', in E. Reinarès (ed.), **European Democracies against Terrorism Governmental Policies and Intergovernmental Co-operation**, the Oñati International Institute of the Sociology of Law London: Ashgate.
- Huysmans, J. (2000), **The European Union and the securitisation of Migration**, *Journal of Common Market Studies*, 38(5).
- Monar, J. and W Wessels (eds) (2001), **The Treaty of Amsterdam: Challenges and pportunities for the European Union**, London: Pinter.

- Palidda, S. (1999), **La criminalisation des migrants**, *Actes de la Recherche en Sciences Sociales*, 129, 39-49.
- Pastore, F. (2001), **Reconciling the Prince's Two Arms**. Internal-External Security Policy Coordination in the EU', Occasional Paper No. 30, *Institute for Security Studies*, Western European Union (ISS/WEU), Paris.
- Reinares, F. (ed.) (2000), **European Democracies against Terrorism: Governmental policies and intergovernmental cooperation**, The Oñati International Institute of the Sociology of Law London: Ashgate.
- Smith, S. (1999), **The Increasing Insecurity of Security Studies: Conceptualising Security and Change**, *Special issue of Contemporary Security Policy*, 20 (3), 72 ff.
- Terrif, T., S. Croft, L. James and P.M. Morgan (1999), **Security Studies Today**, Cambridge: Polity Press.
- Tilly, C. (ed.) (1975), **The Formation of National States in Europe**, Princeton, N.J: Princeton University Press.
- Vercher, A. (1992), **Terrorism in Europe. An International Comparative Legal Analysis**, Oxford: Clarendon Press.

APPENDIX

This appendix presents a review of the Commission Communication, the Bi-annual update of the Tampere scoreboard to review progress on the creation of an AFSJ in the European Union, first half of 2003, Brussels, 22.5.2003, COM(2003)291 final. The main legislative instruments proposed to date, as far as immigration, asylum, third-country nationals and third pillar matters are concerned, are shown in Tables A.1-A.3.⁷

Table A.1 EU legislation governing immigration policy and the rights of third-country nationals

MEASURES	PROPOSALS	STATUS
Directive	Commission Proposal for a Council Directive on the implementation of the principle of equal treatment of all persons without distinction as to race or ethnic origin, COM(1999)566, 25.11.1999	Adopted by the Council OJ L 180, 19 June 2000, p. 22
Directive	Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation COM(1999)565, 25.11.1999 / Amended in October 2000, COM(2000)652, 12.10.2000	In November 2000, the Council adopted OJ L 303, the Amended Commission Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation, COM(2000)652
Commission Communication	The Commission is planning to present a communication on the integration of third-country nationals	
Directive	Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents COM(2001)127, 13.3.2001	Politically agreed upon by the Council on 5 June 2003
Directive	Council Directive on the mutual recognition of decisions on the expulsion of third-country nationals, 2001/40/EC	Adopted by the Council on 28 May 2001

⁷ This is not an exhaustive list of legislation, but cites some of the most important legal measures introduced to date.

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MEASURES	PROPOSALS	STATUS
Directive	Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities COM(2001)386, 11.7.2001	
Directive	Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service COM(2002)548, 7.10.2002	
Commission Communication	Commission Communication to the Council and the European Parliament on a common policy on illegal immigration, COM(2001)0672 final, 15.11.2001	
Regulation	Proposal for a Council Regulation extending the provisions of Regulation (EEC) No. 1408/71 to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality COM(2002)59, 6.2.2002	Adopted by the Council in December 2002
Directive	Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human being who cooperate with the competent authorities, COM(2002)71 final, 11.02.2002	
Green Paper	In April 2002, the Commission presented a Green Paper and a Communication on a Community return policy on illegal residents COM(2002)175, 10.4.2002	In November 2002, the Council adopted a repatriation programme on the basis of the Commission Green Paper and a programme for the return of refugees to Afghanistan

MEASURES	PROPOSALS	STATUS
Regulation	Commission Proposal for a Council Regulation extending the provisions of Regulation (EEC) No. 1408/71 to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality COM(2002)59, 6.2.2002	
Directive	Commission Proposal for a Directive on short-term residence permits for victims of trafficking in human beings and trafficking in migrants who cooperate with the authorities, COM(2002)71, 11.2.2002	
Directive	Proposal for a Council Directive on family reunification, COM(1999)638, 1.12.1999 / Amended Proposal for a Council Directive on the right to family reunification, COM(2002)225, 2.5.2002	Politically adopted by the Council on 28 February 2003
Council Decision	Proposal for a Council Decision adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO), COM(2001)0567, 29.01.2002	
Comprehensive Plan	Proposal for a Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, 2002/C 142/02	Adopted by the Council on 28 February 2002
Framework Decision	Framework Decision on combating trafficking in human beings, 2002/629/JHA	Adopted by the Council on 19 July 2002
Directive	Commission Proposal for a Directive on short-term residence permits for victims of trafficking in human beings and trafficking in migrants who cooperate with the authorities, COM(2002)71, 11.2.2002	

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MEASURES	PROPOSALS	STATUS
Directive	Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service COM(2002)548, 7.10.2002	
Green Paper	In April 2002, the Commission presented a Green Paper on a common policy on repatriation of persons residing unlawfully in the EU, the so-called Green Paper on a Community Return Policy on Illegal Residents, COM(2002)0175 final	
Framework Decision	Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, 2002/946/JHA	Adopted by the Council on 28 November 2002
Directive	Council Directive defining the facilitation of unauthorised entry transit and residence, 2002/90	Adopted by the Council on 28 November 2002
Regulation	Commission Proposal for a Council Regulation amending Regulation No. 539/2001, listing the third countries whose nationals must be in the possession of visas when crossing external borders and those whose nationals are exempt from that requirement, COM(2002)679, 28.11.2002	
Commission Communication	Commission Communication on a Community return policy on illegal residents COM(2002)564, 14.10.2002	Adopted by the Council on November 2002
Commission Communication	Commission Communication to the Council and the European Parliament, integrating migration issues in the European Union's relations with third countries, COM(2002)703 final, of 3 December 2002	

MEASURES	PROPOSALS	STATUS
Regulation	The Commission is planning to present a proposal in 2003 for a regulation establishing a legal base regarding cooperation with third countries in the area of migration	
Commission Communication	Commission Communication to the Council and the European Parliament to present an action plan for the collection and analysis of Community statistics in the field of immigration, COM(2003)179, 15.4.2003	

Table A.2 EU legislation governing asylum policy

MEASURES	PROPOSALS	STATUS
Decision	Commission Proposal for a Council Decision on the European Refugee Fund COM(1999)686, 14.12.1999	Council Decision 2000/596/EC on 28 September 2000 adopting a proposal establishing the European Refugee Fund
Directive	Commission Proposal for a Council Directive on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof COM(2000)303, 24.5.2000.	Council Directive (2001/55/EC) of 20 July 2001, about minimum temporary protection for displaced persons. Adopted by the Council on July 2001.
Regulation	Commission Proposal for a Council Regulation concerning the establishment of Eurodac COM(1999)260, 26.5.1999 / Amended proposal for a Council Regulation concerning the establishment of Eurodac to facilitate the implementation of the Dublin Convention COM(2000)100, 15.3.2000	Council Regulation laying down certain detailed rules for the application of the Regulation 2725/2000 of 11 December 2000 concerning the setting up the Eurodac system, OJ L 62, 5 March 2002

MEASURES	PROPOSALS	STATUS
Working Document	Commission Working Document on the relationship between safeguarding internal security and complying with international protection obligations and instruments, COM(2001)743 final, Brussels, 05.12.2001	
Directive	Commission Proposal for a Council Directive on minimum standards for the reception of applicants for asylum in member states COM(2001)181, 3.4.2001	Adopted by the Council on 27 January 2003
Regulation	Commission Proposal on July 2001 for a Regulation laying down the criteria and mechanisms for determining the member states responsible for examining an asylum application lodged in one of the Member States by a third-country national COM(2001)447, 26.7.2001	Council Regulation (EC) No. 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
Directive	Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status COM(2000)578, 20.9.2000 / Amended Proposal COM(2002)326, 18.6.2002, in accordance with the conclusions of the Laeken European Council	
Commission Communication	At the end of 2003, two communications are planned concerning the examination of asylum applications outside the EU and the establishment of a single procedure for examining applications for protection in the Member States	

MEASURES	PROPOSALS	STATUS
Commission Communication	Commission Communication on the common asylum policy and the Agenda for protection (Second Commission report on the implementation of Communication COM(2000)755 final of 22 November 2000), Brussels, 26.03.2003, COM(2003)152 final	
Decision	In the latter half of 2003, the Commission plans to present a proposal for a Decision on the implementation of the European Refugee Fund for 2005-2009	

Table A.3 EU legislation governing third pillar matters

MEASURES	PROPOSALS	STATUS
Council Regulation	Council Regulation (EC) No. 337/2000, concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan	Adopted by the Council on 14 February 2000
Council Regulation	Council Regulation (EC) No. 467/2001, prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No. 337/2000	Adopted by the Council on 6 March 2001
Commission Regulation	Commission Regulation (EC) No. 2199/2001 amending, for the fourth time, Council Regulation (EC) No. 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) No. 337/2000	Adopted by the Council on 12 November 2001

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MEASURES	PROPOSALS	STATUS
Commission Regulation	Commission Regulation (EC) No. 342/2003, amending for the twelfth time Council Regulation (EC) No. 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No. 467/2001; followed by Commission Regulation No. 414/2003 15.03.2003	Adopted by the Council on 21 February 2003
Council Regulation	Council Regulation (EC) No. 561/2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002, imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban	Adopted by the Council on 27 March 2003
Framework Decision	Council Framework Decision on the European Arrest Warrant, 2002/584/JHA	Adopted by the Council on 18 July 2002
Framework Decision	Council Framework Decision on combating terrorism, 2002/475/JHA	Adopted by the Council on 13 June 2002
Council Decision	Council Decision 2003/48/JHA, on the implementation of specific measures for police and judicial cooperation to combat terrorism	Adopted by the Council on 19 December 2002