

# Justice and Home Affairs Policy

EU Justice and Home Affairs policy (JHA) aims to fight criminal activity that crosses national borders through a combination of *intergovernmental* cooperation between member states and *supranational* institutions run by central EU bodies. It promotes the principle of *mutual recognition* of different legal codes within the EU and is having the effect of making member states' legal systems more similar. It is seen as one of the most controversial areas of EU policy because of the importance of criminal law to national sovereignty.

## History

The opening of borders after the Cold War led to a rise in transnational criminal activity across Europe. Human trafficking, illegal immigration, drug trafficking and terrorism are all crimes that now operate beyond national boundaries. In response to this, the Maastricht Treaty (1992) created the JHA under the remit of the European Council. This designated asylum policy and immigration, as well as judicial, customs and police cooperation, as 'areas of common interest'. The Treaty of Amsterdam (1997) went further, giving EU institutions full control over some areas of JHA policy, such as asylum and immigration.

The Treaty of Amsterdam also brought the *Schengen Convention* into EU law, which has served as an impetus for further cooperation on JHA matters. The Tampere European Council (1999) established supranational bodies such as the European Judicial Network (EJN) and Eurojust to help tackle cross-border crime. In December 2001, EU leaders agreed to create a European Arrest Warrant (EAW) and, in 2006, a European Evidence Warrant (EEW) was also approved. The Lisbon Treaty (2007) extended the EU's power on JHA further because it gave the European Court of Justice jurisdiction over JHA for the first time, and renamed the policy area 'Justice, Freedom and Security'.

## How does JHA Policy work?

For the years 2005-09, JHA policy was guided by a document released by the Commission, called the Hague Programme. This prioritised creating a Common European Asylum System and a Common EU Immigration Policy, to enable the effective policing of the new external borders of the EU, and to increase the cross-border availability of police information. The Hague Programme was replaced with the Stockholm Programme, which will guide JHA policy for 2010-14 to establish a visa policy, as well as cooperation on rescue services, and criminal and civil law.

Co-operation on JHA has gradually developed from a loose intergovernmental network to a system of centralised bodies and shared data. Such bodies include Europol, which helps with cooperation in international investigations and has the power to request criminal investigations within member states, and Eurojust, which works to improve cross-border co-operation between prosecutors and courts. There are also proposals for a European Public Prosecutor with powers to arrest, deport

and imprison suspects, and for a European Investigation Order (EIO), which would allow member states to request information on criminal suspects, from other member states' police forces. In July 2010, the UK government decided to opt-in to the EIO, but a final directive on the EIO is yet to be agreed.

The EU maintains several Europe-wide databases including, for example, Eurodac, which stores the fingerprints of asylum-seekers to prevent abuses such as *asylum shopping* across national borders. In June 2007, the Prüm Treaty (2005) was incorporated into EU law. This treaty facilitates a pan-European network of police databases for use in criminal proceedings.

Alongside central bodies such as these, domestic courts can invoke EAWs or EEWs for criminal acts that carry a custodial sentence of at least 12 months. This is intended to speed up extradition processes and reinforces the wider principle of mutual recognition in cases of serious crime.

## Arguments

### For

- Cross-border crime can only be countered with cross-border criminal legislation, especially when borders are open across the EU.
- JHA ensures a basic standard is maintained across the EU in important areas of policy.

### Against

- The rule of law is one of the most important sovereign rights of a nation and the EU should not have jurisdiction over it.
- National police forces know their own countries and cultures: external interference and centralised bodies could hinder effective criminal investigations.

## Quotes

*'The European Community has the power to require the member states to lay down criminal penalties.'* European Court of Justice, 2005

*'What we discuss and eventually decide in the EU on [justice and home affairs] issues will have a direct impact on your daily life.'* Franco Frattini, EU Justice, Freedom and Security Commissioner, 2004-2009

## Technical Terms

**Intergovernmental:** a form of international organisation where governments work together to achieve shared goals.

**Supranational:** a form of organisation through which decisions are made by international institutions, not by individual states.

**Mutual recognition:** that one member state must recognise laws that exist in another.

**Schengen Convention:** allows the free movement of European citizens across national borders without the need for *visas* or passport checks.

**Asylum shopping:** the practice of applying for asylum at a second EU country after being rejected a first time.

## Links

- [http://europa.eu/agencies/pol\\_agencies/index\\_en.htm](http://europa.eu/agencies/pol_agencies/index_en.htm)
- <http://www.eurojust.europa.eu/>
- [http://europa.eu/pol/justice/index\\_en.htm](http://europa.eu/pol/justice/index_en.htm)