III PILLAR: JUDICIAL AND POLICE COOPERATION IN CRIMINAL MATTERS

- Maastricht Treaty: III pillar: justice and home affairs (JHA)
- Amsterdam Treaty: communitarization of part of the III pillar: visas and immigration, asylum and refugees, civil cooperation (area of freedom, security and justice, title IV, arts. 61-68 TEC)
- Hybrid nature of the third pillar between intergovernamentalism and Community method; problems of boundaries with the I pillar
- European Constitution and reform Treaty: reunification of all issues; application of the Community method
III PILLAR

- Structural problems: intergovernmental method (vote by unanimity); absorption of the Schengen acquis; variable geometry (UK, Ireland and Denmark)
- Issues: high level of safety within an area of freedom, security and justice by common action in the fields of police and judicial cooperation in criminal matters and in preventing and combating racism and xenophobia and crime (terrorism, trafficking in persons, offences against children, illicit drug and arms trafficking, corruption and fraud (art. 29 TEU)
- Europol (European Police Office): closer cooperation between police forces, customs and other national authorities (art. 30 TEU) for the prevention, detection and investigation of criminal offences; sharing of information; training
- Eurojust (European Judicial Cooperation Unit): forseen by ToN (created in 2002): closer cooperation between judicial and other national authorities (art. 31 TEU) for facilitating enforcement of decisions, extradition, prevention of conflicts of jurisdiction;
- Possibility of harmonization of rules on criminal matters; art. 31e TEU: minimum harmonization of constituent elements of criminal acts and penalties in the fields of organized crime, terrorism and illicit drug trafficking
III PILLAR

- Types of acts (art. 34 TEU): common positions (approach on a particular matter), framework decisions (similar to dir. but no direct effect), decisions (no direct effect); conventions
- Decision by unanimity in the Council QMV only for measures implementing previous decisions); initiative by the Commission or any Member State
- Limited jurisdiction of the Court of Justice (art. 35 TEU): decision of each Member State on acceptance of preliminary rulings; possibility of limiting the right to refer to the ECJ to court of last instance; no jurisdiction on acts related to law and order or internal security
- Insufficiency of judicial control on acts that may severely impact on fundamental rights
- Commission: shared power of initiative; “fully associated” with the work in the III pillar; limited role
- European Parliament: consultation for the adoption of any act; regular information by the Presidency and the Commission; power of recommendation; limited role: democratic deficit
- Possibility of enhanced cooperation (art. 40 TEU)
- Possibility of further communitarization of the III pillar (art. 42 TEU): decision by unanimity of the Council
EC AREAS RELATED TO THE III PILLAR

- ToA: Communitarization of part of previous III pillar policies: Title IV on the progressive establishment of an area of freedom, security and justice (arts 61-68): external border controls (communitarization of the Schengen acquis), visas, asylum, immigration; judicial cooperation in civil matter having cross-border implications (link with the internal market: art. 65 TEC)
- Variable geometry: protocols on UK and Ireland (opt-in) and Danemark (opt out)
- Link with the free movement of persons; impact of the European citizenship and the Charter of fundamental rights; problems of overlap and coordination
- Hybrid nature: transitional requirement of unanimity vote in the Council on a proposal by the Commission or any Member State; consultation of the EP (art. 67 TEC); thereafter decision by unanimity by the Council on the application of co-decision procedure
- Limits to the jurisdiction of the ECJ (art. 68 TEC): preliminary ruling only from national courts of last instance; no jurisdiction on acts related to the mainentance of law and order and internal security
III PILLAR: SOME PROBLEMATIC ISSUES

- Difficulty of reaching agreement among Member States: lowest common denominator for binding measures, extensive use of soft law in areas requiring a high level of legal certainty (visas, border control, immigration, asylum)
- Schengen acquis: overlap between I and III pillar
- Problems of democratic deficit, accountability, judicial review and protection of fundamental rights
- An example: the European arrest warrant (framework decision 2002/584): mutual recognition in sensitive areas of criminal law; abolition of the dual criminality principle for serious offences: need of harmonization?; possibility of contrast with the ECHR
- Lack of transparency and control on EU agencies (Europol and Eurojust)
- Impact of the international situation; war on terror: framework decision on combating terrorism (2002/475): wide definition of terrorism; measures for stopping financing terrorism (2001): no review of the list by the council
THE LISBON TREATY

• New Title V on an area of freedom, security and justice comprising two chapters on judicial cooperation in criminal matters (ch. 4, arts 82-86 TFEU) and police cooperation (ch. 5, arts 87-89 TFEU), as well as judicial cooperation in civil matters (ch. 3)
• Reunification under the Community method: use of ordinary legislative procedure (with exceptions) and judicial review by the ECJ (arts 82(1) and 87 TFEU); same types of legal acts; different mechanism for proposals: Commission or ¼ of the Member States (art. 76 TFEU)
• Principle of mutual recognition of judgements and judicial decisions (arts 81 and 82(1) TFEU)
• Limited approximation of laws both procedural (art. 82(2) TFEU) and substantial (art. 83 TFEU); exception: effect on fundamental aspects of national criminal justice system: referral to the European Council; in case of agreement the decision is sent back to the Council, otherwise if at least nine Member States agree: enhanced cooperation (arts 82(3) and 83(3) TFEU)
• Rules for control for Eurojust and Europol by the EP national Parliaments (arts 69 and 88(2) TFEU)
• Establishment of a European Public Prosecutor’s Office within Eurojust for combating crimes affecting financial interests of the EU
• Improvement of law-making procedures and control mechanisms; widening of EU competencies: possible encroachment on national sovreignty