

# **THE INSTITUTIONAL AND LEGAL FRAMEWORK OF THE AREA OF FREEDOM, SECURITY AND JUSTICE**

**Presentation  
by  
Boldizsár Nagy  
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Photo of Javier Balauz



# Photo of Javier Balauz



# THE BERLIN WALL 1961 – 1989 AND THE FRONTIER AROUND EUROPE

During the Wall's existence there were around 5,000 successful escapes into West Berlin. Varying reports claim that either 90 or 200 people were killed trying to cross and many more injured.

[http://en.wikipedia.org/wiki/Berlin\\_Wall](http://en.wikipedia.org/wiki/Berlin_Wall)  
visited 25 February 2006

## List of 14037 documented refugee deaths through Fortress Europe

20/01/2011

Documentation on 20-01-2011 by UNITED

UNITED for Inter-cultural Action, European network against nationalism, racism, fascism and in support of migrants and refugees

Postbus 413 NL-1000 AK Amsterdam phone +31-20-6834778, fax 31-20-6834582, info@unitedagainstracism.org, www.unitedagainstracism.org

found dead	number	name	country of origin	cause of death	source
18/01/2011	1	Garrach (boy)	Tunisia	drowned, boat capsized near Metline (TN) during poor border control after Ben Ali abdication	FE
17/01/2011	2	N.N. (men)	unknown	drowned, set boat on fire and jumped to avoid border patrol in Annaba (DZ) on the way to I	FE/Migreurop
16/01/2011	33	N.N.	Afghanistan	missing, feared drowned when ship sank near Corfu (GR) on way to Italy, 230 survivors	ClandestinE/FE/AFP/KI
08/01/2011	1	N.N. (±25, man)	Africa	froze to death, body found in Nea Vissa, Evros (GR) near Turkish border	ClandestinE/Frontex/plode
in Jan 11	1	Borka T. (woman)	Kosovo	brain haemorrhage, could not receive medical treatment once deported from D to Kosovo	WSWS
17/12/2010	2	N.N. (men)	Africa	froze to death, bodies found in Nea Vissa (GR), near Turkish border	Frontex/plode
11/12/2010	5	N.N.	unknown	missing, feared drowned when ship sank off Kani Keli, Mayotte (F), 31 survivors	info/FE
07/12/2010	2	N.N.	unknown	drowned, bodies found in the Evros region (GR) near to border with Turkey	ClandestinE/Frontex/plode
01/12/2010	1	N.N. (16, boy)	Afghanistan	stowaway, suffocated whilst hiding in truck on a ferry from Patras (GR) to Ancona (I)	Migreurop/FE/Kinisi/CorAdriatico
29/11/2010	1	N.N. (38, man)	Mali	died from shock, taser was used on deportee by police in Colombes (FR) to calm fight	Europe1
27/11/2010	1	Sardar Ayari (25, man)	Afghanistan	stowaway, crushed between 2 trucks whilst trying to climb into one in Patras (GR) going to I	Migreurop/Kinisi/FE
23/11/2010	4	N.N. (men)	iran	stowaways, suffocated in back of van near Amphiloxia (GR), travelling from Italy	Europe1/FE
in Nov 10	5	N.N.	Eritrea	beaten to death with sticks by traffickers in Sinai desert (Israel), for trying to escape group	ECRE/LR
01/11/2010	2	N.N. (men)	Eritrea	killed by traffickers holding them in Sinai desert (Israel), for using phones to call for help	LR/ECRE
12/10/2010	1	Jimmy Mubenga (46, man)	Angola	suffocated, security guards restrained him during deportation, on flight from Heathrow (GB)	Guardian/Lin/NR/IndGB/Demosx/BBC/Rue89
07/10/2010	1	N.N. (man)	Algeria	stowaway, drowned whilst swimming from ship to shore at Pinedo beach, Valencia (E)	Provincias
02/10/2010	5	N.N. (16-36, men)	Algeria	missing, feared drowned, sailing with 30 survivors rescued off coast of Mostaganem (DZ)	FE/Swiss.ch
21/09/2010	1	N.N. (22, man)	Eritrea	stowaway, travelling from Georgia, hurriedly jumped off truck near Foggia (I) and fell on head	Migreurop/FE/Fa/Not
13/09/2010	1	Andoline Bassoumga (41, man)	Congo	heart attack, diabetic asylum seeker in Nicosia (CY), had a poor diet when welfare was cut	KISA/CypMail
in Sept 10	3	N.N.	Sub-Saharan Africa	bodies thrown overboard a boat carrying 34 others, found on Alboran Sea (E)	Humano
31/08/2010	2	N.N.	Maghreb	bodies found by civil guard on Ceuta beach (E), in an advanced state of decomposition	SUR
28/08/2010	2	N.N.	unknown	found off Ceuta's coast (E), believed to have fallen from boats several months ago	MAC
25/08/2010	1	N.N. (minor)	Afghanistan	body found by police on Jonic coast, Calabria (I), reportedly died whilst disembarking sailboat	ANSA/Gazzettino
15/08/2010	3	N.N.	Cameroon	died of thirst in Algerian desert near Tamanrasset, with 9 others trying to reach Europe	AFP/FocusNews/AlIWAfrica
15/08/2010	3	N.N.	Mali	died of thirst in Algerian desert near to Tamanrasset, with 9 others trying to reach Europe	AFP/FocusNews/AlIWAfrica
15/08/2010	2	N.N.	Ivory Coast	died of thirst in Algerian desert near to Tamanrasset, with 10 others trying to reach Europe	AFP/FocusNews/AlIWAfrica
15/08/2010	2	N.N.	Senegal	died of thirst in Algerian desert near to Tamanrasset, with 10 others trying to reach Europe	AFP/FocusNews/AlIWAfrica
15/08/2010	1	N.N.	Gambia	died of thirst in Algerian desert near to Tamanrasset, with 11 others trying to reach Europe	AFP/FocusNews/AlIWAfrica
15/08/2010	1	N.N.	Guinea	died of thirst in Algerian desert near to Tamanrasset, with 11 others trying to reach Europe	AFP/FocusNews/AlIWAfrica
15/08/2010	1	N.N.	Guinea	died of thirst in Algerian desert near to Tamanrasset, with 11 others trying to reach Europe	AFP/FocusNews/AlIWAfrica

Source: <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf> -  
visited 25 February 2011

# **Early history**



# THE ROAD UNTIL MAASTRICHT

1976: Trevi

1985: Commission proposal for a Europe without internal borders

1986- group of ministers responsible for immigration creating treaties and other documents  
(e.g. , /failed/ Convention on crossing the external borders)

Cooperation in customs issues and fight against drugs

= Up to Maastricht: intergovernmental cooperation

Schengen Agreement (1985) and Convention implementing the Sch. A. (1990)

The Dublin Convention on determining the state responsible for the asylum procedure (1990)

Treaty on the European Union (Maastricht. 1992) 12 member states agree on 3 pillars of which the third („Justice and home affairs”) declares 9 fields matters of common interest

# THE MAASTRICHT TREATY ON THE EUROPEAN UNION

## Title VI, a single Article „K” Cooperation in justice and home affairs

### Nine matters of common interest:

1. **asylum policy;**
2. **rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;**
3. **immigration policy and policy regarding nationals of third countries;**
  - (a) conditions of entry and movement by nationals of third countries on the territory of Member States;
  - (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
  - (c) combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;
4. **combating drug addiction in so far as this is not covered by 7 to 9;**
5. **combating fraud on an international scale in so far as this is not covered by 7 to 9;**
6. **judicial cooperation in civil matters;**
7. **judicial cooperation in criminal matters;**
8. **customs cooperation;**
9. **police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).**

# **MAASTRICHT: FORMS OF DECISIONS, EVALUATION**

## **Forms of decision**

**Consultation - without formal decision**

**Joint position**

**Joint action**

**International convention.**

## **Evaluation of the Maastricht period (1993 – 1999)**

**Insistence on representing national interests, on the elements of sovereignty, considered inalienable..**

**A lack of clear goal and motivation.**

**Confused competences (e.g. in the field of drugs, customs)**

**Complicated decision making system**

**Dubious legal status of adopted decisions (joint positions and actions)**

**Democratic deficit, lack of democratic control, especially by the ECJ**



# SCHENGEN

# SCHENGEN

## I. The creation of the Agreement (1985) and the Convention, implementing it (1990)

CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 BETWEEN THE GOVERNMENTS OF THE STATES OF THE BENELUX ECONOMIC UNION, THE FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC, ON THE GRADUAL ABOLITION OF CHECKS AT THEIR COMMON BORDERS  
19 JUNE 1990 (OJ (2000) L 239/19)

## II. The essence (see next slides)

# SCHENGEN

## Purpose:

Abolition of controls at the internal borders

Implementation of appropriate flanking measures

protecting the external borders with the same level of security including checks and surveillance

intensive co-operation in customs, police and criminal justice matters

establishing a system to determine which state is responsible for the examination of asylum applications

# SCHENGEN

## Territorial and personal scope

Territorial - see map on next slide

personal: nationals of member states or “aliens”

“Internal borders shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular ferry connections exclusively from or to other ports within the territories of the Contracting Parties and not calling at any ports outside those territories;”



**SCHENGEN  
AFTER  
SWITZERLAND'S  
ACCESSION**

# **THE TREATY OF AMSTERDAM (1997/1999)**

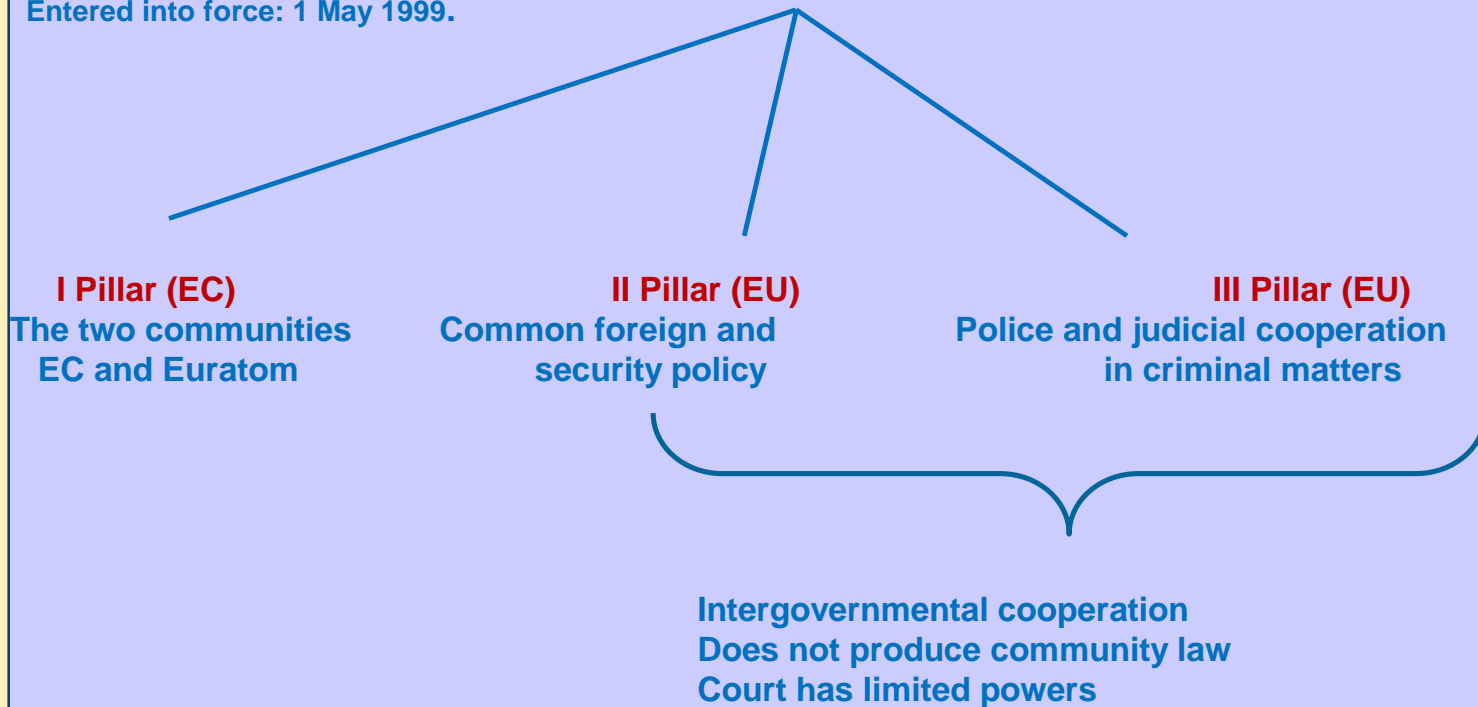


# THE STRUCTURE AFTER AMSTERDAM

Text adopted on: 16-17 June 1997.

Signed on: 2 October 1997.

Entered into force: 1 May 1999.



## Changes from Maastricht

Matters of migration (crossing of external border presence of third country nationals, asylum issues), and judicial cooperation in civil matters moved to new Title IV of the TEC,

Customs cooperation moved to new title X of the TEC.

Schengen is incorporated into the EU acquis and is divided between the first and the third pillar

# THE AREA OF FREEDOM, SECURITY AND JUSTICE

## THE METAMORPHOSIS OF CONCEPTS

**1958 - 1993** = Up to Maastricht: **intergovernmental** cooperation

Schengen Agreement (1985) and Convention implementing the Sch. A.  
(1990)

The Dublin Convention on determining the state responsible for the asylum  
procedure (1990)

**1993 – 1999** = Between Maastricht (1 November 1993) and Amsterdam (1 May  
1999) = **Justice and home affairs** = **III pillar** = **9 matters of common  
interest** as in Article K (Title IV) of the **TEU** (Maastricht treaty)

**1999 -** = From entry into force of the A.T. = **Justice and home affairs** = **Area of  
freedom, security and justice** =

**I pillar** = Title IV. of TEC (**Visas, asylum, immigration** and other policies  
related to free movement of persons + civil law cooperation)  
+

**III pillar** = Title VI. of TEU (Provisions on **police and judicial cooperation  
in criminal matters**)

**Lisbon Treaty**: = Area of freedom, security and justice **reunited in Title V  
of the Treaty on the Functioning of the European Union** = Border checks,  
asylum, immigration; civil law cooperation; criminal law cooperation; police  
cooperation = **no pillar structure but CFSP is outside** of the „normal” EU  
regime

# THE AREA OF FREEDOM, SECURITY AND JUSTICE

**Freedom** = freedom of movement + immigration and asylum+ non-discrimination+ data protection

**Security** = fight against organized crime (including terrorism) and drugs + police cooperation (Europol, Eurojust, External Border Agency)

**Justice („Recht“)** = cooperation among civil and criminal courts, approximation of procedures, mutual recognition of decisions, simplification of transborder actions (litigation in another member state)

# THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

2. ... The challenge of the Amsterdam Treaty is now to ensure that **freedom**, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice **accessible to all**. ...
3. This freedom **should not, however, be regarded as the exclusive preserve of the Union's own citizens**. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be **in contradiction with Europe's traditions to deny such freedom** to those whose circumstances lead them **justifiably to seek access** to our territory.

This in turn requires the Union to develop **common policies on asylum and immigration**, while taking into account the need for a consistent **control of external borders to stop illegal immigration** and to combat those who organise it and commit related international crimes.....

# THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.

# THE HAGUE PROGRAM, 2004

Fundamental rights, as guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights in Part II of the Constitutional Treaty and the explanatory notes, as well as the Geneva Convention on Refugees, must be fully observed.



**THE RULES IN FORCE  
AFTER THE ENTRY INTO  
FORCE OF THE  
LISBON TREATY**

# HISTORY, BACKGROUND

## Efforts to achieve the Constitutional treaty

28 February 2002 the Convent elaborating it starts its work

18 June 2004 the text is adopted, 29 October 2004, Rome – signing of the Constitutional Treaty (OJ (2004) C310/1 2004.12.16)

Summer of 2005: referenda in France and the Netherlands refuse ratification – a period of contemplation starts

2007 German presidency: „reform treaty” not replacing the Treaty of Rome and Maastricht, but – again – amending them

Intergovernmental Conference: from July till October 2007

Agreement on the content: 17-18 October 2007

Signature: 13 December 2007 in Lisbon See OJ C 2007/ 306, p 1.

Entry into force: 1 December 2009 The new unified texts of the TEU and TFEU is to be found in OJ C 2008/115, p. 13 and 47

# THE STRUCTURE OF THE UNION AFTER LISBON (SINCE 1 DECEMBER 2009)

Designation	European Union		European Atomic Energy Community
Legal Basis	Treaty of Rome, 1957 (+ SEA, Maastricht, Amsterdam Nice, Lisbon)	Treaty of Maastricht 1992 (+ Amsterdam Nice, Lisbon)	Treaty establishing the European Atomic Energy Community (1957) (+ SEA, Maastricht, Amsterdam Nice, Lisbon)
Present designation	Treaty on the Functioning of the European Union	Treaty on the European Union	Same Short: Euratom Treaty
Field of cooperation	Justice and home affairs + Economic cooperation (internal market, external action )	Common foreign and security policy Fundamental principles, Institutional rules	Nuclear
Types and forms of legal acts	Type Legislative – delegated – implementing Form: Regulation, directive, decision	No legislative acts. General guidelines Decisions on actions, positions and their implementation (TEU § 25)	Regulation, directive, decision
Court control (ECJ)	Yes	No (except: personal sanctions)	Yes

# DECISION MAKING IN MATTERS RELATED TO ASYLUM

During the first five years (1999-2004)

After 1 May 2004

After 1 December 2009

## Initiative

Commission and  
Member State

Only the Commission  
(M. S. may request that the  
Commission submit a  
proposal to the Council)

Only the Commission

## Decision making process

Unanimous, after  
consultation with  
Parliament

Ordinary legislation according  
to Art. 251 after adoption of  
common rules and basic  
principles (practically **since  
December 2005**)

Ordinary decision making  
according to Art. 294

## Decision

Regulation, directive,  
decision,  
recommendation,  
opinion

Regulation, directive,  
decision,  
recommendation,  
opinion

Regulation, directive, decision,  
recommendation, opinion

# FORMS OF DECISIONS

## *Article 288 TFEU*

...

**A regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

**A directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, **but shall leave to the national authorities the choice of form and methods.**

**A decision** shall be binding in its entirety upon those **to whom it is addressed.**

# DIRECT APPLICABILITY, DIRECT EFFECT, PRIMACY OF EC LAW

**Direct applicability:** a regulation „automatically forms part of the (highest) provisions of a Member State’s legal order” – without transposition

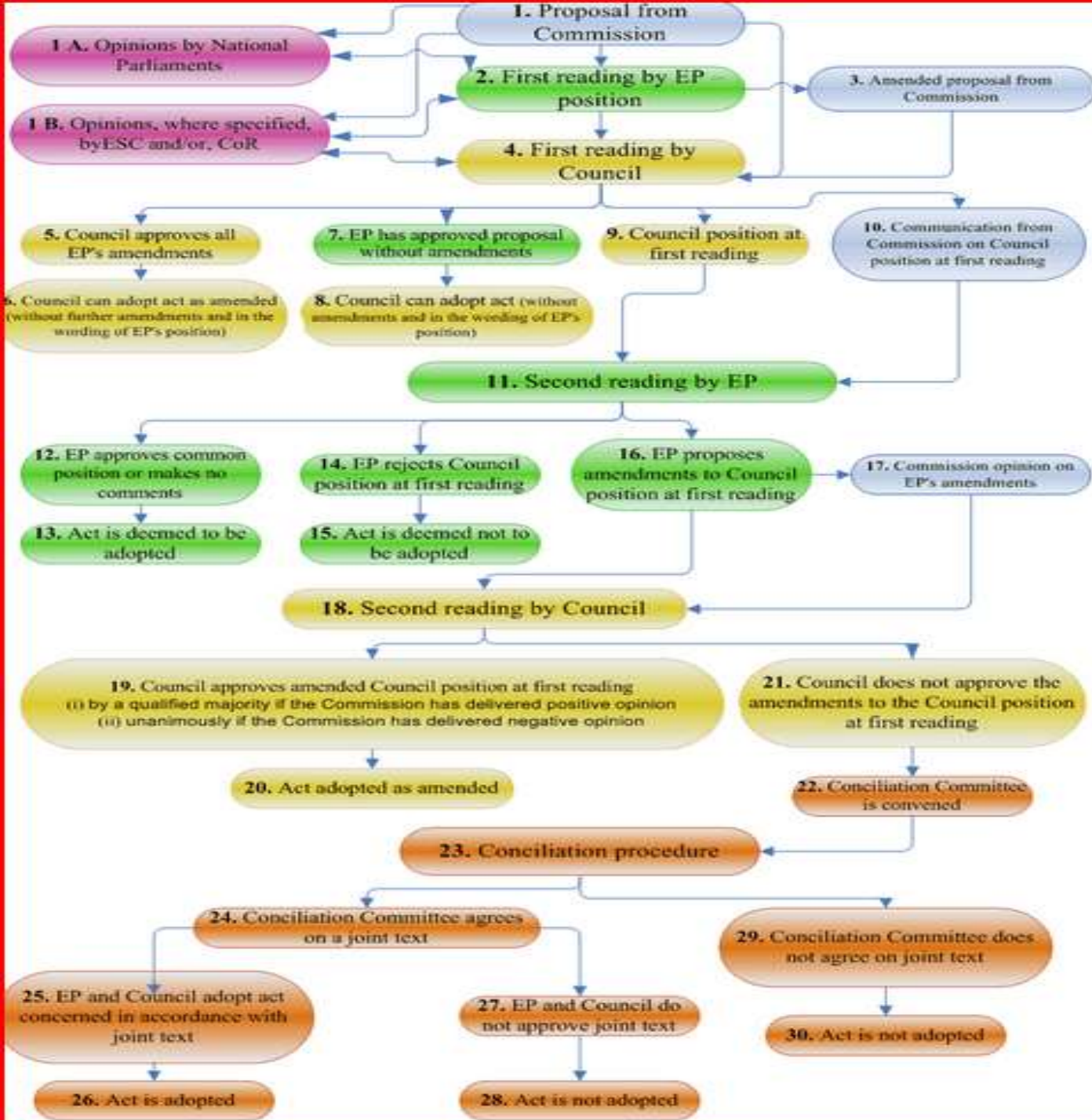
Laenarts – Van Nuffel (Bray, ed), Constitutional Law of the European Union, second ed .2005, p. 764

**Direct effect:** if the *regulation* is clear and precise and leaves no margin of discretion then individuals can rely on it against the state and against each-other

*Directive:* no direct applicability (needs transposition) but *may have direct effect* if unconditional and sufficiently precise – and the state fails to transpose it on time.

**Primacy/Supremacy of EC law:** In case of conflict it has primacy even over later national acts, including statutes.





# ORDINARY DECISION MAKING

AS DEPICTED ON  
[HTTP://EC.EUROPA.EU/  
CODECISION/IMAGES/  
ODECISION-  
FLOWCHART\\_EN.GIF](http://ec.europa.eu/codecision/images/odecision-flowchart_en.gif)

# DECISION MAKING STRUCTURE IN THE EU TITLE V TFEU

## COUNCIL OF MINISTERS (JHA COUNCIL)

High-Level Working Group on Asylum and Migration	<b>COREPER</b>		Standing Committee on Operational Cooperation on Internal Security (COSI) (see § 71 TFEU)
Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)	<b>Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)</b>		Working Party on Civil Law Matters
Working party on Integration Migration and Expulsion	Law Enforcement Working Party	Working Party for Schengen Matters	Working Party on Fundamental Rights Citizens Rights and Free Movement of Persons
Visa Working Party	Working Party on Cooperation in Criminal Matters	Working Party on General Matters including Evaluation	Working Party on Civil Protection
Asylum Working Party	Working Party on Substantive Criminal Law	Working Group on Information Exchange and Data Protection	JAI -RELEX Working Party
Working Party on Frontiers	Working Party on Terrorism		Customs Cooperation Working Party

Based on Council doc 5688/1/11 „LIST OF COUNCIL PREPARATORY BODIES” REV1  
<http://register.consilium.europa.eu/pdf/en/11/st05/st05688-re01.en11.pdf>

# THE COMMISSIONERS



Cecilia  
Malmström

Home affairs

Borders, visa, immigration asylum  
Fight against economic, cyber and financial crimes;  
Organised crime, trafficking of men and drugs, drug-trade,  
corruption;  
Fight against terrorism;  
Police and criminal justice co-operation (e.g.I.FRONTEX,  
EUROPOL)



Viviane  
Reding

Vice president of the  
Commission  
Access to law, fundamental  
rights, EU citizenship

## Access to law

Judicial co-operation in civil and commercial matters  
Co-operation in criminal law matters  
Contract law and consumer rights

## Fundamental rights

Charter of Fundamental Rights and the Fundamental Rights Agency (Vienna)  
Rights of the child  
Gender issue, discrimination (Roma issues)

## Union citizenship

Rights of an EU citizen  
Active citizenship

# ASYLUM PROVISIONS

Location: the new Title V of the „Treaty on the Functioning of the European Union”, on an „area of freedom security and justice „ re-uniting I. and III. pillar

## *Article 78 (1)*

1. The Union shall develop a **common policy on asylum, subsidiary protection and temporary protection** with a view to offering appropriate **status to any third-country national** requiring international protection and **ensuring compliance with the principle of *non-refoulement***. This policy must be in **accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.**

## TFEU § 78 (2)

„...the European Parliament and the Council, acting in accordance with the **ordinary legislative procedure**, shall adopt measures for a **common European asylum system** comprising:

- (a) a **uniform status of asylum** for nationals of third countries, valid throughout the Union;
- (b) a **uniform status of subsidiary protection** for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a **common system of temporary protection** for displaced persons in the event of a massive inflow;
- (d) **common procedures** for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining **which Member State is responsible** for considering an application for asylum or subsidiary protection;
- (f) standards concerning the **conditions for the reception of applicants** for asylum or subsidiary protection;
- (g) partnership and cooperation with **third countries** for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

# MAIN NOVELTIES

Uniform status

„asylum” = Convention refugee status

subsidiary protection

Common procedure

**No longer minimum** standards! Goal: to adopt them in 2012

Partnership with third countries

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Not mentioned in the Lisbon treaty: European Asylum Support Office



# DECISION MAKING PROCEDURES AND MAJORITIES IN TITLE V, TFEU, CONCERNING ASYLUM AND MIGRATION

Numbers refer to TFEU articles and paras	Majority	Procedure	Start	Legal basis
Common polucy on visas and short stay permits 77 § 2 (a)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
Checks on persons at external borders 77 § 2 (b)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Third country nationals - short term travel within the EU 77 § 2 (c)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Gradual establishment of integrated border management 77 § 2 (d)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
Absence of controls on persons at internal borders 77 § 2 (e)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Passport, ID card and residence permit rules implementing TFEU § 20 (2) (a) on the EU citizen's right to move and reside freely	<b>Unanimous</b>	Special legislative procedure	1 Dec. 2009	Lisbon treaty
Uniform status of asylum and subsidiary protection for third country nationals 78 § 2 (a) and (b)	Qualified majority	Ordinary legislation	1/12/2009 (1/12/2005)	Lisbon (Nice)
Common system of temporary protection in case of mass inflow 78 § 2 (c)	Qualified majority	Ordinary leg.	1 /12/2009 (1/12/2005)	Lisbon (Nice)

# DECISION MAKING PROCEDURES AND MAJORITIES IN TITLE V, TFEU, CONCERNING ASYLUM AND MIGRATION

Common procedures for granting and withdrawing status 78 § 2 (d)	Qualified majority	Ordinary legislation	1 /12/2009 (1/12/2005)	Lisbon (Nice)
Criteria and mechanisms for determining which Member State is responsible for considering an application („Dublin”) 78 § 2 (e)	Qualified majority	Ordinary legislation	1/12/2005	Nice
Standards concerning reception conditions during asylum and subsid prot . procedures 78 § 2 (f)	Qualified majority	Ordinary legislation	1 /12/2009 (1/12/2005)	Lisbon (Nice)
Partnership and cooperation with third countries for the purpose of managing inflows of asylum seekers 78 § 2 (g)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
The conditions of entry and residence + standards on the issue by MS of long-term visas and residence permits, including those for the purpose of family reunification 79 § 2 (a)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
The definition of the rights of third-country nationals residing legally in a MS including the conditions governing freedom of movement and of residence in other Member States 79 § 2 (b)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
Illegal immigration and residence , including removal and repatriation (79 § 2 (c)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Combatting trafficking in persons, in particular women and children	Qualified majority	Ordinary legislation	1 Dec. 2009 (1 Jan. 2005)	Lisbon treaty (Council decision 15 Dec 2004)

# Votes distribution – qualified majority

	Before accessions of 2004, 2007	Now, with Bulgaria and Romania until 2014	After 1 November 2014	
France	10	29	<p><b>1 member – 1 vote</b></p> <p><b>Qualified majority = „double majority”</b></p> <p>On a proposal from the Commission or the High Representative</p> <p><b>55% of the ministers (countries) (15) representing 65% of the population of the EU</b></p> <p><b>72 % of the ministers (20) representing 65 % of the population of the EU</b></p> <p><b>Blocking minority : minimum 4 countries even if 3 represent more than 35 % of the population</b></p>	
Germany	10	29		
Great Britain	10	29		
Italy	10	29		
Spain	8	27		
Poland	-	27		
Romania	-	14		
The Netherlands	5	13		
Belgium	5	12		
Greece	5	12		
Portugal	5	12		
Czech republic	-	12		
Hungary	-	12		
Ausztria	4	10		
Sweden	4	10		
Bulgaria	-	10		
Denmark	3	7		
Finland	3	7		
Ireland	3	7		
Lithuania	-	7		
Slovakia		7		
Luxembourg	2	4		
Cyprus	-	4		
Estonia	-	4		
Latvia	-	4		
Slovenia		4		
Malta	-	3		
<b>Total</b>	<b>87</b>	<b>345</b>		
Qualified majority	62 (71,26%)	255 (73,91 %)		
Blocking minority	26	91		

# THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU) IN ASYLUM AND MIGRATION MATTERS

## Procedures against states

**Infringement procedure** = Commission against state for failure to fulfil obligations *Article 285 TFEU (ex Article 226 TEC)*

**Interstate dispute** = State against state for failure to fulfil obligations (*Hardly ever used*) *Article 259 (ex Article 227 TEC)*

**Enforcement procedure** = Commission against MS - when a state fails to implement a judgment of the CJEU *Article 260 (ex Article 228 TEC)*

## Challenging the legality of an act or the failure to act

**Annulment procedure** = review of legality of acts *Article 263 (ex Article 230 TEC)*

MS, Parliament, Council or Commission challenging an act (of the other bodies) on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers + Natural and legal persons also, if personally and directly affected

**Challenging failure to act** = MS and institutions against any institution, body or organ if the latter fails to act in infringement of the Treaties

## Preliminary ruling

MS's courts may (any level) must (highest level) request a preliminary ruling on

- the interpretation of the Treaties;
- the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union

# FLEXIBILITY IN THE DECISION MAKING IN THE FIRST PILLAR

UK, IRELAND

Proposal for legislation under Title V TFEU

3 months

participate

stay out

agreement reached

they hold it back

„passing them”

decision

subsequent request to participate

Commission may approve

# VARIABLE GEOMETRY IN THE FIELD OF AFSJ

	TFEU Title V. <b>not related to Schengen</b>	Building on <b>Schengen</b> under Title V.	<b>Schengen</b> acquis in former <b>title VI of the TEU</b>	<b>Other</b> elements of former <b>Title VI</b>	TFEU and TEU <b>SIS, visa rules abolition of internal borders</b>
UK Ireland	Opts in or out	Opts in or out	Opts in or out	Opts in or out	No participation
Denmark	No participation	No participation, but creates an obligation under international law	Binding, frozen	Binding, frozen	Takes part
Norway, Iceland	No participation	Binding	Binding	No participation	Takes part
Switzerland	No participation	Binding	Binding	No participation	Applied since 12 December 2008 (on airports since 29 March 2009)
NMS of 2004	Binding	Binding	Binding	Binding	Applied since 21 December 2007, on airports since March 2008.
Bulgaria Romania Cyprus	Binding	Binding	Binding	Binding	Not yet applied

# **EU MIGRATION POLICY**

## **OVERVIEW - DILEMMAS**

# THE IMPACT OF THE IDEA OF SCHENGEN AND THE AREA OF FREEDOM, SECURITY AND JUSTICE (AFSJ)

The fundamental dilemma:

Sovereignty (control, security) - freedom of movement, abolition of borders

Responses:

Up to Maastricht (1992) (sovereignty)

Maastricht-Amsterdam (sovereignty but Schengen and „matters of common interest”)

After Amsterdam (1 May 1999):

Genuine freedom (for EU citizens) with

- flanking measures
- closer cooperation, opt ins and opt outs

Emerging common policy on regular, illegal and forced migration of third country nationals



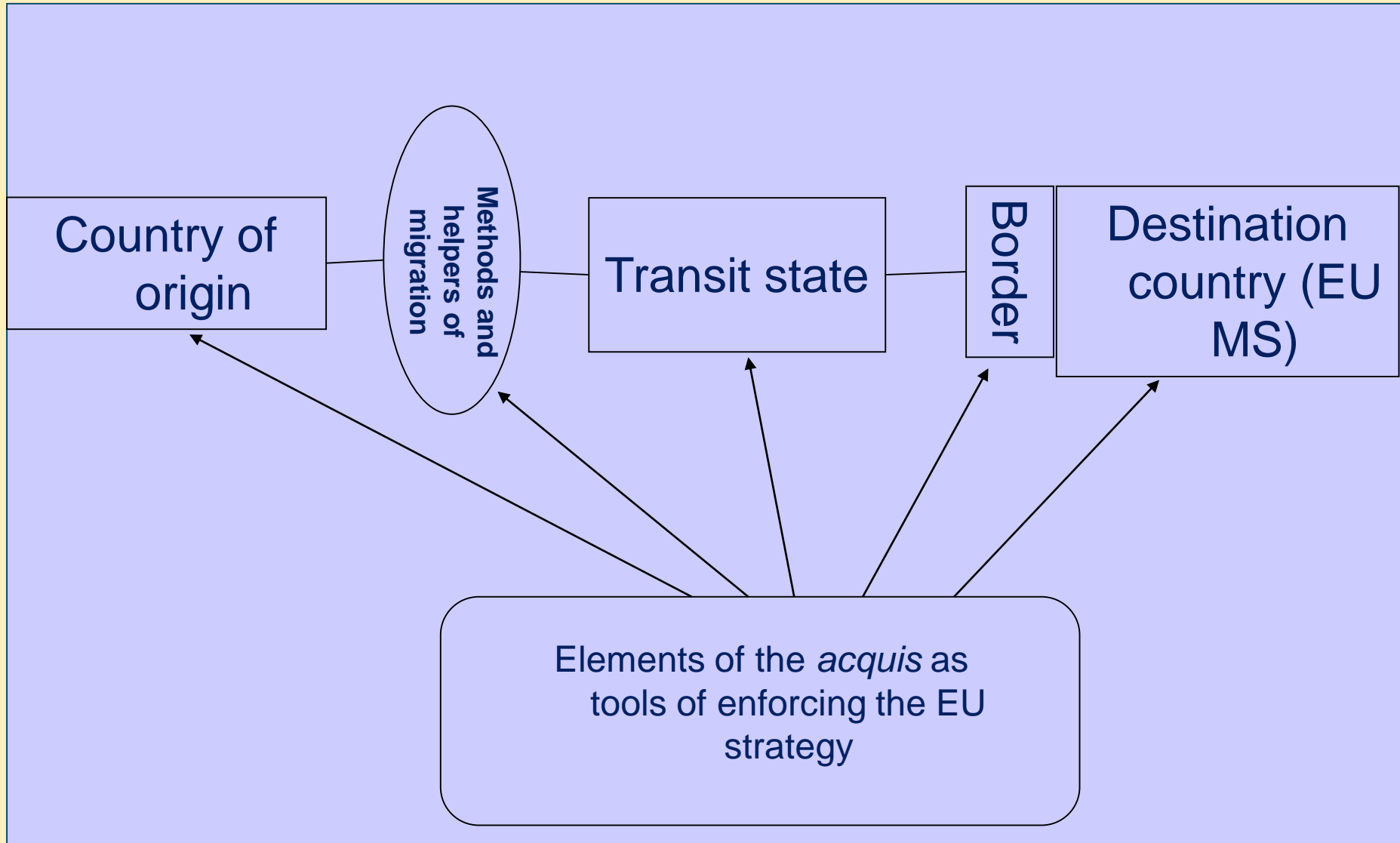
# THE NEW PERCEPTION OF SECURITY AND THE SECURITIZATION OF THE DISCOURSE

Military security *replaced* (augmented) by  
internal,  
cultural  
and welfare  
security (Huysmans)  
and a

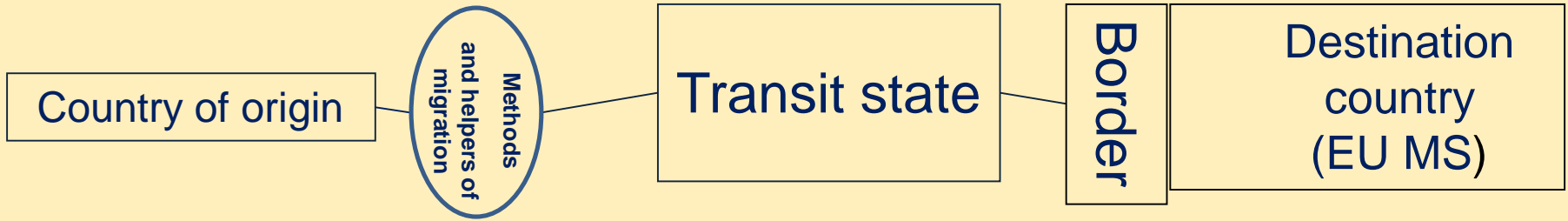
*security continuum*

developed, perceived as comprising  
border control- terrorism - international crime -  
migration  
(Bigo)

# PHASES/SITES OF MIGRATION



# DIMENSIONS OF THE ANALYSIS – MAIN ELEMENTS OF THE MIGRATION ACQUIS



Immigration rules (their impact);	Man smuggling, Fight against trafficking		External border Surveillance, conditions of crossing; abolition of internal borders	EU Immigration policy - workers, - service providers - researchers, - students - family unification
Co-operation with third states in the management of migration	Carrier sanctions	Transit visa	Visa; Alerts (Schengen)	Integration Fight against racism and xenophobia and discrimination
Tackling the root causes of asylum seeking	Interception in international waters	Safe third country		Asylum acquis Burden and responsibility sharing
Safe country of origin	Document protection (from falsification)	Return agreements		Cooperation in removal/return

## DIMENSIONS OF THE ANALYSIS – OVERVIEW OF THE JUNCTURES

Type of migration ↓	The position of the migrant from the EU's point of view →	<b>Preferred</b>	<b>Reservations</b>	<b>Pawn in the game</b>	<b>Unwanted</b>
Regular		National of the EU MS or of the EEA MS or of Switzerland	New MS, Europe Agreements, Associated states (Turkey)	ACP and Maghreb countries; nationals of states with return agreements; Eastern Europe	Visa rejected
	S. Peer's category:	<b>Market citizen</b>	<b>Worker</b>	<b>„Alien”</b>	
Irregular	Refugee	Resettlement „Quota refugees”  „protected entry”	Asylum seeker arriving directly from territory of persecution	Asylum seeker arriving through third countries	Intercepted outside the EU; Arriving from safe country of origin; Rejected claimant
	Illegal migrant			Regularisation addressees Victims of trafficking	Those to be removed or already removed

# **THANKS!**

**BOLDIZSÁR NAGY**

**E-mail: [nagyboldi@ajk.elte.hu](mailto:nagyboldi@ajk.elte.hu)**

**[www.nagyboldizsar.hu](http://www.nagyboldizsar.hu)**

**CEU IRES**

**Budapest, 1051**

**Nádor u. 9.**

**Tel.: +36 1 242 6313, Telefax: +36 1 430 0235**