Editorial

The Court of Justice of the EU and the “New” Lisbon Treaty Environment Five Years On

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1 Introduction

At the time of writing an important milestone in the implementation of the Treaty of Lisbon has just been passed. On 1 December 2014, five years after the Treaty entered into force, the Court of Justice of the European Union (CJEU) assumed its full jurisdiction over what remains of the so-called “third pillar” acquis. The acquis consists of the 133 measures that remain in force and which were adopted on the basis of Title VI of the pre-Lisbon Treaty on European Union (TEU) that conferred competence upon the Union in the field of “police and judicial cooperation in criminal matters”. Rather than taking the Court into wholly uncharted territory, the reform constitutes an incremental change. This is because the Court already had some jurisdiction over the third pillar and it enjoys its full jurisdiction over criminal law measures that have been adopted under the post-Lisbon treaty settlement automatically. Nevertheless, the latest extension to its remit provides an opportune moment at which to examine some of the implications of the Court’s expanded criminal justice role. In order to do so, it is helpful to begin briefly by recapping the Lisbon reforms in so far as they are relevant.
Criminal Justice, the CJEU and the Lisbon Reforms

Under the treaties as they stood before the Treaty of Lisbon entered into force the Union's criminal law competence was split awkwardly between two regulatory environments. Under the third pillar competence was explicit, but it was fundamentally of intergovernmental character, meaning that its exercise remained substantially under the control of the Member States. Additionally, though, the Union enjoyed some implied competence under the “first pillar”. Limited in scope¹ and governed by the European Community Treaty (ECT), this was supranational in character. Measures based in the ECT were thus supreme over the internal laws of the Member States and capable of having direct effect. Accordingly, first pillar competence entailed a more intense pooling of sovereignty than was the case under the third pillar.

Reflecting the distinction, the Union institutions had lesser involvement in third pillar affairs than those falling under the ECT. As far as actions before the CJEU were concerned, the principal differences were as follows:

- **Judicial review**: Compared with the position under the first pillar, the right of judicial review under the third pillar was significantly restricted, both in terms of the range of instruments to which it applied and the class of applicants that was eligible to bring an action.
- **Infringement proceedings**: Under the first pillar the European Commission (and Member States) could bring infringement proceedings against Member States for their alleged failures to implement Community law. No such jurisdiction existed under the third pillar.
- **Preliminary rulings**: Under the first pillar all courts and tribunals in Member States had the right, and in some cases the duty, to make references to the CJEU for preliminary rulings on the correct interpretation of Community law. Under the third pillar access to the Court was available only to the courts of Member States that explicitly opted in to the Court's preliminary rulings jurisdiction, and not all of them did.

A primary goal of the Lisbon reforms is to dissolve the boundary between the former first and third pillars, so that the subject matter of the third pillar becomes absorbed into the supranational core of the Union. To that end, when

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