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# The Reform Treaty's Implications for the Area of Freedom, Security and Justice

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# Overview

1. Legislation in the area of Freedom, Security & Justice
2. Judicial control
3. Border controls, asylum & immigration
4. Civil matters
5. Criminal matters
6. The emergency brake
7. Opt-outs & opt-ins
8. Transition rules

# Legislation

General rule: QMV & co-decision

Exceptions:

- Council unanimously & EP consultation:  
passports; family law; police cooperation;  
family law passerelle (but nat Parl veto)
- Council & EP consultation: sudden inflow  
of migrants – emergency measures
- Council unanimously & EP consent:  
Eurojust conversion into EPP; various  
passerelles

# Legislation initiative

General rule: Commission

Exception for criminal justice and police cooperation (Art 61i):

Commission or  $\frac{1}{4}$  of member states

# Legislation passerelles

Legislation procedure: Family law  
(Art 65 III)

Enlarging legislative competences:

- additional aspects of criminal procedure  
(Art 69a II d)
- additional areas of substantive crime  
(Art 69b I 3)
- additional competences for EPP-Eurojust  
(Art 69e IV)

## Judicial control

General rule: full ECJ jurisdiction

Exception for police measures  
(Art 240b)

Exception for criminal justice & police  
cooperation in transition period

## Civil matters Art 65

Basically unchanged

New competence for training support  
(Art 65 II h)

Procedural passerelle: new right of  
veto for single national parliament  
(Art 65 III 3)

## Criminal matters - procedure

- Art 69a I: mut. recognition, conflicts of jurisdiction & judicial coop bas. unchanged
- new competence for training support (Art 69a I c)
  - Art 69a II a-c: minimum rules harmonisation (directives) on evidence; procedural safeguards; rights of victims
- Passerelle Art 69a II d with emergency brake Art 69a III

## Criminal matters – substantive I

- Art. 69b I: minimum rules harmonisation (directives) on (a) definition of crimes & (b) sanctions
- in enumerated areas of serious crime (Art 69b I 2)
- Passerelle Art 69b I 3 with emergency break Art 69b III

## Criminal matters – substantive II

- Art. 69b II: minimum rules harmonisation (directives) on (a) definition of crimes & (b) sanctions
- to ensure implementation of EU policy in areas of harmonisation; procedure follows legislative procedure in area concerned (Art 69b II 2)
- Emergency brake Art 69b III

## Criminal matters – Eurojust

- Art. 69d I: competences will potentially be strengthened on basis of regulation
- Art. 69e I: allows for establishment of EPPO from Eurojust (to protect EU financial interests); easy access to enhanced cooperation Art 69e I 3
- Passerelle Art 69e IV – with easy access to enhanced cooperation Art 69e I 3 ?

# Police cooperation

Basically unchanged; however:

- Art. 69f III: easy access to enhanced cooperation, Schengen acquis development excluded
- Art 69g: Europol
- Art 69h: operation of criminal justice & police authorities in other member states' territories

## The emergency brake procedure

“Emergency brake” considering national criminal justice system fundamentally affected:

- Art. 69a III proc. law harmonisation
- Art 69b I, III subst. law harmonisation
- Art 69b II, III crim. law prot. of EU pol.
- » easy access to enhanced cooperation

Cf. Easy access to enhanced cooperation in ‘quasi’-emergency situations Art 69e I, Art 69e IV (?), Art 69f III

## Opt-outs and opt-ins

- UK, Irish and Danish opt-outs extended to whole title
- UK and Irish opt-ins possible as before
- DK may any time adopt opt-in regime like UK and IRL (amended Danish protocol)

## Transition regime (Artt. 9, 10 Protocol on transitional provisions)

General rule Art 9: continuity for  
pre-Lisbon acquis

For 5 years, no infringement proced-  
ure and unchanged ECJ jurisdiction  
(Art 10 I, III), unless rule amended

UK right to opt out from total JLS  
acquis from end of transition period,  
but may opt in again (Art 10 IV, V)

Many thanks for your attention!

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