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The European Criminal Justice Jigsaw & its Relevance to Scotland

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Contents

- The EU & the “Area of Freedom, Security & Justice” [“AFSJ”];
- Fundamental (human) rights protection;
- Who is in the driving seat?
- What does all of this mean for Scotland?



EU milestones

- Trevi (1975)
- Schengen (1985, 1990)
- Treaty of Maastricht (1993)
- Treaty of Amsterdam/Tampere Programme (1999)
- Hague Programme (2004)
- Treaty of Lisbon/Stockholm Programme (2009)



The AFSJ

- Treaty of Amsterdam, the new “third pillar” & framework decisions;
- Treaty of Lisbon, new AFSJ Title;
- ECJ/CJEU contribution
 - Case C-105/03 *Pupino*; Case C-135/08 *Rottman*;
Case C-137/09 *Josemans*; Case C-145/09
Tsakouridis



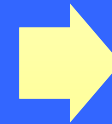
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The AFSJ programmes

Tampere
“faith”



Hague
“trust”



Stockholm
“confidence”



Fundamental (human) rights

- Member States & the ECHR: Articles 2 & 49 post-Lisbon TEU;
- ECJ/CJEU fundamental rights doctrine;
- Article 6 pre-Lisbon TEU;
- Case C-402/05 & C-415/05 *Kadi*; App. No.45036/98 *BosphorusvIreland*



Fundamental rights post-Lisbon

- Article 6 post-Lisbon TEU;
- Charter of Fundamental Rights of the EU;
- EU accession to the ECHR, but see Article 218(8) TFEU



But Lisbon reforms not without equivocation...

- The “emergency brake”;
- Subsidiarity check: Article 69 TFEU;
- Opt ins/opt outs;
- The 5 year transitional phase
 - (& the Stockholm Programme)



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Who is in the driving seat...?

- European Council;
- Council of Ministers;
- European Commission;
- European Parliament;
- ECJ/CJEU;
- National Parliaments





What does all of this mean for Scotland?

- “Sincere cooperation”: Article 4(3) TEU;
- Scotland as part of the UK: the minority “common law” Member States;
- Scotland *within* the UK & its distinct criminal justice system;
- Regionalism, devolution -& independence..?



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*Thank you very much for
listening!*