

Introduction

Fundamental Rights at the Core of the EU AFSJ

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The normative consolidation of the Area of Freedom, Security and Justice (AFSJ) and the entry into force of the Charter of Fundamental Rights of the EU (the Charter) has transformed the Union as we know it.

It is common knowledge that the AFSJ has undergone impressive normative and jurisprudential developments in recent times. An abundance of new instruments were adopted in the years following the entry into force of the Treaty of Lisbon, joining the already vast body of pre-Lisbon secondary law in the various fields covered by the AFSJ: civil and criminal judicial cooperation, as well as matters related to borders, migration and asylum. National authorities and courts have now become, or at least are becoming, well acquainted with the AFSJ *acquis*, which is shown by the impressive increase in the number of preliminary references made by national courts. It is today beyond doubt that the AFSJ has become one of the most prolific areas of litigation before the Court of Justice of the European Union (CJEU).¹

This development has gone hand in hand with the entry into force of the Charter as a legally binding instrument by virtue of the Treaty of Lisbon. EU fundamental rights have been codified and granted the same rank as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (the Treaties). The increased visibility they acquired quickly led to a rise in direct actions and preliminary references to the CJEU concerning fundamental rights. Fundamental rights litigation is today not only extremely frequent but also increasingly central to the debate about the EU's constitutional structure and that structure's relationship with national law and European human rights law.

The combined effect of the two aforementioned trends is a qualitative change in the shape and content of European integration. Fundamental rights lie at the heart of the AFSJ.² It was only a matter of time (and of eliminating pre-existing

¹ CJEU, *Annual Report 2018: Judicial Activity*, mentioning eighty new requests for a preliminary ruling and seventy-four cases completed in the AFSJ that year.

² For some general theoretical approaches to the subject, see D Leczykiewicz, 'Human Rights and the Area of Freedom, Security and Justice' in E Fletcher, E Herin-Karnell and C Matera (eds), *The European Union as an Area of Freedom, Security and Justice* (Routledge 2017); S

limitations on the jurisdiction of the CJEU), before the AFSJ became the most dynamic area of interpretative development of EU fundamental rights. Fundamental rights do not only constitute the basic pre-requisite for the proper functioning of the various rules that constitute the AFSJ *acquis*; they serve as the bedrock on which the principles of mutual recognition and mutual trust rest. As a result, fundamental rights have progressively unveiled their core function as prerequisites and, ultimately, limits to the principles of mutual recognition and mutual trust. Furthermore, the progressive normative development of the AFSJ has confirmed the need to buttress mutual trust and recognition through harmonisation and normative development. This has led to the adoption of various instruments of secondary law in the blocks of asylum, migration and borders, civil judicial cooperation and cooperation in criminal matters. Those harmonising rules are based on, but go well beyond, the inter-state dynamics of mutual recognition and trust and the promotion of free movement. They establish new common standards that not only make judicial and administrative cooperation possible but also contribute to creating a common and solid ground of shared (although often minimal) EU protection standards.

Now that the Charter has reached its critical tenth anniversary as a binding instrument, this book looks at the intersection of these two constellations – the AFSJ and EU fundamental rights – within the constitutional framework erected by the Treaty of Lisbon.

The AFSJ and Constitutionalising the EU

It hardly needs saying that the EU has gone beyond a predominantly economic approach to integration. At a symbolic level, this process has led to the evolution of conceptual labels. Described initially as a common market and later as an internal market, the EU is today referred to as an Area of Freedom, Security and

Douglas-Scott, 'The EU's Area of Freedom, Security and Justice: A Lack of Fundamental Rights, Mutual Trust and Democracy?' (2009) 11 *Cambridge Yearbook of European Legal Studies* 53; V Bazzocchi, 'The European Charter of Fundamental Rights and the Area of Freedom, Security and Justice' in G Di Federico (ed), *The EU Charter of Fundamental Rights: From Declaration to Binding Instrument* (Springer 2011); FJ Donaire Villa, 'Los Derechos en el Espacio de Libertad, Seguridad y Justicia' in J Goizueta and M Cienfuegos (eds), *La Eficacia de los Derechos Fundamentales de la UE* (Thomson Reuters Aranzadi 2014); M Heikkilä and others, 'Report Critically Assessing Human Rights Integration in AFSJ Policies' (FRAME Deliverable 11.2, 2015), <https://doi.org/20.500.11825/107>; JI Ugartemendia and H Labayle (eds), *La Tutela Judicial de los Derechos Fundamentales de la Unión Europea en el Espacio de Libertad, Seguridad y Justicia, Curso de Verano UPV/EHU, IVAP/CDRE* (Oñate European Inklings 8, 2016).

Justice (alongside the pre-existing labels). This notion abandons the market as the reference point and signals a territorial conception of the Union as an area.³ The triad of freedom, security and justice amplifies and extends the old market objective of freedom, embodied from the outset in the four fundamental freedoms. It evokes the wider substantive scope of integration, which now extends to the basic functions of security and justice in both civil and criminal matters. In short, the AFSJ entails a significant constitutional reconfiguration of the integration project.⁴

Since the entry into force of the TFEU, EU competences framed under the AFSJ can no longer be conceived as spin-offs or mere complements to the internal market. Pursuant to Article 3(2) TEU, the AFSJ has become an objective of the Union in its own right. Moreover, the fragmented approach to justice and home affairs inherited from the Treaty of Maastricht has finally been superseded. Title V of the TFEU now brings together the formerly separate blocks of migration, asylum and borders; judicial cooperation in civil matters; judicial cooperation in criminal matters; and police cooperation.

The Treaty of Lisbon has therefore culminated in the ‘constitutionalisation’ of the AFSJ. As a result, the general decision-making procedures now largely apply to this area of law. The fragmented typology of acts brought about by the special instruments of the third pillar has been consolidated, with the entire AFSJ now being developed through normal EU legal acts. The previous limits on the jurisdiction of the CJEU in this field have been eliminated.

However, the specificity of the AFSJ has not completely vanished. The uniqueness of the former third pillar remains in place to a certain extent. Certain rules concerning decision-making procedures still affect judicial cooperation in criminal matters.⁵ Transitional rules govern the effects of acts adopted under the

³ H Lindahl, ‘Inside and Outside the EU’s “Area of Freedom, Security and Justice”’: Reflexive Identity and the Unity of Legal Space’ (2004) 90 *Archives for Philosophy of Law and Social Philosophy* 478.

⁴ See eg M Fichera, ‘Sketches of a Theory of Europe as an Area of Freedom, Security and Justice’ in E Fletcher, E Herin-Karnell and C Matera (eds), *The European Union as an Area of Freedom, Security and Justice* (Routledge 2017).

⁵ See eg arts 82(3) and 83(3) TFEU establishing the so-called emergency break mechanisms. Recourse to a special legislative procedure is provided for passports, IDs and residence permits (art 77(3) TFEU); sudden inflows of third-country nationals (art 78(3) TFEU); family law matters with cross-border implications (art 81(3) TFEU); the European Public Prosecutor’s Office (art 86 TFEU); and operational police cooperation (art 87(3) TFEU). See generally S Peers, ‘Finally “Fit for Purpose”: The Treaty of Lisbon and the End of the Third Pillar Legal Order’ (2008) 27 *YEL* 47; C Ladenburger, ‘Police and Criminal Law in the Treaty of Lisbon: A New Dimension for the Community Method’ (2008) 4 *European Constitutional Law Review* 20.

previous treaty framework.⁶ The phenomenon of *géométrie variable* continues to afflict the AFSJ. The regime of opt-outs that were already in place has been further complicated in the context of Brexit.⁷ The AFSJ therefore remains a singular and particularly complex area of EU law.

The diversity of the substantive topics gathered under the AFSJ umbrella add to this structural complexity. Indeed, it is arguably easier to account for the differences between the AFSJ blocks than it is to explain their similarities. And yet, the AFSJ is marked by a conceptual unity. This is not merely the product of historical coincidence and progressive convergence through treaty reform. More importantly for this book, it reflects a common trend running through the matters covered by the AFSJ – namely, the creeping of EU law into tasks traditionally preserved for the Member States in a way that does not necessarily flow from the dynamics of market integration.

Moreover, in the spheres covered by the AFSJ, EU law affects individual rights with particular intensity.⁸ EU action in this field may strongly affect the balance between fundamental rights and general interests. Such factors have led to additional safeguards not only in the decision-making procedure but also in the mechanism of cooperation between national courts and the CJEU. For example, an urgent preliminary ruling procedure available only for AFSJ matters has been established, and restrictions have been placed on the review of the proportionality of law enforcement measures undertaken as part of judicial and police cooperation in criminal matters.

All in all, the AFSJ is the sphere of integration that currently takes centre stage in academic and jurisprudential debates at national, supranational and international levels. The AFSJ revamps the integration project, redefines the territorial space of the Union, reformulates the relationship between the law and citizens, and raises unique challenges for the multilayered protective system of fundamental rights. For the latter, the AFSJ challenges the traditional role of national

⁶ Protocol 36 on transitional provisions concerning acts adopted on the basis of titles V and VI of the former version of the TEU prior the entry into force of the Treaty of Lisbon. H Satzger, 'Legal Effects of Directives Amending or Repealing Pre-Lisbon Framework Decisions' (2015) 6 *New Journal of Criminal Law* 528; V Mitsilegas, S Carrera and K Eisele, *The End of the Transitional Period for Police and Criminal Justice Measures Adopted Before the Lisbon Treaty: Who Monitors Trust in the European Criminal Justice Area?* (CEPS Paper in Liberty and Security in Europe 74, 2014), www.ceps.eu/ceps-publications/end-transitional-period-police-and-criminal-justice-measures-adopted-lisbon-treaty-who/.

⁷ See D Curtin 'Brexit and the EU Area of Freedom, Security and Justice: Bespoke Bits and Pieces' in Federico Fabbrini (ed), *The Law & Politics of Brexit* (OUP 2017).

⁸ See K Lenaerts, 'The Contribution of the European Court of Justice to the Area of Freedom, Security and Justice' (2010) 59 *International and Comparative Law Quarterly* 255.

jurisdictions as guardians of personal rights, turning them into key components in a multinational system of judicial cooperation based on mutual trust.⁹

These transformations have led to a situation where considerations of fundamental rights in the AFSJ have a systematic impact on policy developments that may shape the future of political integration. The fact that the Union is now an AFSJ has encouraged EU institutions to adopt a broader and more robust approach to the rule of law in the Member States. Mutual trust and recognition might otherwise be at risk. Indeed, the intrinsic link between mutual trust and the substratum of fundamental rights presumed to be shared by Member States makes any failure to secure the rule of law at national level a threat to the functioning of the EU as an AFSJ.¹⁰

The Central Place of Fundamental Rights in the AFSJ

The distinct subject matters covered by the different blocks of the AFSJ – EU rules on judicial cooperation (civil and criminal) and migration, asylum and borders – are intrinsically intertwined with fundamental rights in a particularly intense fashion. Integrating the AFSJ has become crucial to the most pressing challenges of our time, such as international terrorism or the refugee crisis. When EU law is adopted, transposed and implemented in these and other fields of the AFSJ, fundamental rights issues are liable to arise at every step. Moreover, the overall guarantee of EU fundamental rights has become dependent on the progress of integration in the AFSJ. Indeed, the Charter itself affirms the importance of the AFSJ in its preamble: together with Union citizenship, this field of integration ensures that the individual is at the heart of the activities of the Union.

Against this background, EU law in the areas covered by the AFSJ has proved problematic from the point of view of fundamental rights standards. This is because, firstly, the whole area relies on mutual trust and mutual recognition in the (initial) absence of harmonisation. Maintaining mutual recognition and trust across the EU, regarded as a unified area for the application of the law, relies on a presumption of equivalent protection among Member States. Whether innocent or not, this fiction challenges the traditional understanding of the protective responsibilities of national administrative and judicial authorities. Secondly, harmonisation in the different spheres of the AFSJ is often defined in terms of required minimums or is realised only to a limited extent. This leads to additional hurdles

⁹ See Chapter 22.

¹⁰ See Commission, 'A new EU Framework to strengthen the Rule of Law' (Communication) COM/2014/0158 final; case C-216/18 PPU *LM* EU:C:2018:586 (deficiencies in the system of justice).

when assessing the scope of national discretion and interaction with EU fundamental rights standards. Indeed, it is in this field that national differences and entrenched, competing legal traditions can be very sensitive, as the issues connected with the AFSJ often pertain to the treasured core of sovereignty. Indeed, the AFSJ is symbolically linked to the affective foundations of national constitutional identity. Third, the matters covered by the AFSJ are, by their very nature, more susceptible to fundamental rights violations.

In this framework, the fundamental rights obligations placed on Member States by their constitutions and the ECHR are put under particular pressure in the AFSJ. The European Court of Human Rights (ECtHR) and national constitutional and supreme courts are crucial components of the European fundamental rights space, and they all keep a watchful eye on the protection standards provided by EU law in the AFSJ. In particular, this makes the AFSJ the best case study for determining whether the current EU fundamental rights system has adjusted to the specificities of integration in particularly sensitive areas, and whether the progressive construction of the AFSJ meets the standards of the ECHR.

At the core of the challenges are the principles of mutual trust and mutual recognition, portrayed as the constitutional principles underpinning the AFSJ.¹¹ The proper construction of the AFSJ – and particularly the smooth operation of the instruments based on mutual recognition – depends on the solidity of its architecture of rights. Mutual trust has become a principle of ‘fundamental importance in EU law’.¹² The centrality of this principle is intrinsically connected to mutual trust among Member States as the articulating element of the AFSJ – and as a core component of the Union’s uniqueness. This uniqueness was one of the key arguments put forward by the CJEU when finding the draft agreement on accession to the ECHR to be incompatible with EU primary law.¹³ According to Opinion 2/13 of the CJEU, mutual trust requires each of the Member States, ‘*save in exceptional circumstances*, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law’.¹⁴

Despite the potential for conflict,¹⁵ in the pre-accession status quo the ECtHR confirmed its position of deference (the *Bosphorus* presumption of equivalent

¹¹ K Lenaerts ‘The Principle of Mutual Recognition in the Area of Freedom, Security and Justice’ [2015] *Il Diritto dell’Unione Europea* 530; E Herlin-Karnell, ‘Constitutional Principles in the EU Area of Freedom, Security and Justice’ in D Acosta and C Murphy (eds), *EU Security and Justice Law* (Hart 2014).

¹² Opinion 2/13 (Accession of the European Union to the ECHR) EU:C:2014:2454 (18 December 2014) para 191.

¹³ *ibid.* ¹⁴ *ibid.* (emphasis added).

¹⁵ A Kornezov, ‘The Area of Freedom, Security and Justice in Light of the EU Accession to the ECHR: Is the Break-Up Inevitable?’ (2012) 15 *Cambridge Yearbook of European Legal Studies* 227; E Brouwer, ‘Mutual Trust and Human Rights in the AFSJ: In Search of Guidelines for National Courts’ (2016) 1 *European Papers* 893.

protection)¹⁶ to the level of protection granted by the EU in the specific field of mutual recognition in the AFSJ.¹⁷ However, the ECtHR laid down the groundwork for a more exhaustive analysis in *Avotiņš v Latvia*. In this case, which concerned judicial civil cooperation, the ECtHR examined the merits while recognising that the state in question had not been afforded any margin of appreciation. It may be no coincidence that this development followed hard on the heels of Opinion 2/13. Indeed, the ECtHR issued an explicit warning:

[I]f a serious and substantiated complaint is raised before [the Member States] to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by European Union law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law.¹⁸

National constitutional and supreme courts have continued to underline the ‘hard limits’ of trust¹⁹ and have progressively engaged in judicial dialogue with the CJEU in order to dispel pertinent doubts over the congruent functioning of the interlocking levels of protection.²⁰

In this context, the CJEU has been progressively building on the idea that mutual trust is not equivalent to ‘blind trust’.²¹ The CJEU is designing system safeguards to deal with ‘exceptional circumstances’ that justify departing from the quasi-automaticity of mutual recognition. Case law has been gradually determining the role that fundamental rights imperatives play in the operation of EU legal acts based on mutual recognition and mutual trust and specifying the conditions under which they do so. Starting with the *NS* case concerning asylum within the so-called Dublin system²² following a strong message by the ECtHR,²³ the jurisprudential consolidation of fundamental rights as potential limits to mutual trust is today also firmly embedded in the field of judicial cooperation in criminal matters after the seminal judgments in *Aranyosi and Căldăraru*, *ML* and *LM*.²⁴

¹⁶ See *Bosphorus Airways v Ireland* (ECtHR, 30 June 2005).

¹⁷ See *Povse v Austria* (ECtHR, 18 January 2011).

¹⁸ *Avotiņš v Latvia* (ECtHR, 23 May 2016) para 116.

¹⁹ See German Constitutional Court, BVerfG, Order of the Second Senate of 15 December 2015, 2 BvR 2735/14.

²⁰ See eg Case C-303/05 *Advocaten voor de Wereld* EU:C:2007:261; Case C-399/11 *Melloni* EU:C:2013:107; Case C-168/13 *PPU F* EU:C:2013:358.

²¹ See K Lenaerts, ‘La Vie après l’Avis: Exploring the Principle of Mutual (Yet Not Blind) Trust’ (2017) 54 CMLRev 805.

²² See Joined Cases C-411/10 and C-493/10 *NS and Others* EU:C:2011:865; Case C-394/12 *Abdullahi* EU:C:2013:813.

²³ *MSS v Belgium and Greece*, App no 30696/0921.

²⁴ Joined Cases C-404/15 and C-659/15 *PPU Aranyosi and Căldăraru* EU:C:2016:198; Case C-220/18 *PPU ML* EU:C:2018:589 (conditions of detention in Hungary); *LM* (n 10).

It is true that the courts' case law according to which fundamental rights constitute sufficient and practical grounds for limiting mutual trust and recognition continues to be debated and needs to be developed.²⁵ This is a necessary consequence of the incremental and casuistic nature of case law. However, it has become clear that the role of fundamental rights in limiting mutual trust cannot be automatically restricted to instances of systemic deficiencies, as made clear by the CJEU in *CK and Others*²⁶ (again in the asylum field and after a strong message from the ECtHR).²⁷

Furthermore, derogations from mutual recognition and trust are justified not only by violations of absolute or non-derogable fundamental rights, such as the prohibition of torture and inhuman or degrading treatments in Article 4 of the Charter.²⁸ The Court has also confirmed without hesitation the essential role played by the right to effective judicial protection and the rule of law – which is fundamental to mutual trust – in the field of judicial cooperation. Breaches of the fundamental right to a fair trial guaranteed by Article 47 of the Charter which result from systemic or generalised deficiencies affecting the independence of the judiciary may also justify refusing execution of a European arrest warrant.²⁹ That said, case law never produces a neat classification grid with mathematical clarity. However, more developments are to be expected along the lines of the general criteria that have already begun to emerge.³⁰ It would appear that the assessment carried out by executing judicial authorities must not disregard the specific risk, severity and consequences of a violation, the nature of the fundamental right at stake – its absolute nature or its connection to the rule of law or other fundamental EU values – or the specific level of harmonisation and safeguards embedded in the EU act at issue.

Despite the practical challenges that the application of the new developments will undoubtedly raise, the fundamental rights exceptions are buttressing pillars rather than 'cracks' in the wall of mutual trust.³¹ Recent jurisprudential developments in the Strasbourg Court show that a coherent approach to mutual trust that

²⁵ On this debate see E Xanthopoulou, 'Mutual Trust and Rights in the EU Criminal and Asylum Law: Three Phases of Evolution and the Uncharted Territory beyond Blind Trust' (2018) 55 CMLRev 489.

²⁶ Case C-578/16 PPU *CK and Others* EU:C:2017:127. See S. Montaldo, 'On a Collision Course! Mutual Recognition, Mutual Trust and the Protection of Fundamental Rights in the Recent Case-Law of the Court of Justice' (2016) 1 European Papers 965; S. Prechal, 'Mutual Trust Before the Court of Justice of the European Union' (2017) 2 European Papers 75.

²⁷ *Tarakhel v Switzerland* (4 November 2014) CE:ECHR:2014:1104JUD 002921712.

²⁸ See I. Canor, 'My Brother's Keeper? Horizontal *Solange*: "An Ever Closer Distrust Among the Peoples of Europe"' (2013) 50 CMLRev 383, 403.

²⁹ *LM* (n 10). ³⁰ See eg Case C-128/18 *Dorobantu* EU:2019:857.

³¹ On the intensity of the executing judicial authority's review of the EAW, see C-128/18 *Dorobantu* EU:C:2019:334, Opinion of AG Campos Sánchez-Bordona.

safeguards fundamental rights can satisfy the requirements of the ECtHR.³² At the same time, EU law has furthered positive harmonisation in the AFSJ. This is, to a certain extent, a by-product of the need to build mutual trust. Fundamental rights have transformed the dynamics of integration in the AFSJ: if mutual recognition based on mutual trust was initially a means of enabling cooperation despite reticence to harmonisation, the need to bolster this trust and safeguard the effectiveness of mutual recognition has in turn increased the need for substantive harmonisation. The adoption, transposition and implementation of both positive (harmonising) and negative (mutual-recognition-based) EU legislation requires constant monitoring of fundamental rights protection. Through this intensive normative action and its interpretation in case law, the EU is progressively defining its conception of rights through constant interchange with the ECHR and the various national constitutional traditions.

With regard to national constitutional systems, the autonomy of EU fundamental rights presents unique challenges to the multilevel system of rights protection in Europe. EU legal rules in the fields covered by the AFSJ pose challenges both for EU institutions and for Member States. New areas of competence have been opened for interaction between EU law and national law. The operation of the principles that govern the interaction between EU and national law – primacy, direct effect, conform interpretation – have reappeared, posing new challenges in areas previously unexplored by EU law.³³ Not all the challenges are new, however, as EU law already deployed outside the AFSJ has important effects in criminal and migration law through internal market rules, as well as in civil judicial cooperation through international conventions. However, the intensity and breadth of the normative action of the Union at the current stage of development of the AFSJ has brought many latent or at least relatively unexplored issues to the fore.

Fundamental Rights in the AFSJ: The Structure of This Book and Its Chapters

The essays in this compilation examine the normative and jurisprudential development of the AFSJ with a view to assessing its effect on the overall scope and standards of EU fundamental rights protection in this particularly complex and sensitive field of integration.

³² With respect to the EAW, see *Romero Castaño v Belgium* (ECtHR, 9 July 2019) CE:ECHR:2019:0709JUD000835117.

³³ See Case C-105/03 *Pupino* EU:C:2005:386; Case C-439/16 PPU *Milev* EU:C:2016:818; Case C-573/17 *Popławski* EU:C:2019:530. In relation to criminal sanctions concerning TVA, see Case C-105/14 *Taricco and Others* EU:C:2015:555; Case C-42/17 *MAS and MB* EU:C:2017:936.

The General Approach

The chapters of this book analyse EU legislation (primary and secondary) and case law from the point of view of their impact on the standard and scope of fundamental rights protection in the AFSJ. The emphasis is on the role of fundamental rights as a yardstick for judicial review of both EU legal acts and national legislation (which falls within the scope of EU law), as well as their importance as interpretative guides. What impact has EU secondary law had on the construction of an EU standard in respect of particular fundamental rights? How have the challenges linked to harmonisation and mutual recognition shaped the interpretation of specific fundamental rights in the different fields of the AFSJ? How is EU action in the AFSJ shaping the jurisprudential construction of an autonomous standard of protection for specific fundamental rights? How do these developments interact with national standards and ECHR standards?

This book does not include a separate examination of ECtHR case law or national constitutional law. The role of the ECHR and ECtHR case law is examined as part of the system of EU fundamental rights within each chapter. Rather than taking a conflictual approach, the book seeks to offer an account of current trends and potential solutions to the identified areas of tension at EU level. Furthermore, the book does not seek to provide an exhaustive description of instruments of secondary law or a systematisation of legislative developments in the AFSJ. The various instruments of secondary law are studied in relation to each chapter's centre of gravity, which is determined by the content of the fundamental rights in question. Hence, fundamental rights that are central to the development of each of the blocks of the AFSJ have been selected as the elements around which the book is structured.

The Structure of the Book

The book is divided into five parts. Part I deals with general structural elements: the scope of fundamental rights in the AFSJ; the standard of protection; and the principles of mutual trust and mutual recognition as core components of the AFSJ. Parts II, III and IV are each devoted to one of the three main blocks of the AFSJ: migration, asylum and borders; judicial cooperation in civil matters; and cooperation in criminal matters. Finally, Part V consists of three horizontal studies of specific fundamental rights that traverse all three blocks: data protection; citizenship and non-discrimination; and the protection of vulnerable groups.

This book readily acknowledges the distinct structure, content and fundamental rights implications of the different blocks of the AFSJ. Indeed, the factors driving harmonisation and mutual recognition are not identical across the blocks. However, the constitutional sense of unity that the Treaties lend to the AFSJ, the shared challenges in terms of fundamental rights, and the perception of this field