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Democracy and the Rule of Law: A New Push for European Values

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JUSTICE AND HOME AFFAIRS COOPERATION (JHAC) IN THE PERSPECTIVE OF ENLARGEMENT

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SUMMARY: 1. General Considerations Concerning the Origins and the Evolution of the JHAC. – 2. Specific Considerations in the Perspective of the EU Enlargement. – 3. JHA's Centrality in the Accession Process of the Western Balkans. – 4. The Need to Strengthen Cooperation in the Fight Against the Serious Crime of Trafficking in Human Beings and … – 5. … the New EU legal Framework of Directive (EU) 2024/1712. – 6. Conclusions: JHAC Alignment as a Guarantee of Respect for EU Values in Enlargement?

1. General Considerations Concerning the Origins and the Evolution of the JHAC

In the contemporary EU context, the term "Justice and Home Affairs" (JHA), often known as "Freedom, Security, and Justice" (FSJ), refers to topics such as police cooperation, customs cooperation, drug trafficking, organised crime, terrorism, immigration, and asylum. Member States have always been hesitant to harmonise or adopt common policies in these sectors, which are inextricably related to national sovereignty. Furthermore, national legal and administrative systems as well as national policy approaches differ significantly. Such concerns were not included in the European Economic Community's competences under the Treaty of Rome. Only in the 1970s a variety of circumstances prepared the way for the first tentative moves towards tighter collaboration in this field, as it became clear that organised crime and terrorist groups were increasingly operating transnationally[1]. An emblematic incident was the terrorist

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[1] A form of informal cooperation in the field of JHA was initiated by the States in the 1960s and 1970s. The reference is obviously to the TREVI group (terrorism, radicalism, extremism and international violence), which survived at least until the early 1990s. See the *Declaration of Ministers of the Trevi Group*, Paris, 15 December 1989; *Meetings of the Trevi Group Ministers*, June 1992; on which see A. TIZZANO, *Droit communautaire et droit pénal*, in *Droit communautaire et droit pénal, Colloque du 25 octobre 1979*, Milan, 1981, p. 267 ff.; C. BALDI, *Istituzionalizzazione dei vertici, cooperazione intergovernativa e sopranazionalità comunitaria*, in *Rivista di diritto europeo*, 1980.

attack on the Munich Olympics[2]. Furthermore, the goal of expanding European economic integration prompted a call for closer JHAC. The Schengen Agreement of 1985, which proposed the elimination of internal border restrictions, raised clear security concerns. The implementing agreement, signed in 1990, did not take effect until 1995, *i.e*. ten years later.

An intergovernmental "Justice and Home Affairs" pillar was first added to the EU treaty architecture in the 1990s with the Maastricht Treaty[3]. This pillar was based on unanimous voting among Member States and excluded the supranational EU institutions from the decision-making process[4]. Then, in 1999, the Treaty of Amsterdam established the Community method for civil law cases, immigration, asylum, and external border controls[5]. In criminal cases, police and judicial cooperation was maintained as a diminished intergovernmental Third Pillar. Additionally, the Schengen rules were included into the EU legal structure via the Treaty of Amsterdam. According to Article 2 TEU-Amsterdam, JHA gained its own goal, which is "to maintain and develop an area of FSJ"[6].

From a national sovereignty standpoint, some Member States felt that the increasing European integration was too invasive. Differentiated integration in the JHA domain has emerged as a common aspect of EU cooperation[7]. In fact, the JHA domain was seen in

[2] Regarding the emblematic importance of this event in raising awareness of the need for cooperation in the fight against transnational crime and terrorism, see W. DE LOBKOWICZ, *L'Europe et la securitè intérieure*, Paris, 2002, p. 10.

[3] On JHAC, see *ex multis* C. KAUNERT, S. LEONARD, J.D. OCCHIPINTI (eds.), *Justice and Home Affairs Agencies in the European Union*, London, 2016; A. RIPOLI SERVENT, F. TRAUNER (eds.), *The Routledge Handbook of Justice and Home Affairs Research*, London, 2018; S. PEERS, *EU Justice and Home Affairs Law*, Oxford, 2023.

[4] D. CURTIN, *The Constitutional Structure of the Union: A Europe of Bits and Pieces*, in *Common Law Market Review*, 1993, vol. 29, p. 17 ff.; E. DENZA, *The Intergovernmental Pillars of the European Union*, 2002.

[5] The 1997 Treaty of Amsterdam brought elements of JHA within the Community legal framework proper (i.e. the first pillar). This act gave the European Commission the power to propose policies and laws on asylum, immigration, frontiers, visas and judicial cooperation in civil matters. Those issues were then brought under Title IV of the EC Treaty, on visas, asylum, immigration and other policies related to free movement of persons (Articles 61-69 ECT). See P. MULLER-GRAFF, *The Legal Bases of the Third Pillar and Its Position in the Framework of the Union Treaty*, in *Common Market Law Review*, 1994, vol. 30, p. 493 ff.; N. PARISI, D. RINOLDI (eds.)*, Giustizia e affari interni nell'Unione europea: il terzo pilastro del trattato di Maastricht*, Turin, 1996; A. TIZZANO, *Brevi note sul "terzo pilastro" del trattato di Maastricht*, in *Il Diritto dell'Unione Europea*, 1996, p. 391 ff.; D. O'KEEFFE, *La cooperazione intergovernativa e il terzo pilastro del trattato sulla Unione europea*, in *Rivista italiana di diritto pubblico comunitario*, 1997, pp. 651-662; L.S. ROSSI, *Verso una parziale "comunitarizzazione" del terzo pilastro*, in *Il Diritto dell'Unione europea*, 1997, pp. 63-84; R. ADAM, *La cooperazione in materia di giustizia e affari interni tra comunitarizzazione e metodo intergovernativo*, in *Il Diritto dell'Unione europea*, 1998, pp. 481-509; P. DE PASQUALE, F. FERRARO (eds.), *Il terzo pilastro dell'Unione europea: cooperazione intergovernativa e prospettive di comunitarizzazione*, Naples, 2009.

[6] See A. DI STASI, L.S. ROSSI (eds.), *Lo spazio di libertà sicurezza e giustizia. A vent'anni dal Consiglio Europeo di Tampere*, Naples, 2020.

[7] See S. PEERS, *Differentiated Integration and the Brexit Process in EU Justice and Home Affairs*, in A. RIPOLL SERVENT, F. TRAUNER (eds.), *The Routledge Handbook of Justice and Home Affairs*, cit. pp. 253-263.

the post-Amsterdam era as the most expansive and rapidly developing EU policy area[8] with the adoption of five-year work programs (Tampere, The Hague and Stockholm) that were enacted as the driving force behind the political agenda[9]. Then, the Treaty of Nice emphasised "closer cooperation between judicial and other competent authorities of the Member States" in the field of JHA, which aimed at enabling the EU to develop more rapidly into an area of FSJ, including: cooperation through Eurojust, the enhanced cooperation and the extension of the co-decision procedure to areas such as illegal immigration and short-term visa policy as well as to immigration and asylum.

As is known, the Lisbon Treaty abolished the pillar structure, expanded the Court of Justice's general jurisdiction and legislative procedure in the area of FSJ and reaffirmed the centrality of human rights. However, the entire subject matter is based on a system of "integrated cooperation"[10] where elements of the old and new rules coexist and combine differently than in the past, albeit now explicitly binding the area to respect fundamental rights, as well as the various national legal systems and constitutional traditions of the Member States (Article 67(1) TFEU). In particular, the area of FSJ refers to a goal established by the treaties that outline the ideal shape of European integration (Article 3(5) TEU), while JHA is still associated with the political sphere and is still widely used[11]. Although JHA is primarily an internal policy area, its goals require strong external cooperation[12]. Even more so in the wake of enlargement procedures that have highlighted,

[8] See J. MONAR, *Specific Factors, Typology and Development Trends of Modes of Governance in the EU Justice and Home Affairs Domain*, Strasbourg, 2006.

[9] According to S. WOLFF, F. GOUDAPPEL, J. DE ZWAAN (eds.), *Freedom, Security and Justice after the Lisbon Treaty and the Stockholm Programme*, The Hague, 2011, when JHA was "normalised" following Lisbon, the need for such programs decreased.

[10] Thus, T. RUSSO, *Lo spazio europeo di libertà, sicurezza e giustizia nella "riforma" del Trattato di Lisbona, in Globalizzazione e pluralità delle fonti giuridiche un duplice approccio.* Liber Discipulorum, Naples, 2012, pp. 247-264. More recently, see G. TESAURO, *Manuale di diritto dell'Unione europea*, (cur.) P. DE PASQUALE, F. FERRARO, vol. I, Naples, 2023; M.E. BARTOLONI, *La tutela giurisdizionale nell'ambito del terzo pilastro UE*, in *Quaderni costituzionali*, 2005; U. VILLANI, *Metodo comunitario e metodo intergovernativo nell'attuale fase dell'Unione europea*, in *Studi per l'integrazione europea*, 2019, no. 2, p. 266 ff.

[11] In actuality, the European Commission has Directorates General on "Justice and Consumer Affairs" (JUST) and on "Migration and Home Affairs" (HOME), the European Parliament's specialised committee is known as the "Committee on Civil Liberties, Justice and Home Affairs" (LIBE), and the Council of the European Union responsible for internal security was still established as the "Justice and Home Affairs Council". Furthermore, on 1st April 2025 the European Commission presented ProtectEU – a European Internal Security Strategy to support Member States and bolster the EU's ability to guarantee security for its citizens emphasizing the need for more effective tools for law enforcement and stronger JHA agencies.

[12] See, *ex multis*, B. MARTENCZUK, S. VAN THIEL (eds.), *Justice, Liberty, Security: New Challenges for EU External Relations*, 2008; P. ANDRADE, *EU External Competences in the Field of Migration: How to Act Externally when Thinking Internally*, in *Common Market Law Review*, 2018, vol. 55, p. 157 ff.; S. WOLFF, N. WICHMANN, G. MOUNIER, *The External Dimension of Justice and Home Affairs? A Different Security Agenda for the EU*, in *Journal of European Integration*, 2009, vol. 31, no. 1; C. KAUNERT, *The External Dimension of EU Counter-Terrorism Relations: Competences, Interests, and Institutions*, in *Terrorism and Political Violence*, 2010, vol. 22, no. 1, pp. 41-61; M. CREMONA, J. MONAR, S. POLI (eds.), *The External Dimension of the Area of Freedom, Security and Justice*, Brussels, 2011; F. TRAUNER, H. CARRAPICO, *The External Dimension of EU Justice and Home Affairs After the Lisbon Treaty Analysing the Dynamics of Expansion and Diversification*, in *European Foreign Affairs Review*, 2012, no. 17, pp. 165-182; C. KAUNERT, K. ZWOLSKI, *The EU as a Global Security Actor A Comprehensive Analysis Beyond CFSP and JHA*, New York, 2013.

as we shall attempt to illustrate, an external dimension of JHA cooperation in order to stabilise borders and align neighbouring and accession countries with the core EU values and standards[13].

2. Specific Considerations in the Perspective of the Enlargement

Therefore, the rapid growth of JHAC provided a problem for candidate countries, which, until the second half of the 1990s, saw the limited intergovernmental *acquis* of the old Third Pillar as a minor concern in the accession process. On the contrary, after the decision to include Schengen into the Treaty of Amsterdam in 1997, they realised they were facing a new serious challenge. Adaptation to the EU *acquis* in the fields of JHA began to take precedence on the enlargement agenda, both in terms of national reforms and EU help requests. Furthermore, the precise nature of EU asylum laws was still up for debate among Member States, which presented as one of the main issues for candidate nations[14]. To ensure the internal security of enlargement, they also had to strengthen border controls, which was seen as a necessary first step. The extension of the EU's external borders required, in fact, that new States were able to ensure effective border control, asylum systems and effective migration management[15]. As a result, JHA grew into a confidence-building area, essential for free movement (Schengen) and cooperation on internal security of the EU.

Nevertheless, the particular sensitivity of JHA in the national political context of the candidate countries for accession immediately highlighted the difficulties in the establishment and consolidation of institutional structures necessary for adaptation to the requirements of the rule of law and its practical implementation, also registering a

[13] In particular, measures taken within the Union needed to have a projection into external cooperation in order to be effective, such as stopping migratory flows in countries of origin. Thus, the Hague Programme (2004-2009) explicitly called for the integration of JHA into EU external relations, cooperation with countries of origin and transit on return, readmission and border management was promoted. Frontex, established in 2004, started to play a role beyond the EU's borders. The Stockholm Programme (2010-2014) also continued to consolidate the external dimension, emphasizing a comprehensive approach to migration, partnerships with countries of origin and the need to address the root causes of irregular migration. In this direction, by making JHA cooperation an integrated Union policy area, the Treaty of Lisbon expressly provides the EU's external competence in the area of JHA. See Article 3(2) TFEU.

[14] European asylum law emerged only later, initially consisting of soft law instruments presented to candidate countries as binding and therefore to be implemented by them. There has been, according to some, a "hardening" of soft law, which is a cause for concern. In this sense, see C. PHUONG, *Enlarging 'Fortress Europe': EU Accession, Asylum, and Immigration in Candidate Countries*, in *The International and Comparative Law Quarterly*, 2003, vol. 52, no. 3, pp. 641-663. According to J. MONAR, *Enlargement-Related Diversity in EU Justice and Home Affairs: Challenges, Dimensions and Management Instruments*, The Hague, December 2000, at the beginning, the Union did little to advance preparations for admission in this area. As a result, the candidate countries only gradually gained a comprehensive understanding of what would be expected of them, resulting in delays in preparations and the development of more particularly tailored EU support measures.

[15] According to the Schengen Protocol (no. 19) all future Member States are to be bound by the entire Schengen *acquis* (Article 7).

shortage of specialized personnel with adequate training and experience[16]. Since the 2004 enlargement, JHA has become a gatekeeper policy to ensure that candidate States for accession are closely aligned with EU standards on the rule of law, democratic institutions and internal security. Indeed, JHA issues are key to meeting the basic political criteria for accession (Copenhagen criteria), as well as in the negotiation phase for the opening and closing of Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security).

However, the integration of the candidate countries in sensitive areas, such as asylum, immigration, cross-border security, the fight against transnational crime, police and judicial cooperation in criminal matters, did not occur necessarily at the time of accession, thanks to the provision of safeguard clauses and transitional derogations[17] in the accession treaty[18]. The 2003 Multiple Accession Treaty[19] specified that the ten new Member States acceding to the EU would apply, from the date of accession (1st May 2004), the measures of the *acquis* incorporated into the EC and EU Treaties "and acts based on them or otherwise related to them", referred to in Article 3(1) of the Act of Accession and listed in Annex 1 to the Act, as well as other similar measures adopted between the approval of the Accession Treaty and the date of accession, with some parts – including most of the provisions of criminal and police law – applying from the date of accession. The rest of the Schengen *acquis* (in this context, hot pursuit, cross-border surveillance and the

[16] Already with regard to the countries of Central and Eastern Europe, JHA becomes one of the priority areas of the accession partnerships that the Union concludes with to assist them in their efforts to meet the accession criteria through a pre-accession strategy: priorities for preparations for accession, in particular for the implementation of the *acquis*, and for the programming of pre-accession assistance from Community funds. See, among others, H. GRABBE, *A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants'*, in *EUI Working Papers*, no. 99, 2012.

[17] The Court of Justice itself has confirmed that the adoption of safeguard clauses in the accession treaties with the provision, in the so-called post-accession phase, of transitional derogations necessary to balance the particular interests of the new State with the general interest of the Community has also been a defining feature of gaining membership status. These provisions ensure respect for the principles of equality, fairness, or solidarity between the current and future Member States. See Court of Justice, judgment of 28 November 2006, *European Parliament v. Council*, case C-413/04, paras. 67-68; as well as the Court of Justice, judgment of 28 November 2006, *European Parliament v. Council*, case C-414/04, para. 28 ff.

[18] According to Article 39 of the Treaty of Athens: "If there are serious shortcomings or any imminent risks of such shortcomings in the transposition, state of implementation, or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty (…), the Commission may, until the end of a period of up to three years after the date of entry into force of this Act, upon motivated request of a Member State or on its own initiative and after consulting the Member States, take appropriate measures and specify the conditions and modalities under which these measures are put into effect. These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between a new Member State and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and enter into force as of the date of accession. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commission will inform the Council in good time before revoking safeguard measures, and it will take duly into account any observations of the Council in this respect".

[19] OJ L 236, 23 September 2003, pp. 17-930.

Schengen Information System) applied only from a later date set by the Council, although in practice the new Member States generally started using the SIS even before that date. Excluding some peculiarities, nine of the ten Member States that joined the EU in 2004 have participated in the entire Schengen system since December 2007, joining the other Member States since March 2008 also with regard to air borders[20]. Only Cyprus has been excluded from the extension of the Schengen area because of the practical difficulties of controlling the borders as long as the country is divided. However, Cyprus has recently expressed its intention to apply the provisions of the Schengen *acquis* on visas, having decided to join Schengen in 2026[21], even if the Council has not yet acted on this request.

The model established in the 2003 Accession Treaty was largely replicated in the 2005 Accession Treaty with Romania and Bulgaria, and again for the Accession Treaty with Croatia. Applying the provisions of the latter Treaty, Croatia has participated fully in Schengen since the beginning of 2023, having evidently faced a less troubled path than Bulgaria and Romania, which have been part of Schengen only since 1st January 2025. Furthermore, both of these latter States were subject to the Cooperation and Verification Mechanism (CVM) as a post-accession measure to help them remedy shortcomings in judicial reform and the fight against corruption and (as regards Bulgaria) also in the fight against organized crime[22]. JHA consequently became an essential component of EU enlargement policy to the extent that one of its most significant tasks is to integrate candidate nations into this rapidly evolving field in order to ensure democratic stability and respect for the rule of law both outside and inside the EU.

3. JHA's Centrality in the Accession Process of the Western Balkans

With specific reference to the Western Balkans' enlargement process, cooperation in the field of JHA, as included in the Stabilisation and Association Agreements (SAAs)[23], became fundamental for the consolidation of the rule of law, and the reinforcement of

[20] See Council Decision 2007/801/EC, *on the full application of the provisions of the Schengen acquis in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic*, of 6 December 2007, in OJ L 323, 8 December 2007, pp. 34-39.

[21] See *Cyprus Committed to Schengen Entry by 2026*, in *Etias*, 21 May 2025, https://etias.com/articles/cyprus-committed-to-schengen-entry-by-2026.

[22] See Commission Decision 2006/928/EC, *establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption*, of 13 December 2006, in OJ L 354, 14 December 2006, pp. 56-57; Commission Decision (EU) 2023/1785, *repealing Decision 2006/929/EC establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime*, of 15 September 2023, in OJ L 229, 18 September 2023, pp. 91-93; and Commission Decision 2006/929/EC, *establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime*, of 13 December 2006, in OJ L 354, 14 December 2006, pp. 58-60. Both decisions are no longer in force from 8 October 2023.

[23] See J. O'BRENNAN, *The EU and the Western Balkans: Stabilization and Europeanization through Enlargement*, London, 2011.

institutions at all levels in the areas of administration, law enforcement and justice[24]. In particular, as a transit area and a location of origin for migration, the Western Balkans are a frontier zone where migration occurred between Europe, Asia, and Africa. Therefore, since the early 2000s, EU-Western Balkan relations have focused heavily on cooperation in the areas of visa, border control, asylum, and migration. This was achieved through readmission and visa facilitation agreements[25] that were signed concurrently with the enlargement process in exchange for greater cooperation on migration, primarily to reduce irregular migration to the EU. Furthermore, the EU introduced the Integrated Border Management (IBM) concept for the Western Balkans by pointing out that "the establishment of well-functioning IBM systems is an important element for candidate and potential candidate countries for their alignment with EU *acquis* and good practices, which leads the countries in the Western Balkan region towards European integration"[26]. With the so-called "refugee crisis" of 2015, the Eastern Mediterranean route became the focus of the challenge[27]. The Union pursued a more effective border control regime in the region, including through a strengthened mandate for the European Border and Coast Guard Agency (EBCGA), and following status agreements with countries in the region[28].

This resulted in a process of externalisation of the EU's borders towards the Western Balkans, where most countries in the region were not prepared to receive refugees due to a structural lack of facilities and resources[29]. The Balkans migration route became the

[24] Article 78 of the SAA with Albania, heading reinforcement of institutions and rule of law, states: "In their cooperation on justice and home affairs the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime". According to O. ANASTASAKIS, D. BECHEV, *EU Conditionality in South East Europe: Bringing Commitment to the Process*, Oxford, 2003, when the SAP was launched, a key issue was "State weakness", meaning that more effective and accountable state institutions should contribute to regional stability and prosperity.

[25] Visa facilitation and readmission agreements between the EU and Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia entered into force between 2006 and 2008, offering accelerated visa procedures for citizens of these countries. See the consideration of F. TRAUNER, I. KRUSE, *EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*, in *CEPS Working Documents*, 2008, no. 290.

[26] See *Guidelines for Integrated Border Management in the Western Balkans* that were first established by the European Commission (EC) in October 2004 and updated in the framework of the Community Assistance for Reconstruction, development and Stabilisation (CARDS) regional integrated border management (IBM) project "Support to and coordination of IBM strategies". As is known, the Instrument for Pre-Accession Assistance (IPA) superseded the previously existing pre-accession instruments.

[27] See T. RUSSO, *The Migrant Crisis Along the Balkan Routes: Still a Lot to Do*, in *EUWEB Legal Essays. Global & International Perspectives*, 2022, no. 1, pp. 45-56.

[28] See Y. ZHONG, *The Empowerment of EU Agencies in EU Border Management*, London, 2024. See also M. COMETTI, *Il ruolo dell'Agenzia dell'Unione Europea per l'Asilo nel processo di allargamento ai Balcani occidentali. Tra l'esternalizzazione del diritto di asilo e supporto alla procedura di adesione,* in *EUWEB Legal Essays. Global & International Perspectivs*, 2022, no. 2, pp. 24-43.

[29] In particular, the Cooperation on JHA is linked to the existence of "non-professional and corrupt security forces, an inefficient and overly politicized judiciary, weak borders without efficient border controls and no professional and specialized anti-trafficking forces that could prohibit illegal migration and trans-border crime activities". See P. LUIF, H. RIEGLER, *The External Dimension of the EU's Area of Freedom, Security and Justice in Relation to the Western Balkan Countries*, 2006, p. 7; and N. KOGOVŠEK ŠALAMON, *Asylum*

only viable pathway for the massive influx of migrants from the Middle East and Africa. Displaced persons from Syria, Iraq and Afghanistan fled war or political prosecution and sought asylum in the EU. This underlined the fundamental strategic importance of such a geographic area for the EU's stability and security. Nevertheless, the accumulation of migrants in some territories and excessive pressure on the national systems of some States simply shifted the main route towards Northern Albania, Montenegro and Croatia by the end of 2017[30].

As it turns out, the situation has not changed much. The Commission's Communication on pre-enlargement reforms and policy reviews, dated March 2024[31], emphasizes the significance of comprehensive migration and border management within the enlargement process, which currently includes Moldova, Ukraine, and Georgia as candidate countries. Furthermore, the latest Communication on EU enlargement policy[32] recognizes operational capacities and tools of customs and border guards are still insufficient in many enlargement countries, as well as the need for fully functioning national Schengen governance systems by the time they are admitted to the EU. Nevertheless, the decision to abolish checks on persons at future common internal EU borders, as already happened, is postdated as it is subject to the fulfilment of additional objective requirements to be verified under the Schengen evaluation mechanism.

Under these circumstances, the adoption of the Pact on Migration and Asylum in May 2024, whose implementation is already widely discussed in the Member States[33], will constitute a significant challenge for the Western Balkans. All accession countries will be expected to align their legal frameworks to further improve comprehensive migration management, with a particular emphasis on combating migrant smuggling, effective returns and reintegration, and legal pathways. In this direction, the EU has used (and still uses) conditionality in the field of JHA to transform the legal order of third countries, facing a growing "paradox" regarding the respect of the rule of law and judicial independence by some Member States within the Union. The creation of a single internal security area requires a high degree of mutual trust and awareness of how Member States'

Systems in the Western Balkan Countries: Current Issues, in *International Migration*, 2016, vol. 54, no. 6, pp. 151-163.

[30] More specifically, the Balkan countries facilitated transit along the route while EU Member States pushed them to stop the incoming flows. Consequently, some migrants became trapped in Serbia and Macedonia, non-EU States; other migrants travelled freely along the Balkan route; and other migrants reached Slovenia, Croatia and Hungary, where they were obliged to comply with the Dublin Regulation as stated by the CJEU in cases *A.S. v Slovenia* (C-490/16) and *Jafari* (C-646/16). In a critical perspective, see M. SAIDE LIPERI, *The EU's Externalisation of Migration Management Undermines Stabilisation in the Western Balkans*, in *IAI Commentaries*, 2019, no. 19/27, who underlines how "[t]he EU's externalisation policy cannot compensate for Europe's inability to manage migration related issues on the domestic side". On these critical issues, see also the considerations of T. RUSSO, *The Detention of Migrants at the EU's Borders: A Serious Violation of Human Rights and a Threat to the Rule of Law*, in A. DI STASI, I. CARACCIOLO, G. CELLAMARE, P. GARGIULO (eds.), *International Migration and Law. Legal Approaches to a Global Challenge*, New York, Turin, pp. 573-590.

[31] Brussels, 20 March 2024, COM(2024) 146 final.

[32] Brussels, 30 October 2024, COM(2024) 690 final.

[33] See, for all, F. SPITALERI, *La grande riforma del diritto dell'immigrazione e dell'asilo dell'Unione europea: un'analisi d'insieme nella prospettiva dei rapporti tra ordinamenti*, in *Eurojus*, 2025, no. 1.

legal systems and organisations function, which presents implementation challenges among Member States themselves, making it a difficult task.

4. The Need to Strengthen Cooperation in the Fight Against the Serious Crime of Trafficking in Human Beings and …

In this context, one of the JHA areas in which the EU is investing most of its efforts is the fight against human trafficking. As is known, the matter was progressively introduced into the EU legal order[34] until the entry into force of the Treaty of Lisbon which incorporated it within the scope of the European area of FSJ and specifically of "a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member

[34] The fight against human trafficking did not fall within the original scope of Community competences. It was only with the Maastricht Treaty that the third pillar was introduced, in Article K.1, police cooperation for the purposes of preventing and combating terrorism, illicit drug trafficking and other serious forms of international crime which the States consider "matters of common interest". Nonetheless, some initiatives were adopted by the Council (the "Stop" programme) aimed at combating human trafficking and the sexual exploitation of minors, thanks to a joint action, decided by the Council on 29 November 1996 on the basis of the then Article K.3 of the TEU (Joint Action 96/700/JHA adopted by the Council on the basis of Article K.3 of the Treaty on European Union, *establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children*, of 29 November 1996, in OJ L 322, 12 December 1996, pp. 7-10). As can be read in the preamble, the legitimacy of the Council to adopt a joint action derived from the fact that, although trafficking was not explicitly contemplated by Article K.1 TEU, "recent developments reveal that trade in human beings and the sexual exploitation of children may constitute a major form of organized crime the proportions of which within the European Union are becoming increasingly worrying". Then, with the Treaty of Amsterdam trafficking in human beings is included among the forms of organised crime explicitly contemplated by the former Article K.1 (now Article 29 TEU), even if the matter was not included among the priority ones, for which minimum rules must be established relating to the constituent elements of crime and sanctions, such as terrorism and drug trafficking (Article 31 TEU). This order of priority, however, was already modified by the Action Plan of the Council and the Commission, adopted by the Justice and Home Affairs Council on 3 December 1998, which included trafficking in human beings among the crimes for which, within two years of the entry into force of the Treaty of Amsterdam, it was necessary to assess the need and urgency of "adopting measures to establish minimum standards relating to the constituent elements and sanctions and, if necessary, developing the measures accordingly" (para. 46). This led to the adoption of Council Framework Decision 2002/629/JHA, *on combating trafficking in human beings, which introduced a first set of common rules on the constituent elements of the crime and on effective and dissuasive criminal sanctions*, of 19 July 2002, OJ L 203, 1 August 2002, pp. 1-4 that was replaced by the Directive 2011/369. In general, see, among others, A. WEYEMBERGH, *La lutte contre la traite et le trafic d'êtres humains*, in *Revue internationale de droit pénal*, 2006, vol. 77, no. 1, p. 211 ff.; C. GABRIELLI, *La direttiva sulla tratta di esseri umani tra cooperazione giudiziaria, penale, contrasto all'immigrazione illegale e tutela dei diritti*, in *Studi sull'integrazione europea*, 2011, no. 3, pp. 609-631; A. MIDDLBURG, C. RIJKEN, *The EU Legal Framework on Combating Trafficking in Human Beings for Labour Exploitation*, in C. RIJKE (ed.), *Combating Trafficking in Human Beings for Exploitation*, Nijmegen, 2011, p. 379; S. PEERS, *Legislative Update EU Immigration and Asylum Law 2010: Extension of Long-Term Residence Rights and Amending the Law on Trafficking in Human Beings*, in *European Journal of Migration and Law*, 2011, no. 2, p. 216 ff.; F. SPIEZIA, M. SIMONATO, *La prima direttiva UE in diritto penale sulla tratta di esseri umani*, in *Cassazione Penale*, 2011, no. 9, p. 3198 ff.; M. VENTUROLI, *La direttiva 2011/36/UE: uno strumento "completo" per contrastare la tratta degli esseri umani*, in *Indice Penale*, 2013, no. 1, pp. 206-207.

States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings" (Article 79 TFEU)[35]. These are, in fact, the two most lucrative activities for organised crime, and migrants, especially women and minors, are particularly vulnerable categories and more easily exposed to the risk of falling victim. Therefore, the fight against human trafficking acquired greater autonomy thanks to the Treaty of Lisbon that expressly included it among the so-called euro-crimes, pursuant to Article 83 TFEU. Furthermore, it is also a violation of fundamental rights and is prohibited as stated in Article 5(3) of the Charter of Fundamental Rights[36]. On the legal basis of the aforementioned Article 83(1) TFEU, and also of Article 82(2) as regards the introduction of assistance and support measures for victims of trafficking, regardless of their conditions of residence in the territory of the Member States[37], Directive 2011/36/EU, on preventing and combating trafficking in human beings and protecting its victims, was adopted on 5 April 2011. It has been developed together with a European policy of control over entries resulting from migratory flows, both of which constitute a necessary interface in the repressive policies of transnational organised crime[38].

In the Western Balkan region, human trafficking encompasses a variety of patterns, modes of coercion, and types of exploitation. Nonetheless, few characteristics are shared by all countries. In particular, sexual exploitation is the most common kind of exploitation in the region, and all of the countries are designated as source, transit, and destination

[35] See A. DI PASCALE, *Article 79 TFUE*, in A. TIZZANO (ed.), *Trattati dell'Unione europea*, II ed., Milan, 2014, p. 847 ff.; P. MCREDMOND, G. WYLIE, *Human Trafficking in Europe: Character, Causes and Consequences*. Basingstoke, 2010; and V. STOYANOVA, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law*, Cambridge, 2017.

[36] According to the *Explanations relating to the Charter of Fundamental rights* (2007/C 303/02): "Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks".

[37] The anti-trafficking Directive must be read in conjunction with Council Directive 2004/81/EC, *on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, of 29 April 2004, in OJ L 261, 6 August 2004, that adopts an opportunistic approach by Member States, based essentially on a reward mechanism, which makes the victim's stay on the territory of the European Union subject to cooperation with the authorities of the State in proceedings against the perpetrators of the crimes of trafficking or of facilitating illegal immigration. Thus, S. SCARPA, *The Protection of the Rights of Victims of Trafficking in Human Beings and the Reward System Provided for by Community Directive 2004/81/EC*, in *Diritto, Immigrazione e Cittadinanza*, 2005, p. 45.

[38] On the correlation between the two policies, see, among others, J.P. GAUCI, *Protecting Trafficked Persons through Refugee Protection*, in *Social Sciences*, 2022, no. 11, pp. 294-313; J. C. HATHAWAY, *The Human Rights Quagmire of Human Trafficking*, in *Virginia Journal of International Law*, 2008, no. 49, pp. 1-59; A.T. GALLAGHER, *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, in *Virginia Journal of International Law*, 2009, no. 49, pp. 789-848; F. NICODEMI, *Le vittime della tratta di persone nel contesto della procedura di riconoscimento della protezione internazionale. quali misure per un efficace coordinamento tra i sistemi di protezione e di assistenza?*, in *Diritto, Immigrazione e Cittadinanza*, 2017, no. 1, pp. 1-29; M.G. GIAMMARINARO, F. NICODEMI, *L'edizione aggiornata delle linee guida su "L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di* referral, in *Questione giustizia*, 18 maggio 2021; P.F. POMPEO, *Protezione internazionale e vittime di tratta. Valutazione di credibilità, dovere di cooperazione istruttoria e forme di protezione*, in *Questione Giustizia*, 2022.

countries for human trafficking[39]. According to the aforementioned 2024 Communication on EU enlargement policy, the Western Balkans (and Türkiye) continue to be a source and hub of criminal activities and groups that are also active in the EU. In line with the 2022 EU Action Plan for the Western Balkans[40], the European Commission's support to the region focuses on border management, the fight against migrant smuggling and human trafficking, increasing returns and cooperation on asylum, protection and reception, as well as achieving alignment with the EU visa policy, one of the commitments undertaken by Western Balkan partners in the reform programmes under the Growth Plan[41]. Also, Frontex can send teams and carry out cooperative actions, such as combating human trafficking, according to status agreements[42]. Despite the establishment of referral mechanisms as in the case of Albania, monetary compensation commissions for victims of violent crimes as in the case of Macedonia or the introduction of an explicit provision on non-punishment of victims of human trafficking in the criminal code of Montenegro, a number of challenges remain in the capacity to identify, investigate and prosecute human traffickers and to protect victims. In addition, law enforcement agencies still lack sufficient and qualified personnel to combat human trafficking and smuggling. Although the detailed assessment of the state of play and the progress made by the Western Balkans stresses that their legal framework on trafficking in human beings is partially aligned with the EU *acquis*, *i.e*. Directive 2011/369/EU, it will need to be further aligned with the amendments introduced by the Directive (EU) 2024/1712[43].

According to its Articles 19 and 20, the 2011 Directive already allowed Member States to establish national monitoring systems, such as national rapporteurs or similar mechanisms, in a way that was appropriate for their internal organisation and took into consideration the need for a minimum structure with defined tasks. These systems would

[39] Nonetheless, it seems that trafficking for other reasons has been increasing recently in the area. See J. KAYE, J. WINTERDYK, *Explaining Human Trafficking*, in J. WINTERDYK, B. PERRIN, P. REICHEL (eds.), *Human Trafficking: Exploring the National Nature, Concerns, and Complexities*, Boca Raton, 2012, pp 57-78; K. EMAN *ET AL*., *Human Trafficking in Slovenia: Contemporary Issues*, in A.M. RODRIGUES, M.J. GUIA (eds.), *New Forms of Human Trafficking*, Cham, 2024, p. 232 ff.

[40] European Commission, *EU Action Plan on the Western Balkans*, 5 December 2022, https://home-affairs.ec.europa.eu/eu-action-plan-western-balkans_en.

[41] The EU's Growth Plan for the Western Balkans includes initiatives to combat trafficking in human beings. See Commission Implementing Decision, *on the financing of the individual measure for EU support to strengthen the fight against migrant smuggling and trafficking in human beings in the Western Balkans for 2023 within the Instrument for Pre-Accession Assistance (IPA III)*, of 27 November 2022, C(2022) 8764 final and, more recently, Commission Implementing Decision, *on the financing of the Individual Measure to Strengthen Management Systems of Irregular Migration and Fight Against Organised Crime in the Western Balkans for 2024*, of 7 November 2024, C(2024) 7725 final.

[42] S. MORANO-FOADI, *La gestione delle frontiere esterne e la responsabilità di Frontex nella identificazione e protezione delle vittime di tratta di esseri umani*, in *Quaderni AISDUE*, 2024, no. 4, p. 1 ff.

[43] Directive (EU) 2024/1712 of the European Parliament and of the Council, *amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, of 13 June 2024, in OJ L, 2024/1712, 24 June 2024. See M. BORRACCETTI, *Il contrasto alla tratta di persone e la prospettiva di riforma del 2024: alcune riflessioni,* in *Quaderni AISDUE,* 13 October 2023; F. ROLANDO, *L'evoluzione della normativa dell'Unione europea sulla tratta degli esseri umani e sul favoreggiamento dell'immigrazione illegale, tra lotta al crimine internazionale e tutela dei migranti,* in *Quaderni AISDUE,* 2024, no. 4.

be used to measure the effectiveness of anti-trafficking actions, collect statistics, assess trends in human trafficking, and submit regular reports to the European Anti-Trafficking Coordinator. All of this is to enable the European Commission to compile a report on the advancements made every two years. In its reports over the years, the Commission has essentially emphasised the Directive's poor implementation, along with a number of crucial problems with victim data collection and criminal proceedings, victim identification challenges due protection activation, and the significant impunity of those who exploit victims and perpetrators. Furthermore, the most concerning reality is that, rather than declining over time, human trafficking has transformed with new technologies and forms, exposing new dangers[44].

5. … the New EU legal Framework of Directive (EU) 2024/1712

In light of this, EU Directive 2024/1712, which amended but did not replace Directive 2011/36, was passed on June 13 and published in the Official Journal of the European Union on June 24, 2024. The Directive's updated wording went into effect on July 14, 2024, and Member States are required to incorporate it into their national laws by July 15, 2026. As a result, the European Union's anti-trafficking laws are founded on the integrated provisions of Directive 2011/36 and Directive 2024/1712, which provides a more up-to-date reading of the phenomenon. In particular, the new Directive creates additional avenues for exploitation of surrogate motherhood, forced marriage or illegal adoption, to counter the constant increase in crimes related to human trafficking committed for purposes other than sexual exploitation or exploitation of labour[45]. Under the new Article 18a, it establishes crimes pertaining to the knowing use of exploited services rendered by a victim of human trafficking, in which the victim is coerced into rendering the services and the service user is aware that the service provider is a victim of the crime[46]. Furthermore, replacing paragraph 3 of Article 4 on penalties, it adds as an aggravating circumstance "the fact that the perpetrator facilitated or committed, by means of information and communication technologies, the dissemination of images or videos

[44] See Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *on the progress made in the European Union in combating trafficking in human beings (Fifth Report)*, 20 January 2025, COM(2025) 8 final.
[45] Indeed, illegal adoption and forced marriage were already included in recital 11 of the 2011 Directive, leaving too much discretionary room for interpretation by national operators. Now the new Directive replaces paragraph 3 of Article 2 entitled offences concerning trafficking in human beings.
[46] Making such behaviour illegal would be a component of the demand reduction strategy that supports the various forms of exploitation. The 2021-2025 EU Strategy on Combating Trafficking in Human Beings included, in fact, a comprehensive approach built on four pillars: – i) reducing demand that fosters trafficking in human beings; ii) breaking the business model of traffickers; iii) protecting and empowering victims; and iv) promoting international cooperation. However, the different approaches taken by the States with regard to the regulation of prostitution, whether it be free, regulated, or prohibited, as well as the various national legal options were the subject of much debate during the preparation of Directive 1712. For this reason, it will be necessary to verify the transposition of the Directive into the various national systems.

or similar material of a sexual nature involving the victim". Basically, any behaviour that involves the use of technology should be seen as more serious. This includes online recruitment through social media and the internet as well as exploitation, such as the online distribution of sexual exploitation products[47]. In addition, the Directive aims to strengthen the role of the EU network of national coordinators and rapporteurs on trafficking in human beings, through the appointment of national anti-trafficking coordinators and the regular updating of national action plans by Member States (new Article 19 ff.). Therefore, the new provisions reinforce existing regulation and provide law enforcement with more tools to look into and punish trafficking offences.

Nonetheless, the Directive leaves certain sensitive matters pertaining to victim protection up to the States' discretion with regard to international protection[48] and more in general[49]. Furthermore, its content has not enhanced unconditional access to help and residence permits, although making it clear that aid to victims should not be contingent on their willingness to cooperate in criminal investigations (new Article 8). It would have been better to take an approach that separated victim identification and support from (potential) collaboration with law enforcement and involvement in the criminal justice system. The Directive should have made a great effort to promote the social path for obtaining a residence permit and for participating in a protection and inclusion program. However, due to the lack of clarity on this principle, it may continue to establish that the judicial road is prioritised over the social one in national reality[50]. This is particularly true in countries like the Western Balkans where assistance systems are challenging to establish. Therefore, they require more proactive investigations and efficient protocols to

[47] However, it would have been reasonable to adopt a more comprehensive strategy that covered "all forms of human trafficking" rather than just the sexual realm.

[48] Despite the fact that international protection and human trafficking are acknowledged to be complementary, recital 19 exclusively addresses the vulnerability of trafficking victims as a consideration in asylum processes and particular reception needs, according to Regulation (EU) 2024/1348 of the European Parliament and of the Council, *establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, of 14 May 2024, OJ L, 2024/1348, 22 May 2024; and Directive (EU) 2024/1346 of the European Parliament and of the Council, *laying down standards for the reception of applicants for international protection*, of 14 May 2024, OJ L, 2024/1346, 22 May 2024. In a similar vein, recital 20 forbids the transfer of victims to a Member State in which there are serious grounds for believing that victims face a real risk of a violation of their fundamental rights which would constitute inhuman or degrading treatment within the meaning of Article 4 of the Charter.

[49] For example, only the current, mostly ineffective methods remain available for access to compensation under Article 17. The idea of States creating a compensation fund is mentioned, but it is not legally binding, and in cases where one already exists, it either does not function or distributes insignificant sums. Additionally, there is no definition of the kinds of compensable damages (material, moral) that are necessary to guarantee victims' rights to seek and obtain compensation in criminal and civil proceedings, as well as their access to legal aid or representation for the same purpose (see European Court of Human Rights, judgment of 28 November 2023, application no. 18269/18, *Krachunova v. Bulgaria*). Furthermore, with respect to the exemption of victims' non-punishability extended to "other unlawful activities", which aims to broaden the scope of potentially exculpable illicit conduct, such as the commission of administrative violations, the rule gives States considerable discretion in how they intervene without specifying a precise rule. In critical sense, see D. MANCINI, *Il principio di non punibilità delle vittime di tratta. Sfida per l'effettività dei diritti e logica dell'intervento penale*, in *Diritto, immigrazione e cittadinanza*, 2022, no. 2.

[50] In this sense, see D. MANCINI, *La direttiva UE 2024/1712 sulla tratta di esseri umani. Un lungo percorso di revisione, con risultati controversi*, in *Sistema Penale*, 29 October 2024.

detect trafficking cases, as well as the improvement of coordination and communication among all stakeholders in order to deliver a thorough anti-trafficking response at the national and international levels.

For these reasons, through a number of initiatives, like the EU-Western Balkans Ministerial Forum on Justice and Home Affairs[51] and the EU4FAST-WB Project[52], the EU actively supports anti-trafficking efforts in the Western Balkans. These programs demonstrate the need to help the Western Balkans conform to EU norms, strengthening their ability to successfully combat human trafficking. In its yearly progress reports, the European Commission evaluates the anti-trafficking efforts of these nations to the EU *acquis*, where the enlargement countries' key priorities continue to be advancements in the areas of democracy, fundamental rights, and the rule of law. However, since the 2011 Directive's implementation in the Member States had already run into a number of issues, as was previously mentioned, the new measures will need to be further modified by July 2026. Therefore, they will also present a new challenge for the Western Balkans to implement in the perspective of accession.

6. Conclusions: JHAC Alignment as a Guarantee of Respect for EU Values in Enlargement?

Conclusively, the JHAC, which started with the intention of establishing cooperation between States in the field of domestic security policy, has developed into one of the most active areas of the Union's external action and specifically of enlargement. JHAC is not only a technical requirement but a litmus test for the EU's values and the readiness of candidate countries to become part of the Union. As enlargement proceeds, particularly toward the Western Balkans, the EU's insistence on high standards in JHA underscores both its strategic interests and its normative commitments. The unresolved problems of integrating the candidate countries into the AFSJ has in fact, after accession, seriously jeopardized its functioning and completion. Therefore, the full implementation of the JHA *acquis* in accordance with common standards has become a crucial issue in enlargement.

The management of the massive migrant flows that have entered Europe since 2015 has highlighted the geopolitical significance of the Western Balkans region, posing special challenges for human rights protection and human trafficking. For these reasons, the EU and the Western Balkan partners have launched an operational partnership at the

[51] In the meeting of 28-29 October 2024 in Budva, Montenegro, parties agreed to continue strengthening cooperation to counter regional and transnational criminal organised networks involved in illicit trafficking, including migrant smuggling and trafficking in human beings, drugs, and firearms trafficking. Joint efforts will therefore continue, especially through Europol and within the European Multidisciplinary Platform Against Criminal Threats (EMPACT).

[52] *EU Support to Strengthen the Fight against Migrant Smuggling and Trafficking in Human Beings in the Western Balkans*, co-financed by the EU, the German Government, the Italian Ministry of Interior and the Dutch Ministry of Foreign Affairs.

regional level to fight migrant smuggling and human trafficking, with a view to strengthening law enforcement and judicial cooperation against criminal trafficking networks and increasing the Western Balkans' border management capacity. Nevertheless, implementing minimum standards is crucial to ensure the growing mutual trust in the reliability of partners that underpins the European area of FSJ. It was precisely the critical issues that emerged in adapting to the subjects of JHAC that affected further enlargements of the Union, particularly the Western Balkans. Enlargement policy focused mainly (and almost exclusively) on respect for the rule of law, linking it to democratic governance and respect for human rights to be addressed already in the pre-accession phase, making the subject of JHAC the heart of the enlargement process. This has prioritised the extension of the objectives of the European area of FSJ to ensure democratic governance and respect for the rule of law in the legal systems of the acceding States and has considerably broadened the phase of preparing candidates for accession.

Nonetheless, what emerged was a glaring discrepancy between the conditions of accession and the obligations of membership[53], especially with regard to respect for the values set out in Article 2 TEU, as well as the paradox that the progress of the accession process can be hindered, given the unanimity vote, by a Member State that does not respect these values and has not fully adapted to the requirements of JHAC. In this direction, concerns have been raised about the same Member States adherence to EU values. Hungary, for instance, has come under fire for devaluing judicial independence, for restricting press freedom by combining media ownership and exercising political influence over both State and private media and for widespread corruption, including the misappropriation of EU funding. A "clear risk of a serious breach" of EU values prompted the start of Article 7 proceedings in 2018[54], and the EU invoked the Rule of Law Conditionality Mechanism in 2022[55], which led to the suspension of some EU funding unless Hungary enacted anti-corruption reforms[56]. However, such a State is once again in

[53] See, for all, T. RUSSO, *Allargamento e Membership dell'Unione europea*, Naples, 2024.

[54] The procedure was triggered by the European Parliament against Hungary. After several discussions on the state of play and seven hearings at the General Affairs Council, the procedure is still ongoing. Additionally, the Court of Luxembourg dismissed Hungary's action against the Parliament resolution in Court of Justice, Grand Chamber, judgment of 3 June 2021, *Hungary v. European Parliament*, case C-650/18.

[55] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council, *on a general regime of conditionality for the protection of the Union budget*, of 16 December 2020, in OJ L 433I, 22 December 2020. On the Regulation, see B. NASCIMBENE, *Il rispetto della rule of law e lo strumento finanziario. La 'condizionalità'*, in *Eurojus*, 2021, no. 3, pp. 172-183; P. MORI, *Identità nazionale, valori comuni e condizionalità*, in *Quaderni AISDUE*, 2024, no. 1, pp. 1-26.

[56] See Court of Justice, Full Court, judgment of 16 February 2022, *Hungary v. European Parliament and Council*, case C-156/21. The Court of Justice has rejected the actions for annulment brought by Hungary (and Poland, in case C-157/21) against the new Budgetary Conditionality Regulation. The Court has confirmed that the institutions used the correct legal basis (Article 322, para. 1, let. A, TFEU), that the Regulation does not circumvent the procedures of Article 7 TEU, and that it adequately guarantees legal certainty. The judgment of the Court uses bold and explicit constitutional language, stating for example that the rule of law and Article 2 TEU values form the very identity of the Union. On the case, see J. ALBERTI, Adelante, presto, con juicio. *Prime considerazioni sulle sentenze della Corte di giustizia che sanciscono la legittimità del "Regolamento condizionalità"*, in *Eurojus*, 2022, no. 2, pp. 30-36; A. BARAGGIA, *La condizionalità a difesa dei valori fondamentali dell'Unione nel cono di luce delle sentenze C-156/21 e C-*

the crosshairs for a law on the protection of national sovereignty from foreign interference[57], for a law on the protection of children that affects LGTB+ rights[58], as well as for its foreign policy positions[59]. Similar considerations could be made for other member States, such as Poland, Bulgaria, Cyprus, Malta[60].

Ultimately, the tightening of accession conditions and procedures with the gradual integration of future Member States, including by giving absolute priority to the JHAC, does not ensure the irreversibility of national reforms after accession. The integrity of the accession process and the standards governing it are fundamentally called into doubt by this circumstance, thus emphasising how urgently the systems in place to guarantee that all Member States are held responsible to the fundamental values that support the EU need to be revaluated.

157/21, in *Quaderni costituzionali*, 2022, no. 2, pp. 371-374; M. BONELLI, *Has the Court of Justice Embraced the Language of Constitutional Identity?*, in *Diritti Comparati*, 26 April 2022; M. BUCCARELLA, *Le pronunce della Corte di Giustizia sul nuovo meccanismo di condizionalità finanziaria orizzontale: la legittimità del Regolamento 2020/2092 nel segno della trasparenza amministrativa e di una (ri)affermata identità europea*, in *DPCE online*, 2022, no. 2, pp. 1279-1296; C. FASONE, *Le sentenze della Corte di giustizia sul Regolamento UE sulla condizionalità relativa alla* rule of law*: gli elementi di novità e le (numerose) questioni aperte*, in *Democracy and Security Review*, 2022, no. 2, pp. 57-94; A. HOXHAJ, *The CJEU Validates in C-156/21 and C-157/21 the Rule of Law Conditionality Regulation Regime to Protect the EU Budget*, in *Nordic Journal of European Law*, 2022, no. 1, pp. 131-147; R. MAVROULI, *The Dark Relationship Between the Rule of Law and Liberalism. The New ECJ Decision on the Conditionality Regulation*, in *European Papers*, 2022, no. 1, pp. 275-286; E. PERILLO, *Il rispetto dello "Stato di diritto europeo" alla luce delle sentenze Ungheria e Polonia sulla clausola di condizionalità finanziaria. Quali prospettive?*, in *Blog DUE*, 16 March 2022; L. PECH, *No More Excuses: The Court of Justice Greenlights the Rule of Law Conditionality Mechanism*, in *Verfassungsblog*, 16 February 2022; S. PROGIN THEUERKAUF, M. BERGER, *ECJ Confirms Validity of the Rule of Law Conditionality Regulation*, in *European Law Blog*, 11 March 2022; V. SACCHETTI, Once more, with feeling: *il finale annunciato del ricorso per l'annullamento del meccanismo di condizionalità relativo alla* rule of law *(sentenze C-156/21 e C-157/21*, in *Diritti Comparati*, 3 March 2022; F. SALMONI, *La funzionalizzazione della tutela dello Stato di diritto alla sana gestione finanziaria e alla tutela del bilancio dell'UE. (A prima lettura delle sentt. C-156 e C-157 Ungheria e Polonia v. Parlamento e Consiglio)*, in *Consulta Online*, 2022, no. 1, pp. 303-310; A. ZEMSKOVA, *Analysis: "Rule of Law Conditionality: a Long-Desired Victory or a Modest Step Forward?": Hungary v Parliament and Council (C-156/21) and Poland v Parliament and Council (C-157/21)*, in *EU LawLive*, 18 February 2022.

[57] See Court of Justice, action brought on 4 December 2024, *European Commission v. Hungary*, case C-829/24.

[58] See Court of Justice, Action brought on 19 December 2022, *European Commission v. Hungary* (Case C-769/22) (2023/C 54/19) and the Advocate General's opinion of 5 June 2025, *Commission v. Hungary ('Values of the European Union'*, case C-769/22, which addresses *inter alia* the invocation of Article 2 TEU as a self-standing plea in law within Article 258 TFEU infringement actions.

[59] See *Speech by President von der Leyen at the European Parliament Plenary on the presentation of the programme of activities of the Hungarian Presidency*, 9 October 2024: "We all want to better protect our external borders. (…) How can it be that the Hungarian government invites Russian nationals into our Union without additional security checks? (…) This is not defending Europe's sovereignty. This is a backdoor for foreign interference". On the topic, see P. MÜLLER, P. SLOMINSKI, *The Soft Hostage-Taking of EU Foreign Policy: Hungary's Rule of Law Conflict with the EU and Russia's War Against Ukraine*, in *Journal of European Public Policy*, 2025, pp. 1–27. See also the action brought on 27 April 2023 – *European Commission v. Hungary*, (Case C-271/23) on the interference of Hungary in the exclusive external competence of the European Union laid down in Article 3(2) TFEU.

[60] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2024 Rule of Law Report – The rule of law situation in the European Union*, of 24 July 2024, COM(2024) 800 final.

ABSTRACT: The purpose of this essay is to examine the development of Justice and Home Affairs Cooperation (JHAC) in order to demonstrate how it is the "political soul" of the European area of Freedom, Security, and Justice (FSJ). On the one hand, the JHAC has taken on a pivotal role in advancing the accession process of new States, especially those in the Western Balkans, in the adaptation to the Union's values in the management of external borders and the fight against illegal immigration and human trafficking. On the other hand, it has brought attention to the Member States' resistance with regard to the sector that is continuously expanding, pushing to rethink the tools used to safeguard values inside the Union.

KEYWORDS: Enlargement – JHAC – EU Borders – Human Trafficking – Values.