
Judicial cooperation in criminal matters is based on the principle of mutual recognition of judgments and judicial decisions, and includes measures to approximate the laws of the Member States in several areas. It includes minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

Considerable progress was made in developing the judicial cooperation in criminal matters in all these areas during the legislative term 2014-2019. Most importantly, the new Eurojust Regulation will take effect in December 2019 and the European Public Prosecutor’s Office is expected to start operating from late 2020 or early 2021 onwards.

In Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) is responsible for measures relating to police and judicial cooperation in criminal matters, including terrorism, and substantive and procedural measures relating to the development of a more coherent Union approach to criminal law, according to Parliament’s Rules of Procedure.

Main legislative instruments on judicial cooperation in criminal matters

1. EU Treaties

Under Articles 82 to 86 of the Treaty on the Functioning of the European Union (TFEU), “judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States” in several areas. Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis may be established. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.
Eurojust’s mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States’ authorities and by Europol.

EPPO is responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences against the Union’s financial interests. The powers of the EPPO may be extended to include other serious crime having a cross-border dimension.

Title VI of the *Charter of Fundamental Rights of the European Union* includes numerous rights and principles relating to criminal law.

2. International Conventions

2.1. The Council of Europe European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its two Additional Protocols. Under this Convention, Parties agree to afford each other the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons.

2.2. The Council of Europe *Convention on Cybercrime* of 23 November 2001 (Budapest Convention) aims to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation. Its Additional Protocol of 28 January 2003 concerns the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

On 5 February 2019 European Commission adopted Recommendation for a Council Decision authorising the participation in negotiations on a second Additional Protocol to the Council of Europe Convention on Cybercrime (CETS No. 185). The Second Additional Protocol aims to strengthen international cooperation including on obtaining access to electronic evidence, enhancing mutual legal assistance and setting up joint investigations.

2.3. The Council of Europe *Convention on the Prevention of Terrorism* of 16 May 2005 aims to increase the effectiveness of existing international texts on the fight against terrorism.

*Additional Protocol* to the Council of Europe Convention on the Prevention of Terrorism of 22 October 2015 supplements the convention with a series of articles aimed notably at addressing the problem of foreign terrorist fighters.

Following the consent of Parliament in its legislative resolution of 18 April 2018, Council Decision (EU) 2018/889 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism and Council Decision (EU) 2018/890 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, were adopted. These decisions conclude the convention and the protocol on behalf of the EU. Both the convention and the protocol apply in the EU from 1 October 2018.

Main EU legislative acts on judicial cooperation in criminal matters

1. Adoption procedures

Under the TFEU, most judicial cooperation in criminal matters measures are adopted under the ordinary legislative procedure and are subject to judicial review by the Court of Justice. Nevertheless, even leaving to one side the specific features of the Area of Freedom, Security and
Justice (opt-outs for the United Kingdom, Ireland and Denmark (Protocols 21 and 22 annexed to the TFEU) and a privileged role for national parliaments (Protocols 1 and 2)), judicial cooperation in criminal matters, together with police cooperation, has not been entirely integrated into the EU framework and retains some of its original features:

- The Commission shares its power of initiative with the Member States, provided they represent a quarter of the members of the Council (Article 76 TFEU);
- Parliament is merely consulted on specific judicial cooperation in criminal matters measures, which are adopted unanimously by the Council. In the absence of unanimity in the Council, it is possible for nine or more Member States to work together on the basis of enhanced cooperation.

2. Main legislative acts adopted under the ordinary legislative procedure

2.1. Development of common minimum standards in criminal proceedings

Several legislative acts to develop the common minimum standards in criminal proceedings were already adopted during the previous legislature:

- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Current legislature continued the development by adopting the following legislative acts:

- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Member States were required to incorporate the directive into national law by 1 April 2018;
- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Member States are required to incorporate the directive into national law by 11 June 2019;
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. Member States were required to incorporate the directive into national law by 5 May 2019.

2.2. Fight against terrorism

Following the terrorist attacks in several Member States, following legislative acts were adopted to strengthen the fight against terrorism:

- Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention,
Judicial cooperation in criminal matters: achievements during the legislative term 2014-2019

detection, investigation and prosecution of terrorist offences and serious crime. Member States were required to incorporate the directive into national law by 25 May 2018.


In addition, Parliament adopted the following resolutions with several recommendations on how to improve the fight against terrorism:

- its resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations;
- its resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism.

2.3. Fight against corruption, cybercrime, fraud and money laundering

Several legislative acts were adopted during the previous legislature:

- Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (so-called cybercrime directive);
- Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive);

Current legislature continued to strengthen the fight against corruption, fraud and money laundering by adopting the following legislative acts:

- Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law. Member States are required to incorporate the directive into national law by 6 July 2019;
- Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. Member States are required to incorporate the directive into national law by 3 December 2020;
In addition, Parliament adopted the following resolutions with several recommendations on how to improve the fight against corruption and cybercrime:

- its resolution of 25 October 2016 on the fight against corruption and follow-up of the CRIM resolution;
- its resolution of 3 October 2017 on the fight against cybercrime;
- its resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia.

2.4. Improvement of exchange of information between Member States and EU agencies

Directive to establish European Investigation Order was adopted during the previous legislature:


Current legislature continued to improve the exchange of information by adopting the following legislative acts:

see the procedure file stored in the Legislative Observatory for more details on this file.

2.5. Protection of victims

Several legislative acts in order to improve the protection of victims were adopted during the previous legislature:


Parliament adopted the following resolutions on the implementation of these Directives during current legislative term with several recommendations on how to improve the protection of victims:

- its resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order;
- its resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

2.6. Although the legal bases are not under the judicial cooperation in criminal matters, the following legal act also contributes to the judicial cooperation in criminal matters:

- legal bases Article 33 (customs cooperation) and Article 114 (internal market) of the TFEU: Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 will apply from 3 June 2021.

3. Main legislative acts currently being discussed under the ordinary legislative procedure

3.1. Further strengthening of the judicial cooperation in criminal matters is in the pipeline via the following main legislative acts currently in discussion:

- Parliament adopted its legislative resolution of 13 March 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Internal

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1 Please see the briefing entitled ‘Personal data protection achievements during the legislative term 2014-2019: the role of the European Parliament’ for information on related data protection legislation.
Security Fund. The negotiations are scheduled during the next parliamentary term. Please see the procedure file stored in the Legislative Observatory for more details on the ongoing work on this file;

- Parliament adopted its position at first reading on 17 April 2019 with a view to the adoption of Regulation (EU) 2019/… of the European Parliament and of the Council establishing the Justice programme. The negotiations are scheduled to continue during the next parliamentary term. Please see the procedure file stored in the Legislative Observatory for more details on the ongoing work on this file;

- Proposal for a regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters. Please see procedure file in the Legislative Observatory. This proposal is connected to: Proposal for a directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings. Please see the procedure file stored in the Legislative Observatory. Parliament started its work on those files during current parliamentary term and will continue during next parliamentary term;

- Proposal for a regulation of the European Parliament and of the Council establishing the conditions for accessing the other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) yyyy/xxx [ECRIS-TCN]. Please see the procedure file stored in the Legislative Observatory for more details on the ongoing work on this file.

3.2. Although the legal basis is not under the judicial cooperation in criminal matters, the following legal act also contributes to the judicial cooperation in criminal matters:

- legal basis Article 133 (use of the euro) of the TFEU: Parliament adopted its legislative resolution of 13 February 2019 on the proposal for a regulation of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting for the period 2021-2027 (the ‘Pericles IV programme’). The negotiations are scheduled during the next parliamentary term. Please see the procedure file stored in the Legislative Observatory for more details on the ongoing work on this file.

4. Main legislative acts adopted by the Council

Main judicial cooperation in criminal matters measures adopted by the Council previously:

- Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- Council Framework Decision 2002/584/JHA of 13 June 2002 on joint investigation teams;
- Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;

The EU’s main international agreements on judicial cooperation in criminal matters
Judicial cooperation in criminal matters achievements during the legislative term 2014-2019

1. EU-US, EU-Iceland and Norway, and EU-Japan agreements on mutual legal assistance

Agreement on mutual legal assistance between the European Union and the United States of America was signed on 25 June 2003 and entered into force on 1 February 2010. A first joint review of the agreement took place in 2016. This concluded that the agreement adds value to the EU-US Mutual Legal Assistance relationship and generally works well, and that further efforts will be made to improve this cooperation.


Agreement between the European Union and Japan on mutual legal assistance in criminal matters was signed on 20 November 2009 and entered into force on 2 January 2011.

2. EU-US and EU-Iceland and Norway agreements on extradition

Agreement on extradition between the European Union and the United States of America was signed on 25 June 2003 and published on 19 July 2003.

Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway - Declarations was signed on 28 June 2006 and published on 21 October 2006.

3. EU-US, EU-Australia and EU-Canada passenger name record (PNR) agreements

The EU has signed bilateral passenger name record (PNR) agreements with the United States, Australia and Canada. PNR data includes information provided by passengers when booking or checking in for flights, and data collected by air carriers for their own commercial purposes. PNR data can be used by law enforcement authorities to fight serious crime and terrorism. The transfer of PNR data from the EU to third countries can only be done through a bilateral agreement that provides for a high level of personal data protection.

4. Negotiations for EU-US agreement on cross-border access to electronic evidence


Addressing judicial cooperation in criminal matters measures in resolutions

In addition to the resolutions mentioned above, a number of Parliament resolutions on a variety of policy areas have addressed judicial cooperation in criminal matters by recommending the appropriate judicial cooperation policy responses. The most relevant resolutions are:

Please see the briefing entitled “Personal data protection achievements during the legislative term 2014-2019: the role of the European Parliament” for more details on these international agreements and Parliament’s role in negotiating them.
• its resolution of 9 July 2015 on the European Agenda on Security;
• its resolution of 29 October 2015 on the follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens;
• its resolution of 5 October 2016 on the European Public Prosecutor’s Office and Eurojust;
• its resolution of 5 October 2017 on prison systems and conditions;
• its resolution of 25 October 2018 on the use of Facebook users’ data by Cambridge Analytica and the impact on data protection.

Judicial cooperation in criminal matters agencies and other related bodies

1. European Union Agency for Criminal Justice Cooperation (Eurojust)

1.1. Eurojust stimulates and improves the coordination of investigations and prosecutions and the cooperation between the competent authorities in the Member States, particularly by facilitating the execution of international mutual legal assistance requests and the implementation of extradition requests. Eurojust supports in any way possible the competent authorities of the Member States to render their investigations and prosecutions more effective when dealing with cross-border crime.

At the request of a Member State, Eurojust may assist investigations and prosecutions concerning that particular Member State and a non-Member State if a cooperation agreement has been concluded or if an essential interest in providing such assistance is demonstrated.

Eurojust’s competence covers the same types of crimes and offences for which Europol has competence, such as terrorism, drug trafficking, trafficking in human beings, counterfeiting, money laundering, computer crime, crime against property or public goods including fraud and corruption, criminal offences affecting the Union’s financial interests, environmental crime and participation in a criminal organisation. For other types of offences, Eurojust may assist in investigations and prosecutions at the request of a Member State.

Eurojust’s current legal framework, Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, entered into force on 4 June 2009. Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA will apply from 12 December 2019. The Eurojust Regulation establishes a new governance system, clarifies the relationship between Eurojust and the European Public Prosecutor’s Office, prescribes a new data protection regime, adopts new rules for Eurojust’s external relations and strengthens the role of the European Parliament and national Parliaments in the democratic oversight of Eurojust’s activities. It also revises both the list of crime types for which Eurojust is competent to act and the actions the agency can take. The Regulation provides the possibility for Eurojust to act on its own initiative as well as on the request of the Member States and that of the EPPO, and to be more proactive in handling cases or sharing information.

Eurojust publishes annual reports. It is based in The Hague, the Netherlands.

1.2. Parliament adopted several resolutions under consultation procedure approving Eurojust’s Cooperation Agreements and Memorandums of Understanding, including:
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- its legislative resolution of 2 February 2016 on the draft Council implementing decision approving the conclusion by Eurojust of the Agreement on Cooperation between Eurojust and Montenegro;
- its legislative resolution of 5 July 2017 on the draft Council implementing decision approving the conclusion by Eurojust of the Memorandum of Understanding between the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice and Eurojust.

2. European Public Prosecutor’s Office (EPPO)


The EPPO will assume the investigative and prosecutorial tasks conferred on it on a date to be determined by a decision of the Commission on a proposal of the European Chief Prosecutor once the EPPO is set up. The date to be set by the Commission will not be earlier than 3 years after the date of entry into force of the EPPO Regulation.

Parliament and the Council will appoint by common accord the European Chief Prosecutor for a non-renewable term of 7 years.

The EPPO which, is expected to be operational at the end of 2020 or early 2021, will be an independent office in charge of investigating, prosecuting and bringing to justice crimes against the EU budget; such as fraud, corruption or cross-border VAT fraud above 10 million euros.

Most of Member States have joined the EPPO and the few Member States that currently do not participate could join at any time. The EPPO central office will be based in Luxembourg, along with the Chief Prosecutor and a College of Prosecutors from all participating Member States. They will head the day-to-day criminal investigations carried out by the delegated prosecutors in all participating Member States.

Tools to support evidence-based policies

1. Meetings with experts

Parliament has held numerous meetings, hearings, interparliamentary committee meetings and conferences addressing various aspects of judicial cooperation in criminal matters. The main meetings on this topic, as outlined below, gave MEPs the opportunity to hear from experts and hold discussions on the key issues:

- Hearing on Judicial cooperation in criminal matters on 11 November 2014;
- Hearing on The fight against terrorism and the challenges for EU internal security on 14 April 2015;
- Hearing on Investigation of alleged transportation and illegal detention of prisoners in European countries by the CIA on 13 October 2015;
- Hearing on The control of the acquisition and possession of weapons on 15 February 2016;
- Hearing on Fight against organised crime and corruption: stepping up the EU response on 16 February 2016;
• Hearing on The European Public Prosecutor’s Office (EPPO) and EUROJUST on 24 May 2016;
• Hearing on Preventing and countering radicalisation and violent extremism on 29 November 2016;
• Hearing on Prisons’ Systems and Conditions in the EU on 9 February 2017;
• Workshop on The training of judges and legal practitioners on 12 April 2017;
• Hearing on Child sexual abuse and exploitation online and offline: time to act on 25 April 2017;
• Hearing on The current challenges of fighting terrorism and serious crime on 30 May 2017;
• Hearing on the European Protection Order on 12 October 2017;
• Hearing on Victim’s Rights on 11 January 2018;
• Hearing on Electronic evidence in criminal matters on 27 November 2018.

2. Ad hoc delegations

Parliament organises various ad hoc delegations to obtain first-hand information from the relevant countries or organisations. In the field of judicial cooperation in criminal matters, it has proved a very useful tool that enables the LIBE Committee to evaluate the effectiveness of judicial cooperation in practice. During the current legislative term, the LIBE Committee organised ad-hoc delegations to Eurojust and several ad hoc delegations to the US in 2015, 2016, 2017 and 2018.

3. Supporting analyses

Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, and the European Parliamentary Research Service, have commissioned several analyses at the request of the LIBE Committee to support the work of Parliament in the field of judicial cooperation in criminal matters. The main studies produced during the current parliamentary term are as follows:

• The law enforcement challenges of cybercrime: are we really playing catch-up?, published in October 2015;
• Combatting child sexual abuse online, published in October 2015;
• Towards a European Public Prosecutor’s Office (EPPO), published in November 2016;
• The European Union’s Policies on Counter-Terrorism: Relevance, Coherence and Effectiveness, published in January 2017;
• Legal Frameworks for Hacking by Law Enforcement: Identification, Evaluation and Comparison of Practices, published in March 2017;
• Combating sexual abuse of children Directive 2011/93/EU: European Implementation Assessment, Published in April 2017;
• How can the EU and the Member States better help victims of terrorism?, published in September 2017;
• EU and Member States’ policies and laws on persons suspected of terrorism-related crimes, published in December 2017;
• The Victims’ Rights Directive 2012/29/EU: European Implementation Assessment, published in December 2017;
• Virtual currencies and terrorist financing: assessing the risks and evaluating responses, published in May 2018;
• The Cost of Non-Europe in the fight against terrorism, published in May 2018;
• **The EU-UK relationship beyond Brexit: options for Police Cooperation and Judicial Cooperation in Criminal Matters**, published in July 2018;

• **The future EU-UK relationship: options in the field of the protection of personal data for general processing activities and for processing for law enforcement purposes**, published in August 2018;

• **Criminal procedural laws across the European Union – A comparative analysis of selected main differences and the impact they have over the development of EU legislation**, published in August 2018;


## Conclusions

Parliament has played a key role in shaping EU legislation in the field of judicial cooperation in criminal matters by making fighting crime and corruption into a political priority. Parliament has been working on the judicial cooperation in criminal matters on an equal footing with the Council, under the ordinary legislative procedure. That applies to almost all areas of EU criminal law with a few exceptions, including notably the consent procedure for establishing the EPPO.

The main instrument for judicial cooperation in criminal matters is EU Agency for Criminal Justice Cooperation (Eurojust). As part of the Eurojust reform, Parliament actively advocated greater parliamentary scrutiny and improved data protection rules.

The development of the judicial cooperation in criminal matters area, which started during the previous legislative term, was considerably advanced during the current legislative term. Specific measures have been adopted to fight terrorism, transnational crime, corruption, fraud and money laundering and to make sure that the rights of victims, suspects and prisoners are protected across the Union. Several measures aiming at improved information exchange were also adopted.

Judicial cooperation in criminal matters policies are still developing, with attention focused on countering pan-EU threats and crime more effectively. Although an almost complete overhaul of the criminal procedural law has taken place during the current legislative term, a lot of efforts will be needed during the next parliamentary term to further strengthen the cooperation, notably via the information exchange measures. The role of Parliament will probably also more shift from new legislation towards monitoring the implementation of the legislation.

In sum, considerable progress has been made in developing judicial cooperation in criminal matters during the legislative term 2014-2019.

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