



## JUDICIAL COOPERATION IN CRIMINAL MATTERS

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. The Treaty of Lisbon has provided a stronger basis for the development of a criminal justice area, while also stipulating new powers for the European Parliament.

### LEGAL BASIS

Articles 82 to 86 of the Treaty on the Functioning of the European Union (TFEU).

### OBJECTIVES

The progressive elimination of border controls within the EU has considerably facilitated the free movement of European citizens, but also made it easier for criminals to operate transnationally. In order to tackle the challenge of cross-border crime, the area of freedom, security and justice includes measures to promote judicial cooperation in criminal matters. The starting point is the principle of mutual recognition. Specific measures have been adopted to fight transnational crime and make sure that the rights of victims, suspects and prisoners are protected across the Union.

### ACHIEVEMENTS

#### A. Institutional framework

##### 1. The Treaty of Lisbon

Under the former ‘third pillar’ (police and judicial cooperation in criminal matters), the European Parliament was only consulted. Its role has been enhanced with the Treaty of Lisbon, which has introduced more effectiveness, accountability and legitimacy in the area of freedom, security and justice (AFSJ). The Treaty has generalised (with a few exceptions) the Community method, based on co-decision (now, ordinary legislative procedure) between Parliament and Council (where unanimity has been replaced with majority voting). The old pillar structure has disappeared. As regards international agreements, a new procedure, ‘consent’, has been introduced. The abolition of the former third pillar has led to the harmonisation of legislative instruments. Instead of framework decisions, decisions and conventions, even in the criminal law field the EU adopts the ordinary EU instruments (regulations, directives and decisions).

The role of the Court of Justice has also been strengthened under the Treaty of Lisbon: the ordinary procedures for preliminary references and infringement proceedings initiated by the Commission apply. Transitional arrangements were in place until 1 December 2014 for the acts which were already in force in the areas of police cooperation and judicial cooperation in criminal matters.

Member States are still able to propose legislative measures, but now an initiative requires the support of a quarter of their number. Provision is made for special measures concerning enhanced cooperation, opt-outs and the so-called ‘emergency brake’. The EU Charter of Fundamental Rights is integrated into the Treaty of Lisbon, and is legally binding on the European Union (and its institutions and bodies) and on Member States when they implement EU law.

## **2. The strategic guidelines in the area of freedom, security and justice**

Following the Tampere and Hague programmes (of October 1999 and November 2004 respectively), in December 2009 the European Council approved the multiannual programme regarding the AFSJ for the 2010-2014 period: the Stockholm programme. In its conclusions of June 2014, the European Council defined the strategic guidelines for legislative and operational planning for the coming years within the AFSJ, pursuant to Article 68 TFEU. One of the key objectives is to develop judicial cooperation in criminal matters in the EU. A mid-term review of the guidelines will take place in 2017.

### **B. Mutual legal assistance in criminal matters**

On 29 May 2000 the EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters, which aims to encourage cooperation between judicial, police and customs authorities within the Union by supplementing provisions in existing legal instruments, while also complying with the European Convention for the Protection of Human Rights of 1950. A number of agreements have been adopted by international organisations, such as the Council of Europe Convention of 1959 on Mutual Assistance in Criminal Matters.

### **C. Mutual recognition of judicial decisions in criminal matters**

The Tampere European Council stated that mutual recognition should become the cornerstone of judicial cooperation in criminal matters. The principle of mutual recognition was confirmed in the Hague and Stockholm programmes. It is a key concept for the European judicial area, as only through mutual recognition is it possible to overcome difficulties created by differences between national judicial systems. Yet the principle can only develop fully if a high level of mutual trust exists between Member States.

### **D. European Arrest Warrant**

The Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) has revolutionised the traditional extradition system by adopting innovative rules: limited grounds for refusal of execution, decision-making shifting from political to judicial authorities, the possibility of surrendering nationals of the executing state, and clear time-limits for the execution of each EAW. Some difficulties have been encountered in the implementation of the EAW at both EU and national level, and the Framework Decision was amended once, in 2009, as regards the rules applicable to in absentia trials. Europol, Eurojust and the European Judicial Network can make an important contribution in the field of mutual legal assistance and EAW requests. On 27 February 2014, Parliament adopted a resolution containing recommendations to the Commission on the review of the EAW.

### **E. Approximation of legislation and establishment of minimum rules**

The functioning of the EU judicial area could be undermined by differences in national criminal law. Approximation of criminal law in the EU, which can serve to overcome these difficulties — in particular with regard to particularly serious crimes with a cross-border dimension — means adjustment to a common minimum standard, not full-scale unification. Organised crime, trafficking in human beings, exploitation of children and child pornography, terrorism, financial

crime (fraud, money laundering, corruption), cybercrime, environmental crime, counterfeiting, racism and xenophobia are all areas in which legal texts have been adopted or are being negotiated in order to arrive at common definitions and harmonise the level of penalties. Article 83 TFEU provides that Parliament and the Council, through the ordinary legislative procedure, may ‘establish 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’.

#### **F. Eurojust, the European Judicial Network, the Joint Investigation Teams and the European Public Prosecutor’s Office**

Eurojust is an EU body established in 2002 by a Council decision amended in December 2008. It stimulates and improves the coordination of investigations and prosecutions between competent authorities in the Member States, in particular by facilitating the provision of cross-border mutual legal assistance and the implementation of extradition requests and EAWs. The Treaty of Lisbon provides that ‘in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor’s Office from Eurojust’, while also providing for the possibility, at a later stage, of extending the powers of the European Public Prosecutor’s Office (EPPO) to include serious crime having a cross-border dimension. On 17 July 2013, the Commission tabled legislative proposals to set up the EPPO and to reform Eurojust, which will become the EU Agency for Criminal Justice Cooperation. Negotiations have proven rather complex, and in April 2017, 16 Member States notified their intention to launch enhanced cooperation to establish the EPPO.

In June 1998 the European Judicial Network (EJN) in criminal matters was created in order to improve judicial cooperation between Member States. The EJN is aimed at helping national judges and prosecutors carry out cross-border investigations and prosecutions.

The Tampere European Council called for Joint Investigation Teams (JITs) to be set up to combat trafficking in drugs and human beings, as well as terrorism. The Convention on Mutual Assistance in Criminal Matters of May 2000 also provides for the setting-up of JITs. In June 2002, the Council adopted a framework decision on the matter. Two or more Member States may set up a JIT, which may also include representatives of Europol and Eurojust. This is an instrument which has not been fully developed yet.

#### **G. Procedural rights**

The right of suspects and accused persons to a fair trial is recognised as a fundamental right. The initial proposal for a Council framework decision on procedural safeguards in criminal proceedings, tabled by the Commission in 2004, was blocked owing to divergent views of national delegations. In November 2009 the Council adopted a Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings and invited the Commission to put forward ad hoc proposals. The roadmap identified six main areas in which legislative or other initiatives are desirable: translation and interpretation; information on rights and information about charges; legal advice and legal aid; communication with relatives, employers and consular authorities; special safeguards for suspected or accused persons who are vulnerable; and (proposing a Green Paper on) pre-trial detention. In October 2010, Parliament and the Council adopted Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. In May 2012, Parliament and the Council adopted Directive 2012/13/EU on the right to information in criminal proceedings (the so-called ‘letter of rights’). In October 2013, Parliament and the Council adopted Directive 2013/48/EU on the right to have access to a lawyer in criminal proceedings and the right to communicate upon arrest.

In June 2011, the Commission published a Green Paper on the application of EU criminal justice legislation in the field of detention; the European Parliament is currently working on an own-initiative report on prisons' systems and conditions in the EU. In December 2011, Parliament adopted a resolution calling for common EU standards for conditions of detention. On 27 November 2013, the Commission presented a package of legislative proposals in order to complete the roadmap on procedural safeguards. In March 2016, Parliament and the Council adopted Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. In May 2016, Parliament and the Council adopted Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. In October 2016, Parliament and the Council adopted Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings, and for requested persons in European arrest warrant proceedings.

#### **H. Towards an EU criminal policy**

In September 2011, the Commission published a communication entitled 'Towards an EU criminal policy: ensuring the effective implementation of EU policies through criminal law'. This communication explains how EU-wide minimum rules on criminal law could better protect citizens against criminal behaviour, and sets out principles which will help to ensure that EU legislation on criminal law is consistent and coherent.

### **ROLE OF THE EUROPEAN PARLIAMENT**

The Treaty of Lisbon has introduced greater effectiveness and accountability in the criminal justice area. It has generalised (with a few exceptions, such as the European Public Prosecutor) the Community method, based on codecision and majority voting in the Council. The old pillar structure has disappeared. The EU Charter of Fundamental Rights is integrated into the Treaty of Lisbon and is legally binding on the Union (its institutions and bodies) and its Member States when they implement EU law. As regards international agreements, provision is made for a new procedure, 'consent'.

Parliament has adopted resolutions on various issues in the field of judicial cooperation in criminal matters, such as settlement of conflicts over the exercise of jurisdiction, supervision measures as an alternative to provisional detention, post-trial supervision measures, transfer of proceedings, the European Arrest Warrant and European Evidence Warrant, Eurojust, the European Judicial Network, decisions rendered in the absence of the accused person, environmental crime, terrorism, organised crime, e-Justice, trafficking in human beings, sexual exploitation of children and child pornography, the European protection order, and minimum standards on the rights, support and protection of victims of crime. In May 2009, Parliament adopted a resolution (which also contained a recommendation to the Council) on the development of an EU criminal justice area. In May 2012, it adopted a resolution, based on an own-initiative report, on 'an EU approach on criminal law', which addressed the issues of which criteria can be used to establish whether there is a need for EU criminal law legislation, and how to ensure the coherence and quality of criminal law. In October 2013, Parliament adopted a resolution on organised crime, corruption and money laundering, based on the recommendations of its special committee on the subject (CRIM).

Parliament has recently adopted resolutions approving draft directives on the freezing and confiscation of the proceeds of crime, insider dealing and market manipulation, protection of the euro against counterfeiting, and prevention of the use of the financial system for the purposes of money laundering and terrorist financing. Parliament is currently reviewing some important

Commission proposals on subjects such as the reform of Eurojust, the establishment of the European Public Prosecutor's Office, efforts to fight fraud against the Union's financial interests by means of criminal law, and the fight against terrorism.

Parliament will be involved in evaluation and monitoring in the AFSJ, including criminal justice, as provided for in the Treaty of Lisbon. Article 70 TFEU states that 'the European Parliament and national Parliaments shall be informed of the content and results of the evaluation' of the 'implementation of the Union policies referred to in this Title by Member States' authorities, in particular on mutual recognition'. Article 85 TFEU provides for the involvement of the European Parliament and the national parliaments in 'the evaluation of Eurojust's activities': such arrangements will be determined by new regulations to be adopted by Parliament and the Council under the ordinary legislative procedure.

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