



## 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 facilitated considerably the free movement of European citizens, but has 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 (AFSJ) involves measures to promote judicial cooperation among the Member States 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. Main EU legislative acts on judicial cooperation in criminal matters

##### 1. Adoption procedures

In accordance with the TFEU, most measures for judicial cooperation in criminal matters are adopted under the ordinary legislative procedure and are subject to judicial review by the Court of Justice of the European Union. Nevertheless, even setting aside the specific features of the area of freedom, security and justice (opt-outs for the United Kingdom, Ireland and Denmark (see Protocols 21 and 22 annexed to the TFEU) and a privileged role for national parliaments (see Protocols 1 and 2)), judicial cooperation in criminal matters, together with police cooperation, have not been entirely integrated into the EU framework and they retain some of their original features from before the Treaty of Lisbon:

- 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 measures for judicial cooperation in criminal matters, which are then adopted unanimously by the Council. In the absence of unanimity in the Council, then it is still 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**
- a. Common minimum standards for criminal proceedings:**
- [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings;
  - [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings;
  - [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;
  - [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;
  - [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;
  - [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.
- b. 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, detection, investigation and prosecution of terrorist offences and serious crime;
  - [Directive \(EU\) 2017/541](#) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.
- c. Fight against corruption, cybercrime, fraud and money laundering:**
- [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 (known as the ‘Cybercrime Directive’);
  - [Directive 2014/42/EU](#) of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union;
  - [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);



- [Directive 2014/62/EU](#) of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA;
  - [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;
  - [Directive \(EU\) 2018/1673](#) of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law;
  - [Regulation \(EU\) 2018/1805](#) of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders;
  - [Directive \(EU\) 2019/713](#) of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA.
- d. Exchange of information between Member States and EU agencies:**
- [Directive 2014/41/EU](#) of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
  - [Regulation \(EU\) 2018/1726](#) of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011;
  - [Regulation \(EU\) 2018/1862](#) of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU;
  - [Regulation \(EU\) 2019/816](#) of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726. This Regulation is connected to a proposal for a directive on which Parliament adopted its [position at first reading](#) on 12 March 2019 as regards the exchange of information on third-country nationals and the European Criminal Records Information System (ECRIS)<sup>[1]</sup>. The Directive is currently awaiting publication in the Official Journal;

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[1] Proposal for a directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA.



- [Regulation \(EU\) 2019/818](#) of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.
- e. Protection of victims:
  - [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
  - [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA;
  - [Directive 2011/99/EU](#) of the European Parliament and of the Council of 13 December 2011 on the European protection order;
  - [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

## B. Agencies for judicial cooperation in criminal matters and other related bodies

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

[Eurojust](#) stimulates and improves the coordination of investigations and prosecutions and the cooperation among the authorities in the Member States. In particular, it facilitates the execution of international mutual legal assistance requests and the implementation of extradition requests. Eurojust supports the Member States' authorities in any way it can so as to make their investigations and prosecutions of cross-border crime more effective.

Eurojust may assist a Member State, at its request, in investigations and prosecutions concerning the Member State in question and a non-Member State if Eurojust and the non-Member State have concluded a cooperation agreement or if an essential interest has been demonstrated.

Eurojust covers the same types of crimes and offences for which the European Union Agency for Law Enforcement Cooperation (Europol) has competence, such as terrorism, drug trafficking, human trafficking, counterfeiting, money laundering, cybercrime, 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. Eurojust may, at the request of a Member State, also assist in investigations and prosecutions of other types of offences.

The current legal framework for Eurojust (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. However, from 12 December 2019, [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 instead.

Eurojust publishes [annual reports](#). It is based in The Hague, the Netherlands.

## 2. European Public Prosecutor's Office (EPPO)

Council [Regulation \(EU\) 2017/1939](#) of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO) has been in force since 20 November 2017. Parliament had given its consent to the Council's draft regulation in its [legislative resolution of 5 October 2017](#).

Once the EPPO has been set up, it will assume its investigative and prosecutorial tasks on a date to be determined, by a Commission decision, based on a proposal from the European Chief Prosecutor. The date will be at least three 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 seven years.

The EPPO is expected to be operational by the end of 2020 or early 2021. It will be an independent office in charge of investigating, prosecuting and administering justice for crimes against the EU budget, such as fraud, corruption or cross-border VAT fraud worth more than EUR 10 million.

Most of the 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 made up of members from all participating Member States.

## ROLE OF THE EUROPEAN PARLIAMENT

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 a political priority. It has been working on judicial cooperation in criminal matters on an equal footing with the Council, under the ordinary legislative procedure. The ordinary legislative procedure applies to almost all areas of EU criminal law, with a few exceptions — including, most notably, the consent procedure for establishing the EPPO.

The main instrument for achieving judicial cooperation in criminal matters among the Member States is Eurojust. When Eurojust was being reformed, Parliament actively advocated greater parliamentary scrutiny and improved data protection rules.

Policies for judicial cooperation in criminal matters are still developing, with a special focus on countering pan-EU threats and crime more effectively. Parliament has adopted specific measures to fight terrorism, transnational crime, corruption, fraud and money laundering and to protect the rights of victims, suspects and prisoners across the Union. Several measures intended to improve the exchange of information among the Member States have also been adopted.



Kristiina Milt  
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