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 EU 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 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 terrorism, and to make sure that the rights of victims, suspects and prisoners are protected across the EU.

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 Ireland and Denmark (see Protocols 21 and 22 annexed to the TFEU) and the 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, 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 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;


b. 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, detection, investigation and prosecution of terrorist offences and serious crime;


c. The fight against corruption, cybercrime, fraud and money laundering:


d. The exchange of information between Member States and EU agencies:


nationals and as regards the European Criminal Records Information System (ECRIS);


e. Protection of victims:


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 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 EU’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.

Following Russia’s military aggression against Ukraine, which began in February 2022, a Eurojust-supported joint EU investigation team (JIT) has been active in Ukraine since March 2022. On 14 April 2023, the seven members of the JIT agreed to investigate not only alleged war crimes, but also crimes of genocide committed in Ukraine. They also welcomed the US Department of Justice’s pledge to second a prosecutor to the International Centre for the Prosecution of the Crime of Aggression against Ukraine.
Eurojust also hosts a Core International Crimes Evidence Database (CICED) to support the work of the JIT and other investigations into international crimes.

In April 2022, the Commission published a proposal to expand Eurojust’s mandate. Parliament and the Council reached an agreement a few weeks later on the revised mandate, which is enabling Eurojust to preserve, analyse, store and share evidence of war crimes, genocide and crimes against humanity with the competent judicial authorities of the Member States and with the International Criminal Court. The new Eurojust Regulation was published in the EU Official Journal on 31 May 2022 and entered into force the following day.


Every year, Eurojust publishes an annual report. On 2 March 2022, Eurojust published its 2021 annual report.

Eurojust is based in The Hague in the Netherlands.

2. The 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 gave its consent to the Council’s draft regulation in its legislative resolution of 5 October 2017.

The EPPO is 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 of more than EUR 10 million. The list of crimes could be extended in the future to include, for example, terrorism.

Parliament and the Council appointed by common accord the first European Chief Prosecutor, Laura Codruţa Kövesi, for a non-renewable term of seven years.

So far, 22 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 is located in Luxembourg, along with the offices of the Chief Prosecutor and the College of Prosecutors from all participating Member States. They head the day-to-day criminal investigations carried out by the delegated prosecutors.

The EPPO started its operations on 1 June 2021 and is already carrying out many investigations. Work also continues in a number of areas, including the adaptation of national justice systems to EPPO regulations, the appointment of the European Delegated Prosecutors, and the recruitment of staff.

On 23 March 2023, the EPPO presented its 2022 annual report before the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs. In 2022, the EPPO received and processed 3 318 crime reports and opened 865 investigations.
Moreover, judges granted freezing orders for EUR 359.1 million in connection with EPPO investigations. By the end of 2022, the EPPO had 1 117 active investigations with estimated total damages of EUR 14.1 billion.

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. 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 for greater parliamentary scrutiny and improved data protection rules.

On 1 December 2020, Parliament organised (via remote participation due to COVID-19) the first inter-parliamentary committee meeting (ICM) on the evaluation of Eurojust activities. The ICM was dedicated to a first assessment of Eurojust's activities by the European Parliament and national parliaments in accordance with Article 85 TFEU and Regulation (EU) 2018/1727. The second ICM on the evaluation of Eurojust's activities was organised on 1 February 2022, while the third took place on 30 November 2022.

On 20 January 2021, Parliament adopted a resolution on the implementation of the European arrest warrant and the surrender procedures between Member States (and also approved an implementation report on Council Framework Decision 2002/584/JHA of 13 June 2002, adopted before the Treaty of Lisbon). In this resolution, Parliament assessed the results of the simplified cross-border judicial surrender procedure that in 2004 replaced the lengthy EU extradition procedures, based on the principle of mutual recognition of court decisions.

On 6 October 2021, Parliament adopted a resolution on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters.

Parliament is currently preparing reports (and resolutions) on the following issues: combating gender-based violence and cyber violence; preventing and combating trafficking in human beings and protecting its victims; European production and preservation orders for electronic evidence in criminal matters; money laundering and the financing of terrorism; digitalisation of justice; hate speech online; and the detection and removal of child sexual abuse material.

Parliament will also follow recent and upcoming initiatives by the Commission in the areas of organised crime, cybercrime, victims’ rights, judicial training, rule of law developments in the field of justice, artificial intelligence, and transfer of criminal proceedings.

In May 2022, in the light of the Russian aggression in Ukraine, the Commission proposed new reinforced rules on asset recovery and confiscation, which would contribute to the implementation of EU restrictive measures, the violation of which would be added to the list of EU crimes. Parliament is involved in the approval process.
for these proposals, which were put forward in the context of the ‘Freeze and Seize’ Task Force.

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 EU. Several measures intended to improve the exchange of information among the Member States have also been adopted.

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