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 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 (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 terrorism, and 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 AFSJ (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 of the 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 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;
   b. The fight against terrorism:
   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.


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

So far (as of April 2021), 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 will head the day-to-day criminal investigations carried out by the delegated prosecutors.

The date on which the EPPO will assume its investigative and prosecutorial tasks will be set by the Commission on the basis of a proposal to be made by the European Chief Prosecutor once the EPPO has been set up. The selection procedures of the European Delegated Prosecutors are still ongoing in some Member States. Working arrangements and staff recruitments are in their final stages. The expected start date of EPPO operations is 1 June 2021.

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 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 of the TFEU and Regulation (EU) 2018/1727.

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.

Parliament is currently preparing reports (and resolutions) on the following issues: combating gender-based violence and cyber violence; artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters; preventing and combating trafficking in human beings and protecting its victims; European production and preservation orders for electronic evidence in criminal matters.

On 28 April 2021, Parliament adopted at second reading a proposal for a regulation on preventing the dissemination of terrorist content online, which would oblige internet platforms to remove flagged content or disable access to it in all Member States within one hour of receiving a request to take it down.

Parliament will also follow recent and upcoming initiatives by the Commission in the areas of money laundering and financing of terrorism, organised crime, cybercrime, victims’ rights, digitalisation of justice, judicial training, rule of law developments in the field of justice, and hate speech online.

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.

Alessandro Davoli
04/2021