

Main Structures in International Cooperation in Criminal Matters at European Level

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Abstract

Creating a European area without borders and free movement gave rise to new forms of expression of cross border crime, but also new opportunities for criminals to evade justice. Cross-border crime concerns at present international drug traffic areas such as risk and high risk, terrorism, human trafficking, counterfeiting of means of electronic payment and cybercrime, tax evasion and money laundering, corruption offenses.

Although adopted a series of measures and ways to combat this phenomenon have diversified and adapted to new ways of committing these crimes, some very sophisticated, crime has grown. Therefore, it is necessary to strengthen existing institutions - Europol, Eurojust, OLAF, and the creation of new sound institutions - the European Public Prosecutor - able to prevent and combat crime, especially on the borders.

Keywords: Cross-Border Crime, Cooperation In Criminal Matters, The European Justice.

Introduction

Despite the different development level, the shape of the state and borders separating them, states of the world, as a whole, form the international community, which in its evolution has traveled a difficult road from war to peace, from unlimited use of force to its prohibition in the international relations and the implementation of a peace meant to last as long as the states agree to cooperate with each other.

The most important tool available for the states to achieve its ideals of peace and international security, human rights and fundamental freedoms, but also for the achievement of international cooperation is the United Nations. Organization of universal jurisdiction, the

United Nations¹ is open to all states; it was created by the world states being in a world disturbed by wars and marked by their horrors, its purpose is to defend peace and promote economic and social progress of all peoples and to achieve international cooperation in all fields.

International cooperation is enshrined in numerous provisions of the Charter², "which can be considered as a genuine *international code of cooperation*" (Ecobescu, Duculescu, 1976) but also in a number of international documents³. International cooperation in criminal matters appears as a natural consequence, a particular application of the general principle in respect of the obligation of states to cooperation. It is obvious that in the absence of specific particularizations areas in which states are to cooperate, the general principles of the UN Charter would remain mere form without substance.

In criminal matters, judicial cooperation was made primarily to facilitate and accelerate cooperation in the field of legal proceedings and the enforcement of decisions, simplifying extradition procedure between the Member States, implementing minimum rules relating to the constituent elements of criminal acts and to penalties against organized crime, terrorism and drug trafficking (Fuerea, 2002).

Created after the Second World War, the European Union is an organization of European countries dedicated to increasing economic integration and strengthening cooperation. The Union is founded⁴ on the indivisible and universal values of human dignity, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law and it places the individual in the core of its activities, by establishing the citizenship of the European Union and by creating an area of freedom, security and justice.

In order to achieve those latter objectives, two agreements were signed, namely, the Schengen Agreement on the abolition of checks at common borders of 14 June 1985 and Convention implementing of this Agreement of June 19, 1990 - original signed by Germany, France and the Benelux countries.

In 1995, when the *Convention implementing the Schengen Agreement*⁵ came into force, abolished internal border controls of the signatory states and created a single external frontier, where checks for access to the Schengen area are carried out under identical procedures. Have been adopted common rules on visas, asylum and checks at external

¹ At the conference in San Francisco, which took place between April 25 and June 25, 1945 and attended by 50 states (Poland did not participate in the conference, as the U.S. did not recognize installed Soviet government in this country, but later was awarded Poland's founding members and hence the number of the founding members of the organization was 51), has adopted the United Nations Charter. Charter entered into force on 24 October 1945, the day which was proclaimed United Nations Day.

² In article 1 section 3 of the Charter, international cooperation is foreseen as one of the main purposes of the UN; art.13 of the Charter states that the promotion of international cooperation is one of the important functions of the General Meeting.

³ Arab League Pact; Charter of Organization of American States; Charter of African Unity; Helsinki Final Act; UN Declaration of 1970; Charter of Economic Rights and obligations of states adopted by the General Meeting in 1974 (XXIX).

⁴ Preamble to the Charter of Fundamental Rights of the European Union - http://ec.europa.eu/romania/documents/eu_romania/tema_8.pdf

⁵ Convention implementing the Schengen Agreement sets out the conditions and the safeguard clause necessary to implement the freedom of movement.

borders to allow the free movement of persons within the signatory states without disrupting law and order.

Although long awaited, this European space without borders, freedom of movement determined also new opportunities for cross-border crime and for criminals to evade justice (Radu, 2009).

Currently, most cross border crime is targeting areas such as international drug trafficking risk and high risk, terrorism, human trafficking, counterfeiting of means of electronic payment and cybercrime, tax evasion and money laundering, corruption offenses.

Europol

European Police Office, Europol called briefly, based in The Hague, is an organism of the European Union, whose goal is to improve⁶ (in the case of cooperation relations between Member States) the effectiveness and cooperation, of the competent authorities of the Member States relating preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime.

According to article 4, paragraph 3 of Decision 2009/371/JHA of 6 April 2009 through which is established the European Police Office (Europol), the competence of Europol include also related crimes. Related offenses are considered: a) criminal offenses committed to procure the means for perpetrating acts within the competence of Europol; b) criminal offenses committed in order to facilitate or perpetrating acts within the competence of Europol; c) criminal offenses committed to ensure the impunity of acts within the competence of Europol.

Europol's mission shall be to support and strengthen action by the police and other law enforcement services of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy⁷.

In order to comply with its tasks, Europol cooperates with all Member States of the European Union, and in this sense each of them constituted a Europol national unity, which is the liaison body between Europol and the competent authority of that State.

A Member State may permit under conditions determined by it, also direct contact between the competent authority and Europol. According to article 8 paragraph 2 of The Decision, national unity will receive from Europol any information exchanged in the course of direct contacts between Europol and designated competent authorities. Relations between national unity and authorities are governed by law and, in particular, the relevant national constitutional requirements.

Romania, through the Law no. 197/2004⁸ ratified the Agreement on cooperation between Romania and the European Police Office, in the preamble emphasizing that the parties are aware of the urgent problems arising from international organized crime, in particular terrorism, trafficking in human beings and smuggling of migrants, trafficking illicit drugs and other serious forms of international crime.

⁶ Article 2, paragraph 1 of the Convention establishing the European Police Office (Europol Convention), of 26 July 1995 and entered into force on 1 October 1998.

⁷ Treaty on European Union (consolidated version), Art. 88 paragraph 1 (Article 30 TEU) - http://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026ro.pdf

⁸ Published in the Official Gazette, Part I, no. 498/2004.

The legal regime applicable to business cooperation between Romanian authorities and Europol was established by Law no. 55/2012 concerning cooperation between Romania and the European Police Office (Europol)⁹. By the same law (art. 5) Europol National Unit has been designated as the single point of liaison with Europol, stating that the competent Romanian authorities can cooperate directly with Europol only in special circumstances determined by the need to ensure timeliness of data exchange and information or of confidentiality actions taken and any direct communication with Europol shall be conducted prior notification to the Europol National Unit.

Eurojust

Given the need to improve judicial cooperation between the Member States of the European Union, particularly in the fight against serious crime and to strengthen this struggle¹⁰, the European Council by Decision 2002/187/JHA of 28 February 2002, decided to establish a unit called Eurojust. Creating such a unit, with the aim of coordinating the activities of national authorities responsible for prosecution was decided by the European Council in Tampere on 15 and 16 October 1999.

Subsequently, in particular due to significant changes appeared in time, regarding how judicial cooperation acts in criminal matters, the mentioned decision was amended by Council Decision 2009/426/JHA EU of 16 December 2008¹¹ regarding the strengthening of Eurojust and amending Decision 2002 / 187/JAI setting up Eurojust with a view to reinforcing the fight against serious crime, known as the "New Eurojust Decision". Therefore, this last change was the most significant and aimed at strengthening the role and powers of Eurojust.

Eurojust is composed, according to article 2 of Decision 2009/426/JHA, of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence. They should have a rich experience and highly qualified legal.

There are obvious differences in national legal systems between Member States, being entrusted to the representatives of these countries to find the best ways to soften them and ensure effective cooperation in the judicial field.

Eurojust has in the jurisdiction serious and organized crime, and its objectives are: to promote and improve coordination between the competent authorities of the Member States relating to investigations and prosecutions in the Member States, improving cooperation between competent national authorities by facilitating the execution of applications decisions on judicial cooperation, including those instruments regarding implementing the principle of mutual recognition and support, in any way, of the competent authorities of the Member States in order to render their investigations and prosecutions.

At the same time, the Lisbon Treaty has provided new opportunities to strengthen the coordination of criminal liability in the European Union. Articles 85 and 86 of the Treaty on

⁹ Republished in the Official Gazette, Part I, no. 206/2014.

¹⁰ See the preamble to Council Decision 2002/187/JHA of 28.02.2002 Europe.

¹¹ Official Journal of the European Union L 138 of 04.06.2009 –

<http://eurojust.europa.eu/doclibrary/Eurojust-framework/ejdecision/New%20Eurojust%20Decision>

%20(Council%20Decision%202009-426-JHA) / Eurojust Council, Decision-2009-426-JHA-EN.pdf

the Functioning of the European Union (TFEU) add a dimension of an embryonic European justice that transcends national borders.

Article 85 of TFEU provides that the powers of Eurojust may include, inter alia, the "initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offenses against the financial interests of the Union" (paragraph 1 a), opening, consequently, the prospects of full powers of action of Eurojust, and Article 86 of the Treaty, which provides the establishment of a European Public Prosecutor, Office from Eurojust.

As a principle thesis, strengthening Eurojust prerogatives should not be seen as an end in itself. Article 85 TFEU does not automatically confer the supranational prerogatives Eurojust, although they admit the possibility. Strengthening Eurojust, credentials shall be evaluated primarily in terms of how to increase its effectiveness. It is a cause and effect relationship.

European Anti-Fraud Office

Independent of the European Commission, the European Anti-Fraud Office, OLAF briefly, is a Fraud Investigation Service and was established in 1999 by Decision 1999/352/EC ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office (OLAF).

According to Article 2 paragraph 1¹² of the decision, the Office shall exercise the Commission's powers of administrative nature to investigate, in order to intensify the fight against fraud, corruption and other illegal activity adversely affecting a Community's financial interests, as well as any act or activity contrary to the provisions of Community.

However, according to the same text, OLAF is responsible for conducting internal administrative investigations aimed, on the one hand, to combat fraud, corruption and any other illegal activity adversely affecting a Community's financial interests and on the other hand, to investigate serious facts linked to professional activities which may constitute a breach of obligations by officials and other categories of worker employed of the Communities, liable to result in disciplinary action and, according the case, to initiate criminal proceedings or an analogous breach of obligations of members of institutions and bodies, heads of the bodies and employees of institutions and bodies that fall under the Staff Regulations of Officials and the Conditions of Employment of other categories of employees of the Communities.

"Administrative investigations" (hereinafter "investigations") means any inspection, testing or other measures taken by the Office to fulfill its competences¹³.

Internal investigations¹⁴ are carried out within the institutions, bodies, offices and agencies and are conducted in accordance with the conditions set out in Regulation 883/2013 concerning investigations conducted by OLAF and the decisions taken by the institution, body,

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<http://eur-lex.europa.eu/legal-content/RO/ALL/?jsessionid=wwN5TzXK4v6xNX5w2X1LB4y1HdLHZsklyqB0GgyfZQHz4Q1QDXmQ!-975582138?uri=CELEX:31999D0352>

¹³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) no. 1073/1999 of the European Parliament and of the Council and Regulation (Euratom) No 1074/1999 of the Council –

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:248:0001:0022:RO:PDF>

¹⁴ Idem.

office or agency concerned. In this case, the institutions, bodies, offices and agencies shall be informed whenever office staff carry out an internal investigation into their premises or consult a document or request information held by them.

External investigations are conducted by OLAF through inspections and spot checks in the Member States, in accordance with the cooperation and mutual assistance with any legal instrument in force, in third countries and related international organizations spaces.

In addition to administrative investigations, OLAF, develop strategies to fight fraud, provide technical assistance to Member States and material support in the fight against fraud and other illegal activities and collaborate with them in order to prevent fraud.

European Prosecutor

In criminal matters, judicial cooperation is based mainly on legal proceedings set in motion by the prosecution, specific to each state. The competence of the same criminal prosecution and investigation of acts aimed entering cross-border crime and offenses against the financial interests of the European Union.

Regarding the offenses against the financial interests of the European Union, there is no uniform regulation at European level in terms of procedural rules, states with procedures set free according to their will. Consequently are identified specific difficulties due to the specific procedures for handling criminal cases in the prosecution of those responsible, although in principle there is the same person injured - European Union - and here we refer to offenses against the financial interests of the European Union (Matei, Dragne, 2014)¹⁵.

National prosecution even if they operate with maximum care and properly exploit the opportunities created by new means of judicial cooperation within the European Union are often found to be ineffective in promptly combating these threats of XXI century.

The Treaty of Lisbon was founded, shy that's right, an institution with novelty character - European Prosecutor, which would aim to combat cross-border serious crime and offenses against the financial interests of the European Union.

Thus the Article 86 paragraph 1 of the TFEU states that "to combat crimes affecting the financial interests of the Union, the Council, acting by means of regulations in accordance with a special legislative procedure, may establish a European Prosecutor, starting from Eurojust. The Council shall act unanimously after obtaining the approval of Parliament". Independent institution headed by a European public prosecutor, the European Public Prosecutor would have the mission to protect the financial interests of the European Union. European Public Prosecutor will be integrated into national legal systems, in the sense that investigations and prosecutions will be conducted by European prosecutors who will act in the EU countries. They will work with national staff and enforce national laws. One attorney will ensure that all prosecutors have the same approach in all countries¹⁶.

Conclusions

European Union, as shown in the TFEU, is intended to be for its citizens an area of freedom, security and justice, guaranteeing the free movement of people and forcing it to take appropriate measures to prevent and combat crime. Or, so that principle to be put into practice is necessary to create solid institutions capable of preventing and combating crime, especially on the borders.

¹⁵.

¹⁶ http://ec.europa.eu/news/justice/130722_ro.htm

As regards Europol, is desired to become a more effective agency in collecting and analyzing information and sharing this analysis with the Member States, which will allow Europol to provide more effective support and targeted national enforcement authorities law of co-operation and cross-border investigations¹⁷.

Regarding the Eurojust, confer new powers must be balanced by an equivalent level of responsibility of this agency. Initiating criminal investigations or settlement of jurisdiction conflicts implies the existence of certain procedural rules at European level as well as the establishment of a judicial review of the Court of Justice of the European Union. Extent of jurisdiction *ratione materiae* must, in turn, should be determined on the basis of statistics and assessment in concreto of the number and relevance of cases of offenses against the Union's financial interests or other types of transnational crime.

Any extension of the competence of Eurojust cannot be performed before the actual potential of the Agency to be used up by the national authorities.

Eurojust's operational efficiency should not be seen in the number of cases or the frequency with which national members are asked to assist national authorities, but in the actual content of the cases submitted for its assistance. It should be analyzed how many of them involve crimes that fall under the general jurisdiction laid down in Article 4. (1) of the Eurojust Decision, that involves more than two Member States, and many of them direct contact or direct consultations between the authorities of the Member State concerned has failed. Eurojust intervention should not undermine the principle of direct contact principle already enshrined in EU law.

Initiating criminal investigations in specific cases by Eurojust, such as negative conflict of competence, could add value to the new regulation. Both the strengthening of Eurojust and the establishment of a European Prosecutor are central interest themes for the Member States while establishment of a European Prosecutor could represent a turning point in the construction area of freedom, security and justice of the European Union.

About the establishment of the European Public Prosecutor aimed at protecting the financial interests of the European Union has been described in two previous papers, namely *Corpus Juris* in 1997¹⁸, which includes a number of guiding principles in criminal law protection of the financial interests of the European Union within the legal space European and European Commission Green Paper of 2001 on criminal protection of the financial interests of the European Community and the creation Attorney¹⁹.

These documents having unquestionable value were not able to determine the Member States to establish a European Prosecutor, given the fact that the consent of all Member States of the European Union is needed, but the Union has demonstrated awareness of the need for new institutions which can effectively combat the new challenges of the XXI century. We emphasize, however, in agreement with the view expressed in the doctrine (Mazilu, 2012) that the general project of building a united Europe will have the expected success only if their legitimate choices will be respected and that they will not be discriminatory.

¹⁷ http://europa.eu/rapid/press-release_IP-13-284_ro.htm

¹⁸ At the initiative of the European Commission, during 1995 - 1996, a group of experts working under the direction of Mrs. Mireille Delmas-Marty *Corpus Juris* project general criminal law and criminal procedure.

¹⁹ *Livre Vert sur la protection pénale des intérêts financiers communautaires et la création d'un Procureur européen*, Bruxelles, le 11.12.2001, COM(2001) 715 final (http://eur-lex.europa.eu/LexUriServ/site/fr/com/2001/com2001_0715fr01.pdf)

The European Union must be based on the cooperation of the Member States and not by positioning over and subordination relations of states, depending on their economic strength.

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