JUDICIAL COOPERATION IN CRIMINAL MATTERS – AN ESSENTIAL COMPONENT OF INTEGRATION INTO THE EU

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Abstract

In a world increasingly appreciated as multipolar, from political, economic, social, cultural and, why not, legal perspective, faced with unprecedented challenges, also of multipolar nature, such as wars, international tensions, climate change and the energy crisis, international cooperation, including in criminal matters, between states is essential, with the EU playing a particularly important role. Judicial cooperation in criminal matters at EU level is an integrative part of judicial cooperation in criminal matters at international level. Pragmatically analysing, we notice that we are witnessing a real interoperability in vertical and horizontal planes, between the states that form the international society, at regional (including European) level, but also at universal level, with the precise purpose of ensuring the maximization of the efficiency of actions carried out in the criminal field. Judicial cooperation in criminal matters represents, together with judicial cooperation in civil matters, an essential component of the integration of all Member States into the EU.

Keywords: *judicial cooperation, criminal matters, EU law, minimum rules, international law.*

1. General aspects

Judicial cooperation in criminal matters at EU level is an integrative part of judicial cooperation in criminal matters at international level. Pragmatically analysing, we notice that we are witnessing a real interoperability in vertical and horizontal planes, between the states that form the international society, at regional (including European) level, but also at universal level, with the precise purpose of ensuring the maximization of the efficiency of actions carried out in the criminal field. This is happening because „setting a compound of international cooperation rules in criminal matters is necessary since crime has developed simultaneously with the domestic, regional (European) and international, universal society"[1].

Judicial cooperation in criminal matters represents, together with judicial cooperation in civil matters, an essential component of the integration of all Member States into the EU. Initially regulated as the third important pillar on which the EU was grounded, from its establishment by the Maastricht Treaty[2] until the entry into force of the Lisbon Treaty in 2009, the two types of cooperation, together with the well-known cooperation that generated special practical implications in the police field, in the „area of freedom, security and justice", currently constitute genuine policies of the Union.

The reasons why, we have been witnessing after 1990, the foundation and consolidation of Romania's judicial cooperation at international level, in general, and at regional, European level, in particular, including from a criminal perspective, are found, without equivocation, in the unprecedented multiplication of public and private international law relations in which our country and, implicitly, the citizens of Romania have been involved. This multiplication, „was, without a doubt followed [and we believe that it will continue to happen] by an unprecedented increase of the international organized crime on the territory of several states"[3], including the Member States of the EU[4].

The concern of legal practitioners and theorists for the knowledge and application of international and EU legislation is obvious. The doctrine[5] analyses the two levels of regulation, within the specialized works dedicated

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[1] B. Micu, R. Slăvoiu, *Cooperarea judiciară internațională în materie penală*, Hamangiu Publishing House, Bucharest, 2020, p. 1.

[2] Signed in 1992 and entered into force in 1993.

[3] N. Neagu, D. Dediu, *Cooperarea judiciară internațională în materie penală*, 2nd ed., revised and added, Universul Juridic Publishing House, Bucharest, 2021, p. 7.

[4] A. Fuerea, *Statul de drept, o perspectivă europeană*, in Palatul de justiție, new series, June 2024, pp. 18-21.

[5] As example, I. Neagu, M. Damaschin, *Tratat de procedură penală. Partea generală*, 5th ed., revised and added, Universul Juridic Publishing House, Bucharest, 2024, p. 72.

to all those called to administer justice in Romania – a state increasingly anchored in the realities of the general international society and in particular in the regional, European society.

As „effect of our country's membership of the EU, it is necessary to mention the EU primary law (the Treaty on European Union, respectively the Treaty on the Functioning of the European Union – TFEU) and the secondary law of the EU, consisting of directives, regulations, decisions and framework decisions"[6]. Thus, judicial cooperation in criminal matters is regulated in the TFEU, within the scope of Chapter 4 of Title V. The provisions of the five articles dedicated to judicial cooperation in criminal matters are based on the principle of mutual recognition of judgments and judicial decisions and aim at the approximation of laws and administrative provisions of the Member States, in the following areas[7]: the establishment of rules and procedures to ensure the recognition, throughout the Union, of all categories of judgments and judicial decisions; the prevention and settlement of jurisdiction conflicts between Member States; supporting the professional training of magistrates and judicial personnel and facilitating cooperation between judicial or equivalent authorities of the Member States in criminal prosecution and enforcement of decisions[8].

It is necessary to mention that, regardless of the method chosen by the Union legislator for the implementation of judicial cooperation in criminal matters, the principle of territoriality of Romanian criminal law continues to apply, but, „sometimes, due to political-legal interests, situations that appear as exceptions, may arise"[9]. Along with the exception determined by the case of the passive international letter of request, particularized at EU level, we encounter that of the European investigation order, a case in which we are in the presence of a judicial decision „issued or validated by a judicial authority of a Member State of the EU, for the purpose of carrying out one or more specific investigative measures in another Member State"[10]. The aim is to obtain and transmit evidence „which is already in the possession of the competent authority of the enforcing State"[11]. Other exceptions[12] are also instructive for the field analysed, from the perspective of interference and existing relations, inevitably, starting from the provisions of the fundamental law of Romania[13], found at the intersection of domestic law, EU law and international law[14]. „In the specialized literature, it has been correctly shown that the activity of the European Public Prosecutor's Office (EPPO)" is also an exception to the principle of territoriality[15].

2. Conceptual delimitations

From the perspective of necessary conceptual delimitations, cooperation within the EU is susceptible to several meanings, its dimensions being multiple. Thus, in the *Romanian Legal Encyclopaedia*[16], we find cooperation defined, in general, first in EU law[17]. This definition is immediately followed, also in EU law, by the definition given to „enhanced cooperation"[18]. The two definitions are followed by two others belonging to different fields, but with real possibilities of interference, namely: the administrative field („interinstitutional cooperation") and the field of international law („international cooperation"). The following five definitions referring to cooperation belong to the fields of EU law (4) and criminal law (1). In the field of EU law, cooperation

[6] *Ibidem*.

[7] Art. 82 para. (1) TFEU.

[8] A. Fuerea, *Manualul Uniunii Europene*, 6th ed., revised and added, Universul Juridic Publishing House, Bucharest, 2016, p. 336.

[9] I. Neagu, M. Damaschin, *op. cit.*, p. 80.

[10] *Idem*, p.81.

[11] *Ibidem*.

[12] This concerns: „a) some criminal judicial activities [which] are carried out in a foreign country in compliance with the legislation of that country [in which case] (...) they produce legal effects in a criminal trial taking place in our country; (...) d) the case of recognition and enforcement of criminal judgments, criminal ordinances and foreign judicial acts, when these judgments or acts produce effects on the territory of our state; e) the case of recognition and enforcement of Romanian criminal judgments and judicial acts abroad; f) the immunity from jurisdiction of representatives of the diplomatic and consular corps" (according to I. Neagu, M. Damaschin, *op. cit.*, p. 81-83).

[13] Romanian Constitution, republished, art. 11, 20 and 148.

[14] In the specialized literature it is appreciated that „we cannot currently speak of national law without taking into account international public law and, on the other hand, national law in general cannot exist outside the acquis communautaire" (E.E. Ștefan, *News and Perspectives of Public Law*, in Athens Journal of Law, vol. 9, issue 3, July 2023, p. 396).

[15] A.V. Iugan, *Procedură penală. Partea generală*, C.H. Beck Publishing House, Bucharest, 2023, p. 63 (quoted by B. Micu, R. Slăvoiu, A. Zarafiu, *Procedură penală*, 2nd ed., Hamangiu Publishing House, Bucharest, 2024, p. 39).

[16] I.R. Urs, M. Duțu, A. Severin, S. Angheni, S. Neculaescu (coord.), vol. I letters A-C, Universul Juridic Publishing House, Bucharest, 2018.

[17] *Idem*, p. 989, is defined as „EU legislative procedure".

[18] *Ibidem*, known as „the same faculty granted by the TFEU, to those Member States (minimum 9) that wish to deepen the integration of their policies in a certain area falling within the scope of the Union's non-exclusive competences".

covers the following matters: European policies; justice and home affairs; police and judicial cooperation in criminal and police matters. All of these have relevance/incidence on/with the definition given in the field of criminal law under the name established by the TFEU itself, Title V, Chapter 4, Art. 82-86 „judicial cooperation in criminal matters". This latter meaning of cooperation is understood as „a specific way of working together by which states provide each other with mutual assistance in guaranteeing the rule of law and reducing crime, by using legal instruments of international law"[19] to which are added those instruments specific to EU law, to which the authors of the definition also refer.

The Treaty of Lisbon, by the simple fact that it has conferred legal personality on the Union, has generated an unprecedented multiplication of legal rules in areas in which it was hard to believe that the EU would have the competence to issue regulations. „The Treaty of Lisbon has solved some problems regarding the scope of EU competence in criminal law, although there are still difficult problems of interpretation"[20]. More than clarifying is the fact that, from the doctrine, but also from practice, it results, without equivocation, that, currently, „the EU's competence to adopt measures in criminal law is (...) provided for in art. 83 TFEU"[21]. A significant concern has arisen in practice, particularly in the field of criminal procedure, in terms of possible questions in the matter prior to the adoption of the Treaty of Lisbon. By the Treaty of Lisbon, „this issue was addressed by art. 82(2) TFEU"[22] regarding the adoption of directives laying down minimum rules to facilitate the mutual recognition of judgments and judicial decisions, as well as police cooperation in criminal matters with a cross-border dimension.

3. The main „minimum rules" adopted in the field of criminal judicial cooperation

The recognition of criminal judicial acts in relations with the Member States of the EU, but also outside the EU, is nowadays, of unprecedented interest, precisely given the consequences, not only positive, but also negative, that the freedoms of movement generate, in general (persons, services, goods, capital and payments).

The specific measures in the field are adopted by the European Parliament and the Council of the European Union. The two institutions have the possibility, in order to facilitate the mutual recognition of „judgments and judicial decisions, as well as police and judicial cooperation in criminal matters with a cross-border dimension"[23], to establish minimum rules, taking into account the differences existing „between the legal traditions and legal systems of the Member States"[24]. Thus, „the Romanian authorities may recognize final decisions by which courts from other Member States of the EU have applied custodial sentences if certain legal requirements are found to be met"[25]. The same thing happens „in [Romania's] relations with states outside the EU"[26].

The minimum rules that may be the subject of legal acts of the Council and the European Parliament refer to[27]: the mutual admissibility of evidence between Member States; the rights of individuals in criminal proceedings; the rights of victims of crime and other special elements of criminal proceedings that the Council has previously identified by a decision. The adoption of such rules does not „prevent Member States from maintaining or adopting a higher level of protection of individuals"[28].

Chronologically, the first minimum legal rule adopted in this field at EU level is Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings[29]. The Directive, as its name suggests, establishes rules on the right to interpretation and translation in criminal proceedings and in the procedures for the execution of a European arrest warrant. Persons benefit from this right, „from the moment[30] (...) they are informed by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until[31] the final determination of the question

[19] *Idem*, p. 990.

[20] P. Craig, G. de Búrca, *Dreptul Uniunii Europene. Comentarii, jurisprudență și doctrină*, 6th ed., Hamangiu Publishing House, Bucharest, 2017, p. 1106.

[21] *Idem*, p. 1107.

[22] *Idem*, p. 1108.

[23] Art. 82 para. (2) TFEU.

[24] *Ibidem*.

[25] B. Micu, R. Slăvoiu, *op. cit.*, p. 155.

[26] *Idem*, pp. 121-152 (*e.g.*: recognition, in Romania, of foreign custodial sentences).

[27] *Ibidem*.

[28] *Ibidem*.

[29] Adopted by the European Parliament and the Council, on 20 October 2010, published in OJ L 280/26.10.2010.

[30] Our emphasis.

[31] Our emphasis.

whether the persons concerned have committed the criminal offence, including, where appropriate, the determination of the penalty and the outcome of any appeal"[32].

Regarding the interpretation, it must be provided free of charge „to suspected or accused persons who do not speak or understand the language of the criminal proceedings, including during: police questioning; essential meetings between the client and the lawyer; all court hearings and any necessary intermediate hearings"[33].

The translation of essential documents in criminal proceedings concerns: any decision depriving a person of their liberty; any indictment and any court judgment. In the context of procedures for the execution of a European arrest warrant, the persons concerned must be provided with the interpretation and written translation of the warrant.

The quality of interpretation and translation must be, under art. 5 of the Directive, adequate, „sufficient to guarantee the fairness of the proceedings, in particular by ensuring that suspected or accused persons are aware of the case against them and are able to exercise their rights of defence"[34].

The right to information in criminal proceedings is regulated in Directive 2012/13/EU[35]. The Directive applies „from the moment[36] a person is informed by the competent authorities of a Member State, of the fact that they are suspected or accused of having committed a criminal offence, until[37] the conclusion of the proceedings, meaning the final decision on the question whether the suspected or accused person has committed the criminal offence, including, where appropriate, the issuing of the sentence and the resolution of any appeal"[38].

Under the Directive, suspects or accused persons have the right to be informed of: the right to be assisted by a lawyer; the right to free legal advice and the conditions for obtaining such advice; the right to be informed of the charge, namely of the criminal offence of which they are suspected or accused; the right to interpretation and translation and the right to remain silent. Suspected or accused persons who are arrested or detained shall be provided with a *written Letter of Rights*, drawn up in a language which they understand. The Letter, in addition to the information mentioned above, shall also contain information on the following rights, as they apply in accordance with national law[39]: the right of access to the case file; the right to inform consular authorities and a third party; the right of access to emergency medical care and the maximum number of hours or days for which the suspected or accused person may be deprived of liberty before being brought before a judicial authority.

Another minimum legal rule is Directive 2013/48/EU[40] on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, as well as the right for a third person to be informed upon deprivation of liberty and the right to communicate with third persons and with consular authorities while deprived of liberty[41]. According to art. 2 of the Directive, it applies to suspects or accused persons in criminal proceedings from the moment[42] they are informed by the competent authorities of a Member State, by formal notification or otherwise, that they are suspected or accused of having committed a criminal offence, whether or not they are deprived of their liberty, until[43] the conclusion of the proceedings.

The rights enshrined in the Directive are the following: the right of access to a lawyer in criminal proceedings; confidentiality; the right to have a third person informed of the deprivation of liberty; the right to communicate with third persons after deprivation of liberty; the right to communicate with consular authorities; the right to waive any right provided in the Directive and the right to have access to a lawyer in European arrest warrant proceedings.

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[32] Art. 1 para. (2) of Directive 2010/64/EU.

[33] *https://eur-lex.europa.eu/legal-content/RO/LSU/?uri=CELEX:32010L0064*, accessed on 17 October 2024.

[34] Art. 2 para. (8) of Directive 2010/64/EU.

[35] Directive of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, published in OJ L 142/01.06.2012.

[36] Our emphasis.

[37] Our emphasis.

[38] Art. 2 para. (1) of Directive 2012/13/EU.

[39] Under art. 4 para. (1) and (2) of Directive 2012/13/EU.

[40] Adopted by the European Parliament and the Council on 22 October 2013, published in OJ L 294/06.11.2013.

[41] For further details, see R.-M. Popescu, *Directiva 2013/48/UE privind dreptul de acces la un avocat în cadrul procedurilor penale*, in Curierul Judiciar no. 11/2013, pp. 654-658.

[42] Our emphasis.

[43] Our emphasis.

The legislation in this field is completed with the adoption of Directive (EU) 2016/343[44] on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings. The Directive contains minimum rules on certain aspects of the presumption of innocence in criminal proceedings and on the right to be present at trial in criminal proceedings[45]. The beneficiaries of the provisions of this EU legal act are natural persons who are suspects or accused in criminal proceedings, and it applies „at all stages of criminal proceedings, from the moment a person is suspected or accused of having committed a criminal offence or is alleged to have committed it until the decision establishing that that person committed the criminal offence in question, becomes final"[46].

According to the directive, the fundamental rights of an accused or suspected person in criminal proceedings are as follows: the presumption of innocence until proven guilty; the task of proof lies with the criminal prosecution authorities; the right to remain silent and the right not to incriminate oneself, namely the right to be present at one's own trial. There is, however, an exception to this last right, meaning that the trial may take place in the absence of the suspect or accused person, when one of the following conditions is met: „the suspect or accused person was informed in good time of the trial and of the consequences of failure to appear or the person is represented by a lawyer appointed by them or by the State"[47].

The legislative activity of the European Parliament and the Council in the field of judicial cooperation in criminal matters, through minimum rules, has been materialized, including, through the adoption of Directive (EU) 2016/800[48] on procedural safeguards for children who are suspects or accused persons in criminal proceedings and Directive (EU) 2016/1919[49] on free legal aid for suspects and accused persons in criminal proceedings and for persons requested in European arrest warrant proceedings.

The specific features of Directive (EU) 2016/800 lie in the fact that it enshrines, on the one hand, the right of children to have access to a lawyer and, on the other hand, their right to assistance from a lawyer. A child who has not been assisted by a lawyer during court hearings, cannot be sentenced to a custodial sentence (imprisonment). „Deprivation of liberty and, in particular, detention shall be imposed on children only as a measure of last resort and for the shortest appropriate period of time. Children who are detained shall be kept separate from adults, unless it is considered in the best interests of the child not to do so"[50].

Directive (EU) 2016/1919 applies to suspects and accused persons in criminal proceedings who have the right of access to a lawyer under Directive 2013/48/EU and who are deprived of their liberty. They must be assisted by a lawyer in accordance with Union or national law or must or may be present at any investigative or evidence-gathering act, including, at least, identification in a group of persons, confrontations, reconstructions of a crime[51].

If a Member State of the EU considers that a draft directive which is going to establish a minimum legal rule „would prejudice the fundamental aspects of its criminal justice system, it may request referral to the European Council, in which case the ordinary legislative procedure shall be suspended. After debate, in the event of consensus, the European Council, within four months from the suspension, shall refer the draft to the Council, thereby terminating the suspension of the ordinary legislative procedure. Within the same period, in the event of disagreement and if at least nine Member States wish to establish a form of enhanced cooperation on the basis of the draft directive in question, they shall inform the European Parliament, the Council and the Commission accordingly. In that case, authorisation to establish a form of enhanced cooperation (…) shall be deemed to have been granted and the provisions on forms of enhanced cooperation shall apply"[52].

4. EU minimum rules defining criminal offences and sanctions in certain areas of crime

In criminal judicial cooperation, the European Parliament and the Council, acting by means of directives, as rules derived from EU law, in accordance with the ordinary legislative procedure, „may establish minimum

[44] Adopted by the European Parliament and the Council on 9 March 2016, published in OJ L 65/11.03.2016.
[45] Art. 1 of Directive (EU) 2016/343.
[46] Art. 2 of Directive (EU) 2016/343.
[47] Art. 8 para. (2) of Directive (EU) 2016/343.
[48] From11 May 2016, published in OJ L 132/21.05.2016.
[49] From 26 October 2016, published in OJ L 297/04.11.2016.
[50] *https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32016L0800*, accessed on 17 October 2024.
[51] Under art. 2 para. (1) of Directive (EU) 2016/1919.
[52] Art. 82 para. (3) TFEU.

rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such crimes or from the special need to combat them on a common basis"[53]. By enumerating these areas of cross-border crime, the penultimate sentence of art. 83 para. (1) lists the following: terrorism, trafficking in human beings and sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering, corruption; counterfeiting of means of payment; cybercrime and organised crime[54].

Showing true realism, European decision-makers have also introduced, in the final sentence of art. 83, para. (1) TFEU, the provision under which, depending on the development of crime, the Council may adopt a decision identifying other areas of crime[55].

Among the EU legal acts on the definition of offences and sanctions in areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of these offences, attention is drawn to those acts specific to the following segments: combating terrorism; the fight against corruption, cybercrime, fraud and money laundering and the protection of victims.

In the field of combating terrorism, the specific secondary legislation acts are both directives and regulations, namely: Directive (EU) 2016/681[56] 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[57] on combating terrorism; Regulation (EU) 2021/784[58] on the prevention of the dissemination of terrorist content online. These are supplemented by Regulation (EU) 2023/2131[59] amending Regulation (EU) 2018/1727 and Decision 2005/671/JHA on the exchange of digital information in cases of terrorism.

Directive (EU) 2016/681 regulates, on the one hand, the transfer by air carriers of passenger name record (PNR) data of passengers on non-EU flights and, on the other hand, the processing of such data, including their collection, use and retention by Member States and the exchange of such data between EU Member States. PNR data „consists of information on reservations, stored by airlines in their reservation and departure control systems. The information collected includes: travel dates; travel itinerary; ticket information; contact details; the means of payment used and information about luggage"[60].

There are currently three international agreements in force concluded by the EU with three third countries, namely Australia[61] and USA[62] (2012) and UK[63] (2020) which regulate the transfer and processing of PNR data originating from the EU. In addition to the negotiations with Canada[64], the Commission is authorised to negotiate PNR agreements with Mexico and Japan, and in September 2023, it recommended the opening of negotiations with Norway, Iceland and Switzerland.

The role of Directive (EU) 2017/541 is to establish minimum rules on the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as measures to protect, support and assist victims of terrorism.

The Directive exhaustively lists a number of serious crimes, such as attacks against a person's life, as intentional acts which may be qualified as terrorist offences when and to the extent that they are committed with a specific terrorist purpose, namely to seriously intimidate a population, to unlawfully compel a government or an international organisation to do or refrain from doing any act, or to seriously destabilise or destroy the

[53] Art. 83 para. (1) TFEU.

[54] A. Fuerea, *Manualul Uniunii Europene, op. cit.*, p. 337.

[55] *Idem*, p. 338.

[56] Adopted by the European Parliament and the Council on 27 April 2016, published in OJ L 119/04.05.2016.

[57] Adopted by the European Parliament and the Council on 15 March 2017, published in OJ L 88/31.03.2017. The Directive replaced Council Framework dec. 2002/475/JHA and amended Council dec. 2005/671/JHA.

[58] Adopted by the European Parliament and the Council on 29 April 2021, published in OJ L 172/17.05.2021.

[59] Adopted by the European Parliament and the Council on 4 October 2023, published in OJ L 2023/2131/11.10.2023.

[60] *https://eur-lex.europa.eu/legal-content/RO/LSU/?uri=CELEX:32016L0681*, accessed on 22 October 2024.

[61] This is the Agreement between EU and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service, published in OJ L 186/14.07.2012.

[62] The Agreement between USA and EU on the use and transfer of Passenger Name Record (PNR) data to the US Department of Homeland Security, published in OJ L 215/11.08.2012.

[63] The Trade and Cooperation Agreement between EU and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, Part III, published in OJ L 149/30.04.2021.

[64] In this regard, see CJEU Opinion 1/15 to determine whether the PNR agreement envisaged to be concluded with Canada, is compatible with the Treaties and the Charter of Fundamental Rights of the European Union [details in R.-M. Popescu, *(Din) Jurisprudența Curții de Justiție a Uniunii Europene cu privire la noțiunea de „transfer de date cu caracter personal către țări terțe*, in O. Predescu, A. Fuerea, A. Duțu-Buzura (coord.), *Actualitatea și perspectivele interdependențelor dreptului Uniunii Europene cu dreptul intern al statelor membre*, Universul Juridic Publishing House, Bucharest, 2022, pp. 111-112].

fundamental political, constitutional, economic or social structures of a country or an international organisation"[65]. The threat to commit such intentional acts is considered a terrorist offence when it is established on the basis of objective circumstances that the threat was made with such a terrorist purpose. In contrast, acts aimed at, for example, compelling a government to do an act or to refrain from doing any act, without however being included in the exhaustive list of serious crimes, are not considered terrorist offences under this Directive[66].

The Directive includes additional clauses on a number of services that respond to the specific needs of victims of terrorism, such as the right to immediate access to professional support services providing medical and psychological assistance and legal or practical advice[67].

Regulation (EU) 2021/784 aims at ensuring the proper functioning of the digital single market in an open and democratic society, by preventing the misuse of hosting services for terrorist purposes and by contributing to public security across the Union[68]. The Regulation includes rules on reasonable and proportionate due diligence obligations on hosting service providers to prevent the public dissemination of terrorist content through their services and the measures that EU Member States must apply to identify and ensure the prompt removal of terrorist content by hosting service providers, respectively to facilitate cooperation between the competent authorities of the Member States, with hosting service providers and, where appropriate, with Europol[69].

In the field of the fight against corruption, cybercrime, fraud and money laundering, the activity of the Union legislator has resulted in the adoption of the following legal acts: Directive 2013/40/EU[70] on attacks against information systems (Cybercrime Directive); Directive 2014/42/EU[71] on the freezing and confiscation of instrumentalities and proceeds of crime committed in the European Union; Directive 2014/57/EU[72] on criminal sanctions for market abuse (Market Abuse Directive); Directive 2014/62/EU[73] on the protection of the euro and other currencies against counterfeiting by criminal law measures; Directive (EU) 2017/1371[74] on the fight against fraud to the Union's financial interests by criminal law means; Directive (EU) 2018/843[75] amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing; Directive (EU) 2018/1673[76] on combating money laundering by criminal law; Regulation (EU) 2018/1805[77] on the mutual recognition of freezing and confiscation orders and Directive (EU) 2019/713[78] on combating fraud and counterfeiting in relation to non-cash means of payment.

The exchange of information between Member States and EU agencies is also an area that is part of judicial cooperation in criminal matters and that benefits, at EU level, from a series of secondary, derived regulations. A careful analysis of the legislation specific to the area shows that the following aspects are subject to harmonisation at Member State level: the European Investigation Order in criminal matters; the establishment, operation and use of the Schengen Information System (SIS) in the areas of police cooperation and judicial cooperation in criminal matters; the centralised system for determining which Member States hold information on convictions of third-country nationals and stateless persons (ECRIS-TCN), designed to complement the European Criminal Records Information System; the establishment of a framework for interoperability between EU information systems in the areas of police and judicial cooperation, asylum and migration; the exchange of information between law enforcement authorities of other Member States; European Production Orders for

[65] Recital 8 of the preamble to Directive (EU) 2017/541.

[66] *Ibidem*.

[67] According to *https://eur-lex.europa.eu/legal-content/RO/LSU/?uri=CELEX:32017L0541*, accessed on 22 October 2024.

[68] According to recital 1 of the Regulation.

[69] According to *https://eur-lex.europa.eu/legal-content/RO/LSU/?uri=CELEX:32021R0784*, accessed on 22 October 2024.

[70] Adopted by the European Parliament and the Council on 12 August 2013, published in OJ L 218/14.08.2013. The Directive replaces Council Framework dec. 2005/222/JHA.

[71] Adopted by the European Parliament and the Council on 3 April 2014, published in OJ L 127/29.04.2014.

[72] Adopted by the European Parliament and the Council on 16 April 2014, published in OJ L 173/12.06.2014.

[73] Adopted by the European Parliament and the Council on 15 May 2014, published in OJ L 151/21.05.2014. The Directive replaced Framework dec. 2000/383/JHA.

[74] Adopted by the European Parliament and the Council on 5 July 2017, published in OJ L 198/28.07.2017.

[75] Adopted by the European Parliament and the Council on 30 May 2018, published in OJ L 156/19.06.2018. This legal act amends, *inter alia*, Directives 2009/138/EC and 2013/36/EU.

[76] Adopted by the European Parliament and the Council on 23 October 2018, published in OJ L 284/12.11.2018.

[77] Adopted by the European Parliament and the Council on 14 November 2018, published in OJ L 303/28.11.2018.

[78] Adopted by the European Parliament and the Council on 17 April 2019, published in OJ L 123/10.05.2019. This directive replaced Framework dec. 2001/413/JHA.

electronic evidence and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings and the appointment of legal representatives for the purpose of obtaining electronic evidence in criminal proceedings.

If the approximation[79] of the laws, regulations and administrative provisions of the Member States in criminal matters proves necessary to ensure the effective implementation of a Union policy in an area which has been the subject of harmonisation measures, „directives may lay down minimum rules concerning the definition of criminal offences and penalties in the area concerned"[80]. However, a Member State, through its representative in the Council, may consider that such a draft directive affects fundamental aspects of its criminal justice system, in which case the ordinary legislative procedure by which the directive would have been adopted, shall be suspended, after having first been referred to the European Council. After discussion, if there is consensus, the European Council shall, within four months from the suspension, refer the draft to the Council, thereby ending the suspension of the ordinary legislative procedure. In this regard, „The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to encourage and support the action of the Member States in the area of crime prevention, excluding any harmonisation of the laws, regulations and administrative provisions of the Member States"[81].

The references made in the specialized doctrine to international law instruments[82], respectively to European criminal legislations, are numerous and consistent, especially after the adoption of the new Criminal Code. As an example, we highlight the change[83] in the new Criminal Code from „error of fact" to „error", more precisely it is specified that „this approach is today promoted by numerous European legislations, but also by the Statute of the International Criminal Court"[84].

And in the matter of complementary penalties (the content of the complementary penalty of the prohibition of the exercise of certain rights – art. 66 CP), the specialized doctrine, speaking about the sources of inspiration of the Romanian legislator, refers to several EU Member States, with a pronounced democratic vocation, especially taking into account Romania's status as a member state since January 1, 2007, as follows: „the Romanian legislator was inspired by the French Criminal Code, the Spanish Criminal Code, the Belgian Criminal Code, etc."[85]. Also, in this matter of complementary penalties, the German Criminal Code (execution of the complementary penalty of the prohibition of the exercise of certain rights, art. 68 CP) is added.

EU legislation is equally invoked, for example, for the crime of counterfeiting foreign securities, stating that „the criminalization is in accordance with the provisions of art. 3-6 of Council Framework dec. 2000/383/JHA[86] on strengthening protection against counterfeiting by criminal and other sanctions in connection with the introduction of the euro"[87].

The impact of EU legal acts (under art. 288 TFEU) on judicial cooperation in criminal matters is often recognized/invoked by both theoreticians and legal practitioners. In this sense, we consider edifying the statement according to which „the regulations and directives, and from previous regulations, the framework decisions (normative acts still in force according to art. 173 CP are influential in criminal matters"[88].

6. The EU Agency for Criminal Justice Cooperation (Eurojust) and the EPPO – institutions that play a decisive role in the field of judicial cooperation in criminal matters

An important role in ensuring the finality of the objectives regarding judicial cooperation in criminal matters falls, undoubtedly to Eurojust. At the EU level, it has the mission to support and strengthen the coordination and cooperation between national investigation and prosecution authorities in relation to serious

[79] Horizontal legislative harmonisation (between Member States).

[80] Art. 83 para. (2) TFEU.

[81] Art. 84 TFEU.

[82] For example: Statute of the International Criminal Court, adopted in Rome, on 17 July 1998, ratified by our country by Law no. 111/2002.

[83] Art. 51 CP 1968, amended in art. 30 CP, its marginal designation.

[84] M. Hotca (coord.), M. Gorunescu, N. Neagu, R.-F. Geamănu, M. Dobrinoiu, M. Sinescu, R. Slăvoiu, L.-D. Al-Kavadri, C. Nedelcu, A. Hărătău, *Noul Cod penal. Note. Corelații. Explicații*, C.H. Beck Publishing House, Bucharest, 2014, p. 69.

[85] *Idem*, p. 134.

[86] Published in OJ L 329/14.12.2001. The Framework Decision was implicitly repealed by 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 measures and replacing Council Framework dec. 2000/383/JHA, published in OJ L 151/21.05.2014.

[87] M. Hotca (coord.), *op. cit.*, p. 574.

[88] N. Neagu, *Drept penal. Partea generală*, 2nd ed., revised and added, Universul Juridic Publishing House, Bucharest, 2021, p. 46.

forms of crime affecting two or more Member States or requiring prosecution on a common basis, through operations undertaken by the authorities of the Member States and Europol and through information provided by them[89].

Compared to the provisions prior to the entry into force of the Treaty of Lisbon (in 2009), with reference to the mission of Eurojust, given the unprecedented enlargement of the EU to 28 Member States by 2020, there is an obvious strengthening of Eurojust's position within the mechanisms aimed at judicial cooperation in criminal matters, a position materialized, including, in the duties performed. These powers mainly concern the initiation of criminal investigations and the proposal to initiate criminal prosecutions by the competent national authorities, in particular in relation to offences affecting the financial interests of the Union, in addition to assuming the role of coordinator of investigations, but having relevance to the field. Eurojust participates in strengthening judicial cooperation, including by resolving conflicts of jurisdiction and by close cooperation with the European Judicial Network[90].

The powers, structure and functioning of Eurojust are established by means of regulations – as legal acts of the EU – by the European Parliament and the Council, in accordance with the ordinary legislative procedure. The conditions for the involvement of the European Parliament and national parliaments in the evaluation of Eurojust's activities are also established by means of regulations[91].

The Treaty of Lisbon brings into discussion, for regulation, those aspects relating to the financial interests of the EU. Relevant in this respect is art. 86 TFEU, which, in para. (1), specifies that in order 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 an EPPO, starting from Eurojust. The decision was adopted unanimously by the Council, after obtaining the consent of the European Parliament, following a series of technical clarifications, within the same art. 86 TFEU, in the event that unanimity is not achieved[92].

„The concept of EPPO first emerged as a response to the need to strengthen the Eurojust Agency"[93]. This naturally happened, taking into account the qualitative and quantitative developments that the EU has experienced, including from the perspective of the financial interests that inevitably are revolving around its rather generous budget, the projects and programmes financed.

The real causes of the emergence of EPPO are found in the fact that „The Eurojust Agency, operating since the early 2000s, has proven to be effective in cooperation between Member States or between Member States and third countries on the exchange of information in judicial proceedings, but has not been considered sufficient for the protection of the financial interests of the EU"[94].

Under art. 86 para. (2), EPPO shall have the power to investigate, prosecute and bring to justice[95], where appropriate, in cooperation with Europol, the perpetrators and co-perpetrators of offences affecting the financial interests of the Union, in accordance with the rules laid down by means of the Regulation. EPPO shall also exercise, before the competent courts of the Member States, public action in relation to such offences. The following have also been established by means of regulations: the statute of EPPO; the conditions for the exercise of its powers; the applicable procedure; the admissibility of evidence and the judicial review of procedural acts adopted in the exercise of its powers[96].

TFEU, in the spirit of a pronounced balance, taking into account possible negative developments in the exercise of freedoms, reserves the possibility for the European Council to adopt, at the same time or subsequently, an amending decision, with a view to extending the powers of the EPPO, to include combating serious crime with a cross-border dimension, as well as with regard to perpetrators and co-perpetrators of serious crimes affecting several Member States. The decision lies with the European Council, which shall act unanimously, after obtaining the consent of the European Parliament and after consulting the Commission[97].

[89] Art. 85 para. (1) TFEU. See A. Fuerea, *Manualul Uniunii Europene, op. cit.*, p. 338.

[90] A. Fuerea, *Manualul Uniunii Europene, op. cit.*, pp. 338-339.

[91] *Idem*, p. 339.

[92] *Ibidem*.

[93] A. Șandru, M. Morar, D. Herinean, O. Predescu, *Parchetul European. Reglementare. Controverse. Explicații*, Universul Juridic Publishing House, Bucharest, 2021, p. 15.

[94] *Ibidem*.

[95] We notice an involvement in the act of justice at the EU level, towards Eurojust.

[96] A. Fuerea, *Manualul Uniunii Europene, op. cit.*, p. 339.

[97] *Idem*, p. 340.

7. Conclusions

In a world increasingly appreciated as multipolar, from political, economic, social, cultural and, why not, legal perspective, faced with unprecedented challenges, also of multipolar nature, such as wars, international tensions, climate change and the energy crisis, international cooperation, including in criminal matters, between states is essential, with EU playing a particularly important role. In addition, to the multidimensional nature, there are the inevitable challenges generated by digitalization and artificial intelligence, with many positive consequences, but also many possible negative implications. The impact of all of the above on the health of the planet's population often determines, realistically, multiple approaches from the perspective of judicial cooperation in criminal matters, at the European level, and beyond, cooperation that will certainly experience the most consistent developments, some of which are currently quite difficult to imagine, but inevitable if, we have the willingness to scrutinize the future with the power of our mind.

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