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European Law Forum: Prevention • Investigation • Prosecution

Current Challenges for Judicial Cooperation
Défis actuels pour la coopération judiciaire
Aktuelle Herausforderungen für die justizielle Zusammenarbeit

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eucrim also serves as a platform for the Associations for European Criminal Law and the Protection of Financial Interests of the EU – a network of academics and practitioners. The aim of this cooperation is to develop a European criminal law which both respects civil liberties and at the same time protects European citizens and the European institutions effectively. More information about the Associations is available at https://eucrim.eu/associations/.

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Guest Editorial

Dear Readers,

According to the Japanese scholar *Kakuzō Okakura,* "The art of life lies in a constant readjustment to our surroundings." This call for gradual and prudent reform can serve as a guiding principle for judicial cooperation and is particularly well-suited to the role that our agency, Eurojust, plays.

The current system of judicial cooperation and mutual recognition, and Eurojust, are, in the meantime, the grown-up children of the 1999 Tampere Programme. Decades of experience show that, in principle, they are working well.

In matters of cooperation, this is illustrated by the experience gathered in our daily casework, which is regularly compiled in reports on the matter. As regards Eurojust, this success is confirmed by the recent evaluation of our legal basis, Regulation (EU) 2018/1727. The underlying study concluded that Eurojust has been successful in supporting investigations and prosecutions, and that its relevance is increasing.

At the same time, society and the criminal landscape – and with them the challenges and opportunities for law enforcement and prosecution – are evolving. We need to adapt to keep up with these developments. With regard to judicial cooperation, an obvious example would be the introduction of the European Preservation and Production Orders under the e-evidence Regulation. And for Eurojust, the anticipated upcoming proposal for a revision of our Regulation offers the opportunity to update our support to the national authorities.

A clear trend in our casework is that cases increasingly have a link to non-EU Member States. It is therefore essential to strengthen our cooperation with them. Ideally, this would mean increasing the current number of Liaison Prosecutors (twelve) seconded to The Hague. In my experience, Liaison Prosecutors expedite cooperation with our partners outside the EU, as they are able to provide their home authorities with the same support available to their EU counterparts. In order to have more Liaison Prosecutors, we need a simpler legal basis for their secondments than the existing international agreements; these are cumbersome to negotiate and have so far proven impossible to implement.

Furthermore, operational cases reveal a demand for more support and guidance when it comes to "all things online". Access to and use of communication data – especially encrypted data, cryptocurrencies, AI and, presumably in the future, the new instruments for e-evidence mentioned above – present complex legal and technical challenges for prosecutors and judges. A revised Eurojust Regulation could give us a more explicit mandate as a judicial centre of expertise in this domain.

Michael Schmid

Additional ways to enhance our support to national authorities include semi-permanent platforms that enable the temporary secondment of joint investigation team members to Eurojust, as well as taking on a more proactive role in analysing data received from other EU agencies and private partners and providing it to national authorities.

Finally, we need to carefully improve the speed and efficiency of our governance and decision-making. This requires a clear delineation of the competences within Eurojust's different bodies; several competences could be shifted from the College to the Executive Board.

Some changes are necessary, but we should preserve what works well. Today's excellent cooperation with, and the trust of, prosecutors and judges in the Member States is based on Eurojust's judicial independence and the perception that we are an agency run by practitioners for practitioners. A shift in the governance structure that takes powers away from the National Members would jeopardise this, as would binding powers to open proceedings against the will of the national authorities.

Many recent initiatives in the field of criminal justice have focused on law enforcement. I would like to call on all of us, as members of the judiciary, to make sure we maintain our strong standing in order to effectively prosecute criminals and ensure fundamental rights and the rule of law.

With this in mind, I wish you an insightful reading of this issue!

Michael Schmid, President of Eurojust

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Reported by Thomas Wahl (TW), Cornelia Riehle (CR), Dr. Anna Pingen (AP)

Foundations

Rule of Law

WJP 2025 Index Shows Sharp Acceleration of Global Rule-of-Law Decline

On 28 October 2025, the World Justice Project released its latest Rule of Law Index 2025, warning that the global erosion of rule-of-law standards had deepened significantly over the past year. According to the new figures, more than two-thirds of the 143 countries assessed saw their scores fall in 2025, signalling the sharpest annual downturn since the Index was launched in 2009. For the eighth consecutive year, the rule of law has weakened in more countries than it has improved (68% declined vs. 32% improved).

WJP Executive Director *Alejandro Ponce* stated that the modest stabilisation seen in recent editions had reversed, with declines now outnumbering improvements by a wide margin. Countries that registered progress did so only marginally, while those backsliding experienced declines roughly twice as steep, underscoring how quickly institutional checks can be weakened once democratic safeguards come under strain.

➤ *How the Index measures rule of law*

The WJP defines rule of law as a "durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just law, open government, and accessible and impartial justice."

The WJP Index is built on one of the world's most extensive rule-of-law datasets, drawing on over 150,000 household surveys and more than 3400 expert assessments. Country performance is evaluated across 44 indicators grouped into eight globally comparable factors:

- Constraints on government powers;
- Absence of corruption;
- Open government;
- Fundamental rights;
- Order and security;
- Regulatory enforcement;
- Civil justice;
- Criminal justice.

These factors collectively make up the assessment of how power is limited, how corruption is prevented, how transparent and participatory government is, how rights are protected, how security is ensured, and whether civil and criminal justice systems function independently, impartially, and without undue delay.

➤ *Authoritarian tendencies drive the downturn*

The 2025 report attributes much of the global deterioration to the continued spread of authoritarian governance practices. Three areas of government accountability saw widespread weakening:

- Oversight institutions lost independence in a majority of states;
- Parliaments exercised less effective control over executives;
- The judiciary faced growing pressure that reduced its ability to restrain governments.

At the same time, civic space narrowed across most regions. Indicators capturing freedom of expression, assembly, and association as well as broader civic participation declined in over 70% of the countries assessed. The WJP notes that these freedoms are essential for democratic scrutiny and for enabling the public to hold those in power accountable.

➤ *Courts under increasing political pressure*

Judicial independence – described as a critical barrier against executive overreach – also deteriorated. More

* Unless stated otherwise, the news items in the following sections cover the period 16 September – 15 November 2025. Have a look at the eucrim website (https://eucrim.eu), too, where all news items have been published beforehand.

than half of the assessed jurisdictions saw rising political interference in criminal and civil justice, longer delays, and fewer effective mechanisms for resolving disputes outside the courts. Taken together, these trends point to growing fragility in institutions traditionally relied upon to uphold legal certainty and individual rights.

➤ *Rule of Law in the EU: Deterioration with only a handful of exceptions*

Among the top decliners globally from 2024 to 2025 were two European countries: Hungary and Slovakia. Poland stands out as an unusual case: despite remaining among the lower-performing EU Member States, it is simultaneously one of the fastest improvers in 2025, reflecting the first measurable effects of its judicial and institutional reforms after years of decline.

The 2025 WJP Rule of Law Index paints a sobering picture for the European Union. While the EU continues to host several of the world's highest-scoring democracies, the overall trend inside the Union mirrors the global rule-of-law recession: declines are widespread, improvements are rare, and structural weaknesses are deepening. Only five EU Member States registered improvements this year — Ireland (+0.4%), Poland (+0.4%), Estonia (+0.2%), Austria (+0.1%), and Lithuania (+0.1%).

The largest drops occurred not only in states with long-standing rule-of-law concerns but also in countries traditionally perceived as stable. Slovakia (-2.3%) and Hungary (-2.0%) recorded some of the sharpest declines in the region, followed by Slovenia (-0.9%), Greece (-0.8%), and the Netherlands (-0.7%), an unusually large fall for a consistently high-performing Western European state. Spain, Portugal, and Italy also posted notable decreases, while France and Germany experienced smaller but still negative shifts. Bulgaria and Romania continued their downward trajectories, with annual declines of -1.0% and -1.2% respectively.

The scoring results also confirm a persistent structural divide within the Union between high-performing Nordic/Western states and the countries of Central, Eastern, and Southern Europe. Nevertheless, even the EU's strongest performers are not immune. Denmark (0.90), Finland (0.87), Sweden (0.85), Germany and Luxembourg (0.83), Ireland (0.82), and Estonia (0.82) remain global leaders, but several registered small declines — signalling that vulnerabilities are surfacing even within the bloc's traditionally robust rule-of-law systems.

Taken together, the 2025 data show that the EU is not insulated from the worldwide rule-of-law contraction. Declines are broad-based, stretching across regions and political families, and the index captures both entrenched weaknesses and emerging risks. With only a handful of modest improvers, the EU faces a dual challenge: reversing deterioration in long-problematic systems while addressing early signs of erosion in those once considered resilient.

➤ *Rule of Law Report 2025 and the WJP 2025 Index*

A comparison with the European Commission's 2025 Rule of Law Report (→ eucrim 2/2025, 107–108) – which likewise pointed to uneven reform trajectories across Member States; persistent shortcomings regarding judicial independence, anti-corruption frameworks, and c ivic space; and continued concerns over surveillance practices — suggests that the global trends captured by the WJP Index are also reflected within the EU. Both assessments underline that, despite sustained engagement and reform initiatives, rule-of-law vulnerabilities remain a structural challenge for a number of Member States. (AP)

Slovakia under the EU's Rule-of-Law Eye

On 21 November 2025, the European Commission decided to open an infringement procedure against Slovakia for failure to comply with fundamental principles of Union law. By sending a letter of formal notice, the Commission particularly targets Slovakia's recent constitutional amendment which allows Slovak authorities, including courts, to assess whether and to what extent EU law may apply in Slovakia, including rulings of the Court of Justice of the EU. This contravenes the principle of the primacy of EU law, which is a fundamental element of the EU legal order, together with the principles of autonomy, effectiveness, and uniform application of Union law. The Commission also noted that the amendments were adopted without addressing the Commission's concerns that were raised in advance.

Recent legal changes by the Slovak government set off the alarm bells at the EU institutions. It is feared that they have negative consequences for media freedom and civil society, and for Slovakia's ability to fight corruption and the possible misuse of EU funds.

On 10 September 2025, MEPs discussed with Commission and Danish Council Presidency representatives how to address democratic backsliding and threats to EU values in the country. The debate followed two visits of MEPs from the Budgetary Control Committee (CONT) and Civil Liberties Committee (LIBE) in May and June 2025. According to the MEPs' statements after these two visits, the following issues are particularly worrisome in Slovakia:

- Dissolution of the Special Prosecutor's Office, which put the protection of the Union's financial interests at risk. This includes a sharp decrease in early 2025 of the number of indictments for criminal activities formerly

dealt with by the Office. MEPs also disagree with the argumentation that the amendments were made in compensation of extending the jurisdiction of the European Public Prosecutor's Office (EPPO), because the EPPO needs expertise at the national level.

- Other changes to Slovakia's criminal law, including the reduction of sentences for corruption-related offenses or the extension of the statute of limitations for sexual violence.
- Doubts as to whether Slovakia adequately detects and prevents fraud. The CONT delegation was pointed to several scandals involving agricultural or rural development funds. Concrete cases of misuse of EU funds included the financing of "guesthouses" which were never used for their intended purposes or the acquisition of lorries.
- There is a mismatch between the actual project funding and the existential needs of Roma communities.
- Democratic principles are compromised as the current Slovakian government continues the use of the expedited legislative procedures; this marginalises the legislative branch.
- The "Foreign Agents Act" render operations by non-governmental organisations burdensome and their work virtually untenable.
- Slovakia has established a prevailing climate of hostility towards journalists; this includes disinformation, politically motivated investigations and the deployment of strategic lawsuits against public participation (SLAPPs). The EU's Media Freedom Act is jeopardized by restructuring the public broadcaster and political interference into the broadcaster's independence.
- Compliance with the values of Art. 2 TEU is questionable as regards the plans to amend Slovakia's constitution by asserting the supremacy of Slovak law over international law in matters of culture and ethics, including family law.

On 17 January 2024, the European Parliament already adopted a resolution in which it voiced profound concern over several Slovak government's measures that will weaken the rule of law in the country (→eucrim 1/2024, 3). (TW)

Hungary: Rule-of-Law Developments in 2025

This news item continues eucrim's overview of worrying rule-of-law developments in Hungary as far as implications on Union Law, in particular the protection for the EU's financial interests, are concerned. It reports on the developments in 2025 and follows up on the overview in eucrim 4/2024, 262–264.

- 3 February 2025: A team of researchers from the Hungarian Helsinki Committee and Háttér Society present a report in which they assessed the activities and performance of the Hungarian Commissioner for Fundamental Rights (CFO). The project/publication was supported by the Friedrich Naumann Foundation for Freedom – Central Europe. It is based on the fact that, since 2010, the ruling Fidesz-KDNP government has continuously merged specialised human rights protection institutions into the Office of the Commissioner for Fundamental Rights, such as Hungary's equality body and an independent body vested with examining human rights-related complaints against law enforcement. The report finds that this level of concentration of mandates is highly problematic due to the lack of the functional independence of the CFR alone. The research has also demonstrated that the concentration has resulted in weakened human rights protection in affected areas, namely in deficient monitoring of places of detention, a diminished level of protection against discrimination, and weakened protection against police abuse. The authors call for significant institutional, procedural and practical changes to enhance or at least restore the previous level of human rights protection in Hungary.
- 11/17 March 2025: The Hungarian government submits a bill for the 15th amendment to Hungary's Fundamental Law (the country's constitution). The amendment would (1) allow the "suspension" of Hungarian nationality of those with multiple citizenship; (2) constitutionally prohibit legal gender recognition; and (3) assert that children's rights take precedence over all other fundamental rights, except the right to life. The latter would also restrict free assemblies such as the Budapest pride or other similar events that might expose minors to content about LGBTQI identities. Furthermore, the 15th amendment removes the time limit on the Government's ability to declare a state of danger, allowing the Government to maintain it indefinitely without parliamentary approval.
- 13 March 2025: The ECJ declared Hungarian administrative practice to deny the rectification of the personal data relating to the gender identity of a natural person kept in a public register (here: register of asylum seekers) incompatible with EU law. According to the Court, the Hungarian approach violates the right of rectification enshrined in Art. 16 of the GDPR. The judgment (Case C-247/23, *Deldits*) comes amid legislative attempts by the Hungarian government to prevent the possibility of changing the sex of birth.
- 18 March 2025: The Hungarian Parliament tightens restrictions on holding assemblies through legislative changes. The new law requires that public events must comply with "Section 6A" of the Child Protection Act, which was introduced in 2021 in the framework of the "Anti-Paedophilia Act" (→eucrim 2/2021, 72). Section 6A curtailed LGBTQI content and especially its availability to minors. It

is currently subject of infringement proceedings before the ECJ (→Case C-769/22). Through the legislative changes, public events, such as prides, can be prohibited if they depict and promote "divergence from self-identity corresponding to sex at birth, sex change or homosexuality" to people under 18. In addition, the new law provides that attendants of a banned protest risk a fine up to €500 and authorities are now empowered to deploy facial recognition technology against all suspected offenders of petty offences, including those participating in a banned assembly.

■ 19 March 2025: Lead MEPs representing the majority in the European Parliament publish a statement in which they condemn the Hungarian government's move to limit the right of assembly and ban the Budapest Pride (see above). MEPs state that "[t]his attempt to suppress peaceful assembly is an undeniable violation of basic rights enshrined in the Charter of Fundamental Rights of the EU …". They also criticise that the bill was submitted to Hungary's Parliament under the "accelerated procedure" and approved in two days' time, without impact assessment, consultation or debate. The Council is called to stop stalling the Article 7 procedure against Hungary.

■ 25 March – 1 April 2025: The Council of Europe anti-torture Committee (CPT) carries out an *ad hoc* visit to Hungary to examine the treatment and detention conditions of prisoners. The visit comes after an official periodical visit in 2023 and the related publication of the CPT report on 3 December 2024. NGO's point out that, since the last CPT visit to Hungary in 2023, there has been little tangible progress regarding key issues related to detention. Serious concerns remain regarding issues such as prison overcrowding and inhumane detention conditions, the failure to address systemic deficiencies in the prevention, investigation and sanctioning of ill-treatment, as well as the rise in the number of pre-trial detainees and irregularities in pre-trial detention.

■ 21 March 2025: UN Human Rights spokesperson *Liz Throssell* voices concerns over Hungary's new anti-LGBTIQ+ law, in particular as regards the use of surveillance measures and fines for Pride parades.

■ 24 March 2025: In a letter, the Commissioner for Human Rights of the Council of Europe, *Michael O'Flaherty*, asks members of the National Assembly of Hungary to "initiate a reconsideration of the recently-adopted amendment to the law on the right to assembly, and to refrain from adopting the proposed constitutional and other amendments." He makes reference to respective ECtHR case law that is in opposition of the legislative changes in Hungary.

■ 27 March 2025: Ambassadors from 22 European countries voice deep concerns over the legislation passed on 18 March 2025 in Hungary that results in restrictions on the right of peaceful assembly and the freedom of expression.

■ 14 April 2025: The Hungarian Parliament adopts the bill of 11/17 March (see above), i.e., the 15th amendment to the Fundamental Law of Hungary. The law is criticised as being a further attack to LGBTQI rights in Hungary and for tweaking the rules of the state of danger once again to secure the power of the ruling Fidesz-KDNP party. NGOs critically summarise the amending law as follows: "This discriminative amendment not only violates the fundamental rights of LGBTQI people and citizens who support them, but by allowing for the blanket use of facial recognition techniques to identify unknown perpetrators of all petty offences, violates privacy rights of every person in Hungary with the aim to further instil fear among those who voice dissent."

■ 13 May 2025: The ruling Fidesz party submits a bill under the heading "Act on the Transparency of Public Life". The legislation would create the possibility of listing foreign-supported organisations that threaten Hungary's sovereignty. Listed organisations will no longer be allowed to accept foreign funding without authorisation, will not be eligible for personal income tax benefit, and their managers will have to make a declaration of assets and be considered a politically exposed person. The procedure of determining organisations and listing/delisting them involves Hungary's Sovereignty Protection Office and the anti-money laundering body, which is conferred widespread powers to conduct administrative inspections. The legislative proposal also includes several compliance obligations for the credit institutions keeping accounts of listed organisations as well as the managers of the organisations. *Márta Pardavi*, co-chair of the Hungarian Helsinki Committee, criticises that "the law represents a full-on attack on participation in public life and makes clear that Prime Minister Orbán's government sees independent organisations promoting rights, government accountability and democratic values as its enemies".

■ 14/20 May 2025: Over 350 civil society organisations and media outlets point out in a joint statement that the bill on the "Transparency of Public Life" (see above) is nothing but an authoritarian attempt to hold on to their [the ruling party's] power. Its aim is to silence all critical voices and eliminate what remains of Hungarian democracy once and for all." In a briefing paper entitled "Operation Starve and Strangle", several Hungarian civil society organisations explain the details of the bill and how the law would silence watchdogs and shield government abuse. They urge the European Commission to take swift

legal action against the law, seek interim measures from the EU Court of Justice in the ongoing lawsuit related to the 2023 sovereignty protection law, and ensure full compliance with the Court's earlier judgment in the Hungarian LexNGO case.

■ 27 May 2025: The General Affairs Council holds the eighth hearing of Hungary within the Article 7(1) procedure. Triggered by the European Parliament in 2018, the Council has to determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU. The exchanges focus on the functioning of the constitutional system and checks and balances, the fight against corruption, the protection of civic space, academic and media freedom, and the protection of LGBTQI rights in Hungary.

■ 5 June 2025: In the infringement proceedings regarding Hungary's "Anti-Paedophilia Act", actually prohibiting or restricting access to "LGBTQ+ content" (Case C-769/22, see also above), Advocate General (AG) *Tamara Ćapeta* proposes that the ECJ rule that the Commission's action is well founded in relation to all grounds. She concludes that the Hungarian law of 2021 infringes the freedom to provide and receive services as enshrined in primary and secondary EU law, and interferes with a number of fundamental rights enshrined in the EU Charter of Fundamental Rights without justification. Lastly, the AG suggests that the Court should also find a self-standing infringement of Art. 2 TEU, which sets out the European Union's fundamental values.

■ 24 June 2025: In a landmark judgment in the case of *H.Q. and Others v Hungary* (applications nos. 46084/21, 40185/22 and 53952/22), the European Court of Human Rights (ECtHR) calls on Hungary to immediately stop collective expulsions. The judgment condemns the practice of automatic removals from Hungary to Serbia without examination of the applicants' individual circumstances, and their alleged lack of access to the international-protection procedure. For the first time, the ECtHR also assessed the "embassy procedure". This regulation requires asylum seekers to submit a "declaration of intent" and request asylum from Hungary exclusively through the embassies in Kyiv or Belgrade – even if they are already in Hungary or have never been to either of these countries. According to the ECtHR, this procedure was not clearly regulated and lacked adequate safeguards.

■ 28 June 2025: Despite a police ban (based on the new legislation) and warnings by the Hungarian Minister of Justice, the traditional 30th Budapest Pride parade is held. According to the organisers, between 100,000 and 200,000 people are present. They not only demonstrate in support of LGBTQ+ rights, but also for Hungary's democratic future. The police announces that they will not start procedures against participants.

■ 7 July 2025: The Hungarian Helsinki Committee (HHC) releases a briefing paper in which it lists several shortcomings in Hungarian prisons. According to the paper, long-standing systemic deficiencies have remained unaddressed. Central problems remain prison overcrowding and ill treatment, including pest infestations, routine strip searches, excessive use of restraints, and visiting restrictions. The HHC also states that the situation of non-binary German *Maja T.*, who was unlawfully extradited from Germany to Hungary, illuminates the crisis in Hungarian detention conditions.

■ 23 September 2025: In a joint policy brief, the German Bar Association (DAV), Hertie School's Jacques Delors Centre (JDC), and the Max-Planck-Institute for Comparative Public and International Law (MPIL) propose the initiation of a new Article 7 TEU procedure against Hungary based on a breach of solidarity in the Common Foreign and Security Policy. The authors argue that it is high time that Hungary is stripped of its veto powers.

■ 25 September 2025: Media report that the European Commission approved the regrouping of €545 million of Hungary from frozen cohesion funds, but the fund will not be disbursed as Hungary because Hungary continues to not fulfil the horizontal enabling condition on the Charter of Fundamental Rights relating to academic freedom. MEPs worry that in the new envelopes, it could be easier for Hungary to fulfil the criteria and access the money.

■ 21 October 2025: The General Affairs Council holds the ninth hearing of Hungary within the Article 7(1) procedure. Ahead of the meeting, independent Hungarian civil society organisations informed about key developments over the past year in Hungary in areas of particular relevance to the protection of EU values. The civil society organisations note that recent developments were marked by an erosion of independent institutions, the capture of the media landscape, the non-execution of domestic and international court judgments, and increasing restrictions on civil society and fundamental rights. Recent amendments to electoral legislation and appointments to key institutions have aggravated existing structural imbalances rather than rectified them.

■ 22 October 2025: In a brief, the Hungarian Helsinki Committee summarises two cases that illustrate how Hungary's Supreme Court, the *Kúria,* has sought to restrict the freedom of expression of judges and court-affiliated academics who had been critical of internal practices. It is demonstrated how integrity procedures, administrative measures, and disciplinary actions are used to exert

pressure on members of the judiciary who speak out in defence of judicial independence and the rule of law.

■ 25 November 2025: The European Parliament (EP) is calling for tougher action by the Union against Hungary for serious violations of EU values. The Parliament's report on the Article 7 procedure (which the EP triggered in 2018) takes stock of developments across all 12 areas of concern – including the functioning of the electoral system, judicial independence, and corruption. MEPs note that Hungary's situation has continued to deteriorate, partly due to the Council's lack of progress in determining that Hungary is in breach of EU values under the Article 7 procedure. They call for direct action under Article 7(2) TEU as Hungary is no longer a democracy but must be characterised as an electoral autocracy. The EP's list of deficiencies include the non-implementation of CJEU/ECtHR judgments, the link between corruption and electoral integrity (including persistent obstacles faced by Hungary's anti-corruption body), the misuse of EU funds, the government's systematic weakening of Hungary's national judicial council, its politically motivated business practices, its de facto constitutional ban on Pride marches, etc. MEPs also raise concerns over the increasing use of unlabelled AI-generated political content in Hungary ahead of the 2026 elections which pose a threat to the fairness of democratic elections.

■ 5 December 2025: Ahead of a reassessment on the conditions set for Hungary to access EU funds to be carried out by the European Commission and the Council in December 2025, Hungarian civil society organisations provide an analysis on how the Hungarian government has addressed these conditions since November 2024. The civil society organisations conclude that Hungary has not complied with the safeguards that EU law attached to the disbursement of EU funds. No progress has been made at all in many areas. It is found that the Hungarian government's approach suggests that it looks at the conditions set by the EU and Member States as a "ticking-the-box" exercise at best, without a real commitment to restoring the rule of law and respect for human rights in Hungary.

■ 11 December 2025: Budapest Mayor *Gergely Karácsony* receives a formal police notice that recommends to press charges against him for defying a government ban and allowing the Budapest Pride parade held on 28 June in Hungary's capital. European Green Party Co-Chair *Vula Tsetsi* states: "The fact that the police are requesting to indict the Green Mayor of Budapest Gergely Karácsony for supporting Budapest Pride 2025 is a shocking misuse of state power by the Orbán regime."

■ 11 December 2025: The European Commission opens an infringement procedure against Hungary for failure to comply with EU media regulations. The Commission denounces several issues of Hungarian law, including provisions regarding interference in the work of journalists and media outlets in Hungary and the non-adequate judicial protection of journalists.

■ 18 December 2025: In a resolution on the implementation of the rule of law conditionality regime, the European Parliament calls on the Council and Commission to take tougher measures against Hungary to protect the European Union's financial interests. According to the resolution, the systemic and persistent nature of breaches of the rule of law by the Hungarian Government should lead to significantly higher proportions of European Union funding being suspended. The Commission is also called on to urgently reassess and address rule of law backsliding in Hungary, in particular as regards the independence of the judiciary, by proposing additional measures or updating current ones within the conditionality framework. (TW)

Schengen

FRA Publishes Guidance on Fundamental Rights in Entry/Exit System Rollout

With the gradual introduction of the Entry/Exit System (EES), which was rolled out on 12 October 2025 and is scheduled for full implementation by 10 April 2026 (→eucrim 2/2025, 111), the EU Agency for Fundamental Rights (FRA) published two new guides to support Member States in implementing and operating the system in full compliance with fundamental rights.

The two guides are tailored to different operational responsibilities:

■ Guide for managers responsible for the rollout and overall functioning of the EES;

■ Guide for border guards responsible for operating the system at border crossing points.

The FRA guides identify key risks that the EES may pose to the fundamental rights of non-EU nationals at borders and propose practical mitigating measures, e.g.:

■ The right to information;

■ Dignified treatment at borders;

■ Data protection, especially regarding biometric data;

■ Support for people with special needs;

■ Fundamental rights compliance and training.

The EES replaces the traditional passport-stamping system and provides automated data collection and verification for short stays of non-EU nationals entering the EU. FRA closely monitors the respect for fundamental rights in the design and use of large-scale EU IT systems for migration and policing (CR)

Frontex and EU Agencies Test New EU Screening Process

In cooperation with Italian national authorities, the EU Agency for Asylum (EUAA), and Europol, Frontex conducted a two-week pilot exercise on Lampedusa in October 2025 to test the EU's new screening process. This exercise was part of the preparatory measures for implementing the EU Pact on Migration and Asylum.

The pilot assessed the operational use of the Screening Toolbox, a standardized set of tools and procedures designed to support the application of the Screening Regulation. The exercise simulated realistic conditions with 240 irregular arrivals, focusing on optimizing workflows, enhancing inter-agency coordination, and ensuring compliance with legal safeguards. Joint Screening Teams, composed of personnel from Frontex, the EUAA, Europol, and Italian authorities, carried out comprehensive assessments of each individual:

- Health and vulnerability checks;
- Identification;
- Biometric registration;
- Security screening.

All individuals received accessible information on procedural safeguards, the right to asylum, and the specialized support available. Results were recorded individually using dedicated screening forms to guarantee legal accountability and procedural transparency.

Insights from this pilot phase will contribute to the final version of the Screening Toolbox, which is scheduled for distribution to all EU Member States and Schengen-Associated countries in 2026.

Under the Screening Regulation 2024/1356, Member States are required to apply uniform rules ensuring monitoring and proper registration of all irregular migrants and asylum seekers entering the European Union. It will apply from 12 June 2026. (CR)

Artificial Intelligence (AI)

CCBE Issues Guidance on Generative AI Use in Legal Practice

On 2 October 2025, the Council of Bars and Law Societies of Europe (CCBE) published a Guide on the Use of Generative AI by Lawyers. It aims to raise awareness regarding the use of generative AI (GenAI) in legal practice and to highlight the opportunities and risks associated with its use, in particular with regard to applicable professional ethics and regulations.

The guide criticises the lack of a definition of GenAI, which seems to be a subset under general purpose AI systems as defined in Art. 3 of the AI Act. According to the CCBE, the use of GenAI among lawyers is increasing, and it brings tangible advantages: greater efficiency, quicker handling of cases, enhanced research capacity, and reduced costs. However, these benefits must be balanced against the following serious risks:

- Client data retention by AI systems without the user's knowledge, which raises concerns about privacy and data protection;
- Hallucinations, when GenAI produces factually incorrect or illogical outputs, e.g., inventing case law or misattributing quotations;
- Reproduction or amplification of societal biases;
- Lack of transparency around how GenAI systems function;
- Unresolved questions surrounding intellectual property in AI-generated content;
- Heightened cybersecurity vulnerabilities linked to the use of such tools.

More specifically, the guide points out that the use of GenAI might affect several core principles of the legal profession, such as:

- Confidentiality: Lawyers may not input personal, confidential, or client-related information into GenAI tools;
- Professional competence: Outputs generated by AI must be independently verified; lawyers must understand the technology's capabilities and limitations.
- Independence: Awareness of algorithmic bias and AI "sycophancy" is key to avoiding undue influence on professional judgment;
- Transparency: Lawyers should inform clients when they intend to use GenAI tools, affording clients the opportunity to object to its use.

With this guidance, the CCBE underscores that GenAI can support legal practice only if used responsibly – with safeguards that preserve the profession's ethical foundations. (AP)

Legislation

Civil Society Call for Halt to Deregulation Wave

In an open letter, 470 civil society organisations, trade unions and public interest groups call on the European Commission and the EU Member States to stop the policy of deregulation. According to the letter published on 9 September 2025, the EU's deregulation agenda risks undermining safeguards for people and the environment, including protection against surveillance and snooping. The organisations stress that the Commission's new "unprecedented simplification effort" really means "deregulation".

The letter lists several issues on the "simplification" agenda that run the risk of empowering the far right and anti-democratic forces, enabling corruption, increasing inequalities, slowing down the urgently needed climate action and environment protection, and depriving communities and workers of essential protections and services. The signatories warn for example against the reopening of the backbone of the EU digital rulebook – the General Data Protection Regulation; this would mean that sensitive

personal data could be processed without protections. Further attacks on rights-based rules, such as those set out in the AI Act and the planned Digital Package, could undermine the protection of people's digital lives against AI-related harm and surveillance by state and corporate actors. The EU and national lawmakers are called on to promote more protection, not fewer. (TW)

German Federal Bar Criticised Planned Implementation of Sanctions Directive and e-Evidence Package

The German Federal Bar (*Bundesrechtsanwaltskammer, BRAK*) – the umbrella organisation of the 28 German regional Bars – criticised the German government's plans to implement two important EU laws in the field of criminal law and cooperation.

Looking at the draft bill for the implementation of Directive (EU) 2024/1226 on the definition of criminal offences and penalties for violation of Union restrictive measures (→eucrim 1/2024, 14–15), the BRAK criticised the blanket criminalisation of the legal advisory activities of lawyers. This violates the freedom to practise a profession pursuant to Article 12(1) sentence 2 of the German Basic Law. The draft provides for a penalty of three months to five years' imprisonment for the professional practice of "legal advice", whereby the essential wrongfulness of the act only becomes apparent from an overall view of EU secondary law, which can be amended at any time. The BRAK criticises the resulting risk of excessive or even unjustified prosecution of lawyers, with consequences for the protection of confidentiality.

Looking at the implementation plans for the e-evidence package (→eucrim 2/2023, 165–168), the BRAK denounced the restriction of legal remedies. According to the plans, there will be no subsequent review of discretionary decisions by the enforcement authority with regard to the (non-)assertion of grounds for refusal under Union law pursuant to Art. 12 of the e-Evidence Regulation. The BRAK sees this as a threat to fundamental EU rights, such as the right to confidentiality of communications between clients and professionals bound by professional secrecy, and as promoting legal uncertainty.

The implementation of both pieces of EU legislation was already drafted in the previous legislative period, but fell victim to the principle of discontinuity following the premature end of the red-yellow-green coalition. The drafts have now been reintroduced unchanged. The BRAK has thus largely repeated its original criticism. (TW)

Current Infringement Proceedings in Justice and Home Affairs: October – December 2025

In its regular package of infringement decisions, the European Commission takes legal action against Member States that fail to comply with their obligations under EU law. The following overview reports on selected infringement proceedings in the area of justice and home affairs that were opened or continued in October, November and December 2025.

■ 8 October 2025: The Commission issues reasoned opinions to Belgium, Germany, Estonia, Spain and Poland for failure to fully transpose Directive 2023/977 on information exchange between law enforcement authorities (→eucrim 1/2023, 36–39). According to the Commission, the countries have failed to fully transpose the Directive. The sending of a reasoned opinion is the second stage in the three-stage infringement process. If the Member States fail to remedy the infringement within two months, the Commission may bring the matter before the European Court of Justice with a request to impose financial sanctions.

■ 8 October 2025: The Commission decided to send a reasoned opinion to Bulgaria, Ireland, and Spain for failure to correctly transpose into national law the Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. In December 2025, a reasoned opinion followed for Croatia and Malta.

■ 21 November 2025: The Commission calls on Estonia, Hungary and Poland to comply with the Directive on attacks against information systems (Directive 2013/40/EU →eucrim 2/2013, 82). The Directive introduces new rules harmonising criminalisation and penalties for a number of offences directed against information systems. It also calls for for greater international cooperation between judicial and law enforcement authorities, such as the establishment of an operational national point of contact and the use of the existing network of 24/7 contact points. The Commission criticises that Estonia, Hungary and Poland have incorrectly transposed some measures of the Directive, in particular the provisions regarding illegal interception or tools used for committing certain offences established by the Directive.

■ 21 November 2025: By sending a letter of formal notice, the Commission opens infringement proceedings against Bulgaria and Hungary for failing to correctly transpose Directive (EU) 2016/1919 on legal aid in criminal proceedings. The Directive aims to create common minimum standards to ensure that the rights of suspects and accused persons are sufficiently protected across the EU both in domestic criminal proceedings and European Arrest Warrant proceedings (→article by *S. Cras*, eucrim 1/2017, 34–45). According to the Commission, not all persons covered by the Directive have access to legal aid in Bulgaria and Hungary. With regard to Hungary, the Commission also found other deficiencies, such as the failure to grant legal aid without undue delay.

■ 21 November 2025: Sweden receives a reasoned opinion from the Commission for failure to correctly transpose Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive, →article by A. Juszczak and E. Sason, eucrim 2/2017, 80–87). The PIF Directive aims to facilitate enforcement of the Member States' responsibilities towards revenue and expenditure of the EU's budget by harmonising fraud-related criminal offences and sanctions. The Commission finds that Sweden still fails to comply with some aspects of VAT-related statements.

■ 11 December 2025: The Commission acts against Poland for the country's non-compliance with the procedural rights directives. First, the Commission opens an infringement proceeding for Poland's failure to correctly transpose the legal aid Directive (see above). In particular, legal aid is not ensured in early stages of police investigations. This also leads to problems in the second infringement procedure regarding Poland's failure to comply with Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings (→article by S. Cras, eucrim 1/2014, 32–44). In this case, the Commission also identified non-compliance with the Directive's strict rules on the confidentiality of communications between the suspects/accused person with their lawyer, and information rights of holders of parental responsibility in case of the deprivation of liberty of their children. Lastly, the Commission considers that Poland has not correctly transposed the right of access to a lawyer in European arrest warrant proceedings. Against this background, the Commission decides to refer Poland to the European Court of Justice for failure to correctly transpose Directive 2013/48. (TW)

Digital Space Regulation

GC: Designation of Amazon as VLOP Was in Line with Fundamental Rights

On 19 November 2025, the General Court (GC) delivered its judgment in *Amazon EU Sàrl v Commission* (T-367/23), dismissing Amazon's challenge to its designation as a Very Large Online Platform (VLOP) under the Digital Services Act (DSA).

➤ *Facts of the case*

The dispute arose after the Commission's April 2023 decision designating Amazon Store as a VLOP on the basis of Art. 33(4) DSA. Amazon had reported more than 45 million average monthly active recipients in the EU – crossing the quantitative threshold set by Art. 33(1) triggering the enhanced obligations applicable to VLOPs.

Amazon did not dispute that it met the numerical threshold. Instead, it sought annulment of the decision by mounting an indirect challenge to the legality of the DSA's VLOP designation mechanism itself, arguing that Art. 33(1) unlawfully subjects marketplaces to obligations designed for platforms that create "systemic risks", such as social media platforms or search engines. It contended that the VLOP regime infringed several fundamental rights under the EU Charter.

In Amazon's view, marketplace operators do not create the societal risks targeted by the DSA; hence imposing heavy risk-mitigation, transparency, auditing, and data-access obligations is disproportionate. It also argued that forcing platforms to offer non-profiling recommender options and publicly disclose advertising-related information harms its commercial interests and the interests of sellers.

➤ *The General Court's judgment and reasoning*

The GC rejected Amazon's action in its entirety, concluding that none of the invoked Charter rights had been violated and that the Commission's decision was legally sound.

It first held that Amazon's objections to the legality of Art. 33(1) DSA were admissible, because the provision forms the legal basis for the contested VLOP designation. It rejected procedural objections raised by the Council, the Commission, and the BEUC.

The Court found that Art. 33(1) DSA – linking enhanced obligations to a platform's reach – was a proportionate and justified regulatory choice. The legislature enjoys a wide margin of discretion in designing a framework for managing systemic online risks, and the threshold of 45 million users reflects a legitimate concern: platforms with such a reach may amplify illegal content, facilitate harmful practices, and affect consumer protection and public security on an EU-wide scale.

The judges in Luxembourg repeatedly emphasised that marketplaces are not immune from systemic risks. They may disseminate illegal products, host harmful content in reviews or advertisements, and expose vast numbers of consumers to unsafe or misleading practices. Large size alone, the they reasoned, justifies subjecting marketplaces to enhanced due-diligence obligations. With regard to the invoked violation of fundamental Charter rights, the GC concluded:

■ Freedom to conduct a business (Art. 16 CFR): the Court recognised that the VLOP obligations impose heavy compliance burdens but found the interference justified and not manifestly inappropriate. The duties – risk assessments, audits, transparency obligations, data access for researchers, and non-profiling recommender options – are anchored in consumer protection and the mitigation of large-scale societal risks;

■ Right to property (Art. 17 CFR): the GC held that the obligations consti-

tute administrative burdens rather than a deprivation of property. Even if they interfere with the exercise of property rights, the interference would be proportionate for reasons similar to those advanced under Art. 16 CFR;

- Equal treatment (Art. 20 CFR): the GC rejected Amazon's argument that marketplaces should not be treated like social networks or search engines and that smaller platforms or retailers should face the same rules. Marketplaces with very large user bases create risks different in scale and impact from smaller operators and are therefore not comparable. Nor are retailers comparable, since they do not host content from millions of third-party sellers;
- Freedom of expression (Art. 11 CFR): the Court accepted that the obligation to offer non-profiling recommender systems limits a platforms' commercial expression; however, that interference is minimal and justified by consumer-protection objectives. Providers remain free to design recommender systems, and users retain the choice to opt into profiling if they wish;
- Private life and confidentiality (Art. 7 CFR): the Court acknowledged that certain obligations – such as the public advertising repository and disclosure of data to vetted researchers – entail interferences. However, these are carefully circumscribed, exclude personal data of users, operate with safeguards, and pursue legitimate aims including transparency, consumer protection, and risk detection. As a result, the essence of the right is unaffected and the measures are strictly necessary and proportionate.

➤ *Put in focus*

Amazon said it was disappointed by the ruling. A spokesperson stressed that the company supports the EU's goal of online safety and has long taken action against illegal products and content. However, Amazon insists that the Amazon Store does not create systemic risks, arguing that it simply enables the sale of goods and does not spread or amplify information or opinions. The company maintains that the DSA's designation regime was designed for platforms whose business models rely on advertising and the dissemination of content, not for online marketplaces. Amazon may appeal the judgment to the Court of Justice on points of law.

On 3 September 2025, the German fashion retailer Zalando also failed in its lawsuit against the classification as VLOP before the General Court. According to the GC's judgment in this case (T-348/23), the Commission could correctly consider that over 83 million people are actually exposed to Zalando's online platform. The Court also dismissed Zalando's arguments that the rules of the Digital Services Regulation relating to the classification of VLOPs violate the principles of legal certainty, equal treatment and proportionality. Zalando appealed the decision before the Court of Justice (referred as Case C-724/25 P). (AP)

Institutions

Commission

European Commission Presents 2026 Work Programme

On 21 October 2025, the European Commission presented its 2026 Work Programme: "Europe's Independence Moment". It addresses current and emerging challenges, including threats to the EU's security and democratic institutions, geopolitical tensions, economic and industrial risks, and the accelerating impact of climate change.

In 2026, the Commission will maintain its focus on reducing regulatory burdens for individuals, businesses, and public administrations. Furthermore, the Work Programme signals a continued commitment to streamlining EU legislation, with proposals targeting a broad range of sectors:

- Automotive;
- Environment;
- Taxation;
- Food and feed safety;
- Medical devices;
- Energy products.

Ongoing implementation dialogues and "reality checks" are intended to identify additional opportunities to reduce administrative burdens for citizens.

In the field of Justice and Home Affairs, the 2026 Work Programme prioritizes the operationalization of the Pact on Migration and Asylum. Recognizing migrant smuggling as a criminal enterprise, the Commission plans to propose targeted sanctions against smugglers and traffickers, including asset freezes, restrictions on freedom of movement, and measures to deprive them of illicit profits. Special attention will be given to child protection measures – addressing criminal threats both online and offline – alongside new strategies to combat trafficking in human beings.

Frontex is expected to expand its operational support to Member States, including enhanced roles in facilitating returns, with the digitalisation of return procedures advancing the modernization of the Common European Return System.

Future initiatives will also seek to strengthen Europol and reinforce the EU legal framework for combating organised crime.

The Commission stressed that the 2026 work programme will seize the simplification momentum. Further omnibus proposals will be tabled aiming to bring more than €8.6 billion in annual savings for European businesses. Finally, the Commission calls on the EP and the Council to swiftly agree on the new MFF. (CR)

OLAF

Petr Klement New Director-General of OLAF

On 4 November 2025, the European Commission appointed Czech prosecutor *Petr Klement* as new Director-General of OLAF. He succeeds *Ville Itälä* whose seven-year term of office ended on 31 July 2025 (→eucrim 2-2025, 123–124).

Petr Klement is an expert in the protection of financial interests and in cybercrime. He has more than 20 years of experience in investigating and prosecuting serious economic and financial crimes, both at the national and European levels. He is currently European Prosecutor for Czechia at the European Public Prosecutor's Office (EPPO) and has been Deputy European Chief Prosecutor at the EPPO since 29 July 2023. He was a member of the OLAF Supervisory Committee from 2017 to 2020. He was seconded to Eurojust in 2007, to North Kosovo under the EU Rule of Law Mission (EULEX), and to the Instrument for Pre-Accession Assistance (IPA) 2010 project in Tirana, Albania. Mr Klement also held senior positions in the Czech Prosecutor General's Office. The assumption of his office at OLAF will be determined at a later stage. (TW)

General Court Orders Compensation for Damage Caused by OLAF Press Release

spot light

On 1 October 2025, the General Court (GC) ruled in favour of a Greek academic researcher seeking compensation for damage allegedly caused by a 5 May 2020 press release from the European Anti-Fraud Office (OLAF) that unlawfully processed her personal data and conveyed false information about her. The case is referred as T-384/20 RENV (*OC v Commission*).

➤ *Facts of the case and background*

OLAF had opened an investigation into possible irregularities or fraud in an EU-funded research project led by a scientist at a Greek university. In its 5 May 2020 press release (also reported in *eucrim*), OLAF stated it had found evidence of fraud, forgery, and use of forged documents by the lead scientist, recommended that the European Research Council Executive Agency (the managing authority of the funds in the case at issue) recover unduly received funds, and urged national judicial authorities to initiate criminal proceedings (→eucrim 2/2020, 81).

An initial action before the GC under Art. 268 TFEU for non-material damages was dismissed on 4 May 2022 (judgment of 4 May 2022, *OC v Commission* (T-384/20), with the Court finding no unlawful conduct by OLAF.

On 7 March 2024, the Court of Justice (ECJ) set aside that judgment, holding that the GC had erred in law by finding that the applicant was not identified or identifiable in the press release and that the information contained therein did not constitute "personal data". It also held that the GC had distorted the conclusions of OLAF's final report by holding that OLAF had not disclosed inaccurate information in the fifth paragraph of the press release at issue. The case was remitted (Case C-479/22 P, *OC v Commission*).

➤ *Ruling of the General Court*

Upon remittal, the GC affirmed that the three cumulative conditions for non-contractual liability of the EU are fulfilled in the present case, namely: (1) the unlawfulness of the conduct of which the EU institutions are accused, (2) the fact of damage and (3) the existence of a causal link between that conduct and the damage complained of.

The Court identified three unlawful aspects of OLAF's press release:

- Unlawful processing of personal data and breach of purpose limitation under Regulation 2018/1725 that establishes data protection rules for the processing of personal data by EU institutions: Although the name of the applicant was not explicitly mentioned, the press release included information on age, nationality, gender, father's employment at the Greek university, and the amount of the grant that enabled indirect identification. Except for the grant amount, these details were unnecessary for informing the public about OLAF's activities in the fight against fraud. Publishing the press release constituted "further processing of data" for a purpose different from the original data collection and breached Art. 6(c), (d), and (e) of Regulation 2018/1725, including insufficient consideration of the data's identifiability and the potential consequences for the applicant.
- Violation of the presumption of innocence: The wording implied the applicant's guilt before judicial adjudication, notably by characterising her actions as "fraud", exceeding a purely factual presentation of the conclusions of OLAF's final report. Referring to the ECJ's appeal decision, the GC stated inter alia that information given, in that the press release highlighted the number of persons concerned, reinforces the sentiment that the applicant is guilty resulting from the term "fraud" being used.
- Breach of neutrality and impartiality under Art. 10(5) of Regulation No 883/2013 and Art. 41(1) CFR: By using the term "fraud" in the press release, OLAF conducted a classification in law of the facts implying guilt; this represented an infringement of principles enshrined in the right to good administration.

On damage and causation, the Court found the applicant had sufficiently established non-material damage to honour and reputation, prejudice to her professional career, and harm linked to deteriorated health. It confirmed a causal link to OLAF's (serious) breaches and ordered the Commission to pay €50,000.

➤ *Comment*

The rulings in OC are important for EU data protection and the presumption of innocence:

- Personal data and identifiability: Information enabling indirect identification (even without a name) constitutes personal data under Art. 3(1) of Regulation 2018/1725. This reasoning extends to the GDPR and the Law Enforcement Data Protection Directive. Apparent anonymity does not exempt processing from data protection principles; identifiability depends on the totality of factual circumstances (such as personal relationships, job description, workplace, etc).
- Communication by law enforcement: EU and national bodies (including OLAF, Europol, and Eurojust) must exercise care, neutrality, and proportionality when communicating about individual cases. As the GC stressed, wording should be balanced, measured, and essentially factual. As *Joris Deene* put it in her short analysis of the judgment: "Communication services must carefully weigh the necessity and proportionality of each communication. Using sensational details to attract media attention is unlawful and can lead to liability." The ruling also informs the interpretation of Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Art. 4 of that Directive includes an explicit provision on public references to guilt.

It should also be noted that Greek courts deemed the researcher innocent regarding all of OLAF's charges. (TW)

European Public Prosecutor's Office (EPPO)

Largest Container Seizure in the EU

An investigation led by the EPPO in Athens, Greece resulted in the largest container seizure in the EU to date. A total of 2435 shipping containers, primarily containing e-bikes, textiles, and footwear, were seized at the Port of Piraeus. The goods, which are estimated to be worth €250 million, were allegedly fraudulently imported from China into the EU in order to evade customs duties and VAT. Conservatively, the damage to the EU budget from the e-bikes alone is estimated at €25 million in unpaid customs duties and €12.5 million in VAT losses.

The seizure was part of the long-running Calypso investigation targeting several criminal networks. These networks, which are mainly controlled by Chinese nationals, manage the entire supply chain of goods imported from China into the EU, including distribution across Member States and sales to end customers. They evade customs duties and commit large-scale VAT fraud and money laundering, sending the profits back to China. The first raids happened end of June 2025. The EPPO in Greece brought first charges against six individuals involved in the fraudulent scheme on 15 September 2025. (CR)

Europol

Europol and Ecuador Enhance Cooperation

On 24 September 2025, the EU and Ecuador paved the way for further cooperation. The new agreement builds on the 2023 working agreement establishing cooperative relations with the Ministry of the Interior of the Republic of Ecuador. The previous agreement did not allow for the exchange of personal data, but the new agreement enables Europol and the Ecuadorian authorities competent for combating serious crime and terrorism to improve the exchange of information. This includes the processing of personal data, while guaranteeing a high level of fundamental rights protections, including robust personal data protection safeguards. In addition, Ecuador may deploy a liaison officer at Europol and vice versa.

The next step is for the European Parliament to approve the agreement. (CR)

Agreement on New Europol Mandate to Combat Migrant Smuggling and THB

On 25 September 2025, the Danish Council Presidency and the European Parliament reached a provisional agreement on legislation to strengthen Europol's mandate with regard to preventing, detecting, and investigating migrant smuggling and trafficking in human beings (THB).

The proposal for a Regulation, tabled by the European Commission in 2023 (→eucrim 3/2023, 257–258), foresees stronger obligations for the national authorities of EU Member States to share relevant information on migrant smuggling and human trafficking with Europol in a timely manner. It is provided that the national authorities must also transmit such information to other EU Member States whenever it could aid in the prevention, detection, or investigation of these crimes. All exchanges must be made via SIENA, and EU Member States must ensure that their immigration liaison officers are connected to SIENA.

EU Member States may also establish operational task forces for the duration of specific criminal intelligence activities or investigations, and Europol shall facilitate and support their implementation. Furthermore, Member States may request Europol deployment on their territories for operational support, under certain conditions and in accordance with their national laws. This will enable them to make use of the analytical, operational, technical, forensic, and financial support provided by Europol to prevent and combat crimes.

Another key element of the new Regulation is the strengthening of the European Centre Against Migrant Smuggling, which will become a permanent part of Europol's structure:

- When carrying out *operational* tasks, its composition will include specialised liaison officers from each Member State and permanent representatives from Eurojust and Frontex. The Centre's

operational tasks will also include coordinating and supporting cross-border investigations and information exchange – analytical, technical, logistical, or financial assistance that can aid Member States in combating migrant smuggling and human trafficking. The Centre will also identify cases that may require operational task forces, Europol deployments, criminal investigation requests, or cooperation with third countries, and it shall advise the Europol Executive Director accordingly.

■ The Centre's *strategic* tasks will focus on providing strategic analyses, threat assessments, monitoring, and reporting to inform EU-level priorities, coordination, and operational action against migrant smuggling and human trafficking. The Centre will also facilitate cooperation between Union agencies and Member States, supporting operational deployments, investigations, and the setting of annual priorities across the Union.

Lastly, additional personnel and financial resources will be allocated to implement the new tasks for Europol. The next step is for the provisional agreement to be confirmed by the Council and the European Parliament before it can be formally adopted. (CR)

EIB Joins SIENA

On 9 October 2025, the European Investment Bank (EIB) joined the Secure Information Exchange Network Application (SIENA) operated by Europol. With 3500 connections, SIENA is the EU's main channel for swiftly and securely exchanging sensitive and restricted information between European law enforcement authorities, European agencies and bodies (such as Eurojust, the EPPO, and OLAF), and trusted partners outside the EU. By joining the network, the EIB will be able to use the platform to safely and promptly exchange information with the relevant authorities. This accession adds to the working arrangement signed between Europol and the EIB in 2001. (CR)

Europol Excellence Awards 2025 for Germany, Norway, and Portugal

In September 2025, Europol presented its Excellence Awards in Innovation for this year. The awards recognise ingenuity, collaboration, and forward-thinking approaches that are shaping the future of European law enforcement. Each year, law enforcement authorities from EU Member States, the UK, and Schengen Associated Countries are invited to submit nominations. Nominations can be made in three categories: innovative operation, innovative technical solution, and innovative initiative in ethics, diversity and inclusion. The winners are selected by a high-profile jury. The 2025 jury comprised the EU Presidency Trio Chiefs of Police (Poland, Denmark, and Cyprus), the Director-General of DG HOME, *Beate Gminder*, and Europol's Executive Director, *Catherine De Bolle*.

This year's awards went to law enforcement agencies from Germany, Norway, and Portugal.

■ The Award for Innovative Operation went to the Bavarian State Criminal Police Office in Germany, which dismantled KidFlix, one of the world's largest child sexual abuse platforms (→eucrim 1/2025, 28).

■ Norway received the Award for Innovative Technical Solution for the development of AI4Interviews, a project focusing on AI solutions to increase efficiency in areas such as interviews, investigations, crime scene examination, reporting, court transcription, and crisis exercises.

■ Portugal won the Award for Innovation in Ethics, Diversity and Inclusion for a cybercrime prevention project that uses a video game called RAYUELA to promote safe and ethical Internet use among young people.

The Europol Excellence Awards in Innovation were granted for the fifth time. They not only aim to honour individual successful achievements but also to inspire further innovation across the European law enforcement community. For further information and the winners of the previous year, navigate to the dedicated Europol website. (CR)

Eurojust

JHA Council: Framework for Revision of Eurojust Regulation

On 13 October 2025, the justice ministers of the EU Member States held a political debate on the future of Eurojust at the JHA Council meeting. They provided political guidance to the European Commission for a possible revision of the Eurojust Regulation following the evaluation of the Eurojust Regulation that was presented in July 2025 (→eucrim 2/2025, 130–131). According to the ministers, Eurojust should have the means and tools to support concrete investigations. Eurojust should also play a role when it comes to improving judicial cooperation between the EU and third countries. In this context, Eurojust could support the extradition of drug criminals. (TW)

Familiar Face Becomes National Member for Italy

Filippo Spezia returned to Eurojust as the National Member for Italy at the end of September 2025. Mr Spezia has a long-standing history with the agency, having previously served as National Member from 2016 to 2023, and as Vice-President until 2020. From 2008 to 2012, he was Deputy National Member for Italy at Eurojust. Prior to his new mandate, he served as Head Public Prosecutor in Florence. He brings extensive expertise as an anti-Mafia and counter-terrorism prosecutor to his current role. (CR)

European Judicial Network (EJN)

Memorandum of Understanding Signed between EJN and SEEPAG

On 16 October 2025, the EJN and the Southeast European Prosecutors Advi-

sory Group (SEEPAG) signed a Memorandum of Understanding to enhance their cooperation, exchange best practices, and improve modes of communication between the parties.

SEEPAG is an international judicial cooperation mechanism that aims to facilitate significant cross-border crime investigations and cases. It operates under the umbrella of the Southeast European Law Enforcement Centre (SELEC). The countries covered by both SEEPAG and SELEC include the following: the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Hellenic Republic (Greece), Hungary, the Republic of Moldova, Montenegro, the Republic of North Macedonia, Romania, the Republic of Serbia, and the Republic of Türkiye. (CR)

EJN Biennial Report Highlights Judicial Cooperation Achievements and Digital Innovation

In November 2025, the European Judicial Network (EJN) Secretariat published its biennial Report on Activities and Management of the EJN for the period 2023–2024. The reporting period was marked by a significant milestone, as the EJN celebrated its 25th anniversary in 2023 (→eucrim 2/2023, 131).

The report provides a comprehensive overview of the support delivered by EJN Contact Points to national judicial authorities in cross-border judicial cooperation, illustrated through practical case examples. It also underlines the added value of the Network in facilitating judicial cooperation in criminal matters, both within the EU and beyond its borders.

The main focus in 2023 and 2024 was on strengthening cooperation between EU Member States and supporting practitioners in the application of EU legal instruments. Throughout the reporting period, EJN Contact Points facilitated cooperation across a wide range of cases, including the use of key mutual recognition instruments, such as the European Arrest Warrant (EAW), the European Investigation Order (EIO), and other EU judicial cooperation tools.

The scale of the activity of the EJN Contact Points during the reporting period is reflected in the following figures:
- 15,376 cases reported;
- 1513 EAWs and 4612 EIOs facilitated;
- 425 freezing and confiscation orders supported.

In parallel, the EJN further intensified its cooperation with partners outside the EU, in particular in the Western Balkans, Latin America, the Caribbean, and South-East Asia, while also strengthening collaboration with EU institutions and agencies.

A dedicated section of the report highlights the growing importance of the EJN website in the context of the digitalisation of justice. Over the past two years, the EJN Secretariat continued to modernise the website and enhance its online tools to better support judicial authorities in their daily work. Key developments were rolled out during the 2023–2024 reporting period:
- **Fiches Belges:** A redesigned version of the Fiches Belges was launched in March 2023, and new Fiches Belges were prepared for the Western Balkans (Montenegro and Serbia), with additional country fact sheets to follow in 2025.
- **Judicial Atlas:** The redesigned Judicial Atlas, launched in March 2023, now includes information on multiple investigative measures in the context of EIOs and mutual legal assistance.
- *Compendium:* A redesigned Compendium, reflecting the new look and spirit of the EJN website, was launched in March 2023.
- **"My EJN" page for Contact Points:** Introduced in December 2023, this page allows Contact Points to manage their own profile information directly. The page includes digital functionalities to comply with data protection requirements, enabling Contact Points to give, withdraw, or manage consent for the use of their personal data.
- **Cooperation with partners and networks:** A dedicated page on cooperation with non-EU countries and partner networks was implemented in December 2023. This enables the migration of the external domain to the EJN website and ensures compliance with data protection requirements when contact details of judicial authorities and Contact Points outside the EU are provided.
- **Reporting tool:** A revised EJN reporting tool was launched in 2024 offering an enhanced user experience and updating technicalities.
- **EAW Portal:** The EAW Portal was developed further, including the addition of a dedicated section on the jurisprudence of the CJEU on the application of the EAW. Also in 2024, a revised Joint EJN–Eurojust Compilation on Issuing and Executing Authorities in EAW proceedings was published and made available.
- **Judicial training section:** A new dedicated section on judicial training brings together information on training opportunities in judicial cooperation as well as training catalogues from EJN partners.

The report concludes by highlighting the work of the EJN Working Group on the Future of the EJN (established in 2023). The Working Group was tasked with strengthening the EJN's role in judicial cooperation by examining its future development, governance, and cooperation with partners. Its work is structured around five core areas: governance, legislation, EJN–Eurojust cooperation, judicial training, and the overall functioning of the Network. (CR)

Frontex

Frontex to Modernise Europe's Border Surveillance

In mid-October 2025, Frontex released a comprehensive blueprint report designed to improve the connectivity, interoperability, and future readiness

of Europe's border security systems. The new European Border Surveillance Reference Architecture (EBS-RA) aims to help EU Member States share information more effectively, modernise outdated systems, and derive greater value from surveillance capabilities deployed at borders and in pre-frontier areas. The architecture is intended to guide the entire lifecycle of border surveillance systems in order to help authorities to assess operational gaps, plan investments, draft clearer procurement requirements, and ensure that local tools fit into the broader European landscape.

At first, an executive overview and introduction is given, before detailing the legal basis of Frontex operations and the role of EUROSUR, as well as the current state of border surveillance across the EU. Key challenges are highlighted, including evolving threats to the EU's eastern borders, and comparisons are drawn with systems in the United States, Australia, and the United Kingdom.

A significant part of the report is dedicated to introducing the reference architecture itself: examining technological trends, such as AI, 5G/6G and unmanned systems, and presenting a clear vision that is grounded in defined mission needs. The report identifies the main stakeholders and sets out ten user requirements, ranging from improved situational awareness and intelligence sharing to interoperability, cybersecurity, and system resilience. It also evaluates core capabilities and presents detailed architectural building blocks covering sensors, platforms, communication networks, command and control systems, and advanced data processing frameworks that can be mixed and matched to design new solutions or upgrade existing ones.

Two annexes complement the report: one capturing insights from industry and operational experts, including lessons learned from real-world deployments, and another providing a taxonomy of surveillance system components to establish a shared technical vocabulary.

Lastly, the report's recommendations call on stakeholders to adopt and continuously refine the European Border Surveillance Reference Architecture while aligning it with local operational needs. They emphasise sustained stakeholder engagement, ongoing investment in emerging technologies, and regular testing and validation to ensure the architecture remains effective, up to date, and resilient. (CR)

Updated Frontex Handbook on Contingency Planning for Border Management and Return

At the end of September 2025, Frontex released an update of its Handbook on Contingency Planning for Border Management and Return. The handbook offers practical guidance to EU Member States and Schengen-associated countries on how to prepare for and respond to crises at their external borders. It aims to support national authorities and Frontex Liaison Officers by explaining how to assess risks, design contingency plans, and put them into action, in this way helping authorities strengthen coordination and ensure effective border management in emergency situations.

A new feature of the second edition is its expanded scope, with the edition now covering returns as well as border management. Each of the four-phase cycles (Plan & Prepare; Respond & Lead; Test; and Review & Adjust) includes success factors, checklists, considerations, and review questions. The new edition describes a concise pathway from signal to decision: the RACER activation model (Report, Assess, Convene, Execute, Resolve), including triggers, thresholds, and de-escalation. In addition, it provides models and steps for setting a chain of command, assigning resources, and making time-bound decisions. It also provides practical templates such as stakeholder lists, RACI matrices, early-warning indicators, resource tables, communication plans, exercise scripts, and test reports. (CR)

Agency for Fundamental Rights (FRA)

FRA Opens Liaison Office in Brussels

In late August 2025, the European Union Agency for Fundamental Rights (FRA) opened a new liaison office in Brussels to strengthen its dialogue and exchange with key stakeholders.

The office will act as a hub for stakeholder engagement, with the following aims:

- Build closer relationships and partnerships with EU institutions, agencies, Member States' permanent representations in Brussels, European umbrella civil society organisations, and other Brussels-based stakeholders;
- Enhance the agency's responsiveness to stakeholder needs and emerging policy developments;
- Facilitate more effective cooperation on fundamental rights matters;
- Boost the visibility and impact of the agency's work by means of events, briefings, and networking with key EU stakeholders.

The agency's communications adviser, Mr *Friso Roscam Abbing*, was appointed Head of the Liaison Office. Mr Abbing builds on many years of work experience in strategic communications, stakeholder relations, and institutional cooperation on fundamental rights.

FRA's mission is to instil a fundamental rights culture across the EU and to bring the EU Charter of Fundamental Rights to life for everyone in the EU. Founded in 2007, FRA's headquarters are in Vienna. (CR)

FRA Report on Being Intersex in the EU

On 17 September 2025, the EU Agency for Fundamental Rights (FRA) pub-

lished a new report examining the discrimination, harassment, violence, and non-consensual medical interventions experienced by intersex persons in 30 European countries. Building on the outcomes of the LGBTIQ Survey III, which collected the life experiences and views of 1920 respondents identifying as "intersex", the report highlights distinct results and trends compared with the previous survey conducted in 2019. It revealed, among other things:

- Alarming lack of free and fully informed consent before interventions are carried out to modify sex characteristics;
- Four in ten intersex respondents have experienced "conversion' practices", which are interventions designed to modify a person's sexual orientation or gender identity;
- There is a concerning high with regard to hate crimes and hate speech against intersex people, with the proportion of intersex respondents who have experienced harassment increasing from 42%, according to the EU LGBTI Survey II results in 2019, to 74%;
- Intersex individuals face significant barriers to accessing healthcare, with alarming findings of suicidal thoughts and attempts.

According to FRA, the results point out that the EU institutions and EU countries need to act in a number of areas. The key recommendations of the report are:

- Adopt and implement laws that protect intersex persons by putting an end to Intersex Genital Mutilation (IGM) and non-vital "sex normalizing" treatments and surgeries;
- Ban conversion practices;
- Include sexual orientation, gender identity, gender expression, and sex characteristics as aggravating bias motivations in criminal law, and add hate crime/hate speech against intersex people to the list of EU crimes;
- Adopt anti-discrimination legislation that explicitly includes sex characteristics among its protected grounds, extending protection beyond employment to all areas of life;
- Provide that all educational settings provide safe, inclusive, and supportive learning environments free from harassment, bullying, and violence;
- Ensure that intersex persons enjoy equal access to good-quality, affordable, preventive, and curative healthcare;
- Raise public and professional awareness through training across the judiciary and education, healthcare, social services, and law enforcement enviroments, working in partnership with intersex and LGBTIQ organisations to ensure a rights-based and participatory approach.

Overall, the report showed that intersex persons continue to face serious challenges across many areas of life. (CR)

Areas of Crime

Protection of Financial Interests

AG: Spanish Law on Catalan Amnesty Does Not Violate EU's Financial Interests

spot light

According to Advocate General (AG) *Dean Spielmann*, the Spanish amnesty law, which exempts politicians and officials from liability in connection with the unlawful independence referendum in Catalonia on 1 October 2017, and acts carried out in connection with the Catalan independence process, does not conflict with Union law on the protection of the EU's financial interests. However, certain provisions may be incompatible with the right to effective judicial protection.

➤ *Background to the case*

The reference for a preliminary ruling to the ECJ arose in a public action before the Spanish Court of Auditors (*Tribunal de Cuentas*) which deals with the responsibility of persons entrusted with handling public funds. The "Catalan Civil Society Association" and the State Counsel's Office are seeking the defendants' accounting liability for the undue spending of public money on the promotion of independence of Catalonia at an international level from 2011 to 2017. Shortly before the judgment in the case was set to be delivered, the Spanish Parliament adopted on 10 June 2024 "a law on amnesty for institutional, political and social normalisation in Catalonia" ("the LOA"). It includes the extinction of the defendants' liability in respect of public funds arising from the LOA. The referring Spanish Court of Auditors doubts whether the LOA is compatible with Art. 325 TFEU and Regulation 2988/95, which establish the effective and deterrent protection of the EU's financial interests. Additionally, the referring Court raised questions regarding the compatibility of the LOA's impact on ongoing liability proceedings with the principle of effective judicial protection enshrined in the second subparagraph of Art. 19(1) TEU. The case has been referred as C-523/24 (*Sociedad Civil Catalana*).

➤ *AG Spielmann's Opinion with regard to the protection of the EU's financial interests*

In its first question, the Spanish Court of Auditors saw a violation of Art. 325 TFEU, as the LOA expressly excludes "acts that constitute criminal offences affecting the financial interests of the EU" from its scope, but not administrative liabilities, as in the present case. According to the Court, the term "financial interests" must be interpreted broadly to include *potential* harm to the EU budget arising from the illegal referendum, such as a reduction in the revenue which a Member State is required to make available to the EU budget. However, AG Spielmann argues that the use of EU money for the promotion of the Catalan independence could not be proven, and that there is no

general obligation for Member States to set up measures to address any potential impact on the EU's financial interests. The applicability of Art. 325 TFEU rather requires a *direct link* between acts relating to public funds and a reduction in the revenue made available to the EU budget. This link cannot be seen in the present case.

➤ *AG Spielmann's Opinion with regard to the effective judicial protection*

With regard to the compatibility of certain provisions of the LOA with rule of law issues, the referring Court first argued that the LOA provides a time limit according to which any decision relating to the application of the amnesty in a given case must be adopted within a maximum period of two months; this period would not allow the national court to determine whether the assets affected by the acts giving rise to liability in respect of the public funds under examination constitute EU funds. This puts judges under "external pressure" and thus compromises the court's independence, in breach of Art. 19 TEU. According to *AG Spielmann*, such a time limit may indeed constitute an indirect influence, capable of shaping the decisions given by the courts concerned, and thus infringe the requirement of independence arising from the second subparagraph of Art. 19(1) TEU. However, considering the nature of amnesty, this timeframe must be *mandatory* in order to prevent the national court from adopting the investigative measures necessary to determine whether the assets affected by the acts giving rise to liability in respect of the public funds under examination constitute EU funds. It is up to the referring court to determine whether the time limit in the LOA is mandatory or merely "indicative".

A second criticism of the LOA is that it violates the right to be heard, as it does not expressly mention that the parties who brought the action in the public interest are heard before the national court takes its decision exonerating natural or legal persons from liability. *AG Spielmann* sees this as a violation of the second subparagraph of Art. 19 TEU, because it would prevent those parties from engaging in an adversarial debate on the matters of fact and law that are crucial to the outcome of the proceedings.

Conversely, the legal mechanism whereby the national court must close the procedure without having had the opportunity to assess the evidence to determine whether the defendants committed the acts is inherent in any amnesty and thus no violation of the obligation to ensure effective judicial protection occurs.

Thirdly, regarding the impact of the LOA on a request for a preliminary ruling, the AG clarifies that the amnesty law must be interpreted in such a way as to guarantee the effectiveness of the ECJ's response to the reference. Therefore, national provisions cannot require national courts to adopt a decision exempting liability in respect of public funds and to lift the interim measures ordered at an earlier stage of the proceedings within a maximum period of two months, even if the ECJ, hearing a request for a preliminary ruling, has not yet given its decision. (TW)

Next MFF: Criticism is Growing

In a speech to the European Parliament's plenary session on 13 November 2025, Commission President *Ursula von der Leyen* defended the Commission's proposal for the new multiannual financial framework 2028–2034 (→eucrim 2/2025, 136–137). She emphasised that, in the light of a reshaped world order, the EU needs a strong and reliable new budget. She also argued that the proposal responds to MEPs' calls for a more ambitious, more coherent and more flexible EU budget.

Von der Leyen touched upon the main features of the proposal, including the three pillars:

- National and regional partnership plans;
- Competitiveness fund;
- The Global Europe instrument.

She stressed that the EU must now make decisions for the world of 2034. A world that may be fundamentally changed by geopolitics or artificial intelligence. In conclusion, the Commission President pointed out that the next multiannual budget should apply from 2028 and any delay would be at the expense of everyone in Europe.

Meanwhile, criticism of the Commission's proposal is growing among EU institutions.

On 30 October 2025, the EP's four pro-European groups stated in a joint *letter to von der Leyen* that the "one national plan per Member State" approach with the Recovery and Resilience Facility model as a blueprint is unacceptable for the EP. The groups disagree with the National and Regional Partnership Plan (NRPP) Regulation as it stands – with large amounts of unallocated funds. This would lead to fragmentation, de-solidarization and the financing of 27 disparate national plans, the letter says. Concerns are also raised about the approach of decoupling policies, the foreseen weak role of regional and local authorities in cohesion policy, and the lack of a dedicated legislative framework for the Common Agricultural Policy (CAP). The letter also mentions that the Conditionality Regulation and the compliance with EU values must apply to the entire EU budget, including to the future Cohesion and CAP national plans, and not be duplicated in parallel instruments. Rather than creating overlapping tools, the Commission should be more proactive and coherent in the enforcement of the rule-of-law toolbox. Breaches of rule of law should, as a principle, lead to automatic decommitments and MEPs insist that there shall be no reshuffling of EU funds suspended due to rule-of-law breaches.

On 16 October 2025, members of the European Committee of the Regions' COTER Commission and the European Parliament's REGI Committee also raised concerns. They opposed the nationalisation of cohesion policy, with regions side-lined from the design and management of territorial investments without clear allocations for specific categories. They stressed the need for a well-funded cohesion policy that would not trigger competition between, for example, mayors and farmers, as a result of the merging of regional and agriculture resources. (TW)

MEPs Debate Links between Rule-of-Law Report and EU Funding

On occasion of the presentation of the 2025 Rule of Law Report (→ eucrim 2/2025, 107–108) on 23 September 2025, MEPs from the LIBE Committee and the EU Commissioner for Justice *Michael McGrath* discussed ways to strengthen the conditionality in the next multiannual financial framework (MFF). MEPs raised broader structural concerns and demanded stronger links between the recommendations in the Commission's rule of law report and funding under the MFF for the period 2028–2034.

McGrath emphasised the Commission commitment to protecting the EU budget even more strongly than before against rule of law violations, referring to the proposal for "an integrated annual cycle on the rule of law" mentioned in Commission President *Ursula von der Leyen's* 2025 State of the Union Address. He also stressed that the rule-of-law process has already contributed to legislative reforms in many EU Member States, including in areas such as judicial independence, anti-corruption prevention and enforcement, and the strengthening of independent oversight bodies.

LIBE Members also referred to the following trends, which echoed several of the broader themes already identified in the 2025 report:

- Uneven progress in strengthening judicial councils, appointment safeguards, and prosecutorial independence;
- Lagging preventive measures on lobbying, conflicts of interest, and high-level corruption cases;
- Mixed results in media freedom, where alignment with the European Media Freedom Act coexisted with persistent concerns over regulator independence, ownership transparency, and state advertising practices;
- Governance weaknesses in legislative processes;
- Pressure on civil society space;
- Ongoing concerns relating to the use of spyware in several Member States and enlargement countries.

The exchange ultimately highlighted both the value of the Rule of Law Report as a tool for reform and dialogue, and the divergent political views on its weight, follow-up, and potential future linkages to EU funding.

In its annual, non-binding Rule of Law Report, the European Commission summarises developments in the areas of judicial systems, anti-corruption frameworks, media pluralism and institutional issues relating to the separation of powers, after consulting with various stakeholders and institutions. For the first time, the 2025 report, presented on 8 July 2025, pays particular attention to the link between the rule of law and a functioning, competitive internal market. (AP/TW)

EPRS Paper on Implementation of Conditionality Regulation

In August 2025, the European Parliamentary Research Service (EPRS) released a paper that provides an overview of the implementation of Regulation 2020/2092 on the general regime of conditionality for the protection of the Union budget (the "Conditionality Regulation"). The Regulation aims to protect the EU budget from breaches of the rule of law in Member States (→eucrim 3/2020, 174–176). The paper is intended as input for the joint report of the EP's Committees on Budgets (BUDG) and Budgetary Control (CONT) on the implementation of the Conditionality Regulation, which came into effect four years ago. The paper deals with the following:

- Potential legal gaps within the framework of Regulation 2020/2092, and of the challenges and opportunities that arise from its application;
- The possibilities to implement a "smart conditionality mechanism", which could enable EU funds to reach final beneficiaries directly, bypassing a government whose management affects or risks affecting EU financial interests;
- The link between the implementation of the Conditionality Regulation and the European Commission's annual rule of law report.

The EPRS concludes that several challenges exist that may hinder the effective implementation of the Conditionality Regulation. Several improvements are proposed with regard to the conditionality process, the measures to be taken for financial sanctions, and the European Parliament's involvement throughout the process. (TW)

ECA Report for 2024 Financial Year: RRF Has Systemic Weaknesses

On 9 October 2025, the European Court of Auditors (ECA) published its annual reports for the 2024 financial year. The auditors concluded that the EU's accounts for 2024 give a true and fair view, and that revenue transactions were error-free. However, they note issues in connection with customs duties, which are at risk of either not being declared or being declared incorrectly by importers.

For the sixth consecutive year, the auditors issued an "adverse opinion" on EU budget expenditure: the estimated error rate is 3.6% (approximately €6 billion), which is a decrease of 2% compared to 2023. Once again, the error rate was primarily due to incorrect

High-Level Conference on Customs Fraud

From 12 to 13 November 2025, OLAF and the Danish Council Presidency hosted a high-level conference in Copenhagen, in which over 100 senior customs officials discussed ways to tackle customs fraud. This was the fourth edition of annual conferences on customs fraud organised by OLAF with the rotating EU Council Presidencies. This year's conference focused on pressing operational challenges in the fight against customs fraud, such as cross-border export fraud, security and defence. Participants also exchanged views on how OLAF can better support Member States' efforts in detecting, preventing, and investigating fraud. Another key discussion point dealt with the use of new technologies and automation to improve efficiency of fraud detection.

It was stressed that the effective cooperation in the fight against customs fraud is essential to prevent the EU from the deprivation of much-needed revenue and the distortion of the internal market. (TW)

InvestigAid Conference 2025

From 22 to 24 October 2025, investigators, auditors and external aid experts discussed new patterns and risks affecting international development assistance. The annual InvestigAid conference was held in Bucharest, Romania, co-organised by OLAF and the Romanian Agency for International Development (RoAid).

Discussion points included the strengthening of accountability and resilience in public aid programmes, digitalisation and cyber-enabled fraud, new cooperation models between donors and recipient countries, and the strategic planning of development assistance to prevent misuse of funds. Insights were also provided on emerging fraud schemes and oversight reforms. Participants also shared technology-enabled investigation techniques, such as the use of satellite imagery in investigations.

The InvestigAid conference, which has been held since 2021 upon OLAF's initiative, is part of the Office's efforts to strengthen the global alliance against fraud into development aid. (TW)

payments in EU cohesion policy expenditure (2024: 5.7%; 2023: 9.3%). Ineligible projects and costs and failures to comply with public procurement rules continue to be the most common errors.

The auditors also issued a "qualified opinion" on expenditure under the Recovery and Resilience Facility (RRF). The ECA found that of the 28 grant payments paid out to Member States under the RRF in 2024, which had a total value of €59.9 billion, six payments did not comply with the applicable rules and conditions. The ECA repeated its criticism that the RRF regime has design weaknesses in milestones and targets, and there are persistent problems with the reliability of information that Member States included in their management declarations. The auditors emphasised that RRF expenditure models (achievement of pre-defined "milestones" or "targets") should only be used in future if it is ensured that responsibilities are clear, that funding is directly linked to measurable results and that payments can be traced back to actual costs.

The ECA also points to the growing risks posed by rising debt. Appropriate repayment schedules should be implemented in order to safeguard sustainability of future EU budgets and not to restrict the financial scope of EU action and programmes. Looking at the next multiannual financial framework from 2028 onwards, the ECA calls for greater emphasis to be placed on performance measurement, transparency and accountability. (TW)

Tax Evasion

Commission Proposes Strengthened Cooperation between Eurofisc, EPPO and OLAF

spot light

On 14 November 2025, the European Commission proposed amendments to Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax. The amendments will include the EPPO and OLAF into the cooperation scheme of the Regulation. Accordingly, the EPPO and OLAF will get a direct and streamlined communication with the Eurofisc network and, within their respective mandates, a specific, direct and centralised access to the IT systems with relevant VAT information defined under the Regulation.

The amendment to Regulation 904/2010 aims that the EPPO and OLAF can gain a quicker picture of potential fraudulent behaviour, because to date, both bodies can get VAT information exchanged at the Union level under the Regulation only by cooperating bilaterally with national tax authorities. This mechanism proved long and cumbersome and it does not fit with the need of investigating intra-Community VAT fraud that involves several Member States.

In detail, the proposal provides:

- Eurofisc working field coordinators must communicate spontaneously to the EPPO and OLAF any indication of suspected fraud based on the information exchanged between Member States on cross-border VAT fraud, thereby respecting the EPPO's and OLAF's mandates;
- Eurofisc working field coordinators must communicate to the EPPO and OLAF upon request any information relevant during their investigations into VAT fraud;
- The competent authorities of the Member States must grant the EPPO and OLAF centralised access for targeted searches to VAT relevant infor-

mation through the EU IT systems for the purpose of their investigations.

The EPPO and OLAF will get access through (1) the VAT Information Exchange System (VIES) to information on VAT identification numbers and intra-Community transactions; (2) the SURVEILLANCE system to relevant information on VAT exempt importations; and (3) the CESOP system to payment information.

The proposal follows the special legislative procedure: it requires unanimity in the Council for its adoption, following consultation of the European Parliament and the European Economic and Social Committee. (TW)

EP Proposes Reforms to the EU's Tax Architecture

In a resolution of 9 October 2025, the European Parliament (EP) advocated for a simple, predictable and competitive European tax system to boost competitiveness of the EU. At the same time, the fight against tax avoidance and tax evasion should be continued.

The resolution contains a number of proposals to simplify tax compliance and reduce administrative barriers in the internal market, with the aim of reducing costs, particularly for small and medium-sized enterprises. These proposals are to be incorporated into ongoing legislative work, in particular a specific Commission proposal on tax simplification, which is expected in early 2026.

Among other things, the Commission is called upon to set up a European tax data platform (EU Tax Data Hub) to improve the automatic exchange of tax information and reduce administrative burdens. MEPs also want to see tax return procedures for savings and investment accounts simplified in order to stimulate investment in EU capital markets. With regard to the increase of efforts against tax fraud and tax evasion, the MEPs stress the following:

- Improve coordinating efforts, in particular by ensuring timely information exchange and promoting a level playing field;
- Tap the potential of digitalisation and artificial intelligence for the support of VAT fraud detection;
- Reform the EU policy on harmful tax practices with the aim of reducing the complexity of tax regimes;
- Apply a risk-based and appropriate approach to fighting tax fraud and aggressive tax planning;
- Enhance collaboration between the EPPO and Eurofisc to strengthen intelligence-sharing, coordinated enforcement efforts and cross-border investigations.

The resolution also highlighted the impactful role that the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF) have had in identifying and investigating tax fraud and evasion. In this context, it is stressed that effective collaboration between these bodies and with the national tax authorities is needed. (TW)

Information Exchange in Tax Matters with Non-EU Countries Strengthened

On 13 October 2025, the European Commission signed four amending protocols to the agreements between the EU and, respectively, Liechtenstein, Andorra, Monaco and San Marino on the automatic exchange of financial account information to improve international tax compliance. On 22 October 2025, a similar protocol with Switzerland was signed. The EU finance ministers gave green light for the signature on behalf of the EU at the ECOFIN Council meeting on 10 October 2025. After the Council approved the amendments on 20 November 2025, the updated agreements enter into force on 1 January 2026.

The amendments bring existing agreements with the EU neighbouring jurisdictions into line with the revised OECD standard and are intended to contribute to a more effective fight against tax fraud and tax evasion. Since 2015/2016, the EU has entered into agreements with the aforementioned non-EU countries on the mutual automatic exchange of financial account information under the OECD Common Reporting Standard (CRS). The aim is to improve international tax cooperation and transparency. Among other things, the new agreements provide for the exchange of financial account information to be extended to digital currencies and electronic money, with stricter due diligence and reporting requirements. The new protocols also create a framework for enhanced cooperation between the EU and third countries for mutual assistance in the recovery of tax claims, including VAT.

In parallel, the Commission was mandated to open negotiations for an agreement on administrative cooperation in the field of direct taxation with Norway. The aim is to broaden the scope of both reciprocal automatic exchange of information and tax recovery assistance between the EU Member States and Norway. (TW)

List of Non-Cooperative Tax Jurisdictions: No Changes

On 10 October 2025, the ECOFIN Council confirmed the EU list of non-cooperative jurisdictions for tax purposes. It decided that the same 11 jurisdictions as before remain on the list, including, for instance, American Samoa, Fiji, Panama, Russia, Trinidad and Tobago, and Vanuatu (→eucrim 3/2024, 188). The Council regretted that these jurisdictions are not yet fully cooperative on tax matters despite positive developments.

In addition, the Council updated the "state of play document", in which jurisdictions are listed that do not yet comply with international tax standards but have committed to implementing reforms. Vietnam has been removed from the "state of play document" as the country satisfactorily improved reporting standards for multinational companies.

Since 2020, the Council updates the list twice a year. The listing criteria relate to tax transparency, fair taxation,

and measures against base erosion and profit shifting. If a country is blacklisted, EU Member States are required to take efficient defensive measures in non-tax and tax areas (→eucrim 3/2023, 255–256). (TW)

Counterfeiting & Piracy

OLAF and EUIPO Kick Off Efforts to Fight E-commerce Fakes

On 7 and 8 October 2025, OLAF and the European Union Intellectual Property Office (EUIPO) brought together over 100 participants from 57 countries to discuss current trends and best practices in the fight against counterfeits and violations of intellectual property in the e-commerce sector. The event took place at the EUIPO premises in Alicante, Spain and dealt with the following issues:

- Presentation of the recently released statistics on the EU enforcement of intellectual property rights in a new format, replacing the former annual report on the matter;
- Investigation techniques and operational cooperation with regard to counterfeit goods sold online;
- Explanation of the operation of traditional websites and e-commerce platforms, their various business models and logistic flows;
- Methods used by counterfeiters to misuse online sales channels and strategies how to tackle them;
- Compliance processes related to the prevention of online sale of counterfeited products on the part of online platforms and payment providers.

The conference included representatives from major e-commerce platforms such as Amazon, Alibaba, Mercado Libre, Temu and Shopee, as well as from payment provider PayPal and from the World Customs Organization (WCO). OLAF acting Director-General *Salla Saastamoinen* stressed the endangerment of counterfeit e-commerce goods for health and safety. She also pointed out that the conference was designed to go beyond mere knowledge sharing, but to lay the ground for enhanced global joint efforts against online counterfeiting, ensuring that the digital marketplace becomes safer and fairer for citizens.

Another joint activity between the EUIPO and OLAF took place from 1 to 2 July 2025 at the EUIPO premises in Alicante: Over 50 participants, including representatives from customs, police and market surveillance authorities, EU and international bodies as well as stakeholders from the industry discussed current and emerging trends in intellectual property crime related to Fast-Moving Consumer Goods (FMCG). FMCG are everyday products that are in high demand, have a short shelf life, and are sold at a relatively low cost, e.g., home and personal care items, snacks and soft drinks, etc. Due to their economic scale, FMCG are a lucrative target for fraudsters. OLAF Director-General *Ville Itälä* stressed that cooperation across borders and sectors to tackle crimes related to FMCG is essential to stop counterfeit goods at the source and protect European consumers, industry and markets. (TW)

Cybercrime

Council Paves Way to Sign UN Convention against Cybercrime

On 13 October 2025, the JHA Council adopted a decision authorising the European Commission and EU Member States to sign the United Nations Convention against cybercrime. The Convention was adopted by the General Assembly on 24 December 2024 and opened for signature on 25 October 2025.

A key element of the Convention is the harmonisation of criminal conduct of certain cyber-related offences. Participating countries are committed to make certain conduct (e.g. ICT system-related theft or fraud, illegal interception, and interference with electronic data or ICT systems) a criminal offence in their national legislation. The Convention will also give an impetus to criminalise acts related to online child sexual abuse material, grooming as well as the non-consensual dissemination of intimate images. With regard to criminal procedure, the Convention enables the effective collection of electronic evidence. It also fosters international cooperation in investigating and prosecuting the cybercrime offences under the Convention. (TW)

Illegal Employment

Practical Guide on Labour Exploitation

At the beginning of October 2025, the EU Agency for Fundamental Rights (FRA) and the European Labour Authority (ELA) jointly launched a new practical guide designed to support labour inspectors in identifying and addressing labour exploitation in the workplace.

The guide applies to several categories of workers, including EU nationals and citizens of Iceland, Liechtenstein, Norway, and Switzerland in exercising their right to work, and it details services across the EU. It also covers third-country nationals, i.e., workers employed in the EU who do not hold the nationality of an EU Member State or one of the other above-mentioned countries.

A key objective of the guide is to help workers better understand, claim, and effectively enjoy their rights throughout the EU. It focuses on protecting EU citizens working outside their home country as well as non-EU nationals employed in EU Member States. The publication provides labour inspectors with clear and practical tools, e.g.:

- Explanations of the various forms of labour exploitation;
- An overview of foreign workers' rights under EU law;

- Guidance on conducting interviews with workers;
- Indicators for identifying potential cases of exploitation;
- Advice on supporting victims of labour exploitation.

In addition, the guide includes a dedicated training manual for labour inspectors and reports on labour exploitation. (CR)

Terrorism

AG: Spanish Law on Catalan Amnesty Does Not Violate EU Terrorism Law

spot light

According to Advocate General (AG) *Dean Spielmann*, the Spanish law "on amnesty for institutional, political and social normalisation in Catalonia" ("the LOA"), passed in June 2024, which includes an exemption from criminal liability for terrorist offences in the context of the Catalan independence movement is neither in breach of the EU's Directive on combating terrorism nor certain general principles of EU law.

➤ *Background to the case*

The Audiencia Nacional (High Court of Spain) is conducting criminal proceedings against several supporters of the independence movement of Catalonia. They are accused of being a member of a terrorist organisation and of having possessed, stored and manufactured explosives or substances or destructive devices for terrorist purposes. The Audiencia Nacional (the referring Court) doubts whether the LOA is applicable in the present case, as it includes amnesty for acts that may be classified as terrorist acts under Directive 2017/541 on combating terrorism, and thus may undermine the effectiveness of the Directive. In addition, the referring Court raises several questions on the LOA's compatibility with certain general principles of EU law, such as legal certainty, equality before the law and the primacy of EU law. The case has been referred as C-666/24 (*Associació Catalana de Víctimes d'Organitzacions Terroristes (ACVOT)*).

➤ *AG Spielmann's Opinion regarding the compatibility with the EU Directive on combating terrorism*

AG *Spielmann* considers that the question of whether the LOA deprives the Directive on combating terrorism from its full effectiveness "requires several parameters to be taken into account". Ultimately, he finds that none of the parameter lead to the conclusion that the Directive would be compromised by the adoption of the LOA. He argues in detail:

- From the perspective of the EU legal order, amnesty remains a prerogative of the Member States and EU law recognises its existence without harmonising its content or conditions;
- Directive 2017/541 does not contain any provision explicitly prohibiting the use of mechanisms for extinguishing criminal liability, such as amnesty; the ECJ can only assess "external limits" of the justification for a national amnesty measure, i.e., its compatibility with international law, in particular international humanitarian law and case-law standards established by the ECtHR;
- These standards stipulate that amnesty cannot be granted for serious crimes affecting the guarantees on the protection of life and physical integrity under Arts. 2 and 3 ECHR and that it must be framed with considerations of compensation for victims and, where appropriate, reconciliation.

According to the AG, the LOA is within these limits. In particular, its purpose is political and social reconciliation and it expressly excludes amnesty for acts that intentionally and actually caused serious breaches of human rights. The LOA's failure to formally include all offences covered by the Directive in this exception clause does not contradict the objectives of the directive itself.

➤ *AG Spielmann's Opinion regarding the compatibility with general principles of EU law*

The AG found no infringements of the amnesty law with regard to certain general principles of EU law as set out by the referring Court. The AG argues in detail:

- The scope of the exclusion clause provided for in Article 2(c) of the LOA is sufficiently defined, since it refers to Arts. 2 and 3 ECHR – thus, there is no breach of the principle of legal certainty;
- There is also no violation of the principles of legal certainty and legitimate expectations, because the LOA complies with the substantive conditions of the "external limits", i.e., possible prosecution for acts against the life or physical integrity; it is not the ECJ's place to assess the material and temporal scope of the LOA, even though it may be considered very broad and vague;
- The principles of equality before the law and non-discrimination are not infringed, because the different treatment of certain acts is based on a precise political and temporal foundation, which is directly linked to the objective pursued;
- Lastly, the principle of the primacy of EU law and the duty of sincere cooperation do not preclude the Spanish amnesty law because Directive 2017/541 does not prohibit Member States from having recourse to amnesties.

➤ *Put in focus*

The law "on amnesty for institutional, political and social normalisation in Catalonia" is the subject of heated debate in Spain. It was initiated in 2024 by the Socialist Prime Minister *Pedro Sánchez,* who needed the support of Catalan parties to remain in power. The law was deliberately formulated to cover a wide range of acts being exempted from liability, including the organisation of the unofficial referendums in 2014 and 2017, related protests, and administrative decisions, e.g., the handling of public funds. Supporters view the amnesty law as a long-overdue step towards political reconciliation in Spain, whereas critics argued that it is an ad-

mission of moral and political bankruptcy sweeping aside serious claims and allegations.

The legality of the amnesty law has been questioned. In June 2025, the Spanish Constitutional Court, however, ruled that it was (with two exceptions) in line with the Spanish Constitution. Other Spanish courts have taken a different approach, seeking to invalidate the law due its potential incompatibility with Union law. While the Spanish High Court questioned its compatibility with the EU's anti-terrorism directive, the Spanish Court of Auditors raised concerns about its compatibility with the Union law on protecting the EU's financial interests in a separate reference for a preliminary ruling regarding the misuse of EU funds in the context of the independence movement (Case C-523/24 →separate eucrim news on the AG's opinion of the same day, above pp. 201–202).

In both cases, the AG provided arguments to give green light for the Spanish path of reconciliation. However, he emphasised, particularly in his opinion in Case C-523/24, that certain red lines of EU law must be observed. This concerns mainly procedural regulations of the Spanish amnesty law.

The AG's opinions remain controversial, with critics arguing that he has set the limits too strictly and has not taken into account the political context in which certain amnesties are adopted.

It is now up to the ECJ's Grand Chamber to rule on both cases. (TW)

Procedural Law

Data Protection

AG Medina: Competition Authorities May Seize Business Emails without Prior Court Approval

In her Opinion delivered on 23 October 2025, Advocate General *Laila Medina* examined whether EU fundamental rights law requires prior judicial authorisation in the context of national competition authorities seizing business emails containing personal data during antitrust investigations. The cases arose from proceedings in Portugal, where several companies challenged the seizure of internal emails ordered by the Public Prosecutor's Office during investigations into suspected infringements of Arts. 101 and 102 TFEU (Joined Cases C-258/23 (*Imagens Médicas Integradas*), C-259/23 (*Synlabhealth II*), and C-260/23 (*SIBS*)).

AG *Medina* acknowledged that the seizure of business emails may involve the processing of personal data, which constitutes an interference with Art. 8 CFR. However, she stressed that this right is not absolute and may be limited if the conditions of legality, necessity, and proportionality under Art. 52(1) of the Charter are met.

Drawing a clear distinction from the Court's judgment in *Bezirkshauptmannschaft Landeck* (→eucrim 3/2024, 189–191), which concerned unrestricted access to personal data on a private mobile phone in a criminal investigation, AG *Medina* contended that business emails seized at company premises do not, in principle, enable authorities to reconstruct an individual's private life with comparable depth or intensity. She emphasised that, in competition investigations, personal data are collected only incidentally and for the sole purpose of establishing anticompetitive conduct attributable to the undertaking, not the criminal liability of individual employees.

Based on this reasoning, she concluded that, according to Art. 8 CFR, prior judicial authorisation is not required for the seizure of business emails in competition inspections, provided that a strict legal framework governs the authorities' powers and that effective safeguards are in place. These safeguards include a clearly defined inspection decision, data minimisation, purpose limitation, secure storage, transparency vis-à-vis the undertaking, and the availability of comprehensive ex post judicial review. She added that EU law does, however, not preclude Member States to provide for a mechanism for prior authorisation issued by a judicial authority, which includes the Public Prosecutor's Office, in respect of inspections by national competition authorities.

As a result, AG *Medina* proposed the ECJ rule that Arts. 7 and 8 CFR do not preclude national rules permitting competition authorities to seize relevant business emails without prior judicial approval, as long as adequate protections against abuse and arbitrariness are ensured.

Note: This is a supplementary Opinion for the case at issue which was requested from the judges in Luxembourg after the cases were referred to the Grand Chamber. In essence, the AG was asked to reassess the case following the delivery of the ECJ's ruling in *Bezirkshauptmannschaft Landeck* in October 2024 (see above). The first opinion in the case was delivered in June 2024. (AP)

Victim Protection

CJEU Strengthens Protection of Crime Victims by Requiring Compensation for Non-Material Harm

spot light

On 2 October 2025, the ECJ held in Case C-284/24 (*LD*) that EU law precludes national compensation schemes for victims of violent intentional crimes that, as a matter of principle, exclude compensation for pain and suffering. Ruling on a reference from the Irish High Court, the ECJ interpreted Art. 12(2) of Directive 2004/80 as requiring that "fair and appropriate compensation" must be capable of contributing to the reparation of both material and non-material harm, including mental and emotional suffering. While Member States retain discretion and are not obliged to provide full civil-law damages, the judges in Luxem-

bourg clarified that compensation cannot be merely symbolic and must reflect the seriousness of the harm suffered by the victim.

➤ *Facts of the case and legal challenge*

LD, a Spanish national residing in Ireland, was the victim of a violent assault in Dublin in July 2015, which caused serious physical injuries, including permanent partial loss of vision, as well as psychological harm. He applied for compensation under the Irish criminal injuries compensation scheme.

Although the Irish Criminal Injuries Compensation Tribunal acknowledged his injuries and awarded a small sum covering specific out-of-pocket expenses, it did not grant any compensation for pain and suffering. This exclusion was based on Irish rules introduced in 1986, which removed compensation for non-material harm in order to limit the financial burden on the State.

LD challenged this outcome before the Irish High Court, arguing that a compensation scheme excluding compensation for pain and suffering was incompatible with Art. 12(2) of Directive 2004/80/EC, which requires Member States to ensure "fair and appropriate compensation" for victims of violent intentional crime. The High Court referred several questions to the Court of Justice concerning the scope of that obligation.

➤ *The ECJ's reasoning*

The ECJ recalled that Directive 2004/80 establishes a subsidiary compensation scheme, intended to provide support when victims cannot obtain adequate redress from the offender. While Member States enjoy discretion in shaping their schemes and are not required to offer full tort-style compensation, that discretion has limits.

It stressed that compensation cannot be merely symbolic or manifestly inadequate in light of the seriousness of the harm suffered. "Fair and appropriate compensation" must reflect both material and non-material harm, even if only partially.

Interpreting Art. 12(2) in light of the Directive's purpose, the Charter of Fundamental Rights, and the Victims' Rights Directive (Directive 2012/29/EU), the ECJ held that non-material harm forms part of the concept of harm suffered by victims. This includes mental and emotional harm, such as pain and suffering. Excluding such harm, in principle, undermines the requirement that compensation take account of the seriousness of the consequences for the victim.

In conclusion, a national scheme which, as a matter of principle, excludes any compensation for pain and suffering exceeds the discretion allowed under EU law and is incompatible with Art. 12(2) of Directive 2004/80.

➤ *Put in focus*

The case returns to the Irish High Court, which must apply the ECJ's interpretation to the dispute before it. In practice, Ireland will need to reassess whether its compensation scheme for crime victims complies with EU law, particularly as regards the exclusion of non-material harm.

More broadly, the judgment reinforces the fact that Member States must ensure that national compensation schemes for victims of violent crime meaningfully reflect the seriousness of both physical and psychological harm, even where budgetary constraints are invoked. (AP)

ETAF Urges Clarifications Ahead of 2026 Review of Whistleblower Protection Directive

On 17 September 2025, the European Tax Adviser Federation (ETAF) submitted comments to the European Commission ahead of the 2026 evaluation of the Whistleblower Protection Directive, calling for clearer terminology and reduced administrative burdens.

The Directive establishes minimum EU-wide protections for individuals reporting breaches of Union law and requires Member States to ensure that organisations with 50 or more employees set up internal reporting channels (→eucrim 4/2019, 238–239). The ETAF acknowledges that the rules have strengthened ethical behaviour but warns that inconsistent national interpretations undermine legal certainty.

Central to the ETAF's concerns: the uneven transposition of the English term for "legal professional privilege". Germany, for instance, translated it as "attorney-client privilege," limiting the exemption to lawyers and excluding tax advisers, despite their statutory confidentiality obligations. Austria, by contrast, extends the protection to auditors and tax advisers through a purpose-driven approach. The ETAF argues that such divergences have created inconsistency across the EU and calls for a uniform, more accurate term in future – such as "duty of confidentiality of the legal professions."

Another concern is the bureaucratic burden created by the Directive's requirement for internal reporting channels. The ETAF proposes raising the employee threshold from 50 to at least 100, which would ease compliance costs for medium-sized firms. (AP)

Cooperation

European Arrest Warrant

ECJ: EAW Possible When Police Supervision Is Converted into Custodial Sentence

In its judgment of 9 October 2025 in Case C-798/23 (*Abbottly*), the ECJ ruled on the execution of a European Arrest Warrant (EAW) in the case of court decisions rendered *in absentia*. The case at issue specifically concerned the interpretation of the term "trial resulting in the decision" within the meaning of Art. 4a(1) of Framework Decision 2002/584/JHA on the European arrest warrant.

The starting point was a Latvian judgment which provided for three years of police supervision after the serving of a prison sentence. As the defendant failed to comply with the conditions governing the police supervision, a Latvian court converted the remaining unserved term of police supervision (2 years and to days) into a custodial sentence, whereby two days of police supervision were counted as one day of deprivation of liberty. As the person concerned did not appear at the hearing, an EAW was issued against him. The Irish courts initially refused extradition. They classified the conversion as an enforcement measure based on the prison sentence and supervision order already imposed. The mere absence of the person concerned could therefore block enforcement.

However, after the Irish Supreme Court had referred the case for a preliminary ruling, the ECJ ruled that the decision by the Latvian court to impose an additional sentence was an independent decision. It was decisive that the courts of the issuing state exercise their discretion and thus decide on an independent prison sentence based on the violation of the conditions. This constitutes a "decision" within the meaning of Art. 4a(1). Extradition may therefore not be based solely on the absence of the person concerned, unless an exception under the article applies. (TW)

Extradition for Nord Stream Pipeline Blast: EU Courts Have Ruled Differently on German EAWs

In summer/autumn 2025, Italian and Polish courts ruled on European Arrest Warrants (EAWs) issued by Germany for the criminal prosecution of Ukrainian nationals allegedly involved in the attacks on the North Stream Pipeline in the Baltic Sea on 26 September 2022. Given that the acts may have undermined the internal security of the Federal Republic of Germany and due to the particular importance of the case, the investigations in Germany are conducted by the Federal Public Prosecutor General (*Generalbundesanwalt*). The Office of the Federal Prosecutor General has investigated seven Ukrainians. According to their findings, the Ukrainians chartered a yacht and placed explosive devices on the Nord Stream 1 and 2 gas pipelines in the Baltic Sea in September 2022. Several explosions damaged the two pipelines so badly that gas could no longer be transported from Russia to Europe. The Federal Prosecutor General issued arrest warrants for anti-constitutional sabotage committed concurrently with causing an explosion and with destruction of buildings and structures (Sections 88, 305, and 308 of the German Criminal Code).

The courts reached different decisions on the EAWs, which sparked a legal debate on fundamental issues of the EU's extradition scheme under the Framework Decision on the European arrest warrant (FD EAW). These issues include the competence to prosecute potential criminal acts in international waters, the scope of the examination of double criminality requirements, the justification of the act as an anti-war operation, immunity, the political offence exception, and procedural safeguards and fair trial. In detail, the extradition proceedings proceeded as follows:

- In Poland: On 17 October 2025, the Regional Court in Warsaw refused to extradite 46-year-old Ukrainian *Volodymyr Z.* and lifted his pre-trial detention. The court justified its decision primarily on the following grounds: Firstly, any action taken would have been within the framework of a just defensive war on behalf of Ukraine, meaning the suspect did not commit a crime under Polish law, and therefore double criminality was not established (Article 607r §1(1) of the Polish Code of Criminal Procedure). Secondly, the German state does not have jurisdiction to prosecute any natural person for causing the explosion of the pipelines; jurisdiction would lie with an international tribunal adjudicating armed conflicts at sea, or with an ad hoc tribunal appointed by the UN to judge the incident in question. Polish Prime Minister *Donald Tusk* stated that "the case is closed now" and that it was not in his country's interest to prosecute or extradite the man.
- In Italy: On 15 October 2025, the Italian Supreme Court overturned a decision by the Bologna Court of Appeal that had authorised the surrender of *Serhij K.*, suspected by German investigators to be mastermind behind the attack. The Italian Supreme Court objected to the Bologna court's reclassification of the offence in the German EAW, which aimed to apply tighter procedural rules for terrorists in the extradition proceedings (for an in-depth analysis of the Supreme Court's decision →N. Canestrini, "(Non-)Extradition in the Nord Stream Case and the Limits of Executing State Authority in Mandatory European Arrest Warrant Proceedings", in this issue, p. 224). After remittal of the case, the Bologna Court of Appeal reordered K.'s surrender to Germany on 23 October 2025. In this second ruling, the Bologna court addressed the procedural defect that had invalidated the previous proceedings, but did not substantively revisit key refusal grounds put forward by the defence, such as functional immunity, *ne bis in idem,* and risks of violations of Art. 3 ECHR. A second appeal against this decision was dismissed by the Italian Supreme Court on 19 November 2025, which confirmed the surrender order. K was effectively surrendered on 27 November 2025.
- In Germany: On 15 January 2026, the Federal Court of Justice (FCJ, *Bundesgerichtshof*) dismissed a complaint against the order for arrest filed by *Serhij K.,* following his extradition from Italy. The FCJ affirmed both the strong suspicion of a criminal offence falling within the Federal Public Prosecutor General's jurisdiction and the risk of flight as reasons for arrest. It rejected the defendant's arguments of immunity and of "combatant privilege" for justification of the act. Lastly, the FCJ stated that Germany has territori-

al jurisdiction because the result of the offence – the pipelines being rendered inoperable – also occurred on German territory, where the pipelines ended.

In the Nord Stream extradition case complex, courts in different EU countries approached the legal grounds for refusing the European Arrest Warrants differently. This is particularly interesting in cases such as Nord Stream that have political and military backgrounds and raise legal questions regarding the relationship between the EAW and international public law. (TW)

e-Evidence

EPOC and EPOC-PR Infographics Available

To explain how to use the new European Production Order Certificate (EPOC) and the European Preservation Order Certificate (EPOC-PR) more clearly, the EJN has created two infographics. The Certificates will be the main means that will allow law enforcement in one EU Member State to request electronic data from a service provider in another under the EU's new legal framework on e-evidence in criminal matters (→eucrim 2/2023, 165–168).

The first infographic provides information on the strategic and operational support that Eurojust and the EJN can offer legal practitioners when using the certificates. Strategic support includes expert meetings, cooperation and networking opportunities, and facilitators as well as support via co-funded EU projects that can be used to develop products and practical tools for filling in the forms. On the operational side, Eurojust can advise on the legal framework and coordinate judicial cooperation. It can also facilitate the issuing and execution of EPOC and EPOC-PR certificates.

The second infographic outlines the practical support offered by Eurojust, the SIRIUS project, the EJN, and the European Judicial Cybercrime Network (EJCN) in the use of the EPOC and EPOC-PR. It briefly explains the different mandates of each actor and provides a detailed overview of the options available to support legal practitioners in the context of e-evidence gathering. While Eurojust, the EJN, and the EJCN offer different forms of strategic and operational support, the EU-funded SIRIUS project develops products and practical tools to improve the cross-border access of judicial and law enforcement authorities to e-evidence held by service providers. Such products include service provider-specific guidelines, best practice guidelines on cross-border access to e-evidence, legal and policy reviews, and annual reports on the status of e-evidence. Other tools include EPOC/EPOC-PR guidelines, a compilation of case studies on their application, a repository of competent authorities under existing legal frameworks on e-evidence, a database on conflicts of laws on e-evidence, and a restricted platform.

The infographics will be part of a specific EJN website dedicated to electronic evidence. (CR)

Council of Europe

Reported by Thomas Wahl (TW) and Dr. Anna Pingen (AP)

Foundations

Human Rights Issues

75 Years of the European Convention on Human Rights

spot light

75 years ago, on 4 November 1950, the European Convention on Human Rights (ECHR) was signed in Rome by 12 Council of Europe member states. This was a historic step towards a Europe that protects the fundamental rights of every individual and guarantees basic democratic freedoms. The 75th anniversary was celebrated with a solemn ceremony at the European Court of Human Rights (ECHR) in Strasbourg on 4 November 2025. Since its entry into force in 1953, the Convention has been at the heart of European human rights protection in the (current) 46 member states of the Council of Europe.

In his speech, ECtHR President *Mattias Guyomar* stressed that the Convention is a fragile and precious asset that needs a commitment. He concluded that it is a renewed promise to live up to the legacy given to us 75 years ago by the authors of the Convention, and it is our responsibility to keep alive "the conscience that sounds the alarm".

Other speakers at the ceremony included *Alain Berset*, Secretary General of the Council of Europe, *Myriam Spiteri Debono*, President of the Republic of Malta (which holds the presidency of the Committee of Ministers), and *Theodoros Rousopoulos*, President of the Parliamentary Assembly of the Council of Europe. A video of the ceremony is made available at a dedicated website to the 75th anniversary of the Council of Europe.

This website also includes information about other events and conferences held in 2025 to celebrate the 75th anniversary of the Convention, as well as useful background information on the ECHR as a "living instrument". (TW)

Artificial Intelligence (AI)

CoE Parliamentary Assembly Warns against Unregulated Use of AI in Migration Management

On 3 October 2025, the Parliamentary Assembly of the Council of Europe adopted Resolution 2628 (2025) on the use of artificial intelligence in migration, asylum, and border management. While acknowledging that AI can improve efficiency, search and rescue operations, and access to information for migrants and refugees, the Assembly stressed that technological innovation must not come at the expense of fundamental rights.

The Assembly cautioned that AI systems, if poorly designed or insufficiently regulated, could reinforce discrimination, undermine privacy, and weaken asylum protections. It underlined that AI should support, but never replace, human decision-making in migration and asylum procedures and called for strong transparency, accountability, and human oversight.

The resolution opposes the use of automated credibility assessments, emotion recognition, and nationality-based risk profiling, and emphasises strict data protection safeguards, particularly for biometric data. It urges Member States to carry out human rights impact assessments before deploying AI tools and to align their practices with international human rights standards, including the ECHR and the Refugee Convention. Lastly, the Resolution calls for awareness raising and capacity building among all public and private stakeholders to support the required measures. (AP)

Institutions

European Committee on Crime Problems (CDPC)

88th CDPC Plenary Meeting: Main Decisions

This news item continues the reporting of key decisions taken by the European Committee on Crime Problems (CDPC). The CDPC oversees and coordinates the Council of Europe's activities in the field of crime prevention and crime control. The CDPC meets twice a year in plenary at the headquarters of the Council of Europe in Strasbourg (France). The 88th plenary meeting was held from 25 to 27 November 2025. The main decisions taken include:

- Establishment of two new expert committees: (1) The PC-FIMI is mandated to carry out a feasibility study on the possible elaboration of a Council of Europe legal instrument on foreign information manipulation and interference (FIMI); it will explore challenges in relation to election interference, media concentration and capture, media freedom and democratic and information literacy, organised crime, cybercrime, corruption, and the malign use of AI and other technologies. (2) The PC-TM is responsible for drafting a recommendation on deterring and fighting the smuggling of migrants and for supporting the implementation of the Council of Europe's Action Plan on Fostering International Cooperation and Investigative Strategies in Combating the Smuggling of Migrants.
- Approval of the draft revised Recommendation Rec(89)12 on education in prison as proposed by the PC-CP; the CDPC took also note of the ongoing work on the review of Recommendation CM/Rec(2012)12 concerning foreign prisoners and the Council of Europe Probation Rules.
- Approval of the Recommendation on Accountability for Technology-facilitated Violence against Women and Girls.
- Examination and approval of the draft Additional Protocol supplementing the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, which is to be adopted by the Committee of Ministers in 2026.

Furthermore, the CDPC encouraged Council of Europe member states, which have not done so far, to contribute to the mapping study on criminal liability related to the use of artificial intelligence, which is conducted by the two legal experts *Sabine Gless* and *Alfonso Peralta*. The CDPC also welcomed that the CoE's Conventions on Medicrime, trafficking in human organs, and protection of cultural property have enjoyed growing membership. A focus of continuous work will be laid on hate crime, restorative justice, and child-friendly justice.

Lastly, the participants held elections for the positions of President, Vice-President and Bureau Members of the Committee. *Lorenzo Salazar* (Italy) succeeds *Fritz Zeder* (Austria) as President. Ms *Garonne Bezjak* (Germany) was elected Vice-President. Their terms of office will begin on 1 January 2026 and last for two years. (TW)

Consultative Council of European Judges (CCJE)

CCJE: Opinion on the Importance of Judicial Well-Being

During its plenary session, held from 12 to 14 November 2025 in Strasbourg (France), the Consultative Council of European Judges (CCJE) adopted Opinion No. 28 (2025) on the importance of judicial well-being for the delivery of justice. The Opinion examines how the well-being of judges may be protected and promoted to

enhance the quality and efficiency of their work and support judicial independence and impartiality.

It provides for a conceptual framework, lists the main challenges of judicial work, describes initiatives to protect judicial well-being, and concludes with several recommendations on necessary initiatives, measures and actions. These include, for instance, a robust governance framework in the hands of the judiciary that recognises the well-being of judges as an essential prerequisite to the rule of law; the prevention of extreme and unnecessary judicial stress; the set-up of monitoring systems in all courts to evaluate threats to the physical, psychological and digital safety and security of judges; and the establishment of positive leadership practices and effective channels of communication. (TW)

Consultative Council of European Public Prosecutors (CCPE)

CCPE: Opinion on Diversity and Inclusivity and Study on AI

At its plenary meeting on 16/17 October 2025, the Consultative Council of European Prosecutors (CCPE) took two major decisions:

(1) It adopted Opinion No. 20 (2025) on diversity and inclusivity within prosecution services. The Opinion aims to encourage an open approach that encompasses diversity and inclusivity for prosecutors and staff members working for prosecutors. It highlights the practical implications for human resources policies, and illustrates the benefits of diversity/inclusivity for the activities of prosecution services in relation to their effectiveness.

According to the Opinion, diversity/inclusivity have both internal and external effects. Internally, more diversity and inclusivity among prosecutors could contribute to the appraisal of situations as well as circumstances involving parties with diverse backgrounds. From an external perspective, diversity/inclusivity among prosecutors could contribute to strengthening trust in the prosecutorial system by better reflecting the different groups in society.

The Opinion makes a number of recommendations on how diversity and inclusivity could be enhanced in prosecution services. This includes the further development of equality duties, the enhancement of relevant organisational infrastructures, and the establishment of codes of conduct, or codes of ethics, or internal policies or guidelines, which include appropriate, ambitious commitments to diversity and inclusivity in employment as well as in service provision by prosecution services. In addition, recommendations refer to pro-active actions in integrating the promotion of diversity and inclusivity in educational and training systems, as well as the awareness raising of career opportunities in the prosecution services.

(2) The plenary meeting adopted a thematic study on the use of artificial intelligence (AI) in the work of prosecution services. The study reacts to recent AI developments in the member states, the EU, and the Council of Europe, and was particularly triggered by the recent CoE Framework Convention on artificial intelligence, which aims that activities within the lifecycle of artificial intelligence systems are fully consistent with human rights, democracy and the rule of law, while being conducive to technological progress and innovation (→eucrim 3/2024, 194–196).

The CCPE's study analyses responses of CoE member states to a questionnaire on relevant national legislation, rules, guidelines and procedures, the circumstances where prosecutors use AI in their work, the design, operation and management of AI by prosecutors and other aspects of the use of AI. It concludes that, despite the regulatory momentum provided by the CoE's Framework Convention on Artificial Intelligence and the EU AI Act, the specific use of AI within prosecutorial functions remains an under-regulated area. Practices across jurisdictions diverge and a shared understanding on critical issues, such as accountability, transparency and the potential impact of AI on prosecutorial independence is lacking. (TW)

Areas of Crime

Corruption

New GRECO Paper: Effective System for Accessing Official Information Is Essential for Combatting Corruption

On occasion of the International Day for universal access to information on 28 September 2025, GRECO published a thematic paper on the right to access to information. GRECO stressed that access to official information and documents is a fundamental tool that helps prevent corruption and promote integrity. The paper summarises the main findings of GRECO's fifth-round evaluation reports which included a dedicated section on introducing or strengthening access-to-information legislation. It lists common obstacles to access information held by central governments as well as good practices that were identified in GRECO's reports to facilitate access to official information.

Looking at the main recommendations that were addressed to the member states under scrutiny, GRECO points out the following:

- Adopting access-to-information legislation or, where such laws already exist, conducting an independent and thorough review to expand the scope of publicly available information;
- Enshrining the principle of proactive transparency in law or ensuring its sys-

tematic implementation where already established;

- Establishing an independent oversight mechanism or, where one exists, ensuring it has proper independence, authority and resources;
- Creating a register of access-to-information requests and limiting restrictions and exemptions to the strict minimum necessary;
- Providing awareness-raising training for officials on freedom of information laws.

GRECO has also urged member states that have not yet done so to accede to the Council of Europe Convention on Access to Official Documents (the Tromsø Convention) to help ensure an effective right to access to information.

Building on these findings, GRECO will further explore the issue of access to information during its sixth evaluation round, which focuses on preventing corruption and promoting integrity at the sub-national level. (TW)

Money Laundering

MONEYVAL: Annual Report for 2024

Most of the 33 jurisdictions that are subject to MONEYVAL's evaluation procedures have made progress in 2024 aligning their anti-money laundering/countering of terrorism financing laws to FATF standards in a number of areas. However, significant shortcomings remain to be addressed in other key areas. This is the main statement in MONEYVAL's annual report for 2024 that was released on 7 November 2025.

The report notes that states and territories that are members to MONEYVAL have performed well in international co-operation, transparency of beneficial ownership and supervision of financial institutions. However, weaknesses remain in the investigation and prosecution of money laundering offences, asset confiscation, the implementation of targeted financial sanctions, the use of financial intelligence, the application of preventive measures and supervision of designated non-financial businesses and professions (e.g., lawyers, notaries, accountants, auditors, tax advisors, real estate agents or dealers in precious metals and stones).

MONEYVAL pointed out that it completed the 5th round of mutual evaluations in 2024, with finalising the assessments on Bosnia and Herzegovina, and the United Kingdom Crown Dependencies of Jersey and Guernsey. It highlighted that many jurisdictions have improved their technical compliance ratings through the 5th round follow-up processes. According to the Financial Action Task Force's (FATF) consolidated list of ratings, 193 technical compliance upgrades were recorded in MONEYVAL jurisdictions. Thanks to the implementation of MONEYVAL's recommendations, Gibraltar was removed from the FATF's grey list. Only 9 jurisdictions were downgraded in 2024. The reasons were the identification of money laundering risks as regards new products and new business practices.

In 2024, MONEYVAL also increased its role at the global level and further developed into a FATF-style regional body. Cooperation with the FATF intensified: For example, MONEYVAL contributed actively to the FATF Global Network's priorities, particularly in the area of asset recovery, and began its collaboration on the FATF-led project on Ensuring a Consistent and Coherent Approach to EU Supranational Measures.

Looking ahead, MONEYVAL will focus on advancing the 6th evaluation round that was launched in 2024. On the basis of the MONEYVAL 2023–2027 Strategy, the Committee will expand typologies work, sustain the pace and quality of evaluations, and promote the secondment of experienced officials. (TW)

Articles

Articles / Aufsätze

Fil Rouge

This eucrim issue focuses on the challenges for judicial cooperation in the current EU landscape.

In his guest editorial, *Michael Schmid*, President of Eurojust and national member for Austria, stresses that new challenges are emerging, particularly in the context of cooperation with non-EU countries and the use of new technologies/artificial intelligence. He underlines that the upcoming revision of the Eurojust Regulation could provide an opportunity to strengthen the Agency's support for national authorities in combating new threats.

A specific challenge in providing this support will be the implementation of the new legislative framework on access to electronic evidence. *Jorge Espina Ramos*, another national member at Eurojust, discusses the pros and cons of the 2023 EU e-evidence Regulation. It seemingly grants the issuing authorities unprecedented discretion to choose the legal instrument for obtaining e-evidence (Preservation/Production Orders, the European Investigation Order, or another MLA instrument).

Having addressed mutual legal assistance, the discussion moves to extradition, with defence lawyers offering their perspectives.

In their contribution, German defence lawyers *Sören Schomburg* and *Chad Helmrich* take a critical look at the ECJ's judgment in the Kamekris case. According to the Court, when assessing whether there is a serious risk of fundamental rights violations in the requesting State, the "deciding EU Member State" is not obliged to adopt the same assessment as another EU Member State (conceding "only" that the refusal decision of the other Member State must be taken into due consideration when determining the existence of such a risk). The authors view the judgment as a missed opportunity for the ECJ to further develop the principles of mutual trust and mutual recognition in the field of extradition.

In the next contribution, Italian defence lawyer *Nicola Canestrini* analyses the Italian Supreme Court's decision of 15 October 2025, which objected to the authorisation of an individual's surrender from Italy to Germany for alleged "sabotage" of the Nord Stream pipelines in 2022. The Court primarily argued that the executing authority in EAW proceedings cannot reclassify the issuing authority's designation of a "list offence" under Art. 2(2) of the Framework Decision on the European Arrest Warrant for the purpose of determining domestic custodial or procedural measures. *Canestrini* believes that this approach is fully consistent with the principle of mutual trust and is essential for protecting fundamental rights.

The next section of articles explores the scheme of the European Public Prosecutor's Office (EPPO). Both articles reveal that the interpretation of the 2017 EPPO Regulation is a complex and delicate issue, underlining the need to strike a balance between effectiveness and the defendant's procedural safeguards.

Defence lawyer *Alba Hernández Weiss* comments on the second ECJ judgment interpreting the EPPO Regulation (Case C-292/23). In a Spanish case, the Grand Chamber clarified which EPPO acts must be subject to judicial review. Weiss points out that the judgment has implications for the effective judicial protection of individual rights in EPPO proceedings. She concludes that it may result in a too restrictive definition of acts susceptible to review clashing with the right to an effective remedy in Art. 47 of the EU Charter of Fundamental Rights.

Balázs Marton, a Hungarian academic, highlights the challenges in resolving positive conflicts of competence between national prosecution authorities and the EPPO in two recent cases in Spain and Croatia. He discusses the regulatory issues involved in these cases within EPPO's legal framework, emphasising the absence of clear procedural provisions in EU law for resolving conflicts of competence, which undermines legal certainty.

The last article by researcher *Ali Bounjoua* builds a bridge between the topic of judicial cooperation in this issue and that of the external dimension of justice policy in the previous *eucrim* issue. He explores the possibilities and limitations of cooperation in the fight against organised crime and terrorism in the Euro-Mediterranean region against the backdrop of the lack of a specific agreement on judicial cooperation in criminal matters between the EU and Morocco. He concludes that recent operational developments could drive efforts towards the establishment of a formal agreement.

This issue of *eucrim* showcases a range of perspectives from different authors, providing a multidisciplinary and comprehensive understanding of the challenges of judicial cooperation within the EU.

Lorenzo Salazar, President of the European Committee on Crime Problems (CDPC) of the Council of Europe

European Preservation and Production Orders: A Non-Exclusive Approach to e-Evidence within the EU

Implications of the Union Legislator's Choice to Derogate from the Precedence of Union Law in the e-Evidence Regulation

Jorge A. Espina Ramos*

The Cheshire Cat: "Then it doesn't matter which way you go".
Alice: "... so long as I get somewhere".

Lewis Carroll (Alice in Wonderland)

The 2023 e-evidence Regulation – the new mutual recognition instrument introducing Preservation and Production Orders to obtain e-evidence from service providers – includes a provision allowing issuing authorities to decide freely whether to use this new instrument or to resort to alternative ones, even if they are not based on EU Law. This may enhance the efficiency of e-evidence gathering, but it could also have negative implications for several other issues. This article outlines the pros and cons of the legislative approach taken in the regulation of e-evidence in the EU. The author stresses that the competent issuing authority should assess all relevant factors to ensure an informed decision on the appropriate legal basis for requesting e-evidence from abroad.

I. Introduction

The main piece of the legislative package on electronic evidence – Regulation 2023/1543[1] (hereinafter: the e-evidence Regulation) establishes a new mutual recognition instrument for preserving and obtaining e-evidence from service providers located in another jurisdiction by means of European Preservation Orders (EPOC-PR) and European Production Orders (EPOC). It will be applicable in the EU Member States (except Denmark) as of 18 August 2026.[2]

As has often been stressed, this mutual recognition instrument, especially the revolutionary approach of allowing trans-border requests to be sent directly from the judicial authority of one Member State to the service provider of another Member State, takes the field of judicial cooperation beyond its traditional boundaries.[3] It exceeds the scope of this article to discuss the novel, revolutionary features of the e-evidence Regulation; instead I will deal with an important practical question, namely the relationship between the e-evidence Regulation and other instruments, agreements, and arrangements on the gathering of electronic evidence. In other words, the article explores how the e-evidence Regulation apparently derogates from the principle of precedence of Union law, as it does not foresee an exclusive use of EU law in judicial cooperation. As a result, the question also follows as to whether or not this is consistent with Art. 82(1) TFEU?

I will first outline the principle of the precedence of EU law under the mutual recognition instruments that were adopted prior to the e-evidence Regulation (II.). Next, I will present the provision adopted under the e-evidence Regulation (III.) before exploring several problematic issues arising from the legislative choice made by the Union legislature in the e-evidence Regulation (IV.). Section V. of the article summarises the main conclusions drawn.

II. Mutual Recognition Instruments and the Precedence of EU Law

The development of the EU's principle of mutual recognition for judicial cooperation in criminal matters began in 2002 with the Framework Decision on the European Arrest Warrant.[4] The Framework Decision was complemented by a dozen other legal instruments that regulated other scenarios of judicial cooperation in criminal matters within the EU. As an underlying principle, all these mutual recognition instruments underscored that if a legislative act of the Union exists (be it a Framework Decision, a Directive, or a Regulation) its application is considered to prevail; legal practitioners from EU Member States are theoretically not free to opt for a different instrument in their reciprocal relations, not even if other international treaties would be applicable to the subject matter. Since the beginning, however, this precedence has not been an absolute principle and we have already seen exceptions to this rule – always subject to certain conditions. For example,

Art. 31(2) of the Framework Decision on the European Arrest Warrant provides that the use of alternative means is allowed:

> […] in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

This begs the question of whether this legal assessment has changed after the entry into force of the Lisbon Treaty. Art. 82(1) TFEU states that "[j]udicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions […]". One could argue that the wording used by the Treaty ("shall be based") does not imply an absolute obligation to govern all matters of judicial cooperation via mutual recognition and that some exceptions would be possible. Put differently, one could take the view that, although the basis for cooperation needs to be mutual recognition, this does not prevent alternative options from being acceptable. This interpretation seems to be in line with the legislative choice made in Art. 34(3) of Directive 2014/41 on the European Investigation Order (EIO Directive):

> In addition to this Directive, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017 only insofar as these make it possible to further strengthen the aims of this Directive and contribute to simplifying or further facilitating the procedures for gathering evidence and provided that the level of safeguards set out in this Directive is respected.

Elsewhere, I have called this approach the "compatibility rule".[5] This rule has been taken up in other mutual recognition instruments, most recently in the Regulation on the transfer of proceedings in criminal matters.[6]

However, I believe that said legislative approach does not actually imply a derogation from the precedence of EU law but rather its opposite: it is only because the EU law contains this exception, that the option to use other instruments is valid. This is corroborated by the fact that the alternatives can only be used if certain conditions are met (e.g., strengthening the aims of the Directive, simplifying or facilitating the gathering of evidence, and maintaining the level of safeguards). Hence, what appears to be a derogation from the precedence of EU law is, in fact, non-existent. Only expressly authorised derogations from the principle of the exclusive application of EU law would be possible, which also has a number of implications, as we will see in a moment.

III. The e-Evidence Regulation – A New Approach

The reality under the e-evidence package is precisely that the prudent approach followed for the European Arrest Warrant, the European Investigation Order, and the Regulation on transfer of proceedings (allowing for the use of alternative legal tools only under certain conditions) has become a fully open door. In all cases, and without being subject to any conditions, any applicable different legal bases can be used instead of the Regulation, even if they are not EU legal instruments. This is due to Art. 32(1) of the e-evidence Regulation, which states:

> This Regulation does not affect Union or other international instruments, agreements and arrangements on the gathering of evidence that falls within the scope of this Regulation.

According to this clear wording, no precedence is given to the EU Regulation and no limits or conditions are set[7] to allow for the use of alternative means. In practice, this means that competent issuing authorities remain free to decide whether they will use the EPOC/EPOC-PR or whether they will instead resort to alternative legal bases, either from the EU environment (e.g., the Directive on the European Investigation Order) or non-EU frameworks (e.g., the Council of Europe Budapest Convention on Cybercrime[8] and/or its Second Additional Protocol,[9] the UN Convention against Cybercrime (UNCAC), etc.).[10]

Sometimes, the reasons behind this legislative decision might be sound and reasonable. For instance, in complex cases in which a number of investigative measures of different nature are needed, it might be better and more efficient to allow competent authorities to use alternative legal bases, including non-EU frameworks, in addition to EU legal solutions. In this context, Recital 96 of the e-evidence Regulation clarifies:

> Member States' authorities should choose the tool most adapted to the case at hand. In some cases, they might prefer to use Union and other international instruments, agreements and arrangements when requesting a set of different types of investigative measures that are not limited to the production of electronic evidence from another Member State.

Therefore, judicial authorities can decide whether or not to use the e-evidence Regulation, even partially (e.g., use the EPOC-PR but then use a conventional mutual legal assistance (MLA) request to obtain actual evidence; or, the other way around, to use other means to preserve the data first and then use the EPOC to get the e-evidence). This approach is also reflected in other provisions of the e-evidence Regulation,[11] leaving no doubt about the intention of the Union legislator to fully confer free choice when it comes to selecting the right legal basis by which to obtain electronic evidence.

IV. Problematic Issues

Despite the reasonable grounds for this legislative approach, which allows for free choice, a number of inter-

esting follow-up questions arise from a practical viewpoint:

Firstly, I wonder to what extent this legislative decision is in line with the wording of Art. 82(1) TFEU, which states that judicial cooperation shall be based on the mutual recognition principle. I concluded in Section II that Art. 82(1) TFEU authorises derogations from the general principle of mutual recognition, but they must also respect the clear mandate of Art. 82(1). This may mean that an issuing authority cannot be empowered to conduct intra-EU judicial cooperation based on non-mutual recognition instruments without conditions. Derogations must ensure that the choice of legal instrument is based on an assessment respecting the substantial features of mutual recognition, such as the level of safeguards or efficiency, as exemplified by the respective provisions in the Directive on the European Investigation Order and the Regulation on transfer of proceedings in criminal matters.

Secondly, the e-evidence Regulation's approach may create a disincentive for judicial authorities to use the Regulation as a legal basis for the rather simple act of data preservation, as this can be achieved more efficiently and swiftly through police channels, e.g., the services provided by the 24/7 Network established by Art. 35 of the Budapest Convention. In many countries this network fully remains under the remit of the police and not of the judiciary. When faced with the option of issuing an EPOC-PR, law enforcement might opt for the faster and more effective route of using the 24/7 Network, thus circumventing the judicial mechanisms established by the EPOC-PR.

Thirdly, the "free choice principle" might have unintended consequences for cost reimbursement. Art. 14 of the e-evidence Regulation regulates the reimbursement of costs for service providers. Specifically, paragraph 1 allows service providers to claim reimbursement of their costs from the issuing State if this is provided for under the national law of the issuing State for domestic orders in similar situations. Similar provisions do not exist in alternative legal frameworks (such as the CoE Budapest Convention and its Second Additional Protocol). Cost reimbursement may also be regulated differently, as in the EIO Directive, where the executing State bears the costs in principle. A report on cost reimbursement systems in judicial cooperation with service providers by the SIRIUS Project rightly stated:[12]

> Given the varying cost reimbursement systems across different legal frameworks (or the absence of such systems under certain frameworks), the most cost-efficient options for judicial cooperation when accessing electronic evidence might be preferred. This may involve opting for the regimes that do not include cost reimbursement provisions.

Fourthly, Art. 32(1) of the e-evidence Regulation will surely have an impact on the electronic communication channels for submitting requests. The EU has established an obligation to transmit all forms and communications related to judicial cooperation through a new digital system (originally called e-EDES,[13] recently rebranded as JUDEX[14]). The use of this digital system is mandatory by default, with only limited exceptions, and requires a completely different environment for all relevant actors, including judicial authorities. The obligation to use the system is established by the e-evidence Regulation[15] and, for other existing instruments of judicial cooperation in the EU, by Regulation 2023/2844.[16] However, Art. 32 of the e-evidence Regulation does not prevent any competent authority from resorting to alternative means (and thus communication channels) to obtain electronic evidence. For instance, due to lack of technical resources, insufficient training, lack of knowledge, or familiarity with the new system, etc., an authority can decide that it is in the best interest of the case not to use the EU's JUDEX system for EPOC/EOPC-PR, but instead to resort to the traditional means of mutual legal assistance under the Budapest Convention in order to request the evidence.[17]

From the latter context, an interesting question further arises: whether Art. 32 of the e-evidence Regulation allows for a direct switch from EPOC/EPOC-PR to a mutual legal assistance request or whether an assessment is first required to determine if the best alternative would be to issue a European Investigation Order. If we follow the latter path, this means that resorting to mutual legal assistance requests would only be possible if the requirements of Art. 34(3) of the EIO Directive are met. Against the background that Art. 32 of the e-evidence Regulation is both *lex posterior* and *lex specialis* to the EIO Directive, a direct jump from EPOC/EPOC-PR to mutual legal assistance is possible in my opinion and would not infringe any norms stemming from either the e-evidence Regulation or the EIO Directive.

The legal situation is different, however, when it comes to the gathering of "evidence in electronic form", which is outside the material scope of the e-evidence Regulation. According to Art. 3(8), e-evidence under the e-evidence Regulation is defined as "subscriber data, traffic data or content data stored by or on behalf of a service provider, in an electronic form". By contrast, the Budapest Convention and its Second Protocol have a broader scope applying to "the collection of evidence in electronic form" of a criminal offence.[18] The EIO Directive, of course, also has a wider scope than the e-evidence Regulation. Consequently, if a judicial authority seeks to gather electronic evidence that is not strictly e-evidence, it must do so within the European

Union through a European Investigation Order under the EIO Directive, rather than via MLA means (e.g., the Budapest Convention and its Second Protocol), unless the conditions of Art. 34(3) of the EIO Directive are met.

V. Conclusion

The 2023 e-evidence Regulation will certainly bring many novel – almost revolutionary – elements to the field of judicial cooperation. Its approach to the non-exclusive application of Union law, however, is not without problems, as this article has demonstrated. Legal practitioners need to address this approach with an open mind and even a new mind-set, when dealing with the e-evidence Regulation as it is a unique cooperation instrument for many reasons.

In this article, I have highlighted that the application of this instrument coincides with the formal revolution of digitalisation in cross-border judicial cooperation, as introduced by the JUDEX system. The e-evidence Regulation will be the first (and, for the time being, only) instrument for which the obligation to work through JUDEX applies. The EPOC-PR and EPOC as non-exclusive means to obtain e-Evidence within the EU, coupled with the implications of the Union legislator's choice to derogate from the precedence of Union law, underscores the complexity of the e-evidence landscape and sets the stage for international cooperation on digital evidence.

Moving forward, any judicial authority in the EU Member States should be made aware of the new possibilities at hand to gather electronic evidence. At the same time, judicial authorities must be kept informed about the potential consequences of relying on a more convenient legal basis for requests to obtain electronic evidence from other jurisdictions, as Art. 32 of the e-evidence Regulation appears to open this gateway.

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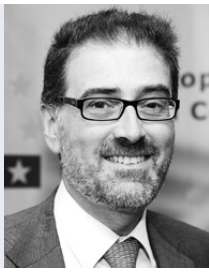

* The opinions expressed by the author in this article are purely personal.

1 Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings, OJ L 191, 28.7.2023, 118.

2 For the e-evidence package, see T. Wahl, "E-evidence Regulation and Directive Published", *eucrim* 2/2023, 165–168 as well as the articles in this special *eucrim* issue on electronic evidence, pp. 170 et seq. In accordance with Protocol No. 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark has not taken part in the adoption of the e-evidence Regulation and is neither bound by it nor subject to its application.

3 Among others, see A. Juszczak and E. Sason, "The Use of Electronic Evidence in the European Area of Freedom, Security, and Justice – An Introduction to the New EU Package on E-evidence", (2023) *eucrim*, 182–200.

4 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, 1.

5 J. A. Espina Ramos, "The European Investigation Order and its Relationship with Other Judicial Cooperation Instruments", (2019) *eucrim*, 53–60, 56.

6 Regulation (EU) 2024/3011 of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters, OJ L, 2024/3011, 18.12.2024. Its Art. 33(2) reads: "In addition to this Regulation, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 7 January 2025 only insofar as such agreements or arrangements make it possible to further strengthen the aims of this Regulation and contribute to simplifying or further facilitating the procedures for transferring criminal proceedings and provided that the level of safeguards set out in this Regulation is respected." It should be noted that the Regulation is applicable only as of 1 February 2027.

7 Such as the requirements to align with the aims of the Regulation, to have the same level of safeguards, or to strive for a higher efficiency.

8 Convention on Cybercrime (ETS No. 185), signed in Budapest on 23 November 2001, entered into force on 1 July 2004.

9 Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CETS No. 224), signed in Strasbourg on 12 May 2022.

10 For an overview of current national, European, and international legal efforts to regulate cross-border access to electronic evidence, see. K. Pfeffer, "Die Regulierung des (grenzüberschreitenden) Zugangs zu elektronischen Beweismitteln", (2023) *eucrim*, 170–174.

11 For instance, Art. 6 of the e-evidence Regulation states that an EPOC-PR can be issued "with a view to issuing a subsequent request for production of those data via mutual legal assistance, a European Investigation Order (EIO) or a European Production Order".

12 Cf. <https://www.eurojust.europa.eu/publication/cost-reimbursement-system>, p. 4 with further reference>. SIRIUS is an EU-funded project that helps law enforcement and judicial authorities access cross-border electronic evidence in the context of criminal investigations and proceedings.

13 e-EDES stands for e-Evidence Digital Exchange System.

14 JUDEX stands for Justice Digital Exchange System. JUDEX is the reference software developed by the European Commission for

connection to the Europe-wide IT system e-CODEX (e-Justice Communication via Online Data Exchange). JUDEX enables digital, secure, and fast requests for legal assistance in civil and criminal matters (e.g., European Investigation Orders) to be made to other EU Member States via the e-CODEX system.

15 See Arts. 19 *et seq.* of Regulation 2023/1543, *op. cit.* (n. 1).

16 Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023. For the use of the system in cases of transfer of proceedings in criminal matters, see Arts. 24 *et seq.* of Regulation 2024/3011, *op. cit.* (n. 6).

17 With regard to the choice between EPOC/EPOC-PR and the European Investigation Order (EIO), this would merely result in a postponement, as the use of JUDEX will also be mandatory for transmitting EIOs. However, according to current planning, this requirement will only apply from 1 March 2028, whereas the application of JUDEX for EPOC/EPOC-PR will begin earlier.

18 See Art. 14.2. b and c and, similarly, Arts. 23 and 25 of the Budapest Convention (*op. cit.* (n. 8), and Art. 2.1. a of the Second Protocol to the Budapest Convention (*op. cit.* (n. 9)). According to the T-CY Guidance Note 13, "The scope of procedural powers and of international co-operation provisions of the Budapest Convention", adopted on 27 June 2023, T-CY(2023)6, available at: <https://rm.coe.int/t-cy-2023-6-guidancenote-scope-of-powers-v9adopted/1680abc76a>, p. 4, the CoE instruments do not only apply to cybercrime-related offences but to any offence, including corruption, money laundering, murder, terrorism, trafficking in human beings, etc.

Mutual Recognition of Extradition Decisions

A Critical Analysis on the ECJ's Judgment in Kamekris: A Missed Opportunity?

Sören Schomburg and Chad Heimrich

Mutual recognition of judicial decisions and mutual trust are considered one of the cornerstones of the EU's Area of Freedom, Security and Justice. In recent years, the ECJ has rendered numerous decisions dealing with the scope of these principles and further elaborating the idea that EU Member States must recognise certain judicial decisions issued by another EU Member State (e.g., European arrest warrants) on the same footing as they trust each other to comply with EU fundamental rights. In 2022 already, the European Criminal Bar Association (ECBA) urged EU Member States to consider specific categories of extradition decisions to be binding in all Member States and to recognise such decisions by means of mutual recognition. The idea is to avoid restrictions on free movement that would arise if a person sought by an INTERPOL Red Notice had successfully defended extradition in one Member State but was at risk of (once again) being arrested and possibly extradited by another Member State. This was precisely the scenario that culminated in a recent decision by the ECJ in the *Kamekris* case (C-219/25 PPU), which is subject of this critical analysis.

I. Facts of the Case

The *Kamekris* case[1] concerns KN, a Greek and Georgian national, who was arrested on 4 October 2021 in Belgium based on an INTERPOL Red Notice issued against him by Georgia. Georgia requested KN's extradition for the execution of a sentence of life imprisonment for trafficking cocaine as part of an organised gang, preparations for the commission of group murder, and the illegal possession of firearms. It should be noted that both the criminal proceedings of first instance as well as the ensuing appeal proceedings in Georgia took place in absentia and date back to 2010/2011.

After his arrest, KN was provisionally released on 29 October 2021 and placed under non-custodial judicial supervision for the duration of the extradition proceedings in Belgium. In January 2025 (more than three years later), KN was then arrested again in France based on the same INTERPOL Red Notice from Georgia. Although France does not extradite its own nationals to third countries (Art. 696-4(1) of the French Code of Criminal Procedure), French law does not prohibit the extradition of nationals of other EU Member States to third countries to enforce a sentence.

Notably, however, just a few weeks after KN's arrest in France, the Cour d'Appel de Bruxelles (Court of Appeal of

Brussels) refused the (2021) extradition request by Georgia: the judges in Belgium found that there were "compelling grounds for believing that the extradition of KN to Georgia would expose him to a denial of justice and a real risk of inhuman or degrading treatment."[2] After the Belgian refusal to extradition, KN argued that France would be bound by the Belgian decision and, consequently, would need to refuse his extradition to Georgia – in accordance with the principles of mutual trust and mutual recognition of judicial decisions in EU law. Interestingly, even the Public Prosecutor in France questioned the reliability of assurances of fundamental rights (Art. 3 and 6 ECHR) in light of the political instability in Georgia since November 2024.

The Cour d'Appel de Montpellier (France), the court competent to decide on KN's extradition from France to Georgia, had doubts as to whether the decision of the Court of Appeal of Brussels has authority vis-à-vis the French courts arguing that mutual recognition of another EU Member State's court decision is only required "where EU law makes express provision for such recognition." The Cour d'Appel de Montpellier stayed the extradition proceedings and referred the following question to the ECJ:

> Must [Article] 67(3) and [Article] 82(1) TFEU, in conjunction with Articles 19 and 47 of [the Charter], be interpreted as meaning that a Member State is obliged to refuse to execute an extradition request for a citizen of the European Union to a third country when another Member State has previously refused to execute the same extradition request on the grounds that the surrender of the person concerned may infringe the fundamental right not to be subjected to torture or inhuman or degrading treatment enshrined in Article 19 of [the Charter] and the right to a fair trial enshrined in the second paragraph of Article 47 of [the Charter]?

II. The ECJ's Judgment and Reasoning

In brief: According to the ECJ, an EU Member State is not obligated to refuse extradition to a third country even if another EU Member State has already refused extradition to the same third country due to a serious risk of a fundamental rights violation (Arts. 19 and 47 of the Charter of Fundamental Rights of the European Union).[3] However, the previous refusal must be taken into due consideration when deciding on the extradition request.

At the outset, the ECJ clarified that the case at hand indeed falls within the scope of primary EU law, specifically Art. 18 and Art. 21(1) TFEU, which guarantee the right to free movement and the principle of non-discrimination on grounds of nationality. It reaffirmed its previous case law, which held that KN's possession of the nationality of another EU Member State than the one the extradition request was sent to (in this case: Greece) and also the nationality of a third country (in this case: Georgia) does not deprive him of the rights guaranteed by Art. 18 and Art. 21(1) TFEU.[4] Additionally, the fact that KN was not a permanent resident in France, but rather in Belgium, does not exclude this case from the scope of the Treaties.[5] Building on its previous case law in *Pisciotti*, the Court reiterated that the temporary nature of the stay in the territory of the requested EU Member State does not render such a situation outside the scope of Art. 18 TFEU.[6] It may therefore come as a surprise that Advocate General *Juliane Kokott* concluded in her opinion that EU law already does not apply, neither on the basis of Art. 67(3) TFEU and Art. 82(1) TFEU, nor on the basis of the right to free movement (Art. 21(1) TFEU).[7]

The ECJ also held that the fact that France does not extradite its own nationals (see above), but does so in cases involving nationals of other EU Member States, constitutes unequal treatment; however, this may be justified if the decision to extradite is compatible with fundamental rights, particularly those enshrined in the Charter of Fundamental Rights of the European Union.[8] As set out in the ECJ's previous case law in *Petruhhin*, such an assessment must be carried out on the basis of information that is "objective, reliable, specific and properly updated", e.g., reports and court decisions.[9]

As such – and this is the key aspect of the ECJ's judgment –, when assessing whether there is a serious risk that fundamental rights (notably Arts. 19 and 47 of the Charter) have been violated, the "deciding Member State" is not required to adopt the same (judicial) assessment as another Member State (in this case: Belgium). However, the decision by the other Member State (refusing extradition) must be taken into due consideration when determining whether a serious risk of fundamental rights violations exists.[10]

According to the ECJ, EU law does not provide a basis for an obligation of mutual recognition of extradition decisions:[11]

> [Art. 67(3) TFEU and Art. 82(1) TFEU] merely provide that judicial cooperation in criminal matters in the European Union is based on the principle of mutual recognition.

Furthermore, the Court stated:[12]

> […] although EU law includes several instruments of secondary legislation laying down an obligation of mutual recognition […] no act of EU law lays down an obligation of mutual recognition of decisions adopted by Member States concerning extradition requests from a third country.

In the *Breian* case (C-318/24 PPU), the ECJ dealt with a similar situation between Member States. In *Breian*, the Court held that the refusal by one Member State to exe-

cute a European arrest warrant on the grounds of a risk of fair trial violations (Art. 47 of the Charter) does not oblige the executing authority in another Member State to refuse the same European arrest warrant on the same grounds:[13] "no provision of Framework Decision 2002/584 provides for the possibility, or obligation" to refuse the execution in such situations.[14] The executing authority must "exercise vigilance" and give due consideration to the previous decision refusing execution of the European arrest warrant.[15]

In *Kamekris*, the ECJ applied the same reasoning with regards to extradition decisions involving non-Member-States.[16] In sum, the Court stated:[17]

> […] a previous decision refusing extradition […] forms part of the information […] that the Member State to which a new extradition request has been made must take into consideration within the framework of its own examination.

III. Comment: A Missed Opportunity for the ECJ?

Put simply, the ECJ missed the opportunity to further develop the principles of mutual trust and mutual recognition in the field of extradition which would have been much needed. An individual Union citizen continues to face extradition and to be deprived of his or her liberty to travel within the EU as long as a non-EU Member State continues to prosecute him/her – irrespective of a decision by a court of another EU Member State.

While staying in the EU Member State that has refused extradition can be considered relatively safe, exercising the right to free movement by travelling to another EU Member State carries a high risk of being arrested, possibly being held in extradition detention for several months, and potentially being extradited to a country that another EU Member State has deemed to be in violation of fundamental rights. There is even a risk of multiple iterations. This is due to the lack of mandatory mutual recognition of refusal decisions: Despite the refusal by the first EU Member State, the INTERPOL Red Notice – which forms the basis for the extradition request – remains in place and may still be enforced by any other EU Member State. In a sense, even if an EU Member State has already refused extradition on the grounds of possible fundamental rights violations, the person concerned will always bear the "risk" that another EU Member State may reach a different conclusion. It is often only a matter of time, until such a situation leads to scenarios where two EU Member States reach opposite decisions: the first one refusing extradition and the second one granting extradition. EU fundamental rights would then not have been interpreted consistently but rather in a fragmented manner.

The ECJ's application of the law severely restricts the right to free movement set out in Art. 21 TFEU, as travelling within the EU as long as a Red Notice is in place might lead to an individual (at least) being arrested in other Member States. As legal practitioners and non-state actors have strongly criticized over the past several years, the latter circumstance is exacerbated by the fact that individuals subject to a Red Notice often do not have access to effective legal remedies to challenge it. This frequently results in the notice remaining active for years and even decades – sometimes despite being clearly illegal – and poses an ongoing risk that the person concerned may be arrested again.[18] It is also well known that Red Notices are often abused by some states – a practice commonly referred to as "transnational repression".[19]

In addition, the ECJ's judgment in *Kamekris* has the consequence that an extradition request from a third country takes precedence over a judicial decision in a Member State that explicitly finds a serious risk of fundamental rights violations in that third country. The opposite should be the case, however, given that the ECJ itself set out the following in para. 49 of the decision: The principle of mutual trust requires each Member State "to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law". Trusting in compliance with fundamental rights would consequently also mean that a Member State must be able to trust that the other Member State interprets fundamental rights "correctly", hence allowing a Member State to accept and recognise a previous assessment of fundamental rights performed by another Member State. This principle should apply in extradition cases, as it is settled case law by the ECJ that the requested Member State must ensure that extradition to a third country does not infringe the rights guaranteed by the Charter of Fundamental Rights.[20]

Furthermore, the *Kamekris* judgment is not in line with the ECJ's case law on respecting and recognising decisions of another Member State in the context of extradition proceedings: For instance, with regard to the principle of *ne bis in idem,* the Court in Luxembourg has found in the cases of *WS* and *HF* that extradition from the EU to a third country may be barred if it is requested for an offence that has already been finally disposed of by another Member State.[21] In *A/Generalstaatsanwaltschaft Hamm*, the Court found that even administrative decisions may constitute an obstacle to extradition. In that specific case, the Court held that when an EU Member State has granted refugee status, another Member State must not grant extradition unless the refugee status has been revoked or withdrawn

by that other Member State which granted the status and there is, otherwise, no further serious risk of fundamental rights violations in the requesting third country.[22]

Lastly, as regards the question of whether EU law provides a legal basis for mandatory mutual recognition of extradition decisions, the ECJ relied on the fact that neither Art. 67(3) TFEU nor Art. 82(1) TFEU nor any secondary EU law provide for such a mandatory recognition mechanism. While the ECJ's requirement for a legal basis is *per se* reasonable, it did not explore whether mutual recognition of extradition decisions could be derived directly from fundamental rights as primary EU law. In this regard, the Court could have relied on its previous case law, which has interpreted fundamental rights as grounds for imposing obligations on judicial authorities of EU Member States. For instance, the ECJ had found in *LM* that a real risk of breaches of the fundamental right guaranteed by Art. 47 of the Charter is "capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to that European arrest warrant."[23] Similarly, in *HF,* the ECJ derived from Art. 54 of the Convention Implementing the Schengen Agreement (CISA) that mutual trust requires an EU Member State to "accept at face value a final decision communicated […] which has been given in the first Member State."[24]

IV. Conclusion

In our opinion, the ECJ's decision should be seen as a wake-up call for the EU legislator to consider legislative measures in this regard, highlighting the need for a more comprehensive approach to mutual recognition of extradition decisions. In other words, if EU Member States are obliged to mutually recognise judicial decisions such as European arrest warrants and verdicts that entail negative consequences for the person concerned, why should they not also recognise decisions with a positive impact in the sense that they prevent fundamental rights violations from occurring in the requesting country?

This opportunity was missed by the ECJ in the *Kamekris* case. Nevertheless, hope remains that another opportunity will arise for the Luxembourg Court to take a step towards a comprehensive system of mutual recognition of judicial decisions. Although the French Court ultimately held[25] that extradition of KN to Georgia is inadmissible for the same reasons stated by its Belgian counterpart in Brussels, there is no guarantee that similar cases will end as positively.

Legislative measures in that sense are clearly needed.

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1 ECJ, 19 June 2025, Case C-219/25 PPU, *Kamekris (proceedings concerning the extradition of KN).* For a summary of the judgment in *eucrim*, see T. Wahl, "ECJ: No Obligation for Mutual Recognition of Decision Taken in Favour of a Person Requested for Extradition to a Third Country", eucrim 2/2025, pp. 148–149 (news of 21 June 2025).
2 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 16.
3 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 53.
4 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 33; see also ECJ, 22 December 2022, Case C-237/21, *Generalstaatsanwaltschaft München v S.M.*, para. 31 for further references.
5 ECJ, 19 June 2025, *Kamekris*, *op. cit.* (n. 1), para. 35; see also ECJ, 10 April 2018, Case C-191/16, *Pisciotti*, para. 34.
6 ECJ, 19 June 2025, *Kamekris*, *op. cit.* (n. 1), para. 35; see also ECJ, *Pisciotti*, *op. cit.* (n. 5), para. 34.
7 Opinion Advocate General, 22 May 2025, Case C-219/25 PPU, *Kamekris*, paras. 30 and 43.
8 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 40; see also ECJ, 18 June 1991, Case C-260/89, *ERT*, paras. 42 and 43.
9 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 42; see also ECJ, 6 September 2016, Case C-182/15, *Petruhhin*, paras. 57 and 59.
10 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 50.
11 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 46.
12 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 47.
13 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 55.
14 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 39.
15 ECJ, 29 July 2024, Case C-318/24 PPU, *Breian*, paras. 46 and 55.
16 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 50: "for the same reasons".
17 ECJ, *Kamekris*, *op. cit.* (n. 1), para. 52.
18 See, for instance, the ECBA Statement on mutual recognition of extradition decisions, June 2022, available at: <https://ecba.org/extdocserv/publ/ECBA_STATEMENT_Mutualrecognitionextraditiondecisions_21June2022.pdf> accessed 11 August 2025. For the statement, see also T. Wahl, "ECBA Requests Mutual Recognition of Certain Extradition Decisions in Favour of Individual", *eucrim* 2/2022, 122.
19 See, for instance, Council of Europe, Report on Transnational repression as a growing threat to the rule of law and human rights, 5 June 2023, available at: <https://rm.coe.int/transnational-repression-as-a-growing-threat-to-the-rule-of-law-and-hu/1680ab5b07>; UK House of Lords, House of Commons Joint Committee on Human Rights, Report on Transnational Repression in the UK, 30 July 2025, <https://

committees.parliament.uk/publications/49059/documents/257980/default/>; European Parliament, Draft Report on addressing transnational repression of human rights defenders (2025/2048(INI)), 16 June 2025, <https://www.europarl.europa.eu/doceo/document/AFET-PR-774242_EN.pdf>; European Parliament, Study on Transnational repression of human rights defenders: The impacts on civic space and the responsibility of host states, June 2025, <https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754475/EXPO_STU(2025)754475_EN.pdf>. All hyperlinks were last accessed on 11 August 2025.

20 See, for instance, ECJ, *Generalstaatsanwaltschaft München v S.M.*, *op. cit.* (n. 4), para. 55; ECJ, 2 April 2020, Case C-897/19 PPU, *Ruska Federacija*, para. 64 with further references.

21 ECJ, 12 May 2021, Case C-505/19, *WS*, para. 82; ECJ, 28 October 2022, Case C-435/22 PPU, *HF*, para. 136.

22 ECJ, 18 June 2024, Case C-352/22, *Generalstaatsanwaltschaft Hamm (proceedings relating to the extradition of A)*, para. 71.

23 ECJ, 25 July 2018, Case C-216/18 PPU, *LM*, para. 59.

24 ECJ, *HF*, *op. cit.* (n. 21) para. 93.

25 Decision by the Cour d'Appel de Montpellier of 8 July 2025, N° 2025/00183.

(Non-)Extradition in the Nord Stream Case and the Limits of Executing State Authority in Mandatory European Arrest Warrant Proceedings

Summary and Analysis of the Italian Supreme Court Judgment No. 1428/25 of 15 October 2025 in K.

Nicola Canestrini*

On 15 October 2025, the Italian Supreme Court (*Corte Suprema di Cassazione*) halted the surrender of a former Ukrainian military officer from Italy to Germany. The requested person was sought by the German authorities for "sabotage" in connection with the attacks on the Nord Stream gas pipelines in the Baltic Sea in 2022. The Supreme Court annulled the decision of the Bologna Court of Appeal, which had previously authorised surrender. The judges in Rome expressly rejected the approach according to which the executing authority in a European Arrest Warrant (EAW) proceeding may reclassify the issuing authority's designation of a "list offence" under Art. 2(2) of the Framework Decision on the European Arrest Warrant for purposes of determining domestic custodial or procedural measures. This article explains the reasoning of the Supreme Court's ruling and comments on its implications. The author concludes that the Court's approach paradoxically strengthens, rather than diminishes, the procedural safeguards available to persons subject to surrender, in particular by reinforcing the traditional extradition principle of specialty.

On 15 October 2025, the Italian Supreme Court issued its judgment in *K.*, halting the surrender of a former Ukrainian military officer sought by German authorities for his alleged involvement in the 2022 attacks on the Nord Stream gas pipelines in the Baltic Sea.[1] The Court in Rome overturned a decision by the Bologna Court of Appeal, which had previously authorized the execution of the German EAW, and remitted the case for a new decision.

Beyond its immediate procedural outcome, the *K.* judgment carries wider doctrinal significance. It constitutes the Supreme Court's most authoritative interpretation to date of the scope of executing-state powers following Italy's 2021 reform of its implementing legislation for the Framework Decision on the European Arrest Warrant (FD EAW)[2]. Moreover, the case also brings into focus fundamental questions about the interplay between mutual recognition principles, domestic procedural autonomy, and the classification of offences within the FD's mandatory surrender categories. The following sections first outline the case background and lower court decision, before examining the reasoning and implications of the Italian Supreme Court's ruling.

I. Facts of the Case and Bologna Court Decision

K., a former Ukrainian military officer, was arrested in Italy while on a family vacation in August 2025, pursuant to a German European Arrest Warrant (EAW). The German au-

thorities classified his alleged conduct in the 2022 attacks on the Nord Stream pipelines as "sabotage" within the meaning of Art. 2(2) FD EAW. This is one of the categories for which the executing State is exempted from verifying double criminality of the act. The German authorities specifically invoked Sections 88, 305, and 308 of the German Criminal Code (*Strafgesetzbuch*, StGB), relating to anti-constitutional sabotage and the destruction of vital public infrastructure.

In its decision on the execution of this German EAW, the Bologna Court of Appeal acknowledged Germany's classification for surrender purposes but nonetheless undertook a "reclassification" of the facts. It termed this approach a "nationalization" (*nazionalizzazione*) of the offence for domestic procedural purposes, holding that the conduct corresponded to Art. 280-bis of the Italian Criminal Code (*Codice penale*), which covers offences aggravated by terrorist purposes. This "reclassification" was later recognized as erroneous by the same Bologna Court in its final surrender decision, but in the meantime it had had two main consequences:

- The placement of K. under the high-surveillance custodial regime (*regime di alta sorveglianza*) reserved for terrorism-related offenses;
- K.'s participation via videoconference in the chamber's surrender hearing (camera di consiglio) pursuant to Arts. 45-bis and 146-bis of the Implementing Provisions of the Italian Code of Criminal Procedure (*disposizioni di attuazione del codice di procedura penale*), which permit — or, more precisely, require — remote appearances for certain high-risk crime categories, including terrorism.

II. The Italian Supreme Court's Ruling and Its Reasoning

One of the legal issues on appeal before the Italian Supreme Court concerned this bifurcated approach to reclassification. Specifically, the question was whether executing States retain any residual authority to reclassify offences that the issuing State has already designated as falling within one of the mandatory categories under Art. 2(2) of the Framework Decision on the EAW, particularly for the purpose of determining domestic custodial or procedural legal framework.

The Supreme Court unequivocally rejected such a power. In doing so, its ruling marks a decisive shift toward stricter deference to the issuing authority within Italy's post-2021 reform framework implementing the FD EAW and raises important questions about the balance between efficiency and rights protection in EU criminal cooperation. The Supreme Court's rejection rests on textual, structural, and functional grounds that merit careful examination.

1. Textual reasoning

Textually, the Court observed that the abrogation of Art. 8(2) of Law 69/2005, following from Legislative Decree 10/2021[3], removed the executing State's competence to verify whether the offence indicated by the issuing authority corresponds to the categories mandating surrender. The previous legal regime had explicitly required Italian judicial authorities to ascertain "the definition of the offences for which surrender is requested, according to the law of the issuing State, and whether it corresponds to one of the offences for which surrender is mandatory." The Court held that the repeal of this provision was not merely cosmetic but reflected a deliberate legislative choice to eliminate any residual power of review, save for cases of manifest error. Under the amended law, Italian courts must simply accept that, "according to the law of the issuing Member State," the offence "falls within the categories referred to in Article 2, paragraph 2" FD EAW, without any authority to second-guess or recharacterize that determination.

2. Structural reasoning

Structurally, the Supreme Court dismissed the Bologna tribunal's attempt to distinguish between a "surrender decision phase" (governed by the FD EAW categories) and a separate "custodial-procedural phase" governed by domestic classificatory authority. This distinction, the Court concluded, lacks any foundation in statutory text and generates systemic inconsistency. Precautionary measures adopted during surrender proceedings exist solely to effectuate potential surrender and are therefore inseparably linked to the classification under the FD EAW. For instance, Art. 13 of Law 69/2005 permits immediate provisional release only upon "manifest error" (e.g., the wrong person has been apprehended or an extralegal arrest occurred), not where the executing authority disagrees with the issuing State's legal characterization. Divergent classifications for custodial purposes would generate cascading inconsistencies: Which classification would govern the analysis of refusal grounds pursuant to Art. 18 of Law 69/2005? Which classification would determine the application of the specialty principle pursuant to Art. 26 of Law 69/2005? The Court thus found that any purported separation between surrender phase and custody phase represents an artificial compartmentalization that frustrates the structural logic of the FD EAW.

3. Functional reasoning

Functionally, the Supreme Court anchored its reasoning in the principle of mutual recognition and the specific architecture of mandatory surrender under Art. 2(2) FD EAW. The 32 listed offence categories — including sabotage, terrorism, organized crime, etc. — function as normative equivalents across the EU legal systems precisely because they eliminate the need for double criminality verification. Citing its recent decision in *Ruba*,[4] the Court emphasised:

> (W)hen the offence falls within one of the categories that give rise to surrender irrespective of double criminality, the conduct need not be subsumed under a specific criminal provision of the domestic law of the requested State. The judicial authority to which the surrender request is addressed is bound by the assessment made by the issuing authority as to whether the offence belongs to one of the listed categories.

This binding character extends not merely to the abstract question of category membership but to all derivative procedural consequences. Allowing executing States to reclassify offences for custodial or procedural purposes would, in effect, reintroduce the very double criminality verification that Art. 2(2) FD EAW was designed to eliminate through a procedural backdoor. This would cause unpredictability and undermine the FD EAW's objective of creating a simplified and more effective surrender system.

III. Consequences of the Court's Reasoning

The Italian Supreme Court's analysis of Germany's deliberate choice to classify the alleged conduct at issue as sabotage rather than terrorism reinforces this logic. German criminal law, like Italian law, contains specific provisions addressing terrorist offences, which also appear as a distinct category in Art. 2(2) FD EAW. According to the Court, Germany possessed full authority to invoke the category of "terrorism" had it deemed the alleged pipeline sabotage to constitute terrorist conduct within the meaning of Framework Decision 2002/475 on combating terrorism[5] and Art. 270-sexies of the Italian Criminal Code, which implements it. By choosing to instead rely on the category of "sabotage" — specifically targeting Section 88 StGB, which addresses damage to infrastructure "vital to the supply of the population" and directly encompasses energy pipeline sabotage — the German authority made a sovereign decision on the charge that merits respect.

The Bologna tribunal's decision to substitute its own classification, treating the same conduct as a terrorism-aggravated offence under Italian law, therefore amounted to an impermissible encroachment on the issuing State's prerogative and a violation of the mutual recognition principle underlying the entire FD EAW system.

As a result, the Supreme Court held that the videoconference authorisation lacked statutory basis and infringed Arts. 45-bis and 146-bis of the Implementing Provisions of the Code of Criminal Procedure, since it rested entirely on the erroneous terrorism classification. Consequently, the Court found that the Bologna tribunal's proceedings were tainted by a "nullity of a general nature" under Art. 178(1)(c) of the Code of Criminal Procedure, which safeguards the right of the accused to be present and assisted by counsel. Having been timely raised by defense counsel at the initial hearing of 3 September 2025, the nullity vitiated the entire *camera di consiglio* proceeding, including the surrender decision itself.

The practical implication is significant: custodial and procedural measures predicated on reclassification by the executing State are not merely irregular but fundamentally void *ab initio* when they violate the rights of the defendant, requiring annulment irrespective of whether the ultimate surrender decision might otherwise have been substantively justified.

IV. The Immunity Issue and Further Implications of the Case

Other grounds of appeal put forward by the defence – including the quality of interpretation, functional immunity for alleged military operations, risk of inhuman or degrading treatment, *ne bis in idem* considerations, and access to the case file — received only passing attention in the Supreme Court's reasoning. Nonetheless, they represent important issues that will likely resurface after remittal.

The defence's claim of functional immunity, in particular, raises profound questions at the intersection of international humanitarian law, State immunity, and EU criminal cooperation. It argued that the alleged sabotage constituted a legitimate military operation within the armed conflict between Russia and Ukraine, targeting strategic infrastructure of an adversary state in accordance with Additional Protocol I to the Geneva Conventions[6]. This claim, based on customary international law incorporated into the Italian legal order through Art. 10 of the Italian Constitution, was dismissed by the Bologna Court on the ground that the act occurred outside the theatre of war and lacked official Ukrainian acknowledgment. Whether that reasoning can withstand closer scrutiny, given the substantial circumstantial evidence of coordinated military planning and the

strategic significance of disrupting Russian energy exports financing Russia's invasion in Ukraine, remains to be seen.

The case thus exposes structural tensions between the summary nature of EAW surrender proceedings and fact-intensive immunity determinations involving constitutional or international law defences. Certain refusal grounds in Art. 2 of Law 69/2005, i.e., conflicts with "supreme principles of constitutional order" or violations of "inalienable rights," may require evidentiary efforts incompatible with the Framework Decision's strict sixty-day timeline and streamlined surrender procedures.

Similarly, the Supreme Court's brief treatment of the *Aranyosi and Căldăraru*[7] standard for inhuman and degrading treatment leaves unresolved important questions regarding the adequacy of German assurances about detention conditions and family visitation rights, especially in light of the reports by the German National Agency for the Prevention of Torture[8], which documented serious concerns about certain pre-trial detention facilities.

V. Conclusion

The broader implications of the judgment in *K.* for European criminal law cooperation extend well beyond its immediate doctrinal findings. The Supreme Court's strict deference to the issuing State's classification represents not merely an efficiency-driven choice but rather the only approach fully consistent with the principle of mutual trust and is essential for protecting fundamental rights within the EAW system. Permitting executing States to reclassify "euro-crimes" would pose serious risks to core procedural guarantees, most critically the specialty principle enshrined in Art. 27 FD EAW. Where surrender is granted on the basis of an issuing State's classification of sabotage, a subsequent prosecution for terrorism (or vice versa) would contravene the essence of specialty, as the executing State's consent would have been obtained under materially different legal premises. The rigid categorial binding endorsed in *K.* therefore safeguards the surrendered person's legitimate expectation that the criminal trial will proceed under the same offence characterization that formed the basis for the surrender decision, preventing post-surrender prosecutorial reformulations that would circumvent specialty limitations.

The Italian Supreme Court's interpretation of the FD EAW in the "Nord Stream extradition case" aligns with the European Court of Justice's sustained jurisprudential commitment to mutual trust as the organizing principle of judicial cooperation in criminal matters within the EU. By anchoring the authority to classify offences under Art. 2(2) FD EAW exclusively in the issuing State's sovereign determination, the Italian Supreme Court's approach paradoxically strengthens, rather than diminishes, the procedural safeguards available to persons subject to surrender. Ensuring classificatory stability across the surrender and prosecution continuum can protect defendants from being tried for materially different charges than those for which surrender was granted, thereby reinforcing the principle of specialty and the broader guarantees of fair process inherent in European criminal law cooperation.

VI. Update

Following the Italian Supreme Court's remittal in judgment No. 1428/25, which was analysed here, the Bologna Court of Appeal reconvened the surrender hearing with K. present in court. On 23 October 2025, the Bologna Court of Appeal – the extradition court – issued a new decision ordering K.'s surrender to Germany.[9] In this second ruling, the Bologna court addressed the procedural defect that had invalidated the previous proceedings, namely the unlawful remote participation via videoconference. However, it did not substantively revisit the classification question or the other grounds of refusal raised by the defence, including functional immunity, *ne bis in idem* and risks of violations of Art. 3 of the European Convention on Human Rights (ECHR). The defence appealed against the second surrender decision to the Italian Supreme Court, reiterating the constitutional and international law arguments that had been given only cursory consideration in the initial annulment.

However, in its judgment No. 37897/25 of 19 November 2025,[10] the Sixth Criminal Section of the Supreme Court definitively rejected the appeal and confirmed the surrender order. The Supreme Court held that, following the procedural rectification ordered in judgment No. 1428/25, the extradition court in Bologna had conducted the remand proceedings properly and that no further nullities had affected the decision. Significantly, the Supreme Court declined to engage substantively with the defence's claims regarding functional immunity under international humanitarian law, the applicability of the Geneva Convention protections, and the structural deficiencies in Germany's assurances regarding detention conditions and access to the case file.

The judgment's narrow focus on procedural regularity, at the expense of the substantive human rights and international law issues raised, suggests a limited approach

to the scope of judicial review in mandatory European Arrest Warrant proceedings under Art. 2(2) FD EAW — an approach that prioritises expedited surrender over a comprehensive examination of potential grounds for refusal, where the issuing state has invoked a "list offence" category. K. was surrendered to German custody on 27 November 2025, and the questions of immunity, the lawfulness of the military operation and fundamental rights protections were transferred to the German judicial authorities for determination at trial.

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1 Corte Suprema di Cassazione, Sesta Sezione Penale, Sentenza n. 1428/25, decided on 15 October 2025, filed on 16 October 2025. A machine translation of the judgment in English can be retrieved here: <https://canestrinilex.com/en/readings/limits-of-executing-state-authority-in-mandatory-eaw-proceedings-cass-142825>. All hyperlinks were last accessed on 21 October 2025.

2 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.07.2002, 1.

3 An English version of the Italian law implementing the FD EAW and reformed in 2021 can be retrieved here: <https://canestrinilex.com/en/readings/italian-european-arrest-warrant-implementation-law-692002>. On Italy's implementation, see also the information on the practical application of EU legal instruments by Italy provided by the European Judicial Network at:<https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCou/EN/295>; Periodic Country Report: Italy by S. Allegrezza within the Stream project, <https://stream-eaw.eu/wp-content/uploads/2023/07/STREAM_Country-Report_Italy3.pdf>.

4 Corte Suprema di Cassazione, Sesta Sezione Penale, Sentenza n. 22376/25, decided in 11 June 2025, filed on 13 June 2025. The judgment in Italian can be retrieved here: <https://canestrinilex.com/risorse/mae-impossible-rivalutare-qualificazione-del-reato-cass-2237625>.

5 Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, OJ L 164, 22.06.2002, 3. The Supreme Court makes reference to this FD. The FD was repealed and replaced by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31.3.2017, 6.

6 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977?activeTab=>).

7 ECJ, 5 April 2016, Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*.

8 Cf. <https://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/NSzVvF_annual_report_2022-web.pdf>.

9 See EURACTIV, "Italy court reorders extradition of Ukrainian to Germany in Nord Stream case", 27 October 2025, <https://www.euractiv.com/news/italy-court-reorders-extradition-of-ukrainian-to-germany-in-nord-stream-case/>.

10 An automatic machine translation in English of this second judgment of the Supreme Court in the Nord Stream II extradition case can be retrieved here: <https://canestrinilex.com/en/readings/nord-stream-extradition-italian-supreme-court-confirms-surrender-and-narrows-space-for-rights-in-eaw-proceedings-cass-3789725>.

EPPO Caught between EU and National Law: A Catch-22

Comments on the ECJ's Judgment in EPPO v. I.R.O and F.J.L.R (Case C-292/23)

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On 8 April 2025, the Grand Chamber of the European Court of Justice (ECJ) delivered its second judgment interpreting the EPPO Regulation: *EPPO v. I.R.O. and F.J.L.R.* (Case C-292/23). This is the Court's first ruling on Art. 42(1) of the Regulation, which addresses the scope of *ex post* judicial review of EPPO procedural acts before national courts. The case arose from a Spanish preliminary reference concerning the compatibility of *Ley Orgánica* 9/2021 (the Spanish law implementing the EPPO Regulation) with Art. 42(1). In particular, the reference dealt with the Spanish law's limitations on judicial review of acts carried out by Spanish European Delegated Prosecutors.

The ECJ's judgment clarifies which acts undertaken by the EPPO must be subject to review by national courts. More broadly, it has implications for the effective judicial protection of individual rights in EPPO proceedings. This article first outlines the relevant background of the case and then the Court's main findings. It goes on to examine the judgment's effects and implications and argues that, while the Court's interpretation of Art. 42(1) fits well with the EPPO's institutional structure, its connection to the case law on Art. 263 TFEU may result in an overly narrow understanding of the acts susceptible to review. This in turn potentially clashes with the right to an effective remedy in Art. 47 of the EU Charter of Fundamental Rights.

I. Introduction

On 8 April 2025, the Grand Chamber of the European Court of Justice (ECJ) delivered its judgment in *EPPO v. I.R.O and F.J.L.R* (C-292/23). The case concerns the interpretation of Art. 42(1) of the EPPO Regulation[1] and the judicial review of procedural acts undertaken by the European Public Prosecutor's Office (EPPO) in the course of its investigations. Specifically, the Spanish referring court asked the ECJ whether a witness summons issued by a European Delegated Prosecutor (EDP) must be subject to judicial review by national courts. This is the second time that the ECJ has had to clarify the EPPO Regulation, particularly with regard to the design of procedural rights in EPPO investigations. The first case, *G.K. and Others* (C-281/22),[2] concerned the *ex-ante* judicial review of cross-border investigation measures (Art. 31 EPPO Regulation).[3] This case raises the issue of *ex-post* judicial control of the EPPO's "procedural acts".

Designing a system that ensures effective judicial protection of individual rights is at the heart of developing an Area of Freedom, Security and Justice based on the rule of law.[4] As an EU body with competence to undertake criminal investigations on the ground in Member States, designing the EPPO's system of judicial review was a tricky issue.[5] As an "indivisible body of the Union", the EPPO's procedural acts would, in principle, have been subject to judicial review before the CJEU under Art. 263-265 TFEU.[6] However, due to the EPPO's hybrid structure and reliance on national law, judicial review — both *ex ante* and *ex post* — is largely in the hands of national courts. Thus, the CJEU's role via preliminary references is essential to ensuring uniform application of the EPPO Regulation, as well as to exercising a certain degree of control over the EPPO's activities.[7]

With its ruling in *I.R.O and F.J.L.R*, the ECJ has further shaped the system of remedies in EPPO proceedings, highlighting the interplay between national law and EU law. The ECJ established that Art. 42(1) of the EPPO Regulation, which grants national courts competence to review the EPPO's "procedural acts with legal effects vis-à-vis third parties," must be given an autonomous and independent interpretation throughout the EU. Ultimately, the assessment of whether a specific act falls under the scope of that provision is left up to national courts. Although the procedures and modalities of judicial review are within the procedural autonomy of the Member States, they are limited by the Charter of Fundamental Rights of the European Union (the Charter) and the principles of effectiveness and equivalence. Accordingly, Member States are not required to provide for a direct appeal against EPPO acts, with indirect review by the trial court being sufficient in accordance with the right to an effective remedy enshrined in Art. 47 of the Charter. Nevertheless, the principle of equivalence requires that the same remedies be available in EPPO investigations as in similar national cases.

After summarizing the facts of the case and the relevant legal framework (II.), as well as the ECJ's reasoning (III.), the implications of this ruling and a number of remaining questions will be discussed (IV.).

II. Facts of the Case and Legal Framework

In the case at hand, the EPPO was conducting an investigation into a Spanish company and its directors, I.R.O. and F.J.L.R, for subsidy fraud and falsification of documents.[8] The company had received EU funding for a project and had not adequately justified the direct personnel costs for two researchers, Y.C. and I.M.B.[9] In the context of this investigation, Y.C. and I.M.B. were summoned as witnesses by the Spanish EDP.[10] However, Y.C. had already testified before the *Juzgado de Primera Instancia e Instrucción no 1 de Getafe* (Court of First Instance and Preliminary Investigation No 1, Getafe, Spain), as the case had originated as a national investigation, which then became an EPPO case when the Spanish EDP exercised their right of evocation.

The lawyers representing I.R.O. and F.J.L.R challenged the EPPO's decision to summon Y.C., arguing that the measure was neither relevant nor necessary nor useful.[11] It was unclear, however, whether it was even possible to challenge the EDP's witness summons. Art. 90 of the applicable Spanish statutory law (*Ley Orgánica (LO) 9/2021*),[12] which implements the EPPO Regulation into Spanish law, restricts the possibility of appealing the EPPO's procedural acts to a certain number of exhaustively listed cases.[13] As an appeal against a witness summons is not expressly provided for under LO 9/2021, defendants cannot challenge these acts – at least not directly – before Spanish courts.

At the same time, Art. 42(1) of the EPPO Regulation provides that the EPPO's procedural acts, as well as failures to adopt such acts, which are "intended to produce legal effects vis-à-vis third parties", shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. While the EPPO Regulation does not further specify which acts fall under the scope of Art. 42(1), the *Juzgado Central de Instrucción no 6 de Madrid* (Central Court of Preliminary Investigation No 6, Madrid, Spain) – the referring court[14] – considered witness summons to be "acts which produce legal effects vis-à-vis third parties". First, the Spanish court highlighted that the summons had legal implications for the witnesses, who were obliged to appear and testify truthfully.[15] Second, the court was of the opinion that the summons could also affect the defendants' procedural rights. Incriminating evidence could be obtained and, given that Y.C. had already been questioned, their right to a trial without undue delay could be affected.[16] Moreover, in a similar national case, such a witness summons would have been open to appeal, as the investigation is led by the investigative judge in Spain, whose orders are, in principle, subject to appeal.[17] By contrast, investigations by the EPPO follow a different structural model – predominant in many EU Member States[18] – whereby the prosecution services are in charge of investigating and prosecuting the offence. In Spain, EPPO proceedings are thus subject to a special procedure that differs structurally from national proceedings.[19]

Against this background, the referring court stayed the proceedings and referred questions to the ECJ on the compatibility of the Spanish law with Art. 42(1) of the EPPO Regulation read in light of the Charter (Question 1), as well as with regards to the principles of equivalence and effectiveness (Questions 3 and 4). The referring court furthermore had doubts as to how such a provision, which precludes the judicial review of witness summons, was to be interpreted in light of Art. 7 of the Directive on the presumption of innocence[20] (the right to remain silent and not incriminate oneself) and Art. 48 of the Charter (Question 2). The ECJ, however, considered this second question to not directly pertain to the case at hand, as it concerned the possibility for the witness to bring an appeal, rather than the defendant, and thus deemed the question inadmissible.[21]

III. The ECJ's Reasoning

The ECJ began by recalling that, due to the specific nature and tasks of the EPPO as an EU body exercising the functions of a public prosecutor before national courts on the basis of national law — which sets it apart from any other EU body —, the EU legislature was conferred the power to design a specific system of judicial review applicable to the EPPO.[22] Such a system has been set up in Art. 42 of the EPPO Regulation, which provides for a sharing of competences between national courts, and the ECJ. Art. 42(1) awards national courts the competence to review "procedural acts that are intended to produce legal effects vis-à-vis third parties" in accordance with the modalities and procedures in national law,[23] while Art. 42(2) to (8) list the cases where the power of review lies with the ECJ.[24] To ensure a coherent division of labour between national courts and the ECJ, the concept of "procedural acts which produce legal effects vis-à-vis third parties" within the meaning of Art. 42(1) must be given an auton-

omous and uniform interpretation throughout the Union.[25] The reference in Art. 42(1) to national law pertains only to the modalities and procedures under which such a review may be exercised, not to the acts which may be subject to review in the first place.[26]

The Court then established that "procedural acts" are to be understood in line with Recital 87 of the EPPO Regulation as acts that are carried out by the EPPO in the course of its investigations.[27] As to the question of whether these acts are to be regarded as having "legal effects vis-à-vis third parties", the Court highlighted that this expression corresponds to the criterion used in the first paragraph of Art. 263 TFEU (to determine the scope of acts that may be challenged before EU courts by way of an action for annulment) and must therefore be interpreted analogously.[28] Drawing on the case law on Art. 263 TFEU, the Court concluded that Art. 42(1) covers "all acts of a procedural nature intended to produce binding legal effects capable of affecting the interests of third parties by bringing about a distinct change in their legal position, including those adopted in the course of a criminal investigation procedure."[29] In line with Recital 87, the term "third parties" is to be interpreted broadly and include suspects, victims, and other persons who may be adversely affected by such acts. Specifically, the ECJ stressed that the EU legislature did not intend to restrict mandatory review of procedural acts to a certain *numerus clausus* but rather sought to extend the scope to include all acts that have legal effects vis-à-vis third parties.[30]

The question of whether a specific act, such as a witness summons, has binding legal effects cannot be answered in the abstract, however, but requires an assessment *in concreto* of the substance of the act and its effects with regard to the "third party", i.e., the person challenging that act, taking into account its content, the context it was adopted in, and the body that adopted it.[31] Given that both EU and national procedural rights apply in EPPO proceedings, the specific effects of any such procedural act will vary, depending on the jurisdiction within which it is taken.[32] Thus, in the words of the Court, as "the perimeter of procedural safeguards" granted to the various persons may vary according to national law, "the perimeter" of the procedural acts that these persons can challenge may consequently also vary.[33] It is therefore for the national court to assess, in light of the national procedural rules and in the context of the criminal investigation, whether the decision of an EDP summoning a witness to appear is intended to produce binding legal effects. Particularly, the (national) court must determine whether that decision is capable of affecting the interests of the person challenging it by bringing about a distinct change in their legal position, including by affecting their procedural rights.[34]

Should this question be answered in the affirmative, the act must be subject to review. However, this review does not necessarily have to be carried out by way of a direct appeal: indirect review by the trial court is sufficient to comply with the required level of protection set out in Art. 19 TEU and Art. 47 of the Charter.[35] Notwithstanding the foregoing, national procedural autonomy is limited in any case by the principles of equivalence and effectiveness. This means that the rules governing remedies in EPPO cases may neither be less favourable than those in similar national cases, nor may they render the exercise of rights guaranteed by EU law impossible or excessively difficult in practice. Therefore, if national law allows for direct appeal, this must also be provided for in EPPO cases.[36]

IV. What to Make of It?

This ruling further cements the reliance on national law and national courts in EPPO proceedings: not only will national courts review the acts, but they will ultimately also determine which acts are susceptible to review in the first place. While this makes sense in terms of the EPPO's setup and structure, it also perpetuates an uneven playing field with regard to procedural rights in proceedings led by an EU body. Besides the implications for the specific case and the Spanish legal order — which will clearly have to amend LO 9/2021— this decision raises broader questions about the standard set forth in Art. 42(1) of the EPPO Regulation. Firstly, the adequacy of the reliance on the case law on Art. 263 TFEU can be questioned. Secondly, doubts can be raised as to the compatibility of the interpretation of Art. 42(1) with the right to effective judicial protection of Art. 47 of the Charter.

1. Implications for the Spanish legal order

While the ECJ does not expressly state that Spanish law is contrary to EU law, leaving that assessment to the referring court, it strongly points in this direction. First, the ECJ notes that Art. 42(1) of the EPPO Regulation is not to be seen as restricting the availability of remedies to a specific list or categories of acts, but rather it is meant to extend the (mandatory) judicial review to all EPPO procedural acts intended to produce binding legal effects. In this regard, Art. 90 of LO 9/2021 is already in contravention of Art. 42(1) of the EPPO Regulation.[37] Regardless of whether a witness summons is considered to have "binding legal effects" in this specific case, the principle of equivalence mandates that the

same remedies be available in EPPO cases as in similar national cases. In this context, we can distinguish two possible scenarios in which judicial review must be provided for:

- The procedural act falls within the scope of Art. 42(1) of the EPPO Regulation;
- The procedural act does not fall within the scope of Art. 42(1) but national law provides for remedies against such acts anyway.[38]

In a similar Spanish case, a witness summons would have been issued by the investigating judge and thus have been subject to appeal (see II. above).[39] The same must apply in EPPO cases, as the EPPO procedure cannot have the effect of limiting rights otherwise available in national cases.[40] With regards to the specific case at hand, the defendants should thus be able to challenge the witness summons issued by the EDP.[41]

2. On the standard of Art. 42(1) of the EPPO Regulation

The ECJ does not determine if a witness summons constitutes "a procedural act intended to have legal effects vis-à-vis a third party", leaving the final assessment up to the national courts, but it provides the parameters of the test to be performed. The ECJ interprets Art. 42(1) EPPO Regulation in line with its case law on Art. 263 TFEU concerning actions for annulment. At first glance, the standard set seems quite broad, as the Court holds, that the possibility of judicial review is not to be limited to a certain list of or category of acts.[42]

However, settled case law regarding the admissibility of actions for annulment establishes that only measures with **binding** legal effects are capable of affecting the interests of the applicant.[43] These are generally enforceable acts which create obligations for the addressees. In this context, the ECJ has held that preparatory or intermediate acts, such as "opinions" or "recommendations", whose purpose is to prepare a final decision, do not, in principle, constitute challengeable acts under Art. 263 TFEU.[44] In this sense, the ECJ has also considered whether an intermediate measure may also be indirectly challenged by contesting the final measure or decision it supports. In *Deutsche Post*, and more recently in *Poland v. European Parliament* the Court held that an intermediate measure could not form the subject of an action for annulment if its illegality could be remedied in an action against the final decision, as in this case the final annulment decision would provide sufficient effective legal protection.[45]

If we take the case law concerning acts adopted by OLAF as a reference, the CJEU has maintained quite a restrictive approach: OLAF acts are routinely not considered challengeable acts under Art. 263 TFEU.[46] For example, in the *Tillack* case, the CJEU ruled that the forwarding of information by OLAF to national authorities does not bring about a specific change in the applicants' legal position, as national authorities remain free to assess the information and determine the actions to be taken.[47] The CJEU has considered preparatory measures to fall within the scope of Art. 263 TFEU, provided they have independent legal effects that are distinct from those of the final decision and also that an appeal against the final decision would not nullify these effects.[48] In *Tillack*, the CJEU highlighted that it was the national authorities who would have taken actions with binding legal effects, such as initiating investigations.[49]

Unlike OLAF, the EPPO has the competence to undertake criminal investigations on the ground, and many of its "preparatory acts", such as initiating investigations,[50] undertaking investigative measures, and granting or denying access to the case file,[51] should be considered challengeable acts according to the standard of Art. 263 TFEU – of course particularly where they affect fundamental rights and the rights of the defence. On the contrary, requests by the EDPs to perform investigative measures, which then have to be approved by the competent judge, would not constitute such challengeable acts.[52]

Against this background, the summoning of a witness can be seen as intending to produce **binding legal effects on the witness** by bringing about a distinct change in their legal position. A summons involves a third party in the proceedings as a witness, carrying certain obligations. Under Art. 410 of the Spanish Code of Criminal Procedure Code (*Ley de Enjuiciamiento Criminal* (LECrim)), witnesses are legally compelled to testify, and Art. 420 stipulates that failure to appear can lead to fines or, in more serious cases, even criminal proceedings for obstruction of justice. Spain is not the only jurisdiction where this is the case; similar provisions apply in Germany, for example.[53] A parallel can be drawn with the ECJ's reasoning in *Gavanozov II*.[54] Although *Gavanozov II* did not concern Art. 263 TFEU, it addressed the issue of challenging a European investigation Order to hear a witness via video conference.[55] The ECJ held that the witness could rely on the protection of the right to an effective remedy of Art. 47 of the Charter, as the decision was capable of adversely affecting them.[56] Furthermore, as Advocate General *Bobek* pointed out in his opinion in *Gavanozov II*, witnesses may be third parties who do not have the option of indirectly challenging the "final" decision at trial.[57] A similar line of reasoning can therefore be applied in the present context.

A different view can be taken with regard to the possible **binding legal effects on the defendants**. In the preliminary reference request at hand, the Spanish court identified two potential effects: First, summoning the witness (to be questioned) could infringe the defendants' right to a trial within a reasonable time, since it would involve a second round of questioning of the same witness. Second, the questioning could lead to the collection of incriminating evidence against the defendants. This does not really showcase binding legal effects on the defendants' legal position. In fact, gathering both incriminating and exonerating evidence is part of prosecutors' tasks in most civil law systems, and does not, as such, constitute a binding effect on the defendants' procedural position.[58]

As an interim conclusion, it should be noted that Art. 263 TFEU gives the CJEU the power to review the legality of the actions of EU bodies, offices or agencies. Art. 42(1) of the EPPO Regulation attributes a function that would otherwise be performed by the CJEU to national courts. From this perspective, it is coherent for the ECJ to interpret Art. 42(1) in light of its case law on Art. 263 TFEU. At the same time, case law on Art. 263 TFEU can only provide limited guidance, however, as it mainly concerns administrative and antitrust law.[59] Thus, while Art. 263 TFEU can inform the interpretation of Art. 42(1) of the EPPO Regulation, a context-sensitive approach appears warranted for EPPO acts, particularly given their potential impact on individual rights. This brings us to our third point: the interplay between Art. 42(1) and Art. 47 of the Charter.

3. On the compatibility of the Art. 42(1) standard with Art. 47 of the Charter

At a more general level, the compatibility of the standard set in Art. 42(1) of the EPPO Regulation, with the right to an effective remedy in Art. 47 of the Charter, may be called into question. According to the ECJ's interpretation of Art. 42(1), a procedural act is subject to judicial review where it constitutes an act capable of producing binding legal effects vis-à-vis the person challenging it. If such judicial review is available, at least indirectly, this would be compatible with Art. 47 Charter. Beyond this, the Court does not elaborate further on the relationship between Art. 42(1) of the EPPO Regulation and the standard of protection in Art. 47 Charter.

As an EU body, investigations led by the EPPO fall within the scope of the Charter (Art. 51(1) Charter). The right to an effective remedy enshrined in Art. 47(1) of the Charter encompasses both the right to judicial review of acts where rights secured by EU law may have been infringed and the right to obtain appropriate redress where such an infringement is established. In this regard, the right to judicial review of the EPPO's procedural acts thus arises from the Charter itself. In general, the ECJ has interpreted Art. 47 of the Charter quite broadly, stating that its protection can be relied on not only where EU fundamental and individual rights are at stake but also *where an act can adversely affect a person.*[60] In this sense, any procedural act by the EPPO would, in principle, be susceptible to – at least indirect – judicial review in line with Art. 47 of the Charter, provided that it could adversely affect the person challenging the act.[61] In my view, the threshold in such a case is lower than that of "binding legal effects". In any case, Art. 47 of the Charter does not constitute an absolute right and may be subject to limitations in accordance with Art. 52(1) of the Charter.

In its case law on Art. 263 TFEU, which informs the interpretation of Art. 42(1) (see above, point 2), the CJEU has not considered the lack of remedies before national courts to be relevant in determining the scope of acts that can be challenged by way of an action for annulment.[62] Specifically, the ECJ has ruled that Art. 47 of the Charter cannot lead to an expansion of the Court's jurisdiction as set out in the Treaties.[63] The context of Art. 42(1) of the EPPO Regulation is, however, somewhat different. The purpose of that provision is specifically to attribute powers to national courts that would otherwise reside with the CJEU.[64] Furthermore, not only procedural acts within the scope of Art. 42(1) must be challengeable before national courts, but also those for which domestic remedies already exist via the principle of equivalence. In this regard, the EPPO Regulation has already resulted in an "expansion" or "redistribution" of competence,[65] which suggests that a more flexible approach may be warranted.

This is further reinforced by the specific nature of the EPPO. As the ECJ itself has emphasised, the EPPO differs from all other EU bodies, including OLAF, Europol, and the European Commission, by its very nature. It adopts measures that, by their very nature, will infringe upon fundamental and individual rights. Even if these measures are not considered to have "binding" legal effects according to the standard of Art. 263 TFEU, such measures could still very well "adversely affect" those involved and should therefore fall within the scope of judicial review.

V. Conclusion

It remains to be seen how national courts will apply the ECJ's ruling in *EPPO v. I.R.O and F.J.L.R* and what effect the ruling may have on the system of remedies in EPPO proceedings. For the time being, the Court has clarified the broad mean-

ing of Art. 42(1) EPPO Regulation as "challengeable acts", but many questions remain. One such question concerns the classification of specific acts within the definition provided by the ECJ. Another concerns the adequacy of the standard set out in Art. 263 TFEU for EPPO investigations and its relationship to Art. 47 of the Charter. A broader interpretation of the criteria is surely called for – an interpretation possibly more in line with Art. 47 of the Charter.

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1 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO), OJ L 283, 31.10.2017, 1 (henceforth: EPPO Regulation).
2 ECJ, 21 December 2023, Case C-281/22, *G.K. and Others (Parquet européen)*, [ECLI EU:C:2023:1018].
3 On this judgement, see H.H., Herrnfeld, "Yes Indeed, Efficiency Prevails: A Commentary on the Remarkable Judgment of the European Court of Justice in Case C-281/22 *G.K. and Others (Parquet européen)*", (2023) *eucrim*, 370–380; M. Caianiello, "Sometimes the More is less. Transnational investigations in the EPPO System After the Judgment of the EU Court of Justice", (2024) *European Journal of Crime, Criminal Law and Justice*, 87–104; A. Venegoni, "The EPPO Faces its First Important Test: A Brief Analysis of the Request for a Preliminary Ruling in G. K. and Others", (2022) *eucrim*, 282–285.
4 ECJ, 23 April 1986, Case C-294/83*, Les Verts v. Parliament,* [EU:C:1986:166], para. 23.
5 See, *inter alia*, on the system of judicial review of EPPO investigations: H.H. Herrnfeld, in: Herrnfeld/Brodowski/Burchard, *European Public Prosecutor's Office: Article-by-Article Commentary*, 2021, Art. 42; V. Costa Ramos, "The EPPO and the equality of arms between the prosecutor and the defence", (2023) 14(1) *New Journal of European Criminal Law* (*NJECL*), 43–70; V. Mitsilegas, "European prosecution between cooperation and integration: The European Public Prosecutor's Office and the rule of law", (2021) 28(2) *Maastricht Journal of European and Comparative Law (MJ),* 245–264, 259 et seq; V. Mitsilegas and F. Giuffrida, "The European Public Prosecutor's Office and Human Rights," in: W. Geelhoed et. al (eds.), *Shifting Perspectives on the European Public Prosecutor's Office*, 2018, pp. 59–98, 83.
6 Herrnfeld, *op. cit.* (n. 5), Art. 42, mn. 12.
7 Cf. also ECJ, 22 Oktober 1987, Case C-314/85, *Foto-Frost v Hauptzollamt Lübeck-Ost,* [EU:C:1987:452], para. 16: "[…] requests for preliminary rulings, like actions for annulment, constitute means for reviewing the legality of acts of the Community institutions".
8 ECJ, 8 April 2025, Case C-292/23, *EPPO v I.R.O and F.J.L.R.,* [ECLI:EU:C:2025:255], para. 19 et seq.
9 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 19 and 20.
10 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 23.
11 Ibid.
12 Ley Orgánica 9/2021, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea (Organic Law 9/2021 implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), of 1 July 2021, BOE No 157, 2 July 2021, p. 78523 (henceforth: LO 9/2021).
13 According to Art. 90 of the LO 9/2021, the decrees ("decisions/orders") ordered by the EDP during the investigative procedure may only be challenged before the *Juez de Garantias* ("Judge of Garanties") in the cases expressly established by this law.
14 As per Art. 65 (5) of the Organic Law of the Judiciary (*Ley Organica del Poder Judicial* (LOPJ)), the Central Court of Preliminary Investigation (*Juzgado Central de Instrucción*) is the supervisory court in EPPO proceedings, responsible for appeals against the first instance courts.
15 See Auto ("Order") Juzgado Central de Instrucción Nr. 6, 26 April 2023, available at: <https://curia.europa.eu/juris/showPdf.jsf;jsessionid=45417B170DB88939F77248F0DE16CBF7?text=&docid=275263&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=12686409>, paras. 63 et seq; for an English version see the summary of the request for a preliminary ruling in case C-292/23, 3 May 2023, <https://infocuria.curia.europa.eu/tabs/document?source=showPdf.jsf&text=&docid=275263&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8522681>, paras. 12 et seq. See also Art. 410 of the Spanish Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal* (LECrim)), which establishes the obligation to appear, Art. 433 of the LECrim, which establishes the obligation to tell the truth, and Art. 420 of the LECrim, which provides for penalties in case of non-appearance.
16 See Auto Juzgado Central de Instrucción Nr. 6, 26 April 202, *op. cit* (n. 15) paras. 70 and 71; For an English version see the summary of the request for a preliminary ruling, *op. cit* (n. 15), para. 15.
17 See Art. 216 of the LECrim.
18 This procedural model has been the subject of much debate in Spain, with a reform potentially underway, as the Spanish Government approved a draft reform of the Code of Criminal Procedure, (*Proyecto de Ley Orgánica de Enjuiciamiento Criminal* (LOECrim), on 28 October 2025. The reform would hand power to lead and direct the criminal investigation over to the prosecution service. If approved by the Spanish Parliament, the reform would come into force in January 2028.
19 On the challenges of this structural difference, see A. Hernández López, "Settlement of conflicts of competence between the European Public Prosecutor's office and national authorities: The Spanish case, in: B. Ubertazzi (ed.), *The EPPO and the Rule of Law*, 2024, pp. 99–118.
20 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, OJ L 65, 11.3.2016, 1.
21 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 37–41.
22 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 48.
23 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 54.
24 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 55–56.
25 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para.58.
26 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 53.

27 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 60.
28 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 61.
29 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 62 and 63.
30 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 63.
31 ECJ , *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 67–69.
32 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 71.
33 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 72.
34 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para.75.
35 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 76.
36 ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 82 et seq.
37 See B. Vidal Fernández, "Control jurisdiccional de los actos de la Fiscalía Europea: Artículo 42 Reglamento de la Fiscalía Europea" in: (2023) *Revista de Estudios Europeos, n.º Extraordinario monográfico 1*, 38. He had previously argued (prior to this preliminary reference) that Art. 90 of LO 9/2021 contravened Art. 42(1) and must therefore be disapplied by national courts.
38 See Recital 87 of the EPPO Regulation.
39 The decision to summon a witness can be subject to a "*recurso de reforma*" before the same court that ordered it.
40 See R. Esser, "§ 12 Rechtsschutz", in: Herrnfeld/Esser (ed.), *Europäische Staatsanwaltschaft, Handbuch,* 2022, mn. 42.
41 See also, in this sense, J. Öberg, "Effective Remedies and Procedural Autonomy – Judicial Review of Actions by the European Public Prosecutor (C-292/23, EPPO v I.R.O and F.J.L.R)", *EU Law Live*, 23 April 2025, p. 16. Öberg finds that the ECJ has given the national court strong reasons to grant this remedy and considers it a significant undermining of national procedural autonomy, since it would clearly offer a remedy against the EPPO's actions in this case, which does not exist today according to national Spanish law. However, in my view, the ECJ does not require Spanish law to create any new remedies but rather to extend existing remedies to EPPO cases and, in that sense, reinforces more than undermines national procedural autonomy. The follow-up decision by the referring Spanish court was not known to the author at the time of writing; either the decision is still pending or it has not been published in publicly available databases.
42 See ECJ, 31 March 1971, Case C-22/70, *Commission* v *Council* (European Agreement on Road Transport (ERTA)), para. 42; ECJ, 25 June 2020, Case C-14/19, *European Union Satellite Centre (SatCen) v. Council of the European Union*, para. 69.
43 ECJ, 4 October 1991, Case C-117/91, *Bosman v. Commission*, para. 13; ECJ, 9 December 2004, Case C-123/03 *P, Commission v. Greencore*, para. 44; ECJ, 11 November 1981, Case 60/81, *IBM v. Commission*.
44 ECJ, 9 July 2020, Case C-575/18 P, *Czech Republic v Commission*, paras. 61 and 62; ECJ, 13 October 2011, Joined Cases C-463/10 P and C-475/10 P, *Deutsche Post AG, Federal Republic of Germany v European Commission,* para. 50.
45 ECJ, *Deutsche Post, op. cit.* (n. 44), para. 53; See also more recently ECJ, 3 June 2021, Case C-650/18, *Poland v. European Parliament*, para. 46
46 See V. Mitsilegas, *EU-Criminal Law after Lisbon,* 2016, p. 117; M. Rodopolous and K. Pantazatou, "Judicial Protection against OLAF's Acts: in Search of Effectiveness", (2013) *Hellenic Review of European Law, International Edition*, 133.
47 CFI, 4 October 2006, Case T-193/04, *Hans-Martin Tillack v Commission of the European Communities,* [EU:T:2006:292], para. 69 et seq.
48 ECJ, *Deutsche Post, op. cit.* (n. 44), para. 54.
49 CFI, *Tillack v Commission, op. cit.* (n. 47), paras. 69 and 70.
50 Herrnfeld, *op. cit.* (n. 5), Art. 42, para. 35. According to Herrnfeld, decisions undertaken by the EPPO, such as the decision to initiate an investigation/or exercise its right of evocation, would not, in principle, be acts subject to mandatory judicial review pursuant to Art. 42(1). Instead, judicial review should be granted if there has been an infringement of fundamental and procedural rights. Mitsilegas, (2021) 28 *MJ*, *op. cit.* (n. 5), 261 adopts a broader approach, considering that EPPO decisions including the initiation of investigation and prosecution, the merging or reallocation of cases, and decisions on choice of forum or conflicts of jurisdiction would fall under the scope of Art. 42(1), as per the parameters of Art. 263 TFEU. I would also tend to agree with Mitsilegas.
51 Esser, *op. cit.* (n. 40), mn. 39.
52 Also, in this sense, Esser, *op. cit.* (n. 40), mn. 67.
53 See sections 49 and 50 of the German Code of Criminal Procedure (*Strafprozessordnung, StPO*).
54 ECJ, 11 November 2021, Case C-852/19, *Gavanozov II*, [ECLI:EU:C:2021:902], para. 47; see also Opinion of Advocate General Bobek, 29 April 2021, Case C-852/19, *Gavanozov II*, [ECLI:EU:C:2021:346], para. 97.
55 On *Gavanozov II* see: A. Weyembergh, "About the Gavanazov II and HP judgments of the CJEU on the European Investigation Order Directive: strengthening the judicial protection in the issuing Member State", in: EJ20 Anniversary essays, 2022, <https://www.eurojust.europa.eu/20-years-of-eurojust/gavanazov-ii-and-hp-judgments-cjeu-european-investigation-order>; V. Costa Ramos, "*Gavanozov II* and the need to go further beyond in establishing effective remedies for violations of EU fundamental rights", *EU Law Live,* 22 November 2021; A. Hernandez Weiss, "Effective protection of rights as a precondition to mutual recognition: Some thoughts on the CJEU's Gavanozov II decision", (2022) 13(2) *New Journal of European Criminal Law* (*NJECL*),180–197.
56 ECJ, *Gavanozov II*, *op. cit.* (n. 54), para.47.
57 AG Bobek, *op. cit.* (n. 54), para. 52.
58 In this sense, see also: Öberg, *EU Law Live,* 23 April 2025, *op. cit.* (n. 41), p. 15.
59 See Herrnfeld, *op. cit.* (n. 5), Art. 42, para. 34. The type of acts that are the subject of case law on Art. 263 TFEU differ quite substantially from the type of procedural acts and measures adopted by the EPPO because they refer more to "legal" acts, i.e., regulatory acts. A lot of the discussions surrounding Art. 263 TFEU focus on the changeability of "soft law" acts, which are not comparable to decisions/acts undertaken in the course of criminal procedure.
60 ECJ, 16 May 2017, Case C-682/15, *Berlioz-Investment Fund*, [ECLI:EU:C:2017:373], paras. 51 and 52; ECJ, *Gavanozov II*, *op. cit.* (n. 54), para. 46.
61 The ECJ has consistently held that "indirect judicial review" is sufficient: See ECJ, 7 September 2023, Case C-209/22, *Rayona Prokuratuura Lovech* [ECLI:EU:C:2023:634] or ECJ, 26 January 2023, Case C-205/21, *V.S.*, [ECLI:EU:C:2023:49].
62 CFI, *Tillack v Commission, op. cit.* (n. 47), para. 80.
63 ECJ, Case C575/18 P, *Czech Republic v Commission*, *op. cit*. (n. 44), paras. 52–53.
64 Herrnfeld, *op. cit.* (n. 5), Art. 42, mn. 5 and 12.
65 See also, in this sense, Herrnfeld, *op. cit.* (n. 5), Art. 42, para. 33.

History Repeats Itself: Resolving Conflicts of Competence in EPPO Cases

Reflections on the Beroš and Ayuso Cases

Balázs Márton

A corruption case in Croatia (the *Beroš* case) recently reached the political level, leading to a positive conflict of competence between the Croatian prosecutorial authorities and the European Public Prosecutor's Office (EPPO). The circumstances surrounding the debate bear a striking resemblance to the conflict that emerged in 2022 regarding the so-called *Ayuso* case in Spain. Both cases underpin the shortcomings in the regulatory framework of the EPPO's competences, which have already been highlighted in legal literature. The prompt resolution of these shortcomings is crucial, as the current legal framework may have serious rule-of-law implications, potentially leading to harmful consequences for the defendant's rights. With its analysis of both the Croatian *Beroš case* and the Spanish *Ayuso* case, this article aims to demonstrate the regulatory challenges related to the conflict of jurisdiction within the EPPO's legal framework.

I. Background of the *Beroš* and *Ayuso* Cases

On 15 November 2024, the European Public Prosecutor's Office (EPPO) issued a statement announcing that its office in Zagreb (Croatia) had initiated an investigation against eight individuals, including the Minister of Health, directors of two hospitals in Zagreb, and two companies. The suspects allegedly committed various economic crimes as members of a criminal organisation between June 2022 and November 2024: accepting and giving bribes, abuse of position and authority, and money laundering.[1] For the purpose of this article, it is important to note that some of the alleged offences relate to contracts under projects funded by the European Union (EU) as part of Croatia's National Recovery and Resilience Plan 2021–2026. The media referred to the Croatian case as the *Beroš case*, named after the Minister of Health involved.[2] For the sake of clarity, I will also use this term, nevertheless respecting the presumption of innocence.

On the same day that the EPPO issued its statement, the Office of the Prosecutor General of Croatia (*Državno odvjetništvo Republike Hrvatske, DOHR*) also released a statement confirming that its anti-corruption unit (*Ured za suzbijanje korupcije i organiziranog kriminaliteta, USKOK*), which operates independently within the Croatian prosecutorial system, was also investigating the same facts and individuals. The DOHR claimed that the EPPO had not been notified, indicating that it should exercise competence over the case. Therefore, the DOHR requested the EPPO to transfer the entire case file to the USKOK. It referred to Art. 5 of Regulation (EU) 2017/1939,[3] which mandates sincere cooperation between national authorities and the EPPO. This provision requires national authorities to actively assist and support the EPPO in its investigations and prosecutions and emphasizes that any action, policy, or procedure under Regulation (EU) 2017/1939 shall be guided by the principle of sincere cooperation.[4]

These circumstances resulted in a positive conflict of competence between the EPPO and the DOHR – the basis of the legal dispute.

The *Beroš* case resembles the events in another case of a positive conflict of competence that arose between the EPPO and Spanish authorities in 2022: the *Ayuso* case. The *Ayuso* case, which I presented in a previous eucrim article,[5] involved an alleged corruption crime regarding the purchase of medical masks financed by EU funds during the COVID-19 pandemic. Spain's **Special Anti-Corruption Prosecutor's Office** (*Fiscalía Especial contra la Corrupción*, FEC) initiated an investigation into the payment of €55,000 allegedly made to the brother of the regional president, Isabel Díaz Ayuso. The EPPO sought to exercise its right of evocation, however, arguing that the suspected offence involved EU financial resources. The **Prosecutor General** of Spain, who is the authority in Spain to decide on positive conflicts of jurisdiction in EPPO cases, decided to separate the case involving the mask deal. Thus, the FEC could continue to investigate the mask contract.[6]

Against the background of these two cases, this article aims to demonstrate the regulatory challenges related to resolving (positive) conflicts of competence within the EPPO's legal framework. Section II briefly recapitulates this legal framework; section III presents the lines of argument in the Croatian and Spanish cases. This is followed by my own analysis of the cases (section IV) and, ultimately, conclusions are drawn (section V).

It is likely that, as a consequence of the regulatory difficulties shown, legal disputes similar to those described in this article can presently only be resolved on an ad hoc basis. Such case-by-case resolution affects the principles of legal certainty and foreseeability, thereby undermining the predictability of legal outcomes. Addressing this risk effectively calls for a comprehensive and fundamental legislative response.

II. EPPO's Legal Framework on Resolving Conflicts of Jurisdiction

Both substantive and procedural rules governing the EPPO's competence are defined in Regulation (EU) 2017/1939, which is directly applicable in all participating Member States. There are two primary ways in which the EPPO may initiate an investigation:

- Right of evocation: If a judicial or law enforcement authority of a Member State initiates an investigation into an offence for which the EPPO could exercise its competence or if at any time after the initiation of a national investigation it appears to that authority that the case concerns such an offence, that authority shall, without undue delay, inform the EPPO so that it can decide whether to exercise its right of evocation.[7]
- Autonomous initiation: The EPPO shall initiate an investigation if there is a suspicion that an offence within its competence has been committed. In such cases, the European Delegated Prosecutor (EDP) of the relevant Member State shall record the initiation of the investigation in the Case Management System.[8] The EPPO shall then notify the national authority of its decision to open the investigation without undue delay.[9]

Before making a decision about exercising its right of evocation, the EPPO may consult with the relevant national authorities.[10] If it comes to the EPPO's attention that an investigation into a criminal offence for which it could be competent has already been undertaken by the competent national authorities, it shall inform these authorities without delay. After being duly informed, the EPPO shall take a decision on whether to exercise its right of evocation.[11] It follows from this "priority competence" that, once the EPPO has exercised its competence over an investigation, the national authorities shall transfer the case to the EPPO and are no longer permitted to proceed with the investigation or prosecution of the same offence.

The EU legislator neither regulated the vertical relationship between the EPPO and the Member States on the basis of the principle of complementarity as laid down in the Corpus Juris[12], nor did it apply the rule of exclusive competence proposed in the Model Rules[13] and the European Commission's 2013 proposal.[14] Although these concepts would have created a clearer legal framework for the EPPO's competence, they provoked opposition from the Member States during the legislative procedure. This ultimately led to the adoption of the current solution based on the model of shared competence.[15] While shared competence may appear to be a more balanced approach compared to exclusive competence at first glance, the balance actually shifts in favour of the EPPO rather than to the Member States. The reason for this is that, in the case of competing competences, the EPPO's jurisdiction ultimately takes precedence over that of the Member State if there is an offence within the scope of the EPPO Regulation. That is why it is more accurate to refer to this rule as priority competence.[16]

Thus, the current legal framework does not de jure preclude the emergence of a positive conflict of competence between the EPPO and the national authorities. In legal literature, procedural issues related to conflicts of competence are often discussed alongside the material law governing the competence.[17] The EU legislator did not provide detailed guidance on the procedure to be followed in case of such a conflict. Regulation (EU) 2017/1939 merely provides that, in case of disagreement between the EPPO and the national authorities regarding the scope of the EPPO's material competence, the national authorities responsible for attributing competences concerning prosecution at the national level shall determine which authority is competent to investigate the case.[18]

III. Lines of Arguments in the *Ayuso* and *Beroš* Cases

In *Ayuso*, the EPPO recognized the complexity of the case and the complexity of the relationship between national law and EU law; it recommended that the **Prosecutor General – the competent authority in Spain to decide on this conflict of competence – consider a referral** to the European Court of Justice.[19] Spanish lawyers proposed separating the case into two investigations, one allowing the EPPO to handle matters involving EU financial interests and one in which the FEC would handle the investigation of inextricably linked offences (see below).[20] The **Prosecutor General** ultimately endorsed this split. The EPPO, however, argued that splitting competence over factually linked offences contravened EU law and decided to proceed with its investigation. Eventually, both the FEC and the EPPO terminated their parallel investigations for different reasons and at different times.[21]

The European Chief Prosecutor criticized the events leading up to the **Prosecutor General**'s decision. She argued that the **Prosecutor General** of Spain, as the superior of the FEC, was inherently involved in the conflict. Moreover, the EPPO had not been given an opportunity to present its position either before the Prosecutor General or Spanish courts. The procedural rules in Spain, which pertain to the interpretation of EU law, did not provide for any right to judicial review. According to the European Chief Prosecutor, these procedural deficiencies hindered the CJEU from exercising its exclusive competence over the interpretation of EU law, thereby jeopardizing the **supremacy of EU law**.[22]

In the *Beroš* case, the Office of the **Prosecutor General of Croatia** – the national authority designated to resolve conflicts of competence – issued its decision on the conflict of competence on 19 November 2024, determining that the investigation should be continued by USKOK.[23] The Prosecutor General of Croatia cited Art. 22(2) of Regulation (EU) 2017/1939, which grants the EPPO competence over a case involving participation in a criminal organisation (as defined in Council Framework Decision 2008/841/JHA[24]) only if the focus of the criminal organisation's activity is to commit offences affecting the EU's financial interests (as defined in the PIF Directive). The **Prosecutor General of Croatia** concluded that the organisation's criminal activity in the *Beroš* case primarily targeted the Croatian state budget rather than EU funds.[25] Regarding the issue of inextricably linked offences, the **Prosecutor General of Croatia** cited the limitations in Art. 25(3) of Regulation (EU) 2017/1939 and determined that these also fell outside the EPPO's competence in the concrete case. The decision further noted that the EPPO did not act in accordance with the principle of **loyal cooperation**, as the Office itself caused the conflict of competence by failing to refrain from exercising its competence in compliance with the provisions of Regulation (EU) 2017/1939.[26]

It followed that the EPPO issued a statement expressing firm disagreement with the Prosecutor's General decision, but it finally transferred the *Beroš* case to the Croatian authorities. At the same time, the European Chief Prosecutor sent a formal letter to the European Commission, underlining systemic challenges in upholding the rule of law in Croatia, in line with Art. 4 of Regulation (EU) 2020/2092[27] (the so-called "**Rule of Law Conditionality Regulation**"), and raising three main concerns:

- The designation of the **Prosecutor General of Croatia** as the authority to resolve the conflict of competence violates EU law.
- The decision was based solely on USKOK's legal interpretation without allowing the EPPO to present its position, which undermines the principle of impartiality.
- USKOK had previously failed to notify the EPPO about its investigation involving EU financial resources, thereby breaching the provisions of Regulation (EU) 2017/1939.28

IV. Analysis: The Deficient Regulatory Approach

The *Ayuso* and *Beroš* cases have highlighted conflicts of competence between the EPPO and national authorities, which stem from the regulatory approach taken: The Union legislator's decision to refer the dispute to the national level was likely guided by the same political considerations that led to the acceptance of shared competence.

The first problem here is the need for the application of national procedural rules in resolving such conflicts of competence. In the *Ayuso* case, *Lorena Bachmaier Winter* has identified a significant shortcoming regarding the reference of dispute resolution to the national authorities: there is no possibility of hearing the EPPO, as an involved party; moreover, the decision of the national authority is not subject to any judicial review.[29]

Second, the CJEU is only competent to interpret Arts. 22 and 25 of Regulation (EU) 2017/1939 within the framework of preliminary rulings.[30] In my view, however, the preliminary ruling procedure does not constitute an effective judicial remedy. The experiences in the *Ayuso* case confirm this, as the involvement of the CJEU was not mandatory and even inadmissible. I share *Hans-Holger Herrnfeld's* view that "disturbances" occur when a national authority decides in cases of conflicts of competence;[31] I find it incomprehensible – from an EU law perspective – that a national decision can be binding on an EU body.

Several authors have criticized the current regulatory framework for resolving conflicts of competence, arguing that it undermines the EPPO's interests.[32] According to *Bachmaier Winter*, potential breaches of the right to a fair trial are apparent in the *Ayuso* case.[33] I firmly believe that the problem should instead be examined from the perspective of the defendant, as disputes of competence like those in *Ayuso* primarily affect the defendant's right to a fair trial. Parallel investigations conducted by different authorities involving the same offence – despite the pending resolution of a conflict of competence – undermine the principle of **equality of arms**: the defendant is forced to respond to multiple authorities, participate in multiple interrogations, and prepare for each proceeding, which complicates the exercise of the right

to effective defense. One need only think of the associated costs of legal representation and related expenses. In addition, serious rule-of-law concerns arise regarding the legal validity of procedural acts conducted during parallel investigations if competence is ultimately granted to a different authority with a different regime of criminal procedure.[34]

V. Lessons to Learn

The *Ayuso* and *Beroš* cases exemplify a conceptual anomaly in current EU law: Member States are obliged to interpret EU law and issue binding decisions on an EU body, specifically the EPPO, if conflicts of competence arise. Even though the Union legislator may have had a different intention, the currently applicable attempt to resolve such disputes by opening up the possibility of preliminary references to the CJEU, is unsuitable: national authorities are not in a position to provide authentic interpretations of EU law, particularly if the national authority or its subordinate body is a party to the dispute. The shortcomings are also exacerbated if the national authority competent to decide the conflict is not a court or tribunal, as it is not entitled to submit a request for preliminary ruling to the CJEU.[35]

The lack of clear procedural provisions in EU law for resolving a conflict of competence undermines **legal certainty**. As seen in the *Ayuso* and *Beroš* cases, the parties involved in the conflict (the Prosecutor Generals, on the one hand, and the EPPO, on the other) can only argue on the basis of broadly formulated principles or norms beyond the scope of Regulation (EU) 2017/1939, such as the Charter of Fundamental Rights of the European Union, general principles of EU law (e.g., loyal cooperation), or the Rule of Law Conditionality Regulation. This *ad hoc* approach is neither coherent nor comprehensive.

An effective judicial review is essential to ensuring a rule-of-law-compliant resolution of conflicts of competence between the EPPO and national authorities. Since these vertical conflicts inherently involve clashes between EU law and national laws, only a supranational body would be qualified to adequately review them. The Charter (Art. 47) has also emphasized the importance of ensuring effective judicial review, which is a fundamental requirement for the lawful resolution of such conflicts.

It could be argued in favour of the current solution that in cases where the investigation remains purely within a national jurisdiction, similar conflicts of competence can arise between different national law enforcement and/or judicial authorities with similar negative consequences, particularly for the defendant, including the prolongation of the procedure. However, purely national, horizontal disputes have a much less significant impact on the defendant's legal position compared to a vertical conflict, such as one between the EPPO and the national authority of a Member State. The resolution decision in the vertical situation determines the choice between different legal orders – and thus different procedures with different procedural rules. Furthermore, it must be borne in mind that, in horizontal disputes, the investigation – regardless of the final outcome of the competence dispute – remains within the national legal order at all times, the "master" of the case being a national authority under the jurisdiction and control of the given state. Conversely, if the conflict of competence is embodied in a vertical choice between EU and national laws, the decision may also have the consequence that the investigation is removed from state control.

In conclusion, I agree with *Enrico Traversa's* opinion that the renunciation of exclusive competence and the transition to shared competence should have been accompanied by a complete revision of the procedure for conflicts of competence during the legislative procedure leading to the EPPO Regulation.[36]

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La coopération judiciaire pénale euro-marocaine pour la lutte contre la criminalité organisée et le terrorisme

État des lieux et défis actuels

Ali Bounjoua

This article examines the judicial cooperation between Europe and Morocco in combatting organised crime and terrorism. Despite Morocco's strategic role and its expertise in anti-drug and counter-terrorism efforts, there is currently no specific formal legal framework on the part of the European Union that governs judicial cooperation with the Kingdom of Morocco. This article analyses the relevant political and legal instruments, such as the EU-Morocco Association Agreement, the advanced status under the European Neighbourhood Policy, the EuroMed Justice and Police programmes, and initiatives by Eurojust and Europol. The analysis reveals how mutual trust is gradually being established through the convergence of Euro-Moroccan judicial and police practices. However, it also identifies structural limitations, including the heterogeneity of bilateral agreements with EU Member States and procedural divergences. While EU-Morocco judicial cooperation lacks a binding legal framework at the Union level, recent operational developments are promoting a pragmatic and effective partnership. This is positioning Morocco as a central actor in the Euro-Mediterranean judicial space and driving the establishment of a formal EU-Morocco judicial cooperation agreement.

I. Introduction

La criminalité organisée transnationale et le terrorisme international ont profondément transformé les enjeux sécuritaires de l'espace euro-méditerranéen. Depuis une vingtaine d'années, les réseaux criminels reliant l'Europe et la région du MENA (Moyen-Orient et Afrique du Nord) ont connu une expansion sans précédent.[1] Le Maroc occupe une position particulière dans cette « géopolitique criminelle ». Sa situation géographique, aux portes de l'Europe, en fait un point de passage pour le transport de la drogue venant d'Amérique latine.[2] Les autorités marocaines ont ainsi développé une certaine expertise dans la lutte antidrogue sur le plan transfrontalier.[3] À cela s'ajoute leur expérience dans la lutte contre le terrorisme. En effet, le Maroc a pu mettre en échec plusieurs projets en lien avec des organisations terroristes, depuis de nombreuses années, grâce à la vigilance de ses autorités sécuritaires[4]. Les autorités marocaines ont pris très tôt et de manière proactive la mesure du danger de l'extrémisme violent. Elles ont mis en place une approche multidimensionnelle et intégrée qui repose sur cinq piliers :[5]

- le pilier sécuritaire et juridique ;
- le pilier socio-économique ;
- le pilier religieux ;
- le pilier du renforcement des droits humains et de l'État de droit ;
- et le pilier de la coopération judiciaire et policière internationale.

Ceci fait du Maroc un partenaire stratégique idéal pour l'Union européenne et plusieurs de ses États membres. La France, la Belgique, l'Espagne ou encore les Pays-Bas entretiennent depuis longtemps une coopération judiciaire et policière opérationnelle avec les autorités marocaines afin de neutraliser des réseaux actifs dans le narcotrafic et les cellules terroristes, tant sur l'espace pénal européen que sur l'espace euro-méditerranéen.[6]

Paradoxalement, cette coopération opérationnelle entre les États membres de l'UE et le Maroc ne s'accompagne pas d'un cadre juridique européen unique formalisé par l'Union.[7] Contrairement aux relations de l'Union avec d'autres États tiers, comme les États-Unis[8], aucun accord européen sur la coopération judiciaire en matière pénale n'a été conclu avec le Maroc. Les instruments institutionnels de droit pénal européen demeurent limités, voire inexistants, et laissent les États membres opérer principalement via leurs conventions bilatérales de coopération judiciaire. Cette situation met en lumière une tension entre l'importance stratégique du partenariat euro-marocain et l'absence d'un cadre de l'Union européenne qui permettrait une approche harmonisée de la coopération internationale pour ses États membres. Pour qu'un tel cadre européen puisse voir le jour, il faut un certain niveau de confiance mutuelle. Certes, cette confiance ne doit pas être aussi développée que celle de l'espace pénal européen, mais elle doit atteindre un certain niveau qui per-

mettrait une coopération internationale « européanisée » plus efficace.[9]

Plusieurs initiatives européennes favorisent une convergence pragmatique dans les enquêtes transnationales, qui sont indispensables à la coopération judiciaire et qui permet de construire une confiance mutuelle entre l'UE et le Maroc.[10] L'étude de la coopération pénale euro-marocaine permet donc d'analyser un phénomène particulier de la coopération judiciaire internationale et européenne : celui d'une confiance mutuelle en construction, qui ne repose pas sur un cadre juridique contraignant mis en place par l'Union européenne, mais sur une convergence progressive des pratiques judiciaires et policières, ainsi que de la conclusion de plusieurs accords politiques en lien avec l'État de droit. Il convient ainsi d'examiner, d'une part, les fondements institutionnels de cette coopération et, d'autre part, les dynamiques opérationnelles qui montrent comment, malgré ses limites, la relation s'est consolidée dans la pratique. Cela au point de devenir l'une des coopérations judiciaires extérieures les plus actives pour l'Union et plusieurs de ses États membres dans le domaine de la lutte contre la criminalité organisée transnationale et le terrorisme.[11]

II. Un cadre opérationnel et politique structuré de la coopération

1. Les contraintes de la coopération pénale euro-marocaine : une coopération casuistique à l'aune des droits fondamentaux

Contrairement à la coopération judiciaire entre États membres de l'UE fondée sur la reconnaissance mutuelle, la coopération avec un État tiers ne repose pas sur une présomption de confiance mutuelle. Elle est subordonnée à un contrôle concret des risques au regard des droits fondamentaux. La coopération judiciaire avec le Maroc demeure structurée par une logique d'évaluation au cas par cas, fondée sur l'appréciation du risque et, le cas échéant, sur les garanties offertes par le Maroc en tant qu'État requérant. La jurisprudence de la Cour européenne des droits de l'homme impose ainsi une appréciation concrète du risque grave et sérieux vis-à-vis des droits fondamentaux au sein des relations de coopération euro-marocaine. Ceci rend ainsi plus difficile la construction d'une confiance qui atteindrait un degré tel permettant un accord de coopération UE-Maroc ou, à tout le moins, fluidifier de manière systématique la coopération judiciaire permettant un cadre proche de celui de la confiance mutuelle entre les États membres de l'Union.

Les affaires concernent les extraditions demandées par le Maroc à la Belgique ou à la France ont souvent posé la question d'un risque de violation des articles 3 et 6 de la Convention européenne des droits de l'homme. C'est ce qui a constitué le principal obstacle dans la plupart des cas de coopération pénale européenne avec le Maroc.[12] Une décision de la Cour européenne des droits de l'homme relative à la coopération entre l'Allemagne et le Maroc permet d'illustrer que cet obstacle à la coopération pénale avec le Maroc en lien avec l'existence d'un risque de torture ou de traitement inhumain ou dégradant ne vaudrait surtout que lorsqu'il est question d'infractions terroristes.[13]

Ces dernières années, le Maroc semble tout de même, selon la jurisprudence de la Cour européenne des droits de l'homme, entamer des actions pour se conformer davantage aux droits humains en matière procédurale ce qui a poussé la Cour à expliciter dans certains arrêts relatifs à la coopération pénale que toute extradition vers le Maroc ne peut être constitutive en tout temps de violation de l'article 3 ou de l'article 6 de la Convention. Ainsi, s'il n'y a pas de confiance systématique, il n'y a pas non plus de présomption d'absence de confiance.

Au contraire, malgré ces difficultés relatives aux droits humains qui rendent difficile une coopération pénale euro-marocaine plus systématique et fondée sur un degré de confiance qui permettrait la conclusion d'un accord de coopération par l'Union européenne, le Maroc et les États membres de l'UE se sont rapprochés en développant des valeurs communes afin de consolider cette confiance. À cet égard, l'article 2 de l'Accord d'association UE-Maroc est particulièrement éclairant en indiquant que :

> Le respect des principes démocratiques et des droits fondamentaux de l›homme, tels qu'énoncés dans la Déclaration universelle des droits de l›homme, inspire les politiques internes et internationales de la Communauté et du Maroc et constitue un élément essentiel du présent accord.[14]

De plus, la Déclaration conjointe de l'Union européenne et du Maroc suite à la 14e réunion du Conseil d›Association UE-Maroc du 27 juin 2019 mentionne :

> Un Espace de convergence des Valeurs, inspiré de la Charte des droits fondamentaux de l'Union européenne, de la Constitution marocaine et des engagements internationaux des deux partenaires. Cet espace aura pour objectif de renforcer un rapprochement autour des principes fondateurs et directeurs du partenariat que sont la démocratie, l'État de droit, la bonne gouvernance, la justice, l'efficacité, responsabilité et transparence des institutions, les Droits de l'Homme et les libertés fondamentales [...].[15]

Ces exigences jurisprudentielles expliquent que la coopération pénale euro-marocaine ne puisse, à ce stade, reposer sur des mécanismes de reconnaissance mutuelle compa-

rables à ceux existant entre États membres de l'UE. Elles éclairent en revanche le rôle central du cadre politique général, conçu comme un premier levier progressif de rapprochement et de consolidation de la confiance avec les autorités judiciaires marocaines.

2. Le cadre politique général de la coopération euro-marocaine : la base de la construction d'une confiance mutuelle

La coopération judiciaire euro-marocaine en matière pénale est née dans un contexte institutionnel encadré par des instruments plus politiques que juridiques. Initialement, l'Accord d'association de 1996 constitue le premier pilier du partenariat UE-Maroc.[16] Il établit les bases d'une coopération dense dans les domaines économique, social et sécuritaire, mais n'inclut pas de mécanismes de coopération judiciaire relatifs à l'extradition, le transfèrement des personnes condamnées ou l'entraide judiciaire. L'Accord évoque la lutte contre la criminalité organisée comme un objectif commun, mais sans créer d'obligations juridiques procédurales contraignantes.[17]

En 2008, le Maroc s'est vu octroyer le « statut avancé » dans le cadre de la Politique européenne de voisinage, reconnaissant ainsi la volonté partagée d'approfondir les relations politiques, sécuritaires et économiques.[18] Toutefois, ces engagements fixent uniquement des orientations politiques, des objectifs généraux, des priorités ou des axes d'action, sans créer d'obligations juridiques contraignantes ni d'effets directs pour les autorités judiciaires marocaines ou européennes.

Ainsi, ces accords ne se traduisent pas par des outils juridiques concrets permettant la coopération judiciaire pour lutter efficacement contre le crime organisé.

La Déclaration conjointe adoptée lors du Conseil d'association de 2019 marque une étape clé.[19] Elle érige la « justice et la sécurité » en axes prioritaires du partenariat euro-marocain et met en lumière la nécessité d'une coopération accrue dans la lutte contre le terrorisme, les trafics de stupéfiants, la traite des êtres humains et d'autres formes de criminalité transnationale.[20] Les routes maritimes font de la région euro-méditerranéenne un terrain particulièrement apprécié par les organisations criminelles transnationales qui exploitent ces routes à l'aune des nouvelles technologies. Le Maroc est alors explicitement présenté comme un partenaire central dans la lutte contre ce type de criminalité transfrontalière dans cette région. Cependant, cette déclaration a uniquement valeur politique sans valeur normative directe pour les autorités judiciaires souhaitant renforcer leur coopération.

3. Les accords bilatéraux avec les États membres de l'Union européenne : un socle fragmenté de la coopération euro-marocaine

Contrairement à ce qui existe avec les États-Unis, l'Union ne dispose pas avec le Maroc d'un traité relatif à l'entraide judiciaire, à l'extradition, aux échanges d'informations ou à la protection des données à des fins répressives. Cette lacune place les États membres de l'UE au centre de la coopération judiciaire en matière pénale euro-marocaine. Ces derniers doivent ainsi utiliser les conventions bilatérales datant de plusieurs décennies, parfois modernisées, mais souvent disparates dans leur contenu. Ainsi, le Maroc a conclu une trentaine d'accords bilatéraux de coopération judiciaire en matière pénale avec plusieurs États membres de l'UE, couvrant l'extradition ou les mécanismes d'entraide judiciaire. À titre illustratif, la France et le Maroc sont liés par une Convention d'extradition de 1957 et un Accord d'entraide de 2008.[21] La Belgique s'appuie quant à elle sur des conventions bilatérales anciennes qui ont permis une coopération opérationnelle encadrée juridiquement.[22]

Cette situation génère une hétérogénéité qui suscite une problématique : La diversité des accords bilatéraux de coopération avec un même État tiers, en l'occurrence le Maroc, crée des divergences à l'échelle européenne dans la manière de coopérer et au niveau des standards de preuve, des délais d'exécution, de la protection des données, des causes de refus de coopérer ou les modalités d'actions conjointes. Par exemple, les dispositions relatives aux demandes urgentes fondées sur des communications électroniques sont absentes de plusieurs accords bilatéraux, obligeant les autorités judiciaires des États membres à adapter au cas par cas les modalités de coopération pour ce type de demandes urgentes.

4. Au-delà des accords bilatéraux : le rôle structurant des initiatives régionales

Au-delà des accords de coopération bilatéraux entre les États membres de l'UE et le Maroc, des initiatives régionales contribuent également à poser un cadre juridique européen de la coopération dans la pratique.

La nouvelle phase des programmes EuroMed Justice et EuroMed Police pour la période 2024–2027 vise à intensifier l'alignement technique et procédural des systèmes judiciaires.[23] Par « alignement technique et procédural », il ne faut pas entendre une harmonisation formelle du droit pénal matériel et procédural, mais un rapprochement progressif des pratiques, des outils et des méthodes d'enquêtes.

À travers le programme EuroMed Justice VI, l'Union européenne entend renforcer les capacités techniques des autorités marocaines et structurer des réseaux de coopération entre praticiens. À cette fin, le programme s'appuie notamment sur le Justice Expert Group in Criminal Matters (CrimEx) et l'EuroMed Justice Network (EMJNet), qui réunissent des magistrats et des enquêteurs des États membres et des pays partenaires. Ces dispositifs visent à faciliter les échanges d'expertise, la coordination des enquêtes à dimension transnationale et l'assistance technique.[24]

Le programme EuroMed Justice joue ainsi un rôle structurant de cette coopération euro-marocaine, en renforçant la formation des magistrats et des enquêteurs, en développant des outils pratiques relatifs aux demandes d'entraide judiciaire ou aux preuves numériques, et en favorisant des formations thématiques réunissant les autorités judiciaires européennes et marocaines.[25] Le Maroc est l'un des participants les plus actifs à ce programme, ce qui traduit une volonté de rapprocher ses pratiques de celles des États membres de l'UE.[26]

Le Conseil de l'Europe constitue un autre cadre favorisant la construction d'une confiance mutuelle pour l'adoption future d'un accord juridique de coopération UE-Maroc. L'adhésion du Maroc à la Convention de Budapest sur la cybercriminalité en 2018 témoigne en effet d'un engagement décisif en faveur de standards communs concernant la collecte et l'échange de données électroniques à des fins judiciaires. Ce texte, le seul traité international global en matière de cybercriminalité à présent, fournit un cadre solide pour la coopération en matière de preuve numérique, secteur particulièrement sollicité par les autorités policières et judiciaires dans les affaires de criminalité organisée.[27]

Les initiatives EuroMed Justice et EuroMed Police jouent ainsi un rôle structurant dans la coopération euro-marocaine, en favorisant une convergence progressive des pratiques, des standards et des méthodes de travail. Elles traduisent toutefois une approche essentiellement encadrante, qui renforce la coopération judiciaire sans pour autant créer d'obligations juridiques directement mobilisables par les autorités judiciaires. Les liens du Maroc avec le Conseil de l'Europe, au travers de la Convention de Budapest, permettent quant à eux de donner une portée plus juridique et contraignante du cadre régional euro-marocain.

5. La coopération pratique et opérationnelle au prisme d'Eurojust et d'Europol

Les acteurs de la coopération européenne manifestent un intérêt pour une coopération renforcée entre les États membres et le Maroc. L'activité d'Eurojust a été renforcée par la désignation d'un point de contact marocain.[28] Par ailleurs, Europol inclut désormais explicitement la conclusion d'un accord opérationnel avec le Maroc dans ses objectifs.[29]

Le Maroc n'est plus à la marge : il est désormais formellement intégré dans la structure de coopération internationale d'Eurojust, bien qu'un accord opérationnel avec Eurojust devient urgent. L'implication du Maroc en sa qualité de point de contact d'Eurojust permet ainsi de faciliter l'exécution des demandes d'entraide judiciaire, d'accélérer les échanges et les contacts, de coordonner les enquêtes transnationales, ou encore d'assurer une liaison permanente en cas d'urgence. Or, dans les affaires de fusillades liées à la criminalité organisée transfrontalière ou de menaces d'attentats terroristes, l'urgence est de principe. Grâce à la coopération entre Eurojust et le Maroc, les autorités judiciaires européennes peuvent dépasser certaines fragilités des accords bilatéraux, notamment en matière de rapidité et de coordination multilatérale.

Ainsi la stratégie 2024–2027 d'Eurojust identifie la région méditerranéenne comme prioritaire pour la conclusion d'accords formels.[30] Dans ses rapports pour les années 2024–2026 et 2025–2027, Europol inscrit également la conclusion d'un accord opérationnel avec le Maroc parmi ses objectifs, ce qui marque une évolution notable dans le cadre future du partenariat de coopération euro-marocain.[31]

6. Conclusion intermédiaire : une coopération en construction malgré l'absence d'un cadre de l'Union européenne

La coopération pénale euro-marocaine s'inscrit dans un cadre juridique et politique marqué par une tension structurelle. Si la jurisprudence de la Cour européenne des droits de l'homme impose un contrôle rigoureux des risques relatifs aux droits fondamentaux liés à l'extradition et à l'entraide judiciaire, elle n'exclut pas pour autant toute coopération en matière de criminalité organisée et de terrorisme. Les instruments politiques, les accords judiciaires bilatéraux avec les États membres et les initiatives régionales apparaissent ainsi comme des vecteurs essentiels de consolidation progressive d'une confiance renforcée.

Depuis la Déclaration conjointe de 2019, la dynamique de coopération évolue selon une même dynamique : une coopération croissante, mais encore essentiellement politique et dépourvue d'un cadre juridique strict. Mais depuis 2023, une évolution perceptible se dessine grâce à l'implication des acteurs européens de coopération.[32]

Ces développements témoignent d'une nouvelle évolution du partenariat, mais ne modifient pas la réalité juridique fondamentale : l'ensemble des instruments faisant état d'une coopération UE-Maroc applicable au Maroc demeurent dépourvus d'effet normatif propre. La coopération UE-Maroc en matière pénale repose ainsi sur un socle politique solide, renforcé par des mécanismes techniques efficaces, mais qui ne bénéficie toujours pas d'un cadre juridique européen contraignant au niveau de l'Union comparable à ceux conclus avec d'autres États tiers.

En outre, l'absence d'un cadre européen commun empêche toute harmonisation de la pratique entre les États membres dans leurs relations individuelles avec le Maroc.

Pour les dossiers complexes liés au grand banditisme ou au terrorisme, l'existence d'un point de contact via Eurojust rend ainsi la coopération plus efficace et plus fluide ce qui renforce, au niveau judiciaire, la confiance mutuelle de droit européen et pas seulement la confiance politique. Le Maroc devient alors un partenaire central de coopération dans l'espace judiciaire euro-méditerranéen au bénéfice de l'espace pénal européen.

L'ensemble de ces éléments révèle une coopération en pleine mutation. Si le droit européen institutionnel demeure en retrait, les dynamiques politiques, les outils régionaux et les initiatives des acteurs européens de coopération construisent progressivement une base de valeurs communes et de standards communs, condition essentielle à l'établissement d'une confiance mutuelle durable.

III. Une coopération opérationnelle confrontée à des limites structurelles

1. Exemples de collaborations fructueuses

La coopération pénale entre le Maroc et les États membres de l'UE est caractérisée par une certaine intensité.[33] Les demandes d'extradition, d'entraide judiciaire et d'échanges d'informations montrent un engagement fort tant des autorités judiciaires européennes que marocaines. Surtout en ce qui concerne les affaires de trafic international de stupéfiants, de criminalité organisée et de terrorisme.[34]

Les relations avec la France illustrent bien ce haut degré de coopération opérationnelle bilatérale.[35] Les autorités françaises sollicitent régulièrement leurs homologues marocaines dans le cadre d'enquêtes liées à des homicides en bande organisée, à des trafics de stupéfiants ou à des réseaux installés entre Marseille, l'Espagne et le nord du Maroc. Plusieurs extraditions ont été exécutées depuis 2022 et 2023.[36] Le Maroc répond également aux demandes françaises en matière de saisies et confiscations d'avoirs criminels, même si l'absence de cadre européen commun limite la fluidité de tels échanges judiciaires.

La coopération entre la Belgique et le Maroc est tout aussi significative.[37] La Belgique se trouve au cœur de l'un des hubs majeurs de la criminalité organisée transnationale, en particulier à travers le port d'Anvers, devenu un point d'entrée stratégique pour la cocaïne sud-américaine. Les fusillades survenues en 2024 et 2025, dont la fréquence a augmenté au cœur de la capitale belge, en constituent une illustration.[38] De plus, de nombreux réseaux criminels d'origine ou d'affiliation marocaine y opèrent. Les autorités belges sollicitent ainsi fréquemment l'assistance des autorités judiciaires et policières pour identifier, localiser ou extrader les suspects recherchés, notamment dans les dossiers de trafic international de stupéfiants. Certaines de ces procédures ont abouti à des arrestations, notamment à Casablanca ou à Tanger. Dans d'autres cas, l'extradition a été refusée en raison de l'acquisition récente de la nationalité marocaine par les personnes recherchées, conformément au principe constitutionnel de non-extradition des nationaux marocains. Ces situations illustrent à la fois l'efficacité et les limites structurelles de la coopération bilatérale belgo-marocaine.

Récemment, le 12 janvier 2026, la Belgique et le Maroc ont renforcé leur coopération judiciaire.[39] Les ministres de la Justice des deux pays ont signé un accord de coopération visant à développer de bonnes pratiques et à échanger de l'expertise. Ainsi, ce plan d'action judiciaire opérationnel porte sur :[40]

- la mise en œuvre de manière la plus optimale des traités bilatéraux pour lutter contre la criminalité organisée internationale ;
- le renforcement de l'entraide judiciaire en matière pénale afin de démanteler les modèles de revenus criminels et de lutter contre l'impunité ;
- une collaboration plus efficace dans le transfèrement de personnes condamnées sans droit de séjour ;
- la mise en œuvre effective de la déclaration commune du 23 octobre 2025 entre la Belgique et le Maroc.

Ainsi, ce nouvel accord démontre d'une part, l'efficacité des accords bilatéraux antérieurs dans la pratique judiciaire belgo-marocaine, et d'autre part, que la Belgique et le Maroc réaffirment leur volonté d'approfondir leur coopération judiciaire à travers des consultations structurelles et d'accords

concrets pour lutter au mieux, et avec une confiance renforcée, contre la criminalité organisée.

Par ailleurs, de manière plus spécifique, la lutte contre le terrorisme constitue un pilier essentiel de la coopération euro-marocaine. Les services marocains de renseignement, en particulier la Direction générale de la surveillance du territoire (« DGST »), jouent un rôle reconnu dans la prévention d'attentats en Europe. Plusieurs projets d'attaque ont ainsi été déjoués en France et en Belgique grâce à des informations transmises par Rabat.[41] Cette dimension illustre l'un des paradoxes de la coopération euro-marocaine : une confiance opérationnelle très élevée dans les dossiers les plus sensibles, malgré l'absence d'un accord juridique au niveau de l'Union européenne.

2. Problèmes et obstacles à la coopération

La pratique révèle toutefois plusieurs obstacles. Le premier est la lenteur relative des procédures. Selon la procédure marocaine, l'extradition se déroule en deux phases : une phase judiciaire, suivie d'une phase administrative au cours de laquelle le gouvernement doit valider la décision.[42] Le pouvoir exécutif conserve un contrôle sur les affaires internationales. En pratique, la durée totale de la procédure peut atteindre huit mois, ce qui peut être incompatible avec les besoins des enquêtes transnationales, notamment lorsqu'il existe un risque de fuite ou de destruction de preuves relative à des faits en lien avec des organisations criminelles.

Le deuxième obstacle tient à l'asymétrie des systèmes judiciaires. L'impossibilité constitutionnelle d'extrader les ressortissants nationaux peut parfois empêcher la remise de personnes recherchées par les autorités européennes. Certains suspects ont la double la nationalité, ce qui crée des tensions diplomatiques et rend nécessaire la mise en place de mécanismes alternatifs, tels que l'assurance de poursuites nationales au Maroc lorsque les dossiers judiciaires le permettent.

Un troisième obstacle réside dans les divergences procédurales. Les standards relatifs à la preuve numérique, à la conservation des données, aux conditions de détention préventive ou aux auditions peuvent différer, obligeant les États membres de l'UE à adapter leurs demandes ou à fournir des documents complémentaires. Ces ajustements entraînent des retards et renforcent la nécessité d'un dialogue constant entre magistrats européens et marocains. Les affaires les plus complexes, notamment en matière de cybercriminalité ou de grand banditisme, requièrent souvent plusieurs échanges policiers et judiciaires pour clarifier les modalités d'exécution des commissions rogatoires.

3. Conclusion intermédiaire : une coopération dynamique mais limitée

En définitive, la coopération opérationnelle euro-marocaine apparaît à la fois dynamique et contrainte. Elle révèle une capacité d'adaptation pragmatique des acteurs judiciaires et policiers, marocains et européens, tout en mettant en lumière les limites structurelles d'un modèle de coopération fondé sur des arrangements bilatéraux et sectoriels plutôt que sur un cadre européen intégré. Cette analyse invite ainsi dans le futur à une réflexion sur les modalités selon lesquelles une coopération largement fondée sur des pratiques opérationnelles pourrait évoluer vers un cadre plus cohérent et normatif au niveau supranational, sans transposer mécaniquement les logiques de reconnaissance mutuelle propres à l'espace pénal européen.

IV. Conclusion

La coopération judiciaire pénale euro-marocaine constitue un modèle bien spécifique sous l'angle des relations extérieures de l'Union européenne.[43] Elle repose sur une tension permanente entre une coopération opérationnelle très active et un cadre juridique institutionnellement lacunaire, marquée par l'absence d'accords formalisés par l'Union européenne. Les États membres de l'UE jouent un rôle prépondérant, en mobilisant leurs Conventions bilatérales de coopération pour répondre aux défis posés par la criminalité organisée transnationale et par le terrorisme. Cette situation crée une coopération judiciaire efficace pour lutter contre ce type de criminalité transfrontière, mais fragmentée, dont les performances dépendent tout de même des relations politiques entre le Maroc et chacun des États membres.

Les développements de ces dernières années montrent toutefois une volonté partagée d'aller au-delà de ce modèle fragmentaire. Les initiatives d'Eurojust et d'Europol, qui souhaitent formaliser leurs relations avec le Maroc, ainsi que les efforts de convergence menés dans le cadre des programmes EuroMed Justice et EuroMed Police, contribuent à la construction progressive d'une confiance mutuelle plus stable et institutionnalisée. Cette évolution permet d'entrevoir la possibilité d'un futur cadre euro-marocain plus structuré, susceptible de combler les lacunes actuelles en matière de rapidité, de prévisibilité et d'harmonisation : un accord de coopération judiciaire UE-Ma-

roc. Toutefois, la relation restera probablement marquée par un équilibre particulier, où la confiance se construit d'abord à travers la pratique, l'expérience et les succès opérationnels, avant de se traduire dans des instruments juridiques contraignants. En ce sens, la coopération euro-marocaine peut être considérée comme un laboratoire des relations extérieures de l'Union, illustrant les défis, les ambiguïtés, mais aussi le pragmatisme qui consolide progressivement une confiance mutuelle indispensable pour un accord pénal conclu au niveau de l'Union.

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