

FIGHTING CRIME ACROSS BORDERS: SOVEREIGN EQUALITY AND JUDICIAL COOPERATION IN CRIMINAL MATTERS



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Abstract

The article examines the role of equality as a fundamental principle in judicial cooperation within the EU, tracing its evolution and impact concerning criminal law. The discussion begins with an outline of the significance of equality in the EU's formation and its early stages of cooperation. It explores the historical development of judicial cooperation in criminal matters, highlighting its transformation into a key element of EU integration. The analysis focuses on the principle of equality within the current framework of judicial cooperation, emphasising the adoption of common minimum standards for criminal proceedings as a basic model. These standards ensure uniformity and fairness while preserving equality among the Member States. The article delves into how these standards influence the equality of the Member States in criminal law enforcement and judicial processes. Key areas of criminal law are explored to illustrate the practical application of equality in judicial cooperation, including efforts to combat terrorism, corruption, cybercrime, fraud and money laundering, alongside measures to protect victims. The article addresses the challenges posed to equality by European integration, discussing sovereignty, the rule of law and the emerging role of the European Public Prosecutor's Office. Additionally, it highlights the pivotal role of the Court of Justice of the European Union in upholding the principle of equality in judicial cooperation. The article concludes by summarising the complex interplay between equality, sovereignty and judicial cooperation in the EU, underscoring the continued importance of this principle in fostering integration and addressing contemporary challenges.

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1. Introduction

The EU, within which an intensive process of integration has been ongoing for years, is a *sui generis* international organisation uniting states to achieve its designated objectives.¹ The goals set by its Member States must be pursued according to a plan and within certain boundaries. The establishment of these goals and the methods for their achievement ensures the efficiency and effectiveness of a complex mechanism such as the EU. It is necessary to reconcile diverse individual interests of the Member States, varying economic positions and consider the peculiarities and characteristics of all the Member States, including their heterogeneous legal systems. Therefore, at the EU's inception, several fundamental principles were laid down, forming its foundation and guiding the future coexistence of the Member States.

One such principle has been the principle of equal cooperation among the EU Member States. This is a foundational principle, shaping further rules and operational frameworks for all the Member States. Without cooperation among the Member States, neither the EU's creation nor its continued functioning would be possible. The cooperation is based on equality, a necessary and indispensable element.² This cooperation serves as the cornerstone for the positive future of the European integration process. Therefore, it is worth examining equality as the primary substrate of cooperation among the Member States. This equality among the cooperating Member States is particularly impactful in areas tied to the individuality, uniqueness or sovereignty of each Member State. In the context of the present analysis, the area of cooperation being considered is the domain of justice in criminal matters, where the equality of cooperating Member States is key to integration in this unique field.

2. Equality As a Fundamental Element of Cooperation in the Initial Process of Shaping the EU

It is generally accepted that the emergence of the concept of the EU began in 1950, with the activities of legendary figures, such as Jean Monnet and Robert Schuman. The former was a French politician and economic advisor, while the latter

1 Wunderlich, 2012, pp. 653–669.

2 Rossi, 2017, pp. 3–42.

was a qualified lawyer and the French Minister of Foreign Affairs.³ They presented a set of resolutions, objectives and methods of cooperation as a vision for a united Europe, which was intended to be a modern, efficient, secure and rationally integrated structure. This formulated position, as a proposal of the French government, was known as the Schuman Plan.⁴ Subsequently, this document became the catalyst for the signing of the Treaty of Paris in 1951, which established one of the first European communities, the European Coal and Steel Community (ECSC).⁵ This is widely recognised as the beginning of the idea of European cooperation, now known as European integration, which later developed into the present-day EU.

The Schuman Plan was announced on May 9, 1950, to build strong and lasting foundations for the stabilisation and integration process in post-war Europe.⁶ The goal was to preserve peace in Europe, which had just emerged from World War II. Thus, the objective was to initiate cooperation among certain key European states, which would provide predictability and guarantees to prevent the outbreak of further conflicts, alongside a vision of prosperity and modernity for a united Europe. Hence, the economy was prioritised, with only partial emphasis on the political sphere. At the time, the foundation of the economy consisted of fossil fuels and other related resources. Consequently, the signing of the treaty (Treaty establishing the European Coal and Steel Community and related instruments (ECSC treaty)) aimed to establish principles for the cooperation and distribution of natural resources that dominated the European and global economy. It sought to create stable frameworks for cooperation in managing coal and steel production, which was expected to translate into Europe's economic stability. The countries that initiated European cooperation in this area included France, West Germany (the Federal Republic of Germany), Italy, Belgium, the Netherlands and Luxembourg.

In its original version, the Schuman Plan included the following declarations. First, the aforementioned attempt to ensure stabilisation and lasting peace in Europe. Second, the establishment and observance of strict rules for the management of strategic resources, such as coal and steel. Third, European integration, as the tightening of economic cooperation, is reflected in the inclusion of additional sectors of the economy and the establishment of a common European market. Fourth, although the primary objective was strong economic cooperation, slow indications of future tightening of political cooperation were emerging, signifying collaboration based on shared values. Fifth, a forward-looking openness to new members in the integration process, that is, openness to other European countries and the possibility of their accession to the integration process, intending to initiate the integration of the entire continent. Sixth, international cooperation, as the activity of states on a supranational level towards a common goal, which, at that time, implied, to some extent,

3 Anta, 2021, pp. 773–784; Wells, 2022, pp. 9–13.

4 Perkowski, 2006, p. 27.

5 Petzina et al., 1981, pp. 450–468.

6 McKesson, 1952, pp. 18–35.

the relinquishment of certain elements of sovereignty. However, this was done in a rational and comprehensible manner, respecting the individuality of each Member State (the concept of a ‘Europe of Nations’).⁷

At the outset, as the foundation for implementing the Schuman Plan, the fundamental principles of this nascent cooperation among European states were delineated. Based on the common objectives, cooperation among states was grounded in several key principles that became the bedrock of the functioning of the EU. These principles included the joint management of strategic resources, the assurance of peace and security in the European region, the principle of economic solidarity and interdependence, the simultaneous sovereignty and integration of states, the principle of a single market, the free movement of persons, goods, services and capital, the principles of subsidiarity and proportionality, the respect for community law and the principle of equality among Member States. These principles formed the foundation of the integration process, which led to the establishment of the EU, evolving and adapting to changing political, economic and social conditions. Cooperation based on these principles among the six founding states laid the groundwork for further integration, leading to the establishment of the European Economic Community (EEC) and later the development of the EU.⁸

This concise, retrospective overview of the beginnings of European integration reveals that, from the beginning, European integration was based on cooperation and equality of the states and rested on the aforementioned principles. For instance, each Member State, at the inception of modern integration, was assured equal voting rights. Member States were represented on equal terms, regardless of their size or economic strength. The same applied to the early judicial bodies. The Court of Justice was established to resolve disputes and ensure adherence to common principles.⁹ This Court treated all states equally. However, with the expansion of the EU’s competences following the ratification of the Lisbon Treaty and the adoption of the Regulation on conditionality related to the rule of law, an issue began to evolve. This was a turning point that directly contributed to changes in the approach of the European courts, which acquired new areas of adjudication, a development that is not self-evident and remains debatable regarding its compatibility with the Treaties.¹⁰

A similar approach was applied to decision-making mechanisms, which recognised the interests of all states. While voting mechanisms (e.g., majority voting) have evolved towards stark inequalities, in the early stages, particular care was taken to ensure that no state felt dominated by another. Key decisions required consensus, which prevented larger states from imposing solutions on smaller partners. Thus, the equality of the Member States, at the early stages of integration, was crucial and respected. Equality, as a driving force for integration, was a fundamental component

7 Sienko, 2021, pp. 29–48.

8 Vandermeersch, 2017, pp. 79–101.

9 Garrett et al., 1998, pp. 149–176.

10 Du Vall, 2024, pp. 177–197.

in building trust and faith. If the smaller states had felt dominated by larger ones, the cooperation would have collapsed. Hence, the principle of equality was foundational to the success of the initial European communities and should remain a significant aspect of the EU's functioning today.¹¹

3. Judicial Cooperation in Criminal Matters in the EU – A Historical Overview

The equality of the Member States, which has been a foundational principle of European integration, was intended, over time, to extend to the highly sensitive area of judicial cooperation, particularly in the complex domain of criminal law. Broadly speaking, the judiciary can be defined as a function of the state aimed at resolving disputes through competent authorities. It is an integrated and interdependent system of institutions (e.g., courts), whose scope of operation is delineated by law and values (such as the rule of law, fairness and truth), with legal principles enshrined in the highest-ranking legal acts (e.g., constitutional principles of equality before the law, judicial independence, the presumption of innocence, the right to defence, etc.) and procedural frameworks (e.g., criminal procedure, civil procedure, administrative procedure and alternative dispute resolution methods).¹² This system fulfils specific societal functions, such as the protection of law and public order and the safeguarding of human and civil rights.¹³

Closely tied to the judiciary is the process of administering justice, which involves determining legal liability (whether civil, criminal or administrative) and enforcing penalties that may be imposed.¹⁴ The judiciary plays a central role in administering justice. For instance, Art. 175 of the Polish Constitution¹⁵ explicitly states that the judiciary in the Republic of Poland is exercised by the Supreme Court, common courts, administrative courts and military courts. Consequently, the judiciary holds a pivotal role in building a democratic state governed by the rule of law, where every citizen can expect the protection of their rights and fair treatment. Thus, the concept of the judiciary, and the judicial function within it, has become a subject of consideration within the broader process of European integration.

The current form of administering justice, including judicial cooperation in criminal matters within the EU, is the result of a significant evolution, a convergence of numerous historical events and phenomena and political factors and economic

11 Defeis, 2004, p. 73; Howard, 2009, pp. 19–38.

12 Hensler, 2003, p. 165.

13 Cross, 1999, pp. 87–98.

14 Hylton, 2005, pp. 175–201.

15 The Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws 1997 No. 78, item 483).

processes that have been observed through the years of integration. The beginning of fundamental changes and the gradual development of judicial cooperation in criminal matters became the provisions of the Maastricht Treaty.¹⁶ It introduced the three pillars of European cooperation. First was the Pillar of the European Communities, based on the existing communities: the EEC, the ECSC and the European Atomic Energy Community (EURATOM).¹⁷ It was characterised by a supranational nature, meaning that decisions were made within the framework of community institutions (European Commission, Council of the EU, European Parliament and European Court of Justice). Second was the Common Foreign and Security Policy (CFSP), concerning the cooperation of the Member States in foreign and security policy for maintaining peace and international security, promoting international cooperation, strengthening democracy, human rights and the rule of law.¹⁸ It was based on an intergovernmental nature, meaning that decisions required consensus among the Member States and were not subject to control of the EU institutions. Third was cooperation in the area of Justice and Home Affairs (JHA),¹⁹ which covered matters such as asylum and immigration policy, combating organised crime, terrorism, human trafficking and judicial and police cooperation in criminal matters. This pillar was intergovernmental, meaning that decisions were made by agreement among the Member States. Under this pillar, the Member States began cooperation for criminal justice.

Judicial cooperation in criminal matters under the Maastricht Treaty (1992) was framed in a different context than today, as the EU's institutional and legal framework was still taking shape. At the time, the principle of unanimity was largely respected; hence, for judicial cooperation in criminal matters, all the decisions required unanimity among the Member States. Each Member State could veto proposals. An important element of this cooperation was its voluntary nature, which was primarily based on voluntary agreements between the Member States. There was no mechanism enforcing uniform legal standards across the Union. It was a forum for the exchange of information and best practices, rather than an integrated legal system. However, there was a noticeable lack of harmonisation of criminal law, because the Maastricht Treaty did not foresee the harmonisation of criminal law provisions across the Member States.

Each Member State retained full sovereignty. Hence, the main areas of cooperation within the third pillar focused on aspects such as combating transnational crime, including drug trafficking, human trafficking and terrorism, the exchange of information between law enforcement authorities and courts of Member States and the issue of extradition as a form of cooperation in the transfer of individuals sought by the Member States. Furthermore, there was a complete lack of EU competencies at

16 Treaty on European Union. OJ C 191, 29.7.1992, pp. 1–112.

17 Radivojevic, 2004, p. 61; Scheinman, 1965.

18 Sjursen, 2003, p. 34.

19 Wolff et al., 2009, pp. 9–23.

the time; hence, within the third pillar, no EU judicial body had any competence to settle disputes or interpret provisions regarding judicial cooperation. This was due to the intergovernmental nature of this pillar and the strong respect for the sovereignty of the Member States. Therefore, the Maastricht Treaty limited judicial cooperation in criminal matters to intergovernmental exchange of information and voluntary actions, without harmonisation of criminal law or strong institutional mechanisms.

Although this was an important step towards building trust among Member States, real integration and effective judicial cooperation began in subsequent treaties. The Treaty of Amsterdam,²⁰ signed in 1997, reformed the third pillar by transferring some competences (e.g., cooperation in visa, asylum and immigration matters) to the first pillar, thereby increasing the role of EU institutions. The Treaty of Amsterdam, entered into force in 1999, introduced new mechanisms and institutions for improving the effectiveness of this cooperation and gradually harmonising the legal systems of the Member States. Most notably, it established the Area of Freedom, Security and Justice (AFSJ) as a key objective of the EU.

Regarding criminal law, the third pillar continued to operate on an intergovernmental basis; however, with greater coherence in actions. The Treaty of Amsterdam laid the foundation for the principle of mutual recognition of judgments and judicial decisions between the Member States. This was believed to be essential for streamlining judicial cooperation in criminal matters, allowing for the swift and effective recognition of criminal judgments and decisions across the EU. Furthermore, it strengthened the protection of fundamental rights. Member States were required to respect fundamental rights, such as the right to defence, the presumption of innocence, etc., in judicial cooperation. Moreover, there was a noticeable development of judicial cooperation instruments. Cooperation in criminal matters was expanded to include new mechanisms, including initiatives aimed at harmonising laws concerning combating organised crime, countering terrorism and fighting cross-border crime, including human trafficking and the illegal drug trade.

Eurojust was officially established in 2002, as the Treaty of Amsterdam provided the legal basis for its creation.²¹ Eurojust was created to support judicial cooperation among the Member States in criminal matters through coordination between law enforcement authorities and judicial bodies of different countries. The popular tool in criminal proceedings, the European Arrest Warrant (EAW), was introduced. While the EAW was formally introduced after the Treaty of Amsterdam (pursuant to the 2002 Framework Decision of the Council), the Treaty had established its legal basis. The EAW was a response to the noticeable problems with extradition between EU states, which was a very lengthy, highly formalised and inefficient process. The EAW allowed for the simplification and acceleration of the process, eliminating the aforementioned traditional barriers. It was during this time that the EU's judicial

20 The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts OJ C 340, 10.11.1997, pp. 1–144.

21 Suominen, 2016, pp. 13–32.

competencies were expanded. For instance, compared to the Maastricht Treaty, the Treaty of Amsterdam foresaw such competences in judicial cooperation, although they were limited to the third pillar. However, the EU judicial body gained the right to interpret EU legal acts related to judicial cooperation to strengthen the coherence of the legal system across the Member States.²²

Additionally, the Treaty of Amsterdam paved the way for the adoption of the Tampere Programme,²³ which set specific goals and actions for the ‘area of freedom, security and justice’, including the development of judicial cooperation in criminal matters. The programme emphasised the importance of mutual recognition of judicial decisions and the harmonisation of minimum standards in criminal matters. Hence, the Treaty of Amsterdam was a crucial step in the evolution of judicial cooperation in criminal matters within the EU. It transitioned from the purely intergovernmental cooperation model of Maastricht to a more integrated system. It laid the groundwork for modern judicial cooperation tools, such as Eurojust, the EAW and directed future cooperation through closer harmonisation of criminal law.

The next legal act, the Lisbon Treaty (2009), fully integrated judicial cooperation in criminal matters into the EU’s legal framework, transferring it into a unified EU legal system and providing certain but concrete mandates for the Court of Justice of the EU (CJEU). The Lisbon Treaty introduced fundamental changes in judicial cooperation in criminal matters, integrating it more deeply into the EU legal system.²⁴ As a part of the treaty reforms, the three-pillar division was abolished, allowing for full integration of cooperation in JHA into the EU’s general legal framework. Judicial cooperation in criminal matters was transferred to the section covering the AFSJ. Hence, judicial cooperation became a part of EU policy, governed by common legislative procedures and EU institutions (European Commission, European Parliament, Council of the EU). The Lisbon Treaty expanded the EU’s competences in criminal law and introduced the possibility of harmonising minimum standards of criminal law across the EU.

According to Art. 83 of the Treaty on the Functioning of the European Union (TFEU), the Union may establish minimum rules concerning, for example, the definitions of crimes and penalties in areas of particularly serious transnational crimes (such as terrorism, human trafficking, drugs and cybercrime).²⁵ Further harmonisation of regulations occurred in areas related to the protection of the EU’s financial interests. The Lisbon Treaty enabled the establishment of the EPPO, which was tasked with conducting investigations and prosecuting crimes against the financial interests of the EU, such as fraud involving EU funds.²⁶ In 2017, the EPPO was formally established as an entity of significance in cross-border judicial cooperation in

22 Willems, 2019, pp. 468–495.

23 Carrera, 2020, pp. 3–9.

24 Ladenburger, 2008, pp. 20–40.

25 De Pasquale and Celeste, 2021, pp. 1581–1596.

26 Wade, 2019, pp. 165–180.

criminal matters. The Lisbon Treaty reinforced the principle of mutual recognition of judicial decisions, which became the primary mechanism for judicial cooperation. It was assumed that mutual recognition would allow quicker and more effective recognition of judgments and judicial decisions across the Member States, forming the basis for an efficient use of legal instruments, such as the EAW and the new European Investigation Order (EIO).

The Lisbon Treaty expanded the CJEU's competences in the area of judicial cooperation in criminal matters. The CJEU gained the authority to, among other things, resolve disputes between the Member States in this area. A simplified legislative procedure was introduced, as decisions regarding judicial cooperation in criminal matters were made under the ordinary legislative procedure by the Council and the European Parliament, which was intended to enhance democratic oversight. The requirement for unanimity was abolished in several areas and replaced by qualified majority voting, speeding up decision-making processes. The Treaty strengthened the catalogue of fundamental rights and made the EU Charter of Fundamental Rights (CFREU) legally binding, meaning that all actions of the EU, including those of judicial cooperation in criminal matters, must comply with the Charter. Greater guarantees were provided for the protection of the rights of the accused, suspects and victims in criminal proceedings.

Furthermore, it strengthened the position of bodies such as Eurojust, which coordinates judicial cooperation between the Member States and supports justice in cross-border matters,²⁷ and Europol, which, while primarily focused on police cooperation, supports judicial bodies by providing intelligence data.²⁸ There was a harmonisation of minimum procedural standards, as minimum standards concerning the rights of accused persons in criminal proceedings and the rights of crime victims (e.g., protection of victims of violence, access to information about proceedings) were introduced as a part of judicial cooperation. Hence, the Lisbon Treaty was a turning point in the development of judicial cooperation in criminal matters within the EU.²⁹ It laid the foundation for further development of instruments and institutions for combating cross-border crime and set the course for a stronger harmonisation of criminal law in Europe.

27 Weyembergh and Theodorakakou, 2023, pp. 157–182.

28 Deflem, 2006, pp. 336–359.

29 Öberg, 2011, pp. 60–82.

4. The Principle of Equality Within Present Judicial Cooperation in the EU

The current legal foundation for judicial cooperation in criminal matters within the EU is the Treaty on EU (TEU),³⁰ which is the primary document defining the principles, main objectives and values of the EU. Furthermore, the TFEU³¹ regulates specific issues related to the EU's competences, the functioning of its institutions and its policies. These are the two legal pillars on which the analysis of judicial cooperation in criminal justice matters among the Member States should be based. From the perspective of the principle of equality, a key component of judicial cooperation in criminal matters within European integration, the most important provisions in the TEU and TFEU are Art. 4 (TEU) and the provisions of Arts. 82 to 86 (TFEU).³²

Art. 4 of the TEU emphasises that any competences not conferred upon the EU by the Treaties belong to the Member States. Furthermore, the EU respects the equality of the Member States under the Treaties, including their national identity, which is linked to their political and constitutional structures, and regional and local self-government. It respects the essential functions of the State, particularly those ensuring its territorial integrity, maintaining public order and protecting national security. Particularly, national security remains the exclusive responsibility of each Member State. Additionally, following the principle of loyal cooperation, the EU and the Member States respect each other and provide mutual support in carrying out the tasks arising from the Treaties. The Member States take all appropriate general and specific measures to ensure the implementation of the obligations of the Treaties or the acts of the EU institutions. They facilitate the EU's task fulfilment and refrain from adopting any measures that could jeopardise the achievement of the EU's objectives. Hence, the EU respects the national identity of the Member States, which is inextricably linked to their constitutional and political structures, including the principle of equality of the Member States. Therefore, according to the provision, the national identity of the Member States is of value in itself and this identity, combined with sovereignty, expresses the equality of the Member States.

A closer examination of Art. 4, particularly through the lens of the principle of equality, highlights that Art. 4(2) strongly emphasises that the EU respects the national identity of the Member States, which is linked to their constitutional and political structures, including the principle of equality. Based on the wording of this provision, the equality of the Member States under EU law means that each

30 Consolidated version of the Treaty on European Union. OJ C 326, 26.10.2012, pp. 13–390.

31 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. Consolidated version of the Treaty on the Functioning of the European Union Protocols. Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference, which adopted the Treaty of Lisbon, signed on December 13, 2007, OJ C 202, 7.6.2016, pp. 1–388.

32 Mitsilegas, 2019, p. 565; Jimeno-Bulnes, 2003, pp. 614–630.

Member State, regardless of its size, population or economic power, has equal rights and obligations within the EU. No country can be treated in a privileged or discriminatory manner. Moreover, constitutional and national identities are of great importance, as they protect the unique constitutional and cultural characteristics of each State, which is tied to respecting their diversity within the Union. Hence, the Member States may preserve their unique institutions, legal traditions, administrative structures, values and legal culture. The key to the respect for this provision lies in the respect for the sovereignty of each Member State, because the EU, as a voluntary organisation of states, although possessing competences, ensures that the Member States retain full autonomy in matters not conferred upon it (such as national security, judiciary, etc.). Therefore, regarding equality, Art. 4(2) forms the foundation for dialogue between the Member States and EU institutions, ensuring the unequivocal equal treatment of all countries within the EU. It underscores that the EU cannot act in a manner that undermines the autonomy, identity and sovereignty of the Member States.³³

Regarding Chapter 4 of the TFEU, Arts. 82–86 contain detailed issues of judicial cooperation in criminal matters and reveal certain characteristics of procedures of justice within EU Member States. Chapter 4 of the TFEU is entitled ‘Judicial Cooperation in Criminal Matters’.³⁴ This cooperation between the Member States is of a special nature and is highly sensitive to any disruptions. This cooperation pertains to the essence of the existence of each Member State and concerns the crucial area of criminal law, which is directly linked to the sovereignty of each EU Member State.

Judicial cooperation in criminal matters within the EU includes the approximation of legislative and executive provisions of the Member States in areas such as, *inter alia*, terrorism, human trafficking, sexual exploitation of women and children, illicit drug trafficking, illegal arms trade, money laundering, corruption, counterfeiting of currency, cybercrime and organised crime.³⁵ Thus, judicial cooperation in criminal matters between the Member States is based on the principle of mutual recognition of judgments and court decisions.³⁶ To achieve this, certain legal instruments are required to establish specific frameworks of influence. Therefore, the EU, by influencing national legislation, may establish minimum standards regarding the admissibility of evidence in criminal cases, the rights of individuals in criminal proceedings (e.g., the right to defence, the presumption of innocence) or the catalogue of victims’ rights.

Regarding the tools for influencing the Member States, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, adopt measures aimed at establishing rules and procedures ensuring the recognition of all forms of judgments and court decisions across the EU, preventing and resolving

33 Muszyński, 2023, pp. 5–40.

34 Pavaleanu, 2009, pp. 348–351.

35 Mancano, 2023, pp. 962–981.

36 Sicurella, 2024, pp. 61–89.

jurisdictional disputes between the Member States, supporting the training of judges and other judicial staff, facilitating cooperation between judicial authorities or equivalent bodies of the Member States for criminal prosecution and the enforcement of judgments. Furthermore, to facilitate the mutual recognition of judgments and court decisions, and police and judicial cooperation in cross-border criminal matters, the European Parliament and the Council may establish minimum standards. Such standards should take into account the differences between the traditions and legal systems of the Member States. This includes the mutual admissibility of evidence between the Member States, respect for individual rights in criminal proceedings, respect for the rights of victims of crime and other specific aspects of criminal proceedings.

Subsequently, the foundations for the harmonisation of criminal law in specific areas, such as organised crime, terrorism, human trafficking, corruption, drugs and cybercrime, were established. This involved specifying minimum criminal requirements in areas recognised as ‘particularly serious crimes’.³⁷ Therefore, additionally, the European Parliament and the Council, acting through directives in accordance with the ordinary legislative procedure, may establish minimum standards relating to the definition of crimes and penalties in areas of particularly serious cross-border crime, arising from the nature or consequences of such crimes or the specific need for their joint prosecution. However, depending on the development of criminal activity, the Council may adopt a decision identifying other areas of crime following Art. 83(2) of the TFEU. The Council acts unanimously after obtaining the consent of the European Parliament. The focus is on a specific body within the structures of cooperation between the Member States, Eurojust, which is an agency responsible for supporting cooperation between judicial authorities in criminal matters.³⁸ Hence, the EU has enabled the development of Eurojust’s role and competence to support the judiciary and effectively prosecute cross-border crimes.

Detailed tasks were established for Eurojust to support and strengthen coordination and cooperation between national investigative and prosecutorial bodies. These concern serious crimes affecting two or more Member States or requiring joint prosecution, based on operations carried out and information provided by the authorities of the Member States and Europol. Hence, the European Parliament and the Council determine the Eurojust’s structure, functioning and scope of activities and tasks. These tasks may include initiating investigations and requesting the prosecution of relevant national authorities, particularly concerning crimes against the EU’s financial interests, coordinating investigations and prosecutions, strengthening judicial cooperation, including resolving disputes over jurisdiction and close cooperation with the European Judicial Network.³⁹

37 Kompatsiari, 2024, pp. 104–111.

38 Busuioc, 2016, pp. 13–32; Claes, 2012, pp. 100–114.

39 Claes, 2012, pp. 100–114.

Therefore, the concept of establishing an institution such as the EPPO was introduced. The idea was for the EPPO to have the competence to investigate and prosecute crimes against the EU's financial interests (e.g., fraud related to EU funds).⁴⁰ In the future, the competencies of the EPPO may be expanded to include other serious cross-border crimes. However, at present, it investigates, prosecutes and brings to trial, in cooperation with Europol (where appropriate), perpetrators and accomplices of crimes against the EU's financial interests. It has jurisdiction to bring public charges before the competent courts of the Member States for such crimes. EU regulations determine the statute of the EPPO, the conditions for fulfilling its functions, the procedural rules applicable to its activities, the rules of evidence admissibility and judicial review of its procedural actions taken in the exercise of its functions. The Council may, either simultaneously or later, adopt a decision to extend the EPPO's powers to combat cross-border crimes and amend provisions relating to the perpetrators and accomplices of such crimes affecting more than one Member State. It acts unanimously, after obtaining the consent of the European Parliament and consulting with the European Commission.

Evidently, Arts. 82–86 fully address judicial cooperation in criminal matters within the EU.⁴¹ Analysing them in the context of the principle of equality highlights that they aim to ensure that all EU citizens are treated equally in matters related to criminal law and access to justice, regardless of borders. This includes, *inter alia*, the harmonisation of procedural rules in criminal matters, facilitating the mutual recognition of judicial decisions (Art. 82) and ensuring that all the defendants are afforded basic rights, such as the right to a defence or a fair trial. Furthermore, the principle of equality requires that all EU citizens be treated equally by the judiciary across the EU.⁴² These provisions reinforce the creation of a victims' rights catalogue, ensuring that the victims have equal access to support and compensation, regardless of the location of the crime, and equal treatment of accused persons in criminal proceedings, for example, by ensuring uniform standards of procedural rights protection.

Moreover, Art. 83 allows for the harmonisation of criminal law within the EU, particularly for serious cross-border crimes, such as terrorism, human trafficking or corruption. This ensures the uniformity of provisions, preventing unequal treatment of citizens from different Member States and aligning penalties for the same crimes across the EU, reinforcing the principle of equality before the law.⁴³ Art. 82 introduces the principle of mutual recognition of judicial decisions between the Member States. This guarantees equal enforcement of the law across the EU, eliminating discrimination between citizens of different countries regarding justice.⁴⁴ Hence, Arts. 82–86, following the principle of equality, standardise criminal justice procedures

40 Ligeti, 2013, pp. 7–21.

41 Muraru–Ključica, 2023, pp. 28–34.

42 Schiek, 2009, pp. 35–60; Hindelang, 1969, pp. 306–313.

43 Hindelang, 1969, pp. 306–313.

44 De Witte, 2011, pp. 157–178.

within the EU, providing equal rights for victims and defendants and enhancing the consistency and transparency of justice across the EU, particularly in the fight against cross-border crime.⁴⁵

5. Common Minimum Standards for Criminal Proceedings – Basic Model

In developing the mechanisms for judicial cooperation in criminal matters within the EU, a decision was made to establish common, to some extent, minimum requirements and guidelines, to define the boundaries of such cooperation between the Member States. Through the implementation of these guidelines, the Member States would gradually harmonise criminal law. Hence, the EU developed what are known as the minimum standards for criminal proceedings.

The general objectives of these standards focused on ensuring justice, protecting individuals' rights and strengthening criminal law cooperation between the Member States. For instance, to ensure equality and protect individuals' rights, the commitment to adhere to a series of fundamental guarantees for the proper position and rights of the accused was established, such as the right to defence and the right to a fair trial, and, for victims, the right to an interpreter. These guarantees were developed based on the CFREU and the ECHR.⁴⁶

Another example is the facilitation of cross-border cooperation through the harmonisation of standards in criminal procedures, aimed at streamlining cooperation between countries, especially in matters related to extradition, the EAW and joint investigations. Another challenge was, among other things, increasing the efficiency of the justice system, where these minimum standards would assist in speeding up criminal procedures and enhancing their effectiveness, while ensuring greater transparency and striving to address criminal cases within a reasonable time. Furthermore, an important issue was the increased protection of crime victims, as these standards addressed the need to protect victims by ensuring information access, protection from re-victimisation and the opportunity to participate in proceedings.

For the implementation of these objectives, common minimum standards for criminal procedure began to operate within EU law. The legal basis for these standards is provided by Art. 82(2) of the TFEU, which allows for the adoption of regulations harmonising procedural rights within the EU. This provision explicitly states that, to the extent necessary to facilitate the mutual recognition of judgments

⁴⁵ Bort, 2003, pp. 191–212.

⁴⁶ The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on November 4, 1950, subsequently amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2. (Journal of Laws 1993, No. 61, item 284).

and judicial decisions, and police and judicial cooperation in cross-border criminal matters, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish minimum standards. Such standards take into account the traditions and legal systems of the Member States.⁴⁷ They mainly concern issues such as the mutual admissibility of evidence between the Member States and the development and respect for the rights of individuals in criminal proceedings, including the rights of victims. Therefore, the provision has an open scope, as the adoption of these minimum standards does not prevent the Member States from maintaining or establishing a higher level of protection for individuals.

Regarding specific legal regulations, a set of interrelated directives from the European Parliament and the Council is currently in place. For instance, Directive 2010/64/EU of the European Parliament and the Council of October 20, 2010, on the right to interpretation and translation in criminal proceedings,⁴⁸ guarantees the right of any person suspected or accused in criminal proceedings to receive oral and written translation if they do not understand the language of the proceedings. Additionally, it ensures high-quality translations, which are essential for a fair trial. Similarly, Directive 2012/13/EU of the European Parliament and the Council of May 22, 2012, on the right to information in criminal proceedings,⁴⁹ requires that suspected or accused persons be informed of their rights in a language they understand. It is necessary to convey information about the nature of the charges and the available defence options. In the case of detention, the accused must receive a 'Letter of Rights'.

Directive 2013/48/EU guarantees the right of access to a lawyer in criminal proceedings and in proceedings related to the EAW, and the right to inform a third party of the deprivation of liberty and the right to communicate with third parties and consular authorities during detention.⁵⁰ It introduces an absolute obligation to provide legal assistance to the accused from the outset of the criminal proceedings. The individuals have the right to contact a third party (e.g., family) and notify a consulate in the case of detention. Furthermore, Directive 2016/343/EU of March 9, 2016, on strengthening certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings, emphasises the importance of one of the most fundamental principles of criminal proceedings (presumption of

47 Akaliyski, 2019, pp. 388–411.

48 Directive 2010/64/EU of the European Parliament and the Council of October 20, 2010, on the right to interpretation and translation in criminal proceedings. OJ L 280, 26.10.2010, pp. 1–7.

49 Directive 2012/13/EU of the European Parliament and the Council of May 22, 2012, on the right to information in criminal proceedings. OJ L 142, 1.6.2012, pp. 1–10.

50 Directive 2013/48/EU of the European Parliament and the Council of October 22, 2013, on the right of access to a lawyer in criminal proceedings and EAW proceedings, and on the right to have a third party informed upon deprivation of liberty and communicate with third persons and consular authorities while deprived of liberty. OJ L 294, 6.11.2013, pp. 1–12.

innocence).⁵¹ According to this Directive, the presumption of innocence applies until guilt is proven following the law. The defendants have the right to be present at the trial and the right not to incriminate themselves. The issue of legal aid plays a significant role here.

Directive (EU) 2016/1919 of the European Parliament and the Council of October 26, 2016, on legal aid for suspects and accused persons in criminal proceedings and for persons subject to an application in proceedings concerning the EAW,⁵² introduced minimum standards concerning access to legal aid for individuals who cannot cover the costs of defence. Similarly, Directive (EU) 2016/800 of the European Parliament and the Council of May 11, 2016, on procedural safeguards for children who are suspects or accused in criminal proceedings,⁵³ includes special procedural safeguards for children, such as the requirement for the presence of a parent or guardian during questioning and the obligation to conduct the trial in a manner suitable to the child's age and needs.

6. The Impact of Minimum Standards in Criminal Law on Member State Equality

The idea of creating the above-mentioned set of minimum standards for criminal proceedings within the Member States is a positive challenge. Criminal proceedings, which are a restrictive, sanction-based and unequal legal process, should have clearly defined boundaries. The aim is to ensure that such proceedings are conducted fairly, particularly for the most vulnerable parties, namely the victim and the accused. Their positions are often at risk of being undermined or ignored by stronger participants in the process, such as the prosecution. The prosecution, as the principal party in criminal proceedings, sets the direction of the case and determines the potential scope of criminal liability. This determination is made by the court, which decides the extent to which an individual will bear criminal responsibility or be acquitted. Therefore, the directives establishing minimum standards for criminal proceedings create a framework of fair criminal process, with real instruments to assert that a

51 Directive (EU) 2016/343 of the European Parliament and the Council of March 9, 2016, on the strengthening of certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings. OJ L 65, 11.3.2016, pp. 1–11.

52 Directive (EU) 2016/1919 of the European Parliament and the Council of October 26, 2016, on legal aid for suspects and accused persons in criminal proceedings and requested persons in EAW proceedings. OJ L 297, 4.11.2016, pp. 1–8.

53 Directive (EU) 2016/800 of the European Parliament and the Council of May 11, 2016, on procedural safeguards for children who are suspects or accused in criminal proceedings. OJ L 132, 21.5.2016, pp. 1–20.

person guilty of a crime will be held liable, while providing a robust guarantee that an innocent person will be acquitted. Therefore, both the prosecution and the court must respect the laws of the State in which they operate, which, in turn, would implement and adhere to the directives analysed here, introducing minimum standards into the national legal order.

This is precisely where the issue of the principle of equality of the Member States in relation to the implementation and respect of directives establishing the minimum standards by the Member States arises. Unfortunately, the connection between the EU's minimum standards in criminal proceedings and the principle of equality among the Member States is not uniform. One can distinguish both positive aspects and specific challenges, or negative impacts. A positive influence is evident in the attempts to align the means of protecting the rights of individuals, who are the most vulnerable participants in the criminal proceedings. Hence, minimum standards reduce the differences between the legal systems of the Member States, contributing to a uniform protection of the rights of suspects, defendants and victims throughout the EU. Individuals participating in criminal proceedings are treated comparably, regardless of the jurisdiction of the proceedings.

To an extent, the harmonisation of criminal procedure standards contributes to greater transparency and predictability, which can translate into increased public trust in national justice systems. The same applies to cooperation between states, as the introduction of uniform standards strengthens mutual trust between the Member States regarding judicial cooperation (e.g., surrendering suspects under the EAW, recognising specific evidence, enforcing judicial decisions, etc.). However, a challenge lies in better promoting equal access to justice, which is driven by citizens' trust in the fairness of the proceedings. Fair criminal proceedings are those in which the rights and obligations of each participant are defined and fully respected, and each decision has its justification, with the possibility of correction in case of error. Therefore, minimum standards prevent situations in which citizens of one Member State are treated worse than citizens of other EU countries in similar legal situations.

Nonetheless, certain challenges must be addressed. Given the general nature of these minimum standards, there is the potential for varying implementation levels by the Member States. Despite the minimum standards, Member States differ in how they implement them into their national laws. Some countries may adopt a stringent approach, while others may be more lenient, leading to inequalities in practice. However, the greater issue is the impact on the legal sovereignty of individual Member States. The harmonisation of standards may be considered an encroachment on the autonomy of the States in shaping their legal systems, provoking resistance in countries with established legal traditions. The interference of EU law, especially in criminal law, broadly, could be perceived as an intrusion into their sovereignty.⁵⁴ Equally important are the costs that a state may incur in adapting its

54 Anghel, 2010, p. 19; Mamudu, 2009, pp. 73–97.

criminal legislation to the minimum standards. Another challenge is the potential for superficiality and formalism. The introduction of minimum standards could lead to situations where the Member States merely fulfil them superficially and formally, without genuinely raising the level of protection for the participants in criminal proceedings.

Therefore, although the minimum standards in criminal proceedings significantly contribute to the realisation of the principle of equality among the Member States, levelling the protection of individual rights and strengthening trust between legal systems, their implementation and compliance within a state must be strongly supervised and thoroughly analysed concerning rationality. The full achievement of equality requires a reasonable, effective and consistent implementation of standards across the EU based on the consensus of all Member States, the creation of rational mechanisms for monitoring and enforcing compliance with these standards in a Member State, the necessary consideration of differences in administrative, economic and cultural capacities, the acknowledgment of the characteristics of the legal system in a Member State and the categorical respect for the sovereignty of a Member State.⁵⁵

7. Main Areas of Criminal Law in Concerning Cooperation and Equality in the EU

7.1. The Fight Against Terrorism

The fight against terrorism is currently one of the greatest challenges in the process of European integration. The EU has developed several legal initiatives to assist in preventing and combating it. The process of countering terrorism in the EU involves close cooperation among the Member States. In the Polish legal system, the Penal Code (Act of June 6, 1997) contains, under Art. 115 § 20, the concept of a 'terrorist offence'. It refers to a prohibited act, punishable by imprisonment with a maximum term of 5 years, committed with the intent to: 1) Seriously intimidate a large group of people, 2) Compel a public authority of the Republic of Poland, another state or an international organisation to take or refrain from certain actions or 3) Cause significant disruption to the political or economic structures of the Republic of Poland, another state or an international organisation, including threats to commit such an act.

At the EU level, the fight against terrorism is based on international cooperation for preventing acts of terror, prosecuting offenders and protecting citizens. Among the key legal acts and instruments is Directive (EU) 2017/541 of the European

55 Bellamy, 2017, pp. 547–570.

Parliament and the Council of March 15, 2017, on combating terrorism, which replaces the Council Framework Decision 2002/475/JHA and amends Council Decision 2005/671/JHA.⁵⁶ This Directive defines terrorist offences, including planning, executing or supporting terrorist acts, financing terrorism, recruiting terrorists and travelling for terrorist purposes (e.g., joining a terrorist organisation). It obliges Member States to criminalise terrorism-related offences, including disseminating terrorist propaganda and supporting terrorist activities. It provides for the protection of victims of terrorism, offering psychological, legal and financial support.

The Council Regulation (EU) No. 2580/2001 of December 27, 2001, on specific restrictive measures directed against certain persons and entities for combating terrorism,⁵⁷ introduces provisions for freezing the financial assets of individuals and organisations suspected of terrorist activities. Furthermore, it prohibits making funds available to entities linked to terrorism. The Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, on the prevention of the use of the financial system for money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC,⁵⁸ imposes obligations on financial institutions to identify suspicious transactions related to terrorism. It introduces requirements for customer identification and the reporting of suspicious activities. Furthermore, Regulation (EU) 2021/784 of the European Parliament and of the Council of April 29, 2021, on addressing the dissemination of terrorist content online,⁵⁹ requires online platforms to remove terrorist content within one hour of being reported by the competent authorities. It establishes penalties for platforms that fail to comply with these provisions.

Another segment of cooperation in combating terrorism pertains to institutional frameworks. For instance, the EU Agency for Law Enforcement Cooperation (Europol) plays a key role by coordinating actions related to information exchange and providing support in terrorism-related cases. Furthermore, the Europol Counter-Terrorism Centre (ECTC) assists the Member States in investigations concerning

56 Directive (EU) 2017/541 of the European Parliament and the Council of March 15, 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, pp. 6–21.

57 Council Regulation (EC) No 2580/2001 of December 27, 2001, on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. OJ L 344, 28.12.2001, pp. 70–75.

58 Directive (EU) 2015/849 of the European Parliament and the Council of May 20, 2015, on the prevention of the use of the financial system for money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council and repealing Directive 2005/60/EC of the European Parliament and the Council and Commission Directive 2006/70/EC (Text with EEA relevance). OJ L 141, 5.6.2015, pp. 73–117.

59 Regulation (EU) 2021/784 of the European Parliament and the Council of April 29, 2021, on addressing the dissemination of terrorist content online (Text with EEA relevance) PE/19/2021/INIT. OJ L 172, 17.5.2021, pp. 79–109.

terrorism. Additionally, joint databases and information systems have been established, such as the Schengen Information System (SIS II), which facilitates the exchange of information on individuals suspected of terrorism and persons subject to entry bans, and Eurodac and VIS (Visa Information System), which enable monitoring the movement of individuals across the EU's external borders. The Passenger Name Record (PNR) system requires airlines to share passenger data to identify potential terrorist threats. Hence, for judicial cooperation and information exchange, Eurojust plays a vital role by supporting collaboration between law enforcement agencies and the judiciary in cross-border cases.

Legislations related to combating terrorism impact human rights.⁶⁰ Therefore, it is crucial to strike a balance between ensuring security and protecting civil rights, which are among the highest values within the EU. Actions taken to counter terrorism must be proportional, in accordance with the rule of law and respectful of privacy.⁶¹ The principle of equality among the Member States for combating terrorism requires a rational harmonisation of security measures, respect for differences in legal systems and the protection of fundamental rights. This necessitates that every Member State applies counter-terrorism instruments uniformly and effectively. However, Member States may vary regarding resources allocated to counter-terrorism efforts, such as budgets for security services, intelligence capabilities and technological infrastructure. Moreover, not all Member States face the same level of terrorist threats. Countries such as France, Belgium and the United Kingdom, due to their diverse social structures shaped by an inadequately planned migration policy, have experienced numerous attacks. Consequently, their priorities differ from those of the less-affected countries. This disparity can lead to differences in the commitment to EU-level actions, potentially disrupting the principle of equality in implementing a common security policy.

Another crucial issue concerning the principle of equality is the divergence in legal systems. Member States differ in their approach to balancing security with individual rights. For instance, some countries have adopted stricter measures, such as extended preventive detentions, while others prioritise the protection of human rights, potentially causing tensions in the application of common measures. A further challenge arises in operational cooperation among Member States' intelligence services. Intelligence cooperation is paramount and elements such as information exchange, speed and reliability are highly valued. Hence, the principle of equality requires that all the Member States have equal access to intelligence related to terrorist threats. Agencies such as Europol and Eurojust play a critical role in coordinating counter-terrorism efforts.⁶² The equality of Member States mandates that all countries have an equal say in shaping the policies of these agencies and equitable access to their resources.

60 Hoffman, 2004, pp. 932–955.

61 Pagallo, 2021, pp. 111–127.

62 Bures, 2010, pp. 236–256; Deflem, 2006, pp. 336–359.

Hence, the principle of equality among the Member States in combating terrorism within the EU is essential for maintaining the effectiveness and coherence of actions. However, differences in resources, capabilities, threat perceptions and approaches to the protection of fundamental rights lead to inequalities in practice. To minimise these disparities, the EU must strive for greater harmonisation of security policies, ensure equal access to resources and information, monitor compliance with common standards and foster solidarity in the distribution of burdens and responsibilities.

7.2. The Fight Against Corruption, Cybercrime, Fraud and Money Laundering

The fight against corruption, cybercrime, fraud and money laundering within the EU is a key element of its policy, ensuring that all the Member States operate according to the principle of equality and comply with common standards regarding the rule of law, security and the protection of the EU's financial interests. In this context, the EU recognises corruption as a serious threat to economic and social stability and public trust. As a part of its anti-corruption efforts, the EU has introduced common standards and regulations to ensure that citizens can trust that their money is being used appropriately. To safeguard its financial interests, the EU, in collaboration with the Member States, protects its resources. Monitoring and oversight of activities and supporting actions to combat abuse and irregularities in the implementation of the EU's budget are crucial. Hence, legal instruments, such as the United Nations Convention against Corruption⁶³ and the Directive of July 5, 2017, on the fight against fraud to the EU's financial interests by means of criminal law, have been introduced.⁶⁴ Member States are obliged to implement preventive measures and sanctions against corruption. The European Commission prepares reports on the rule of law and the corruption level in the Member States. An equality assessment mechanism (e.g., through the European Semester) is used to identify countries requiring targeted anti-corruption measures. The activities of OLAF (the European Anti-Fraud Office) focus on investigating cases of corruption and fraud involving EU funds. Additionally, within the EU's structures, certain tasks are assigned to the EPPO, which prosecutes financial crimes, including corruption, that affect the EU's budget.

The EU views cybercrime as a global threat that requires cross-border cooperation. Hence, it adopted the Directive of August 12, 2013, concerning attacks on information systems.⁶⁵ Europol, particularly its European Cybercrime Centre (EC3), supports the Member States in combating cybercrime, including ransomware attacks,

63 The United Nations Convention Against Corruption, adopted by the United Nations General Assembly on October 31, 2003 (Journal of Laws 2007, No. 84, Item 563).

64 Directive (EU) 2017/1371 of the European Parliament and the Council of July 5, 2017, on the fight against fraud to the EU's financial interests by means of criminal law. OJ L 198, 28.7.2017, pp. 29–41.

65 Directive 2013/40/EU of the European Parliament and the Council of August 12, 2013, on attacks against information systems and replacing Council Framework Decision 2005/222/JHA. OJ L 218, 14.8.2013, pp. 8–14.

the illegal trade of goods on the dark web and online fraud. The EU pursues an active policy against money laundering, based on the harmonisation of regulations across the Member States. It has adopted anti-money laundering directives (AML Directives),⁶⁶ which impose obligations on financial institutions and other entities, such as the registration of beneficial owners.

The European Anti-Money Laundering Authority (AMLA) has been established. Starting in 2024, a specialised office began operating to oversee compliance with AML rules within the EU and coordinate cross-border cooperation. In this context, the principle of equality among the Member States means that each State should act in accordance with the same standards and regulations. However, in practice, differences may arise in the implementation of these tasks, which the EU seeks to minimise through the standardisation of regulations, that is, through the adoption of common directives and regulations to align standards. Furthermore, monitoring and support mean that the European Commission, OLAF and other institutions oversee the implementation of regulations and assist the Member States in fulfilling their obligations. The initiation of sanctions is possible, as the EU can impose sanctions or financial restrictions on states that do not adhere to the principles of the rule of law (e.g., the conditionality mechanism linked to EU funds).

7.3. Protection of Victims

The protection of victims' rights in the EU and the principle of equality among the Member States are closely linked. The EU has introduced several regulations and measures for protecting the rights of crime victims, regardless of their Member State. Key provisions include Directive 2012/29/EU of the European Parliament and the Council of October 25, 2012, establishing minimum standards for the rights, support and protection of victims of crime and replacing the Council Framework Decision 2001/220/JHA.⁶⁷ It upholds the right to information, as victims are entitled to clear information about their rights and legal procedures in a language that they understand. It ensures access to information about available assistance, compensation and rights in criminal proceedings. Furthermore, it provides right to support, as victims must have access to support services, such as psychological counselling, legal aid or assistance for particularly vulnerable groups (e.g., children or victims of domestic violence). It respects the right to protection, as victims, particularly children or elderly persons, should be protected from secondary victimisation, intimidation and retaliation. Moreover, participation in criminal proceedings is important. Victims have the right to be heard, with their accounts being considered during court proceedings. Access to translation and interpretation should be provided if the victim

⁶⁶ Bergström, 2018, pp. 33–56.

⁶⁷ Directive 2012/29/EU of the European Parliament and the Council of October 25, 2012, establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA. OJ L 315, 14.11.2012, pp. 57–73.

does not speak the language of the proceedings. An individual assessment of victims has been introduced. Therefore, each victim should be individually assessed in terms of their specific protection needs.

Another instrument in the area of victim assistance is the introduction of the European Protection Order through Directive 2011/99/EU of December 13, 2011.⁶⁸ In general, it allows the transfer of protective measures (e.g., restraining orders) from one Member State to another. A European Protection Order (EPO) is a decision by a court or another authority of a Member State for transferring the protection of a crime victim to another Member State.⁶⁹ This applies to individuals who, for example, move, travel or stay in another EU country. The order allows victims under protection in one country (e.g., subject to a restraining order, contact ban or other protective measures) to obtain similar protection in the country to which they move. The order is issued in the country where the victim was residing and was granted protection (the issuing state). If the protected person plans to travel to another EU country (the executing state), the EPO may be issued upon their request. The executing state, based on the EPO, implements the appropriate protection measures following its national law.

Examples of protective measures in this instrument include various prohibitions, such as restraining the offender from approaching the victim, prohibiting contact (e.g., by phone, SMS or email) and prohibiting presence at specific locations (e.g., the victim's home or workplace). The EPO is intended for persons who are particularly at risk, including victims of domestic violence, stalking or intimidation, and victims of other crimes where there is a threat of further violence. Hence, it applies exclusively to crimes involving violence or a direct risk to the victim's safety. Protection measures must have been granted in the issuing state because the EPO does not introduce new protection measures, only transfers the existing ones. Additionally, under the Council Directive 2004/80/EC of April 29, 2004, concerning compensation to crime victims,⁷⁰ guarantees have been introduced, ensuring that crime victims have the right to compensation throughout the EU, even if the crime occurred abroad. In this context, the principle of equality ensures that all victims of crime are treated equally, regardless of the location of the incident within the EU. However, full harmonisation of the protection of victims' rights requires continuous oversight and cooperation among the Member States.

68 Directive 2011/99/EU of the European Parliament and the Council of December 13, 2011, on the European protection order. OJ L 338, 21.12.2011, pp. 2–18.

69 Bieńkowska, 2012, pp. 151–173.

70 Council Directive 2004/80/EC of April 29, 2004, relating to compensation to crime victims. OJ L 261, 6.8.2004, pp. 15–18.

8. European Integration vs. Challenges to Equality in Judicial Cooperation

8.1. The Concept of Sovereignty in the Context of the Principle of Equality in Judicial Cooperation in Criminal Matters.

When analysing the functioning of the principle of equality within the EU in the context of cooperation in criminal matters, one cannot overlook the issue of the sovereignty of the Member States. It is interesting to juxtapose the issue of sovereignty with the current form, course and future of the European integration process. Sovereignty is expressed through the respect for the internal criminal justice system of each Member State. However, the participation of each State in the EU, a unique international organisation, requires the transfer of certain competences to the Union at the expense of sovereignty.⁷¹ Therefore, in this triangular relationship between the sovereignty of each state, the fate and character of criminal regulations within that state and the harmonisation of community laws, one must look for elements of the near future.

On the one hand, regardless of how sovereignty is defined, it remains, and should always remain, one of the most important attributes of every state in the world. This is because sovereignty means the state's independence in making decisions within its territory and in relation to other states. Therefore, sovereignty is divided into internal and external sovereignty. Internal sovereignty allows the state to exercise power over its territory and population, whereby it has the exclusive right to establish laws, exercise power and control institutions. This further means that no other forces (e.g., foreign states or international organisations) may interfere in the internal affairs of the state. External sovereignty concerns international relations. It means that the state is independent from other subjects of international law, has the right to conduct its foreign policy and can decide to join international organisations or treaties. The main features of sovereignty include autonomy, because the state establishes its laws and norms, independence, because there is no subordination to other states, unity of power, because all state organs operate within a unified system, and territoriality, as sovereignty applies within a defined territory.

On the other hand, there is the rapidly advancing process of European integration, which simultaneously brings several benefits and negative consequences. Objectively, the aim of the European integration process is the gradual rapprochement and cooperation of European states in various areas of political, economic, social and cultural life to ensure peace, stability and prosperity on the European continent. However, every integration, harmonisation or unification, irrespective of the term, requires consensus. Therefore, currently, one of the consequences of the dynamic

71 Hinsley, 1967, pp. 242–252.

growth of the integration process is the extent to which the Member States have entrusted certain aspects of their sovereignty to the governance of the EU bodies.

This is where criminal law within the state comes into play. In every sovereign state participating in the European integration process, criminal law exists as an inherent part of its legal system. Criminal law is one of the most sensitive areas of legal regulation in any state.⁷² It is endowed with crucial features that no other area of law within the state possesses. For instance, among the characteristic features of criminal law, there exists a strong lack of equality in the positions of the subjects of legal relationships. On one side is the state and its bodies, while the other side is an individual functioning in the state, who, *in esse*, is subject to the authority of that state. Furthermore, there is a monopoly on the use of repressive measures by the authorities. Repression can be defined as a set of sanctions anticipated as a reaction to illegal behaviour by all members of society, a severe, often violent, measure used as a form of pressure, punishment or retaliation.⁷³ Repression is an inherent feature of criminal law, necessary to ensure the effectiveness of its enforcement, observance and prevention.

There exists axiological collision, that is, the frequent clashes and conflicts of certain values that guide criminal law. *Prima facie*, the nature and assumptions of criminal law, when juxtaposed simply, provoke conflicts. An example could be the value of human dignity, which is a guiding value; however, it may, at times, be limited, although within strictly defined boundaries (e.g., examining the body of the accused during criminal proceedings, temporary detention as a deprivation of liberty for a person not yet convicted, etc.). Moreover, there is the concept of full hermeticity, understood as something closed and inaccessible to external influences. Criminal law is primarily the internal law of a country, with minimal international connotations and influences. As the core and primary element of state criminal policy, it is a closed system that is created and modelled internally. Therefore, the hermetic nature of criminal law lies in the fact that each state creates its criminal law system, solutions and criminal policy for its citizens, who will be subject to criminal responsibility for committing an offence.

Considering the speed and direction of various aspects of European integration, there is little doubt that issues of cooperation between states in criminal matters still resist full integration. This area of criminal law avoids deep legal integration within the EU, which we currently observe in other areas of legal regulation. In fact, it is precisely in this context that the question arises: should criminal law, broadly speaking, be subject to European integration to the further the process of harmonising European law?

The answer is complex and depends on what the EU is at present and what it will be in the near future. This is because the shape and competencies of the EU determine whether criminal law will be subject to further integration or whether

72 Ouwerkerk, 2015, pp. 11–31.

73 Great Dictionary of the Polish Language.

it is unsuitable for such integration. Against this backdrop, two main issues arise regarding the structure, character, organisation, integration and competencies of the EU. First, one could assume that the EU is a community of relatively equal, yet sovereign states, united by a common economic goal that boils down to strong economic, scientific and commercial cooperation. In this scenario, the EU is a community similar to the one formed at the beginning of the integration, during the time of Monnet and Schuman. Second, one could assume that the EU is moving towards a full federalist concept, understood as a single, centrally managed entity, in which the Member States are merely parts of a large and complex organism, with significant competencies transferred to the central decision-making body. However, this second scenario is completely different from the original assumptions of European integration.

The EU is a massive entity, with a large number of people, in which countless transactions take place and several different problems arise. The establishment of such a large community requires the transfer of certain competences from the Member States to the decision-making centre. However, the transfer must be organised in a manner to ensure effective cooperation between the Member States. Regarding competences, the EU model is simple, as it is based on the principle that the EU only has those competences that have been granted to it by the treaties. Key to this are the fundamental principles of the functioning of the EU, which are directly derived from the treaties.

The principle of conferral ensures that any competences not conferred on the EU by the treaties belong to the Member States.⁷⁴ The principle of subsidiarity ensures (only in non-exclusive competences) that decisions are made at the lowest possible level of authority, closest to the citizens, yet at a level that ensures the effectiveness of their implementation.⁷⁵ It aims to limit excessive centralisation of power at the EU's level and guarantees that the EU acts only when actions taken at the national, regional or local levels are insufficient to achieve an objective. The principle of proportionality, which is closely linked to the principle of subsidiarity, regulates how the EU exercises its competences to ensure that the actions taken are appropriate to the intended objectives and do not exceed what is necessary to achieve them.⁷⁶ The principle of proportionality ensures that the actions taken by the EU institutions are adequate and necessary to achieve the intended objectives, without imposing excessive burdens on the Member States, citizens or economic entities.

Hence, the EU only has the powers that have been granted to it by the treaties and cannot, of its own accord, increase, limit or modify its competences. The scope of the competences is determined solely by its Member States. Changes to this scope can only occur within the framework of the ordinary procedure for amending the

74 Van de Velde-Van Rumst, 2018; Knežević-Predić and Radivojević, 2018, pp. 108–128; Oręziak, 2024a, pp. 187–212; Oręziak, 2024b, pp. 213–260.

75 Gosepath, 2005, pp. 157–170; Melé, 2005, pp. 293–305; Spicker, 1991, pp. 3–14.

76 Engle, 2012; Harbo, 2010, pp. 158–185; Poto, 2007, pp. 835–869.

treaties. It is often assumed that the EU is a *sui generis* international organisation, possessing certain competences from its Member States. Additionally, the Lisbon Treaty clarified the final division of competences between the EU and its Member States. The competences are divided into three categories. Exclusive competences are policy areas in which only the EU may adopt laws and take binding actions. Member States cannot regulate these matters independently unless authorised by the EU to introduce specific provisions or implement EU law. Shared competences are policy areas in which both the EU and Member States may take legislative actions and exercise their competences. This means that the Member States may act in these areas only when the EU has not taken action or has decided not to exercise its competences. Supplementary competences (also called supporting competences) are areas where the EU can support, coordinate or complement the actions of the Member States; however, does not have the authority to harmonise national regulations or replace their actions. This means that the primary responsibility for conducting policy in these areas lies with the Member States, with a limited role of the EU.

In this model of European integration, should there be room for the integration of criminal law as a new area and trend in the EU's judicial cooperation in criminal matters? The consent to the full intervention of the EU in the criminal law system constitutes consent to shaping the criminal policy of the Member States. This could lead to the establishment of joint law enforcement bodies, methods for appointing judges, structuring courts within the state, ways in which crimes are defined, the catalogue of punishments, types of correctional facilities and the shaping of criminal proceedings. However, internal criminal legislation is a key element of the state's criminal policy and represents an important aspect of sovereignty. Hence, criminal policy is a crucial concept which should always belong to the autonomous competence of the Member States and should never be transferred externally to an international organisation, such as the EU.

Criminal law is directly related to sovereignty and the application of criminal sanctions to the citizens of a country. Its fundamental feature is that the power to punish citizens for a crime belongs solely to the state. This concept, derived from Roman times, is known as the monopoly of the state on the application of *ius puniendi*, that is, the state's right to impose criminal sanctions. *Ius puniendi* is a characteristic of the sovereign power of the state. Hence, only the state has the right to establish criminal law, apply it and enforce penalties. The enforcement of *ius puniendi* is aimed at protecting the legal order, societal interests and individual rights. Punishment has a repressive character (retaliation for unlawful conduct) and a preventive purpose (preventing future violations of the law). *Ius puniendi* is limited by human rights principles, the principle of proportionality, legality (punishment only for acts prohibited by law) and the prohibition of inhuman punishments.⁷⁷ According to Hobbes, Locke and Rousseau, citizens relinquish a part of their freedom to the state, which, in return, ensures order and security, including the right to punish

77 De Wet, 2004, pp. 97–121.

criminals. Therefore, the right to punish, belonging solely to state authority, makes it dominant over the individual in a given state. Thus, the comprehensive integration of criminal law should not be fully implemented within the EU.

The EU, as an international organisation, has several internal bodies completely devoid of universal suffrage, lacking knowledge of the specifics and the social structures of a country, yet having a significant impact on the legislation of the interested Member States. Therefore, it does not have the right to directly interfere with the criminal law of a Member State. Criminal law is closely linked to culture, history and legal traditions. Hence, it is difficult to accept full control of the EU over criminal law. Another obstacle is the existence of various legal traditions within the EU, such as the continental system and common law, which differ in their approach to criminal proceedings, the definition of crimes and punishments. Additionally, differences in the standards of protection of civil rights in different countries may hinder full harmonisation. Therefore, this integration of criminal law takes the form of point integration, such as protection of the rights of victims, improving the position of children in criminal cases or the EAW. Hence, full unification of criminal law at the European level is unlikely due to strong national traditions and sovereignty. In a sovereign state, state bodies, such as courts, prosecutors and police, act based on and within the scope of criminal law, whose source is the will of the legislator, which, in turn, is an expression of the will of the society.

8.2. The Concept of the Rule of Law in the Context of the Principle of Equality in Judicial Cooperation in Criminal Matters

The rule of law, as one of the main characteristics of a modern democratic state, involves the 'strict application of the law by all state authorities, for which the law should be the foundation of their activities, and the adherence to the law by both social organisations and citizens'.⁷⁸ In a democratic state, the rule of law is entrusted with the special task of protecting individuals from the arbitrariness and subjectivism in the actions of state bodies. This secures and ensures the individual's free enjoyment of the basic rights granted to them by the state, and establishes effective protection against potential subjectivism and arbitrariness by state organs. For instance, in the 1997 Polish Constitution, the principle of the rule of law is reflected in several provisions; however, its most direct expression is Art. 7, which states that public authorities act based on and within the limits of the law.⁷⁹

Hence, it can be assumed that the rule of law in criminal matters means, in relation to state authorities, that all actions by law enforcement and the judiciary must be based on law and all decisions made within the framework of judicial cooperation must meet the standards of the rule of law.⁸⁰ States cooperating in criminal

⁷⁸ Ehrlich, 1979, p. 205.

⁷⁹ Kondek, 2023, pp. 149–163.

⁸⁰ Varga, 1995.

matters must comply with international and national legal provisions and international agreements. Criminal procedures must guarantee respect for the rights of the accused and victims, including the right to defence and the principles of a fair trial. Therefore, key aspects of the rule of law include the legality of actions by public authorities operating within the realm of criminal law. This means that every decision must have a legal basis and comply with established standards. Moreover, there must be mutual trust, upon which the EU Member States and other countries base their judicial cooperation on the assumption that each country respects the rule of law and human rights.

In the procedural realm, the principle of equality refers to the equal treatment of all parties in criminal proceedings and within the framework of judicial cooperation, regardless of nationality, legal status or the place of crime. Thus, the principle of equality means equal procedural rights. The accused, victims and parties to criminal proceedings have the same rights to present evidence, appeal decisions and access legal assistance. There must be no discrimination, as judicial cooperation cannot be carried out in a discriminatory manner based on nationality, religion, origin, gender or other characteristics. It is necessary to base judicial cooperation on the principles of mutual recognition of court rulings and mutual trust. These principles assume that all the Member States operate in accordance with the rule of law and respect the principle of equality.

Evidently, the rule of law and the principle of equality are the foundations of judicial cooperation in criminal matters. They ensure that judicial proceedings are conducted in accordance with the law, without discrimination and with respect for the rights of all parties. In practice, their implementation requires mutual trust between states and consistent adherence to international human rights protection standards. A lack of the rule of law or inequality in the treatment of parties may lead to the limitation or suspension of judicial cooperation.

8.3. The EPPO and Its Position in the Context of the Principle of Equality in Judicial Cooperation in Criminal Matters

The concept of sovereignty and the rule of law define a certain area of institutional activities. The realisation of both in the context of the principle of equality in the European integration process requires the rational functioning of the entire institutional structure within EU law. Thus, accounting for the increasingly accelerating European integration, a completely new institutional entity has emerged, namely, the EPPO. It represents a significant and bold step in European integration, as until now, prosecutorial bodies have been strongly linked to internal relations within individual states.

The prosecutorial body plays a key role in the judicial system of any state. Its primary task is to protect the legal order and oversee the prosecution of crimes. The prosecutor's office acts in the public interest, representing the state in criminal proceedings and other matters where public authority intervention is required.

It plays a crucial role in ensuring justice and legal order within the state, as its actions influence the effectiveness of crime prosecution, citizens' safety, the protection of civil rights and the public's trust in the judiciary. Hence, the prosecutor's office, as an institution, operates at the intersection of law and society, serving as a tool for the implementation of criminal policy and the protection of public interest.

Never before in European integration has a supranational body been established to directly operate in the area of criminal law, which, as demonstrated, is strongly linked to the sovereignty of each state. The EPPO was established under the Council Regulation (EU) 2017/1939,⁸¹ which entered into force in October 2017. The body began its operations on June 1, 2021. It is an EU institution responsible for conducting investigations, prosecuting and bringing to court cases involving crimes against the EU's financial interests. It is the first supranational prosecuting authority within the EU, with competences extending beyond the borders of the Member States.

The EPPO was created in response to the need for more effective combating of financial crime within the EU. Therefore, it is tasked with conducting investigations, which means it has the right to initiate proceedings independently in cases concerning crimes against the EU's financial interests. It can bring charges before national courts and collaborate with states that are not a part of the EPPO framework and EU institutions, such as OLAF, Europol and international organisations. It operates under the Directive on the protection of the EU's financial interests (2017/1371), including, *inter alia*, the embezzlement of funds from the EU budget (e.g., structural funds), improper spending of grants or subsidies, cross-border VAT fraud exceeding 10 million euros, corruption and bribery and money laundering.

However, the establishment of the EPPO has sparked considerable controversy, both in the context of judicial cooperation in criminal matters and in relation to the principle of equality within the EU.⁸² One of the main criticisms is that its activities may limit the sovereignty of the Member States, particularly in criminal law, which has traditionally been within the competence of national authorities. The concern is that the EPPO has the authority to initiate investigations and conduct criminal proceedings in the Member States, which may be perceived as interference in national justice systems. Furthermore, the increasing competencies of supranational EU bodies could weaken the independence of the Member States in deciding their criminal justice priorities.

Countries differ in their approach to criminal law, for instance, in terms of penalties for crimes or rules of evidence. The EPPO's actions may be hindered by the lack of uniform legal standards. Member States may challenge EPPO decisions if they consider them contrary to their national legal order. Moreover, not all EU Member States have joined the EPPO. Countries such as Hungary, Ireland, Denmark, Sweden,

81 Council Regulation (EU) 2017/1939 of October 12, 2017, implementing enhanced cooperation on the establishment of the EPPO. OJ L 283, 31.10.2017, pp. 1–71.

82 Wade, 2019, pp. 165–180; Wade, 2013, pp. 439–486; Bugarski and Pisaric, 2019, p. 17; Öberg, 2021, pp. 164–181.

and, until recently, Poland (which is now a member of the EPPO), have chosen not to participate in this initiative. The voluntary approach to participation could lead, for example, to inequality between the Member States, where participating countries must align their legal systems with EPPO requirements, while others do not, or may create potential difficulties in combating cross-border financial crimes when cases involve countries that are not a part of the EPPO. Such a division could be seen as a violation of the principle of equality.

Non-participating countries may be accused of a subjective lack of engagement in protecting the EU's financial interests. Other concerns may arise from the possibility that the EPPO could become a political tool, exerting pressure on the Member States in the context of advancing European integration. Undoubtedly, the EPPO will be viewed as a strong step towards the federalisation of the EU, where EU institutions take on increasingly broad powers at the expense of national states. Hence, the EPPO could be used to pressure Member States in political matters, such as the issue of the rule of law. There exists the possibility of investigations against politicians or institutions in countries that are hostile to deeper European integration.

Furthermore, the scope of the EPPO's competences is unclear and may be expanded, which raises concerns about excessive interference in national legal systems. Although it is tasked with addressing crimes affecting the EU's financial interests, there is a concern that its competences will be expanded to cover other cross-border crimes or internal matters of a country. Critics argue that, in the long term, the EPPO will evolve into a quasi-European Attorney General's Office, with broad powers. It may be perceived as a violation of the principle of subsidiarity, which holds that actions at the EU level should only be taken when objectives cannot be achieved at the national level. The argument is that financial crimes affecting the EU could be effectively prosecuted by national law enforcement bodies within existing cooperation mechanisms (e.g., Europol and OLAF). Undoubtedly, the EPPO introduces a new layer of bureaucracy and procedural complexities, which may undermine its effectiveness.

There exist concerns about the EPPO's independence. Although it is meant to operate as an independent body, its independence may be undermined in practice. Since it is subject to oversight by the European Commission, it raises concerns about political influence. The EPPO's budget is determined by EU institutions, which may limit its independence. Prosecutors delegated from Member States may face pressure from national governments, which could influence their procedural decisions. Moreover, critics argue that the differences in national legal systems are too great for the EPPO to function efficiently and fairly. Member States differ in their rules regarding evidence, the rights of suspects, investigation procedures and criminal systems. Difficulties in harmonising procedures could lead to conflicts of competence and inconsistencies in the EPPO's actions. Suspects in different countries may be treated differently within the same EPPO procedure, which would undermine the principle of equality. Moreover, it may lack the financial and personnel resources to effectively conduct investigations in multiple Member States simultaneously.

Due to a limited budget and staff, it may have to prioritise cases, which could reduce its effectiveness. Focusing on large financial cases might lead to the neglect of smaller, yet important crimes affecting local communities. There is the possibility of significant centralisation and coordination between the EU and national levels, delaying and increasing costs. A human rights conflict could emerge, as the EPPO has wide investigative powers, including the ability to search, detain and freeze assets. These powers could be abused, leading to violations of the right to defence, the right to privacy and the principle of equal treatment.

8.4. The Role of the CJEU in the Context of the Principle of Equality in Judicial Cooperation in Criminal Matters

The CJEU is one of the key bodies of the EU and the only one responsible for ensuring the uniform interpretation and application of EU law across all the Member States. Its current form allows the CJEU to settle legal disputes between EU institutions, Member States and, in certain cases, individuals and legal entities. Depending on the situation, an individual or legal entity from a Member State may be involved in disputes adjudicated by the CJEU, particularly when these involve breaches of EU law by EU institutions, Member States or cases related to the interpretation of EU law by national courts. The CJEU ensures the protection of the rights of EU citizens and economic entities, guaranteeing a uniform interpretation of EU law and providing an effective means for pursuing claims at the European level.⁸³

Regarding judicial cooperation in criminal matters within the EU, the CJEU currently has limited competencies. Its main role is to ensure that EU law is interpreted and applied uniformly across the EU. In criminal law, it primarily operates for judicial cooperation between the Member States and the protection of fundamental rights arising from EU law. It deals with the interpretation of provisions related to judicial cooperation, the protection of procedural rights, the protection of the EU's financial interests and the monitoring of the compatibility of national and EU laws. Its case law shapes the standards of judicial cooperation within the EU and influences the development of the area of freedom, security and justice.

Among the specific competences of the CJEU, it issues preliminary rulings in criminal matters. The legal basis for this is Art. 267 of the TFEU. The CJEU issues preliminary rulings at the request of national courts that have doubts regarding the interpretation or validity of EU law concerning ongoing criminal proceedings.⁸⁴ Preliminary rulings are binding on national courts and ensure the uniform application of EU law in criminal matters. An example may involve the EAW, whereby the CJEU would address potential doubts regarding, for example, the grounds for refusing an EAW, such as the risk of human rights violations in the issuing state.⁸⁵

⁸³ Zalnierute, 2022, pp. 198–218.

⁸⁴ Billis, 2016, pp. 20–38.

⁸⁵ Hinarejos, 2007, pp. 793–811.

However, these limited competences in criminal matters have evolved as the EU developed and its ambitions for cooperation in the area of justice increased. Initially, the CJEU did not deal with criminal matters, as it fell within the exclusive competences of the Member States. However, over time, as European integration progressed, mechanisms emerged that allowed the CJEU to play an increasingly larger role in criminal matters. The founding treaties (1951 – ECSC, 1957 – EEC) established that criminal law was fully within the domain of the Member States. The CJEU only had competences regarding the protection of the economic interests of the European Communities, without extending to criminal law. Cooperation in criminal matters took place solely based on intergovernmental agreements (e.g., the European Convention on Mutual Assistance in Criminal Matters of 1959, within the framework of the Council of Europe (CoE)).

The transformation of the CJEU's competences began with the Maastricht Treaty (1993), which introduced the EU's three-pillar structure, with cooperation in criminal matters and justice under the third pillar. The CJEU acquired limited competences to interpret acts adopted within this pillar; however, references for preliminary rulings could only be made by the highest courts of the Member States. Development of tools, such as the EAW, began to influence the CJEU's competences, as it started to rule on matters related to the interpretation of the EAW and other mechanisms of judicial cooperation. A key moment came with the Amsterdam Treaty (1999), which partially integrated the JHA into the EU legal system, increasing the CJEU's role in criminal matters. The CJEU began interpreting EU acts related to justice, including directives concerning the protection of victims of crime and the procedural rights of the accused.

The Lisbon Treaty was a turning point, when the three-pillar structure was abolished and judicial cooperation in criminal matters was incorporated into the core of EU law (Title V TFEU – Area of Freedom, Security and Justice). As a result, the CJEU gained full competence in the interpretation of EU law concerning cooperation in criminal matters. New areas under the CJEU's jurisdiction included the EAW, mutual recognition of judicial decisions, the EIO, directives on the protection of the procedural rights of the accused (e.g., the right to interpretation and the right to counsel), issues related to crimes affecting the EU's financial interests (PIF Directive – Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law) and matters of cooperation with the EPPO.

Hence, there has been a gradual expansion of the CJEU's competences, initially concerning areas of law closely related to EU law, yet outside criminal law, which remained within the domain of each Member State's domestic law. However, given the dynamics of the integration process, the trend of extending the CJEU's jurisdiction to encompass criminal law could be significantly broadened. Although criminal law is not yet directly under the CJEU's jurisdiction, its competences concerning criminal law are being gradually expanded.

However, this should be analysed cautiously, as it directly concerns the sovereignty of each Member State. We are currently witnessing a process of the CJEU appropriating competences at the expense of the jurisdictional sovereignty of the Member States, which, through its rulings, has led to an interference with the sovereignty and legal autonomy of the Member States, violating the principle of equality. Therefore, a controversial question arises as to whether, in the current judicial structure of the EU, the CJEU has inadvertently become a kind of super-arbiter through the expansion of its jurisdictional influence beyond the provisions of the treaties?

According to the EU primary law, CJEU rules in accordance with the treaties that define the boundaries of the EU's competences. These treaties are international agreements that specify what the Member States have agreed to and the commitments undertaken. Therefore, the matters in which the CJEU may intervene have been clearly defined by the treaties.⁸⁶ Since Roman times, we are familiar with the principle of *pacta sunt servanda*, that is, agreements must be upheld in the form in which the parties concluded them, and if any changes are to be made, a proper procedure, based on the consensus of the parties to the agreement, must be followed. Nonetheless, the CJEU has ruled on matters in which the EU lacks competence. The CJEU's judgments are treated as a form of legal precedent. However, for example, in Poland, the common law system, with binding legal precedents, does not apply.

Moreover, CJEU judgments autonomously decide on the EU law's interpretation and construction. One could argue that the rulings exhibit the characteristics of authentic interpretation. This leads to numerous absurdities and the attribution of competences to the EU, with the basis of this attribution not being the principle of their transfer, but because the CJEU considers it so. This has happened in the context of the judicial system organisation in Poland.⁸⁷ Hence, the CJEU can unilaterally bypass the treaty amendment procedure and, disregarding the fundamental principles of international law, change the content of the commitments of the Member States. The expansion of CJEU competences into such non-treaty areas is known as the 'spillover effect' or 'competence creep'.⁸⁸ It refers to the process of the EU administration appropriating, or even 'stealing', competences that are unequivocally assigned to the Member States. In Poland, Jacek Saryusz-Wolski described this as a harmful process, stating:

We are witnessing the creeping appropriation of competences by the EU. The creeping appropriation of competences is a process that has been ongoing for decades and is described in European literature as 'competence creep'. In short, it involves the gradual and unlawful takeover of competences by EU institutions at the expense of

86 Guzman, 2005, pp. 579–612.

87 Gajda-Roszczyńska and Markiewicz, 2020, pp. 451–483.

88 Garben, 2019, pp. 205–222.

the Member States, with the goal of a non-treaty change in the EU's structure and the creation of an oligarchic superstate.⁸⁹

Therefore, the potential expansion of the competences of the CJEU into criminal law must be halted at the current stage. Expanding them further could directly limit the sovereignty of the Member States, as criminal law reflects the specific values, traditions and legal systems of individual States. Imposing CJEU standards may lead to their erosion and political conflicts, especially in countries that are sceptical about deepening European integration. The expansion could be perceived as a step towards the federalisation of the EU, which is unacceptable to some states. Concerning the principle of equality, the CJEU is not directly subject to democratic control, as its judges are appointed and not elected by the citizens. Therefore, it raises concerns that the Tribunal's decisions may contradict the will of the citizens of a country. The CJEU may act independently of national parliaments and governments, making it difficult to take local interests into account in its judgments.

Cases involving Hungary and Poland before the CJEU, as nation-states that are critical of the current formula of EU intervention in internal matters, may serve as important examples of the expansion of the CJEU's competences and attempts to impose external standards. For instance, contrary to the principle of equality, in its rulings on judicial reforms in Poland, the CJEU unfairly concluded that changes introduced by the Polish government might undermine judicial independence and EU standards. Poland criticised this as interference in the internal affairs of a Member State. Thus, certain judgments may have a political rather than a legal character and could be used to exert pressure on countries that hold differing political positions within the EU. This is a clear instrumentalisation of the CJEU, which can be perceived as an aggressive tool of EU institutions, such as the European Commission, to enforce compliance with rules that these countries view as externally imposed.⁹⁰

The Polish example illustrates the essence of the misunderstanding. In Poland, through erroneous interpretations of CJEU judgments, it has mistakenly been concluded that these rulings became a source of law. In the Polish legal system, the catalogue of legal sources is clearly and explicitly defined by the highest-ranking legal act, the Constitution of the Republic of Poland. According to Art. 87, the sources of universally binding law in the Republic of Poland are the Constitution, statutes, ratified international agreements and regulations. Poland does not operate under a precedent-based legal system that would render court decisions, including those of the CJEU, as sources of law. The issue of uncritical affirmation of CJEU judgments at the expense of the constitutional catalogue of legal sources in Poland became evident during the judiciary reform. One decision within this reform was the establishment of the Chamber of Extraordinary Control and Public Affairs in the Supreme Court. At a certain point, a belief emerged in Poland that this body was not a court and

⁸⁹ Wnp.pl, 2025.

⁹⁰ Du Vall, 2024, pp. 177–197.

that the judges appointed to this Chamber did not meet the standard of a judge. This led to a harmful campaign of discrediting these individuals, including offensively labelling them as ‘neo-judges’.

To date, no changes have been made to the legal basis governing the functioning of the Supreme Court in Poland. The matter was brought before the CJEU, which issued a judgment stating that the circumstances surrounding the appointment of judges to this Chamber could raise legitimate doubts about their independence and impartiality, undermining the trust that the judiciary should inspire in a democratic society and a state governed by the rule of law. However, the CJEU did not declare that this Chamber was not a court.⁹¹ A CJEU judgment can never serve as a source of law in Poland. In the context of the principle of equality, the organisation of the judiciary is, under the constitutional principles of the Member States, a competence reserved to each state. Therefore, the CJEU, by interfering in the Polish judicial system, is likely encroaching upon an area that was not conferred upon the EU under the treaties.⁹² The Constitution of the Republic of Poland remains the supreme law, providing for autonomy in shaping the judiciary and imposing no obligation to adhere to CJEU decisions. Consequently, while CJEU judgments influence the interpretation of EU law, they do not constitute a direct source of law in Poland regarding the organisation of the judiciary, which is regulated by the Constitution and national statutes.

In this instance, the principle of equality was not upheld, as there was a selective interpretation of the law by the CJEU. It expansively interpreted Art. 19(1) of the TEU and Art. 47 of the CFREU, asserting that the Polish Chamber of Extraordinary Control and Public Affairs does not meet the requirements of independence. Such actions can be criticised as an attempt to create new legal norms that go beyond the treaties and interfere with Poland’s sovereign decisions regarding the functioning of its judiciary. Furthermore, this breaches the principle of the sovereignty of the Member States, which allows them the right to independently shape the structure of their judiciary.

In Poland, the Constitutional Tribunal has explicitly ruled in several judgments that EU law does not take precedence over the Polish Constitution in matters not transferred to the EU under the treaties.⁹³ Hence, the CJEU rulings that interfere with the Polish judicial system can be seen as conflicting with the Constitution, which guarantees sovereignty in this domain.⁹⁴ This justifiably concludes that the CJEU’s actions have a political character and are being used as a tool to exert pressure on Poland in its disputes with EU institutions. It is argued that the CJEU exceeds its powers by favouring certain interpretations of EU law, which undermines

91 Judgment of the CJEU of December 21, 2023, ECLI:EU:C:2023:1015.

92 Case no. 15/2014 Dansk Industri (DI) acting for Ajos A/S vs. The estate left by A.

93 The judgment of the Constitutional Tribunal of the Republic of Poland of October 7, 2021, case file no. K3/21.

94 Ibid.

the sovereignty of the Member States. There is significant concern that continued CJEU interference in the internal judicial affairs of Member States could establish a dangerous precedent, threatening the principle of state autonomy within the EU.

Other Member States may find themselves under pressure from EU institutions, weakening the foundations of cooperation based on the principle of equality and the balance of competences. Notably, the CJEU has not explicitly declared that the Polish Supreme Court's Extraordinary Control and Public Affairs Chamber 'is not a court', as it lacks competence to 'recognise' or 'reject' national institutions. In its rulings, the CJEU only examines whether these bodies meet the requirements of EU law, such as the principles of independence and impartiality under Art. 19 of the TEU and Art. 47 of the CFREU. Moreover, CJEU judgments do not formally annul the Extraordinary Control and Public Affairs Chamber or question its existence in the national legal order. Instead, they assess whether the decisions of this Chamber (e.g., those related to EU law) comply with EU legal principles. Notably, in its published opinion of October 14, 2024, the Venice Commission, an advisory body of the CoE on constitutional law, analysed these issues in light of democratic standards and the rule of law. The Commission did not challenge the formal status of the Extraordinary Control and Public Affairs Chamber or that of its judges.

Hence, the potential expansion of the CJEU's competencies, as one of the most significant judicial bodies within the EU, in criminal matters is controversial, particularly due to the concerns outlined regarding the infringement of state sovereignty in criminal law, challenges arising from differences in the legal systems of Member States, risks of politicising conflicts between Member States and the EU and issues related to mutual trust and the effectiveness of the CJEU.

9. Conclusion

The principle of equality is, undoubtedly, an integral part of the EU and the on-going integration process. It should fundamentally ensure balanced, respectful and effective cooperation between the Member States. Initiatives such as the Schuman Plan (1950) and the Paris Treaty (1951) laid the foundations for equal European cooperation by prioritising economic stability and peace in post-war Europe. These early agreements emphatically highlighted equality as an essential feature for building trust between the Member States, ensuring that smaller or less powerful states could participate in decision-making processes on equal terms with larger states. The establishment of principles, such as joint resource management, solidarity and mutual respect for sovereignty, created a fertile ground for more complex forms of cooperation and integration. Over time, these principles were institutionalised through key treaties, such as the Maastricht Treaty (1992), the Amsterdam Treaty (1997) and the Lisbon Treaty (2009). These agreements gradually incorporated judicial cooperation

into the EU framework, transitioning from voluntary intergovernmental agreements to coherent legal structures.

However, equality in judicial cooperation in criminal matters has encountered several challenges and concerns because it is a particularly sensitive area within the functioning of the EU. It is an area deeply connected to the sovereignty of each state, and today's integration trends inevitably aim to limit this sovereignty. Historically, judicial systems in criminal matters were strictly guarded by individual states due to their significance in maintaining national security and public order. While the EU recognised the need for international cooperation in combating cross-border crimes, such as terrorism, human trafficking and organised crime, equality has not become a genuine and reliable element of that cooperation. During the formative period of integration, the principle of equality served as a foundation for building trust among the Member States and ensuring that cooperation did not undermine national legal systems. However, one can observe several actions within the framework of European integration where this equality does not align with its natural understanding.

Hence, although the concept of equality is presented as a key element of integration and cooperation within the EU, including criminal matters, a deeper analysis reveals the existence of a harmful concept of 'apparent' equality. The principle of equality does not always translate into actual parity of Member States in the practical functioning of the EU. Among other things, under the treaties, all EU Member States formally have equal rights in decision-making processes. Furthermore, judicial cooperation in criminal matters is based on mutual recognition of judgments, which requires the equal treatment of legal systems. However, in reality, larger states are dominant in the EU. Larger countries (e.g., Germany and France) have a greater influence on shaping EU policy due to their economic and political power. The increasingly advancing integration, rather than enhancing mutual trust among the Member States, creates a direct asymmetry of interests, leading smaller states to struggle to pursue their interests, especially in matters requiring unanimity, where the pressure from larger states is decisive.

In judicial cooperation, the equality of legal systems may be illusory, as there are differences in resources, efficiency and legal traditions. This apparent equality is particularly evident in the establishment of the EPPO. At first glance, it represented a significant innovation in judicial cooperation. Its mandate focused on investigating and prosecuting crimes against the EU's financial interests, such as fraud and corruption. These were valid premises deserving initial approval and full support. While the EPPO, according to its objectives, addresses the inefficiency in cross-border prosecution, its creation gives rise to several challenges, particularly concerning equality. First is the risk to state sovereignty, as the EPPO is authorised to act in all Member States, even bypassing traditional national controls if required. This raises concerns about the infringement of the prosecutorial autonomy of the Member States. Furthermore, concerns are raised regarding the unequal participation of states in this initiative, as not all Member States are part of the EPPO. States with reservations about this initiative emphasise that it may lead to a loss of sovereignty in prosecuting

financial crimes and, in an uncontrolled manner, increase EU oversight over internal legal systems and government policies that are internally autonomous.

There are concerns related to the excessive centralisation of EU power, which is seen as a step towards the federalisation of Europe. The internal prosecutorial systems and existing mechanisms for protecting the financial interests of the EU are sufficiently developed and do not require the support of an individual body, such as the EPPO. The States have effective systems for countering financial crimes and cooperate with other Member States within existing structures (e.g., OLAF and Eurojust), which is sufficient. This asymmetry undermines the principle of equality, as citizens of non-participating states are subjected to different prosecutorial standards. Another issue concerns the EPPO's accountability and oversight due to its operational independence. Ensuring accountability while maintaining efficiency is a delicate balance. There are concerns that the mandate of the EPPO may eventually be expanded to include further categories of crime, which further infringe on state sovereignty.

Similarly, the principle of equality in the judicial cooperation in criminal matters takes on the appearance of a mere formality regarding the CJEU's jurisdiction. Its growing role is noticeable, with its increasingly broadening jurisdiction over matters extending beyond the treaties. This process is often referred to as 'competence creep'. Among the concerns, a controversial judicial activity stands out, as the CJEU is increasingly interpreting the provisions of the treaties, effectively expanding its jurisdiction beyond the intentions of the Member States. For example, its rulings on the independence of courts in Member States have sparked significant debates about the boundaries of oversight and EU influence on the States. Through such activities, the CJEU's role is seen as contributing to the erosion of sovereignty, as 'competence creep' threatens to undermine the autonomy of national courts, particularly in sensitive areas, such as criminal law.

Member States may consider CJEU rulings as overreaching, undermining trust in the EU legal framework and jeopardising the principle of equality. This is especially true if smaller states perceive CJEU interpretations as disproportionately favouring larger or more influential Member States. Such actions are in direct contradiction to the original spirit of European integration. According to the treaty provisions, the CJEU is the guarantor of the uniform application of EU law. Although CJEU decisions are formally equal for all, they may favour the interests of larger states, which have more influence on EU policy and legal interpretation during negotiations. Furthermore, the protection of rights appears uniform; however, while the CJEU strives for harmonisation of laws, differences in legal cultures and traditions lead to inequalities in practice. Smaller states, which rely on different legal traditions, may feel that the imposition of EU standards constitutes a form of inequality and discrimination.

To reduce or eliminate the 'apparent' equality within the EU, it is necessary to strengthen the monitoring of implementation. Therefore, the EU should develop more effective control mechanisms to ensure real, not just formal, implementation of

EU standards in criminal proceedings. The issue of funding is significant, as equal financial support for EU Member States is essential. Smaller and less wealthy Member States should receive financial and technical support to adapt their legal systems to EU requirements. The competencies of the EPPO and the CJEU should be limited to eliminate ‘competence creep’. Hence, they should be clearly defined and restricted to avoid perceiving their actions as violations of the sovereignty of the Member States. The specificity of the Member States must be taken into account. Harmonising policies should be flexible, allowing the Member States to consistently align their legal culture with EU requirements.

The apparent equality of EU Member States in judicial cooperation in criminal matters arises from the asymmetry of resources, political influence and differences in legal traditions. While formal principles of equality ensure legal consistency, in practice, smaller countries often experience inequalities resulting from the dominance of larger States and the centralisation of power in EU institutions, such as the EPPO and CJEU. To address these challenges, it is necessary to strengthen monitoring mechanisms, provide greater support for weaker states and adopt a flexible approach to harmonisation, accounting for the diversity of legal traditions within the EU. The principle of equality is observed in the EU only in the formal sphere, its practical implementation often raising doubts. In several cases, equality is only apparent, stemming from differences in the political, economic and administrative capacities of the Member States and the functioning of EU institutions. These need to be addressed for an effective European integration.

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