

N. MUSHAK, A. ZAPOROZHETS

*Natalia Mushak, Dr. hab. in Law, Associate Professor, Professor of the National Aviation University, Professor of the National Academy of Public Administration under the President of Ukraine**

ORCID: 0000-0002-5348-0410

*Anastasiia Zaporozhets, student of II year of Master's degree division of the National Aviation University***

LAW ENFORCEMENT COOPERATION AMONG MEMBER STATES OF THE EUROPEAN UNION

Statement of the problem and its relevance. Effective police cooperation is key to transform the Union into an area of freedom, security and justice based on respect for fundamental rights. Cross-border cooperation – involving police, customs and other law enforcement agencies - aims to prevent, detect and investigate criminal offences across the European Union.

As the national law enforcement system does not have the scope of competence needed to tackle the problem from the European perspective, EU member states have already started to form and implement a common justice and home affairs policy since the 1970s. And also, taking into account the scale, gravity and consequences of the corresponding types of crimes, there is an urgent need for joint actions of states aimed at preventing and suppressing them, which determines the relevance of the topic under study.

The purpose of the article is to study law enforcement cooperation among the EU Member States, to identify the main law enforcement agencies responsible for EU cooperation.

Analysis of research and publications. The legal regulation of inter-State cooperation in the fight against crime is discussed in the works of V. Muraviov, Z. Makarukha, C. Breterton, R. Shamsutdinov, S. Gless.

Presentation of the main article. For the first time, law enforcement cooperation in Europe became cross-border with the signing of the 1962 Treaty on Extradition and Mutual Assistance between the Benelux countries, which allowed for cross-border prosecution and police surveillance. The next step in police cooperation in Europe was the signing of the Convention implementing the 1990 Schengen Treaty. Section 1 of Part III of the Convention “Police and Security” provides clear conditions for cross-border prosecution and police oversight, improved opportunities for information exchange and networking among relevant services of member state¹.

At the same time, as the Maastricht Treaty of 1992 limited itself to defining police cooperation as one of the areas of interest of the EU member states, the Treaty of Amsterdam of 1997 was the first founding treaty that defined the content and boundaries of the joint activities of the member states in this field.

Subsequently, the Lisbon Treaty of 2007 identified important new provisions to enhance the EU's ability to fight international crime, illegal migration and trafficking in people, arms and drugs. The Lisbon Treaty eliminated the three-pillar structure and introduced a section on the functioning of the EU into the Treaty “The Space for Freedom, Security and Justice,” highlighting judicial cooperation in civil cases, criminal cases and police cooperation as separate chapters. It also provided for the establishment of the European Public Prosecutor's office² to investigate, prosecute and defend in court cases affecting the financial interests of the Union.

Accordingly, joint actions in the field of law enforcement cooperation include, among others: operative cooperation of competent authorities, in particular police, customs and other specialized law enforcement services of member states in the field of prevention, detection and investigation of criminal offences; collection, storage, elaboration, analysis and exchange, with the involvement of Europol, of law enforcement information, in particular reports on suspicious financial transactions, taking into account appropriate provisions on the protection of personal data; cooperation and joint initiatives on staff training, exchange of liaison officers and specialists, use of equipment and forensic investigations; joint assessment of individual investigation techniques designed to show serious forms of organized crime.

The main instrument of law enforcement cooperation is the European Police Office, which is central to the broader European internal security architecture. Europol's role is to help national police and other similar authorities to act more effectively to facilitate cooperation between them. The focus of this cooperation is on preventing and combating terrorism, cybercrime, drug trafficking and other forms of serious cross-border crime³.

© N. Mushak, A. Zaporozhets, 2020

* *Наталія Богданівна Мушак, доктор юридичних наук, доцент, професор Національного авіаційного університету; професор Національної академії державного управління при Президентові України*

** *Анастасія Юріївна Запорожець, студентка магістратури Національного авіаційного університету*

Europol began its activities on January 3, 1994 as the European Drug Unit (EDU). Immediately as Europol this department was founded on the basis of the Convention on the Establishment of the European Police Office (Europol) on July 26, 1995, which defined its primary task as improving the flow of information between member states, as well as the collection of information on illegal actions and the transfer of relevant information to competent national authorities (Article 29 of the Convention)⁴. However, even at the time of preparation of Europol Convention there was an acute discussion between member-states about delimitation of Europol competence with national law-enforcement bodies, as a number of states demanded to minimize the influence of the new structure on national investigations (France, Germany), and other states – on the contrary, advocated the idea of almost complete unification of legal procedures of bringing to criminal responsibility the persons who committed crimes on the territory of EU by Europol forces.

Despite the fact that the issue of Europol's competence was ultimately decided in favor of the sovereignty of states, the Europol Convention enshrined the principles of separation of powers between the new pan-European law enforcement agency and national police services of member states. The Europol Convention was ratified by all member states and entered into force on October 1, 1998. After several legislative acts related to the Convention, Europol started its full activity on July 1, 1999⁵.

Since January 1, 2010 Europol is an EU agency funded by the EU budget, and almost 1400 employees (including a maximum of 200 liaison officers) are based at its headquarters in The Hague. The main goal of Europol is to improve information exchange between police authorities. To this end, it conducts the Serious and Organized Crime Threat Assessment (SOCTA), which will serve as a basis for Council decisions, as well as the European Union's Terrorism Situation & Trend Reports (TE-SAT)⁵.

Europol is responsible for collecting, analyzing and exchanging information in order to counteract the creation of illegal immigration and transportation networks; terrorism; illegal trafficking in drugs, nuclear, explosives and radioactive substances, weapons, stolen cars, works of art and antiques, as well as false documents; counterfeiting of currency; corruption, property attempts and fraud, theft, cybercrimes; and environmental damage.

Europol's mandate extends to combating money laundering in relation to each of these types of crime. Europol supports EU countries by analyzing the operational work of EU police agencies; preparing strategic reports containing data on crimes of a European-wide dimension; improving the exchange of information between liaison officers (Europol Liaison Officers), within the framework of national legislation; conducting expertise and providing technical assistance for investigation and operational actions throughout the EU, under the control and responsibility of the state in whose territory the crime was committed⁶.

The Europol Convention provides for the establishment of a computer system to receive, provide and analyse information. The Convention substantiates the conditions of protection of human rights and security of personal data. The system functioning should be controlled by a special commission (Joint Supervisory Body). Europol reports to the Council of Ministers of Internal Affairs and Justice, which is responsible for its activity, appoints a director and his deputies.

Europol does not have any coercive powers (it cannot make arrests or conduct searches), but its operational powers have gradually increased. The Council Act of 28 November 2002, for example, allowed Europol to participate in joint investigation teams and to request member states to initiate criminal investigations. It also expanded its analytical capabilities, including the establishment in January 2013 of the European Center for Cybercrime, which is responsible, inter alia, for assessing the threat of organized crime on the Internet.

Following the terrorist attacks in Paris and Copenhagen in early 2015, the Council of Justice and Home Affairs instructed Europol to set up an Internet diversion unit to combat terrorist propaganda and other extremist measures. After the attack in Paris (November 2015), Council expanded Europol's counter-terrorism powers by starting work on 1 January 2016 at the European Center for Counter-Terrorism.

Similarly, following the massive influx of illegal migrants into the EU in 2014 and early 2015, Europol launched a joint MARE operation in March 2015 to strengthen efforts to counter human smuggling. It also contributes to this operation by deploying on «hot spots» at external borders. Europol is also authorized to negotiate transactions with third countries and bodies that are not members of the EU (e.g., cooperation agreement with Interpol and the USA)⁷.

On 27 March 2013, the Commission submitted to the European Parliament and the EU Council a legislative proposal to amend the current Europol decision, which included the proposed merger of Europol and the European Police College (CEPOL)⁸.

Rejected by both the EU Council and the Parliament, the mergers have now been postponed. In May 2016, the Parliament and the Council approved the new Europol Regulation⁹. This regulation facilitates the establishment by Europol of specialized units to respond to new threats, establishes rules for existing units (for example, the above-mentioned counter-terrorism units) and provides a more reliable data protection regime, strengthened governance and greater responsibility for agencies must be achieved through a common group of parliamentary audits, bringing together the European Parliament and national parliaments.

Since 2018, Europol has conducted several important operations, including:

- the leader of the Carbanak and Cobalt criminal gang of harmful software attacks targeting more than 100 financial institutions around the world were arrested in Alicante, Spain, after a complex investigation led by the Spanish National Police. The criminal transaction affected banks in more than 40 countries and resulted in cumulative losses of more than €1 billion for the financial industry. However, the United States of America and the United States of America have not yet done so. April 25, 2018, law enforcement agencies of states.

– members of the European Union, Canada, and the US have launched a joint action against the so-called propaganda machine of the Islamic State with the aim of seriously disrupting its propaganda flow. This operation was coordinated by the European Union Internet Communications Unit (IRU) within the European Counter-Terrorism Centre at Europol headquarters. This operation, targeting major IP-branded media such as “Amak”, as well as radio stations “Al-Bayan”, “Halumi” and “Nashiri news”, jeopardized the ability of IS to broadcast and publish terrorist material.

– on 5 December 2018, the judicial and law enforcement authorities of the Netherlands, Italy, Germany, Belgium and Luxembourg took coordinated and decisive action against “Ndranghet”. The operation code-named “Polli-no” is the largest of its kind in Europe today. Several hundred police officers, including special units, as well as prosecutors and investigators, have participated in today’s operation. Close cooperation in the investigation resulted in the discovery of almost 4,000 kg of cocaine and hundreds of kilograms of other drugs throughout Europe. Until 12:00, the arrest of 84 suspects, including high-ranking members of the mafia network, was reported.

– in 2019, the second largest darknet market was destroyed by law enforcement. This police operation, coordinated by Europol, resulted in the arrest of three people suspected of running Wall Street stores, the world’s second-largest dark web market. The arrests were coordinated by the Dark Web Team Europol, which is working with EU partners and law enforcement agencies around the world to reduce the size of this underground illegal economy.

Thus, given the above, it should be noted that the activities of Europol are of informational or coordination nature.

Police training is an important aspect of law enforcement cooperation. For this purpose, CEPOL was established in 2000, first as a network of existing national training institutions, and then as an EU agency (Council Decision 2005/681 / JHA of 20 September 2005)¹⁰.

This decision was replaced and repealed by the EU Regulation 2015/2219 of the European Parliament and the Council of 25 November 2015 by the European Union Law Enforcement Training Agency (CEPOL)¹¹.

Thus, it is worth noting that the joint activities of Europol and other institutions of law enforcement cooperation are of particular importance at the present stage, and the importance of further utilizing the possibilities of international police cooperation is topical, and the need to enhance the effectiveness of such cooperation through concerted action at the national and international levels to improve legal regulation.

Another instrument of law enforcement cooperation is the Standing Committee on Operational Cooperation on Internal Security (COSI). It is a new committee within the EU security framework and was founded in the Treaty of Lisbon, but this concept was formally introduced in 2004 in article III-261 of the Treaty Establishing the European Constitution¹². Article 71 of TFEU states that “a standing committee shall be established within the Council to ensure the development and strengthening of operational cooperation on internal security within the Union”.

An example of this provision was established in the Council’s decision of 25 February 2010 establishing the Standing Committee on Operational Cooperation on Internal Security Matters (2010/131/EU)¹³. By founding COSI, the treaty significantly strengthened and formalized operational cooperation on internal security within the EU. In the Treaty of Lisbon, coordination of operational activities was not the exclusive responsibility of the justice and internal affairs authorities.

In fact, until 2010, the Council and its secretariat played an important executive role; it served as a forum for operational law enforcement cooperation among States members, sometimes assuming a coordinating role in the absence of authority in this regard in the European Commission. The Working Group on Freedom, Security and Justice, in its final report to the Constitutional Assembly, proposed to merge the various working groups of the Council dealing with internal security and to redefine the Committee’s mission under article 36, which participates in the legislative work of the Council, with the aim of coordinating operational cooperation.

In general, according to the functions of COSI, paragraph 4.1 of the Stockholm Programme¹⁴ lays the foundation for the functioning of the Zone of Freedom, Security and Justice, the COSI is basically to develop, control and implement an internal security strategy, and should also cover security aspects of integrated border management and, where appropriate, judicial cooperation in criminal matters relating to operational cooperation in the field of internal security, in order to ensure the effective implementation of the internal security strategy. In addition, the ISS should be regularly informed about coordination and cooperation in the field of combating trafficking in human beings, implemented by Member States and EU bodies.

The European Union Centre for Analytical Intelligence (Eu Intelligence and Situation Centre - EU INTCEN)¹⁵ is not essentially a police cooperation body as it is part of the European External Action Service (EEAS). The creation of the EU INTCEN – or the EU Situation Centre (EU SITCEN), as it was called until 2012 – is closely linked to the creation of the European Security and Defence Policy (ESDP) and the creation of the post of High Representative in 1999. The development of ESDP crisis management capabilities and the deployment of both civilian and military missions has made it clear that a broader intelligence analysis structure is needed.

The events of September 11, 2001 and the growing threats of global terrorism have also highlighted the need for timely and accurate intelligence analysis to support EU policy making.

In 2002, the EU SITCEN was founded in the General Council. The Secretariat is directly attached to the Office of the High Representative.

Nevertheless, the European Union’s Intelligence Analysis Centre contributes to law enforcement cooperation by conducting threat assessments based on information provided by intelligence agencies, military, diplomatic and police services. INTCEN can also make a useful operational contribution by providing, for example, Europe-wide information on the destinations, motives and movements of terrorists¹⁶.

Conclusions. Thus, at the current stage of development of the European Union, the coordination of law enforcement activities of the member States of the European Union and law enforcement cooperation among the member States of the European Union are of sufficient importance, related to pan-European integration. In coordinating the activities of law enforcement agencies, this involves the development, operational cooperation and practical implementation of joint activities in the field of prevention, detection and investigation of criminal offences in EU member States.

¹ Муравйов В.І. Правова природа Європейського Союзу. *Актуальні проблеми міжнародних відносин*. 2002. Вип. 32. Частина 2. С. 119–125.

² Official website – European Public Prosecutor's office. URL: https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en

³ Макаруха З.М. Правова характеристика «зовнішнього виміру» простору свободи, безпеки та справедливості Європейського Союзу. *Науковий вісник Львівського державного університету внутрішніх справ*. 2010. № 2. С. 379–387.

⁴ Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention). URL: <http://www.europol.europa.eu/index.asp?page=legalconv>

⁵ Bretherton Ch. The European Union as a Global Actor / Ch. Bretherton, J. Vogler; 2nd ed. Abingdon: Routledge, 2006. 457 p.; Keukeleire S. The Foreign Policy of the European Union / S. Keukeleire, J. MacNaughtan. Basingstoke: Palgrave, 2008. P. 157–159.

⁶ Шамсутдинова, Р.Р. Пространство свободы, безопасности и правосудия Европейского союза: становление, развитие и основные формы сотрудничества государств-членов: автореф. дисс. ... канд. юр. наук / Р.Р. Шамсутдинова. Казань: КГУ, 2009. 28 с.

⁷ Sabine Gless. Police and judicial cooperation between the European Union member states. Results and prospects. URL: <https://core.ac.uk/download/pdf/18245145.pdf>

⁸ Official website – CEPOL. URL: <https://www.cepola.europa.eu>

⁹ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371 / JHA, 2009/934 / JHA, 2009/935 / JHA, 2009/936 / JHA and 2009/968 / JHA. Official Journal of the European Union. L 135/53 URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015R0757>

¹⁰ Council decision 2005/681 / JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820 / JHA /. Official Journal of the European Union. L 256/63. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005D0681>

¹¹ Regulation (EU) 2015/2219 of the European Parliament and of the Council. URL: <https://eurlex.europa.eu/legalcontent/EN/TXT/?Uri=CELEX%3A32015R221>

¹² Regulation (EU) 2015/2219 of the European Parliament and of the Council. URL: <https://eurlex.europa.eu/legalcontent/EN/TXT/?Uri=CELEX%3A32015R221>

¹³ Council Decision of 25 February 2010 on setting up the Standing Committee on operational cooperation on internal security (2010/131 / EU). Official Journal of the European Union. L 52/50. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0131>

¹⁴ European Council, The Stockholm Program – An open and secure Europe serving protecting citizens O.J. 2010 C, no. 115/0. URL: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?Uri=OJ:C:2010:115:0001:0038:EN:PDF>

¹⁵ Official website – EEAS. URL: https://europa.eu/european-union/about-eu/institutions-bodies/eeas_en

¹⁶ “Internal security strategy for the European Union. Towards a European security model”, Brussels 2010, retrieved 27.07.2016, www.consilium.europa.eu/en/documents-publications/publications/2010/pdf/qc3010313plc.pdf

Резюме

Мушак Н.Б., Запорожець А.Ю. Співробітництво правоохоронних органів держав-членів Європейського Союзу.

Стаття присвячена дослідженню співробітництва держав - членів Європейського Союзу в галузі правоохоронної діяльності. Визначено основні органи, відповідальні за співпрацю в ЄС.

Визначено необхідність налагодження ефективної співпраці з питань формування та реалізації спільної політики в сфері внутрішніх справ, об'єднання зусиль по розробці відповідних механізмів співпраці, боротьби з такими злочинами, як: тероризм, незаконний обіг наркотиків, зброї, а також торгівля людьми, кібератаки.

Було визначено, що основним інструментом поліцейського співробітництва є Європейське поліцейське бюро, яке є центральним елементом ширшої європейської архітектури внутрішньої безпеки. Головна мета Європолу – зробити Європу безпечнішою. Він підтримує держави-члени ЄС в їх боротьбі з тероризмом, кіберзлочинністю та іншими серйозними і організованими формами злочинності. Європол також співпрацює з багатьма державами, які не є партнерами ЄС, і міжнародними організаціями. Масштабні злочинні і терористичні мережі становлять значну загрозу для внутрішньої безпеки ЄС. CEPOL зарекомендував себе як агентство, яке розробляє, впроваджує та координує навчання співробітників правоохоронних органів. CEPOL вносить свій внесок в забезпечення безпеки Європи, сприяючи співробітництву та обміну знаннями між співробітниками правоохоронних органів в державах-членах ЄС. Аналітичний центр розвідки ЄС (EU INTSEN) не є, строго кажучи, органом поліцейського співробітництва, оскільки він є Дирекцією Європейської служби зовнішньополітичної діяльності (EEAS) і займається тільки стратегічним аналізом. Проте, він вносить свій внесок в поліцейське співробітництво, проводячи оцінку загроз на основі інформації, наданої розвідувальними службами, військовими, дипломатами і поліцейськими службами.

Що стосується Постійного комітету із забезпечення розвитку та зміцнення оперативної співпраці з питань внутрішньої безпеки в рамках Союзу (COSI), то він сприяє координації між компетентними органами держав-членів.

Ключові слова: співробітництво у правоохоронній сфері, органи ЄС, правоохоронна діяльність, правоохоронні функції ЄС, принципи співпраці, транскордонна злочинність.

Резюме

Мушак Н.Б., Запорожець А.Ю. Сотрудничество правоохранительных органов государств-членов Европейского Союза.

Статья посвящена исследованию сотрудничества правоохранительных органов государств-членов Европейского Союза. Определены главные органы, отвечающие за сотрудничество в ЕС.

Установлено, что главным инструментом полицейского сотрудничества является Европейский полицейский офис, который является центральным элементом более широкой европейской архитектуры внутренней безопасности. Доказано, что CEPOL – это агентство, которое занимается разработкой, внедрением и координацией обучения для сотрудников правоохранительных органов. Аналитический центр разведки ЕС (EU INTCEN) не является, строго говоря, органом полицейского сотрудничества, поскольку он является Дирекцией Европейской службы внешних действий (EEAS) и занимается только стратегическим анализом. По постоянному комитету для обеспечения развития и укрепления оперативного сотрудничества по вопросам внутренней безопасности в рамках Союза (COSI), то он способствует координации действий компетентных органов государств-членов.

Ключевые слова: правоохранительное сотрудничество, органы ЕС, деятельность правоохранительных органов, функции правоохранительных органов ЕС, принципы сотрудничества, трансграничные преступления.

Summary

Natalia Mushak, Anastasiia Zaporozhets. Law Enforcement Cooperation of the Member States of the European Union.

The article is devoted to the study of law enforcement cooperation of the European Union Member States. The main bodies responsible for cooperation in the EU have been identified.

It has been determined that the main instrument of police cooperation is the European Police Office, which is a central element of the wider European internal security architecture. CEPOL has been proven to be the agency that develops, implements and coordinates training for law enforcement officers. The EU Analytical Intelligence Centre (EU INTCEN) is not, strictly speaking, a police cooperation body, as it is the Directorate for European External Action Service (EEAS) and deals only with strategic analysis. On the Standing Committee to ensure the development and strengthening of operational cooperation on internal security matters within the Union (COSI), it promotes coordination among the competent authorities of the member states.

Key words: law enforcement cooperation, EU bodies, activities of law enforcement bodies, functions of EU law enforcement bodies, principles of cooperation, transboundary crimes.

DOI: 10.36695/2219-5521.3.2020.62

УДК 351.755.62

І.Д. СОФІНСЬКА

*Ірина Дмитрівна Софінська, доктор юридичних наук, доцент Навчально-наукового інституту права, психології та інноваційної освіти Національного університету «Львівська політехніка»**

ORCID: 0000-0002-3853-7626

ПАСПОРТ: ГЛОБАЛЬНІ ВИКЛИКИ – ЛОКАЛЬНІ РІШЕННЯ

Постановка проблеми. Від народження кожна особа має право на ім'я і громадянство (принцип 3 Декларації ООН прав дитини 1959 р.¹, продубльований та задекларований у ст. 7 Конвенції ООН про права дитини 1989 р.²). Кожна держава світу володіє різноманітним спектром засобів ідентифікації власних громадян, фіксації їх громадянства та імені, контролю за ними. Основним політико-правовим інструментом серед них є паспорт – документ, наявність якого традиційно підтверджує права, обов'язки, гарантії та привілеї особи-пред'явника, пов'язані з набутиим громадянством, незалежно від їх кількості, часу та способу набуття.

Аналіз останніх досліджень і публікацій. Серед найяскравіших нещодавніх досліджень у сфері правової ідентичності особи (а детальніше громадянства та паспортизації) варто виокремити декілька важливих та популярних імен: Атосса Араксія Абрагамян³, Клер Бенуа⁴, Патрік Вейл⁵, Мартін Ллойд⁶, Крег Робертсон⁷, Марк Селтер⁸, Пітер Спіро⁹, Джон Торпі¹⁰, Джеймс Туллі¹¹ та інші. Якщо спершу паспорт вважався дозволом для легального пересування конкретної особи, то у XX ст. цей документ став символом ідентичності та доказом громадянства особи. Популяризація (доступність) подвійного (множинного) громадянства стала викликом як глобально, так і локально.

Мета статті: унаочнити трансформацію паспорта від документа для легального пересування (безпечних мандрів) особи всередині держави та за її межами до символу ідентичності особи з державою свого походження чи народження, доказу зафіксованого громадянства.

Виклад основного матеріалу. Паспорт вважається фінальним доказом (*conclusive proof*) наявного в особи громадянства, як встановленого постійного у часопросторі, ефективного та правового зв'язку між нею