RIGA GRADUATE SCHOOL OF LAW

Inter-European cooperation in the field of combating and solving transnational crimes

BACHELOR THESIS

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DECLARATION OF HONOUR:
I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

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Abstract

The main purpose of this study is to challenge the legal possibilities and potential of the EU law enforcement structures in the field of ensuring collective security and combating crimes in the territory of the European Union. The primary problem of this study is the ability to correctly assess the effectiveness of existing mechanisms and methods of cooperation between law enforcement structures of the European Union, as well as their compliance with the current realities and needs of the EU countries and their security in general. The end of this study can be considered a positive or negative verdict regarding the effectiveness of the current legal and factual system of cooperation between law enforcement agencies of the European Union in the field of combating transnational crimes.

Key words:

- Theory and philosophy of criminal law
- The diversity of transnational crimes and methods of combating them
- Mechanisms of cooperation between law enforcement structures of the European Union
- European criminal law and its harmonization

Summary

This thesis entails a study of the methods of law enforcement cooperation in the European Union and the mechanisms they use to maintain an appropriate level of internal security in the European Union.

The thesis begins with a description of the basic concepts of criminal law, its relevance and the need for research, as well as the possible problems that can arise if this branch of law is neglected.

The thesis also includes an interdisciplinary study of criminal law from the perspective of socio-economic factors with a direct link to the causes of crime. The main analysis is based on the correlation between the standard of living of the population and the commission of crime over the last 10 years.

The main part of the thesis consists of an analysis of the current EU legislation on which all major cooperation mechanisms between law enforcement agencies of the European Union are based, as well as a detailed study of these mechanisms, their specificities and implementation possibilities.

In addition to the theoretical part of the thesis, there is also an analysis of a survey among law enforcement representatives that aims to better understand the cooperation instruments in practice. This survey helps to better understand the actual use of existing mechanisms as well as their overall effectiveness and frequency of their implementation.

The thesis also analyses existing proposals from non-profit and European organisations that could improve European criminal law in general.

The last part of the thesis explores and describes problems of harmonisation of European criminal law and their impact on possible future development of the latter. The question of mutual recognition of decisions and possible limitations in the harmonisation of criminal law is also explored in greater depth.

The thesis concludes with a brief analysis of the information obtained during the research, as well as a conclusion on the effectiveness of the conducted research and further perspectives in the study of the topic.

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List of Abbreviations

AJSF - Area of Freedom, Security and Justice

CFSP - Common Foreign and Security Policy

EAW – European Arrest Warrant

ECO - European Confiscation Order

EEC - European Economic Community

EEW - European Evidence Warrant

EIO - European Investigation Order

ELI - European Law Institute

EPPO - European Public Prosecutor's Office

EU – European Union

JHA - Justice and Home Affairs

LCL - Latvian Criminal Law

LCPL - Latvian Criminal Procedure Law

MS - Member State(-s)

OLAF - European Anti-Fraud Office

PJCC - Police and Judicial Cooperation in Criminal Matters

TEU - Treaty on European Union

TFEU - Treaty on the Functioning of the European Union

Introduction

The issue of collective European security has always been a priority and quite relevant, regardless of internal and external factors and processes that have affected and continue to affect the European Union. However, over the past decade (especially in recent years), the geopolitical and economic situation has created unprecedented pressure on the overall structure and security of the European Union: the aggravation of local conflicts around the world, the migration crisis, the pandemic and the accompanying global economic crisis, etc. In the current realities, these problems are a serious challenge for the legal, political and economic system of the Union, which, perhaps, was not so prepared for drastic changes in the world and European arena. Despite the fact that the legal framework of the European Union can rightfully be considered one of the most modern and effective in the world, it certainly has some gaps and vulnerabilities that may adversely affect the collective security of the Union countries. For example, the problems of harmonization of criminal and criminal procedure law in the European Union are one of the most serious vulnerabilities that need to be supplemented and improved. Also, many of the actual procedures are most probably overly bureaucratic and ineffective. These problems can definitely be one of the factors that can partly reduce the level of security in the Union. That is why this topic is critically important and relevant both for politicians and EU states and for ordinary people, whose life and security directly depend on the decisions made at the European level.

The main problem of this study is a full-scale and objective assessment of the already existing system of cooperation between law enforcement agencies of the European Union. Since the mechanisms that have been used and supplemented for many years are extremely extensive both in legal and functional terms, it is rather difficult to draw an unambiguous conclusion regarding the ability of the system to withstand threats to the security of the European Union. Nevertheless, relying on available academic sources, including acts and laws of the European Union, as well as on the real experience of law enforcement representatives, the author can conduct a large-scale study and come to conclusions that may be able to improve and supplement existing concepts and mechanisms in the field of cooperation between law enforcement agencies throughout the EU.

Throughout the thesis, the author will use doctrinal comparative, non-doctrinal analytical-historical, qualitative and quantitative methods of data analysis. Also, methods of secondary data analysis and literature review will also be used in order to analyse a larger number of sources for a more extensive disclosure of the research topic. In specific cases, a survey of a certain circle of people and further compilation of statistics based on the available data will also be applied.

The main research question of the study is: Are the methods of cooperation between the EU countries effective in order to counter today's challenges and threats in the field of solving transnational crimes?

The aim of this study is to understand and explore the legal mechanisms that are used by EU law enforcement agencies, to draw a conclusion about their effectiveness in the current situation, as well as to analyse alternative solutions or additions to the existing system.

This study is limited only by the availability of data in the public domain: in order to achieve the goal in the course of the study, all available sources will be used, with the exception of limited and inaccessible to the average user due to the specifics of this area and other obvious reasons.

This paper consists of 3 chapters and 40 pages.

In the first chapter of the study, the author, using socio-economic concepts, explores the causes of crimes in society and their origins. This chapter will also explore fundamental questions of criminal law in human history: the origins of crime, its control and the subsequent creation of regulatory mechanisms, using historical facts as examples

In the second chapter of the study, at the outset, there will be an excursus and analysis of the history of criminal law and cooperation issues.

The author examines the existing mechanisms that the EU law enforcement agencies use in the field of cooperation and the fight against crime.

This chapter also examines the Latvian model of law enforcement and legislative system in terms of available mechanisms for combating crime, also using the Latvian law enforcement survey method.

In the third chapter of the study, the issues of harmonization of criminal and criminal procedural law within the European Union will also be explored.

The author also analyses the legal shortcomings and problems of the current system of cooperation between EU law enforcement agencies and also analyses possible solutions to improve the existing system.

1. THE THEORY OF CRIMINAL LAW IN THE CONTEXT OF SOCIETY AND PHILOSOPHY OF LAW

1.1 A study of criminal law from a historical and philosophical perspective

Crime as such has always been a very complex sociological issue, which has been present in society almost from its very foundation and still remains one of the most topical in our time. Since this factor, in the form of certain acts, had to be somehow controlled by the society (and later by the emerged state), already in quite early periods of formation of such states we can find the first codes similar to Hammurabi's Laws, which go back to Babylonian times to around 1750 B.C. These codes contain legal concepts that are quite familiar and customary to modern man, regulating particular branches of law: family law, property law, commercial law and, of course, criminal law, expressed in a somewhat unusual from the classical approach by the type of the concept Lex Talionis (an eye for an eye - punishment in proportion to the crime committed).[1]

Going deeper into the regulation of the more serious offences of the time, equivalent to modern crimes within the boundaries of existing criminal law concepts, the following extracts from the laws of Hammurabi can be cited as an example:

> [1.] If a man put out the eye of another man, his eye shall be put out.
>
> [2.] If he break another man's bone, his bone shall be broken.
>
> [3.] If a man knock out the teeth of his equal, his teeth shall be knocked out.
>
> [4.] If a builder build a house for someone, and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death.
>
> [5.] If it kill the son of the owner of the house, the son of that builder shall be put to death.[2]

These examples of punishment for convicted crimes may, of course, seem too radical and disproportionate a punishment, but the aim at the time was the most effective and affordable regulation of crimes which were, for the most part, based on human fears of the consequences and, very often, the death penalty. Nowadays, societies can afford to be guided by more humane, proportionate and at the same time effective methods of fighting crime.

Thousands of years have passed since the heyday and fall of Babylon, and many empires and civilisations have fallen into oblivion, but the essence of man has not changed: crime still continues to be committed, regardless of its consequences before the law. The reasons for committing crimes, exactly as before, have not changed - they are based on socio-economic factors such as lack of access to basic necessities for survival. In earlier times mankind did not have mechanisms such as statistics or extensive research into the subject, but now it has the opportunity to compare and analyse the available data.

[1] World History Encyclopedia. Code of Hammurabi. Available on: https://www.worldhistory.org/Code_of_Hammurabi/ Accessed: May 10, 2023.
[2] *Ibid.*

1.2 Socio-economic causes of crimes and analysis of current social trends

The scope of this study is limited to the area of the European Union, in which data from the last decade will be compared and analysed. In this way, it is possible to identify current trends in crime and to correlate the type and frequency of offences committed, as well as general trends towards an increase or decrease in crime in general.

By reviewing and analysing Eurostat data for the period 2011-2020 in the category of recorded offences in certain categories (this sample was made specifically for EU member states), the statistics can be summarised as follows:

1. Theft was the most common crime in 2011. Between 2011 and 2020, the overall rate of theft in the EU decreased by around a quarter, thus showing a significant drop in this category.
2. In the category of intentional homicide, a downward trend of around 15%-30% can be noticed over the same period of time, depending on the country. The Baltic states are an exception: in Estonia and Lithuania, the category has decreased by more than 2 times comparing with other states. In Latvia, the figure has increased by approximately 35%.
3. The category of sexually motivated crimes is rather controversial: there is a general upward trend in this type of crime, for example, in Estonia, Romania, Ireland, Denmark, and France - an increase of more than 100%. Paradoxical increase in Latvia (approximately 500%) and a decrease of more than 2.5 times in Lithuania. An overall increase in this category of crimes of about 5-40% (Germany, Netherlands), except for some countries with the opposite decrease in the number of cases (Cyprus, Greece, Malta).[3]

Taking into account the above-mentioned statistics for the EU countries, it can be concluded that the crime situation regarding the most common crimes has improved, however, an increase in certain categories of crimes has been noticed. The decrease in the number of property crimes may be attributed to the general increase in the well-being of citizens and the use of more advanced technology and methodology by law enforcement authorities in protecting public order. At the same time, the increase in sexual crimes can be linked to a possible migration crisis in the European Union, which emerged against the backdrop of political and economic instability in the Middle East. Information on this migration crisis is confirmed both by the European Commission and by reports from Europol in cooperation with Interpol.[4]

At the same time, according to the official portal of the European Commission, «…migrant smuggling generated €3-6 billion turnover in 2015 and over €200 million in 2019 in the maritime routes leading to the European Union».[5]
From this, it can be concluded that the problem of smuggling migrants into the European Union has also affected the overall security structure and, as can be seen from the aforementioned statistics, an increase in crime in certain categories.

[3] Eurostat, *Recorded offences by offence category - police data.* Available on: https://ec.europa.eu/eurostat/databrowser/view/crim_off_cat/default/table?lang=en Accessed: May 10, 2023.
[4] European Council, *Saving lives at sea and fighting migrant smuggling*. Available on: https://www.consilium.europa.eu/en/policies/eu-migration-policy/saving-lives-sea/ Accessed: May 10, 2023.
[5] *Ibid.*

2. RESEARCH AND ANALYSIS OF THE EXISTING SYSTEM OF CRIME DETECTION AND COOPERATION IN THE EUROPEAN UNION

2.1 History of cooperation in the context of European criminal justice

In order to understand the methodology and methods used by the Member States in the area of cooperation in crime eradication more precisely, it is necessary to further examine the legal framework on which these instruments are based. This part of the study is, of course, mostly concerned with the historical development of the European Union, including the treaties concluded, but it is nevertheless necessary to create a proper chronological chain of events that led to the current system used by the member states and the European institutions in the EU.

The history of cooperation in the field of European criminal justice can be traced back to the mid-1950s, when the current European Union (at that time the European Economic Community) consisted of only 6 countries. Even at that time, issues such as national security in the context of cross-border cooperation in criminal justice were quite topical. The conventions such as the European Convention on Extradition of 1957 and the European Convention on Mutual Assistance in Criminal Matters of 1959 were signed in Paris and Strasbourg respectively. Already at that time, the preamble to these conventions contained the following phrase, which set the course for further cooperation and expansion of the Union: «Considering that the aim of the Council of Europe is to achieve a greater unity between its members».[6] Around the same time, in response to growing threats to European security, the EEC countries created an intergovernmental organisation to combat terrorism and, subsequently, drug trafficking, illegal immigration and other forms of crime affecting the security of these states. The name of this organisation is the TREVI Group - established in Rome in 1975.[7]

Around the end of the 1980s, cooperation between the EC states began to develop gradually in order to compensate for the abolition of border controls and to make the creation of an internal market more efficient. Documents were signed between the parties amending the Treaty of Rome and expanding some cooperation instruments. However, despite this, the use of these amendments for international cooperation between MS was rather limited - for the most part, it was limited to intergovernmental cooperation, and the national MS parliaments and the European Parliament did not have extensive powers in this matter.[8] This phase of cooperation can historically be attributed to a transitional phase, during which there were still not many mechanisms between MS that had been approved at the inter-European level.

The Schengen Agreement of 1985 and the Convention on the Implementation of the Schengen Agreement of 1990 played an equally important role in the establishment of full cooperation between countries, which also established the current system. At that time, only five countries signed these agreements: France, Belgium, Luxembourg, Germany and the Netherlands. Despite this relatively small coverage of countries, these agreements introduced new concepts and mechanisms to the concept of European criminal law, such as cross-border surveillance and the

[6] European Convention on Mutual Assistance in Criminal Matters, 29.04.1959. Available on: https://rm.coe.int/16800656ce Accessed: May 10, 2023.
[7] Roberto E. Kostoris, *Handbook of European Criminal Procedure* (Springer International Publishing AG, 2018). Available on: https://ebookcentral.proquest.com/lib/lulv/reader.action?docID=5347122&query=EU+Financial+Crime Accessed: May 10, 2023., p. 175.
[8] *Ibid*, pp. 176-177.

now well-known *ne bis in idem*, which is responsible for ensuring that a person will not be tried for the same offence.[9]

In February 1992, the Treaty of Maastricht was signed between the member states of the Union, which was the ancestor, or older form, of the current TEU. This treaty introduced the structure of the «three pillars of the European Union» on which all of its main functions and competences were based. The Common Foreign and Security Policy (hereinafter - CFSP) was also added to the already existing pillar responsible for economic and social issues within the Union, with a second pillar responsible for military and foreign policy. The third pillar, and most important for this study, was responsible for cooperation between the member states in criminal matters - Justice and Home Affairs (hereinafter - JHA). Also worth mentioning in the context of this treaty is Title VI «Provisions on cooperation in the fields of justice and home affairs», which sets out the goals to be achieved within the Maastricht Treaty.[10] Article K.1 in particular is worth highlighting, namely the paragraphs relating to the criminal law sphere, which further elaborate on the purpose of the treaty: paragraphs 1-3 (controlling asylum, border crossing, immigration policies), paragraphs 4-6 (controlling drugs and fraud) and paragraphs 7-9 (providing mechanisms for cooperation between judicial systems, customs and law enforcement agencies).[11] By the time the Maastricht Treaty was signed, the structure of the TREVI Group and similar groups had already lost its relevance. Thanks to the new structure of the three pillars, it was possible between the MS to increase the efficiency of overall cooperation and centralised decision-making and, at the same time, to promote cooperation within the Schengen Agreement.[12]

Despite the Maastricht Treaty's rather marked effectiveness compared to that of the TREVI Group, it has been the subject of considerable criticism. Among the main reasons for dissatisfaction with the Maastricht Treaty is the use of the form of conventions as a legal instrument, which is rather difficult to ratify and implement. The interpretation of certain concepts in European criminal law was also an issue; their wording and legal status were not entirely clear. In the end, the model provided by the third pillar was far from being the most transparent, thereby hindering the development of intergovernmental cooperation.[13] However, although the three-pillar model was relatively short-lived, it has certainly made an important contribution to the development of the European Union, particularly criminal law.

In October 1997, the Treaty of Amsterdam was signed, which changed the already existing system represented by the Maastricht Treaty quite dramatically. One of the main innovations can rightly be considered the introduction of the concept of Area of Freedom, Security and Justice (hereinafter - AJSF) and the change of the third pillar to Police and Judicial Cooperation in Criminal Matters (hereinafter - PJCC) as well as the separation of its competences from the JHA concept. With the signing of the Treaty of Amsterdam, the fundamental understanding of the European Union's security concepts changed completely: the AJSF area is now perceived as a new space to deal more closely and effectively with new threats that may threaten the Union.[14]

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[9] *Ibid*, pp. 177-178.

[10] Ivan Sammut & Jelena *Agranovska*, *Implementing and Enforcing EU Criminal Law Theory and Practice*, (Eleven International Publishing, 2020). Available on: Implementing and Enforcing EU Criminal Law (boomportaal.nl) Accessed: May 10, 2023., p. 2.

[11] Treaty on European Union, *OJ C* 191, 29.7.1992. Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT Accessed: May 10, 2023.

[12] Kostoris, *supra* note 7, pp. 178-179.

[13] Valsamis Mitsilegas, *EU Criminal Law* (Bloomsbury Publishing Plc, 2022). Available on: https://ebookcentral.proquest.com/lib/lulv/reader.action?docID=6941328&query=EU+Criminal+Law Accessed: May 10, 2023., p. 7.

[14] Kostoris, *supra* note 7, pp. 181-182.

Nevertheless, despite these fundamental changes, the European Parliament, Council, Commission and other European bodies still do not have a significant weight or authority over European criminal law - it can be said that it has been created by the signatory states to these treaties.[15]

With the signing of the Amsterdam Treaty it is also worth returning to the Schengen Treaty, namely Schengen *aquis*, through which a number of rules and laws were introduced into European Union law. It goes without saying that these norms only regulated rules related to crossing internal Schengen borders, but their impact in the context of maintaining inter-European security was great - the introduction of these norms into EU law was a big step for the development of the AJSF.[16]

Equally important in the development of European criminal justice and cooperation between the member states were the Tampere and Hague programmes signed in 1999 and 2004 respectively. The most important innovations of the Thumper programme were the establishment of a basis for Eurojust and the introduction of a new methodology for cooperation between the MS, based on the principles of mutual trust and recognition of each party's decisions. The Hague Programme adopted 5 years later, also focused on expanding the application and improvement of the principles described above and introduced new methods for cooperation between law enforcement officers in the Union.[17]

The largest and most fundamental changes to the European criminal law system were introduced by the Lisbon Treaty of December 2007 (more commonly known as the TFEU), which still governs the functioning of all EU institutions and European criminal law in particular. The changes introduced by the Treaty had a considerable impact on the structure on which the European Union was based at that time: in the new model, the concept of the three pillars was completely revised and subsequently abolished. Of course, the second pillar, which was responsible for cooperation between member states in the field of criminal law, was also affected.[18] The main changes introduced by the Lisbon Treaty were the cooperation between law enforcement agencies and the judiciary and the change in decision-making procedures within the Union. As mentioned earlier, the fundamental decision was the abolition of the Three Pillars. Issues related to security, justice and law enforcement cooperation (i.e. criminal law issues) were moved to Title V of the TFEU. However, this reform, which involved many related sectors, had both advantages and disadvantages. For example, since the entry into force of the Lisbon Treaty, issues connected to drugs have been the subject of controversy because of the complexities of harmonisation between the treaty countries. Also, the methodology of cooperation in the field of criminal law has been greatly influenced: while before the Lisbon Treaty, the cooperation was mainly on an intergovernmental level, in the more recent period the competence has been entirely exercised on the European level, which entails joint and unanimous decision making in almost all areas. In this renewed system, new legislative instruments such as directives are also being actively implemented and are becoming one of the most important instruments in the EU legal system.[19]

[15] Sammut, Agranovska, *supra* note 10, p. 3.
[16] Mitsilegas, *supra* note 13, pp. 8-9.
[17] Kostoris, *supra* note 7, pp. 186-187.
[18] Sammut, Agranovska, *supra* note 10, p. 4.
[19] Kostoris, *supra* note 7, pp. 189-190.

2.2 Current theoretical and practical methodology used by EU countries in the field of cooperation and crime detection

2.2.1 Legal basis for the establishment and regulation of mechanisms for cooperation between EU law enforcement agencies

After examining the history of European criminal law and cooperation among the member states of the above-mentioned treaties, it becomes clear that the process of establishing this system has taken decades and is still incomplete, as the goals and objectives of the European Union are constantly adjusted according to the economic, political and social situation at a particular time.

Before looking at the methods used by EU countries in the field of cooperation and detection of crime, it is necessary to go back to the TFEU and the main articles that regulate the issues relevant to this study.

The fundamental articles of the TFEU in the field of criminal law and cooperation between the EU Member States is Title V - Area of Freedom, Security and Justice, namely Chapter 1 (General Provisions), Chapter 4 (Judicial Cooperation in Criminal Matters) and Chapter 5 (Police Cooperation). Considering Chapter 1, namely Articles 67-76, they may be referred to as the fundamental legislative framework in the field of security provided by the TFEU. In these articles, the emphasis is placed on the aims and objectives of the EU in the AFSJ field and on the regulation of the sector by the European Parliament, Council, the Commission as well as the Member States themselves.[20]
Turning to a more detailed description of the legislative mechanisms provided by the TFEU, it is worth considering the most key point, namely Article 82 par.1, which describes and highlights the following key points in judicial cooperation:

> …(a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
> (b) prevent and settle conflicts of jurisdiction between Member States;
> (c) support the training of the judiciary and judicial staff;
> (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.[21]

Equally important is paragraph 2, which sets out certain rules for participating countries, bearing in mind the following provisions:

> …(a) mutual admissibility of evidence between Member States;
> (b) the rights of individuals in criminal procedure;
> (c) the rights of victims of crime;
> (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.[22]

This paragraph also contains some important information on the possibility of adopting appropriate directives to regulate judicial and police cooperation. This information is also confirmed in Article 83 par.1, which regulates in even more detail and specifies the areas that may, if necessary, be regulated by directives, namely:

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[20] Treaty on the Functioning of the European Union, *OJ C* 202, 7.6.2016, p. 1–388. Available on: EUR-Lex - 12016ME/TXT - EN - EUR-Lex (europa.eu) Accessed: May 10, 2023.
[21] *Ibid*, Art 82.
[22] *Ibid.*

> terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.[23]

In examining these articles, it can be seen that the legislator is focusing on harmonising the basic aspects of the regulation of criminal law within the EU by establishing minimum criteria and rules to which the Member States must adhere.

In considering Chapter 4, it is also worth drawing attention to Articles 85 and 86. Article 85 is not only a theoretical framework in itself but also a practical tool that can be used (and is in the meantime actively used) by the EU. It describes the procedure for the creation of a European law enforcement organisation, namely Eurojust, whose main objectives according to this article are:

> (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
> (b) the coordination of investigations and prosecutions referred to in point (a);
> (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.[24]

Article 86 describes the procedure for establishing the European Public Prosecutor's Office from Eurojust, whose main task is «…investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests...».[25] This procedure is described in 4 paragraphs and has its own legal formalities that must be respected when establishing this European body.

The last but not least part of the TFEU, which regulates aspects of European criminal law, is Chapter 5 (Police Cooperation). Article 87 sets the objective for member states to cooperate with law enforcement agencies and by a decision of the European Parliament and the Council can establish the following measures to be enforced:

> (a) the collection, storage, processing, analysis and exchange of relevant information;
> (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
> (c) common investigative techniques in relation to the detection of serious forms of organised crime.[26]

Article 88 describes the operation and functioning of an organisation called Europol. This organisation specialises in assisting European Union law enforcement agencies in the eradication of crimes of all kinds, including terrorism. Like the other bodies described in the TFEU articles mentioned above, Europol has the following tasks:

> (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
> (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.[27]

[23] *Ibid*, Art 83.
[24] *Ibid*, Art 85.
[25] *Ibid*, Art 86.
[26] *Ibid*, Art 87.
[27] *Ibid*, Art 88.

Having examined the legislative framework on which all the theoretical and practical methodology of EU countries in the field of cooperation and crime control is based, it can be concluded that the TFEU provides quite extensive and flexible methods that can be used in the field of protecting the security interests of the European Union. It is on this legislative basis that, over the past few decades, the EU has adopted numerous directives that cover almost all areas of cooperation between the European countries, especially those related to criminal law and all related areas that may even indirectly affect EU security.

In further parts of this study, some of the above-mentioned articles will be examined in the context of directives adopted by the European Union, which are based precisely on the TFEU legal framework.

It is also worth highlighting and dividing into two main areas where this study will be conducted:

1. A study based on the «soft» articles (e.g. Art. 82, 83 TFEU and Art. 31, 34 TEU) of the TEU and TFEU. Since the European legislator has put into these articles rather broad notions which can be legally interpreted, the study will entail an analysis of directives related to the aims and objectives of the above-mentioned articles. This part will focus specifically on the mechanisms used by EU law enforcement agencies on an ongoing basis.

2. A study based on the «hard» articles (e.g. Art. 85, 86 TFEU) of the TFEU. This study will only deal with the specific legal mechanisms (namely the organizations) represented in the TFEU because the role of these organizations also has a very significant impact on the development of European Criminal law in general and that`s why they should be analysed.

2.2.2 Analysis of existing mechanisms for cooperation between EU law enforcement agencies, based on «soft» articles of the European law

This part of the study will introduce and examine the most common legal instruments among EU law enforcement agencies that assist them in investigating and solving crimes and ensuring national and transnational security within the European Union. These instruments include the European Investigation Order (EIO), European Confiscation Order (ECO), and the European Evidence Warrant (EEW).

European Investigation Order

Directive 2014/41/EU regarding the European Investigation Order in criminal matters entered into force in April 2014. This document contains 39 articles as well as an annex containing a model form for requesting information that is used by all relevant services in the European Union. Going deeper into this directive, its main purpose is to issue a special document (order) by an authorised representative in one EU country to conduct investigations and inquiries in another EU country. It should be noted that in this case (as in the whole area of European criminal law) the principle of mutual recognition of decisions applies, thanks to which warrants issued are actually bound to be recognized in each EU country. However, due to the obvious specificity of criminal law in comparison to other areas of law, there are exceptions to this principle, which will be discussed below. For this reason, the directive itself comprises 4 parts: issuing, refusing, executing or appealing the EIO.[28]

According to this directive, the EIO can be issued by the authority which, according to the law of the country in question, has the power to investigate. This may not necessarily be a prosecutor or judge, but also an investigator in the police or another executive agency that has such a position. In such cases, however, a warrant will only be issued after confirmation by a judicial authority. It is also worth mentioning that the accused may also apply for this order to protect his or her interests. Also in the directive, the legislator has put the focus on the proportionality of the application: the request for investigative measures abroad must be justified and not pursue the purpose of circumventing the laws of one's own country. Some have suggested the use of a proportionality test when making such requests, but this also requires clear criteria, which can prove rather problematic.[29]

There are also certain reasons why the execution of a given warrant may be refused by the receiving party. These reasons may be to protect the right to privacy, which is one of the cornerstones of the European system. Also, if a certain act committed in one country is considered a crime and not in the other side. However, there are also exceptions to this rule, which are listed separately. Another reason for refusal may be the existence of proceedings for an offence - this case falls under the *ne bis in idem* principle (prohibition of double jeopardy). The last category of

[28] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, *OJ L* 130, 1.5.2014. Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041 Accessed: May 10, 2023.
[29] Kostoris, *supra* note 7, pp. 364-365.

grounds for refusal refers to cases where a certain investigative measure does not exist in the state's legislation or the EIO request includes a person with certain immunity from criminal liability.[30]

In general, unless there are any of the listed reasons for refusal, execution of the EIO is binding on each of the EU countries within 30 days, or a shorter period in the case of an urgent request. The legislation also provides for the possibility to postpone the execution of the warrant if it would prejudice the investigation in question or another investigation. The collection of evidence itself and all subsequent formalities connected to this procedure are governed by the 2000 Mutual Assistance Convention.[31]

As stated earlier, also in the case of the EIO the option to appeal against evidence gathering is available. This appeal is available at the European level, but this right has been criticised because it can reduce the effectiveness of investigative actions and the advancement of the investigation as a whole. At the same time this option offers a protection mechanism for the accused, which can indeed be useful in case of procedural violations by law enforcement authorities during the execution of the EIO. However, an appeal against a warrant does not suspend its validity, unless otherwise provided for in the national legislation of a particular EU country [32].

Although this legal mechanism is actively used by law enforcement agencies (for example, in Latvia it is one of the most frequently used tools, used by most investigators both in the State Police and in other law enforcement agencies that have access to this method), it has certain drawbacks that affect the operation and overall effectiveness of this mechanism according to some of the researchers. One point of contention is the relatively wide range of tools that can be used for investigative purposes, so the choice is uncertain for law enforcement officials. Also, the warrant has a limitation in its scope of application, as described in Article 3: it does not apply to investigations carried out by joint investigation teams.[33]

European Confiscation Order

Touching upon the concept of a confiscation order, it is worth noting that in the context of this issue, the European Union's primary focus is on harmonization and cooperation in the field of assistance between the authorities of the Member States regarding the confiscation and return of assets as a result of the disclosure of serious cross-border crimes.[34]

The main objectives are, firstly, the definition of common standards of such procedure, which result in a unification of national policy on this issue. And, secondly, the improvement of the rules of cooperation of national judicial authorities with international ones in the cross-border execution of confiscation orders, which is extremely important, taking into account the specifics of transnational crimes.[35]

The starting point for the creation of a system of regulation of confiscation was the meeting in Tampere, where especial attention was paid to the issue of the need for convergence of legislation relating to the confiscation of assets as a result of the disclosure of cross-border crimes. During this meeting, two relevant legal acts were adopted, namely, Joint Action 98/699/JHA of December

[30] *Ibid*, pp. 365-366.
[31] *Ibid*, pp. 365-366.
[32] *Ibid*, pp. 367-368.
[33] *Ibid*, pp. 363-364.
[34] Kostoris, *supra* note 7, p 434.
[35] *Ibid*, pp. 434-435.

3, 1998 and Framework Decision 2001/500/JHA of June 26, 2001. The aforementioned acts did not have much success, but nevertheless, they created a common regulatory framework. The main act discussed below will be the Framework Decision 2005/212/JHA on the confiscation of assets, tools and proceeds from criminal offences, adopted on February 24, 2005. This solution includes modern tools for combating economic crimes.[36]

However, it is worth noting Directive 2014/42/EC, which implies regulation of freezing and confiscation of instruments of crime and proceeds of crime in the European Union, which emphasizes the importance of creating a common framework regarding confiscation, in order to promote mutual recognition of confiscation measures between member States. Nevertheless, this Directive has a narrow focus on serious criminal offenses, such as: «terrorism, human trafficking and sexual abuse of women and children, drug trafficking, illegal arms trafficking, money laundering, corruption, forgery of non-cash funds. payments, cybercrime and organized crime.»[37]

Next, it is worth briefly outlining the concept of «confiscation» as such.

Confiscation in the key of international criminal law implies a unified legal form of the seizure of assets by the competent authority as a result of the disclosure of cross-border serious crimes. This is made possible by the harmonization of rules at the level of the European Union. The landmark document on this issue is the European Council Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, opened for signature in Strasbourg on November 8, 1990. This convention formed the basis of the confiscation systems of European countries and fixed characteristic features such as: «final deprivation of property by order of a judicial authority» and the need to link the fact of confiscation with the existence of an established fact of a criminal offense, which found its response in the Directive of 2014, which stipulates that the confiscation order should be based on the final indictment the verdict.[38]

Within the framework of the Council of Europe Framework Decision 2005/212/PVR of February 24, 2005 and the Directive of the European Parliament and of the Council of the EU 2014/42/EU of April 3, 2014, the following standards and procedures can be distinguished regarding the confiscation of criminal property and proceeds obtained as a result of criminal offences in the European Union: Confiscation of assets that are used to commit a crime or are the result of criminal activity, Confiscation of property and Equivalent Value, Extended confiscation Freezing assets, Safeguarding and Confiscation of property that is the result of terrorist activity. The main purpose of the above-mentioned types of confiscation is to recover losses incurred as a result of committing criminal offenses. In this matter, it is worth noting that confiscation should be appropriate and proportionate in order not to violate human rights.[39]

European Evidence Warrant

The European Evidence Warrant (EEW) is mostly based on the European Arrest Warrant (EAW), can be with no doubt be called one of the key tools aimed at harmonizing cooperation in the field of criminal justice in Europe. EEW implies assistance between Member States in the field of criminal proceedings and increasing integration in this matter. For a more complete understanding, it is worth mentioning the predecessor of the EEW Framework Agreement, namely the 1959

[36] *Ibid*, p. 435.
[37] *Ibid*, p. 435.
[38] *Ibid*, pp. 436-437.
[39] *Ibid*, pp. 438-440.

Council of Europe Convention on Mutual Assistance in Criminal Matters and its Additional Protocols (1978 and 2001). The main focus of the Framework Decision on EEW at the time of its creation, especially, taking into account the general complexity of the legal framework at that time, was the issue of standardization of requests for evidence. Significant attention was also paid to the issue of acceleration of such procedures and, accordingly, a significant limitation of the grounds for refusing such requests.[40]

Considering the general structure, it is worth noting that it is similar to the structure of EAW. So Article 1.1 gives a general definition of EEW:

> …a judicial decision issued by a competent authority of a Member State with a view to obtaining objects, documents and data from another Member State for use in proceedings referred to in Article 5.[41]

It follows from the text that the EAW is based on the principle of mutual recognition, which is in line with the fundamental principles of EU legal framework. Delving into the definition of the concept of "evidence" under the EAW, Article 2e of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, defines it as: "objects, documents and data". It provides with a possibility to operate with a large volume of materials for criminal investigations. However, this article excludes such types of evidence as: "questioning or obtaining testimony from suspects, witnesses or victims". Moreover, taking DNA samples or other evidence from one's body is also excluded. Similarly, additional documents requiring the involvement of the implementing Member State are excluded.[42]

From the point of view of the abolition of double criminal liability, the EEW decision gives national legislatures less freedom, however, it mostly abolishes the requirement of double qualification of crimes. An exception is the receipt of warrants for obtaining such evidence, which implies a search and seizure. So, the above-mentioned decision is more strict in its essence than the legal norms preceding it.[43]

Noting both the structural similarity with the EAW and the semantic one, we can note the significant role and importance of EEW in the achievement of harmonization and cooperation between Member States, as well, as executive bodies regarding the issue of obtaining and providing evidence in the investigation of international crimes.[44]

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[40] CIAN C MURPHY, *THE EUROPEAN EVIDENCE WARRANT: MUTUAL RECOGNITION AND MUTUAL (DIS)TRUST?*, Available on: https://deliverypdf.ssrn.com/delivery.php?ID=042078025114069003064097115096065072040084020051087045067030113027079071068100116100114096097007061062034020124106020087008093021052023087058001029009085010115080064086012083016118005126024123111103001125065004104127122084075106100004007113088118087&EXT=pdf&INDEX=TRUE Accessed: May 10, 2023.

[41] Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters *OJ L* 130, 1.5.2014. Available on: EUR-Lex - 32008F0978 - EN - EUR-Lex (europa.eu) Accessed: May 10, 2023.

[42] Murphy, *supra* note 40, pp. 8-9.

[43] *Ibid.*

[44] *Ibid*, pp. 12-13.

2.2.3 Analysis of existing mechanisms for cooperation between EU law enforcement agencies, based on «hard» articles of the European law

This part of the study will focus on those cooperation mechanisms between EU countries that are part of EU legislation, namely TEU and TFEU. Through the adoption of regulations by the European Parliament and the European Council, following the ordinary legislative procedure, specific regulations are created for these instruments which, according to the TFEU, regulate the activities of these organisations, the main ones being Europol and OLAF.

Europol

Europol is the European body responsible for EU law enforcement cooperation in the field of criminal law, namely cooperation in the detection of crimes committed between two or more EU countries, as well as for the overall EU security architecture.

The structure and history of Europol stands out for its multi-stage structure: the very first document that established it was the Europol Convention, based on Article K.3. This Convention was later replaced by Council Decision 2009/371/JHA and was regulated by it for the next 7 years. In 2016, Regulation 2016/794 was adopted, which consolidated all previous Council Decisions, thereby creating a single document governing the organisation to this day.[45]

Europol has a legal personality and is fully financed from EU funds. This fact could indicate that financial dependence on the EU could theoretically affect Europol's activities in various ways. Also, questions may arise about the control and democracy of the system, as certain decisions may be politically motivated. However, the system provides for political monitoring mechanisms as well as the active involvement of national parliaments in the work of Europol by verifying the work done by the organisation..[46]

The competence of Europol is governed by the 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, namely Article 3(1):

> Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, as listed in Annex I.[47]

The second paragraph of the same article describes in more detail the criteria for crimes to be considered as such and to be within the competence of Europol.

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[45] 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 *OJ L* 135, 24.5.2016. Available on: EUR-Lex - 32016R0794 - EN - EUR-Lex (europa.eu) Accessed: May 10, 2023.
[46] Kostoris, *supra* note 7, pp. 211-212.
[47] EUR-Lex, *supra* note 45.

Going deeper into the historical details, there was an extensive debate between the MS regarding the inclusion of the term 'organised crime' within the remit of Europol. In the end, the countries decided that crime should not be organised to trigger Europol's competence.[48]

Summarising the extensive list of specific crimes that Europol is authorised to investigate, the most common are: homicide, bodily injury, drug and arms trafficking, fraud, cybercrime and more. Also, thanks to innovations in the new regulation, this list also includes crimes against EU financial interests, such as the manipulation of financial markets.[49]

According to Article 4 of the Regulation 2016/794, Europol's tasks are to collect and analyse information, coordinate investigative actions between MS, conduct analysis and develop methods to combat crime, and support the work of all EU law enforcement agencies in all areas related to this field.[50]

To summarise the above, the main purpose of Europol is the rapid exchange of information between EU law enforcement agencies. This function is also facilitated by the possibility for Europol to contact a national unit to request information or carry out necessary investigative activities. This system also works in reverse, with the national unit requesting information from its side. For this purpose, a number of officers are deployed in each EU country to ensure contact between the units. Interestingly, these officers are both employees of the national Europol unit and of the law enforcement agency of the country in which they are serving.[51]

OLAF

The European organisation OLAF can truly be considered one of the oldest and most unique organisations involved in criminal justice co-operation. While Europol was founded during the Third Pillar, OLAF has quite a hybrid status. Its main task is the preliminary investigation of all cases involving European public funds. The list of such investigations includes fraud, corruption, fraud in various economic sectors as well as the development of strategies and guidance material for this area. However, enforcement varies widely from jurisdiction to jurisdiction, depending on the national legislation in each individual country.[52]

The history of OLAF's development has seen many decisions and regulations adopted by the European Commission and the European Parliament. The organisation was established on the basis of Decision 1999/352/EC, after which several other regulations were adopted to complement the aforementioned one. Regulation 883/2013/EU, published in September 2013, repealed the previous decisions and consolidated and standardised the entire legal framework related to OLAF and extended its powers and independence. The current legal basis for this organisation is Article 325 of TFEU, which provides for cooperation between EU countries in the fight against fraud and various financial crimes.[53]

The OLAF is currently a structure which is completely independent of the European Commission, but at the same time financed by the Commission. According to the regulations, all direct decisions

[48] Mitsilegas, *supra* note 13, pp. 360-361.
[49] Kostoris, *supra* note 7, pp. 212-213.
[50] EUR-Lex, *supra* note 33.
[51] Kostoris, *supra* note 7, pp. 213-214.
[52] Sammut, Agranovska, *supra* note 10, pp. 37-38.
[53] Kostoris, *supra* note 7, pp. 213-214.

concerning the work of OLAF are taken by the director-general, who is not under the control of any other body, person or state. The director has also the right to sue the Commission if he believes that his right to independence has been violated. The director himself is appointed by the Commission after consultation with the European Parliament and the Council for a period of seven years, without the right to stand for office immediately after the end of his term..[54]

OLAF, in contrast to Europol, although investigating financial crime, is more of an administrative function aimed at preventing crime in this area. In other words, OLAF does not take over the function of a national law enforcement agency to institute criminal proceedings.

OLAF's investigations can be either external or internal. External investigations typically focus on EU countries and identify irregularities related to the financial industry there. Internal investigations are carried out against officials linked in one way or another to European institutions.[55]

The tools used by this organisation are rather limited but still quite effective: carrying out checks or inspections at the premises in question and questioning suspects in order to obtain the necessary information. Of course, according to internal procedures, each such proceeding must be proportionate and justified. As with all investigative measures, the rights of the individual (in particular cases the suspect) must be ensured at each stage of the investigation.[56]

When the investigation is completed, OLAF, represented by the director general, provides a report to the European or national competent authorities, describing the findings and recommendations that can be used to launch criminal or other prosecutions against specific individuals or organisations. It is worth noting that this information can also legitimately be used by national courts as evidence in legal proceedings. However, the availability of specific information gathered by OLAF inspectors and transmitted to the competent institutions does not oblige the latter to take any procedural action in their country.[57]

[54] *Ibid*, pp. 204-205.
[55] *Ibid*, pp. 205-206.
[56] *Ibid*, pp. 206-208.
[57] *Ibid*, pp. 209-210.

2.3 Study of the Latvian model of law enforcement and legislative system in terms of available mechanisms for combating crime

2.3.1 Latvian Criminal Law and the impact of European Criminal Law

After Latvia regained its independence in 1991, the legislative system of the newly sovereign state was to undergo numerous changes in all the areas of its functioning, including the area of criminal law. By the example of Latvia, namely the Latvian Criminal Code and the Criminal Procedure Code, this part of the overview provides an insight into the development of criminal law and its impact upon it both in the post-Soviet legislative system and in the European system following Latvia's accession to the EU. Since Latvia is an EU country and its experience is quite unique due to historical reasons, it is an objectively appropriate case study to conduct research and analyse the impact of the European criminal law system.

The main laws governing criminal law in Latvia are the Latvian Criminal Law (hereinafter - LCL) and the Latvian Criminal Procedure Law (hereinafter - LCPL). Logically it is clear that these laws, namely their concept, were largely inherited from the existence of the Soviet legal system, and in their early stages before being reformed, they were the same, but slightly modified pieces of legislation. The new LCL was adopted and came into force in 1999, while the LCPL came into force in 2005. The new versions of these laws already contained significant changes, which were also facilitated by the EC Association Agreement signed between Latvia and the EC, which imposed an obligation on Latvia to bring its national legislation in line with the EC.[58]

Talking about the creation of the LCL draft, even before the adoption of the latter in 1999, working groups were convened which, based on the requirements of Article 69 of the Association Agreement and the principles of the third pillar mentioned earlier in this study, added quite a number of criminal provisions. The rules added to the LCL regulated such crimes as violence against minors, kidnapping, copyright infringement, and corruption and combating it.[59]

Since Latvia was already a member state of the European Union when the LCPL came into force in 2005, all requirements of the *Acquis communautaire* as well as decisions of the European Court of Human Rights had already been applied to this law. The LCPL was amended and supplemented 38 times, thus having significant impact on the rights of both victims and suspects. The amendments also implemented many of the instruments of cooperation between EU law enforcement agencies described earlier.[60]

Another proof of compliance with the EU standards can be seen in the implementation of the Council's Framework Decisions into Latvian national legislation, e.g. the Law on the exchange of information on the prevention, detection and investigation of criminal offences (lat. Noziedzīgo nodarījumu novēršanas, atklāšanas un izmeklēšanas ziņu apmaiņas likums). The general rules of the act also state that its competence is based on Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.[61]

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[58] Sammut, Agranovska, *supra* note 10, p. 249-250.
[59] *Ibid*, pp. 250-251.
[60] *Ibid*, pp. 251.
[61] Noziedzīgo nodarījumu novēršanas, atklāšanas un izmeklēšanas ziņu apmaiņas likums (Law on the exchange of information on the prevention, detection and investigation of criminal offences) Available on (in Latvian): Noziedzīgo nodarījumu novēršanas, atklāšanas un izmeklēšanas ziņu apmaiņas likums (likumi.lv) Accessed: May 10, 2023.

2.3.2 Analysis of the Latvian and EU law enforcement cooperation system by conducting research in the Latvian State Police

This part of the study is an analysis of information received from representatives of Latvian law enforcement agencies, namely investigators in the State Police. The sample included respondents who hold the position of investigators in various criminal police departments in Riga and who specialise in solving various types of crimes. The survey asked respondents to answer 10 questions related to the cooperation between law enforcement agencies in the European Union. The main objective of the survey was to obtain information on the quantity, quality and overall effectiveness of the available methods of cooperation between law enforcement agencies. The sample of respondents was very narrowly focused in order to achieve as statistically correct a result as possible.

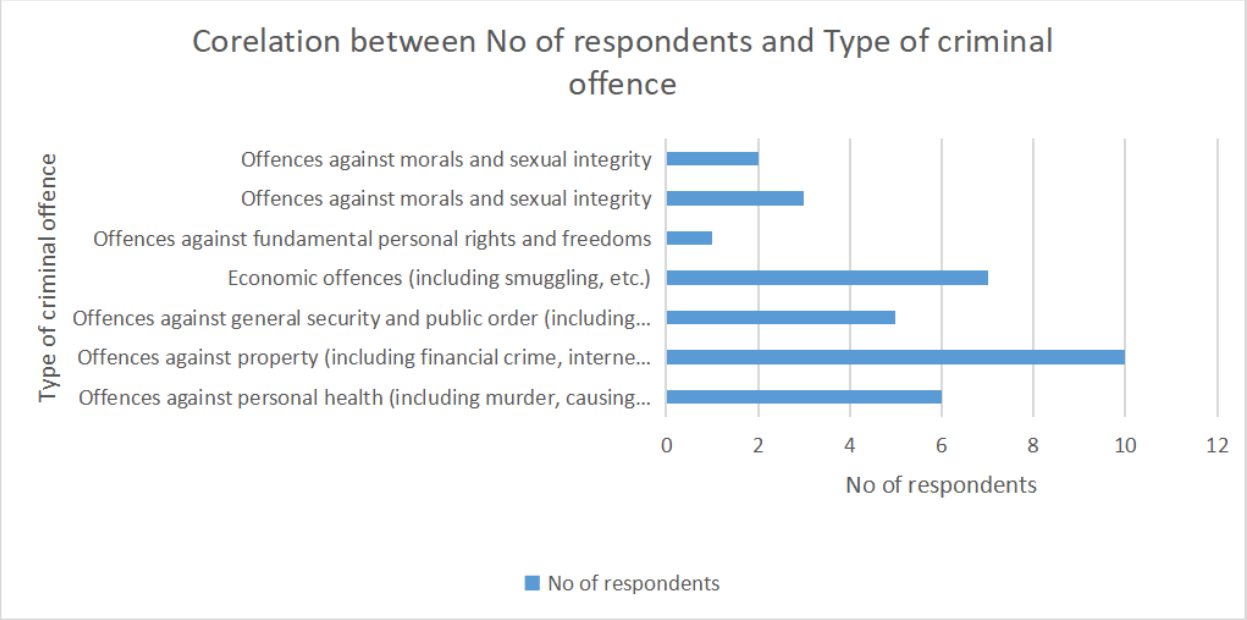

Figure 1. **Which area of criminal offences do you encounter most often?**

When answering this question, respondents were offered 7 answer options, comprising the main types of criminal offences found in the Latvian Criminal Code. As respondents could choose more than one answer option, the percentages in this question will be presented in a comparative way.

1. The first answer option "Offences against personal health (including murder, causing bodily harm, etc.)" was chosen by 46% of all respondents.

2. The second answer option "Offences against property (including financial crime, internet fraud, etc.)" was chosen by 77% of the total number of respondents.

3. The third answer option "Offences against general security and public order (including trafficking in narcotic drugs, etc.)" was chosen by 38% of the total number of respondents.

4. The fourth answer option "Economic offences (including smuggling, etc.)" was chosen by 54% of the total number of respondents.

5. The fifth answer option "Offences against fundamental personal rights and freedoms" was chosen by 8% of the total number of respondents.

6. The sixth answer option "Offences against morals and sexual integrity" was chosen by 23% of all respondents.

7. The seventh answer option "Offences against the family and minors" was chosen by 15% of the total number of respondents.

From the results we can conclude that investigators are most frequently involved in crimes of a property nature, economic crimes, crimes against public safety, and crimes against human life and health. However, given the fact that the respondents did not belong to any particular unit and that investigators themselves are involved in solving various types of crimes, it can be assumed that there is a correlation between the dominant type of crime and the frequency of use of mechanisms for cooperation with other EU law enforcement agencies, but it is rather difficult to determine due to the scope of the survey and the specificity of the sector.

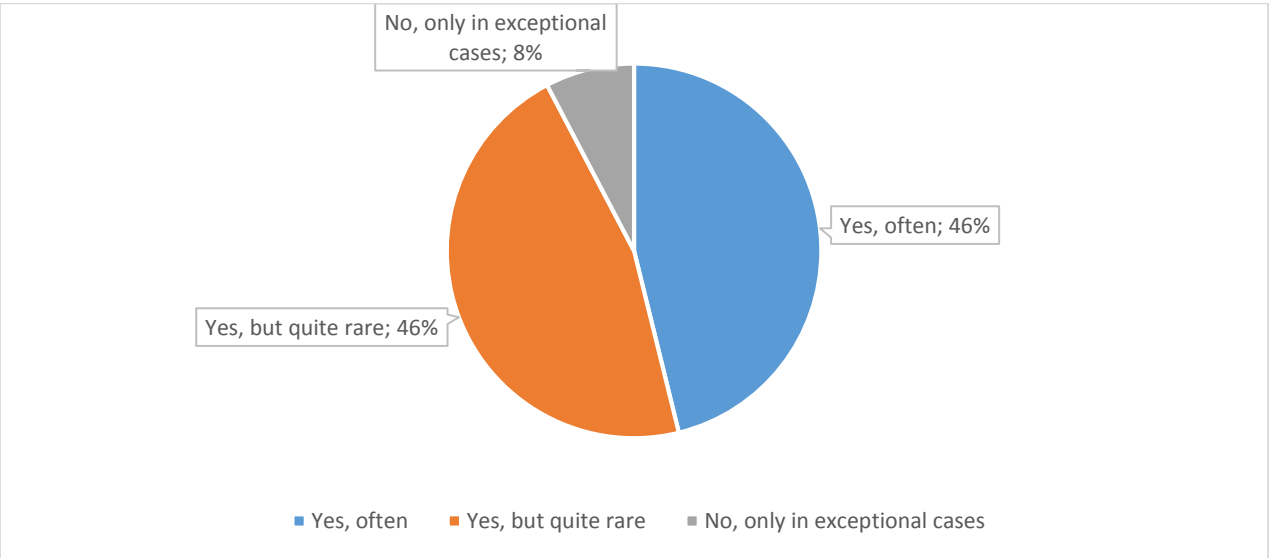

Figure 2. **Do you have to communicate or otherwise contact law enforcement officials of other EU countries in order to request/exchange information for official purposes?**

These answers indicate that there is a clear need for information exchange between law enforcement agencies in the different EU countries, but that the level of need varies widely, which may indicate that the use of such mechanisms is not always necessary for some of the respondents in day-to-day work.

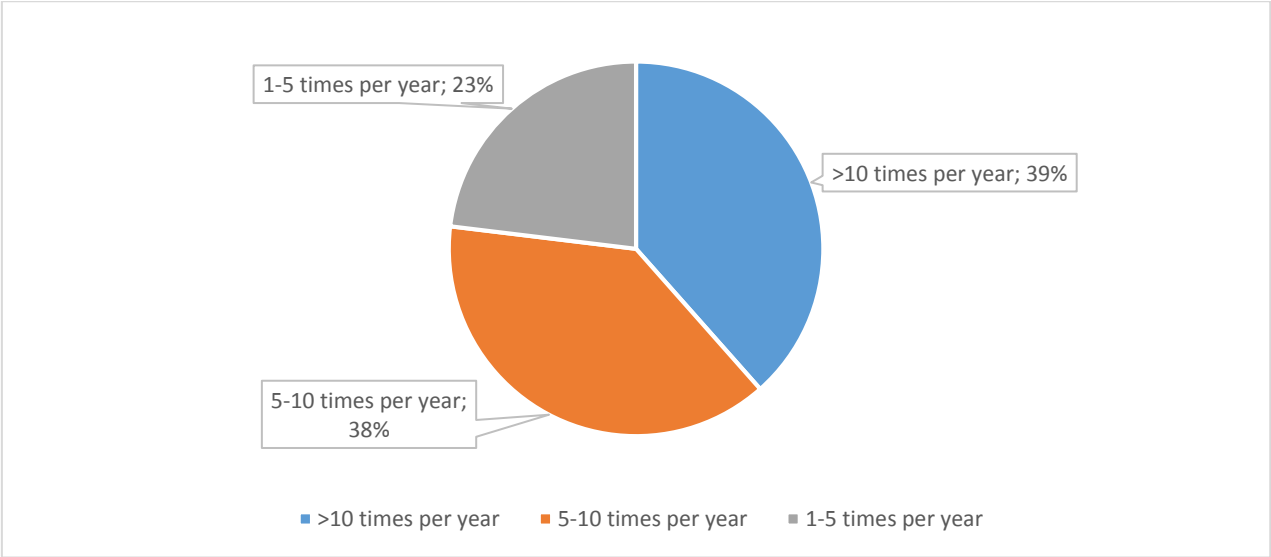

Figure 3. **How often do you have to communicate or otherwise seek help from law enforcement agencies in other EU countries?**

We may conclude from the data obtained that Latvian law enforcement representatives represented by the investigators of the State Police communicate with or seek assistance from their colleagues from other EU countries either quite seldom (1-5 times per year) or quite often (>10 times per year). At the same time, the percentage of respondents who seek help from other EU countries more than 5 times a year is ~62%. This indicates that in general the State Police contact their counterparts from other countries relatively frequently, but there is also about 1/3 of the investigators who rarely need this service for various reasons.

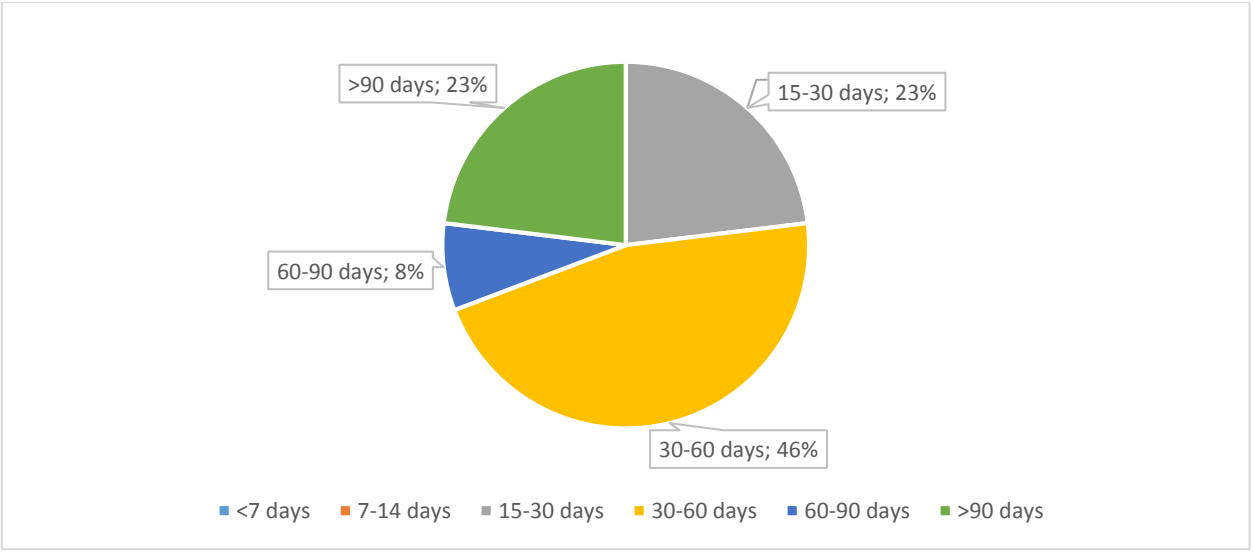

Figure 4. **How quickly, on average, do you receive a response to the service information you request?**

It follows from the data obtained that approximately half of the investigators, or 46%, receive a response to the requested information within 30-60 days. At the same time, the fastest possible waiting time is 15-30 days according to 23% of the respondents. It is worth noting that time periods

of <7 days and 7-14 days are completely absent, indicating that it is highly unlikely that information will be received in such a short time. Also, according to 23% of respondents, a response to the information requested comes later than 90 days. From this it can be concluded that it usually takes 30-60 days to receive the requested information, in some cases it can be faster or slower, but it can almost never take less than 15 days.

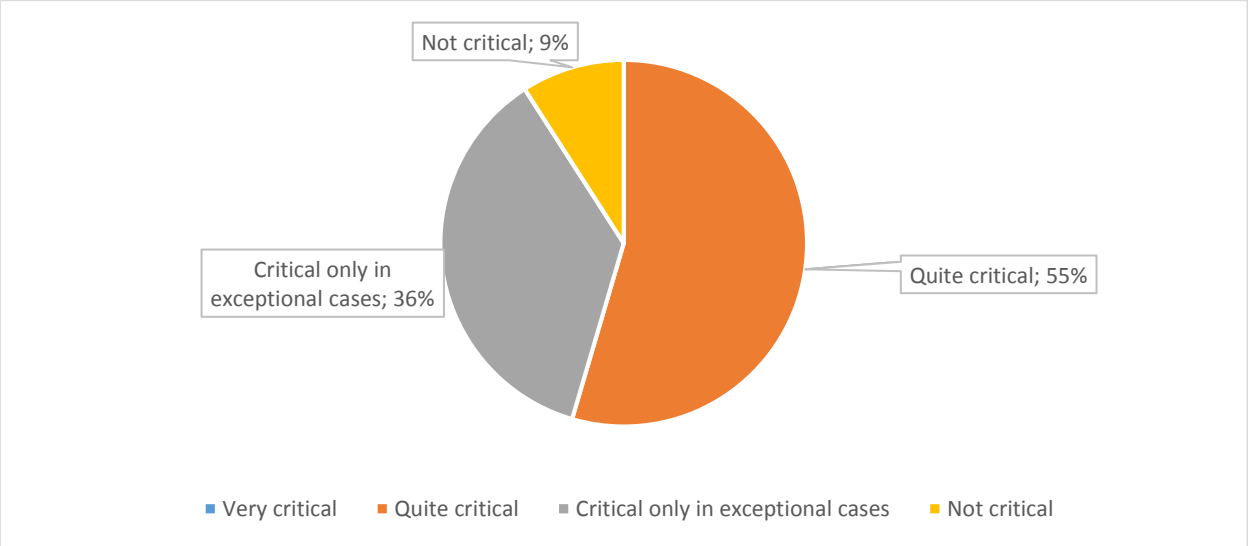

Figure 5. **To what extent does the time of obtaining the requested information affect the outcome of the investigation?**

According to respondents, for 55% of all investigators, the time of obtaining information is quite critical for the outcome of a case and can slow down/delay the process. This issue is also critical, but in exceptional cases for 36% of respondents. For the remaining 9%, the time of receipt of information is non-critical and does not affect the outcome of the case. It is worth noting that not a single respondent considered that a delay in obtaining information could affect someone's life.

It follows from the above that it is true that in certain cases receiving information more quickly/slowly may in fact affect the outcome of a case in some way, but in quite a few cases this parameter is not that critical.

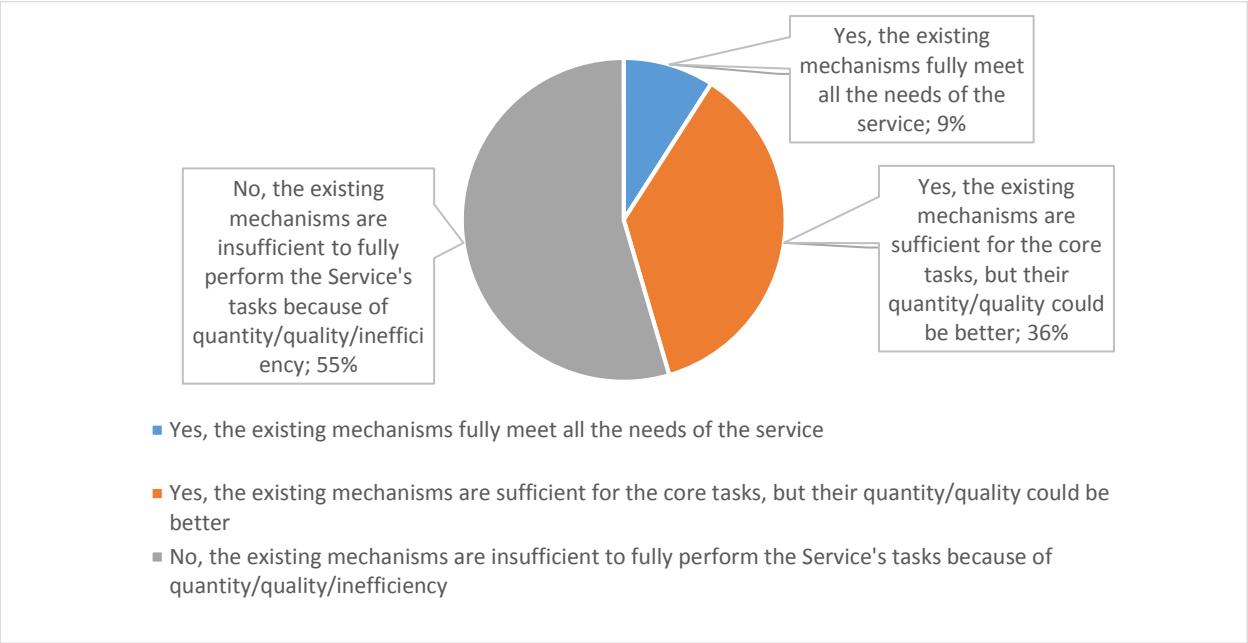

Figure 6. **Do you have enough existing mechanisms to cooperate with the law enforcement agencies of other EU countries as efficiently as possible?**

According to the respondents to this question, only 9% of them are fully satisfied with the existing mechanisms for cooperation between the EU law enforcement agencies. Also 36% consider that these mechanisms are sufficient for the performance of official duties, but that they could be improved. At the same time the dominant part of respondents, namely 55%, believe that the existing mechanisms are not sufficient for the performance of official duties. From the above it can be concluded that only a small part (approximately 1/10) is fully satisfied with the current system, while the overwhelming part of respondents represented by investigators at least would like to see improvements or a complete change/addition to the system.

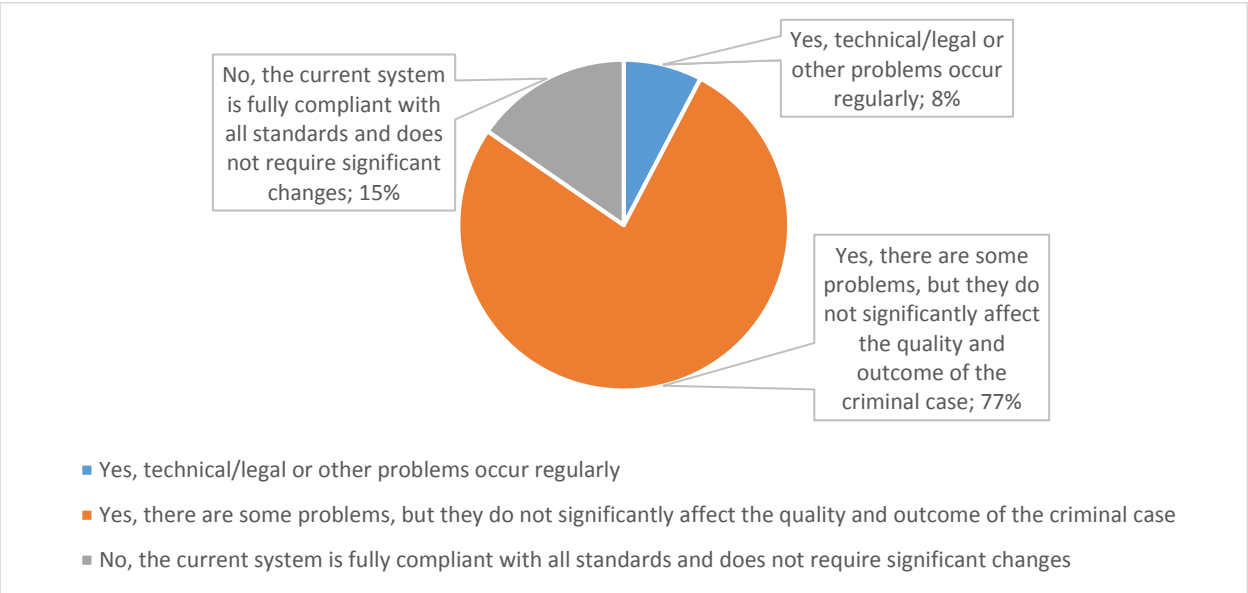

Figure 7. **Do you often encounter technical or other difficulties when exchanging information with law enforcement officials from other EU countries?**

Based on the data obtained, 8% of respondents have certain difficulties during exchange of information with other representatives of EU law enforcement structures. At the same time 77% of respondents also have problems of various kinds, but they do not influence the outcome of the case. Only 15% are completely satisfied with the existing system of information exchange. From this it follows that the absolutely dominant part considers the existing system of information exchange at least working and not critically affecting the quality and efficiency of work, with the exception of some situations.

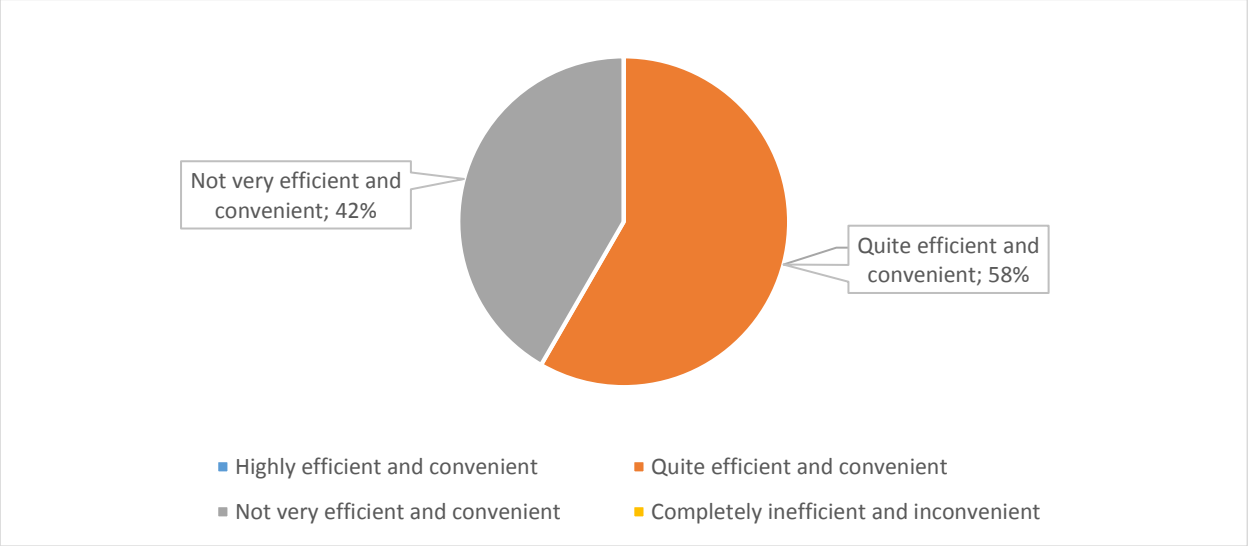

Figure 8. **How convenient and efficient is the current way of communicating with law enforcement agencies in other EU countries?**

According to respondents, none of them consider current EU law enforcement communication to be particularly effective and convenient or completely ineffective and inconvenient. At the same time, 58% believe that the existing methods are rather convenient and effective, and 42% consider that they are not entirely convenient and effective. From the above it can be concluded that there is no uniform and precise positive/negative opinion among the investigators of the State Police regarding this system, but the majority of them tend to think that the existing methods of communication are quite effective rather than the other way round.

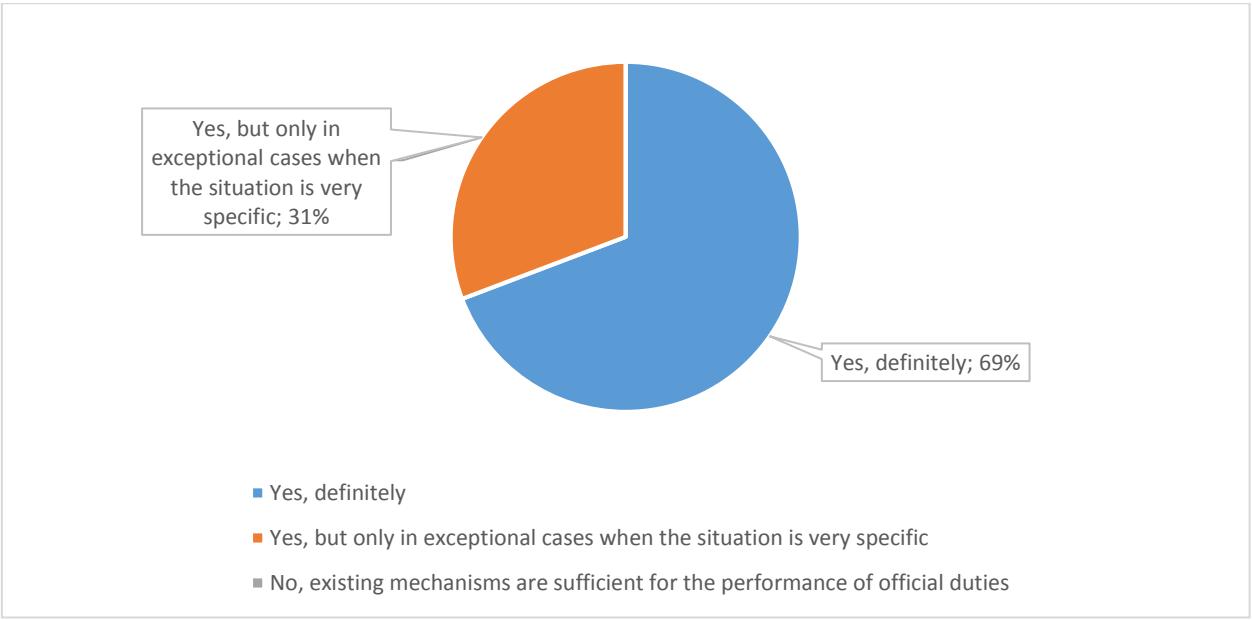

Figure 9. **Would you like it if you were given more opportunities for direct contact with law enforcement agencies in other EU countries?**

According to respondents, 69% of them would like to have more opportunities for direct contact with other representatives of EU law enforcement structures. Also 31% of the respondents answered that they would like to have such an opportunity, but only in specific situations. At the same time, none of the respondents were satisfied with the existing communication mechanisms with the law enforcement authorities of other EU countries. This implies that about 2/3 of the investigators would like to have direct and constant contact with EU colleagues, while the rest would like to have contact only in certain situations.

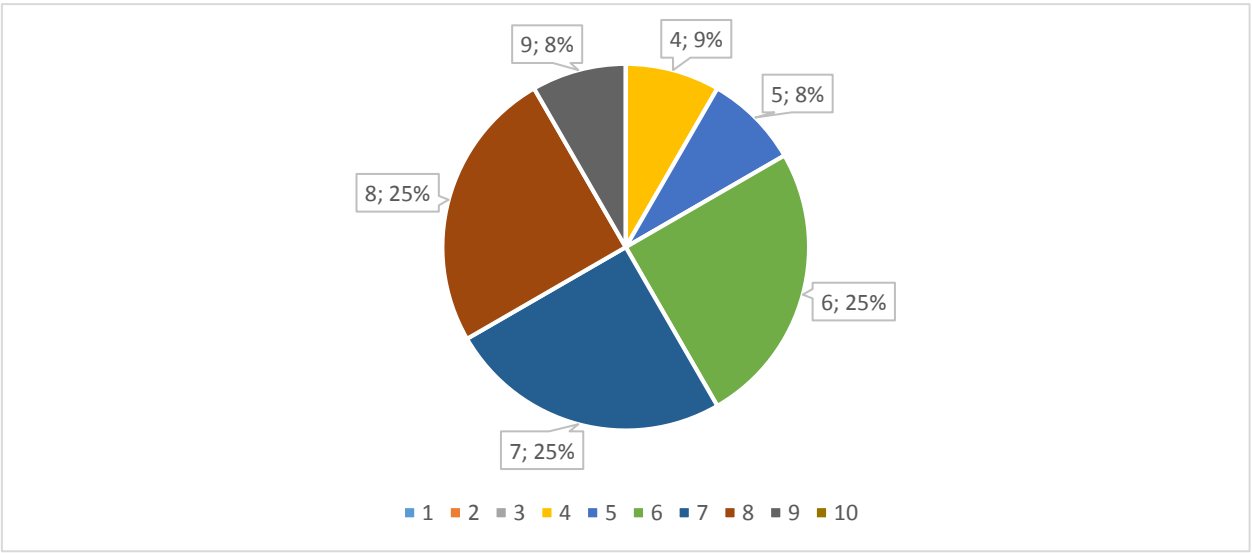

Figure 10. **How can you evaluate the existing mechanisms for inter-European cooperation between law enforcement agencies? (1-10)**

According to the respondents' answers, the following percentage points were given for the existing mechanisms of cooperation between EU law enforcement bodies: 4 points - 9% of respondents; 5 points - 8% of respondents; 6 points - 25% of respondents, 7 points - 25% of respondents, 8 points - 25% of respondents and 9 points - 8% of respondents.

The final average score given by the Latvian State Police investigators is 6.75.

Additional question:

What changes would you like to see in cooperation between EU countries and in the existing law enforcement system in general?

Summarising the respondents' answers to the additional question, it can be concluded that investigators need a faster exchange of information (preferably in an electronic format and without unnecessary bureaucratic obstacles). Also one of the most urgent requests of the respondents is the creation of a direct and secure channel for direct communication with the law enforcement structures of other EU countries. This request is particularly important, because at the moment communication is maintained only by sending a request to the International Cooperation Office, which is run by the Latvian State Police. In other words, an ordinary investigator cannot simply call/send a written request directly to the relevant law enforcement agency abroad. At the same time, despite the bureaucratic chain of command, investigators are equally given all available cooperation mechanisms, as are their colleagues in other EU countries.

To summarise the results of this study, the following conclusions can be drawn:

1. The EU law enforcement institutions (in this case, the Latvian representatives) need to communicate and cooperate with each other to a certain extent on a regular basis.

2. The issue of the speed of information exchange is not the most critical, except in individual cases, but the average time to obtain information is quite long and leaves much to be desired.

3. The issue of sufficient cooperation mechanisms between EU law enforcement bodies is rather controversial and requires more in-depth research, as according to the information gathered, such mechanisms are still lacking.

4. The efficiency and usability of the existing mechanisms is at an average level and at the same time they do not have a negative effect on the work of the law enforcement bodies.

5. Without taking into account the quantity, quality and manner of use of cooperative mechanisms, Latvian law enforcement officials are aware of their existence and use them in the performance of their duties.

3. PROBLEMS OF THE EXISTING SYSTEM AND PROPOSALS FOR POSSIBLE CHANGES TO THE COMMON SECURITY SYSTEM OF THE EUROPEAN UNION

3.1 Problems of harmonization of criminal law in the European Union

The issue of harmonisation of criminal law within the EU can be said to be one of the most important for the idea of European criminal law to continue to improve and develop. Despite the enormous progress made during the lifetime of the EU and its predecessor organisations, the problems of harmonisation of criminal law at the EU level are still relevant and need to be further studied and supplemented.

Also, the harmonisation of European law itself, according to some views, is not only a functional objective to facilitate the recognition of legal concepts between EU countries, but also a political objective expressing the commonality of views and values of all EU countries in economic, political and legal matters. Direct confirmation of this can be found in Art. 2 and Art. 3 of the TEU.[62]

For the time being, European criminal law is harmonised under Art. 82 of the TFEU, namely Judicial Cooperation in Criminal Matters. The term harmonisation of law itself (not only criminal law) is used in almost all areas of European law, but due to the peculiarities of criminal law, harmonisation of the latter has its own peculiarities.[63]

Although the EU legislator's ability to harmonise and extend harmonisation is rather extensive, criminal law falls outside the competence of the EU. Whereas, for example, certain areas of law like internal market rules must be fully harmonised, criminal law is harmonised by means of 'minimum rules' pursuant to Art. 82 and Art. 83 of the TFEU. However, in the case of Directive (EU) 2015/849 on combating money laundering and terrorist financing, for example, the latter affects EU internal market competences according to Art. 114 TFEU and thus directly affects the application of criminal law prohibitions, bypassing Art. 83 TFEU, which should, in fact, be fundamental to the aforementioned directive.[64]

To further analyse the harmonisation of European law, it is also worth highlighting the differences between the principles of mutual recognition, namely the instruments of positive and negative integration. The concept of positive integration eliminates differences in the legal systems of the EU Member States and creates a common standard with the adoption of secondary EU law. At the same time, negative integration eliminates legal differences in the EU by means of mutual recognition. This example is very well expressed in the internal market concept: for example, any product or service approved in any EU country must also be approved in another EU country, except for specific exceptions such as the need to protect the national order in one of the EU countries.[65]

In contrast to the EU internal market concept, in the case of criminal law, the concept of mutual recognition of decisions should be used initially, with positive harmonization being only an auxiliary tool. This example suggests that decisions made by one EU country in the area of criminal law should ideally be mutually recognised in each EU country as well, but this approach is very

[62] Dr Werner Schroeder, *Limits to European Harmonisation of Criminal Law* (Eucrim.eu, 2020). Available on: Limits to European Harmonisation of Criminal Law - eucrim Accessed: May 10, 2023.
[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*

difficult to implement in the criminal area of law as it severely limits the rights of the individual. The main conditions for mutual recognition of such decisions should be, firstly, the creation of a secondary law with certain conditions like framework decisions (e.g. European Arrest Warrant) and, secondly, a high level of trust in the justice system of each EU country.[66]

At the same time Art. 82 (1) of the TFEU implies mutual decision-making without observing the above-mentioned conditions. The EU legislator followed the same logic when adopting the Framework Decision on the European Arrest Warrant, according to which the warrant should be enforced in any EU country, since all countries of the EU are essentially constitutional and respect the rule of law. However, given recent developments involving countries such as Poland and Hungary, this assertion could be challenged. Therefore, the European Court of Justice has also adopted an exception according to which, in case of doubts about the democracy and the rule of law in an EU country, its judicial decisions may not be recognised.[67]

An additional mechanism to ensure that the harmonisation process is democratic is the emergency brake according to Art. 82 (3) and Art. 83 (3) TFEU. Thanks to this mechanism, any EU member state can suspend a legislative procedure that affects the fundamental concepts of criminal justice in a particular country. This mechanism can in fact be considered an additional protection of the sovereignty of each EU country, so that total interference in the criminal justice system by the EU legislator is, at the moment, very unlikely.[68]

To summarise, the harmonisation of European criminal law is a rather complex process, but one that contributes greatly to both the security architecture of the European Union and overall European integration. The main limitation to extending the principles of harmonisation of law is not so much the different legal systems of the EU states, but rather possible doubts about the rule of law and mutual trust in each individual member state of the European Union. If the level of trust among EU countries is high, mutual cooperation in the field of both criminal and other issues will gradually develop. However, the opposite may also be the case, as not only the mutual recognition of judicial decisions but also the harmonisation of other aspects of criminal law may be called into question.[69]

[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*

3.2 Analysis of proposals for improving the existing European security architecture

Despite the rapid development of the EU security architecture in recent decades, the European space still needs new, modern and more effective cooperation solutions in the field of criminal justice and the fight against crime in general. These solutions can come from non-profit organisations such as the European Law Institute (ELI), which helps investigate current legislative issues and, as a result, offers its assistance and provides recommendations on certain issues. However, most proposals come from the European Commission which accordingly, after following formal procedures, transmits them to the European and national parliaments, as well as to the Council of Ministers. This part of the study will examine the proposals of both the EPI and, for the most part, the European Commission's proposals in the area of European criminal law.

The European Law Institute (ELI) describes itself as follows:

> …is an independent non-profit organisation established to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. Building on the wealth of diverse legal traditions, its mission is the quest for better law-making in Europe and the enhancement of European legal integration. By its endeavours, the ELI seeks to contribute to the formation of a more vigorous European legal community, integrating the achievements of the various legal cultures, endorsing the value of comparative knowledge, and taking a genuinely Pan-European perspective.[70]

Its working groups are made up mainly of professors and doctorates in different fields of law (in this case criminal and European law).

The document itself to be considered is an ELI report containing a draft proposal for the prevention and resolution of conflicts of jurisdiction in criminal matters in the European Union, namely Proposal for a Directive Of The European Parliament And The Council on the settlement of conflicts of exercise of jurisdiction in criminal proceedings and the prevention of violations of the principle of *ne bis in idem*. The essence of the proposal is to resolve conflicts of interest where more than one state has jurisdiction in an investigation. This proposal is particularly relevant because without proper regulation of this issue, the interests of those involved in the case as well as one of the most important principles in criminal law - *ne bis in idem* - are compromised.[71]

Briefly outlining the contents of the document and the proposal itself, the latter contains a description of the current problem and gaps in EU law, a description of the new instrument, and three legislative models that can be applied and adopted at European level: horizontal mechanism, vertical mechanism and model based on the allocation of the exercise of jurisdiction in the AFSJ. Examples of these directives with detailed descriptions are also presented at the end of the document in the form of annexes.[72]

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[70] European Law Institute, *Draft Legislative Proposal for the Prevention and Resolution of Con!icts of Jurisdiction in Criminal Matters in the European Union (2017)*. Available on: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Conflict_of_Jurisdiction_in_Criminal_Law_FINAL.pdf Accessed: May 10, 2023.

[71] *Ibid*, p. 6.

[72] *Ibid*, p. 5.

As mentioned earlier, most of the proposals, which at the same time have a better chance of being fully implemented, come from the European Commission. Nevertheless, these proposals could either remain at the same level or move to the stage of some type of EU legislative act.

For example, one of the Commission's most recent proposals, adopted on 1 December 2021, is to improve the existing system of cross-border judicial cooperation by digitalising most transactions that are currently carried out on paper. Following such modernisation and the introduction of new legislative procedures, it is expected that civil and criminal proceedings will have a function of remote hearings, as well as improved accessibility of information in general. However, this proposal is still under consideration and no final decision has been taken on it.[73]

Another example, which, however, has a very good chance of obtaining regulatory status, is the Commission's proposal of 17 April 2018 for a legal framework for EU law enforcement agencies to obtain electronic evidence (full title - Regulation Of The European Parliament And Of The Council on European Production and Preservation Orders for electronic evidence in criminal matters).[74] The essence of this proposal is that law enforcement authorities from any EU country would be able to directly request the necessary information from individuals and legal entities that operate within the EU. This approach is somewhat different from classical European cooperation in criminal matters and there are some legal uncertainties such as differences in national obligations of service providers to law enforcement authorities. There is also the issue of providers located outside the EU.[75]

However, in January 2023, an agreement was reached between the EU Council president and the European Parliament that gave the «green light» for formal approval of the regulation.[76]

To summarise, it can be argued that the European Security Architecture is in the process of continuous improvement through proposals by both private organisations and official EU institutions. Given recent trends, one can foresee a significant increase in the tools available to law enforcement agencies in the area of cooperation between EU countries, as well as a general improvement of existing systems in the context of their usability and efficiency.

[73] European Commission, *Digitalisation of cross-border judicial cooperation*. Available on: Digitalisation of cross-border judicial cooperation (europa.eu) Accessed: May 10, 2023.
[74] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Production and Preservation Orders for electronic evidence in criminal matters. Available on: EUR-Lex - 52018PC0225 - EN - EUR-Lex (europa.eu) Accessed: May 10, 2023.
[75] Thomas Wahl, *Commission Proposes Legislative Framework for E-Evidence.* Available on: Commission Proposes Legislative Framework for E-Evidence - eucrim Accessed: May 10, 2023.
[76] European Council, *Electronic evidence: Council confirms agreement with the European Parliament on new rules to improve cross-border access to e-evidence.* Available on: Electronic evidence: Council confirms agreement with the European Parliament on new rules to improve cross-border access to e-evidence - Consilium (europa.eu) Accessed: May 10, 2023.

Conclusion

Having investigated such a broad and multifaceted topic as Inter-European cooperation in the field of combating and solving transnational crimes, it can be summarised that this study requires a very deep legal analysis of the existing legal system of the entire EU and, where appropriate, of individual countries of the European community.

Throughout this study not only legal and legislative issues directly related to criminal law have been raised, but also socio-economic and historical aspects have been touched upon, which helped to look at criminal law and its nature from a different perspective.

For a more detailed understanding of the entire structure of the European criminal justice system, a chronological analysis of the most important historical events preceding the creation of the existing European criminal law system and the European Union as a whole was conducted, which naturally led to a description of the existing European criminal law system in the European Union.

Before examining the existing cooperation instruments, the legal framework represented by the TEU and the TFEU, on which all existing instruments used by the European Union law enforcement authorities are based, was also analysed. Thanks to this preliminary analysis, further research into existing mechanisms is logical and directly linked to the founding principles of the European Union.

The research and analysis of the most basic mechanisms of cooperation between the EU law enforcement agencies provided an opportunity to understand in more detail the principles of the latter and their methodology of use in particular cases. The analysis was also supported by a survey among Latvian law enforcement officials, thereby combining the theoretical with the practical parts of the study.

The problems of harmonisation of the European criminal law and their possible impact on further development of the criminal law were analysed. At the same time reference was made to proposals for the development of European criminal law and international cooperation in general put forward by both non-profit and European institutions.

The answer to the research question posed at the beginning of the study, namely «Are the methods of cooperation between the EU countries effective in order to counter today's challenges and threats in the field of solving transnational crimes? » - is rather ambiguous. On the one hand it is possible to trace a very extensive and versatile evolution of the European criminal law, including the legislative creation of various cooperation instruments that have been introduced in recent decades. It can also be concluded that these instruments are rather actively used by the law enforcement structures. At the same time, however, the question of their effectiveness and relevance in combating today's challenges and threats remains open, since this research has not provided a clear answer to this question due to the rather narrow scope of the survey conducted among representatives of Latvian law enforcement structures and the lack of specific professional knowledge in this particular area of criminal law.

The problems identified at the beginning of the study have been confirmed and have had a rather significant impact on the overall course of the study. As anticipated earlier, a fully objective assessment of the existing mechanisms of cooperation between the EU law enforcement agencies seems unlikely due to the limited scope of research conducted among Latvian law enforcement representatives and possible misinterpretation of the research findings.

Despite the problems encountered, the objective of this research - to understand and explore the legal mechanisms that are used by EU law enforcement agencies, to draw a conclusion about their effectiveness in the current situation, as well as to propose alternative solutions or additions to the existing system - has been achieved, as the necessary legal research on the existing mechanisms and their possible improvement has been conducted. It is also possible to draw a conclusion from the survey about the effectiveness of existing EU law enforcement cooperation mechanisms - although this conclusion is not entirely straightforward, it is still informative enough to come to certain conclusions.

All of the above conclusions allow us to state that this study can be called a success. Considering that trends in the development and improvement of European criminal law over the last decade are becoming more and more pronounced, there is no doubt that this topic could be explored further, using more diverse research methods and more opportunities to conduct targeted interviews with suitable groups of persons, which would improve and take the research to the next level.

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