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Organizational and Legal Forms of Cooperation in the Field of Combating Organized Crime: European Union Experience

In the context of the integration processes in Ukraine and the European Union, police cooperation becomes of particular importance, which determines not only the need to combine the efforts of States and increase the efficiency of the use of existing capabilities of international police cooperation, but also to take coordinated measures at the national and international levels to improve appropriate legal regulation. The development of Europol as the central office of the European Union for collecting operational information is caused by the importance of identifying priorities for the study of issues of information exchange between European Union member states in the field of combating crime, terrorism, etc. The unique capabilities of the European police office to manage such information make real further dynamic development of the information base capable of facilitating an effective operational response to key security threats. In the modern world, cyberspace remains a place where the number of special military operations and confrontations is constantly increasing every year. An important component of the national cyber security system of any country in the world remains the state-guaranteed cyber defense which means a set of political, economic, social, military, scientific, scientific and technical, information, organizational and legal and other activities carried out in cyberspace and aimed at ensuring the defense of the sovereignty and defense capability of the state, preventing armed aggression. Therefore, in this article the author emphasize that there is an urgent need to accelerate the improvement of national legislation in accordance with the present challenges and application potential of the Internet to meet the challenges of armed struggle, which involves the active reformation of management systems by the relevant security sector; ordering the regulatory field, which should ensure the integrity of state policy in this area; active explanatory work among the population regarding possible risks as a result of cyber-threats; increasing the number of relevant departments involved in cyber defense system; the development of their own samples of cyber weapons and conducting trial cybernetic attacks, strikes in cyberspace; strengthening control over national cyberspace. An important development in this context was the ratification in July 2017 of the Agreement between Ukraine and the European Police Office on operational and strategic cooperation aimed at establishing cooperation between Ukraine and Europol in preventing and combating organized crime, terrorism and other forms of international crime, exchange of information through the designated Ukrainian National Contact Point.

Keywords: organization crime; co-operation; law enforcement agencies; preventive come; integration process; Europe.

Problem statement. The issues of countering organized crime are in the focus of attention of the European community, as according to the European Parliament, criminal organizations were able to penetrate the social, political and economic structures of Europe. Among the priorities for combating crime are the collection of information, preventive measures and cooperation between law enforcement agencies, including outside the European Union (EU). Among the priorities in combating crime is the collection of information, preventive measures, as well as cooperation between law enforcement agencies, including outside the EU. An important role in the pan-European system for combating organized crime plays Europol, which as an organization evolved from data collection and conducting its analysis to supporting investigations at all levels and stages – from the beginning to the realization of the case.

Thus, on May 1, 2017, a new Europol Regulation came into force in all EU member states. On May 11, 2016, the European Parliament voted for the renewed powers of Europol, which enable it to intensify its efforts in the fight against terrorism, cybercrime and other serious and organized forms of crime. Now Europol, whose main tasks is coordinating the work of national services in the fight against international organized crime and improving the information exchange between the national police services, acquires the power to assist the competent law enforcement agencies of the EU member states in carrying out cooperation in the field of forensic and operational search activities.

The new Regulation on Europol also makes alterations to the structure of this organization and its activities. But the main thing remains the same – Europol as a specialized body of the European Union for law enforcement cooperation supports the competent authorities of the EU member states in the field of forensic and operational search activities, organizes and intensifies their cooperation in preventing, disclosing and investigating terrorist and other international crimes, which have become challenges to the rule of law and security in Europe [1].

Under the new Regulation, Europol received a possibility to create specialized units to respond immediately to emerging threats, including at the forefront combating cross-border crime and terrorism. In order to increase the effectiveness of Europol, in January 2016, the European Counter Terrorism Center (ECTC), located in The Hague (the Netherlands), which is in fact the central expert center for countering terrorism, was created. Its main tasks include: intercepting foreign militants; exchange of intelligence information, as well as experience in tracking terrorist financing

channels (involving the Financial Intelligence Unit) and the implementation of the Terrorist Finance Tracking Program; preventing the implementation of online propaganda of terrorism and extremism (carried out by the EU Internet Referral Unit); combating illicit arms trafficking, promoting international cooperation of law enforcement agencies in the fight against terrorism.

The European Counter Terrorism Center (ECTC) uses all Europol's «achievements» and counter terrorism networks. Thus, after terrorist attacks in Paris, Europol created a task force «Fraternite» from 60 police officers to assist France and Belgium in conducting investigations. In early 2016, two countries provided Europe with terabytes of data gathered by more than 800 intelligence leaders and more than 1,600 suspicious transaction tracking experts.

As part of the Operational Department of Europol, the European Center for the Suppression of Terrorism cooperates with other operational centers in Europe, such as the European Cybercrime Centre and the European Migrant Smuggling Centre. Due to the well-established exchange of operational data, Europol was given the opportunity to modernize its general counterterrorism powers. At the same time, the establishment of the European Center for the Fight against Terrorism in the structure of Europol contributed to the increased effectiveness of the management of counter-terrorist intelligence structures, making it the key partner of Interpol and Eurojust. In 2008, Europol in cooperation with the European Network of Forensic Institutions (ENFSI), developed an Internet website on crime scenes. This website facilitates the exchange of special knowledge on the inspection of crime scenes by investigative and operational services and experts in the field of forensic science and forensic expertise. The Internet resource was developed within the framework of the EU funded project «Development of standards for the inspection of the crime scene». The tasks of Europol in this context include technical issues related to access, maintenance and updating of information. The objectives of registration and forensic activity in the information systems of ENFSI, Interpol and Europol are the accumulation, storage, use and organization of the exchange of important forensic information for the purpose of the disclosure, investigation and prevention of transnational crimes. The tasks of registration and forensic activity include: harmonization of forensic and expert methods of detection and investigation of crimes in order to ensure information exchange of important forensic information between countries; providing conditions for identification and diagnostics of objects using existing accounts; Assistance in

conducting searches; increasing the effectiveness of law enforcement cooperation in combating cross-border organized crime.

On June 9, 2017, the Justice Ministers of 20 EU Member States decided to establish a European Public Prosecutor's Office, which would, under certain conditions, be empowered to investigate crimes that would harm the EU's financial interests. This is not only about corruption, money laundering and fraud with European financial resources, but also about cross-border VAT fraud, which, according to the European Commission, the EU annually loses tax revenues of at least 50 billion Euros, as well as keeping the prosecution in court. To fulfill these tasks, the Prosecutor's Office will be given a sufficiently wide scope of powers. The new structure will be able to search for property, computer systems and evidence; the retrieval of documents and electronic data, including information on bank accounts and transactions; seizure of property and proceeds from crime; interception of electronic communication of the suspect/accused; implementation of controlled delivery of goods, etc. The newly created body will have an independent status, and its competence will be much wider than any other similar institution among the EU member states. The competence of the European Office will be extended to the territory of the EU member states, which supported the initiative to establish it. At the same time, the relations of this body with third countries, including Ukraine, will be based on interstate agreements and other agreements and envisage cooperation, starting from issues of mutual exchange of information and rendering legal assistance and ending with the implementation of investigations, audits and inspections in selected spheres. In the case of the relationship between the European Prosecutor's Office and Ukraine, it may be about investigating crimes related to fraudulent schemes of embezzlement of funds allocated by the European Union to various programs introduced in Ukraine.

The European Prosecutor's Office will work as a collegiate structure consisting of two levels. It is expected that the central office of the European prosecutor will be located in Luxembourg. Its staff will consist of 115 people with at least half of the employees – today's employees of the European Union's Judicial Cooperation Unit (Eurojust) and the European Anti-Fraud Office (OLAF). The central level will be headed by the Chief Prosecutor of Europe, who will be responsible for the work of the European Public Prosecutor's Office. The second level will be located in Member States delegated by European countries prosecutors, whose duties will include conducting criminal investigations and maintaining charges in court in accordance with EU legislation and the laws of a

particular Member State. The Minister of Justice of Estonia, Urmas Reinsalu, emphasized that «the body of justice with cross-border powers of law enforcement will be established for the first time». According to preliminary forecasts, the European Prosecutor's Office will work not earlier than 2020.

In order to ensure the cooperation of states in the detection and investigation of crimes by the Council of Europe and the European Union, various legal mechanisms have been developed, as well as forensic tools and methods for its implementation. The activities of the Council of Europe are aimed at the adoption of common norms in the EU member states and the development of common law enforcement practice in the common interest, which provides that Member States shall make changes or amendments to national legislation in accordance with the conventions or decisions of the Council of Europe. This is one of the ways to bring together the national criminal procedural legislation. If the convention or agreement is ratified by any state, they are binding on the territory of that state. Agreements have the same legal effect as conventions, but may be signed with (or without) restrictive conditions, such as ratification, acceptance or approval [2].

Special attention is paid to combating economic and financial crimes in the EU. When carrying out cross-border investigations, it is not enough just to arrest and convict the accused persons, mechanisms are needed to ensure confiscation of illegally obtained income. Thus, the problem of the development of legal instruments to improve cooperation in the field of international search, arrest, seizure and confiscation of proceeds from crime, European countries have returned repeatedly in several legal acts. In 2003, the Council of the European Union adopted a framework decision on European orders for the execution of requests for seizure of property, seizure and storage of evidence, which was subsequently supplemented by a framework decision of the Council of the EU on the application of the principle of mutual recognition of orders for the confiscation of money and property obtained by criminal means, as well as physical evidence in criminal cases. It should be noted that the actions of these orders were limited to the seizure of property and the extraction of evidence, and their transmission was still carried out in accordance with the classical procedures for the provision of judicial assistance. The abovementioned «two-stage procedure» did not promote the effectiveness of cooperation in the investigation of criminal cases.

In 2007, in accordance with the decision of the Council of the EU on cooperation between the Asset Recovery Offices of the Member States in the field of tracing and identifying proceeds of crime or

other criminal assets, adopted on the initiative of the EU Member States, the National Asset Recovery Offices were established to promote cooperation between the EU member states in this field and the exchange of necessary information. Subsequently, the Criminal Assets Seizure Centre was created in Europol, which is responsible for assisting the EU Member States at the stage of identifying illegally obtained incomes in order to establish all criminal connections outside the specific state. In March 2012, the European Parliament and the Council of the EU amended the 2003 Directive in order to improve the legal framework for the length of the process of confiscation of cash and property derived from crime, envisaging the possibility of its implementation before the conviction was issued in connection with evasion of the accused from the court [3].

The advantage of a European Evidence Warrant (EEW) is that it is subject to direct recognition in the state that executes it, without the need for its confirmation at the national level; standard unified form is accepted; can contain a deadline (60 days); in the state that executes it, as well as the one requesting, the minimum guarantees are provided; the list of grounds for refusal to execute the European order has been significantly reduced. On the other hand, the EEW could only be applied to existing evidence, in connection with which only the limited range of legal assistance provided by States in criminal cases for the detection, recording, collection and storage of evidence was applied. On the other hand, the EEW could only be applied to existing evidence, and therefore only covered a limited range of legal assistance by States in criminal cases to identify, record, collect and store evidence. EEW did not cover such types of evidence as interrogations of persons participating in the case; examination, as well as obtaining various kinds of analyzes, including comparative samples for DNA analysis; obtaining information in real time; control over bank accounts; analysis of necessary objects, documents and information; obtaining information contained in open sources. Due to the very limited scope of the EEW, the competent authorities of the EU Member States were allowed to use either a new facility – a European Investigation Order (EIO) or traditional legal aid procedures that were extended to other types of evidence not provided for by the EEW. Practice has convincingly proved that the existing limitations on the collection of evidence in the cooperation of states in the field of forensic and operational search activity were so fragmented and complex that did not contribute to the effective disclosure and investigation of crimes. Thus, the mechanisms for obtaining evidence in criminal cases

developed in the EU were criticized by practitioners because they were very limited.

In 2010, eight EU Member States (Belgium, Bulgaria, Estonia, Spain, Luxembourg, Austria, Slovenia and Sweden) started implementing the European Investigation Order (EIO) in criminal cases. In December 2011, the Justice and Home Affairs Council (JHA) introduced a common approach to the application of an investigative order. In 2014, a European Investigations Order (EIO for criminal cases) was put into effect in the EU [4].

The EIO is a special mechanism for carrying out one or more investigative measures for the investigation of crimes in the requesting State for the purpose of obtaining evidence. The order applies to all types of evidence, including those in the possession of the requesting State, and replaces all previously existing documents in this area, such as the European Evidence Warrant. The adoption of this document has become a serious step towards mutual recognition of court decisions in criminal cases in EU countries. It is worth noting that some measures are provided for by special rules that are not covered by the EIO, and their delineation is dictated by practice. Such measures include, for example, the creation of joint investigation teams and the collection of evidence within their work, as well as the use of special investigative techniques such as the interception of telecommunications messages (interception with immediate transfer or interception by satellite).

Thus, separate legal instruments were integrated into a single normative act, which should improve cooperation in the field of forensic and operational search activities.

The following forms of cooperation of the EU Member States in the field of forensic and operational search activities are distinguished: through direct interaction of law-enforcement agencies of European states within the framework of the EU; through the interaction of the EU member states through the specially created institutions of the European Union, its specialized bodies and structural units of the institutions, whose competence includes cooperation in the field of forensic and operational search activities. In legal terms conceptually it seems appropriate to distinguish two forms of cooperation in this field, which today are relevant: firstly, through the direct interaction between the law enforcement agencies of the Member States and representatives of public or private companies through specially created organizations and associations; secondly, through the interaction of specially created EU institutions, specialized bodies of the EU and structural units of its institutes, which include the issues of cooperation in the field of justice and

internal affairs, in particular forensic and investigative search activities, and public or private companies directly not involved in law enforcement activities of states. At the present stage in the European Union there is a tendency to separate the independent organizational and legal form of interaction of states in the field of justice and internal affairs, which is expressed in the establishment and operation of special law-enforcement structures, which are gradually granted by powers previously characteristic of domestic law-enforcement agencies, such as investigation of criminal cases, investigations, participation in the work of joint investigative groups, conducting operational search activities, testifying to the formation in the EU of a system of «supranational» international law enforcement agencies, which are transferred to a number of functions of state power.

Conclusions. Thus, the counteraction to organized crime is on the agenda of the EU. Currently, the main task of Europol is to support the criminal authorities of the EU member states in the fight against organized crime using the following forms: 1. The exchange of police information; 2. Assessment and analysis of the criminal situation with the aim of identifying new criminal phenomena and trends (preparation of strategic reports and analytical materials based on available information); 3. The support to national criminal authorities (technical, expert assistance). Europol is carrying out a large-scale campaign to intensify research on the problems of combating organized crime and unifying norms of criminal and criminal procedural law in EU member states.

In the context of the integration processes in Ukraine and the EU, police cooperation becomes of particular importance, which determines not only the need to combine the efforts of States and increase the efficiency of the use of existing capabilities of international police cooperation, but also to take coordinated measures at the national and international levels to improve appropriate legal regulation.

The development of Europol as the central office of the EU for collecting operational information is caused by the importance of identifying priorities for the study of issues of information exchange between EU member states in the field of combating crime, terrorism, etc. The unique capabilities of the European police office to manage such information make real further dynamic development of the information base capable of facilitating an effective operational response to key security threats.

An important development in this context was the ratification in July 2017 of the Agreement between Ukraine and the European Police Office on operational and strategic cooperation aimed at establishing

cooperation between Ukraine and Europol in preventing and combating organized crime, terrorism and other forms of international crime, exchange of information through the designated Ukrainian National Contact Point. Currently, the function of the National Contact Point of Ukraine on cooperation with Europol is entrusted to the Department of International Police Cooperation of the National Police of Ukraine. The procedure for the exchange of information with the abovementioned Department and Europol is determined by the Agreement between Ukraine and the European Police Office on Operational and Strategic Cooperation (the Agreement) [5].

However, currently there is no effective organizational and legal mechanism for the use of Europol's information resources by the competent bodies of Ukraine, which, in accordance with Art. 7 of the Agreement are: National Police of Ukraine, Ministry of Internal Affairs of Ukraine, Administration of the State Border Guard Service of Ukraine, Main Directorate on Fight against Corruption and Organized Crime of the Central Department of the Security Service of Ukraine, State Fiscal Service of Ukraine, State Financial Monitoring Service of Ukraine, National Anti-Corruption Bureau of Ukraine, Prosecutor General's Office of Ukraine.

In order to properly implement the Agreement and improve legal cooperation in the field of combating organized crime, the following activities are necessary:

1. Regulate normatively the procedure of interaction of the competent bodies of Ukraine that are responsible for the spheres of combating crime with the National Contact Point.

2. According to subparagraph «s» of Art. 17 of the Agreement on the exchange of analytical information, it is necessary to conclude an association agreement, according to which the analysis groups formed in Europol will include the associated experts of Ukraine, which will be the next stage of Ukraine's cooperation with Europol.

3. Take the necessary measures to harmonize the provisions of the Agreement, which became part of the national legislation, with other normative legal acts of Ukraine.

4. Establish cooperation by sending relevant specialists (liaison officers) to Europol for quick access to databases in order to obtain information for the performance of the duties assigned to them, if necessary.

5. Organize consultations between the representatives of the competent authorities of Ukraine and Europol responsible for crime prevention, with a view to reconciling the most effective ways of organizing their activities in accordance with their competencies.

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Організаційно-правові форми співробітництва у сфері протидії організованій злочинності: досвід Європейського Союзу

В умовах інтеграційних процесів в Україні та Європейському Союзі поліцейська співпраця має важливе значення, що зумовлює не тільки необхідність об'єднання зусиль держав і підвищення ефективності використання наявних можливостей міжнародної поліцейської співпраці, а й ужиття на національному та міжнародному рівнях координованих заходів з удосконалення відповідного правового регулювання. Розвиток Європолу як центрального відомства Європейського Союзу зі збирання оперативної інформації пов'язаний з важливістю визначення пріоритетів для дослідження питань обміну інформацією між державами – членами Європейського Союзу у сфері протидії злочинності, тероризму тощо. Унікальний потенціал європейського поліцейського офісу з управління такою інформацією

уможливлює подальший динамічний розвиток інформаційної бази, здатної сприяти ефективному оперативному реагуванню на головні загрози безпеці. Питання протидії організованих злочинності знаходяться у фокусі уваги європейської спільноти, оскільки, на переконання Європейського парламенту, кримінальні організації дістали можливість проникати до соціальних, політичних та економічних структур Європи. Серед пріоритетів у протидії злочинності визначають збирання інформації, превентивні заходи та співробітництво між правоохоронними органами, зокрема поза межами Європейського Союзу. Важливою подією в цьому контексті стала ратифікація в липні 2017 року Угоди між Україною та Європейським поліцейським офісом про оперативне та стратегічне співробітництво, метою якої є встановлення співробітництва між Україною та Європол у запобіганні та протидії організованій злочинності, тероризму та іншим формам міжнародної злочинності, зокрема шляхом обміну інформацією через призначений Україною Національний контактний пункт.

Ключові слова: організована злочинність; співробітництво; правоохоронні органи; превентивні заходи; інтеграційні процеси; Європол.