The European Public Prosecutor's Office

Protecting the Union's Financial Interests through Criminal Law

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The protection of the financial interests of the European Union and the defence of the European financial system are two aspirations that have accompanied the European Union since its foundation. They are part of the nature of the Union, which was born to overcome the economic crisis installed in Europe after the Second World War. Today, such objectives have been recognized in the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The undeniable economic imprint of the Union is shown in the different areas in which its legislative activity is carried out. The ambitious financial policy only makes sense on a solid economic and financial context, which requires the protection of the budget and the prevention and sanction of conducts undermining the economic pillars. The European Public Prosecutor´s Office (EPPO) marks the turning point in criminal policy that seeks to strengthen the fight against fraud. In this legal context, it is interesting to highlight two aspects. First, the European legislator understands that criminal law is the most effective instrument to combat fraudulent activities affecting the financial interests of the Union; as a consequence, criminal law becomes a prima ratio barrier against crime. Second, the EPPO will be the only body to investigate and prosecute such crimes. The objective of this article is to analyse these aspects and reflect on the limits on the material competence attributed to the EPPO.

I. Introduction

The economy is an essential pillar of the European Union, and as its development largely depends on the solidity of the financial system, it was necessary to ensure that the Member States recognised the legal requirements that justified the Union's decisions to protect the financial interests. Since its foundation, the European Union has been committed to fighting fraud, promoting different policies to prevent any criminal conduct that could affect the economic and financial pillars. We could understand, then, that the decision to provide the legal bases to implement a new criminal structure against fraud is justified by the fact that the action of a single body, with competence to investigate and prosecute in the area of freedom, security and justice, augurs a greater success for this purpose. But the Member States belong to different legal families and each national law is inspired by different legal principles. Therefore, it was essential that the EU Member States accept the anti-fraud solutions offered by the Union in their legal system. As a consequence, it would also become necessary to adopt means or instruments to resolve conflicts of jurisdiction between States and incompatibilities arising between the solutions offered by the Union and those offered by national laws. In this context, the Treaty of Lisbon entailed a qualitative breakthrough in the European Union's fight against economic and financial crime. Proof of this, is the creation of a centralised European Public Prosecutor's Office (EPPO) with exclusive competence to investigate and prosecute such offences. But, one of the most complex aspects was to reflect in Regulation (EU) 2017/1939[1] the necessary balance between the philosophical-legal principles and postulates of the national legal systems and the Union system.

The EPPO was not conceived as an indispensable element in development of the Union's criminal policy, because, in an area based on the principle of mutual recognition and mutual trust, the recognition and implementation of judicial decisions would be very quick. Nevertheless, the States have not achieved the expected results, and the success of the anti-fraud policy has been very limited. Instead, the EPPO was presented as an instrument of added value, around which the legal architecture of future criminal policy tactics for protecting the EU's financial interests would revolve, the measures and decisions of the EPPO becoming immediately effective in the EU Member States.

This article generally aims to provide a better understanding of the importance that this new supranational body to fight EU fraud acquired in the current legal context of the protection of the EU's financial interests. Against this background, it analyses three aspects: Based on the decision of the European legislator, which raised criminal law to the category of the most effective instrument to protect financial interest, the article first examines the evolution of the fight against fraud and the legal environment in which the EPPO operates, and second, the basic concept of the fight against fraud as provided in the Treaty of Lisbon. The third section takes a closer look at EPPO's material competence before final remarks on the subject matter are made.

II. The Legal Environment in which the EPPO Operates

To put the above-mentioned preliminary considerations in a nutshell, the fight against fraud affecting the European Union's financial interests is undoubtedly one of the most important objectives of Europe's current criminal policy.[2] At the moment, we have a legal system made up of administrative and criminal rules, instruments, and bodies that serves the purpose of countering fraud affecting the European Union and recovering the amounts that have been defrauded. In order to accomplish these objectives, it was necessary to involve the Member States for two reasons: first, the European Union lacked criminal sanctioning legitimacy before the entering into force of the TFEU and, therefore, it could only operate through the States; second, in order to protect the Union's financial interests, Member States remain essential for the effective functioning of the system provided for in the TFEU.

Let us briefly call to mind the most recent developments in the fight against fraud in the EU. Since the Convention on the protection of the European Communities' financial interests (PIF Convention),[3] with its Protocols, and the 1997 Action Plan to combat organized crime,[4] which took shape in Joint Action 98/742/JHA on corruption in the private sector,[5] the rules on fighting fraud progressed towards the current legislation. Today, Art. 325 TFEU imposes an obligation on Member States to create an internal procedural regime to protect the financial interests through the adoption of dissuasive and effective measures, without establishing specific criteria or methods in this regard. However, the introduction of the EPPO into the organizational structure of the fight against fraud and the fact that it is (exclusively) competent for investigating fraud crimes (in their many forms) means an alteration of the rules and principles in that the domestic legal order enables specification of the competent institutions and bodies for investigation and prosecution.[6] Following the mandate given in Art. 86 TFEU, the domestic legal authorities will be excluded in favor of the EPPO, as the centralized body of the European Union has exclusive competence to investigate crimes affecting the Union's financial interests.

We should not forget that economic crime has evolved, and this evolution has had a strong influence on the selection of legal strategies to combat such crime and prevent its results. These forms of crime entail extraordinarily sophisticated methods, and new opportunities in the financial system to mask such illicit activities are regularly found. Logically, the absence of controls on economic traffic between financial entities operating within the European Economic Area is due to mutual trust between Member States. But these circumstances have led to an increase in the use of financial channels for laundering illegally obtained profits, just as they have also been used to finance terrorist activities within the Union's territory. The obligations for financial institutions, established by the EU's AML legislation[7], to adopt a set of compulsory compliance measures,[8] in order to control risky financial operations, means that financial institutions have also become, to some extent, instruments of criminal law in the fight against fraud. Therefore, the degree of involvement and commitment in this area is not only binding on the European Union and on the State authorities (judicial, police, or administrative). Indeed, both public and private financial institutions (and certain professionals who manage several types of economic transactions or may be aware of doubtful aspects of their clients' financial activities) must also act as bodies of the criminal law system and are entrusted with the task of being a kind of first response in preventing fraud.

Given the need to protect the financial interests, the European legislator has been forced to regulate aspects of certain conduct that has traditionally been linked to fraudulent activities. This is the case, for example, for corruption, which is sometimes clearly linked to fraud. Thus, the Commission's report on anti-corruption policy, published in February 2014, recognised that corruption affected all Member States without exception and that its cost to the Union's economy at the time amounted to some €120 billion per year.[9] In the same way, and as the Commission already indicated in 2004 in its *Communication to the Council and the European Parliament on the prevention of and fight against organised crime in the financial sector*,[10] such corruption offences include money laundering, financial fraud, and counterfeiting of the euro. Therefore, in 2014, based on the *Pericles 2020 Programme*, Regulation (EU) No. 331/2014,[11] established in its Art. 12(1) that the Commission shall take measures "ensuring that (…) the financial interest of the Union shall be protected by the application of preventive measures against fraud, corruptions and any other illegal activities (…)." Art. 3 of the same Regulation also indicates that the principal objective shall be to prevent and combat counterfeiting and related fraud, thus enhancing the competitiveness of the Union's economy and securing the sustainability of public finances.

In the same vein, Directive 2014/62/EU[12] on the protection of the euro and other currencies against counterfeiting by criminal law was approved, providing the anti-fraud strategy with a new instrument. It stressed the need to criminally investigate acts of counterfeiting by means of more effective rules and allowing for the establishment of common penalties for the most serious offences. In 2017, the PIF Directive[13] specified that certain types of conduct against the common tax system, and against budget expenditure and revenue items, should be made punishable in all Member States by laying down common minimum penalties and specifying the substantive ele-

ments of criminal law that must be incorporated into national legal systems (minimum standards). In 2019, the European Parliament recognized that "many Member States do not have specific laws against organised crime, while its involvement in cross-border activities and sectors affecting the EU's financial interests, such as smuggling or counterfeiting of currency, is constantly growing."[14]

The importance of the measures outlined above has not been lost. In order to strengthen the fight against fraud, the European Union has increased its budget by €181 million for the next multiannual financial period 2021–2027. It supposes evident support for the efforts of the Member States in the fight against corruption and other irregularities affecting revenue and expenditure items.[15] In addition, the legislation on fraud committed through non-cash means of payment[16] was also recently addressed.

In this context, the provision of Art. 22(3) of Regulation (EU) 2017/1939 makes sense: "[t]he EPPO shall also be competent for any other criminal offence that is inextricably linked to criminal conduct that falls within the scope of paragraph 1 of this Article." But the competence, with regard to such criminal offences, may only be exercised in conformity with Art. 25(3). In any case, Regulation 2017/1939 opens up a new stage in the fight against fraud.[17]

III. The Fight Against Fraud for Protecting Financial Interests in the Treaty of Lisbon

The provision on the harmonisation of criminal law – Art. 83(1) TFEU –, refers to a list of criminal areas that do not explicitly include the crime of fraud against the Union's financial interest. Paradoxically, the EPPO has been designed as the only body with exclusive competence to investigate such crimes – Art. 86(2) TFEU. We have to resort to the "Financial Provisions" of the Treaty to find the regulation concerning the fight against fraud in Art. 325 TFEU. Specifically, the referential rule contained in Art. 310(6) TFEU directs us to Art. 325, which establishes, in its first paragraph, the guidelines for building the legal architecture that will protect the EU's financial interests. As we can read in this article, the Member States may be the first barrier to controlling crime, and the measures adopted by national legislators for this purpose may have a clear dissuasive effect. The effectiveness of the measures chosen should definitely place Member States in a position to offer the protection required by the Union.

Based on the principle of assimilation, paragraph 2 of Art. 325 TFEU demands that the Member States protect the Union's financial interests against fraud with the same diligence and the same measures they would apply to combating domestic fraud. For its part, paragraph 3 lays down the duty of the Member States to coordinate their actions and strategies through the Commission, which is the coordinating and monitoring body (as in the pre-Lisbon phase).

In any case, we should take into account the differences between the regulation on judicial cooperation in criminal matters – Arts. 82 to 86 TFEU – and the regulation on the fight against fraud – Art. 325 TFEU (placed in the economic context of the Treaty). It seems that the legislator intended to make an express statement on the separation between the crimes of Art. 83 and the crimes of fraud affecting the financial interests. The latter seemingly deserves special treatment within the criminal law because this is the only instrument that offers the dissuasive measures required by Art. 325. Moreover, if Art. 86(1) and (2) TFEU – the provisions on judicial cooperation in criminal matters – expressly state the competence of the EPPO to investigate fraud against the Union's financial interests,[18] regardless of the fact that this legal proceeding is found in the financial provisions of the TFEU, it is easy to understand why the legislator believed that the fight against fraud must be tackled by means of criminal law, giving it such importance that a specific criminal law enforcement body was created for this purpose. The creation of such measures and bodies for crimes of different nature never had been proposed before. In conclusion, we can understand that, for these financial offences, the concept provided for in the Lisbon Treaty combines criminal cooperation with a certain nuance of criminal integration, clearly advancing the initial idea of approximation or harmonization of the legislation.

IV. Material Competence of the EPPO

The provision on the material competence of the EPPO – Art. 22 of Regulation (EU) 2017/1939 – makes reference to the offences in the PIF Directive "as implemented in national law." In this Article, the European legislator takes on the mandate established in Art. 83(1) TFEU, which requires the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. However, the European legislator is also aware of the differences between national laws. This supposes that the transposition of the Directive´s rules will not be homogeneous and, therefore, the application of the original mandate of the EPPO based on the Directives will not be homogeneous either. Since Regulation (EU) 2017/1939 subjects the EPPO's actions to the regulation of the system in which it operates, this approach must accept occurring procedural differences, e.g., the regulations on (gathering and use of) evidence, and the possibilities for participation of

victims or other parties in the criminal process. Such procedural differences may constitute obstacles that are difficult to overcome when attempting to ensure identical protection of the rights at stake. So, there will be differences in the criminal investigation (depending on the State where the EPPO investigates) and there will be differences in the judgement (depending on the transposition of the PIF Directive).

Coming back to the EPPO's material competence, we can see that there is a connection between fraud – as the generic area of crime defined in Art. 1 of the PIF Directive and Art. 22 of Regulation (EU) 2017/1939 that the EPPO is competent for – and other illegal acts. Effectively, the Union's financial interests can be damaged not only by acts that directly manifest fraud, but also through activities that mask the same fraudulent purpose or cause the same effect without, apparently, constituting fraud.

The link between other offences and fraud may lead to an alteration of the initial competence to investigate – or may even extend the EPPO's competence. The offences provided for in the PIF Directive do not usually occur autonomously and in isolation, because some of them, like money laundering, e.g., require at least a previous illicit activity whose proceeds are to be introduced into licit economic trafficking. These "laundered" amounts may be intended to finance other illegal activities. Hence, Art. 3(4) lit. d) of the 4th Anti-Money Laundering Directive[19] – when defining the notion of "criminal activity" as a predicate offence of money laundering that triggers measures for the prevention of the illegal use of the financial system – makes reference to "fraud affecting the financial interests of the Union" and thus indirectly refers to the PIF Directive. The PIF Directive itself states in Art. 4(1) that money laundering, as described in Art. 1(3) of the 4th AML Directive, may be one of the acts affecting the Union's financial interests. This possible link between money laundering and infringement of the Union's financial interests is the point at which the EPPO's competence with regard to such offences is triggered. We must also interpret the provisions of the PIF Directive in this context.

As a consequence, the European legislator established a system of general protection against fraud by adopting a set of rules that both protect the financial system and prevent its misuse through laundering the illicit proceeds of crime or financing terrorist activities in operations that mask fraud. In the latter case, we can see that there is an additional connection between laundering and fraud, as terrorist organisations are financed through illegal activities, which, by their very nature, are directly linked to acts of fraud in their various forms.

Ultimately, it is worth highlighting that many cross-border criminal activities mentioned in Art. 83(1) TFEU are connected to fraud, because trafficking in arms, drugs, or human beings, as well as organised crime generate a type of fraud affecting the Union´s budget items. Therefore, the competence of the EPPO may also be activated in those criminal areas described in Art. 83 TFEU, if the connection between those crimes and any other activity that affects the financial interests of the Union are proved, under the condition that the other requirements foreseen in the Regulation (EU) 2017/1939 were met.

Closer inspection in this context reveals that Art. 22(3) and Art. 25 of Regulation (EU) 2017/1939, which regulate the EPPO's competence if offences are inextricably linked with the criminal offences affecting the financial interests of the Union, are provided for in the PIF Directive (Art. 22(1) of the Regulation). We learn from these provisions that the EPPO's competence is given under the following conditions:

- There is an inseparable (inextricable) link between a criminal offence and a PIF offence;
- The criminal conduct that can be subsumed in one of offences provided for by the PIF Directive (as outlined in Art. 22(1) of the Regulation) is sanctioned by the national law of the affected State with a higher penalty than the sanction provided for the linked criminal offence at issue.

However, the Regulation (EU) 2017/1939 has established one exception to the above rule: if the PIF offence were not considered the main offence, the competence to investigate will shift away from de EPPO. And this, regardless of the penalties proscribed for each of the related crimes.

If several victims are affected by the criminal offence(s), Art. 25(3) lit. b) of the Regulation attributes competence to the EPPO only when the damage caused to the Union's financial interests exceeds the damage caused to another victim. If this is not the case, the domestic authorities have competence to investigate the crime. However, this latter rule is subject to a further exception: the EPPO is always competent as regards the fraud offences referred to in Art. 3(2) lit. a), b) and d) of the PIF Directive.[20] Yet another exception in relation to Art. 25(3) lit. b) is provided for in Art. 25(4) of the EPPO Regulation, which recognizes the competence of the EPPO if it appears that the EPPO is better placed to investigate or prosecute.

V. Final Remarks

The European Union's strategy in the fight against fraud has shifted towards criminal law. In order to defend the Union's financial system, dissuasive criminal measures and other advanced legal options must be used. The effectiveness of such measures is not only based on sanctioning of the criminal conduct affecting the Union's financial interests, but also on the

probability of suffering a criminal sanction. That sanctioning perspective acts as a preventive and dissuasive barrier against crime.

The prevention of financial fraud is problematic, however, and requires a multidisciplinary solution. The choice of a single type of measure, e.g. criminal measures, should not discriminate others, e.g., solutions in the administrative law field.[21] It is necessary to create a comprehensive protection barrier against crime. Otherwise, the barrier would be broken allowing authors of a crime to find legal loopholes or systematic vulnerabilities. Faced with this circumstance, the legislators both at the European and national levels have implemented a set of measures – *criminal compliance measures* –, that must be incorporated and managed by entities operating in the financial system. These actors are obliged to control the legality of financial operations or economic transactions, minimizing in this way crime risks to the financial system. Consequently, the effectiveness of the fight against fraud depends on the real interconnection between measures agreed in the field of criminal law and those that must be adopted in the field of civil, commercial, and administrative law. This approach especially articulates with the decision to set up the European Public Prosecutor's Office. This is not only because of the novelty that this new body implies and the expectations (and doubts) that it generates, but also because of the special relationship between the EU Member States and the European Union. In this context, we should keep in mind that the EPPO has a double facet: it is a body of the European Union – the first body of the Union responsible for criminal prosecution[22] – independent from the Member States, and, paradoxically and simultaneously, requiring close cooperation with the Member States.

It is certain that the true value of the EPPO cannot be proven through theoretical analysis and studies. It is necessary to wait for its operational activity. However, today we can already observe that the European Union and the Member States have taken a step that will change the foundations of the national criminal and procedural laws. The EPPO cannot be considered an isolated body because it assumes competences that hitherto belonged to national law enforcement bodies and it exercises its powers through national law. Therefore, we are heading for a merger of Union criminal law and the national criminal laws. In the context of the fight against fraud affecting the EU's financial interests, we are witnessing a progression towards the integration of criminal law systems. Obviously, the European Union and its Member States are walking a path marked by difficulties, but it is essential to advance towards a greater degree of liberty, security, and justice.

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1 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), *O.J.* L 283, 31.10.2017, 1.71.

2 See also M.A. Pérez Marín, "Instrumentos orgánicos de cooperación judicial: en especial, la Fiscalía Europea", in M. Jimeno Bulnes (ed.), R. Miguel Barrio (coord.), *Espacio judicial europeo y proceso penal,* Tecnos, Madrid, 2018, pp. 29–55.

3 Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests, *O.J.* C 346, 27.11.1995, 48.

4 Report of 29 October 1997 on the Action Plan to combat organised crime (742/197 – C4-0199/97), PE 223.427/fin.

5 *O.J.* L 358, 22.12.2018, 2.

6 V. Moreno Catena, Fiscalía Europea y Derechos fundamentales, Tirant lo Blanch, Valencia, 2014, p. 342.

7 In this regard, see, especially, 4th Directive [Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (*O.J.* L 143, 5.6.2015, 73–117)], which was partially amended by 5th Directive [Directive 2018/843 of the European Parliament and of the Council of 30 May 2018, *O.J.* L 156, 19.6.2018, 41–74].

8 See M. Gómez Tomillo, *Compliance penal y política legislativa,* Tirant lo Blanch, Valencia, 2016; M. González, "Compliance: más allá de la Responsabilidad Penal", (2016) 919 *Actualidad jurídica Aranzadi,* 11; E. de Urbano Castrillo, "La responsabilidad penal del compliance officer", (2016) 5 *Revista Aranzadi Doctrinal*, 205–214; I. Colomer Hernández, "Régimen de exclusión probatoria de las evidencias obtenidas en las investigaciones del compliance officer para su uso en un proceso penal (1)", *(2017) Diario La Ley, 9080* <https://laleydigital--laleynext--es.us.debiblio.com> accessed 1 January 2020; M. Ruiz de Lara, (coord.), *Compliance penal y responsabilidad civil y societaria* de *los administradores,* Wolters Kluwer, Madrid, 2018.

9 Report from the Commission to the Council and the European Parliament – EU anticorruption report, 3.2.2014, COM(2014) 38 final.

10 Communication from the Commission to the Council and the European Parliament on the prevention of and fight against organised crime in the financial sector, 16.4.2014, COM(2004) 262 final.

11 Regulation (UE) No. 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (The 'Pericles 2020' programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC, *O.J.* 103, 5.4.2014, 1–9.

12 Directive 2014/62/EU of the European Parliament and of the Council

of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law and replacing Council Framework Decision 2000/383/JHA, *O.J.* L 151, 21.5.2014, 1–8.
13 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the financial interests of the Union by means of criminal law, *O.J.* L 198, 28.7.2017, 29–41.
14 European Parliament resolution of 31 January 2019 on the Annual Report 2017 on the protection of the European Union's financial interests – fight against fraud (2018/2152(INI)).
15 See press release "EU Budget: €181 million to strengthen the fight against fraud affecting de EU Budget", https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3967, accessed 2 November 2019.
16 Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA, *O.J.* L 123, 10.5.2019, 18–29.
17 M.A. Pérez Marín, "La estructura orgánica de la Unión Europea en la lucha contra el fraude y contra la delincuencia organizada transnacional: presente y futuro", (2017) 5 Revista Internacional Consinter de Direito, 15–17 <https://revistaconsinter.com/es/revistas/ano-iii-numero-v/> accessed 10 December 2019. See by the same author, La lucha contra la criminalidad en la Unión Europea: el camino hacia una jurisdicción penal común, Atelier, Barcelona, 2013.
18 On this same matter, see P. Csonka, A. Juszczak, E. Sason, "The establishment of the European Public Prosecutor's Office: The Road from Vision to Reality", (2017) *eucrim*, 125–135; L. Kuhl, "The European Public Prosecutor's Office – More Effective, Equivalent and Independent Criminal Prosecution against Fraud?, (2017) *eucrim* , 135–143.
19 Cf. note (10).
20 Art. 3(2) lit. a) and b) of Directive 2017/1371 defines the criminal offences of fraud affecting the Union's financial interests in respect of non-procurement-related and procurement-related expenditure. Art. 3(2) lit. d) of the Directive defines the criminal conduct of fraud affecting the Union's financial interests in respect of revenue arising from VAT own resources. However, the harmonisation of this VAT fraud by the Directive only applies to serious offences. Art. 2(2) of the Directive defines as "serious offence" the necessity that intentional acts or omissions are connected with the territory of two or more Member States of the Union and involve a total damage of at least € 10.000.000, Art. 22(1) of the EPPO Regulation established corresponding restrictions on the competence of the EPPO to prosecute these VAT offences.
21 OLAF is indispensable to protect the EU budget and to prevent fraud affecting the financial interests. See "Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee of the regions and the court of auditors – Commission Anti-Fraud Strategy: enhanced action to protect the EU budget", 29.4.2019, COM(2019) 196 final.
22 Eurojust and Europol can also be considered "criminal bodies" of the EU, however they still have only cooperation and coordination tasks in the area of criminal law.

Mutual Recognition of Judgements in Criminal Matters Involving Deprivation of Liberty in Spain

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Council Framework Decision 2008/909/JHA of 27 November 2008 "on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union" was implemented in Spain by the introduction of new rules into the Mutual Recognition Act. Achieving social rehabilitation is the core objective of the Framework Decision. This has also practical consequences for the implementation of this instrument, for example requiring ties on the part of the sentenced person with the executing State. Some of the most controversial procedural issues in Spain are analysed in this article, including the consent of the sentenced person and the grounds for the adaptation of the sentence by the executing State under Spanish law.

I. Legal Framework in Spain

The 1999 European Council meeting in Tampere was the starting point for the approval of a significant number of European regulations dealing with mutual recognition in criminal matters during the first decade of the new millennium. These regulations led to a change in the legislative techniques of European instruments in Spain. Previously, each mutual recognition instrument was implemented by means of an individual transposition act. After 2014, all European instruments were included in a new statute, which aims to integrate the legislation of the different EU instruments on mutual recognition into a single act (called Mutual Recognition Act). This technique aims to guarantee better transposition and greater clarity, as claimed by the Spanish legislator in the preamble to the Act.[1] From 2014 onwards, every EU mutual recognition instrument has been transposed by an amendment to the Mutual Recognition Act. Every instrument is regulated in one of the titles of the Act, and three chapters can be found under each title: the first chapter regulates general provisions, the second one the