

REPORT

on the annual accounts of Eurojust for the financial year 2011, together with Eurojust's replies

(2012/C 388/31)

INTRODUCTION

1. The European Union's Judicial Cooperation Unit (hereinafter "Eurojust"), which is located in The Hague, was set up by Council Decision 2002/187/JHA ⁽¹⁾ with a view to stepping up the fight against serious organised crime. Its objective is to improve the coordination of cross-border investigations and prosecutions between the Member States of the European Union, and between Member States and non-Member States ⁽²⁾.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

2. The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of Eurojust's supervisory and control systems. This is supplemented by evidence provided by the work of other auditors (where relevant) and an analysis of management representations.

STATEMENT OF ASSURANCE

3. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts ⁽³⁾ of Eurojust, which comprise the "financial statements" ⁽⁴⁾ and the "reports on the implementation of the budget" ⁽⁵⁾ for the financial year ended 31 December 2011, and the legality and regularity of the transactions underlying those accounts.

The Management's responsibility

4. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the financial rules of Eurojust, under his own responsibility and within the limits of the authorised appropriations ⁽⁶⁾. The Director is responsible for putting

in place ⁽⁷⁾ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts ⁽⁸⁾ that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

The Auditor's responsibility

5. The Court's responsibility is to provide, on the basis of its audit, the European Parliament and the Council ⁽⁹⁾ with a statement of assurance as to the reliability of the annual accounts of Eurojust and the legality and regularity of the transactions underlying them.

6. The Court conducted its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require that the Court plans and performs the audit to obtain reasonable assurance as to whether the annual accounts of Eurojust are free of material misstatement and the transactions underlying them are legal and regular.

7. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the transactions underlying them. The procedures are selected based on the auditor's judgment, including an assessment of the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirement of the legal framework of the European Union, whether due to fraud or error. In assessing those risks, the auditor considers internal controls relevant to the preparation and fair presentation of the accounts and supervisory and control systems implemented to ensure legality and regularity of underlying transactions, in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of accounting policies used and reasonableness of accounting estimates made, as well as evaluating the overall presentation of the accounts.

⁽¹⁾ Decision of 28 February 2002 setting up Eurojust (OJ L 63, 6.3.2002, p. 1).

⁽²⁾ The Annex summarises Eurojust's competences and activities. It is presented for information purposes.

⁽³⁾ These accounts are accompanied by a report on the budgetary and financial management during the year which gives further information on budget implementation and management.

⁽⁴⁾ The financial statements include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁽⁵⁾ The budget implementation reports comprise the budget outturn account and its annex.

⁽⁶⁾ Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72).

⁽⁷⁾ Article 38 of Regulation (EC, Euratom) No 2343/2002.

⁽⁸⁾ The rules concerning the presentation of the accounts and accounting by the Agencies are laid down in Chapters 1 and 2 of Title VII of Regulation (EC, Euratom) No 2343/2002 as last amended by Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.7.2008, p. 23) and are integrated as such in the Financial Regulation of Eurojust.

⁽⁹⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

8. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

Opinion on the reliability of the accounts

9. In the Court's opinion, Eurojust's Annual Accounts ⁽¹⁰⁾ present fairly, in all material respects, its financial position as of 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer ⁽¹¹⁾.

Opinion on the legality and the regularity of the transactions underlying the accounts

10. In the Court's opinion, the transactions underlying the annual accounts of Eurojust for the financial year ended 31 December 2011 are legal and regular in all material respects.

11. The comments which follow do not call the Court's opinions into question.

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

12. Payment appropriations amounting to 6,1 million euro had been carried over from 2010 to 2011. The Court highlighted in its report for the financial year 2010 that such a high

level of carry-over was excessive. Out of the amount carried over, 1,3 million euro had to be cancelled in 2011. Payment appropriations amounting to 5,2 million euro (16 % of total payment appropriations) have been carried over to 2012. Of this amount, 3,1 million euro related to Title III (operational expenditure) which represents 39 % of Title III payment appropriations. This level is again excessive and at odds with the principle of annuality.

OTHER COMMENTS

13. In the report for the financial year 2010, the Court noted that there was scope to reconsider the definition of respective roles and responsibilities between the Director and the College of Eurojust in order to avoid the overlap of responsibilities, currently resulting from the Founding Regulation ⁽¹²⁾. No corrective measures were taken in 2011.

14. Eurojust has not yet adopted all Implementing Rules of the Staff Regulations ⁽¹³⁾.

15. The Court again identified shortcomings in recruitment procedures. The composition of the selection boards was in several cases not fully in line with the requirements of the Staff Regulations: not all the members of the selection board had the required minimum staff grade. In one selection procedure, the Chairman of the Board was a direct superior of the only candidate invited for the interview and selected for the post.

This report was adopted by Chamber IV, headed by Mr. Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 5 September 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

⁽¹⁰⁾ The Final Annual Accounts were drawn up on 30 June 2012 and received by the Court on 5 July 2012. The Final Annual Accounts, consolidated with those of the Commission, are published in the *Official Journal of the European Union* by 15 November of the following year. These can be found on the following website <http://eca.europa.eu> or http://www.eurojust.europa.eu/adm_budg_finance.htm.

⁽¹¹⁾ The accounting rules adopted by the Commission's accounting officer are derived from International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, in their absence, International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

⁽¹²⁾ Articles 28, 29, 30 and 36 of the Council Decision 2002/187/JHA, as amended by Council Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44) and 2009/426/JHA (OJ L 138, 4.6.2009, p. 14).

⁽¹³⁾ Implementing rules are missing for the areas: "Reclassification", "Administrative inquiries and disciplinary procedure", "Part-time work", "Job-Sharing", "Middle management", "Temporary occupation of management posts", "Appraisal senior management", "Early retirement without reduction of pension rights", "Leave", "Staff Committee" and "Mission guide."

ANNEX

EUROJUST (The Hague)**Competences and activities**

Areas of Union competence deriving from the Treaty <i>(Article 85 of the Treaty on the Functioning of the European Union)</i>	<p>Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol. [...]</p>
Competences of Eurojust <i>(as defined in articles 3, 5, 6 and 7 of the Council Decision 2002/187/JHA as amended by Council Decision 2003/659/JHA and Council decision 2009/426/JHA)</i>	<p>Objectives</p> <p><i>Article 3 Eurojust Council Decision</i></p> <p>In the context of investigations and prosecutions, concerning two or more Member States, of criminal behaviour referred to in Article 4 in relation to serious crime, particularly when it is organised, the objectives of Eurojust shall be:</p> <ul style="list-style-type: none"> (a) to stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States, taking into account any request emanating from a competent authority of a Member State and any information provided by any competent body by virtue of provisions adopted within the framework of the Treaties; (b) to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition; (c) to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective. <p>Tasks</p> <p><i>Article 5 Eurojust Council Decision</i></p> <p>1. In order to accomplish its objectives, Eurojust shall fulfil its tasks:</p> <ul style="list-style-type: none"> (a) through one or more of the national members concerned in accordance with Art. 6, or (b) as a College in accordance with Art. 7: <ul style="list-style-type: none"> (i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust, or (ii) when the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned, or (iii) when a general question relating to the achievement of its objectives is involved, or (iv) when otherwise provided for in this Decision. <p>2. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members within the meaning of Art. 6 or as a College within the meaning of Art. 7.</p>

Article 6 Eurojust Council Decision

1. When Eurojust acts through its national members concerned, it:

- (a) may ask the competent authorities of the Member States concerned, giving its reasons, to:
 - (i) undertake an investigation or prosecution of specific acts;
 - (ii) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
 - (iii) coordinate between the competent authorities of the Member States concerned;
 - (iv) set up a joint investigation team in keeping with the relevant cooperation instruments;
 - (v) provide it with any information that is necessary for it to carry out its tasks;
 - (vi) take special investigative measures;
 - (vii) take any other measure justified for the investigation or prosecution;
- (b) shall ensure that the competent authorities of the Member States concerned inform each other on investigations and prosecutions of which it has been informed;
- (c) shall assist the competent authorities of the Member States, at their request, in ensuring the best possible coordination of investigations and prosecutions;
- (d) shall give assistance in order to improve cooperation between the competent national authorities;
- (e) shall cooperate and consult with the European Judicial Network, including making use of and contributing to the improvement of its documentary database;
- (f) shall, in the cases referred to in Article 3(2) and (3) and with the agreement of the College, assist investigations and prosecutions concerning the competent authorities of only one Member State;

2. The Member States shall ensure that competent national authorities respond without undue delay to requests made under this Article.

Article 7 Eurojust Council Decision

1. When Eurojust acts as a College, it:

- (a) may in relation to the types of crime and the offences referred to in Article 4(1) ask the competent authorities of the Member States concerned, giving its reasons:
 - (i) to undertake an investigation or prosecution of specific acts;
 - (ii) to accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
 - (iii) to coordinate between the competent authorities of the Member States concerned;
 - (iv) to set up a joint investigation team in keeping with the relevant cooperation instruments;
 - (v) to provide it with any information that is necessary for it to carry out its tasks;

	<p>(b) shall ensure that the competent authorities of the Member States inform each other of investigations and prosecutions of which it has been informed and which have repercussions at Union level or which might affect Member States other than those directly concerned;</p> <p>(c) shall assist the competent authorities of the Member States, at their request, in ensuring the best possible coordination of investigations and prosecutions;</p> <p>(d) shall give assistance in order to improve cooperation between the competent authorities of the Member States, in particular on the basis of Europol's analysis;</p> <p>(e) shall cooperate and consult with the European Judicial Network, including making use of and contributing to the improvement of its documentary database;</p> <p>(f) may assist Europol, in particular by providing it with opinions based on analyses carried out by Europol;</p> <p>(g) may supply logistical support in the cases referred to in points (a), (c) and (d). Such logistical support may include assistance for translation, interpretation and the organisation of coordination meetings.</p> <p>2. Where two or more national members cannot agree on how to resolve a case of conflict of jurisdiction as regards the undertaking of investigations or prosecution pursuant to Article 6 and in particular Article 6(1)(c), the College shall be asked to issue a written non-binding opinion on the case, provided the matter could not be resolved through mutual agreement between the competent national authorities concerned. The opinion of the College shall be promptly forwarded to the Member States concerned. This paragraph is without prejudice to paragraph 1(a) (ii).</p> <p>3. Notwithstanding the provisions contained in any instruments adopted by the European Union regarding judicial cooperation, a competent authority may report to Eurojust recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, and request the College to issue a written non-binding opinion on the matter, provided it could not be resolved through mutual agreement between the competent national authorities or through the involvement of the national members concerned. The opinion of the College shall be promptly forwarded to the Member States concerned.</p>
<p>Governance</p> <p><i>(Articles 2, 9, 23, 28, 29 and 36 of the Eurojust Council Decision 2002/187/JHA as amended by Council Decision 2003/659/JHA and Council decision 2009/426/JHA; Article 3 of the Rules of Procedure of Eurojust)</i></p>	<p>College</p> <p>The College is responsible for the organisation and operation of Eurojust. The College is composed of National Members who are seconded by each Member State in accordance with its legal system and who are prosecutors, judges or police officers of equivalent competence. The College elects its President from among the National Members.</p> <p>Director</p> <p>The Administrative Director is appointed by the College by 2/3 majority.</p> <p>The Joint Supervisory Body supervises the processing of personal data.</p> <p>External audit</p> <p>European Court of Auditors.</p> <p>Discharge authority</p> <p>European Parliament, acting on a Recommendation from the Council acting by qualified majority.</p>

Resources made available to the Eurojust in 2011 (2010)	Final Budget 31,4 (32,3) million euro Staff as at 31 December 2011 Temporary agents 186 (185)
Products and services in 2011 (2010)	Number of coordination meetings: 204 (141) Total number of cases: 1 441 (1 424) Fraud: 575 (631); 39 % (45 %) Drug trafficking: 242 (254); 16 % (18 %) Terrorism: 27 (25); 1 % (2 %) Murder: 88 (83); 6 % (6 %) Trafficking in human beings: 79 (87); 5 % (6 %)

Source: Information supplied by EUROJUST.

EUROJUST'S REPLIES

12. Eurojust acknowledges the Court's comment. A series of steps have been taken by Eurojust in order to improve the budget forecasting and implementation, such as new monthly forecasting reports and other monitoring tools, which will result in a reduced number of carry forwards and budget transfers.

13. Eurojust again calls the attention of the Court to the fact that such definition of roles and responsibilities, other than the internal measures which have already been taken by Eurojust, corresponds to the EU legislator, within the framework of the preparation of the new Regulation on Eurojust.

The governance structure of Eurojust is based on the Eurojust Council Decisions [2002/187/JHA, 2003/659/JHA and 2009/426/JHA]. Hence the College has no means to make any substantial modifications to the present situation. The envisaged new Regulation on Eurojust, in accordance with Article 85, 2nd sentence, of the Treaty on the Functioning of the EU (TFEU), will provide an opportunity to adequately define roles and responsibilities within Eurojust.

14. Eurojust acknowledges that a number of implementing rules have not yet been adopted in accordance with Article 110(1) of the Staff Regulations (SR) and will adopt all missing implementing rules in the near future. Eurojust aims at submitting all outstanding draft implementing rules to the Commission in 2012 and expects adoption in 2012 and 2013.

15. Eurojust takes note of the Court's comment. However, Eurojust would like to recall the fact that it is a relatively small Agency with low gradings in comparison to other Agencies, which has occasionally in the past made it difficult to comply with the same or higher grading requirement for the members of a Selection Board. Eurojust has taken the necessary corrective actions on this regards, in particular the recruitment policy has been updated to comply fully with the requirements of the Staff Regulations. The specific procedure mentioned was conducted in a transparent manner and not biased in favour of the selected candidate.
