

REPORT

on the annual accounts of Eurojust for the financial year 2012, together with Eurojust's replies

(2013/C 365/32)

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 (TFEU), the Court has audited:

- (a) the annual accounts of Eurojust, which comprise the financial statements ⁽³⁾ and the reports on the implementation of the budget ⁽⁴⁾ for the financial year ended 31 December 2012, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

4. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁵⁾, the management is responsible for the preparation and fair

presentation of the annual accounts of Eurojust and the legality and regularity of the underlying transactions:

- (a) The management's responsibilities in respect of Eurojust's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer ⁽⁶⁾; making accounting estimates that are reasonable in the circumstances. The Director approves the annual accounts of Eurojust after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, *inter alia*, that he has reasonable assurance that they present a true and fair view of the financial position of Eurojust in all material respects.
- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

5. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council ⁽⁷⁾ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts 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 the Court to plan and perform the audit to obtain reasonable

⁽¹⁾ OJ L 63, 6.3.2002, p. 1.

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

⁽³⁾ These 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.

⁽⁴⁾ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁽⁵⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁶⁾ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

⁽⁷⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

assurance as to whether the annual accounts of Eurojust are free from material misstatement and the transactions underlying them are legal and regular.

6. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts.

7. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Opinion on the reliability of the accounts

8. In the Court's opinion, Eurojust's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 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.

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

9. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2012 are legal and regular in all material respects.

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

COMMENT ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

11. A framework contract for security services was signed in 2008 and amended in 2009. The amended formula to calculate prices increased them progressively up to 22 %, whereas the original framework contract had provided for a maximum increase of 4 %. The total price increase above the 4 % ceiling amounted to some 440 000 euro for the 2008 to 2012 period, of which some 68 000 euro were paid in 2012. Such a significant increase may undermine the transparency and fairness of the initial procurement procedure and distort competition.

OTHER COMMENTS

12. There is room to improve the transparency of recruitment procedures. There was no evidence that questions for tests and interviews were set before the examination of the applications by the Selection Board and there is no evidence that the weighting between written tests and interviews was set before candidates' screening.

FOLLOW-UP OF PREVIOUS YEAR'S COMMENTS

13. An overview of the corrective actions taken in response to the Court's previous year's comments is provided in *Annex I*.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 15 July 2013.

For the Court of Auditors
Vitor Manuel da SILVA CALDEIRA
President

ANNEX I

Follow-up of previous year's comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	The high level of carry-overs is again excessive and at odds with the principle of annuality.	Completed
2011	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 ⁽¹⁾ . No corrective measures were taken in 2011.	Ongoing
2011	Eurojust has not yet adopted all Implementing Rules of the Staff Regulations ⁽²⁾ .	Ongoing
2011	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.	Completed

⁽¹⁾ Articles 28, 29, 30 and 36 of Decision 2002/187/JHA, as amended by Decisions 2003/659/JHA (OJ L 245, 29.9.2003, p. 44) and 2009/426/JHA (OJ L 138, 4.6.2009, p. 14).

⁽²⁾ 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 II

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

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Article 85 of the Treaty on the Functioning of the European Union)</i></p>	<p>Eurojust's mission is to support and strengthen coordination and cooperation between national authorities in the fight against serious cross-border crime affecting the European Union.</p>
<p>Competences of Eurojust</p> <p><i>(as defined in Articles 3, 5, 6 and 7 of Council Decision 2002/187/JHA, as amended by Decision 2003/659/JHA and Decision 2009/426/JHA)</i></p>	<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> <p>(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;</p> <p>(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;</p> <p>(c) to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.</p> <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> <p>(a) through one or more of the national members concerned in accordance with Article 6, or</p> <p>(b) as a College in accordance with Article 7:</p> <p>(i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust, or</p> <p>(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</p> <p>(iii) when a general question relating to the achievement of its objectives is involved, or</p> <p>(iv) when otherwise provided for in this Decision.</p> <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 Article 6 or as a College within the meaning of Article 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,

	<p>(v) to provide it with any information that is necessary for it to carry out its tasks;</p> <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 Eurojust Decision 2002/187/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</p> <p>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 Eurojust in 2012 (2011)	Final Budget 33,3 (31,4) million euro including assigned revenue Staff as at 31 December 2012 National Members: 27 (of which two based in Member States) (27, of which one based in Member State) Deputy National Members: 17 (of which 10 based in Member States) (16, of which six based in Member States) Assistants to National Members: 22 (of which 11 based in Member States) (20, of which eight based in Member States) Temporary staff: 188 (167) Contract staff: 29 (43) Seconded National Experts: 18 (17)
Products and services in 2012 (2011)	Number of coordination meetings: 194 (204) Total number of cases: 1 533 (1 441) Fraud: 382 (575); 12,2 % (39 %) ⁽¹⁾ Drug trafficking: 263 (242); 8,4 % (16 %) ⁽¹⁾ Terrorism: 32 (27); 1,03 % (1 %) ⁽¹⁾ Murder: 89 (88); 2,8 % (6 %) ⁽¹⁾ Trafficking in human beings: 60 (79); 1,9 % (5 %) ⁽¹⁾

⁽¹⁾ The crime list used for the classification of the cases was modified and refined in 2012 and the categories used now are more detailed, which explains the reductions in some areas even when the total number of cases increased by 6,4 %. The percentages are not related to the number of cases (one case could be related to several types of crime) but relate to the crime types used.
Source: Information supplied by Eurojust.

EUROJUST'S REPLIES

11. Eurojust accepts the fact that retroactive price increases above what is agreed in the contract could undermine the transparency and fairness of the initial procurement procedure and distort competition. The increase in the case at hand was based on changes in the Dutch Collective Labour Agreement and thus would have affected all other competitors offering their services on the territory of the Netherlands equally.

12. Eurojust accepts the comment and has already implemented the guidance of the Court.
