

Council conclusions on Eurojust: the Union's Judicial Cooperation Unit in the Digital Age

(2019/C 412/04)

THE COUNCIL HAS ADOPTED THE FOLLOWING CONCLUSIONS:

1. The Council refers to the new Strategic Agenda 2019-2024 adopted by the European Council on 20 June 2019, setting protection of citizens and freedoms as a key priority for the next institutional cycle. In line with the Strategic Agenda, the Union is committed to building on and strengthening the fight against terrorism and cross-border crime, improving cooperation and information-sharing, and further developing the Union's common instruments.
2. The Council welcomes Eurojust's 2018 annual report (7944/19), and the further progress made by Eurojust in fulfilling its mission as a key player in facilitating and strengthening judicial coordination and cooperation between national authorities in the investigation and prosecution of the most serious forms of cross-border crime, in particular terrorism, trafficking in human beings, migrant smuggling, cybercrime and corruption. As in previous years, in 2018 there was a steady increase in new cases brought to Eurojust.
3. The Council is satisfied that Eurojust has concluded new cooperation agreements with Albania and Georgia and has finalised negotiations on a cooperation agreement with Serbia, and that new liaison prosecutors have been seconded to Eurojust. These cooperation agreements substantially contribute to facilitating judicial cooperation with the third countries concerned, as do the liaison prosecutors. This can also be to the benefit of other actors, in particular the European Public Prosecutor's Office (EPPO) as established by Regulation (EU) 2017/1939 ⁽¹⁾. Eurojust is encouraged to ensure that the new cooperation agreements enter into force as soon as possible, in any case before 12 December 2019, when Regulation (EU) 2018/1727 ⁽²⁾ will start to apply. Eurojust is invited to examine the need to conclude cooperation agreements with other third countries in the context of establishing its cooperation strategy on the basis of Article 52(1) of that Regulation. The Council also invites the Commission to prepare recommendations for the opening of negotiations on international agreements, as soon as possible after the date of application of that Regulation.
4. The Council welcomes the fact that the Judicial Counter-Terrorism Register at Eurojust, bringing together judicial information on counter-terrorism proceedings from all EU Member States, became operational in September 2019. This register, which includes information transmitted by the Member States in accordance with Council Decision 2005/671/JHA ⁽³⁾, will enhance the effectiveness of the EU and its Member States in the fight against terrorism. Given that the transmission of information from the competent authorities of the Member States to Eurojust is a precondition for the Judicial Counter-Terrorism Register to work efficiently and add value to the investigations of Member States' authorities, the Council reiterates the obligations for Member States to transmit such information in accordance with Council Decision 2005/671/JHA.

The role of Eurojust

5. The Council underlines that Eurojust is a crucial actor in the area of freedom, security and justice. It has a special and proactive role in coordinating cases in the field of judicial cooperation in the Union. Eurojust is the only EU agency coordinating judicial authorities in each segment of the security chain. It has a unique and vital role in the coordination of serious cross-border investigations and prosecution between national investigating and prosecuting authorities at every step of the criminal justice process, from the beginning of the investigation of a crime to the final judgment.

⁽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) (OJ L 283, 31.10.2017, p. 1).

⁽²⁾ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

⁽³⁾ Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

6. While the European Union Agency for Law Enforcement Cooperation (Europol) is responsible for supporting Member States' law enforcement authorities in preventing and combating serious cross-border crime, Eurojust's mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities during both the investigation and prosecution of serious cross-border crime. Eurojust and Europol are complementary to each other and should continue their efforts in working closely and in a complementary manner. The Council strongly believes that both Europol and Eurojust have an interest in both agencies working well and efficiently, since both have within their respective mandates the same aim: combating serious cross-border crime in the EU more effectively and thereby creating a safer Europe.
7. The EPPO and Eurojust should establish and maintain a close relationship based on mutual cooperation within their respective mandates and competences and on the development of operational, administrative and management links between them, as referred to in Article 100 of Regulation (EU) 2017/1939 on the EPPO and in Article 50 of Regulation (EU) 2018/1727 on Eurojust. Eurojust is likely to play an important role in the work of the EPPO, in particular in the early stages of the latter. It also has an essential role in cases where both participating and non-participating Member States are involved, as well as in cases of fraud falling outside the scope of the competence of the EPPO. Both actors have their unique role and place in the EU area of freedom, security and justice. The Council calls on Eurojust to establish a close relationship with the EPPO as soon as the latter has started its operational activity. Eurojust should endeavour to assist the EPPO in particular once it is operational, including by sharing with the EPPO its expertise, accumulated over nearly 20 years, in the coordination and support of complex cross-border investigations and relations with non-EU States. A working arrangement between the EPPO and Eurojust should be established as soon as possible.
8. The Council also underlines the importance of cooperation between Eurojust and other EU bodies, offices and agencies, such as OLAF and Frontex. Within their respective mandates, all these EU actors should work together in order to identify further synergies and make full use of their strengths in a coherent manner, to assist Member States in their efforts to create a more secure environment for the EU citizen.
9. The Council encourages Eurojust to continue to make full use of its unique position and increase its proactive role by making observations about developments and trends in criminality and criminal phenomena in the EU and beyond, and by enhancing the knowledge and preparedness of national authorities by sharing information with them.

Digital Criminal Justice and Case Management System (CMS)

10. The Council underlines that EU police and judicial cooperation requires the improvement of information exchange and ensuring interoperability between EU information systems in full compliance with data protection requirements, as this will strengthen rapid, trustworthy and secure exchange of information and evidence between agencies and bodies such as Europol, OLAF, Frontex, the EPPO and Eurojust. Eurojust has a crucial role to play in ensuring that national data can be cross-referenced, so that connections between different criminal investigations can be made. To that end, it should be ensured that Eurojust National Members have access to the e-Evidence Digital Exchange System built by the Commission and operated by Member States.
11. The Council encourages the Commission and Eurojust to continue their initiative on digital criminal justice, as presented in the meeting of the Council (Justice and Home Affairs) of 6 December 2018, which seeks to allow judicial authorities in the Union to connect with each other in a secure way to send and receive (sensitive) information in criminal cases. In this context, existing IT solutions should be taken into account, such as the e-Evidence Digital Exchange System and the Secure Information Exchange Network Application (SIENA).

12. It is vital that the IT infrastructure and Case Management System (CMS) of Eurojust work efficiently and properly, in full compliance with the requirements of data protection, so that Eurojust can support national judicial authorities dealing with serious cross-border criminal cases. This is of utmost importance in order to allow Eurojust to provide the competent national authorities with the information and the feedback on the results on the processing of information that may be expected by these authorities in accordance with the legal framework of Eurojust. The present CMS is rather old and does not properly support the exchange of information. Eurojust should therefore look at ways to improve and modernise its CMS, taking into account interoperability with existing solutions or solutions that are being built (like the e-Evidence Digital Exchange System).

New Eurojust Regulation

13. Regulation (EU) 2018/1727 on Eurojust will apply as from 12 December 2019. The new legal framework will enable Eurojust to handle more efficiently the continuously increasing demands of the national authorities, in particular in crime priority areas such as terrorism, trafficking in human beings, migrant smuggling, cybercrime and corruption.
14. As soon as that Regulation has started to apply, the College of Eurojust can formally present a draft of their new rules of procedure, in accordance with Article 5(5) of the Regulation. After approval by the Council, the College of Eurojust can adopt these rules. The relevant actors are encouraged to carry out all necessary work in order to promote the swift adoption of such rules, which should allow Eurojust to carry out its functions in a more efficient manner.
15. The Council considers it highly important that Eurojust should be able to concentrate on its operational work, particularly as the number of cases is continuously rising. To this end, Eurojust is encouraged to continue implementing changes that will lead to more effective and modern governance as an EU agency. Having regard also to Eurojust's unique role at EU level in coordinating the investigation and prosecution of serious cross-border crime, including its significant support to Joint Investigation Teams, it should be ensured that Eurojust is able to focus on cases requiring such coordination. Other cases that could be facilitated by the exchange of information and/or transmission of judicial documents should be dealt by other channels, such as the European Judicial Network in criminal matters (EJN).
16. The Council welcomes the conclusion of the agreement between Eurojust and Denmark, thereby ensuring that the application of the Eurojust Regulation leaves no gaps in the EU judicial cooperation framework.

Improvement of cooperation and coordination with networks

17. The Council refers to its conclusions of 6 June 2019 on 'Synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters' (OJ C 207, 18.6.2019, p. 1). The Council encourages Eurojust, in cooperation with the EJN, the Genocide Network, the Joint Investigation Teams (JITs) Network and the European Judicial Cybercrime Network (EJCN), to implement the conclusions set out in that document, read together with the suggestions and recommendations set out in the joint paper annexed to those conclusions.

Resources

18. The Council refers to the European Council conclusions of 18 October 2018, which call for measures to provide Eurojust, alongside Europol, with adequate resources to face new challenges posed by technological developments and the evolving security-threat landscape, including through inter-agency cooperation and improved access to data. The current security threats to the EU and its Member States — posed by terrorism, migrant smuggling, cybercrime, trafficking in human beings and drug trafficking — continue to require an effective response from the police and the judiciary. In this connection, the Council underlines that the security and criminal justice chain should be viewed as a whole in order to ensure comprehensive security in the Union. Therefore, the importance and the role of all actors involved in this chain should be acknowledged in order to avoid impediments in one part of the chain and, worse still, impunity in the end.

19. The Council recognises that Eurojust faces a continuously increasing workload, including its new tasks such as those related to the Judicial Counter-Terrorism Register, increasing cooperation with third countries and the practical implementation of Regulation (EU) 2018/1727. Although Eurojust's operational workload and tasks have increased considerably, its budget has not. Moreover, the Council highlights that the proposed growth of the financial resources for law enforcement agencies in the context of the next multiannual financial framework, potentially leading to a higher caseload, may have an additional impact on the Eurojust's workload. The Council reiterates the importance of an efficient, up-to-date and properly functioning IT infrastructure and Case Management System (CMS) to enable Eurojust to carry out its tasks efficiently. The Council recognises that setting up such improvements requires appropriate human and financial resources.
 20. In view of the above, the Council considers that Eurojust should be provided with adequate resources, including for the benefit of the networks that depend from the Eurojust budget, in order to ensure its proper functioning as a vital actor within the security and criminal justice chain in the EU, and to ensure the continued development of its important strategic and operational work.
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