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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

**on the role of Eurojust and the European Judicial Network in the fight against
organised crime and terrorism in the European Union**

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Eurojust was set up, following the positive experience of Pro-Eurojust, by a Decision of 28 February 2002 (“the Decision”)¹; since then it has proved effective in bringing about a real improvement in the operation of law enforcement cooperation between the 27 Member States and has recorded significant operational successes.

In the Hague Programme² the European Council asked the Commission to consider Eurojust’s further development. Specialists in judicial cooperation met to discuss the issue in Vienna in September 2006³. The European Judicial Network⁴ has contributed to the process⁵. Eurojust itself has also made a contribution. In conclusions adopted on 13 June last, the Council once again asked the Commission to present a communication on the role of Eurojust and the European Judicial Network⁶.

1. **Transposal of the Decision: a qualified success**

Leaving aside for a moment the question of progress with the legal transposal of the Decision⁷, the Commission would like to stress that Eurojust’s operational record is a positive one. In 2006, 771 operational cases were registered. This represents an increase of 31% over the year 2005⁸. The quality and speed of the handling of cases are generally recognised. But the development of Eurojust needs to be accompanied by a clarification and reinforcement of the powers of the national members and by greater authority for the College. In order to achieve this objective, the Decision ought to be amended.

Possible improvements

1.1. **Giving wider powers to the national members**

A reinforcement of cooperation is made more difficult by the fact that there is no consistency in the powers of the national members. In view of the importance of Eurojust, the Member States should take measures to spell out the powers of the national members and of the College. If the national member is to have the proper degree of authority within the national law enforcement framework and at European level, an administrative decision designating the national member, describing his or her status and briefly setting out his or her responsibilities is not enough.

¹ OJ L 63, 6.3.2002, p. 1.

² OJ C 53, 3.3.2005, p. 1.

³ Document 14123/06, 19 October 2006, Eurojust 48, *limité*.

⁴ Joint Action of 29 June 1998 (OJ L 191, 7.7.1998, p. 4).

⁵ Vision Paper, 19 September 2006, document 6053/07 EJM 6.

⁶ Council conclusions, document 9920/07 COPEN 73.

⁷ See annexed tables.

⁸ Eurojust annual reports for 2004, 2005 and 2006.

In their dealings with the authorities in their home countries, national members rarely have power to act with authority themselves. A few Member States do allow their national member to order an investigation⁹. Most national members are entitled to suggest the setting up of a joint investigation team, but very few can negotiate it, and even fewer can order it¹⁰. More than half of the national members continue to hold law enforcement powers in their home country¹¹. But these powers are rarely exercised¹² because of the specific character of international criminal cooperation and an insufficient presence in the home country.

The information sought in requests for judicial cooperation submitted by the law enforcement authorities of the Member States is invariably wanted for the purpose of inquiries or legal proceedings that are under way in the particular Member State. Eurojust's work is not sufficiently proactive. Access to information is fundamental. The E-POC I and II projects, financed under the AGIS programme, have seen the installation of a secure internal communication network. The E-POC III project, currently being tested¹³, will allow information to be exchanged on a secure basis. Access to the information in SIS II will make it easier for national members to perform their function. Every Member State ought to develop the legal machinery to allow the national members access to the national files on persons in custody, criminal records, and DNA records¹⁴.

Articles 9(4) and 13 of the Eurojust Decision, and Article 2 of the Terrorism Decision¹⁵, require Member States to pass information to the national members as soon as it is known. Not all Member States comply with this obligation. The Council recently called on national law enforcement authorities¹⁶ to supply information on complex and serious cases to Eurojust more rapidly¹⁷. Some Member States have imposed a requirement that their national representative be informed of all transnational cases; this enables the representative to take the initiative and to correlate cases using the Eurojust databank. This practice should be encouraged by amending the Decision.

Proposals

National members are currently appointed for anything from a year to an unlimited period. Most are appointed for a term of three years, renewable once¹⁸. In order to give the organisation a measure of stability, national members should be appointed to Eurojust for a harmonised term of at least three years. They should not be removable. Article 9(1) should be amended accordingly.

⁹ Bulgaria, Lithuania, Malta, Portugal, Slovenia, Slovakia, Finland and Sweden.

¹⁰ The Czech Republic, Germany, Malta and Sweden.

¹¹ Bulgaria, the Czech Republic, Estonia, Ireland, Cyprus, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (in the UK, only in urgent cases where the proper authority is unable to act).

¹² Information supplied by Eurojust, 1 June 2007.

¹³ Between Italy, France, Poland, Romania and Slovenia.

¹⁴ Council Resolution of 9 June 1997 on the exchange of DNA analysis results (OJ C 193, 24.6.1997, p. 2).

¹⁵ 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).

¹⁶ Council conclusions on the fifth Eurojust annual report.

¹⁷ Conclusions, point 4.

¹⁸ Bulgaria, the Czech Republic, Germany, Ireland, Greece, Spain, France, Lithuania, Hungary, Portugal and Romania.

It is also important that the national member should be assigned to Eurojust on a full-time basis, and should have one or more deputies who can take his or her place, so as to ensure regular representation and full participation in the work of the College. The reinforcement of the national offices will be crucial, because Eurojust's operational capacity depends on it. Article 2(2) should be amended accordingly. The Commission also encourages Eurojust and the Member States to make use of the services of national experts. Article 30(2) already makes provision for this.

There ought to be a shared base of minimum powers. It is not the role of the national members to take the place of the administrative or court staff who handle requests for international mutual assistance on a day-to-day basis. The function of the national members is rather to take action at operational, legal or technical level, making use of their practical experience to improve the effectiveness of mutual assistance and other forms of cooperation. The Commission would therefore encourage Member States to develop their practice in this direction.

They might consider the following:

Together with the domestic law enforcement authorities, the national member should be able:

- **where necessary or urgent, to accept and forward requests from national authorities and to ensure that they are properly followed up**

These tasks are provided for in Articles 6(a)(v) and 6(g). The only thing that needs to be added is “monitoring the follow-up to requests”.

- **where there are difficulties with follow-up, to ask the law enforcement authority concerned, via the appropriate national member, to take further follow-up measures and to suggest additional investigations or inquiries**

Article 6(a)(i) already allows the national member to ask his or her own authorities to undertake an investigation; the scope of this provision should be extended.

- **to suggest that the prosecutor, judge or court dealing with a case take special investigation measures relating to specific facts**

This possibility ought to be provided for in Article 6.

- **to be informed before a decision is taken to set up a joint investigation team**

The possibility of setting up a joint investigation team is provided for in Article 6(a)(iv). Informing Eurojust in advance whenever a joint investigation team is to be set up would allow Eurojust to ask the national authorities to be allowed to play a role in joint investigation teams that might be of interest, thus avoiding the problems that can arise later.

- **to be informed to the extent necessary, where two other Member States are involved, of the organisation of a controlled delivery, an infiltration or an undercover investigation and to have responsibility for monitoring it**

- **to receive automatic, early, complete and continuous information on all criminal cases involving three Member States or more, or two Member States or more where the offence is particularly serious (terrorism or human trafficking) in so far as necessary for the performance of Eurojust's functions**

This is a request that the Commission put forward in its 2000 communication.

- **to forward this information to the national member of a Member State which has not been informed but which is involved de facto**

This task is referred to in Article 13(2), which should be amended to include a Member State which has not been informed but which is involved de facto.

- **to receive from national law enforcement authorities all judgments in transnational cases of money laundering, organised crime, human trafficking and terrorism in so far as necessary for the performance of Eurojust's tasks**

The provision of information of this kind is already within the scope of Article 6(a)(v), which needs to be clarified.

For all of these tasks it is important that requests for information submitted by a national member should not go unanswered. The fact that an inquiry may be confidential does not justify a refusal to send information to the national member of the Member State concerned. The level of protection of personal data provided for in Articles 14 to 25 of the Decision is sufficient.

In the longer term the Commission will examine the possibility of a new legal basis which would substantially reinforce the powers of the national members and which might in particular give them a greater role in the following:

- the initiation of criminal cases, especially those involving offences prejudicial to the financial interests of the Union;
- the setting up of a joint investigation team, and participation in it;
- the taking of specific investigative measures.

1.2. The powers of the College

The College has the same powers as the national members and has some additional tasks of its own.

Registration of new cases in the case management system¹⁹, at the request of Member States, is an important step in the gathering and transmission of information. In deciding to accept a case, the College states its criminal policy and the direction it would like the case to take.

¹⁹ In 2004, as part of an AGIS programme (EPOC), Eurojust set up an automated data processing system known as the case management system (CMS), whose development is continuing with the aid of that programme. Technical solutions are currently being explored with a view to establishing secure connections with the Member States.

Like the national member, the College can rule on conflicts of jurisdiction (Article 7(a)(ii)) and on competing arrest warrants²⁰. The few rulings made so far have all been accepted, but the College's decisions are not legally binding on the Member States.

The reason why Article 7 has been used so little may be that Member States felt that there was no need to refer a matter to the College or that the Member States managed to resolve any differences without needing to seek the College's opinion. But Member States are frequently unaware of the real scale of the case because information has not been assembled at European level, even though registration of information in the Eurojust database is now possible and encouraged.

The role of the College in the setting up of joint investigation teams is limited, because Member States still involve Eurojust in the establishment and supervision of such teams only rarely. So far, of 18 joint investigation teams set up²¹, Eurojust has played a role in only three.

The low level of involvement of the College in operational cases is due to the fact that the College does not initiate such cases itself: cases are referred to the College only where Member States disagree on the course to be taken. But if Eurojust had fuller information, the College could take on these tasks, as provided in the Decision, not only in response to requests under Article 7 but also in any other cases brought before it.

Proposals

The College should also have wider powers. The coordination and management of mutual assistance in criminal matters is primarily a matter for the national member, but the College could become a channel for the settlement of disagreements between Member States. The College should be able to strengthen its role as a mediator in order to prevent and help to resolve conflicts of jurisdiction between Member States.

In the longer term, in the context of a possible new legal basis, the Commission will consider conditions and machinery by which the College could:

- settle conflicts of jurisdiction between Member States and conflicts regarding the working of the mutual recognition instruments;
- initiate inquiries in a Member State and propose prosecution there, and play a role in specific investigation measures;
- initiate criminal inquiries at European level, especially regarding offences prejudicial to the financial interests of the Union.

1.3. Changes to the structure of Eurojust

Article 29(1) should be amended to allow the Administrative Director of Eurojust to be appointed not by all of the members of the College unanimously but by a two-thirds majority. It should also provide that the selection board should include a member of the Commission. .

²⁰ Article 16(2) of the Framework Decision on the European arrest warrant (OJ L 190, 18.7.2002).

²¹ Figures at 15 May 2007. Teams set up by Spain, France, Belgium, the Netherlands, the United Kingdom, Germany and Sweden.

2. Eurojust and the other players in judicial cooperation in criminal matters

Eurojust's relations with its partners should be clarified and simplified.

2.1. Relations with the European Judicial Network and the liaison magistrates

2.1.1. The European Judicial Network

As a result of its cross-cutting flexible structure, the European Judicial Network has facilitated judicial cooperation between the Member States. It has proved a useful tool: its Internet site on the systems of justice in Europe deserves special mention.

The differences in the organisation of the network in different Member States, linguistic difficulties, legal difficulties in international cooperation and frequent overlaps with the field of responsibility of Eurojust all justify a reorganisation of the network.

In order to strengthen and improve cooperation between Eurojust and the European Judicial Network, the Commission envisages the following structure.

The national contact point referred to in the Joint Action would also be the national correspondent of the Eurojust national member, who is referred to in Article 12 of the Decision. This national correspondent, working in the Member State, would be a member of the Eurojust national member's team. In collaboration with the national law enforcement authorities, he or she would manage the different points of contact in the country and would act as a link for Eurojust's policy of communication there. He or she would be the contact points' national representative for all dealings with the Eurojust secretariat. These national contact points would assist the other contact points in their Member State in case of difficulty. The national contact point would be the Eurojust national member's primary contact in the home country, but, of course, the national member would continue to be in direct communication with the law enforcement authorities of the country, a feature that is fundamental to the effectiveness of the system. The structure described already exists in some countries and has demonstrated its effectiveness; the Commission is accordingly proposing that it be generalised.

The proposal would require the amendment of Articles 26(2) and 12. The role of a national coordinator of this kind would be systematically to forward to the Eurojust national member any multilateral cases of which he or she might be aware and any complex bilateral cases that had not been resolved properly or promptly by the contact points. As a member of the national member's team, he or she would immediately forward all cases falling within the competence of Eurojust to the national member.

The Commission feels that the Eurojust secretariat ought to host not just the secretariat of the European Judicial Network but also the secretariats of operational networks in the law enforcement sphere such as the network of terrorism contact points, the CARIN network and the genocide network²².

²² Council Decision of 13 June 2002 (OJ L 167, 26.6.2002).

2.1.2. The liaison magistrates

The appointment of liaison magistrates to improve bilateral cooperation has been handled differently in different Member States. This channel of communication is provided for in a joint action of 1996²³, but it is used in different ways²⁴. In fact, only a minority of Member States have liaison magistrates at all²⁵, and yet liaison magistrates have a useful role to play in international law enforcement cooperation. In the future, Eurojust might itself designate liaison magistrates in countries outside the EU so as to facilitate cooperation between the Member States and the country in which they were to be appointed. Their functions would be similar to those of the Norwegian and United States liaison magistrates currently at Eurojust.

2.2. Stepping up cooperation with Europol

Since it signed a cooperation agreement with Europol²⁶, Eurojust has constantly improved its links with that organisation. It is worth drawing attention to the quality of the work done by these partners in organising expert meetings on joint investigation teams²⁷. On 7 June 2007 a Memorandum of Understanding was signed on the setting up of a secure communications network. This will increase the exchange of information between Eurojust and Europol.

The entry into force on 18 April 2007 of the Protocol of 27 November 2003 amending the Europol Convention²⁸ will facilitate access to Europol's analytical work files (AWFs) and wider participation in those analyses.

Cooperation between Eurojust and the various Europol national liaison offices is still uneven. The links should be strengthened systematically, and exchanges of information with these offices should be improved.

Development of cooperation between Eurojust and Europol in this fashion does not require amendment of Article 26, in so far as the rules on the protection of data permit Eurojust to exchange information in a satisfactory manner.

2.3. Stepping up cooperation with the Commission (OLAF)

Cooperation between Eurojust and OLAF²⁹ is governed by a Memorandum of Understanding³⁰, which should be modified by a cooperation agreement. The fields of responsibility of OLAF and Eurojust are separate³¹. In order to secure all of the potential benefit of cooperation between OLAF, as a specialised agency investigating Community fraud, and Eurojust, as a law enforcement cooperation agency, there is a need for exchange of information, both operational and strategic. The Commission takes the view, therefore, that

²³ Joint Action 96/277/EC of 22 April 1996 (OJ L 105, 27.4.1996).

²⁴ For example, France has 11 liaison magistrates, while some Member States have none.

²⁵ Germany, Estonia, Spain, France, Italy, the Netherlands, Finland and the United Kingdom.

²⁶ 9 June 2004.

²⁷ Eurojust Annual Report 2006, p. 17.

²⁸ Council Act of 27 November 2003 (OJ C 2, 6.1.2004, p. 1).

²⁹ Set up by Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 (OJ L 136, 31.5.1999, p. 20).

³⁰ Signed on 14 April 2003, not published.

³¹ The objectives and tasks of OLAF are set out in Council Regulation (EC) No 1073/1999 (OJ L 136, 31.5.1999, p. 1), and in Regulation (Euratom) No 1074/1999 (OJ L 136, 31.5.1999, p. 8).

the Decision should make provision for the regular exchange of information at a sufficiently early stage. Compatible rules on the protection of data should play a part in the development of closer cooperation.

The designation of contact points and the establishment of regular meetings for the exchange of information and training should continue.

2.4. Stepping up cooperation with Frontex

The protection of the EU's external borders on land or sea is a question that arises in connection not just with clandestine immigration but also with organised crime such as drug trafficking and human trafficking.

In the absence of legal obstacles, the signing of a cooperation agreement between Eurojust and Frontex is to be encouraged.

2.5. Cooperation with non-EU countries

Eurojust has developed contacts with non-EU countries with a view to facilitating and intensifying cooperation between law enforcement authorities.

On the basis of Article 27, Eurojust has concluded cooperation agreements permitting the exchange of information and personal data in operational cases and participation in coordination meetings³². These agreements are reflected in the sending of liaison officers to Eurojust by Norway and the United States. Negotiations are in progress on similar agreements with other countries³³. When a cooperation agreement cannot be negotiated, Eurojust seeks to develop a network of contact points; this has happened most notably in the Mediterranean³⁴ and with the IBER-RED network.

Conclusion

Amending the Decision so that the steps described can be taken would enable Eurojust to develop its potential for cooperation and to establish itself further as a vital player in the fight against organised crime and terrorism in Europe.

Eurojust needs to become a stronger structure acknowledged by all the Member States, who should consolidate the powers of their national members and of the College by transposing the Decision fully into their own law and expanding the powers conferred on them. This will permit progress in the fight against cross-border crime and the establishment of an area of justice, freedom and security in Europe.

³² On 15 June 2007 the countries concerned were Iceland, Norway and the United States.

³³ On 15 June 2007 these were Croatia, Russia, Switzerland and Ukraine.

³⁴ Algeria, Egypt, Jordan, Morocco and Tunisia .

Transposal of the Eurojust Decision and status of the national member

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	EN	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
Eurojust Decision transposed	yes				yes				yes	yes	yes		yes		yes				yes		yes			yes			
Transposal in progress			X			X		X														X			X		
Administrative decision												X				X						X					
No decision		X	X	X		X	X	X						X			X	X		X			X		X	X	X
National member's status	P	P	P	P	P/J	P	P	P/J	P/J	P	P/J	P	P	P	P/J	P	P	P	P/J	P	P	P	P	P/J	P/O	P	P
Term of office	5R	3	3R	U	3R	4R	3R	3R	3R	3R	4R	2R	5R	3	4R	3R	U	U	1R	U	3R	3R	4R	4R	2R	U	U

P: prosecutor J: judge O: police officer

Figure +R: term of office, renewable U: open-ended

Powers of the Eurojust national members (Article 6)

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	EN	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
To ask his or her Member State to undertake an investigation or a prosecution in a specific case	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
To accept a Eurojust decision on a conflict of jurisdiction or prosecution	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no	no	no	no	no	yes	no	yes	no	no
To manage coordination	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
To request and intervene in the setting up of a joint investigation team	yes	yes	yes	yes	yes	no	no	no	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes
To provide all useful	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

information for the performance of its tasks																											
To consult criminal records direct	yes	yes	yes	no	yes	yes	no	no	yes	yes	no	yes	yes	yes	yes	no	no	no	yes	yes	no	yes	no	yes	yes	yes	no
To make direct contact with the competent authorities	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	no	yes	yes	yes	yes	yes	yes

II. Further related powers not formally provided for in the Eurojust Decision

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	EN	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
Law enforcement or operational powers retained in home country	no	yes	yes	no	no	yes	yes	no	no	no	no	yes	yes	yes	no	no	yes	no	no	yes	no	yes	yes	yes	yes	yes	yes
To make a request for mutual assistance	no	yes	no	no	no	no	no	no	no	no	no	no	no	yes	no	no	yes	no	no	no	yes	no	no	yes	yes	yes	yes
To order an investigation and	no	yes	no	no	no	no	no	no	no	no	no	no	no	yes	no	no	yes	no	no	no	yes	no	yes	yes	yes	yes	no

prosecution																											
To authorise the setting up of a joint investigation team	no	no	yes	no	yes	no	no	no	no	no	no	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	yes	no