

EUROJUST IN E.U. - JUDICIAL CO-OPERATION

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ABSTRACT: *Eurojust's specific task is to actively liaise between European Union states' competent authorities to further improve, simplify and speed-up their co-operation.*

It is a small, dynamic, judicial co-operation unit set up under the European Union's "third pillar" in order to reinforce the fight against serious cross-border crime, particularly when such crime is organised.

Eurojust has a unique structure with a specific role: to intervene in the context of investigations and prosecutions concerning two or more European Union states, to collaborate in the criminal area, complicates their co-operation when addressing cross-border cases despite the existence of conventions on the subject.

KEYWORDS: *Eurojust, judicial co-operation, criminal matters, dynamic, competent, impact, European Union*

JEL CLASSIFICATION: *K 14, K 33*

1. Eurojust was formally created in 2002 by the Council Decision of 28 February, with a view to reinforcing the Fight against Serious Crime. Prior to Eurojust's formal creation, a prototype judicial co-operation unit, Pro-Eurojust, was set up by a Decision of the Council and started its work on 1 March 2001.¹

Eurojust is a small dynamic, judicial co-operation unit set up under the European Union's "third pillar" in order to reinforce the fight against serious cross-border crime, particularly when such crime is organised.

The European Union "third pillar" deals with police and judicial co-operation in criminal matters. Eurojust concerns the latter form of co-operation.

The European Council of Tampere which recommended the creation of a body composed of "national prosecutors, magistrates or police officers of equivalent competence, detached from each European Union state with the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organized crime cases."²

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¹ Council Decision of 14 December 2000 setting up a Provisional Co-operation Unit, O.J.L. 324/2, 21.12.2000

² H.G. Nilsson, "Eurojust: the Beginning or the End of the European Public Prosecutor" – The Third Eurojustice Conference, Santander, Spain, 24-27.10.2000, p. 1-6; N. Thwaites, "Eurojust: autre brique dans l'édifice de la coopération judiciaire en matière pénale ou solide mortier", 2003, Revue de science criminelle et de droit penal compare, p. 45-61

This recommendation was a response to the shortcomings of judicial co-operation in criminal matters in the European Union. So, one should note that European Union states have different criminal legal systems. This situation, along with a traditional reluctance to collaborate in the criminal area, complicates their co-operation when addressing cross-border cases despite the existence of conventions on the subject. In this context, Eurojust's specific task is to actively liaise between European Union states' competent authorities to further improve, simplify their co-operation. One should note that Liaison Magistrates and the European Judicial Network contact points, who are located, contrary to Eurojust, in the European Union states and act from therein, also aim at facilitating judicial co-operation in criminal matters in the European Union. They differ from Eurojust and between themselves, as to their structure, scope and means of action.³

2. Eurojust is a unique structure with a specific role. It should be noted that Eurojust is an intergovernmental and international body, and that each national member represents his state, appointed and remunerated by it.

Eurojust gathers national members who are globally referred to as the College. This is headed by a President, who is also a national member. Each of them is a prosecutor, seconded for the first time by his state at European Union level in The Hague. All members are located under one simple roof, which creates an ideal environment for a faster co-operation and a better knowledge of each other's different criminal system.

Eurojust's unique and unprecedented structure represents an important step forward to enhance multilateral co-operation in European Union criminal matters and assist states in a way they could either not achieve with difficulty and slowness, on their own.

Eurojust intervenes in the context of investigations and prosecutions concerning two or more European Union states:

a) by stimulating and improving judicial co-ordination, between European Union states competent authorities, of investigations and prosecutions in the European Union states on the basis of requests or information emanating from competent authorities or bodies;

b) by improving co-operation between the European Union states' competent authorities, especially by facilitating the execution of international mutual legal assistance and the implementation of extradition requests;

c) by generally supporting these competent authorities to increase the effectiveness of their investigations and prosecutions.⁴

3. Eurojust is a tool which can be contacted by states' competent authorities when a facilitation or co-ordination from a central level is needed *to solve* cross-border cases. It is worth mentioning that European Union states have been increasingly contacting Eurojust with information or requests for co-ordination. Eurojust's daily work has also an impact on European Union states by bringing them closer without however changing their criminal laws.

The help provided by the Eurojust can take various shapes such as putting different states' competent authorities in contact, obtaining and transmitting information, bringing

³ Joint Action of 22 April 1996 concerning the Framework for the Exchange of Liaison Magistrates to improve Judicial Co-operation between the Member States of the European Union; Joint Action of 29 June 1998 on the Creation of a European Judicial Network.

⁴ Eurojust: beacon in EU judicial co-operation, Nadine Thwaites, *International Review of Penal Law*, 2006, p. 293-295

together in co-ordination meetings various actors such prosecutors, investigators or police officers from European Union states, similar representatives from third-countries, Europol etc., involved in a specific case to contribute to resolving it. Eurojust have generated constructive results *on bi and* multilateral cases concerning illegal immigration, terrorism, drug trafficking, etc. which led to searches, seizures and arrests.

Eurojust is also entitled to address formal requests to the European Union states' competent authorities either via one or more of its national members or acting as a College. When the requests emanate from the College, a refusal to co-operate must be motivated. These formal requests encompass asking these competent authorities:

- to undertake an investigation or prosecution of specific acts;
- *to accept* that one of them may be in a better position to undertake an investigation or to prosecute certain acts;
- to co-ordinate between the competent authorities of the states concerned;
- to set up a joint investigation team;
- to provide Eurojust with any information that is necessary for it to carry out its tasks.

It should be noted that if Eurojust's requests are non-binding and *if* the unit is deprived of enforcement powers on European Union states *its requests are* generally complied with. Otherwise, Eurojust has political tools (like bringing the matters to the Council's attention) *to* identify reluctant authorities and encourage them to co-operate.

Eurojust also has an impact on European Union states in several other ways. For example, it organises strategic meetings on various topics such as trafficking in human beings, money laundering, and the European arrest warrant in order for practitioners to meet and identify blockages to co-operation as well as best practices or common procedures.

Eurojust has an important role in states' decisions on which jurisdiction should prosecute and to play in facilitating the implementation of the European arrest warrant.⁵

Moreover, Eurojust is linked to a series of related actors such as the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the Liaison Magistrates and the European Judicial Network in order to facilitate the exercise of its role with the European Union states' competent authorities. For this, it is an Agreement between Eurojust and Europol signed on 09.06.2004 and a Memorandum of Understanding between Eurojust and OLAF signed on 14.03.2003.

On the other hand, Eurojust has started to conclude agreements with third-countries, because cross-border crime transcends European Union' geographical frontiers. These agreements regulate the relation between Eurojust and third-countries such as the exchange of information in common cases, the processing of personal data and the participation in meetings. They also foresee the secondment of liaison prosecutors at Eurojust to further enhance this co-operation. Norway was the first third-country to second a liaison prosecutor to Eurojust. In 2005, co-operation agreements were concluded and signed with Norway, Iceland and Romania. Negotiations with the United States have been completed and the signature of an agreement was done in December 2006. Other

⁵ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, O.J.L. 190/1, 18.7.2002, art. 16 (2) and (7).

agreements include the Russian Federation, Ukraine, Croatia and Switzerland. It is interesting to note that Eurojust can also co-operate with third-countries without an agreement in urgent cases and if no personal data is transmitted by Eurojust.⁶

Eurojust also has links with organisations such as the Iberoamerican Network for Judicial Co-operation (IberRED) *with which had* coordinated a successful action against child pornography on the internet involving 17 countries in Europe and South America.⁷

4. Eurojust, in the future, will become a real European Prosecution Office. Today, Eurojust is a very well functioning unit, still quite young, but working perfectly.

Eurojust means quick tackling of the criminal networks, and, at the same time giving a feeling of security and safety to the European citizens, to the victims and to the families of victims.

At the same time, Eurojust's functions are in extension, could be comparable to the role of the judiciary in many civil law jurisdictions. Eurojust is taking a greater monitoring role in respect of Europol's work. It would secure greater legitimacy of Europol activities and would also be likely to improve the efficiency of police and judicial co-operation in the European Union by assisting in the development of high standards of good practice and bolstering trust between European Union states.

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⁶ Council Decision of 28 February 2002, art. 3(2) and art. 27(3).

⁷ Eurojust, Press Release, "Successful Action against Child Pornography", 21.02.2006