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COOPERATION BETWEEN EUROPEAN UNION MEMBER STATES IN THE FIELD OF CRIMINAL JUSTICE

Summary

The author presents in his paper the competences and objectives of Eurojust, the functioning of this body and the cooperation of Eurojust with other agencies. Eurojust is a body of the European Union, whose task is to encourage and improve the coordination and cooperation between competent judicial authorities of Member States. This body has its legal personality and was established by the EU Council Decision in 2002. This Decision was amended in 2003 and 2009.

Eurojust does not deal with all sorts of crime, because it was established with a view to reinforcing the fight against serious crime. The general competence of Eurojust covers all types of crime and offences in respect of which Europol is at all times competent. The competence of Europol is defined in the Article 4 of the EU Council Decision setting up the European Police Office (Europol) and in the Annex to this decision. Pursuant to this provision and its annex, the Europol is competent for organised crime, terrorism and other serious forms of crime, listed in the Annex to the Decision and which affect in such a degree two or more Member States that it urges, due to the extent, importance and consequences of criminal offences a joint action of Member States. In the Annex to the Decision are listed criminal offences which are within the competence of Europol and consequently also within the competence of Eurojust.

Eurojust is competent for the offences on the territory of all Member States. Eurojust may assist also in criminal matters at the request of a Member State's competent authority in which is involved a non-Member State, but only in the case when an agreement establishing cooperation with a non-Member state has been concluded or when this assistance is absolutely necessary.

In the context of its functioning, Eurojust pursues the following objectives:

(a) to stimulate and improve the coordination between the competent authorities of the Member States in the 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 body competent 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 international mutual legal assistance and the implementation of legal instruments which implement the principle of the **mutual recognition**;*

(c) to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.

Eurojust is composed of 28 members who consists the College. Eurojust is composed of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence. Member States have to ensure a continual and efficient participation in achieving objectives of Eurojust pursuant to Article 3. Eurojust has proved successful since its establishment and has gained a high degree of trust among the Member States. It is important that it enables besides the cooperation between the Member States also the cooperation with the institutions, authorities and agencies of the European Union and also the cooperation with the third states (non-Members) and organisations. It has to be specially stressed that the cooperation between different organisations and states in the prosecution of international crime is of utmost importance.

Key words: Eurojust, Europol, European Union, OLAF, cooperation between judicial authorities.

I. Introduction

Circumstances in society are changing and legislation should be adapted according to such changes. With the amendments to the national legislation it would be wise to provide the possibility of cooperation with other states and international organisations and bodies. In continuation I present the competences and objectives of Eurojust and the possibility of non - Member states for the cooperation with this body of the European Union.

Eurojust is a body of the European Union, whose task is to encourage and improve the coordination and cooperation between competent judicial authorities of Member States. This body has its legal personality and was established by the EU Council Decision in 2002.¹ This Decision was amended in 2003² and 2009.³

II. Competences and Objectives

Eurojust does not deal with all sorts of crime, because it was established with a view to reinforcing the fight against serious crime. The general competence of Eurojust covers all types of crime and offences in respect of which Europol is at all times competent. The competence of Europol is defined in the Article 4 of the EU Council Decision setting up the European Police Office (Europol) and in the Annex to this decision.⁴ Pursuant to this provision and its Annex, the Europol is competent for organised crime, terrorism and other serious forms of crime, listed in the Annex to the Decision and which affect in such a degree two or more Member States that it urges, due to the extent, importance and consequences of criminal offences a joint action of Member States. In the Annex to the Decision are listed criminal offences which are within the competence of Europol and consequently

also within the competence of Eurojust. These are the following criminal offences:

- unlawful drug trafficking,
- illegal money-laundering activities,
- crime connected with nuclear and radioactive substances,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- organised robbery,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime,
- illicit trafficking in hormonal substances and other growth promoters.

Europol's competence covers also related criminal offences. The following offences are regarded as related criminal offences:

- (a) Criminal offences committed in order to procure the means of perpetrating acts in respect of which Europol is competent;
- (b) Criminal offences committed in order to facilitate or carry out acts in respect of which Europol is competent;
- (c) Criminal offences committed to ensure the impunity of acts in respect of which Europol is competent.

The general competence of Eurojust covers also other offences committed together with the types of crime and the offences in respect of which Europol is at all times competent to act.

¹ Council decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, 2002/187/JHA, Official Journal of the European Communities L 63, 6.3.2002.

² Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 245, 25.9.2003.

³ Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 138, 4.6.2009.

⁴ Council Decision of 6 April 2009 establishing the European Police Office (Europol), 2009/371/JHA, OJ L 121, 15.5.2009.

In addition to the mentioned forms of crime, Eurojust can also provide assistance, by taking into account its objectives and on the request of the competent authority of the member state, in the investigation and prosecution of other criminal offences.

In accordance with the rules laid down by this Decision and at the request of a

Member State's competent authority, Eurojust may also assist investigations and prosecutions

concerning only that Member State and a non-Member State where an agreement establishing

cooperation pursuant to Article 26a (2) has been concluded with the said State or where in a specific case there is an essential interest in providing such assistance.⁵

In the context of its functioning, Eurojust pursues the following objectives:

(a) To stimulate and improve the coordination between the competent authorities of the Member States in the 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 body competent 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 international mutual legal assistance and the implementation of legal instruments which implement the principle of the **mutual recognition**;

(c) to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.⁶

III. Functioning of Eurojust

Eurojust is composed of 28 members who represent the College. Eurojust is composed of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence. Member States have to ensure a continual

and efficient participation in achieving objectives of Eurojust pursuant to Article 3.

In order to achieve these objectives:

(a) It is required from each national member to have his regular place of work at the seat of Eurojust

(b) Each national member shall be assisted by one deputy and by another person as an assistant. The deputy and the assistant may have their regular place of work at Eurojust. More deputies or assistants may assist the national members and may, if necessary and with the agreement of the College, have their regular place of work at Eurojust.

The national member shall have a position which grants him the powers referred to in this Decision in order to be able to fulfil his tasks. National members, deputies and assistants shall be subject to the national law of their Member State as regards their status.⁷

The deputy shall fulfil the criteria provided for in paragraph 1 of this Decision and be able to act on behalf of or to substitute the national member. An assistant may also act on behalf of or substitute the national member if he fulfils the criteria provided for in paragraph 1.⁸

If conditions laid down are fulfilled, Eurojust shall have the possibility of posting liaison magistrates in third States in accordance with this Decision.⁹

In order to accomplish its objectives, Eurojust shall fulfil its tasks through one or more of the national members concerned (in accordance with Article 6), or as a College (in accordance with Article 7). Eurojust functions as a College in accordance with Article 7 in the following cases:

– when so requested by one or more of the national members concerned by a case dealt with by Eurojust, or

– when the case involves investigations or prosecutions which have repercussions at

⁷ Paragraph 1, 2, 3 and 4, Article 2 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2

⁸ Paragraph 5, Article 2 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3. EJN 2.

⁹ Paragraph 7, Article 2 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

⁵ Paragraph 2, Article 3 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

⁶ Paragraph 1, Article 3 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

Union level or which might affect Member States other than those directly concerned, or

- when a general question relating to the achievement of its objectives is involved, or
- when otherwise provided for in this Decision.

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 7.¹⁰

In order to fulfil its tasks in urgent cases, Eurojust shall put in place an On-Call Coordination (OCC) able to receive and process at all times requests referred to it. The OCC shall be contactable through a single OCC contact point at Eurojust, on a 24 hour/7 day basis.

The OCC shall rely on one representative (OCC representative) per Member State who may be either the national member, his deputy, or an assistant entitled to replace the national member. The OCC representative shall be able to act on a 24 hour/7 day basis.

When in urgent cases a request for, or a decision on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, needs to be executed in one or more Member States, the requesting or issuing competent authority may forward it to the OCC. The OCC contact point shall immediately forward it to the OCC representative of the Member State from which the request originates and, if explicitly requested by the transmitting or issuing authority, to the OCC representatives of the Member States on the territory of which the request should be executed. These OCC representatives shall act without delay, in relation to the execution of the request in their Member State, through the exercise of tasks or powers available to them and referred to in Article 6 and Articles 9a to 9f.¹¹

When Eurojust acts through its national members concerned, it:

(a) may ask the competent authorities of the Member States concerned, giving its reasons, to:

- undertake an investigation or prosecution of specific acts;

- accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;

- coordinate between the competent authorities of the Member States concerned;

- set up a joint investigation team in keeping with the relevant cooperation instruments;

- provide it with any information that is necessary for it to carry out its tasks;

- take special investigative measures;

- 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;

The Member States shall ensure that competent national authorities respond without undue delay to requests made under this Article.¹²

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:

- 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 specific acts;

¹⁰ Article 5 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

¹¹ Article 5a of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

¹² Article 6 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09. REV 3. COPEN 9. EUROJUST 3. EJN 2.

- to coordinate between the competent authorities of the Member States concerned;

- to set up a joint investigation team in keeping with the relevant cooperation instruments;

- to provide it with any information that is necessary for it to carry out its tasks;

(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;

(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 authorities of the Member States, in particular on the basis of Europol's analysis;

(e) shall cooperate and consult with the European Judicial Network, including making use of and contributing to the improvement of its documentary database;

(f) may assist Europol, in particular by providing it with opinions based on analyses carried out by Europol;

(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.

Where two or more national members can not 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).

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.¹³

If the competent authorities of the Member States concerned decide not to comply with a request referred to in Article 6(1)(a) or Article 7(1)(a) or decide not to follow a written opinion referred to in Article 7(2) and (3), they shall inform Eurojust without undue delay of their decision and of the reasons for it. Where it is not possible to give the reasons for refusing to comply with a request because to do so would harm essential national security interests or would jeopardise the safety of individuals, the competent authorities of the Member States may cite operational reasons.¹⁴

Articles 9 to 9f provide in detail the powers of the national members.

For the efficient functioning of Eurojust, it is important to cooperate with the European Commission.¹⁵ The Commission shall be fully associated with the work of Eurojust, in accordance with Article 36(2) of the Treaty. It shall participate in that work in the areas within its competence. As regards work carried out by Eurojust on the coordination of investigations and prosecutions, the Commission may be invited to provide its expertise. For the purpose of enhancing cooperation between Eurojust and the Commission, Eurojust may agree on necessary practical arrangements with the Commission.¹⁶

¹³ Article 7 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09. REV 3. COPEN 9. EUROJUST3.EJN 2.

¹⁴ Article 8 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09. REV 3. COPEN 9. EUROJUST3.EJN 2.

¹⁵ European Commission is composed of 28 individual commissioners and the Commission staff. It holds in fact a position of the government of the European Union.

¹⁶ Article 11 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09. REV 3. COPEN 9. EUROJUST3.EJN 2.

IV. Cooperation with others

Eurojust may establish and maintain the cooperation with the institutions, bodies and agencies set up by, or on the basis of, the Treaties establishing the European Communities and the Treaty on European Union, if it is relevant for the performance of its tasks. Eurojust shall establish and maintain its cooperation with at least:

(a) Europol;

(b) OLAF;¹⁷

(c) European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex);¹⁸

(d) the Council, in particular with the Council's Joint Situation Centre.

Eurojust shall also establish and maintain cooperative relations with the European Judicial Training Network.

Eurojust may conclude agreements or working arrangements with the entities referred to in paragraph 1, Article 26. Such agreements or working arrangements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers to Eurojust. Such agreements or working arrangements may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.

Prior to the entry into force of an agreement or arrangement as referred to in paragraph 2, Article 26, Eurojust may directly receive and use informa-

tion, including personal data, from the entities referred to in paragraph 1, Article 26, in so far as this is necessary for the legitimate performance of its tasks, and it may directly transmit information, including personal data, to such entities, in so far as this is necessary for the legitimate performance of the recipient's tasks and in accordance with the rules on data protection provided in this Decision.

OLAF may contribute to Eurojust's work to coordinate investigations and prosecution procedures regarding the protection of the financial interests of the European Communities, either on the initiative of Eurojust or at the request of OLAF where the competent national authorities concerned do not oppose such participation.

For purposes of the receipt and transmission of information between Eurojust and OLAF, and without prejudice to Article 9, Member States shall ensure that the national members of Eurojust shall be regarded as competent authorities of the Member States solely for the purposes of Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).¹⁹ The exchange of information between OLAF and national members shall be without prejudice to the information which must be given to other competent authorities under those Regulations.¹⁹

Eurojust and the European Judicial Network²⁰ shall maintain privileged relations with each other, based on consultation and complementarity, especially between the national member, the European Judicial Network contact points of the same Member State and the national correspondents for Eurojust and the European Judicial Network. In order to ensure efficient cooperation, the following measures shall be taken:

¹⁷ OLAF is the European Anti-Fraud Office. The abbreviation comes from its French name: Office de Lutte Anti - Fraude. OLAF investigates fraud against the EU budget, corruption and serious misconduct of employees within the European institutions and develops an anti-fraud policy for the European Commission. OLAF was established by the decision of Commission: Commission Decision of 28 April 1999 establishing the European Anti - fraud Office (OLAF), OJ L 136, 31.5.1999.

¹⁸ It was established by the Council of the European Union regulation: Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation of the External Borders of the Member States of the European Union, OJ L 349, 25.11.2004.

¹⁹ Article 26 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

²⁰ The European Judicial Network is a network of national contact points, the objective of which is facilitating the cooperation in criminal matters. It was established by the joint action: Joint Action 98/428 JHA of 29 June 1998 in order to fulfil recommendation no 21 of the Action Plan to Combat Organized Crime adopted by the Council on 28 April 1997. The Network was officially opened on 25 September 1998. This network represents the first mechanism of judicial cooperation which became really operative.

(a) national members shall, on a case-by-case basis, inform the European Judicial Network contact points of all cases which they consider the Network to be in a better position to deal with;

(b) the Secretariat of the European Judicial Network shall form part of the staff of Eurojust. It shall function as a separate unit. It may draw on the administrative resources of Eurojust which are necessary for the performance of the European Judicial Network's tasks, including for covering the costs of the plenary meetings of the Network. Where plenary meetings are held at the premises of the Council in Brussels, the costs may only cover travel expenses and costs for interpretation. Where plenary meetings are held in the Member State holding the Presidency of the Council, the costs may only cover part of the overall costs of the meeting;

(c) European Judicial Network contact points may be invited on a case-by-case basis to attend Eurojust meetings.

Without prejudice to Article 4(1), the Secretariat of the Network for Joint Investigation Teams and of the network set up by Decision 2002/494/JHA shall form part of the staff of Eurojust. These secretariats shall function as separate units. They may draw on the administrative resources of Eurojust which are necessary for the performance of their tasks. Coordination between the secretariats shall be ensured by Eurojust.

This paragraph shall apply to the secretariat of any new network set up by a decision of the Council where that decision provides that the secretariat shall be provided by Eurojust.

The network set up by Decision 2008/852/JHA may request that Eurojust provide a secretariat to the network. If such request is made, paragraph 2 of this Article shall apply.²¹

In so far as is required for the performance of its tasks, Eurojust may establish and maintain cooperative relations with the following entities:

(a) third States;

(b) organisations such as:

- international organisations and their subordinate bodies governed by public law;

- other bodies governed by public law which are based on an agreement

between two or more States, and

- the International Criminal Police Organisation (Interpol).

Eurojust may conclude agreements with the entities referred to in paragraph 1 of this Article. Such agreements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers or liaison magistrates to Eurojust. Such agreements may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.

Agreements referred to in paragraph 2 of this Article containing provisions on the exchange of personal data may only be concluded if the entity concerned is subject to the Council of Europe Convention of 28 January 1981 or after an assessment confirming the existence of an adequate level of data protection ensured by that entity.

Agreements referred to in paragraph 2 of this Article shall include provisions on the monitoring of their implementation, including implementation of the rules on data protection. Prior to the entry into force of the agreements referred to in paragraph 2, Eurojust may directly receive information, including personal data in so far as this is necessary for the legitimate performance of its tasks.

Prior to the entry into force of the agreements referred to in paragraph 2 of this Article, Eurojust may under the conditions laid down in Article 27(1), directly transmit information, except for personal data, to these entities, in so far as this is necessary for the legitimate performance of the recipient's tasks. Eurojust may, under the conditions laid down in Article 27(1), transmit personal data to the entities referred to in paragraph 1 of this Article, where:

(a) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Eurojust is competent, and

(b) Eurojust has concluded an agreement as referred to in paragraph 2 with the entity concerned

²¹Article 25a of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

which has entered into force and which permits the transmission of such data.

Any subsequent failure, or substantial likelihood of failure, on the part of the entities referred to in paragraph 1 to meet the conditions referred to in paragraph 3 of this Article, shall immediately be communicated by Eurojust to the Joint Supervisory Body and the Member States concerned. The Joint Supervisory Body may prevent the further exchange of personal data with the relevant entities until it is satisfied that adequate remedies have been provided.

However, even if the conditions referred to in paragraph 7 of this Article are not fulfilled, a national member may, acting in his capacity as a competent national authority and in conformity with the provisions of his own national law, by way of exception and with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security, carry out an exchange of information involving personal data. The national member shall be responsible for the legality of authorising the communication. The national member shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorised only if the recipient gives an undertaking that the data will be used only for the purpose for which they were communicated.²²

Before Eurojust exchanges any information with the entities referred to in Article 26a, the national member of the Member State which submitted the information shall give his consent to the transfer of that information. In appropriate cases the national member shall consult the competent authorities of the Member States.

Eurojust shall be responsible for the legality of the transmission of data. Eurojust shall keep a record of all transmissions of data under Articles 26 and 26a and of the grounds for such transmissions. Data shall only be transmitted if the recipient gives an undertaking that the data will be used only for the purpose for which they were transmitted.²³

²²Article 26a of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

²³Article 27 of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

For the purpose of facilitating judicial cooperation with third States in cases in which Eurojust is providing assistance in accordance with this Decision, the College may post liaison magistrates to a third State, subject to an agreement as referred to in Article 26a with that third State. Before negotiations are entered into with a third State, the Council, acting by qualified majority, shall give its approval. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.

The liaison magistrate referred to in paragraph 1 of this Article is required to have experience of working with Eurojust and adequate knowledge of judicial cooperation and how Eurojust operates. The posting of a liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his Member State.

Where the liaison magistrate posted by Eurojust is selected among national members deputies or assistants:

- he shall be replaced in his function as a national member, deputy or assistant, by the Member State;
- he ceases to be entitled to exercise the powers granted to him in accordance with Articles 9a to 9e.

Without prejudice to Article 110 of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/681, the College shall draw up rules on the posting of liaison magistrates and adopt the necessary implementing arrangements in this respect in consultation with the Commission.

The activities of liaison magistrates posted by Eurojust shall be the subject of supervision by the Joint Supervisory Body. The liaison magistrates shall report to the College, which shall inform the European Parliament and the Council in the annual report and in an appropriate manner of their activities. The liaison magistrates shall inform national members and national competent authorities of all cases concerning their Member State.

Competent authorities of the Member States and liaison magistrates referred to in paragraph 1 of this Article may contact each other directly. In such

cases, the liaison magistrate shall inform the national member concerned of such contacts. The liaison magistrates referred to in paragraph 1 shall be connected to the Case Management System.²⁴

Eurojust may, with the agreement of the Member States concerned, coordinate the execution of requests for judicial cooperation issued by a third State where these requests are part of the same investigation and require execution in at least two Member States. Requests referred to in this paragraph may also be transmitted to Eurojust by a competent national authority.

In case of urgency and in accordance with Article 5a of this Article, the OCC may receive and process requests referred to in paragraph 1 of this Article and issued by a third State which has concluded a cooperation agreement with Eurojust.

Without prejudice to Article 3(2), where requests for judicial cooperation, which relate to the same investigation and require execution in a third

State, are made, Eurojust may also, with the agreement of the Member States concerned, facilitate judicial cooperation with that third State.

Requests referred to in paragraphs 1, 2 and 3 may be transmitted through Eurojust if it is in conformity with the instruments applicable to the relationship between that third State and the European Union or the Member States concerned.²⁵

V. Conclusion

Eurojust has proved to be successful since its establishment and has gained a high degree of confidence among the Member States. It is important that it enables besides the cooperation between the Member States also the cooperation with the institutions, authorities and agencies of the European Union and also the cooperation with the third states (non-Members) and organisations. It has to be specially stressed that the cooperation between different organisations and states in the prosecution of international crime is of utmost importance.

²⁴ Article 27a of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.

²⁵ Article 27b of the consolidated text of the Council Decision on Setting up Eurojust, 5347/3/09.REV 3.COPEN 9. EUROJUST3.EJN 2.