

EUROJUST: SIGNPOST ON THE ROAD TO SECURITY, FREEDOM AND JUSTICE IN EUROPE

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I. INTRODUCTION

With the abolition of internal borders, the European Union has developed into a single economic area with free movement of persons and goods. It is without doubt that the increased mobility of criminals, their improved technical equipment, the subsequent ‘merging’ of European nations due to the disappearance of checks on internal borders and the opening up of Middle and Eastern European areas after the collapse of the communist system have caused a major increase in cross-border crime. Globalization in the fast developing world of business, finance, trade and commerce is only one side of the coin. The other side shows that crime has become globalized too. Criminals who prepare and commit terrorist attacks; who deal in drugs or arms or counterfeit money; who traffic in human beings and goods; or who launder the proceeds of criminal deals, do not organize their criminal activities according to national borders. On the contrary, the opening up of borders in Europe and the slackening of rules governing transactions in goods and foreign currency are specifically used to wipe away the traces of criminal actions. Not only has the nature of crime changed but also its gravity. Even more frustratingly, while the borders are open to criminals, they are still more or less closed to law enforcement agencies due to reasons of national sovereignty. Police and prosecutors come to a stop at national borders because investigation on foreign territory is still not permitted under international law.

Apart from a few very strictly defined exemptions concerning cross-border pursuits and surveillance operations, law enforcement agencies are mostly left with the option of obtaining information and evidence by going the often cumbersome way of mutual legal assistance. Ignoring the aim to make the European Union an area of freedom, security and justice, as set down in Articles 29 and 31 of the Treaty of the European Union, national interests and prejudices against unrestricted cross-border prosecution networks still persist. Justice and Home Affairs seem to be the final bastions of national power. And, although huge efforts have been made (and also major improvements attained) in the field of mutual legal assistance, a bewildering mass of sometimes overlapping regulations at the European level (conventions, treaties, framework decisions, recommendations) as well as a flood of additional (mostly bilateral) agreements, national declarations and reservations prove themselves to be obstacles to international co-operation. Formalities that have to be observed in legal assistance relations make life difficult for practitioners and language barriers should not be underestimated.

These deficits have necessitated a call for the harmonization of substantive criminal law and criminal procedure in Europe. Tackling this problem more successfully could lead to the appointment of a European Public Prosecutor and to the setting up of a European Criminal Court, but it would demand too far-reaching inroads into the sovereignty of each State and, above all, into the deep-rooted legal traditions of the individual countries. It also bears dangers for legal security, because it presupposes agreement on minimal standards. The legal systems of the Member States (on the front line the ‘antagonists’: common law and civil law), differ too widely, in particular with respect to procedural law, to achieve quick results in this field.

New arrangements based on the principle of mutual recognition of decisions offer a second possibility. The best example for this is the creation of the European Arrest Warrant, which enables an arrest warrant issued in one Member State to be executed in another Member State with a minimum of formality. Similar regulations will be foreseen in creating a European Evidence Warrant.

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Another approach is speeding up, simplifying, and improving mutual legal assistance. On one hand, new European conventions on extradition and legal assistance emphasize technical developments and - above all - modern methods of investigations while, on the other hand, the European Union has in recent years created a number of personally bound (individual-dependent) institutions. These are, in the field of justice: the Liaison Magistrates; the European Judicial Network (EJN); and, in order to raise legal co-operation to the same level as that of the police and create a counterpart to the European Police Office (Europol), Eurojust, which is the subject of this paper.

II. WHAT IS EUROJUST? OUTLINING THE LEGAL FRAMEWORK

Following an idea first floated at the EU-summit of Tampere, Finland in October 1999 (*Number 46 of the Tampere Conclusions*¹) a new system of judicial co-operation was established to help in the fight against serious organized cross-border crime in the European Union. Negotiations on the proposal to establish Eurojust were time consuming and difficult. They were, however, given impetus by the terrorist attacks of 11 September 2001 in the United States of America. After the EU Justice and Home Affairs Ministers had consented to the instrument creating the definitive Eurojust on 6 December 2001, the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime² was published on 6 March 2002 in the Official Journal (OJ) of the European Communities. Since then Eurojust (which had already started work on a provisional basis on 1 March 2001 in Brussels under the name of Pro-Eurojust) has been formally established and the unit is now permanently based in The Hague where it is located in the same building as the International Criminal Court (ICC).

Eurojust is the first permanent network of judicial authorities to be established anywhere in the world. The goal of Eurojust is to improve the fight against serious crime, in particular when it is organized and involving two or more Member States.

A. Objectives and Competences

Eurojust is a body with legal personality composed of one National Member seconded by each Member State in accordance with its legal system. The National Member should be a prosecutor, judge or police officer of equivalent competence, assisted by one or more persons. The Eurojust National Members assist their domestic authorities in investigating and prosecuting serious cross-border crime cases by co-ordinating the activities of the national authorities responsible for particular cases and facilitating the collecting of evidence under the European and international arrangements in mutual legal assistance. Eurojust's objectives³ are to:

- stimulate and improve the co-ordination of investigations and prosecutions of the Member States;
- improve co-operation between the competent authorities of Member States, in particular in the field of extradition and mutual legal assistance;
- otherwise support the competent authorities of the Member States in order to render their investigations and prosecutions more effectively; and
- to assist investigations and prosecutions concerning only one Member State and a Third State or one Member State and the Community.

Eurojust is operating against the background of an immense increase in severe forms of international crime. It was mainly for this purpose that the unit was set up. It provides the main institutional focus in the European Union for co-operation between the national prosecution offices.

The general competences of Eurojust cover the types of crimes in respect of which Europol is also competent to act (Art 2 (2) Europol Convention⁴) which means nearly every form of severe criminality,

¹ "To reinforce the fight against serious organized crime, the European Council has agreed that a unit (Eurojust) should be set up composed of national prosecutors, magistrates or police officers of equivalent competence, detached from each Member State according to its legal system. Eurojust should have the task of facilitating the proper co-ordination of national prosecuting authorities and of supporting criminal investigations in organized crime cases, notably based on Europol's analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory."

² Official Journal of the EU (OJ) L 63, 06.03.02, page 1.

³ Art. 3 (1) Eurojust Decision (EJD).

additionally, computer crime, fraud, corruption, and any criminal offence affecting the European Community's financial interests; money laundering, environmental crime, participation in a criminal organization; and other offences committed in association with these types of crime.⁵ Eurojust may also assist in investigations and prosecutions related to other types of crimes at the request of a competent authority of a Member State.⁶

The unit operates on the basic principle that if a prosecutor (or judge) in a Member State has a problem when dealing with an international case he/she can contact their respective national member at Eurojust. They in turn can speak to the Eurojust member from the State(s) concerned - directly and without the chains of bureaucracy - and obtain a quick and definitive answer to their problem.

The unit will also make recommendations to the Council and to the Commission of the European Union, as well as to the legislators in their home countries, to take action to remedy blockages in current arrangements for mutual legal assistance and, if appropriate, to amend national law.

It is important to note that Eurojust is not a European Public Prosecutor. Its members will not conduct investigations nor will they appear in court. They will assist domestic prosecutors (and judges) to operate more effectively when dealing with international cases. When Eurojust acts through its National Members, it may ask competent national authorities to consider undertaking an investigation or prosecution.⁷ When acting as a college, the wording is stronger⁸; politicians have given Eurojust the capacity to make formal requests to the competent authorities in domestic jurisdictions to undertake an investigation into specific criminality. If a Member State refuses to do so, it must give reasons. At first sight this may not appear to be a significant power, but Member States will surely be politically embarrassed if they are cited in the Eurojust annual report⁹ as having repeatedly refused to investigate particular types of criminality!

In 2005 the college twice exercised its powers under Article 7 of the Eurojust decision, which enables the college to make formal requests to national authorities to act. In both so called 'college cases' the requested Member State agreed to consider acting upon the request.

With the enlargement from 15 to 25 National Members in 2004 the college decided to change its working structure to ensure that the wide range of topics to be handled could be divided among the members and so handled more effectively in smaller groups. It was important to harness and blend the capacities and skills of all members allowing each of them to contribute to the functioning, the operational business, and the management of Eurojust. So it was agreed to form teams, specialized in certain types of crime, administrative or strategic topics, dividing the responsibility and avoiding the cumbersome process of referring all matters to the college plenary sessions.

Each team is comprised of several Members; one of them acts as chair and takes the lead in that particular area of work. This method of operation allows the unit to draw on the individual experience and expertise of its members and also derive support from staff in the Eurojust administration.

The teams deal with initial reactions, consider material and issues, make recommendations and prepare briefings for the college meetings. Team members can also represent Eurojust in appropriate forums dealing with the subjects for which they are taking a leading responsibility. The idea and strategy of building up teams is vital not only when dealing with the widening range of subjects, both in casework and strategic matters, but also for legislative proposals being referred to the college for opinion from Member States and from other EU organizations and bodies. At present Eurojust has fourteen teams:

- Presidency
- Casework

⁴ OJ C 316, 27.11.1995, page 1.

⁵ Art. 4 (1) EJD.

⁶ Art. 4 (2) EJD.

⁷ Art. 6 EJD.

⁸ Art. 7 EJD.

⁹ Eurojust website: www.eurojust.europa.eu.

- Terrorism
- Trafficking in Drugs and People
- Financial Crime
 - I (Fraud, Counterfeiting Currency, Corruption)
 - II (Money Laundering, Environmental Crime)
- European Arrest Warrant/European Evidence Warrant
- Data Protection
- 'Brussels' (European Parliament/Council/Commission)
- European Judicial Network and Liaison Magistrates
- Europol (European Police Office)
- OLAf (European Anti-Fraud Office)
- Third States
- Western Balkans
- Administration.

Additionally, Eurojust has appointed two consultants (one-man teams) for cyber criminality and football related crimes (hooliganism). The latter consultancy was established with a view to the 2006 Football World Championships in Germany as well as to comparable events in the future.

B. Members of Eurojust

The National Members together form the College of Eurojust. At the time of writing, the countries of the European Union represented in Eurojust are: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom of Great Britain and Northern Ireland.

The college is directly accountable to the European Council of Ministers to which it is required to provide regular reports. It is not subject to direct parliamentary control but is required to provide an annual report on its activities to the European Parliament.¹⁰ The European Commission is associated with Eurojust's work and is responsible for proposing its budget, but has no say on Eurojust's operational work and decisions.

The unit is self-governing and elects its own President. At the time of writing, the President is Michael Kennedy from the United Kingdom, re-elected for a second term of three years in June 2005. There are two Vice-Presidents (currently Roelof Jan Manschot from the Netherlands and Ulrike Haberl-Schwarz from Austria).

The College is supported by an administrative team, led by the Administrative Director, Ernst Merz from Germany (former Director of the European Law Academy), who is supervised by the President of the College. The respective administrative units are: budget/finance, human resources, data protection, information management, legal services and security/general services.

Each Member State has designated at least one representative to the unit; a prosecutor, judge or police officer of equivalent competence.¹¹ They also have the option of sending more than one person, if the national system so requires.¹² Following this possibility, some countries, particularly bigger countries like the United Kingdom, France, Italy and Germany, have appointed deputies and/or assistants to the unit. The national representatives are highly experienced multilingual prosecutors and judges with efficient and effective networks and contacts in their home jurisdictions.

At present more than 40 national delegates (25 National Members, more than 15 deputies, additional assistants [some of them working in their home countries], and seconded national experts) and more than 80 staff members are working for Eurojust. The Members of the unit work as equals at a round table. Their language of negotiation is English. There are still inconsistencies in the powers of National Members. They

¹⁰ Art. 32 (2) EJD.

¹¹ Art. 2 (1) EJD.

¹² Art. 2 (2) EJD.

are subject to the national law of their Member State as regards their status. It is for each Member State to set the duration of its Member's terms of office and to define the nature and extent of the judicial powers granted to them.¹³ The Eurojust decision leaves Member States discretion on how to determine the role of their delegates. Some members have full prosecutorial (or judicial) powers, others do not. This has caused, and still causes, problems for some delegates in obtaining vital information from their domestic judicial or police authorities and can also have an impact on the efficiency and on the accountability of Eurojust. Therefore the question arose if these disparities are in line with the spirit of the Eurojust decision. It is very likely that more information and more cases would be referred to Eurojust if its Members had more powers. In a 2005 evaluation report, requested by the Council of Ministers for Justice and Home Affairs, the College of Eurojust commented upon this important question. Their analysis suggests that only a few Members have experienced real problems because of a lack of judicial powers but nearly all of them believe that more powers are needed. This may seem something of a paradox but finds an answer in the fact that basic common powers would help to ensure a baseline of consistency, allowing work on an equal footing, having equal expectations and obtaining a level of certainty when facilitating co-ordinated action and supporting judicial co-operation. Among these basic common powers could be those to:

- issue requests for mutual legal assistance;
- execute requests;
- act as central authorities in relation to foreign judicial authorities;
- decide upon investigations, prosecutions and mutual legal assistance rather than only recommend them; and
- to decide upon (and authorize) controlled deliveries and undercover operations in urgent cases.

III. OPERATIONAL WORK

A. Meetings, Seminars and Conferences

From the beginning the unit placed a strong emphasis on operational work which is perhaps best described as a case co-ordination centre or a clearing-house for co-ordination and facilitation of co-operation between competent national authorities concerned with investigations into serious or organized crime. In 2001, 192 cases were referred to the forerunner organization Pro-Eurojust. Due to lots of - mainly administrative - problems connected with the foundation as a permanent unit and its move from Brussels to The Hague, Eurojust in 2002 dealt with only 202 cases.

Since the move from Brussels to The Hague these difficulties have been overcome. Probably a result of better basic conditions in The Hague (located in its own building with high technical standards and having its own staff) and even more likely, because of increased acceptance among the practitioners in the Member States, the entry figures for 2003 climbed up to 300 cases.

In 2004 (the enlargement of the European Union from 15 to 25 Member States dates from 1 May 2004), 380 cases were assigned. In 2005 the entry figures climbed distinctly up to 588 cases, nearly 50% of them involving drug trafficking and severe forms of fraud; other categories of cases involving significant instances of money laundering, terrorism and trafficking in human beings. These 2005 entry figures have already been topped at summer break 2006 (deadline: 15 August 2006), so close to one thousand cases may be reached at the end of this year.

The enormous increase in cases (remember that only cases of severe criminality are being dealt with) is shared by most Member States where Eurojust is becoming well known and well used. The competent national authorities are becoming more aware and confident about the added value of Eurojust's involvement.

As in previous years, the proportion of bilateral cases (more than 70%) is substantial. Besides the fact that a bilateral case does not always equate to a simple case, Eurojust is sometimes the last hope for prosecutors to obtain the international co-operation they crucially need. Nevertheless the aim of the unit is to play a more significant role in the co-ordination of multilateral cases, preferably at an early stage of the investigations and prosecutions, in particular with a view to the problem of which Member State should have jurisdiction. Drug trafficking and fraud cases represent the highest percentage of crimes referred to

¹³ Art. 9 (1) and (3) EJD.

Eurojust. Altogether the unit has registered 36 different types of severe criminality in 2005. Referrals for all types of criminality have increased, some of them, like trafficking in human beings, significantly. When dealing with individual cases in practice, Eurojust observes the laws of data protection¹⁴ and applies the relevant national law to which its members are subject.

In an initial level one meeting the National Member in question, having received an enquiry from a public prosecutor, judge or police officer at home, will notify the entire unit of this (in an electronic registration form, the case management system or CMS) to get the approval of the college.

At a level two meeting only the Eurojust delegates of the Member States immediately affected take part and exchange all the information and data required to reply to the request. This is not recorded in a file for the entire unit.

Important and/or particularly difficult cases sometimes lead to level three meetings bringing together prosecutors and investigators from several Member States and their national delegates from Eurojust in The Hague - or elsewhere in the Member States - to exchange information and to improve ways to assist each other when investigations cross national borders.

Eurojust hosts those meetings, providing translation facilities and paying all costs for the two participants from the respective Member States involved. Following the pleasing trend in the number of cases registered, the number of operational meetings in 2005 has also increased to 73 (55 of those held in The Hague premises, 18 in the Member States). A further increase of these successful meetings for 2006 is already visible. Eurojust is also arranging strategic meetings. Their objectives are:

- to disseminate information on practical problems, solutions and good practice in the field of organized crime and to create a forum for practitioners to have direct discussions with their European counterparts;
- to create networks between prosecutors and investigators and to build up trust and confidence between them to ensure a better, faster and less bureaucratic co-operation and co-ordination;
- to identify possible new cases for Eurojust ('marketing').

A good first example of a strategic meeting was a co-ordination meeting held on 13 June 2001 in Brussels on *Al-Qaeda* terrorism, before the tragic events of September 11 of that year. As a result of information exchanged at that meeting several terrorist arrests were made that would not have been possible had the meeting not been arranged. Several follow-up-meetings on terrorism have taken place since then, at least one every year, some of them also dedicated to the financing of Islamic terrorism. Other co-ordination meetings have also taken place on a variety of types of criminality, mostly in high profile cases, concerning for example:

- trafficking in human beings
- money laundering
- child pornography on the internet
- drug trafficking
- counterfeiting currency
- fraud
- environmental crime
- joint investigation teams.

Sharing the expertise of prosecutors, judges and policemen in these meetings gives Eurojust more understanding also in reflecting upon major obstacles to mutual legal assistance.

From the very beginning Eurojust has also been organizing seminars and conferences. These started in 2003 in The Hague with a conference on concurrent jurisdiction, identifying a number of criteria that should be considered by prosecutors when reaching a decision in which country a prosecution should take place. Seminars in 2004 and 2005 have been held on the topic of the European Arrest Warrant (EAW) in Prague, the Czech Republic and in Budapest, Hungary. In this field Eurojust is entrusted with two tasks regarding the operation of such warrants. The unit's advice may be sought if there are competing

¹⁴ Eurojust Rules on Data Protection, OJ, C 68, 19.03.2005, page 1.

warrants issued by more than one Member State and Eurojust must be informed if there are delays in the execution of warrants.¹⁵ A follow-up meeting on the EAW topics will be held in Bratislava, Slovakia in October 2006.

In order to heighten the acceptance of Eurojust and to increase the case numbers most of the National Members organized marketing seminars in their own countries for prosecutors, judges, police officers, and partly also for civil servants from tax and customs authorities.

In 2005 for instance, seminars were held in Thessaloniki, Greece with the participation of more than 90 national prosecutors; in Tallinn, Estonia with more than 100 prosecutors from the three Baltic (EU Member) states: Estonia, Latvia and Lithuania; and in Cottbus, Germany with more than 120 prosecutors from Germany, Poland and (the Third State) Ukraine. A similar event took place in Budapest, Hungary with more than 60 prosecutors. At all these seminars other National Members assisted their Eurojust colleagues from the organizing countries to provide a real European flavour. Additionally, marketing seminars conducted only by the national desks concerned were held: seventy of them alone in Germany, another fifteen in Portugal, and several more in Austria, Finland, France and the Netherlands (all in 2005).

B. Eurojust and the Fight against Terrorism

Co-ordinating the fight against terrorism has absolute priority for Eurojust. The Eurojust weekly 'terrorism' meeting has established a centre of expertise to:

- ensure that terrorism co-ordination meetings are well prepared and organized;
- enhance the exchange of terrorism-related information in regular contact with national correspondents for terrorism;
- build up and maintain a general database of legal documents related to terrorism; and
- to define a better approach to the receipt and handling of terrorism information (from open and closed sources).

In 2005 the team prepared two strategic meetings on terrorism, bringing together experts from all 25 EU Member States, and additionally a tactical meeting dedicated to Islamic terrorism. Soon after the September 11 attacks, and with increasing impetus, the EU Council took a bundle of initiatives on combating terrorism as one of the most serious threats to democracy, to the free exercise of human rights, and to economic and social development, in the world. Following an EU Council Decision of 19 December 2002,¹⁶ all Member States have been called to appoint national correspondents for terrorism to provide Eurojust (and Europol) with all information regarding ongoing investigations, trials, and convictions linked to terrorism in the Member States. Until now the input to Eurojust and Europol has been rather insufficient. Therefore neither organization could get the necessary overview of the situation in the Member States to act according to their main roles in the field of terrorism: Eurojust, to set up an index 'terrorism database' and to take care of co-ordination and close co-operation of the judicial authorities; Europol, to provide the law enforcement agencies with the results of its Analytic Work Files.

Proposing new instruments and institutions after every major terrorist attack is no solution in the fight against terrorist threats. Instead of 'actionism' to placate public opinion, faster implementation and application of already existing instruments is needed. Co-ordinated action against terrorism, close co-operation on an international level without too many formal barriers (nevertheless scrupulously observing and guaranteeing human rights standards) must have priority.

C. Differences in Criminal Justice Systems

Major differences between the 25 national criminal justice systems within the European Union, applying both to substantive criminal law (concerning for instance the definition of crimes and the level of penalties) and, even more, to criminal procedure (evidence requirements, modes of investigation and trial, investigating authorities, the role of judges) can lead to serious difficulties when investigating cross-border crimes. The differences between the common law system (United Kingdom and Ireland) and the civil law system (applicable for most of the countries on the European continent) are significant. In their daily work,

¹⁵ Art. 16 (2) and 17 (7) European Union Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedure between Member States.

¹⁶ OJ L 16, page 68.

practitioners from the Member States have to face the fact that it is nearly impossible for them to be familiar with the procedural requirements of a large number of different jurisdictions. Here again Eurojust meets a growing need. Having a group of experienced prosecutors and judges from all Member States available full-time in one place, Eurojust can provide a high level of expertise in mutual legal assistance. Many complex and difficult cases of cross-border crimes can therefore be solved despite the significant problems accruing from the different justice systems.

IV. RELATIONS WITH EUROPEAN COUNTERPARTS

The most important counterparts to mention are the competent national (investigation and prosecution) authorities. The relationship with them is crucial to Eurojust's effectiveness.

If national services do not refer cases to Eurojust, the unit cannot play its role as adviser and co-ordinator. Therefore a comprehensive awareness campaign has been set up by Eurojust in sending the National Members on visits to their home countries to explain the unit's role there on every possible occasion, to encourage the domestic prosecutors and judges, police officers, and other law enforcement agencies, to refer suitable cases to Eurojust.

Eurojust fulfils a unique role as a permanent body in the European legal area. Its mission is to enhance the development of Europe-wide co-operation on criminal justice cases. This means that Eurojust is a key interlocutor with European institutions such as the Parliament, the Council and the Commission.

In order to succeed, Eurojust needs good relationships and close co-operation with its European counterparts. It has privileged partnerships with the Liaison Magistrates and the European Judicial Network (EJN), as well as with organizations such as the European Anti-Fraud Office, OLAF, and the European Police Office, Europol.

A. European Judicial Network

The European Judicial Network (EJN) has been set up by an EU Council Joint Action of 29 June 1998 with the aim of enhancing mutual legal assistance in criminal matters.¹⁷ It consists of national contact points, experienced in the field of mutual legal assistance and/or in the fight against organized crime. Unlike Eurojust the EJN is not a full-time body. It has no powers as such and is intended to help the practitioners in the Member States preferably in bilateral, rather than multilateral cases. Moreover the EJN contact points are located in their country of origin and do not work together at one place. Although working in the same field and sharing similar ideas, the role of Eurojust is not identical with that of the EJN. The need for a clear division of function was apparent to ensure that there was a fluid transfer of appropriate information between the two units and to avoid overlapping.

In order to ensure close interaction between both organizations the EJN secretariat (Secretary General Angel Galgo from Spain) has been integrated within the Eurojust administration and is (since 2003) situated in the Eurojust premises in The Hague. Eurojust is also providing support for several EJN projects, one of them being the development of a Judicial Atlas, a kind of navigation system in mutual legal assistance.

B. OLAF

Relations between Eurojust and the European Anti-Fraud Office (OLAF), the latter established in 1999,¹⁸ are very important in the framework of criminality related to the financial interests of the community, for example, misappropriation of subsidies; tax evasion and fraud in the field of customs, insofar as the Community budget is affected; corruption; and other illegal activities harmful to its interests. OLAF has the power to conduct external investigations (in Member States) and internal investigations (into EU bodies and their staff) but its powers regarding the external field are limited to conducting preparatory (administrative) investigations. So the unit is obliged to pass the files to the competent prosecutor in the respective Member State who may then initiate the prosecution. OLAF itself has no prosecutorial powers.

¹⁷ OJ L 191 7.7.1998, page 4. Website: www.ejn-crimjust.europa.eu.

¹⁸ OJ L 136, 31.5.1999, page 8.

As Eurojust is also expressly competent to deal with fraud against the Community's financial interests, there is a potential overlap in both units' mandates. It is also important to know that, for the purpose of receipt and transformation of information between Eurojust and OLAF, the National Members of Eurojust are regarded as competent authorities.¹⁹

In order to solve their problems OLAF and Eurojust signed a memorandum of understanding. Still, one could not deny that there has been a certain amount of friction, caused for example by the worries of others that one of the intentions to establish Eurojust was to take something away from them (as can be seen in the discussion of which European institution could be the starting point when establishing the European Public Prosecutor). Therefore a framework encouraging more formal co-operation between OLAF and Eurojust seemed desirable. Taking this into account, the units improved their relationship significantly during 2005. Transmission of relevant cases from OLAF to Eurojust has begun, exchange visits took place, and joint participation in conferences and seminars increased.

C. Europol

The European Police Office, Europol (also located in The Hague, the Netherlands), was set up by EU Convention in 1995,²⁰ taking up full activities in 1999 to assist the law enforcement agencies of the European Union in their fight against serious organized crime affecting two or more Member States. It does so by facilitating the exchange of criminal intelligence; providing and co-ordinating operational analysis to support operations of the Member States in producing strategic reports and crime analysis on the basis of information and intelligence supplied by the Member States, generated by Europol or gathered from other (open) sources; and providing expertise and technical support for investigations carried out by law enforcement agencies of the Member States under the supervision and legal responsibility of those States.

In this context Eurojust can be seen as the judicial counterpart to Europol, in the sense that Europol's activities need to be backed up and complemented by co-ordination of judicial authorities. The essential elements of a fruitful co-operation between both organizations have been determined by an agreement of 9 June 2004, which enables personal data to be exchanged. Due to some restrictions, in particular on data protection from Europol's side, the agreement is not as ambitious as Eurojust had hoped. A stronger capacity for joint working and a better sharing of Europol's strategic analysis, on Eurojust's initiative, is desirable.

At present, Europol does not have any investigative competence of its own. However it can be envisaged that in the near future Europol will develop into a typical police organization with operational duties. At that very moment judicial control is needed. So far the mere existence of Europol has already had a catalytic effect for the creation of Eurojust.

V. CO-OPERATION WITH THIRD STATES

Pro-Eurojust, although having no formal basis to build up official relationships, had already made a range of contacts at an informal level with candidate countries and important Third States.

The enlargement of the European Union in May 2004 has been an enormous challenge for all institutions of the European Union, in particular for Eurojust, with the number of National Members increasing from 15 to 25 and - above all - admitting a further ten different national legal systems to accommodate. Two years later it can be said that this challenge has been successfully mastered and the Eurojust members from the new countries are fully integrated into the unit's system.

Contacts with the (at that time) acceding countries and with the candidate countries had been established at an early stage. Eurojust encouraged all the newcomers to establish special prosecutors, or judges, as contact points for the unit and to nominate their National Members early so that they could follow Eurojust's work as observers before May 2004.

¹⁹ Art. 26 EJD.

²⁰ OJ C 316, 27.11.1995, page 1.

Concerning the special role of relations with the USA in response to the Council Decision on terrorism of 20 September 2001, close contacts with the US Department of Justice and with the US Mission to the European Union in Brussels have been built up. The United States nominated their liaison magistrate in Paris as a Eurojust contact point. Several meetings between US officials and Eurojust representatives have already been held in Brussels, The Hague and Washington to discuss obstacles which hinder mutual legal assistance between the US and the EU.

Criminals respect neither national frontiers nor the frontiers of the European Union. Consequently, Eurojust is going to build up relationships with law enforcement agencies worldwide. A list of (as of August 2006) 23 Third States which have nominated informal contact points to Eurojust identifies possible countries with whom Eurojust feels it would be beneficial to have formal co-operation agreements.

Among these 23 countries is the Government of Japan which on 12 March 2003 designated Mr. Takashi Ishi as a contact point. On 21 January 2005, Mr. Ishi was replaced by Mr. Akira Yokoi as First Secretary of the Mission of Japan to the European Union in Brussels.

Eurojust is still waiting for the first individual operational case to be forwarded by the Japanese contact point. Missing a Japanese request to Eurojust could, of course, also be a result of mutual legal assistance between Japan and the 25 Member States of the European Union simply running well.

In having contact points in Third States, Eurojust could become the centre for all requests coming from those countries to be forwarded to the competent national authorities in the Member States, a task that can be described as a 'one-stop shop' for mutual legal assistance between EU Member States and third countries. With a view to data protection problems when exchanging information, Eurojust itself would prefer to have formal agreements with Third States, a possibility expressly foreseen in the Eurojust Decision.²¹

At present, three third country agreements have been concluded: the co-operation agreement with Norway signed on 28 April 2005, and agreements with Iceland and Romania signed on 2 December 2005. With three important Third States (USA, Russia and Switzerland), formal negotiations started in 2004 and continued throughout 2005.

VI. EUROJUST IN THE FUTURE

Eurojust is a legal melting pot from which subsequent developments to strengthen the European judicial area will be defined in the future. In regular internal seminars each year Eurojust members have to face the same inevitable question: what objectives the unit wants to achieve and what its priorities are. With a strong political commitment, Eurojust has been able to garner a reasonable caseload (an increase in entry-figures of about 500% since the start in 2001!) and also hold an impressive number of case-related co-ordination meetings (in 2006 already two per week). When setting up the operative structure the unit achieved best results in a flexible and un-bureaucratic way of working. Giving useful assistance to national prosecutors, judges, police officers or other law enforcement agencies, is only possible if Eurojust is able to provide quick reactions and strives to speed up mutual legal assistance and efficiency at multilateral level.

In the proposed Constitutional Treaty of the European Union the powers of Eurojust will increase. Article III 273 provides that the unit's tasks (to be determined by future EU legislation) may also include the initiation of criminal investigation, whereas the current powers are limited to merely proposing such initiation. Furthermore, in Article III 274 the Constitution also enables the establishment of a European Prosecutor's Office (EPP) "from Eurojust".

The idea of a European Public Prosecutor has a long history, starting with the academic study *Corpus Iuris* aiming at providing a uniform code of criminal offences to deal with fraud on the European Community's financial interests. Under these proposals the European Public Prosecutor would have investigative powers and be responsible for bringing cases before national courts. The idea of such a new institution is controversially discussed in Europe at the moment but even the critics admit that despite their

²¹ Art. 27 (3) EJD.

reservations against the institution as such, the EPP - if eventually created - should build on Eurojust.

The practical experience of Eurojust as a young organization is already considerable. I am convinced that this unit is on solid grounds to develop mutual trust and confidence in the common fight against cross-border crime, not only in Europe but also worldwide.