



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 December 2013

**17188/1/13
REV 1**

**EUROJUST 135
COPEN 226**

COVER NOTE

From : Eurojust
To : delegations
Subject : Report from the Eurojust Seminar on the new draft Regulation on Eurojust:
"an improvement in the fight against cross-border crime?",
The Hague, 14-15 October 2013

Delegations will find in the Annex the Report of the above-mentioned seminar.

SEMINAR

The new draft Regulation on Eurojust: an improvement in the fight against cross-border crime?

The Hague, 14-15 October 2013

Report

Table of Contents

Executive summary

1. Introduction

2. Introductory speeches (*Raivo Sepp, Tomas Krušna*)

3. Keynote speeches (*Lotte Knudsen, Michèle Coninx, Anne Weyembergh*)

4. Thematic presentations and discussions

4.1. Structure and governance of Eurojust

4.1.1. An academic's perspective (*Daniel Flore*)

4.1.2. Outcome of workshop 1 (Chair: *Michael Kennedy*)

4.1.3. A practitioner's perspective (*Björn Blomqvist*)

4.2. Tasks, competence and powers of Eurojust

4.2.1. An academic's perspective (*John Vervaele*)

4.2.2. Outcome of workshop 2 (Chair: *Filippo Spiezia*)

4.2.3. A practitioner's perspective (*Christian Schierholt*)

4.3. Relations with partners and third States

4.3.1. An academic's perspective (*Valsamis Mitsilegas*)

4.3.2. Outcome of workshop 3 (Chair: *Roelof Jan Manschot*)

4.3.3. A practitioner's perspective (*Boštjan Škrlec*)

4.4. Relations between Eurojust and the EPPO

4.4.1. An academic's perspective (*Katalin Ligeti*)

4.4.2. Outcome of workshop 4 (Chair: *Hans G. Nilsson*)

4.4.3. A practitioner's perspective (*Jorge Espina*)

Annex 1: Comparison table: Proposal for a Regulation on Eurojust / Common Approach of the EU institutions on decentralised agencies

Annex 2: Comparison table: Lists of forms of crime (Eurojust Proposal, Europol Proposal and Framework Decision on the European Arrest Warrant)

Executive summary

The Eurojust seminar “*The new draft Regulation on Eurojust: an improvement in the fight against cross-border crime?*” was held in The Hague on 14-15 October 2013 to discuss the proposed reform of Eurojust, assess its impact and identify challenges and possible solutions.

The European Commission’s Proposal for a Regulation on Eurojust was analysed and commented on not only by the academics, practitioners and representatives of the EU Institutions giving the keynote speeches, but also by all participants who played an active role in the four thematic workshops: 1) Structure and governance of Eurojust; 2) Tasks, competence and powers of Eurojust; 3) Relations with partners and third States; 4) Relations between Eurojust and the EPPO.

In relation to the structure and governance of Eurojust, participants discussed whether the proposed reform would achieve its main purposes. In particular, they questioned whether the administrative burden on national members would be reduced as a consequence of the reformed structure of Eurojust. The functions of the College and the consequences that may arise from the dual or even triple role of national members were also considered. Participants further reflected on the roles of the Executive Board, the Commission and the Administrative Director, including in the context of Eurojust’s policy work.

With regard to the tasks of Eurojust, discussions mainly focused on the meaning of the concept “*serious crime requiring a prosecution on common bases*” and several possible interpretations were put forward. The legal and practical consequences of having a closed list of forms of crime limiting the scope of Eurojust’s material competence raised concerns. The provisions on the powers of national members were thoroughly examined in light of the principle that the respect for the different legal systems and traditions of the Member States must be preserved.

Concerning Eurojust’s relations with third States and international organisations, participants reflected on the possibilities for operational cooperation in view of the new proposed legal regime, including possible options for the transfer of personal data in accordance with the draft Eurojust Regulation. The posting of Eurojust liaison magistrates to third States was also examined. Various considerations were put forward with respect to the relationship between Eurojust and the European Judicial Network, Europol and OLAF.

As to the relationship between Eurojust and the EPPO, different aspects of the relevant provisions in both the draft Eurojust Regulation and the draft EPPO Regulation were addressed. It was suggested to clarify the respective spheres of competence of the EPPO and Eurojust in relation to crimes against the financial interests of the EU. Information exchange and requests for cooperation were considered as crucial in ensuring a smooth relationship between the two bodies at operational level. The provisions on functional/administrative cooperation between Eurojust and the EPPO were also examined.

1. Introduction

The seminar “*The new draft Regulation on Eurojust: an improvement in the fight against cross-border crime?*” was organised by Eurojust and took place in The Hague on 14 and 15 October 2013. More than 150 participants including representatives from Member States and EU Institutions, practitioners and academics attended the seminar.

The aim of the seminar was to discuss the proposed reform of Eurojust, assess its impact and identify challenges and possible solutions. A discussion paper aimed at stimulating the debate was circulated to the participants prior to the seminar.

The speeches in the plenary sessions were followed by four workshops devoted to specific topics arising from the new draft Regulation on Eurojust as proposed by the European Commission (“Commission”) in July 2013. These included 1) Structure and governance of Eurojust; 2) Tasks, competence and powers of Eurojust; 3) Relations with partners and third States; and 4) Relations between Eurojust and the European Public Prosecutor’s Office (EPPO). The outcomes of the workshops were presented in a final plenary session and were followed by reactions from practitioners.

The main legal texts of relevance to the discussion were:

- The Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) [COM(2013) 535 final of 17.7.2013] (“Eurojust Proposal”);
- The Proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office [COM(2013) 534 final of 17.7.2013] (“EPPO Proposal”);
- The Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust (“Eurojust Decision”);
- The Common Approach on decentralised agencies adopted by Joint Statement of the European Parliament, the Council of the EU and the European Commission on 19 July 2012 (“Common Approach”).

2. Introductory speeches

Chair: Klaus Rackwitz, Administrative Director, Eurojust

Raivo Sepp, Vice-President of Eurojust and National Member for Estonia, gave the welcome speech and presented the topics of the seminar. He explained the aim of the workshops and highlighted the main issues stemming from the draft Regulation. The legislative Proposals regarding Eurojust and the EPPO were presented as a package by the European Commission on 17 July 2013 and are currently under discussion in the Council of the European Union and the European Parliament. It is therefore timely to have a seminar to promote an exchange of views between representatives of the national authorities of Member States, EU Institutions, academia and Eurojust. The discussions and negotiations on the two Proposals will need to continue in parallel in order to put in place a coherent system to fight crime more efficiently.

Tomas Krušna, Deputy Chief Prosecutor, Prosecutor General's Office of Lithuania, Chair of COPEN under the Lithuanian Presidency of the EU, gave the introductory speech. Over the years, Eurojust has proved its operational capabilities and is valued by practitioners. The Presidency shares the view that both of the Proposals should be considered in parallel during the legislative process. Ideas and issues raised during this seminar will make an important contribution to the negotiations going forward. Moreover, the outcome of the ongoing Sixth Round of Mutual Evaluations on the implementation and operation of the Eurojust and the European Judicial Network (EJN) Decisions ("Sixth Round"), conducted under the auspices of the Council of the European Union, will add great value to the further development of the Eurojust draft Regulation.

3. Keynote speeches

Chair: Klaus Rackwitz, Administrative Director, Eurojust

Lotte Knudsen, Director, Directorate-General for Justice, European Commission, explained the reasoning behind the timing of the European Commission's Eurojust Proposal and set out its five main objectives.

Timing of the Proposal

Not only has the Lisbon Treaty introduced some important changes, but the Commission has also received useful input from a study on how to improve the efficiency of Eurojust. Moreover, other on-going legislative developments – in particular, the Europol Proposal, the EPPO Proposal and the Common Approach – have accelerated the revision of the current Eurojust Decision. Even though the Sixth Round has not yet come to an end, the results of this evaluation process will be taken into account in the negotiations of the Eurojust Proposal.

First objective: A new governance structure to increase Eurojust's efficiency

The draft Eurojust Regulation proposes that the Eurojust College will meet in two separate formations (one for operational issues and one for administrative issues) and that an Executive Board will be created to assist the College and the Administrative Director. This dual governance structure is in line with the Common Approach, whilst taking into account the specificities of Eurojust.

Second objective: Aligning the status and powers of the national members to improve Eurojust's operational effectiveness

The Eurojust Proposal maintains the current link between Eurojust's national members and their Member State of origin, but it explicitly lists the operational powers that all national members must have. Member States have already expressed different views as to this list of powers. Whilst some Member States argue that it grants too much power to the national members, others believe that even more tasks should be allocated to them. It is clear that this issue will have to be further discussed in the coming months.

Third objective: Involvement of the European Parliament and national parliaments

The Lisbon Treaty requires increased involvement of the European Parliament and the national parliaments in the evaluation of Eurojust's activities. In accordance with the Eurojust Proposal, the President of Eurojust will appear before the European Parliament. Furthermore, both the European and the national Parliaments will receive Eurojust's annual reports and other relevant documentation. The European Parliament will, however, not be involved in the evaluation of operational issues.

Fourth objective: Data protection

The Eurojust Decision will be brought in line with the data protection package. Regulation 45/2001 will become fully applicable, but special provisions on operational personal data are being envisaged to respect the specificity of Eurojust's activities. Another important change concerns the supervision of personal data processing, which will no longer be entrusted to the Joint Supervisory Body, but to the European Data Protection Supervisor, in line with the regime that is currently applicable to other agencies.

Fifth objective: Relations with partners

Following the Lisbon Treaty, Eurojust will no longer be able to negotiate international agreements with third countries and international organisations. However, Eurojust representatives will remain involved in the negotiation of future international agreements on judicial cooperation as their expertise can add value to these negotiations. Moreover, all existing agreements will remain valid and Eurojust will still be entitled to conclude working arrangements. Finally, the Eurojust Proposal also pays due regard to Eurojust's cooperation with privileged EU partners, in particular Europol and the EPPO.

In summary, the text does not constitute a revolution, but it includes a number of important changes which will optimize Eurojust's efficiency and which will bring Eurojust's legislative framework in line with the Common Approach and the Lisbon Treaty.

Michèle Coninsx, *President of Eurojust and National Member for Belgium*, presented the fundamental mission of Eurojust and Eurojust's view of the draft Regulation.

The added value of Eurojust

Thanks to extremely effective tools, such as coordination meetings and coordination centres, Eurojust is able to add real value to national investigations and prosecutions. Since its establishment in 2001, Eurojust has been dealing with a steadily increasing number of cases and coordination meetings. Eurojust has grown in importance and has become a unique player on the world stage. Eurojust's support is needed to fight increasingly complex types of crime such as cybercrime, maritime piracy or large scale illegal immigrants smuggling, like the recent Lampedusa tragedy. An interesting illustration of the work of Eurojust is a recent case of illegal immigration, involving a vast criminal network operating in three Member States. A Eurojust coordination meeting was organised in this case and a Joint Investigation Team (JIT) was set up. Furthermore, in January 2013, an operational action day was coordinated from Eurojust: as a result, more than forty house searches were organised simultaneously in all involved Member States and more than thirty suspects were arrested.

The revised Eurojust Decision

Since 2007, with a seminar held in Lisbon on "*Eurojust: navigating the way forward*", Eurojust has been reflecting on prospects and means for the further strengthening of its role in the fight against cross-border crime.

The revised Eurojust Decision has been a major step. This Decision has triggered important developments, such as the setup of an On-Call Coordination, the establishment of a minimum set of ordinary powers for national members, the new coordination centres, the review of the Case Management System, the development of secure connections between Eurojust and the Member States, the possibilities offered by the Eurojust National Coordination System (ENCS), including by promoting synergies and avoiding overlaps between Eurojust and the EJN. Eurojust also plays an important role in the promotion and success of JITs, including JIT funding. Such a role is also recognised in the draft Eurojust Regulation: this should be welcomed. Regarding Eurojust's external relations, important support is provided by the contact points in third States and future Eurojust liaison magistrates may offer new possibilities. Recent cooperation instruments have been concluded with Liechtenstein and Interpol; a *Memorandum of Understanding* with FRONTEX will be concluded before the end of this year.

The proposed new draft Regulation on Eurojust

The Lisbon Treaty has brought about major changes. Eurojust has taken an active part in the discussion of the new possibilities offered by Articles 85 and 86 of the Treaty on the Functioning of the European Union (TFEU), and it welcomes the efforts put in to preparing the draft Eurojust Regulation.

Eurojust looks forward to the reform of its structure and governance in order to fulfil its tasks more efficiently and more effectively. As a result of an internal reflection session held in October 2012, the College has reviewed its working methods. For instance, the operational and management activities of the College are now being handled separately. The following key principles should underpin the future reform of Eurojust: national members should have sole responsibility for the content and progress of their casework, which should only be supervised by national authorities. Further, national members should retain ownership of the ‘policy’ work of Eurojust.

With regard to the involvement of the European Parliament and national Parliaments in the evaluation of Eurojust’s activities, Eurojust would welcome a joint evaluation by the relevant institutions, also in order to produce a coordinated set of objectives for Eurojust. Such objectives should be high level and could be linked to the priorities identified in the context of the EU Policy Cycle.

With regard to the tasks, competence and powers of Eurojust, the Eurojust Proposal does not fully exploit the possibilities offered by Article 85 TFEU: Eurojust notes that this is a matter for political decision. Eurojust welcomes that the Proposal makes explicit reference to the tasks to be carried out by Eurojust on its own initiative, confirming that Eurojust will be able to play a proactive role, as also reflected in the current Eurojust Decision. Regarding the alignment of national members’ powers as foreseen in Article 8 of the Eurojust Proposal, some flexibility is needed to reflect the specificities of the different national systems and to allow Member States to grant additional powers to their respective national members. The ability for Eurojust to act in cases concerning “other types of offences” at the request of a competent authority, as provided for in Article 4(2) of the Eurojust Decision, should also be reflected in the draft Eurojust Regulation. Enhancing cooperation with Europol is of vital importance: Eurojust welcomes the mirroring of the provisions on information exchange in both the draft Eurojust Regulation and the draft Europol Regulation.

Regarding the “special relationship” envisaged between Eurojust and the EPPO, Eurojust is being asked to play an important and wide ranging role from supporting the definition of ancillary competence, to supporting investigations and prosecutions in connected crimes or cases involving non-EPPO Member States or third States. In addition, according to both draft Regulations, Eurojust will provide wide-ranging administrative services to the EPPO. However, this should not be detrimental to Eurojust: it is clear that a strong EPPO established from Eurojust needs a strong Eurojust.

Anne Weyembergh, Professor at the Université Libre de Bruxelles (ULB), presented an overall analysis of the Eurojust Proposal.

Main innovative features and improvements

Six major improvements can be identified, each raising their own questions:

- 1) The new instrument “regulation” has a much stronger legal impact than the current Eurojust Decision and it will be submitted to the full set of the European Court of Justice’s (ECJ) competences. However, there is a price to pay: the rise of “variable geometry” (position of the UK, Ireland and Denmark) and numerous other questions (e.g. the ECJ’s control on Eurojust’s acts).
- 2) The Eurojust Proposal constitutes a deepening of the move towards a strengthened Eurojust launched by the 2008 revised Eurojust Decision, in three main respects:
 - a) *Further reduction in the characteristic asymmetry of Eurojust.* The national members’ powers are further approximated (see Article 8 of the Eurojust Proposal compared to Articles 9b to 9e of the Eurojust Decision). The differentiation between the three categories of powers (ordinary powers, powers exercised in agreement with a competent national authority and powers exercised in urgent cases) remains, but new ordinary powers (e.g. to issue and execute requests themselves) and powers in urgent cases (e.g. to order investigative measures) have been added. Moreover, the Proposal removes the national safeguard clause (Article 9e of the Eurojust Decision). These changes should allow for more consistency in and homogeneity of the powers conferred to national members and should also lead to a strengthening of such powers. However, three issues arise:
 - There is a risk that this may effectively reduce the powers of some national members, which would be a serious step backwards for Eurojust. One solution could be to clarify in the text of the Draft Eurojust Regulation that these are minimum standards and that additional powers may be granted by Member States (although it will not be really in line with the legal nature of a regulation). The consequence is however that there will be no uniform or standard powers and the “variable geometry” will remain.
 - The exact meaning of the words “in accordance with national legislation”, which are used only once in Article 8 is unclear and raises questions of consistency of the Eurojust Proposal in this respect.
 - The abolition of the national safeguard clause may create difficulties in some Member States as to the division of competences and balance of powers between judges, prosecutors and the police. However, the regulation may also grant new powers to the national members (e.g. in Belgium the powers of a *juge d’instruction*).

Furthermore, considering the intended approximation of powers, the fact that the Eurojust Proposal is silent on the appointment criteria and conditions of the national members, such as the definition of a common profile for national members e.g. requiring a certain level of judicial experience, is rather surprising.

b) *Further strengthening the provisions on the exchange of information between national authorities and national members* (see Article 21(3) and (5) of the Eurojust Proposal compared to Article 13(6) of the Eurojust Decision). The need for Eurojust to receive timely information is essential. However, the first reports on the Sixth Round show that there have been severe difficulties in the implementation of Article 13 of the Eurojust Decision that perhaps should not be ignored.

c) *Further clarifications regarding Eurojust's relations with some partners*. Some provisions are to be welcomed in this regard, e.g. Article 40 which foresees that Europol will have access to Eurojust information and mirrors Article 27 of the draft Europol Regulation. However, in general the changes do not go far enough (e.g. Article 42(2) in relation with OLAF which is even more restricted than the current provision) and the complementarity between actors as well as the lack of consistency between respective instruments need to be further reflected upon, e.g.:

- Between Eurojust and Europol: there is a risk of duplication of effort and overlaps in competences, for example because of the similarity of the provisions related to JITs (*see* Article 4(1)(e) of the Eurojust Proposal and Article 4(1)(h) of the Europol Proposal). Moreover, discrepancies exist between the lists of offences annexed to the respective Proposals.
 - Between Eurojust and the EPPO: both the Eurojust Proposal and the EPPO Proposal show a lack of vision as to the implementation of the expression of Article 86 TFEU which provides for the creation of the EPPO “from Eurojust” as Eurojust and the EPPO are being treated in the Proposals as two distinct bodies. If the idea is to “nationalise” the EPPO as much as possible, then the solution should be more integration of the two, from the point of view of the structure, operational competences and functional support. There is also a distinct lack of clarity as to the distribution of competences between Eurojust and the EPPO regarding crimes affecting the EU's financial interests (PIF crimes) (*see* Article 3(1) and Annex 1 Eurojust Proposal).
 - Between Eurojust and the EJM: no changes are proposed to improve cooperation and, for instance, to establish criteria that would allow a clear distribution of tasks/cases between Eurojust and the EJM. This is indeed a missed opportunity, especially considering that this issue has been highlighted in almost all of the Sixth Round reports adopted so far.
- 3) The European nature of Eurojust is strengthened, in particular due to the abolition of the distinction between national members exercising their powers as competent national authorities or as Eurojust national members (the draft Regulation proposes that they will always act as Eurojust). However, there are concerns that this could mean that the national members lose sight of their national judicial landscape, as it is essential for them to have both a national and European “anchorage”. Moreover, Eurojust’s hybrid nature will remain as the national members will still wear “two hats”: they would act only as members of the College in their *operational* functions, but would act as national representatives in performing their *management* functions.
- 4) The drafting of numerous provisions is simplified (e.g. Article 8). However, such changes and simplifications raise numerous questions (*see supra*).

- 5) The specific nature of Eurojust as a judicial agency has been taken into account, in particular in respect to the rules on access to documents which, finally and fortunately, exclude the case-related documents from the general EU regime (*see* Article 60). However, Eurojust's judicial nature should be considered in other respects as well, e.g. the Commission should not be able to influence the nature and focus of Eurojust's operational work.
- 6) The democratic control of Eurojust is enhanced. However, query whether Article 85 TFEU can be considered fully implemented considering that Article 55 of the Eurojust Proposal mainly involves the European Parliament and not really the national Parliaments in the evaluation of Eurojust's activities.

Main sources of disappointment or concern

Five main points can be highlighted:

- 1) *Circumvention of the "good governance timeline"*: instead of the parallel introduction of the Eurojust Proposal and the EPPO Proposal, the logical and reasonable steps to follow would have been to first *i)* wait for the results of the Sixth Round and assess the changes introduced by the revised Eurojust Decision in 2008; then *ii)* use the possibilities to strengthen Eurojust's powers provided by Article 85 TFEU, including in the area of PIF crimes; *iii)* assess the added value of such reform; and, if this was not sufficient, finally *iv)* have recourse to Article 86 TFEU and establish the EPPO. Unfortunately, the choice made deeply impacts not only the EPPO Proposal but also the Eurojust Proposal because the outcome of the on-going Sixth Round has not been taken into account (e.g. as for the better allocation of cases between Eurojust/EJN, a required high level experience of national members in the judicial field, etc.). At the very least, the outcome of the Sixth Round should be taken into account during the negotiations. Moreover, to ensure consistency, the Eurojust Proposal and the EPPO Proposal (and indeed the Europol Proposal) should be negotiated and discussed in parallel.
- 2) *Three risks of regress*: *i)* the reduction of Eurojust's sphere of competence as a result of the removal of a competent authority's possibility to ask the support of Eurojust for types of offences not explicitly foreseen in the list, (Article 4(2) of the Eurojust Decision); *ii)* the fact that Eurojust administration – important for the functioning of Eurojust – is not mentioned anymore in the draft Eurojust Regulation; and *iii)* an approximation of national members' powers that could prevent them from exercising additional powers.
- 3) *Two missed objectives or missed opportunities of note*: *i)* the political choice made by the Commission was not to implement the third sentence of Article 85(1) TFEU and keep Eurojust as a (horizontal) mediator, without any (vertical) decision-making powers/binding powers vis-à-vis national authorities. Such choice is a missed opportunity to deepen Eurojust's efficiency. The argument that it would not be timely to do this, seems even harder to accept considering that Article 86 TFEU, which has a greater vertical impact, has been implemented; *ii)* despite the main purpose of the Eurojust Proposal having been stated to be the reform of Eurojust's structure so as to minimise the administrative burden on national members, such objective is not reached: national members still have a dual role entailing both management and operational

functions. Furthermore, the College of Eurojust will still be heavily involved in administrative matters.

- 4) *Lack of vision*: not only as regards the relationship between Eurojust and the EPPO, but regarding Eurojust's tasks (Article 2): they remain basically unchanged, save for the addition of “*serious crime requiring a prosecution on common bases*”, the interesting concept from Article 85(1) TFEU, which, regrettably, is not defined further. To strengthen the European nature of Eurojust, this concept could cover cases where there is a need for a common European criminal policy or strategy for approaching a particular crime.
- 5) « *Zero cost principle* »: Eurojust should support the EPPO on a « zero cost » basis. However, such « zero cost principle » is difficult to understand and should not in any event be detrimental to either the efficiency of Eurojust itself or to the finances of the EPPO.

4. Thematic presentations and discussions

Chair: Claudia Gualtieri, LIBE Committee Secretariat, European Parliament

For each topic discussed in the workshops, a critical analysis was presented by an academic in the preceding plenary session and then practitioners gave their comments during the panel debate in the following plenary session. Accordingly, Section 4 of this report includes three parts for each topic (academic's perspective, outcome of the workshop and practitioner's perspective).

4.1. Structure and governance of Eurojust

4.1.1 An academic's perspective

Daniel Flore, Professor at the University of Liège, presented his analysis of the structure and governance of Eurojust.

Need to clarify and streamline definitions

Several concepts and terms are used in relation to the structure and governance of Eurojust. There are at least three different ways to describe Eurojust's functions: one way is to make a distinction between operational and management functions; a second is to distinguish between operational work, policy or horizontal work and administrative work; and finally a distinction can be drawn between supervisory, executive and operator roles.

The following classification can be suggested: on the one hand, the “core business” of Eurojust namely judicial support for operational matters and strategic work; on the other hand, the “management” of Eurojust, involving the provision of administrative, executive or strategic support to the organisation.

Main changes

The main changes introduced by the Eurojust Proposal concern: the distinction between the operational and management functions of the College; the establishment of an Executive Board; the representation of the Commission in the College as a Management Board and in the Executive Board; detailed description of the responsibilities and tasks of the Administrative Director.

Adequacy of the Eurojust Proposal

The adequacy of the Eurojust Proposal should be analysed in relation to both the concrete work of Eurojust and the Common Approach.

Firstly, in many Eurojust activities, operational and management aspects are often closely interlinked. For instance, the establishment of a Eurojust guide on casework management, or the organisation of coordination meetings, or the review of the Case Management System, involves both operational and administrative aspects. In such cases, the division of responsibilities is unclear and the Eurojust Proposal does not seem to offer any solution: the proposed distinction between the management and operational functions of the College and the Executive Board or the Administrative Director provide little assistance, based on the competences outlined in the Eurojust Proposal.

With reference to the proposed composition of the College for its management functions, it is important to clarify whether the national members of Eurojust are to be considered as representatives of their Member States in the meaning of the Common Approach. If so, the national members would be acting as national representatives in their management functions and as members of the College in their operational functions. Such a dual role raises some concern as it could generate conflicts of interests and does not seem to comply with the principles of sound governance or with the spirit of the Common Approach.

In addition, there is a need to make sure that the Commission is not involved in the core business of Eurojust.

The role of the Administrative Director appears to be much weaker than the one played by the executive directors of most EU agencies in accordance with the Common Approach. There is scope to suggest that the role of the Administrative Director of Eurojust should be strengthened, or at least rethought, in a number of areas.

Finally, concerning the application of the Common Approach, it is questioned whether the specificity of Eurojust, and in particular the need for independence, could justify all of the proposed deviations from that common model, including the one that would prevent external Member States' representatives to play a role in the management of Eurojust.

4.1.2 Outcome of workshop 1

Chair: Michael Kennedy, former President of Eurojust and former Chief Operating Officer of the Crown Prosecution Service, UK

Aim of the workshop

The goal of this workshop was to discuss the major changes introduced by the Eurojust Proposal to both the structure and the governance of Eurojust. Participants were invited to reflect upon both the feasibility and the usefulness of the proposed reform: what are the main challenges? As it currently stands, can the Eurojust Proposal achieve its intended purposes? In this context, the workshop discussed the functions of the College and of national members as well as the role of the Executive Board, the Commission and the Administrative Director and their interplay. During the discussion, alternative proposals for the reform of Eurojust were also discussed.

Purposes of the reform

- The goals of the reform of Eurojust were largely agreed upon. However, there were divergent opinions on the structure proposed for Eurojust. In addition, it was felt that the Proposal is lacking in clarity, including with regard to the so-called ‘policy work’ of Eurojust.
- Participants were made aware of the Common Approach (*see Annex 1 to this report for a comparison table between the Eurojust Proposal and the Common Approach*) and took note that the proposed reform of Eurojust implies some deviations from it. Although this matter was not discussed in detail, participants agreed that it would be helpful if the reasons why the Eurojust Proposal in some aspects differs from the Common Approach could be clarified.

Functions of the College and dual/triple role of national members

- Participants were unanimous in their support for reducing the administrative burden on national members. It was agreed that the Eurojust Proposal fails to achieve this goal since national members continue to be entrusted with both management and operational functions. It was suggested that, in order to reduce the administrative burden on the College exerting its management functions as foreseen under Article 14 of the Eurojust Proposal, a rotation system could be introduced to reduce the burden, whereby national members could take it in turns to attend to administrative matters.
- Some participants expressed concern for the persistent dual, or in some cases triple, role of the national members (supervisory, operational and executive, for members of the Executive Board).

- In this context, the majority of participants highlighted the possible benefits of an external management board for Eurojust, although the latter is not foreseen in the Eurojust Proposal. Other participants took the view that, due to the specific judicial mission of Eurojust, the Management Board, as well as the Executive Board, should not involve the Commission or any other external participants.
- It was also pointed out that conflicts of interest can arise from the dual role of national members. This problem could be resolved by the use of an external management board or, on an *ad hoc* basis, by the concerned national members declaring a conflict of interest and withdrawing from the decision-making.
- The need to establish a common profile for national members was also discussed. Some participants suggested that, in accordance with the Common Approach, national members should be appointed on the basis of specific criteria relating to both operational and managerial tasks. Accordingly, a standard profile for national members should be established. However, it was objected that since Member States are responsible for the appointment of their own national members, the definition of the appointment criteria is ultimately a matter for each Member State.

Roles of Executive Board, Commission and Administrative Director

- The added value of the establishment of an executive board at Eurojust was questioned. Some participants felt that the proposed Executive Board could create unnecessary bureaucracy and generate additional work for the national members involved. For example, responsibilities that currently lie with the Administrative Director, such as the adoption of implementing rules to the Staff regulations or decisions on the establishment and modification of Eurojust's administrative structure, would now be entrusted to the Executive Board. Additionally, it was observed that, according to the Common Approach, an executive board should be established only when this "promises more efficiency". On this basis, it was suggested that the decision to establish an executive board could ultimately be left to the Management Board, as foreseen, for instance, in the draft regulation on Europol. It was also stressed that the Executive Board should be accountable to the Management Board.

- Some participants suggested that the role of the current Presidency Team could be more clearly defined and structured to remove administrative burden from the national members. Furthermore, the usefulness of establishing an executive board in addition to the Presidency Team was questioned. Defining their respective competences could be difficult in practice, since it is not always possible to clearly distinguish between purely administrative and operational work. For instance, the organisation of a coordination meeting entails both administrative tasks and operational functions relating to the specific case to be discussed.
- Participants also discussed at length the problems arising from the management of the ‘policy work’ of Eurojust. They took note that the policy work of Eurojust aims to providing EU institutions and national authorities with Eurojust’s legal opinion and experience regarding mutual legal assistance and the effectiveness of instruments such as the European Arrest Warrant. It was highlighted that this policy work generates a heavy workload for national members and for the College and that responsibilities in this area should be set out clearly. It was generally agreed that the Eurojust Proposal does not offer any solution to these problems but there were divergent opinions on how the policy work should be organised and managed in practice. Some participants stressed that the policy work should remain under the sole remit of the College since it directly draws on Eurojust’s casework. Those participants firmly opposed entrusting decision-making responsibilities in this area to an external management board or to an executive board involving the Commission. However, other participants argued that this could be a viable solution since it would bring some strategic guidance to the policy work and would give national members more time to focus on the casework and develop ties with their home authorities, which should remain their priority. According to others, the main problem is the practical organisation of the policy work not how competences are formally allocated. One practical solution could be to increase the staffing of the national desks or to reinforce the support of the administration, including by reshuffling the tasks and responsibilities of the available staff. It was also noted that it would be unlikely that Eurojust staffing levels could be increased in the near future, due to severe budget cuts affecting the EU agencies.
- Discussions also touched on the role of the Administrative Director. It was generally agreed that, in order to reduce the administrative burden on national members, it would help to define the authority and powers of the Administrative Director more clearly. It was also noted that the Eurojust Proposal does not make any reference to the administration, although the latter is an integral part of the structure of Eurojust. In addition, it was suggested that an external management board could be best placed to deal with staff matters.

- Some participants suggested that the Administrative Director could be given greater responsibilities to the level of an executive director, as per other EU agencies, including responsibility for preparing the decisions to be adopted by the College. It was also observed that if the role of executive director were to be created at Eurojust, the role of the President of Eurojust might need to be redefined.

The workshop could not cover all the relevant articles of the Eurojust Proposal in detail during the time available. This meant that, for example, the fact that the Commission would participate in the election of the President and Vice-Presidents under the Proposal was not discussed, although at least one participant expressed concerns about such an approach.

Discussion in the plenary following the presentation of the outcome of the workshop

The following views were expressed by participants:

National desk staffing

All national desks should be adequately staffed. This is all the more necessary when the respective national member is the President or Vice-President of Eurojust, due to the additional workload which stems from those functions. The President and the Vice-Presidents of Eurojust should receive remuneration solely from the EU budget, since they are entrusted with a prominent EU-related mission. They should be replaced in their functions as national members by other national representatives, to be appointed by the respective Member States. It should be mandatory that national desks are provided with a sufficient number of staff with appropriate managerial and prosecutorial skills.

Appointment criteria

College members should be appointed not only on the basis of their legal knowledge but also of their seniority and reputation, so as to be able to develop a wide network of contacts within their national judiciary.

National members' heavy administrative burden

One solution could be to remove all management functions from the College and entrust them all to an Executive Board. Another option could be to strengthen the role of the Administrative Director, by making him a full member of the Executive Board enjoying voting rights. However, it should be noted that, in several EU agencies, executive boards have taken over the functions of the agencies' directors, who actually act more as heads of the administration than as executive directors. In principle, establishing executive boards composed of professional peers could be a positive solution; however, Member States might not be ready to bear the costs resulting from the appointment of a second national representative in addition to the national member. In any event, the merits of the proposed reform of Eurojust should be assessed by taking into account its ability to deliver faster, cheaper and better results than under the current set up.

4.1.3 A practitioner's perspective

Björn Blomqvist, Director of Public Prosecution at the Prosecutor General's Office in Sweden and former Vice-President of Eurojust, discussed the need to improve the governance of Eurojust while respecting the specific nature of Eurojust's work and the expectations of national judicial authorities.

Why improve Eurojust's governance and how to improve it

As an organisation Eurojust has developed over the years to reflect its growing role. However, the working methods of the College have remained unchanged. This means that there is now a need to improve the structure and governance of Eurojust, in order to allow it to develop even further and tackle future challenges.

However, any reform should respect Eurojust's special judicial nature, so as not to diminish or risk diminishing the trust of national judicial authorities in Eurojust. In this respect, it is imperative that national authorities be reassured that no external interference will be allowed in Eurojust's internal work, irrespective of whether this is operational or administrative in nature. It should be recalled that the ultimate goal of the work of Eurojust is to contribute to the co-operation between judicial authorities to bring criminals to justice: this goal cannot be achieved if Eurojust's independence is compromised.

An external management board?

From this perspective, the participation of any external representatives in the management board of Eurojust does not seem to be appropriate, unless those representatives are appointed from the national judiciaries. For the same reasons, the participation of the Commission as a full member of both the Management Board and the Executive Board of Eurojust might not be appropriate either.

If an external management board were to be set up for Eurojust, one possibility could be that it is composed of senior prosecutors with proven managerial skills. This way, it would be possible to set up an experienced management board, which would not be seen as jeopardizing the operational work of Eurojust. However, an external management board could not be sufficient to reduce the administrative burden on national members.

Role of the Executive Board, the Administrative Director and the Commission

An executive board could be of help. The current Presidency Team could be the core of an executive board. This Team could be further developed, so as to have greater responsibilities and decision-making powers. Its membership could be strengthened, for instance by enlarging it to include other national members.

Furthermore, it will be necessary to strengthen the responsibilities and powers of the Administrative Director. The college should play a role in general and strategic decision making, for instance drawing up the annual plan. However, it should not also have an executive function. This should be carried out by the Administrative Director.

The main role of the Commission should be to provide expert advice to Eurojust on management questions, but without being part of the structure of Eurojust. In addition, the Eurojust Proposal would create a situation of potential conflict of interest, since the Commission would have the ability to make suggestions to Eurojust and, at the same time, to supervise and execute decisions.

4.2. Tasks, competence and powers of Eurojust

4.2.1 An academic's perspective

John Vervaele, Professor at the University of Utrecht, explained the main issues concerning the tasks, competence and powers of Eurojust revealed by an analysis of Article 85 TFEU.

Preliminary remarks

Article 85 TFEU contains both “shall” and “may” clauses: Eurojust’s mandate contains a “shall” clause (paragraph 1, first part), while Eurojust’s tasks contains a “may” clause (paragraph 1, second part). However, as Article 85 TFEU is part of a broader framework and as it has to comply with the main objectives of the EU area of criminal justice as well as with Article 6 TEU and the Charter of Fundamental Rights of the EU the “may” clauses do not give full freedom to the legislator.

In the Eurojust Proposal, the Commission chose not to make use of all of the “may” clauses (i.e. no binding decisions from Eurojust). However, neither the explanatory memorandum nor the recitals of the draft Eurojust Regulation explain the reasons for this choice. Also, references to the provisional results of the on-going Sixth Round as well as an explanation of the expression “*serious crime requiring a prosecution on common bases*” (e.g. as meaning cases of common interest for the European Union for which a prosecution on a common basis is needed) are regrettably missing from the Eurojust Proposal. Furthermore, the title of the draft Eurojust Regulation differs in the French and English versions of the Proposal: it should be clarified in all languages that Eurojust is a “judicial” agency.

As to tasks, competence and powers, more consistency is needed in the structure of the text: tasks and operational functions fall within Chapter I of the Eurojust Proposal; the powers of national members are under Chapter II; and provisions as to the exchange of information, follow-up to requests of Eurojust and other operational matters come within Chapter III. As such, the provisions related to the operational powers are scattered throughout the text.

Eurojust's powers

Although many of the powers included in the Eurojust Proposal are the same as those set out in the Eurojust Decision, these are now to be given direct applicability through a “lisbonised” regulation and take into account the following:

- College and national members are bound by EU law and empowered with “European powers”, i.e. national and constitutional law should be comply with the Regulation, and this is nothing new. It is however unclear whether Member States can go further and extend the powers of national members: it might be that the Regulation does not totally harmonise the powers, but this should be clearly said in the text as extra national powers would be attributed to an EU agency.
- Considering the importance of several provisions of the Charter of Fundamental Rights of the EU with regard to the functions of Eurojust (e.g. rights of the defence, *ne bis in idem* principle, data protection issues, etc.), a simple reference to the Charter in the preamble of the Eurojust Proposal is not sufficient.

Remarks on specific articles of the Eurojust Proposal

Article 2 does not go far enough (Eurojust to “support and strengthen”). At least, the autonomous role of Eurojust is defined (“on its own initiative”).

Article 3 provides a list of crimes for which Eurojust is competent: this is useful, but it should be in line with the Europol list. In addition, more flexibility is needed, e.g. by introducing a mechanism to easily revise the list when new criminal trends emerge without having to revise the whole Regulation.

Articles 4 and 5 do not innovate very much: Eurojust is still only able to support, assist and ask national authorities to do something. It is interesting to notice that while Article 4(1) contains “shall” clauses, Article 4(2) and (3) contains “may” clauses.

Article 8 introduces some novelties but needs further clarification e.g. on whether it is possible for national members to really “issue and execute” MLA and mutual recognition requests themselves, on the meaning of “order investigative measures” and “in accordance with national legislation” (which is strange in a situation empowered by EU law). Moreover, there is a big tension between the “overactive writing” of Article 8 and the “underactive writing” of Article 2: in fact, the powers of national members are much stronger than the tasks of Eurojust.

Chapter 3 on operational matters, e.g. Article 19 on On-call coordination, should be read in conjunction with Article 8. The ENCS (Article 20) plays an essential role because it links Eurojust the-European agency to the national systems. Finally, the exchange of information, notably with Europol, is essential so that police and judicial information are properly exchanged.

4.2.2 Outcome of workshop 2

Chair: Filippo Spiezia, Deputy National Antimafia Prosecutor and former Eurojust Deputy National Member for Italy

Aim of the workshop

Participants were asked to reflect upon the main question of the seminar: is the Eurojust Proposal an improvement in the fight against cross-border crime in particular with regard to the tasks, competence and powers of Eurojust? How does the Proposal tackle the current deficiencies and needs of Eurojust and reply to the needs and expectations of Eurojust’s main recipients, i.e. the national competent authorities? In the discussion, account was taken of the fact that, although not all possibilities offered by the Lisbon Treaty (Article 85 TFEU) were implemented in the Proposal, even minor changes might have a great impact in practice due to the nature of the regulation as the legal instrument to be used here.

Tasks of Eurojust (Article 2)

Discussions mainly focused on the concept of “*serious crime requiring a prosecution on common bases*” that is introduced in the draft Eurojust Regulation by Article 2(1). In this regard, it was considered that:

- This concept comes directly from the first sentence of Article 85(1) TFEU. However, further clarification of its meaning is missing from the Eurojust Proposal. The explanation contained in Recital 9 is not exhaustive and may even be misleading because the situations it refers to (cases where investigations and prosecutions affect only one Member State and a third State or only one Member State and the Union) correspond to other provisions of the Eurojust Proposal, *i.e.* Article 3(3) and (4).

- Therefore, given the necessity to keep this concept in the text because the first part of Article 85 TFEU is mandatory (“*Eurojust’s mission shall be to [...]*”), a more precise definition of its meaning is needed in the draft Regulation.
- Some possible interpretations were put forward. In general, “*serious crime requiring a prosecution on common bases*” could refer to cases where common and coordinated actions are required to address an EU interest in the area of Freedom, Security and Justice affecting all (or many) Member States or to implement EU priorities or needs. For instance, such concept might cover the following:
 - Cases where crime affects only one Member State (and not “*two or more Member States*”) but have an impact in other cases or deserve to be examined at EU level in order to involve, and then possibly coordinate, other jurisdictions (e.g. tragic event recently occurred in Lampedusa regarding illegal immigrants smuggling: the prosecutor investigating in Italy might suspect that the same organised criminal group is also active in other Member States and then ask Eurojust’s support);
 - Cases which are not cross-border but need a broader common action, e.g. on the basis of Europol’s analysis, in order to achieve a result (e.g. investigations or prosecutions in several Member States on counterfeiting of medicines from China that have no obvious connection but actually require common action at EU level to tackle the same organised criminal group).
- Regardless of the issue of the definition, the introduction of the new concept of “*serious crime requiring a prosecution on common bases*” would enhance the European dimension of Eurojust and confirm the pro-active dimension of Eurojust’s mandate in line with other provisions of the same article of the Eurojust Proposal dealing with the tasks of Eurojust. In fact, Article 2(1) stresses Eurojust’s role in supporting and strengthening coordination and cooperation between national authorities. Therefore, unlike the Eurojust Decision, it does not limit Eurojust’s action to cases already opened (Article 3 EJD on Eurojust’s objectives refers to “*in the context of investigations and prosecutions*”); Article 2(2)(a) refers to any information “*collected by Eurojust itself*”, which also enhances Eurojust’s strategic work; and Article 2(3) which explicitly mentions the possibility for Eurojust to act also “*on its own initiative*”.
- In this regard, it was observed that this interpretation confirms that the sphere of material competence of Eurojust cannot be limited to the forms of crime listed in Annex 1 of the Eurojust Proposal but should be larger and more flexible (see *infra* under “Competence of Eurojust”). Also, it might be advisable in the text of the draft Regulation to first define the sphere of competence of Eurojust (Article 3) and then specify its tasks (Article 2).

Competence of Eurojust (Article 3 and Annex 1)

Participants mainly discussed the scope of Eurojust’s material competence according to Article 3 and the legal and practical consequences of having a closed list of forms of crime (Annex 1 to the draft Regulation) limiting such competence. In this regard, it was considered that:

- The discrepancies (*highlighted in a comparative table distributed to the participants – see Annex 2 to this report*) between the lists of forms of crime contained in the Eurojust draft Regulation, Europol draft Regulation and the “32 offences” list of Article 2(2) of the Framework Decision on the European Arrest Warrant (FD EAW) can jeopardise the work of Eurojust and need to be addressed. For instance, it is regrettable that some forms of crime listed in the FD EAW are not mentioned in the draft Eurojust Regulation (e.g. arson, trafficking in stolen vehicles, sabotage, and unlawful seizure of aircraft/ships).
- The terminology used in the list of Annex 1 and the definition of the forms of crime are often unclear and should be clarified. The further discrepancies that translations in all EU languages will bring (e.g. motor vehicle crime, organised crime, which would be better defined as “participation in a criminal organisation” as in the FD EAW) should also be considered in formulating such definitions. Moreover, the list is incomplete and other forms of crime could be included (e.g. fraudulent bankruptcy).
- The limitation of Eurojust’s material competence due to the closed list set out in Annex 1 and the abolition of the provision allowing Eurojust to act, in accordance with its objectives and at the request of a competent authority, in cases concerning “other types of offences” than those included in the list (foreseen in current Article 4(2) of the Eurojust Decision), raises concerns for several reasons:
 - This limitation would be a step back compared to the current Eurojust’s competence as defined in Article 4 of the Eurojust Decision that ensures flexibility for both Eurojust and the national authorities. In practice, Article 4(2) of the Eurojust Decision is quite frequently used and meets Member States’ requirements.
 - The current flexibility for practitioners who use either Eurojust or the EJM according to the specific case needs to be preserved. The limitation of Eurojust’s material competence may create difficulties in this regard. In practice, Eurojust is a valid alternative to the EJM in some (“minor”) cases, e.g. when the latter is not able to give the requested support to the national authorities.
 - It was acknowledged that the Eurojust Proposal’s attempted to focus Eurojust’s work on serious crime and coordination while leaving the EJM to deal with the rest. However, it was also underlined that the draft Eurojust Regulation should be more ambitious in this sense and, left unchanged it is actually a missed opportunity to clarify further the respective competences of Eurojust and the EJM. There is still room for improvement in this regard, e.g. closer links with the ENCS should be established as in practice Member States implemented the ENCS and the roles of Eurojust and the EJM in different ways.

- The definition of “serious” crime varies in the Member States according to national legislation. This means that the closed list of forms of crime set out in Annex 1 leads to legal uncertainty as to the scope of Eurojust’s material competence in the absence of a common definition of when a crime is “serious”. In any case, a “harmonised list” of forms of crime would be too difficult to create. Therefore more flexibility for Eurojust in the exercise of its functions is needed.
 - Furthermore, a closed list is not compatible with the provisions of other instruments’ which refer to Eurojust’s role and do not seek to limit it to any material competence (e.g. Article 12 of the Framework Decision on conflicts of jurisdiction and Articles 16 and 17 of the FD EAW). In addition, Eurojust’s role as a centre of expertise in judicial cooperation should not be limited by a closed list of offences. New forms of crime not included in the list would not be part of Eurojust’s competence and, in order to be added, a revision of the Regulation would be needed.
- It was concluded that the competence of Eurojust, while preserving legal certainty, should provide the flexibility needed. Hence, as a possible solution, the first phrase of Article 3(1) should be amended in order to provide that Eurojust’s competence shall include “*at least*” (or “*principally*”) the forms of “*serious*” crime listed in Annex 1.
 - It was also suggested that Eurojust’s material competence could be limited to a list of certain forms of serious crimes only when additional (significant) powers are used by the national members (e.g. issue and execute requests themselves).

With regard to the exclusion from Eurojust’s sphere of competence of the crimes for which the EPPO is competent (Article 3(1)), it was concluded that there is a contradiction between Article 3(1) and the list in Annex 1 of the Eurojust Proposal which includes the PIF crimes. In this regard, the text should be reformulated and clarified, taking into account that such an exclusion is not needed as Eurojust and the EPPO will not be in competition as they will clearly have different mandates and roles.

The newly formulated ancillary competence of Eurojust in Article 3(2) of the draft Eurojust Regulation was welcome as the “related criminal offences” for which Eurojust is competent are precisely defined, especially when compared to the corresponding provision of the EPPO Proposal which generically refers to offences which are “inextricably linked”(Article 13 of the EPPO draft Regulation).

Operational functions and national members' powers (Articles 4, 5 and 8)

In the last part of the workshop, participants discussed the Commission's objective to simplify and align the powers of Eurojust (and in particular of the national members) and wondered if such objective is achieved – and achievable – in the draft Eurojust Regulation. The following considerations were made:

- As to the order of the relevant provisions in the draft Regulation, Article 8 on the powers of national members is misplaced under Chapter II, which deals with the structure and organisation of Eurojust. It would be better placed together with Articles 4 and 5 on operational functions to which it is linked.
- The differing ambitions of the far reaching Article 8 and the non-innovative Articles 4 and 5 leads to an unbalanced situation with regard to the powers and operational functions that needs to be overcome.
- The different and enhanced formulation introduced by the Eurojust Proposal with regard to the duty to inform under the operational functions of Eurojust (Article 4(1)(a)) was considered a positive step forward: Eurojust will have to “inform the competent authorities” of investigations and prosecutions, while it only has to “ensure that the competent authorities inform each other” according to the Eurojust Decision.
- The meaning of the powers of national members described in Article 8 needs to be clarified. The wording of some parts is too simplified and is less clear than the formulation of the corresponding provisions of the Eurojust Decision (Articles 9b, 9c and 9d): the risk of this resulting in a “step back” compared to the current situation must be avoided. Several problematic points were identified:
 - o *Issue and execute any MLA or mutual recognition request themselves* (Article 8(1)(a)): several participants considered that it would be very difficult from a legal and/or practical point of view to use this power: e.g. the direct execution of a request from The Hague would be impossible without having an in-depth knowledge of the file. Usually such requests are executed at least in agreement with the competent national authorities and, if need be, Eurojust may “complement” (and not issue *ex novo*) a request. In some Member States, such power can be used by the national member already; however it cannot be used for all measures: e.g. the execution of an EAW will require the decision of a Court. It was suggested that national members, instead of issuing and executing a request themselves, could “order” the national competent authorities to issue and execute it.

- *Order investigative measures* (Article 8(2)(a) and (3)): this concept is too generic. It is unclear what “investigative measures” means and in several Member States it would create serious problems of conformity with national legal traditions and constitutions. Furthermore, the Charter of Fundamental Rights of the EU applies and thus, for instance, the judicial authorisation of some measures would be needed. In any case, it should be clear that such power should not apply to all investigative measures but only those related to judicial cooperation procedures. The formulation of current Article 9c(1)(c) of the Eurojust Decision (“*ordering in their Member State investigative measures considered necessary at a coordination meeting organised by Eurojust [...]*”) was considered clearer and less problematic.
 - *In urgent cases when timely agreement cannot be reached* (Article 8(3)): this expression is ambiguous and unclear. It would create constitutional problems in some countries as it gives to the national member the power to act even when the national authority does not want to.
- In light of the abovementioned remarks, all participants agreed that the respect for the different legal systems and traditions of the Member States must be preserved as foreseen by Article 67 TFEU. However, different concerns and suggestions were expressed with regard to the powers of national members:
- Some participants expressed serious concerns that the formulation of Article 8 is not compatible with national systems and constitutional law, for example as regards the clear separation between judicial, police and prosecutorial powers and underlined that the national safeguard clause of Article 9e of the Eurojust Decision should be foreseen in the draft Regulation, especially if the participation of all Member States in the new instrument is to be ensured. It was also stressed that if such powers would only be used rarely by national members, the need to change national systems and constitutions would not be justified. Moreover, if Eurojust is able to give such orders, it could discourage national authorities from involving Eurojust in future cases.
 - Other participants considered that the draft Regulation aims at harmonising the national members’ powers and overcoming the current discrepancies that limit Eurojust’s ability to act. Therefore, although the current formulation of Article 8 could be revised and improved, the national systems should adapt their national law and constitutions to comply with the regulation – as done for other instruments like the FD EAW – if this is needed to make Eurojust more efficient. For instance, during a coordination centre at Eurojust, national members may actually need to use some of the powers mentioned in Article 8, e.g. to issue an EAW rapidly. In this regard, it was suggested to mention explicitly in the draft Regulation that Eurojust can assist national authorities by setting up coordination meetings as well as coordination centres.

- The need and the opportunity to create a new “European status” for national members, including a common professional profile, was also mentioned and linked to the new powers of Article 8.
 - Moreover, it was mentioned that, to avoid taking a step backwards, the text should clarify that Member States remain free to go beyond the powers foreseen in the Eurojust Proposal and grant their national member additional powers.
- In summary, the EU legislator was invited to: *i)* reconsider some of the powers granted to the national members, e.g. by providing that they can be exercised only in agreement with the competent national authorities; and *ii)* better define the meaning of some generic concepts contained in the Eurojust Proposal such as “issue/execute”, “investigative measures” and “urgent cases when timely agreement cannot be reached”.

Final considerations

As a final remark, the Chair concluded that the Eurojust Proposal does give stronger powers to Eurojust, but only as regards its “judicial authority function” and not as regards its typical “coordination function”. In other words, the Proposal gives more incisive and harmonised powers to the national members as judicial authorities (Article 8), but neglects the possibility to enhance the unique coordination role of Eurojust, for instance by granting binding coordination powers (e.g. in case national authorities do not follow up to decisions agreed during coordination meetings) that would be needed to make Eurojust more effective.

In reply to the initial question, it was concluded that because of the lack of clarity of several key provisions of the Eurojust Proposal as it currently stands, in particular with regard to the tasks, competence and powers of Eurojust, it is doubtful that draft Regulation would represent an improvement in the fight against cross-border crime.

Discussion in the plenary following the presentation of the outcome of the workshop

The following views were expressed by participants:

List of forms of crime

It was underlined that the closed list of forms of crime would be detrimental to the work of Eurojust and also to the competent authorities at national level where the core business takes place; if a list is needed, then it should be an open one. Article 4(2) of the Eurojust Decision should be maintained. The Commission clarified that the lists of crimes included in the draft Eurojust and Europol Regulations will be aligned.

Powers

It was noted that, even if it is understandable that some Member States have difficulties with the proposed provisions regarding the powers of national members, it is hard to work efficiently as a national member without having at least the same powers as one's colleagues at national level. As not all national members currently have the same minimum powers but not all of them, the idea of having them was considered to be helpful.

Implementation of Article 85 TFEU

It was considered regrettable that the Eurojust Proposal reinforces the powers of national members, which is not mentioned by Article 85 TFEU, instead of reinforcing Eurojust's role in preventing and solving conflicts of jurisdictions and enhancing relations with the EJM, as foreseen by Article 85 TFEU.

4.2.3 A practitioner's perspective

Christian Schierholt, Chief Senior Public Prosecutor at the Prosecutor General's Office of Celle in Germany, Central Unit Organised Crime and Corruption, Contact Point of the European Judicial Network and ENCS, offered a practical perspective. In general, it would have been better to wait for the results of the Sixth Round before making a new legislative Proposal on Eurojust.

Tasks

It is essential to improve judicial cooperation between investigating and prosecuting authorities in the Member States, so surely an improved Eurojust would play an even more important role than it does now. The possibility for Eurojust to act on its own initiative means taking on a pro-active role: Eurojust will be able to collect data and information and act accordingly.

Competence

Limiting the competence of Eurojust to a rigid list of forms of crime that would be difficult to change is not a good solution as new forms of crime can emerge (e.g. cybercrime emerged only recently). It is important to introduce an open clause that allows Eurojust to support the national authorities, at their request, also in respect of offences which are not on the list. If Eurojust is then overloaded and the EJM would be in a better position to intervene, some cases can be forwarded to the EJM so that Eurojust can focus more on serious crime cases. The fact that in Germany all EJM contact points are part of the ENCS facilitates the distribution of cases as they act like a filter.

Powers

The main question is whether the national members really need the additional powers foreseen by Article 8. For the German perspective, such additional powers have not been needed by the national member to date. If the added value of Article 8 would be minimal in practice and its adoption would entail profound changes and consequences (e.g. changes in the constitutions of Germany and Poland, the non-participation of Ireland), the reasons to keep Article 8 as proposed are very doubtful.

For instance, according to Article 8(3) of the draft Regulation, the national members would be able to order investigative measures in urgent cases when timely agreement with the national prosecutors cannot be reached, i.e. they would be able to act against national prosecutors' decisions. This could create serious consequences for Eurojust's credibility and acceptance at Member State level.

Moreover, Article 8 would not be in line with Article 85(2) TFEU according to which formal acts of judicial procedure (e.g. issuing an EAW) should be carried out by the competent national officials.

Instead of reinforcing the national members' powers, the unique strength of Eurojust, i.e. the coordination role as shown especially through well organised coordination meetings held at Eurojust's headquarters in The Hague, should be enhanced.

Other issues

Other provisions and issues that need to be highlighted concern:

- Article 47 that foresees a mandatory coordination role for Eurojust of incoming MLA requests issued by a third country. This goes against the fundamental principle of direct contact between competent authorities which has facilitated mutual legal assistance in criminal matters more than any other development in recent years. A "may" clause should be maintained instead;
- Article 45 that provides for data transfer without authorisation and therefore does not take into account the risk that prosecutors will not give Eurojust any information without knowing where such information will go;
- The new data protection supervisory role given to the general European Data Protection Supervisor (EDPS) without taking into account the specificity of Eurojust that, as a judicial body, needs a specialised data protection supervisor;
- The importance of avoiding any influence from a political, governmental and institutional point of view because Eurojust, as a judicial body, must be totally independent; any involvement of other administrative bodies – even if only in administrative matters – might affect this independence or at least might be seen from the outside to affect this independence, which would also be detrimental to the credibility of Eurojust;
- A new possible future role for Eurojust to exercise judicial supervision of the acts of Europol, which, as it is becoming more of an operational body as opposed to a pure data collection body, would need judicial supervision – as foreseen by different court decisions.

4.3. Relations with partners and third States

4.3.1 An academic's perspective

Valsamis Mitsilegas, Professor at the Queen Mary University of London, discussed the relationship between Eurojust and third States as provided for in Articles 43 to 47 of the Eurojust Proposal. The relationship between Eurojust and Europol, in light of Article 40 of the Eurojust Proposal, were also briefly presented.

Transfers of personal data to third countries and international organisations

Article 45 of the Eurojust Proposal provides that Eurojust may transfer personal data to an authority of a third country or to an international organisation or Interpol, in so far as this is necessary for it to perform its tasks, only on the basis of:

- a) an adequacy decision of the Commission; or
- b) an international agreement concluded between the European Union and a third State adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals; or
- c) a cooperation agreement concluded between Eurojust and a third State in accordance with Article 27 of the Eurojust Decision.

This provision essentially removes the competence of Eurojust to conclude international agreements with third States, although it provides for the possibility that Eurojust can conclude working arrangements to implement adequacy decisions or international agreements concluded between the European Union and a third State. The legal force and nature of these working arrangements is however unclear.

The Commission justifies Article 45 of the Eurojust Proposal in view of Article 218 TFEU. However, it is not clear whether the implication or intention of that provision of the Treaty is actually to prevent EU agencies with legal personality from concluding international agreements. It could be that there are some exemptions to Article 218 TFEU.

An issue which needs to be considered is the paradox of allowing the transfer of personal data to third States on the basis of adequacy decisions taken solely by the Commission through comitology procedures where there is no involvement of the European Parliament, therefore making the process less democratic. Questions which remain unanswered are how Eurojust will implement adequacy decisions or international agreements and whether working arrangements concluded by Eurojust will be subject to the jurisdiction of the Court of Justice of the European Union.

Liaison magistrates posted to third countries

Article 46 of the Eurojust Proposal does not define further the mandate, status and competences of Eurojust liaison magistrates. The proposal should better clarify the latter.

Requests for judicial cooperation to and from third countries

In accordance with Article 47 of the Eurojust Proposal, Eurojust shall coordinate the execution of requests for judicial cooperation issued by a third country where these requests are part of the same investigation and require execution in at least two Member States. This provision has been enhanced compared to Article 27b of the Eurojust Decision as it makes mandatory the referral of international mutual legal assistance requests to Eurojust. An important question is whether Eurojust could act as ‘one-stop-shop’ in relation to requests to and from third countries falling under its competence.

Relations with Europol

An issue which remains unclear is the position of Eurojust and Europol in the European area of freedom, security and justice. Data protection should be regarded as a matter of concern in view of the considerable amount of personal data these organisations keep in their database, which are meant to be interconnected.

4.3.2 Outcome of workshop 3

Chair: Roelof Jan Manschot, former Vice-President of Eurojust and former Dutch Chief-Prosecutor

Aim of the workshop

The aim of the workshop was to examine Chapter V of the Eurojust Proposal (Articles 38 to 47) which covers the relations with the authorities of third countries and international organisations, including Interpol, as well as with EU bodies and agencies such as Europol and OLAF, and the EJM.

Relations with third States and international organisations (Articles 43 to 47)

Participants were asked to reflect upon the possibilities for operational cooperation with third States and international organisations in view of the new legislative framework proposed by the Commission. In addition, participants discussed the posting of Eurojust liaison magistrates to third States and the need to clarify the legal regime applicable to Eurojust’s external relations.

With respect to relations with the authorities of third countries and international organisations, it was noted that in accordance with Article 218 TFEU, the new legal regime proposed by the Commission prevents Eurojust from concluding cooperation agreements. The latter have been so far the legal basis for the exchange of operational information, including personal data, in accordance with Articles 3(2) and 26a of the Eurojust Decision. Taking that into account, the new possibilities for operational cooperation in light of the provisions which would allow Eurojust to transfer personal data to third countries and international organisations were discussed (Article 45(1) of the Proposal):

- Adequacy decisions adopted by the Commission in accordance with Articles 25 and 31 of Directive 95/46/EC. It was stated that so far they have been a ‘first pillar’ instrument leading to limited results. The 15 or so adequacy decisions adopted so far are not necessarily in respect of countries which would be a priority for Eurojust action from either an operational, data protection or human rights perspective.
- International agreements concluded between the Union and a third country or international organisation pursuant to Article 218 TFEU adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals. It was noted that so far existing international agreements have limited provisions on data protection.
- Existing cooperation agreements concluded by Eurojust will remain valid after the entry into force of the draft Regulation in accordance with Article 66(5) on transitional arrangements.

In addition, it was noted that Eurojust may conclude working arrangements only on the basis of adequacy decisions or international agreements. Taking the above into account, it was considered that working arrangements would have a limited application and would therefore not provide a solid base for operational cooperation with third States.

Participants then considered other options for the transfer of personal data in accordance with the draft Eurojust Regulation:

- By way of derogation of Article 45(1), the possibility that Eurojust may authorise the transfer of personal data to third countries or international organisations or Interpol on a case-by-case basis and in exceptional circumstances (Article 45(2)).

- The possibility that the College of Eurojust, in agreement with the European Data Protection Supervisor, may authorise the transfer of data in conformity with Article 45(2) points a) to d), taking into account the existence of safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, for a period not exceeding one year but which would be renewable (Article 45(3)). The legislator could explore this provision further and consider extending its scope with a view to ensuring that the safeguards agreed between Eurojust, a third State and the Joint Supervisory Body of Eurojust, the European Data Protection Supervisor or another supervisor are put in place. This possibility, which would mirror the system in place in the framework of Directive 95/46/EC, would offer a more systematic and practical solution for Eurojust while respecting data protection requirements.

In that vein, it was noted that the Legal Service of the Council of the European Union is considering to what extent EU bodies or agencies with legal personality may still have the possibility to establish their own external relations by putting in place adequate safeguards. Participants considered that appropriate human rights safeguards (not only in the field of data protection) would result in better operational cooperation with third States and international organisations.

In relation to Eurojust liaison magistrates posted to third countries (Article 46), it was considered that the Eurojust Proposal should further define their mandate, status and competences. One reservation was raised in relation to their powers, but it was generally acknowledged that Eurojust would not act as a supranational body, but in accordance with the national laws of the concerned Member States in individual cases. With respect to liaison magistrates/prosecutors seconded to Eurojust by third States, it was considered that they should be explicitly mentioned in the text of the draft Regulation considering that experience has shown this instrument to be very useful.

The need to clarify the legal regime applicable to Eurojust's complex external relations was acknowledged by participants, in particular when it comes to Articles 3(3) and 47 of the Eurojust Proposal. The scope of application of both provisions should be clarified.

Finally, it was considered that Eurojust's expertise in establishing cooperation with third States should not be lost and that the legislator should find a practical solution in that respect.

Relations with EU bodies and agencies (Articles 38 to 42)

Participants considered *inter alia* the provisions related to the relationship between Eurojust and the EJM, Europol and OLAF. Establishing and maintaining cooperative relations between Eurojust and the EU institutions was also discussed.

- With respect to the relationship between Eurojust and the EJM, it was considered a missed opportunity that the wording of the draft Eurojust Regulation does not introduce any changes. The recurring issue relating to the streamlining of cases between Eurojust and the EJM remains therefore unresolved. Participants considered that the ENCS could be used as a tool to further develop the relations between Eurojust and the EJM as it could help as a sort of interface between national authorities and Eurojust/EJM.
- The relationship between Eurojust and Europol was also considered. The new provisions on access to information aim at increasing synergies between both organisations and the detection of links between cases. The provisions on information exchange (Article 40 of the draft Eurojust Regulation and Article 27 of the draft Europol Regulation) represent a major step as access to information is now at the same level as compared with the access of Member States. Participants also considered that both Regulations should be phrased in the same way provided that the respective restrictions for exchanging information are taken into account.
- Cooperation between Eurojust and OLAF needs to be enhanced *inter alia* by establishing an obligation for cooperation which should apply equally to both organisations. In that respect, Article 42 of the draft Eurojust Regulation and Article 13 of the draft Regulation concerning investigations conducted by OLAF should be mirror each other. In this context, it was considered that action must be possible on the initiative of Eurojust as well. Finally, it was noted that how the relationship between Eurojust and OLAF will evolve with the creation of the EPPO is an open question as it is not yet clear what the EPPO will look like. One participant considered that the national OLAF contact point could perhaps become part of the ENCS.
- Regarding the Consultative Forum of Prosecutors General and Directors of Public Prosecutions, it was considered that a new provision on the support provided by Eurojust could be added (e.g. in Article 39).
- The way forward for establishing and maintaining cooperative relationships between Eurojust and EU institutions was also discussed. In that respect, it was considered that the relationship between Eurojust and EU Institutions, e.g. the Council of the European Union and in particular its Joint Situation Centre, should be explicitly mentioned in the text of the draft Eurojust Regulation. Frontex should also be explicitly mentioned.

- Finally, it was acknowledged that while agreements between Eurojust and other EU agencies or bodies will no longer be needed (Eurojust will be entitled to directly exchange all information, including personal data, with EU bodies and agencies in accordance with Articles 38(2) and 44 of the Proposal), working arrangements would be advisable *inter alia* to regulate the modalities of the information exchange, including personal data, and the secondment of liaison officers.

4.3.3 A practitioner's perspective

Bostjan Škrlec, Higher Prosecutor at the Prosecutor General's Office in the Republic of Slovenia, presented a drug trafficking case where practical difficulties as to the admissibility of evidence obtained in a third State were encountered. The defence argued in the Slovenian court that the phone number of the head of the criminal organisation had been obtained illegally in a third State. The court considered the allegation of the defence and therefore declared the wiretap evidence to be inadmissible.

The case illustrates the need for an enhanced legal framework in the field of international legal assistance in criminal matters which should include the posting of Eurojust liaison magistrates to third States in order to assist the authorities of Member States *inter alia* in dealing with legal issues and practical difficulties as to the admissibility of evidence obtained abroad.

Article 46 of the Eurojust Proposal does not clarify the mandate, status and competences of Eurojust liaison magistrates. More clarity is needed in that respect in order to facilitate the implementation of this provision by the College of Eurojust which needs to draw up the rules on the posting of liaison magistrates. The legislator should also consider practical solutions with a view to allowing the posting of Eurojust liaison magistrates to specific regions such as the Western Balkans.

4.4. Relations between Eurojust and the EPPO

4.4.1 An academic's perspective

Katalin Ligeti, Professor at the University of Luxembourg, discussed the "special relationship" that is mentioned in both Article 41 of the Eurojust Proposal and Article 57 of the EPPO Proposal.

“From Eurojust”

The starting point for any analysis of “the special relationship” should be Article 86 TFEU which foresees the establishment of an EPPO “from Eurojust”. In this regard, it is important to bear in mind that Eurojust and the EPPO represent different models of integration. Whilst Eurojust works on a horizontal model by coordinating functions, the EPPO as envisaged would work vertically, exercising its own investigating and prosecuting powers. Moreover, Eurojust and the EPPO will have different material and territorial competences. The EPPO’s competence will be limited to PIF crimes and its establishment will be subject to enhanced cooperation. Consequently, the EPPO will not really develop “from” Eurojust in the sense that Eurojust will not become the EPPO.

The structural relationship

Different scenarios can be envisaged, ranging from two completely separate and autonomous entities to a complete merger between Eurojust and the EPPO. The two Proposals make an implicit but clear choice of an EPPO that constitutes a separate entity from Eurojust, but that is linked to it through the joint use of operational, administrative and management resources. Even though a number of provisions of the Eurojust Proposal refer to cooperation, it is difficult to see how in-depth integration can be achieved. The overall impression when reading the two Proposals is that the EPPO should be seen as a 29th member of Eurojust, rather than being an integrated part of Eurojust.

The functional relationship

An analysis of the functional relationship requires some comments on the EPPO’s sphere of competence and some thoughts on how Eurojust can be useful to the EPPO.

First, as regards Eurojust’s sphere of material competence, the wording of Article 3(1) of the Eurojust Proposal is unclear and misleading in particular in light of Annex 1. Article 3(1) of the Eurojust Proposal *juncto* Annex 1 may be interpreted as only excluding Eurojust’s competence in those cases in which the EPPO actually exercises its competence. Yet even according to this interpretation, there might still be PIF cases where Eurojust’s support will be needed, e.g. in case of connected crimes that are allocated to a Member State. Article 3(1) of the Eurojust Proposal *juncto* Annex 1 could also be read in a way that allows Eurojust only to act on the EPPO’s request, but such an interpretation is not satisfying either.

Secondly, as regards the territorial competence of the EPPO, the mechanism of enhanced cooperation cannot be left unmentioned as it will have a major impact on Eurojust’s involvement, in particular in transnational PIF cases that include both EPPO and non-EPPO EU countries. Moreover, in cases that relate to third countries and international organisations, it remains to be seen whether the EPPO will rely on Eurojust’s existing working arrangements with third countries/organisations or whether it will establish its own working arrangements with these entities. In this regard, risks of duplication of efforts should be avoided.

Finally, as regards the ways in which Eurojust can be useful to the EPPO, two aspects should be mentioned: exchange of information and administrative support. As regards the exchange of information, the two Proposals include all kinds of obligations and they provide for the establishment of an EPPO Case Management System that will be connected to the Eurojust Case Management System. It is interesting to note that the mechanism of “automatic” data cross-checking would go further than the system that is currently in place between Eurojust and Europol. As regards administrative support, many questions remain open as this issue needs to be worked out in an agreement between Eurojust and the EPPO. From a managerial point of view, this agreement must pay due regard to Eurojust’s capacity so that Eurojust’s core function will not be endangered. From a financial point of view, this agreement must address the reimbursement of costs. It is regrettable that the EPPO Proposal is silent on this issue.

4.4.2 Outcome of workshop 4

Chair: Hans G. Nilsson, Head of Unit, Fundamental Rights and Criminal Justice at the General Secretariat of the Council of the European Union

Aim of the workshop

The goal of the workshop was to examine the relationship between Eurojust and the EPPO. The fact that Eurojust is mentioned 63 times in the EPPO Proposal and that the EPPO is mentioned 60 times in the Eurojust Proposal is a clear indication of their privileged relationship. During the workshop the participants were asked to discuss different aspects of this relationship by examining a number of relevant provisions in both Proposals. First, they were asked to analyse the respective sphere of competence of the EPPO and Eurojust in relation to PIF crimes. Subsequently, they were asked to look into the provisions on operational cooperation, in particular with regard to the exchange of information and requests for cooperation. Finally, they were asked to assess the provisions on functional/administrative cooperation.

Delineation of competences between Eurojust and the EPPO (Article 3(1) of the Eurojust Proposal)

- Article 3(1) of the Eurojust Proposal excludes Eurojust’s competence for crimes for which the EPPO is competent. According to most participants, the *ratio legis* of this provision – the idea of “a single legal area” that is confined to PIF crimes for which the EPPO has exclusive competence – is interesting, but not fully convincing. The following suggestions were made:
 - o A less categorical approach towards cases that fall within the “single legal area” and cases that fall outside of this area would allow the so-called mixed cases, where Eurojust can play a pivotal role to be considered.

- In view of the fact that it is already known that at least two Member States will not be participating in the EPPO – Denmark is automatically excluded by virtue of Protocol 22 and the United Kingdom has made it clear that it will not be opting in to the proposal under the terms of Protocol 21 – the path of enhanced cooperation becomes unavoidable. This would require some consideration of Eurojust’s role in PIF cases where both EPPO-countries and non-EPPO-countries are involved.
- Less emphasis on “exclusive” competence and more focus on a comprehensive approach – meaning close cooperation between the EPPO, Eurojust and the national authorities – would be more compatible with the idea of complementarity that is reflected in Articles 85 and 86 TFEU.

In the light of the foregoing, it was agreed that a reformulation of Article 3(1) of the Eurojust Proposal would be appropriate.

- The scope of “offences affecting the financial interests of the Union” requires close follow-up. Most participants agreed that it might be desirable not to limit the EPPO’s sphere of competence to the scope of the (future) PIF Directive, but also to include the (future) Directive on Euro-counterfeiting.

Information exchange and requests for cooperation as crucial tools for a smooth operational cooperation between Eurojust and the EPPO

- During the workshop it was considered that the EPPO’s regime on exchange of information is largely in line with the EU *acquis*. In this regard, the participants reached an agreement on the following points:
 - The automatic cross-reference mechanism between the two Case Management Systems is original and promising.
 - The provisions of the two Proposals seem adequate and proportionate and allow a smooth exchange of information whilst at the same time respecting the protection of personal data.
 - Article 57(2)(e) of the EPPO Proposal includes a clear and welcome obligation for the EPPO to share information with Eurojust whenever it is involved in a case.

- It was discussed whether the EPPO should be entitled to “order” Eurojust to act in Member States in which the EPPO has no competence in relation to PIF crimes. In general, participants agreed that the EPPO would not be entitled *to order* Eurojust to do something but only *to make a request*. In this respect, participants made the following remarks. First, it was underlined by all participants that ‘requests’ are by their nature non-binding. Secondly, it was argued that Articles 85 and 86 TFEU represent two complementary models. It would be unfortunate to apply elements of the vertical model (Article 86 TFEU) to the horizontal model (Article 85 TFEU). Whenever an investigation relates to PIF crimes that are not limited to the EPPO’s single legal area – e.g. when third countries, non-EPPO Member States or ancillary competence are involved – Eurojust’s horizontal cooperation model comes into play. In such a model the EPPO would fulfil a role that is more akin to that of a 29th national competent authority that can issue requests, rather than that of a hierarchically superior entity that can impose binding orders.

Administrative/functional cooperation between Eurojust and the EPPO

- The participants regretted that the EPPO Proposal is extremely brief on this sensitive, yet crucial issue and wondered whether the EPPO Proposal would benefit from:
 - a clarification of the sentence that “support must be provided on a zero cost basis”.
 - a clarification of the sentence that the EPPO “shall rely on the support and resources of the administration of Eurojust”.
 - the introduction of a mechanism for the reimbursement of costs.
- The participants felt that the current text (in particular Articles 52(1) and 57(6) of the EPPO Proposal) with its strong budgetary links might jeopardize the independence of the EPPO, which is considered to be a core principle of the EPPO Proposal. Therefore, they suggested that the introduction of a separate budget and a separate accounting officer for the EPPO might be considered.
- It was also underlined that the importance of the agreement between Eurojust and the EPPO (as mentioned in Article 57(6) EPPO Proposal) should not be underestimated. Any such agreement would ideally include an allocation model that contributes to an efficiently functioning EPPO without jeopardizing Eurojust’s core business.

Final considerations

As a final remark the Chair concluded that many issues are still open as the exact contours of the EPPO are at this point unclear and will require further reflection the coming months. Nevertheless, some conclusions can be drawn with regard to the two Proposals. First of all, an unambiguous demarcation of competences is not only essential for a good understanding of the relationship between Eurojust and the EPPO, but also to ensure smooth cooperation between them. In this regard, the wording of current Article 3(1) of the Eurojust Proposal requires further consideration. Moreover, effective cooperation also requires that the horizontal model of Article 85 TFEU should not be mixed with the vertical model of Article 86 TFEU. Finally, the cooperation agreement that is required by Article 57(6) of the EPPO Proposal must be developed with due regard to Eurojust's core business and to the EPPO's independence.

Discussion in the plenary following the presentation of the outcome of the workshop

The following views were expressed by participants:

During the discussion with the audience, the issue of the EPPO's independence was further considered. First, a comparison was made with the International Criminal Court (ICC). When in the early 1990s a Tribunal and an Office of the Prosecutor were created, there were strong budgetary links between both of them. After a while an expert committee was set up to look into this, which found that the Office of the Prosecutor should have its own budget. This was explicitly written down in the Rome Statute of the ICC and even mentioned by Bergsmo in Triffterer's commentary on the Rome Statute. It is important to learn from this past experience. Additionally, it was said that in accordance with EU law, an accounting officer can be held personally responsible. The combined role according to which "the accounting officer of Eurojust shall act as the accounting officer of the EPPO", is certainly an innovative construction, but it is difficult to reconcile with this personal responsibility. In this regard, one may wonder which decision the accounting officer should take when Eurojust' needs and the EPPO's needs do not coincide.

4.4.3 A practitioner's perspective

Jorge Espina, Prosecutor at the Prosecutor General's Office in Spain, considered that many issues are still open when looking at the parallel move that was launched by the Commission's Eurojust and EPPO Proposals. It is clear that both Proposals need to be discussed together throughout the legislative process.

Significance of “from Eurojust”

Even though it is difficult to grasp the significance of “from Eurojust” (Article 86 TFEU), it cannot be denied that in view of the many cross-references in both Proposals, the privileged relationship that should exist between both entities has been respected. From a practitioner’s point of view it is difficult to predict at this time how both structures will work together. As far as Eurojust is concerned, one should speak in terms of the “evolution” of something that already exists but which is still growing and is capable of further evolution (e.g. binding powers on resolution of conflicts of jurisdiction). As far as the EPPO is concerned, the Proposal is truly revolutionary as there is nothing similar in practice yet in the EU. The creation of effective cooperation between these entities will require a change of mind-set and a change of concrete tools. There is no doubt that Eurojust will be deeply affected.

Demarcation of competences

Effective practical cooperation will depend first of all on a good demarcation of competences. In this regard, a problematic issue that was extensively discussed in the workshop and rightly criticized, concerns Article 3(1) of the Eurojust Proposal. The wording of this provision is quite disappointing as it seems to exclude any intervention for Eurojust with regard to PIF crimes. Notwithstanding some creative interpretations that were brought up during the seminar and that provided some insight into the *ratio legis* of this provision, a redrafting of Article 3(1) seems necessary in order to clarify that Eurojust will still have an important role to play with regard to PIF crimes.

Exclusive versus complementary competence

Due regard must be given to the use of the concept “exclusive” competence which only makes sense in the relationship between the EPPO and national authorities, but not when discussing the relationship between Eurojust and the EPPO. In the latter relationship, complementarity should prevail in accordance with the different roles that are attributed to Eurojust and the EPPO in Articles 85 and 86 TFEU.

Ancillary competence

Another point of concern relates to the so-called “ancillary competence” (Article 13 *juncto* Article 57 of the EPPO Proposal) which are unfortunately not equally stressed in the Eurojust Proposal. It should be made clear that PIF crimes are the core business of the EPPO, but that in some cases the EPPO necessarily has to deal with ancillary offences too. There is a clear need for a uniform interpretation of this issue in both Proposals as it is very detrimental for a suspect if ancillary competences are neglected and a case is artificially split up.

Double-hatted position of the Delegated Prosecutors

A final element that needs some further consideration is the “double-hatted” position of the Delegated Prosecutors when “requiring” Eurojust’s intervention regarding specific acts of investigation (Article 57(2)(d) of the EPPO Proposal). The fact that the Delegated Prosecutors exercise their PIF-related competence under the direction and supervision of the European Public Prosecutor does not imply that they are in a superior position vis-à-vis Eurojust. It would be erroneous, misleading and impractical to translate the hierarchical/vertical relationship from the EPPO model to Eurojust. Therefore, it seems reasonable to expect that, like national authorities, Delegated Prosecutors can *request* but not *order* Eurojust to act.

Annex 1

Comparison Table

Proposal for a Regulation on Eurojust / Common Approach of the EU institutions on decentralised agencies

(Version 8 October 2013)

In a Joint Statement issued on 19 July 2012, the European Parliament, the Council of the EU and the European Commission adopted a Common Approach on decentralised agencies. While acknowledging in their Joint Statement its legally non-binding character, the three institutions agreed to take the Common Approach into account in the context of all their future decisions concerning EU decentralised agencies, following a case by case analysis.

The present working document, prepared by Eurojust, compares the provisions of the Commission Proposal for a Regulation on Eurojust against the principles set out in the Common Approach. The left column refers to the articles of the Proposal for a Regulation on Eurojust. The right column indicates whether these provisions are identical or compatible with the Common Approach, or whether they deviate from it or are out of the scope of the Common Approach (the corresponding paragraphs of the Common Approach are indicated in brackets).

1. OBJECTIVES AND TASKS

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
Article 1 - Agency Establishes the European Union Agency for Criminal Justice Cooperation (Eurojust) as the legal successor of Eurojust.	Article 1(1) IDENTICAL (see point 1) The Common Approach provides that the naming of all EU agencies shall follow the same structure, i.e. <i>“The European Union Agency for [...]”</i>

<p>Articles 2–5 - Tasks</p> <p>Set out the tasks and competence of Eurojust, as well as its operational functions and how those functions shall be exercised.</p>	<p>Articles 2-5 OUT OF SCOPE</p> <p>The Common Approach does not contain any provisions relating to the tasks, competence or functions of agencies.</p>
--	--

2. STRUCTURE AND ORGANISATION OF EUROJUST

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 6 - Structure of Eurojust</p> <p>Sets out the structure of Eurojust which includes the National Members, the College, the Executive Board and the Administrative Director.</p>	<p>Article 6 COMPATIBLE (see point 10)</p> <p>Due to the unique nature of the structure of Eurojust, this provision has been adapted slightly from the Common Approach. The College of Eurojust acts as the Management Board provided for in the Common Approach (with a slightly different composition than the College acting as an operational body). Furthermore, an Executive Board is established, as provided for in the Common Approach in order to streamline the decision making process and to enhance efficiency and effectiveness.</p>
<p>Articles 7-9 - National Members</p> <p>Contain provisions on the status of national members and their deputies, their powers and their rights of access to certain types of national registers.</p>	<p>Articles 7-9 OUT OF SCOPE</p> <p>National Members are unique to Eurojust and therefore there are no related provisions in the Common Approach.</p>

2.1 THE COLLEGE

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 10 - Composition of the College</p> <p>Details the composition of the College i) when exercising its operational functions and ii) when exercising its management functions.</p> <p>Also determines the terms of office of members and deputies, the duty of the Administrative Director (AD) to participate in the management meetings of the College, without voting rights, and the possibility to invite external parties to meetings as observers.</p>	<p>Article 10(1)(b) COMPATIBLE (see point 10)</p> <p>The Common Approach provides that each agency's Management Board shall be comprised of one representative from each Member State plus two representatives of the Commission. The members of the Management Board at Eurojust are the national members themselves.</p> <p>Article 10(2) COMPATIBLE (see point 10)</p> <p>The Common Approach provides that the term of office of Management Board's members shall be 4 years renewable, but does not specify that this is limited to one renewal. The CA does not mention the procedure when a MB member's term expires, before their replacement is in place.</p> <p>Rest of Article 10 OUT OF SCOPE</p>
<p>Article 11 - The President and Vice-President</p> <p>Provides the terms for election of the President and two Vice-Presidents and their terms of office. Article 11 also provides that they may be re-elected once.</p>	<p>Article 11 OUT OF SCOPE</p> <p>The positions of President and Vice-President are unique to Eurojust and therefore not contemplated in the Common Approach.</p>
<p>Article 12 - College Meetings</p> <p>Specifies the frequency of College meetings and the rights of the EPPO to participate.</p>	<p>Article 12 OUT OF SCOPE</p> <p>This Article relates to the specific relationship between Eurojust and the future EPPO and is therefore not covered in the CA.</p>

<p>Article 13 - Voting rules</p> <p>Contains the voting rules in the College.</p>	<p>Article 13(1) IDENTICAL (see point 13)</p> <p>The Common Approach states that the Management Board shall take decisions by absolute majority vote for current business matters and by 2/3 majority in specific cases.</p>
<p>Article 14 - Management functions of the College</p> <p>Lists tasks of the College sitting as a Management Board, including adoption of the programming document, activity report and budget, rules on financial matters, conflicts of interest and rules of procedure.</p> <p>Also provides that the Management Board shall appoint the AD, Accounting Officer and DPO and elect the President and Vice-President.</p> <p>Article 14(2) provides that the appointing authority powers granted to the College as Management Board shall be delegated to the AD, who may in turn sub-delegate. The delegation to the AD may be suspended under conditions to be defined by the College acting as Management Board.</p> <p>Article 14(3) provides that the College may temporarily suspend the</p>	<p>Article 14(1) mostly COMPATIBLE.</p> <p>Points (a),(f),(g), and (h) almost IDENTICAL (see points 13, 11, 12, 13)</p> <p>Points (b), (c), (d) and (k) COMPATIBLE (see points 46-49, 28.,31. and 35 and 13)</p> <p>Article 14(2) COMPATIBLE (see point 12)</p> <p>The text is identical to the Common Approach apart from the words “<i>and defining the conditions under which this delegation of powers can be suspended. The Administrative Director shall be authorised to sub-delegate these powers</i>”</p> <p>Article 14(3) DEVIATION (see point 12)</p> <p>The Common Approach provides that the Management Board should only become involved in Appointing Authority competences on a case by case basis in exceptional circumstances.</p> <p>Article 14(4) COMPATIBLE (see point 13)</p> <p>The Common Approach provides that Management Board’s</p>

<p>delegation of the appointing authority powers granted to the AD.</p> <p>Article 14(4) provides that the College shall take decisions on the appointment, extension and removal from office of the AD on the basis of a 2/3 majority vote.</p>	<p>decisions on the appointment and dismissal of the director should be taken on the basis of a 2/3 majority.</p>
--	---

ANNUAL AND MULTI-ANNUAL PROGRAMMING

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 15 - Programming</p> <p>Sets out the procedure and deadlines for adoption of the agency’s programming documents as well as their main content. The annual and multi-annual programmes are contained within the same document which is forwarded to the Commission, Council and European Parliament.</p> <p>The annual work programme shall include objectives and performance indicators, and the allocation of financial and human resources to each action.</p> <p>The annual and multi-annual programming documents should be</p>	<p>Article 15 largely COMPATIBLE (see points 27-32)</p> <p>Like the draft Regulation, the Common Approach provides that the Management Board shall adopt a programming document taking into account the opinion of the Commission. There must be an annual and a multi-annual work programme which are coherent and include resource planning (financial and human).</p> <p>However, the Common Approach does not require the annual and multi-annual programmes to be within the same document, and does not mention the amendment of the programme in the event that new tasks are given to the agency (although this would seem obvious).</p>

<p>coherent and updated annually, as well as following any new tasks assigned to the agency and following the Commission’s periodic evaluation.</p>	<p>The Common Approach also does not explicitly require that the resource programme is updated annually or that the strategic plan be updated to address the outcome of the Commission’s evaluation of the agency.</p> <p>The Common Approach also provides that the European Parliament shall be consulted but its views are not binding on the agency.</p>
---	--

2.2 THE EXECUTIVE BOARD

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 16 - Executive Board</p> <p>Lists the functions of the Executive Board. The Executive Board shall prepare the decisions to be adopted by the College in accordance with Article 14 and is responsible for ensuring follow-up to audits and evaluations. It is also given the power to adopt an anti-fraud strategy and implementing rules to the Staff Regulations/CEOS, and to take all decisions on the modification of Eurojust’s internal administrative structures. The Executive Board shall also reinforce supervision of administrative and budgetary</p>	<p>Article 16 largely OUT OF SCOPE (see point 10)</p> <p>The Common Approach contains very little detail on the Executive Board. Parts of Article 16 which come directly from the Common Approach (IDENTICAL) are the fact that the agency shall have an Executive Board which shall include one representative of the Commission, and that the Executive Board operates with a view to reinforcing supervision of administrative and budgetary management.</p>

<p>management by assisting and advising the AD.</p> <p>Gives the Executive Board the power to take certain provisional decisions on behalf of the College, and grants a residual power to take any other decisions not expressly attributed to the College or the AD.</p> <p>Article 16(4) defines the composition of the Executive Board with the President and Vice-Presidents of the College, one other College member and one Commission representative and their terms of office.</p> <p>Article 16(7) also grants rights to the EPPO to participate.</p>	
--	--

2.3 THE ADMINISTRATIVE DIRECTOR

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 17 - Status</p> <p>Provides that the AD shall be appointed as a temporary agent by the College from a list of candidates proposed by the Commission following an open selection procedure.</p>	<p>Article 17 largely COMPATIBLE (see points 16, 17 and 19) with some DEVIATION</p> <p>The procedure for the appointment of the AD by the Management Board on the basis of a list proposed by the Commission is IDENTICAL to the Common Approach (<i>Note: the CA provides that exceptions to the above procedure can be foreseen if justified in specific cases</i>). The requirement that an AD whose term of office has been extended may not participate in another selection procedure is</p>

<p>Article 17(3) sets the term of office of the AD at 5 years, renewable once.</p> <p>Article 17(7) provides that he/she may only be removed from office by the College acting on a proposal from the Commission.</p> <p>Article 17(6) makes the AD accountable to the Executive Board and to the College.</p>	<p>also IDENTICAL to the Common Approach.</p> <p>Articles 17(3) and (4) are COMPATIBLE (see point 17)</p> <p>The CA provides that an evaluation of the Director’s performance should be undertaken. However, the CA does not require that such an assessment should be made by the Commission. According to the CA, the MB may decide to extend the mandate of the Director. The limit of one renewal on decision of the MB is also in line with the CA. However, according to the draft Eurojust Regulation, the College may only act on the basis of a proposal from the Commission.</p> <p>Article 17(7) is COMPATIBLE (see point 19)</p> <p>The Common Approach provides that the procedure for dismissing the director should mirror the appointment procedure.</p> <p>Article 17(6) DEVIATION (see point 15)</p> <p>The Common Approach provides that the AD is accountable to the Management Board only.</p>
--	---

Article 18 - Responsibilities

Establishes the AD as the legal representative of Eurojust who shall be independent in the performance of his/her duties.

Provides that the AD is responsible for the administrative management of the agency, including day-to-day administration of Eurojust, preparation of programming documents and annual reports, implementation of decisions of the College and Executive Board and preparing actions following audits, investigations and evaluations.

The AD shall also be responsible for preparing the financial rules applicable to the agency, taking measures to prevent fraud and implementing the budget.

The proposed Eurojust Regulation grants some of the management powers concerning financial and staff matters to the AD while others are entrusted to the Executive Board, e.g. the power to adopt implementing rules to the Staff Regulations/CEOS or the power to take all decisions on Eurojust's internal administrative structures.

Article 18 largely COMPATIBLE (see point 14)

The provisions that the AD shall be the legal representative of Eurojust and implement decisions taken by the College (Management Board), the programming document and prepare the annual report are **largely COMPATIBLE** to the Common Approach.

Article 18 – some DEVIATION (see point 14)

The Common Approach states that the Director shall be a “*full management power concerning financial and staff matters*”.

In the Common Approach, the agencies' director is denominated “*Executive Director*”. The Common Approach makes the Director not only responsible for administrative management but also for the implementation of the duties assigned to the agency (because EJ's specificity the AD competence appears to be confined to areas listed

	under Article 18).
--	--------------------

3. OPERATIONAL MATTERS

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Articles 19-26</p> <p>Articles concerning the On-Call Coordination Centre, ENCS, exchanges of information with Member States, information provided to competent authorities and the Case Management System.</p>	<p>Articles 19-26 OUT OF SCOPE</p> <p>These articles all deal with the specific operational functioning of Eurojust and are therefore not included in the Common Approach.</p>

4. PROCESSING OF INFORMATION AND PROTECTION OF PERSONAL DATA

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Articles 27 – 37</p> <p>On processing and storing personal data including the right of access, rectification/erasure of incorrect data and logging of data processing activities. Article 37 establishes liability for any unauthorised or</p>	<p>Articles 27-37 and 44-45 OUT OF SCOPE</p> <p>The Common Approach does not contain any provisions on information processing or the protection of personal data.</p>

<p>incorrect processing of data.</p> <p>These articles also cover appointment of the DPO, responsibilities in data protection matters and cooperation with the EDPS and national data protection authorities.</p> <p>Articles 44- 45 - Transfer of personal data</p> <p>Provides for transfer of personal data to union bodies, third countries and international organisation where necessary for the performance of Eurojust’s duties and subject to specified restrictions.</p>	
---	--

5. RELATIONS WITH PARTNERS AND THIRD COUNTRIES

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Articles 38 - 43</p> <p>Eurojust may establish cooperative relations with Union bodies and agencies, third countries and international organisations in fulfilment of its tasks and may receive and process personal data received from those bodies subject to defined conditions.</p> <p>Establishes privileged relations between Eurojust and the EJM in criminal matters and the modalities of cooperation, as well as special relationships with Europol, the EJTJ, OLAF and the EPPO.</p> <p>Article 46 - Liaison magistrates posted to third countries</p>	<p>Articles 38-43 and 46-47 OUT OF SCOPE (see point 25)</p> <p>The Common Approach does not include provisions on relations with partners and third countries, other than to provide that agencies whose mandate requires such cooperation should have a clear strategy for external relations, which is incorporated in their annual and multi-annual plans.</p>

<p>Enables Eurojust to post liaison magistrates to third countries subject to a working arrangement and sets out the requirements for this posting.</p> <p>Article 47 - Requests for judicial cooperation</p> <p>Provides that Eurojust shall coordinate the execution of requests for judicial cooperation issued by a third country in some circumstances, and the OCC may be utilised.</p>	
--	--

6. FINANCIAL PROVISIONS

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Articles 48-52 Budget</p> <p>On the preparation, establishment and implementation of the budget, presentation of accounts and discharge and adoption of the agency's financial rules.</p>	<p>Articles 48-52 almost entirely OUT OF SCOPE (see point 14)</p> <p>The only provision in this section taken directly from the Common Approach (IDENTICAL) is that implementation of the budget is the responsibility of the agency's Director.</p>

7. STAFF PROVISIONS

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 53 - General staff provisions</p>	<p>Articles 53-54 OUT OF SCOPE</p>

<p>Provides that Eurojust staff are covered by the Staff Regulations and CEOS as well as inter-institutional agreements for giving effect to those.</p> <p>Article 54 - SNEs and other staff</p> <p>Provides the possibility to make use of SNEs and other staff and requires the College to lay down rules on secondment to Eurojust.</p>	<p>The Common Approach does not contain staff provisions.</p>
---	---

8. EVALUATION AND REPORTING

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 55 - Involvement of the European Parliament and national Parliaments</p> <p>Requires Eurojust to transmit its annual report to the EP which may present its observations, as well as transmitting other documents to the EP for information purposes. These documents will also be transmitted to national parliaments.</p> <p>Provides that the President shall appear before the EP at their request discuss matters relating to Eurojust, taking into account the obligations of discretion and confidentiality.</p> <p>Article 56 - Evaluation and review</p> <p>Provides for a periodic evaluation of Eurojust by the Commission</p>	<p>Articles 55 and 56 COMPATIBLE (see points 49 and 60)</p> <p>The Common Approach provides for transmission of the Annual report to the EP as well as the periodic evaluation of the Commission. The Review clause contemplated in the Common Approach is partially reflected by Article 56(3), although not as explicitly as in the Common Approach.</p> <p>The additional requirement for Eurojust to transmit other documents to the Parliament goes beyond the Common Approach which does not contain this level of detail.</p>

which will assess both the implementation of this regulation and the effectiveness of Eurojust, as well as any modifications to Eurojust's mandate which may be required.	
---	--

9. GENERAL AND FINAL PROVISIONS

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 57 - Privileges and Immunities</p> <p>The Protocol on the Privileges and Immunities of the European Union shall apply to Eurojust and its staff.</p>	<p>Article 57 OUT OF SCOPE</p> <p>The Common Approach contains no provision on privileges and immunities.</p>
<p>Article 58 - Language arrangements</p> <p>Provides that Regulation No.1 applies to Eurojust and translation services will be provided by the Translation Centre of the bodies of the EU.</p>	<p>Article 58 almost entirely OUT OF SCOPE (see point 64)</p> <p>The Common Approach does not contain provisions on language arrangements, other than to provide that agencies' websites should be made as multilingual as possible.</p>
<p>Article 59 - Confidentiality</p> <p>Creates an obligation of confidentiality on all Eurojust post-holders and other persons called upon to work with Eurojust including the EDPS with respect to knowledge they may receive in the course of performance of their tasks.</p> <p>This obligation shall also apply to information received by Eurojust.</p>	<p>Article 59 OUT OF SCOPE</p> <p>The Common Approach contains no provision on confidentiality.</p>
<p>Article 60 - Transparency</p>	<p>Article 60 almost entirely OUT OF SCOPE (see point 64)</p>

<p>Limits the application of Regulation No 1049/2001 to documents relating to Eurojust’s administrative tasks and requires the College to adopt detailed rules for the application of this Regulation.</p> <p>Details the competence of the Ombudsman and ECJ in relation to decisions taken by Eurojust under Article 8 of Regulation 1049/2001.</p>	<p>The Common Approach does not contain any provisions on transparency, other than to require that agencies should provide, via their websites, information necessary to ensure transparency.</p>
<p>Article 61 - OLAF and the European Court of Auditors</p> <p>Establishes the cooperation with OLAF and the powers of OLAF and the ECA to carry out audits and investigations.</p>	<p>Article 61 COMPATIBLE (see points 54, 56 and 66)</p> <p>The Common Approach contains general provisions on audits performed by the ECA as well as on OLAF’s role vis-à-vis agencies.</p>

9.1 SECURITY RULES ON THE PROTECTION OF CLASSIFIED INFORMATION

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 62 Security rules for classified information</p> <p>Provides that Eurojust shall apply the Commission’s security rules for classified information and sensitive non-classified information.</p>	<p>Article 62 some DEVIATION (see point 24)</p> <p>The Common Approach provides that the agency shall apply a level of protection equivalent to the rules of the Commission or Council as appropriate, but refers only to classified information, not sensitive non-classified information.</p>

9.2 ADMINISTRATIVE INQUIRIES

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 63 Administrative inquiries</p>	<p>Article 63 OUT OF SCOPE</p>

The administrative activities of Eurojust shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.	The Common Approach does not contain any provisions on administrative enquiries.
---	--

9.3 LIABILITY OTHER THAN LIABILITY FOR UNAUTHORISED OR INCORRECT PROCESSING OF DATA

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 64 - Liability</p> <p>Details the Eurojust’s liability for matters other than unauthorised or incorrect processing of personal data, both contractual and non-contractual. Establishes the jurisdiction of the ECJ and the personal liability of staff towards Eurojust.</p>	<p>Article 64 OUT OF SCOPE</p> <p>The Common Approach does not contain any provisions on liability.</p>

9.4 HEADQUARTERS AGREEMENT AND OPERATING CONDITIONS

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 65 - Headquarters Agreement</p> <p>Establishes the seat of Eurojust and provides that a Headquarters Agreement shall be signed to detail accommodation arrangements and the facilities available and rules applicable to Eurojust postholders in The Netherlands.</p>	<p>Article 65 COMPATIBLE (see point 9)</p> <p>The Common Approach requires the conclusion of a Headquarters Agreement but does not specify the terms which should be included – these are to be covered in separate guidance from the Commission.</p>

9.5 TRANSITIONAL ARRANGEMENTS AND ENTRY INTO FORCE

COMMISSION PROPOSAL FOR A EUROJUST REGULATION	COMMON APPROACH
<p>Article 66 - Transitional arrangements Provides that Eurojust shall be the general legal successor to the former Eurojust established by Council Decision 2002/187/JHA and sets out the arrangements for the continuation of appointment of SNEs, the President, Vice-Presidents and the AD after the entry into force of this Regulation.</p> <p>Article 67 - Repeal Repeals Decisions 2002/187/JHA, 2003/659/JHA and 2009/426/JHA.</p> <p>Article 68 - Entry into force Establishes the date of entry into force</p>	<p>Articles 66-68 OUT OF SCOPE The Common Approach does not contain provisions for transitional arrangements for agencies already in existence or on the entry into force.</p>

ANNEX 2

COMPARISON TABLE: LISTS OF FORMS OF CRIME

(Version 11 October 2013)

Green – Difference between the draft Regulations on Eurojust and Europol

Yellow – Difference between the draft Regulation on Eurojust and the EAW Framework Decision

Underlined – New crimes in draft Regulation on Eurojust compared to current Eurojust Decision

¹ Proposal for a Regulation on <u>Eurojust</u> (COM (2013)535 final), Annex 1: <i>List of forms of serious crime which Eurojust is competent to deal with in accordance with Article 3(1):</i>	Proposal for a Regulation on <u>Europol</u> (COM(2013) 173 final), Annex 1: <i>List of offences with respect to which Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in accordance with Article 3(1) of this Regulation:</i>	Council Framework Decision <u>2002/584/JHA</u> of 13 June 2002 on the <u>EAW</u> , Article 2(2): <i>The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:</i>
<u>organised crime</u>	organised crime	participation in a criminal organisation
<u>terrorism</u>	terrorism	terrorism
drug trafficking	unlawful drug trafficking	illicit trafficking in narcotic drugs and psychotropic substances
money-laundering	illegal money-laundering activities	laundering of the proceeds of crime
corruption	corruption	corruption
<u>crime against the financial interests of the Union</u>	<i>See below under swindling and fraud</i>	<i>See below under fraud</i>

¹ Note that the order of the forms of crime listed in the comparative table has been altered to facilitate the comparison. The order used as a reference is the one of the list of the Proposal for a Regulation on Eurojust, Annex 1 (COM(2013) 535 final).

murder, grievous bodily injury	murder, grievous bodily injury	murder, grievous bodily injury
kidnapping, illegal restraint and hostage taking	kidnapping, illegal restraint and hostage taking	kidnapping, illegal restraint and hostage-taking
sexual abuse and sexual exploitation of women and children, child pornography and solicitation of children for sexual purposes	sexual abuse and sexual exploitation of women and children	sexual exploitation of children and child pornography
		rape
racism and xenophobia	racism and xenophobia	racism and xenophobia
organised robbery	robbery	organised or armed robbery,
motor vehicle crime	motor vehicle crime	trafficking in stolen vehicles
swindling and fraud	swindling and fraud, including fraud affecting the financial interests of the Union	fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
		swindling
		counterfeiting currency, including of the euro
racketeering and extortion	racketeering and extortion	racketeering and extortion
counterfeiting and product piracy	counterfeiting and product piracy	counterfeiting and piracy of products
forgery of administrative documents and trafficking therein	forgery of administrative documents and trafficking therein	forgery of administrative documents and trafficking therein
forgery of money and means of payment	forgery of money and means of payment	forgery of means of payment
computer crime	computer crime	computer-related crime
insider dealing and financial market manipulation		

illegal immigrant smuggling	illegal immigrant smuggling	
trafficking in human beings	trafficking in human beings	trafficking in human beings
illicit trade in human organs and tissue	illicit trade in human organs and tissue	illicit trade in human organs and tissue
illicit trafficking in hormonal substances and other growth promoters	illicit trafficking in hormonal substances and other growth promoters	illicit trafficking in hormonal substances and other growth promoters
illicit trafficking in cultural goods, including antiquities and works of art	illicit trafficking in cultural goods, including antiquities and works of art	illicit trafficking in cultural goods, including antiques and works of art
illicit trafficking in arms, ammunition and explosives	illicit trafficking in arms, ammunition and explosives	illicit trafficking in weapons, munitions and explosives
illicit trafficking in endangered animal species	illicit trafficking in endangered animal species	<i>See below under environmental crime</i>
illicit trafficking in endangered plant species and varieties	illicit trafficking in endangered plant species and varieties	<i>See below under environmental crime</i>
environmental crime	environmental crime, including ship source pollution	environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
ship-source pollution	<i>See above under environmental crime</i>	
crime connected with nuclear and radioactive substances	crime connected with nuclear and radioactive substances	illicit trafficking in nuclear or radioactive materials
genocide, crimes against humanity and war crimes		crimes within the jurisdiction of the International Criminal Court
		sabotage
		unlawful seizure of aircraft/ships
		facilitation of unauthorised entry and residence
		arson

* *