



Dear reader,

I am pleased to present the fourth issue of Eurojust News. Following the priorities set by the European Union, Eurojust's work focuses on the fight against terrorism, drug trafficking, trafficking in human beings, fraud, corruption, cybercrime, money laundering, and other activities related to the presence of organised crime groups in the economy.

This issue of Eurojust News examines the fight against financial and economic fraud. It illustrates different aspects of Eurojust's contribution to the struggle against these criminal activities and some of the legal challenges involved in cross-border cases, with several case examples. Michael Wagstaff discusses the work of the Fraud Group of the United Kingdom's Crown Prosecution Service, the extent of the harm caused by fraud in the UK, and his experiences in co-ordinating investigations with Eurojust. Eurojust's ongoing fight against corruption and crime benefits from our close working relationships with other organisations. Rafaël Rondelez, who works in the Operations Department of the Criminal Finances & Technology Unit at Europol, discusses the work of Europol in the fight against financial fraud and what can be done in the future. Giovanni Kessler, Director-General of OLAF, talks about the need for increased co-operation and information flow.

If you have any comments regarding this newsletter, please contact our Press & PR Service at info@eurojust.europa.eu.

Aled Williams, President of Eurojust

Fraud

An all-encompassing definition of fraud may be difficult to establish, but a core element is criminal deception for material gain. Fraud often involves organised crime and removes billions of euros from the European economy each year. Under the generic heading of fraud, Eurojust deals with a gamut

of offences, including tax fraud, computer fraud, advanced fee fraud, misappropriation of corporate assets and VAT fraud. Other types of fraud referred to Eurojust include counterfeiting, varieties of cybercrime offences, environmental crime, money laundering, product piracy, forgery, corruption, and fraud against reve-



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nue authorities, governments, social security systems, and the budget of the EU. Other illustrations are Ponzi schemes, boiler room fraud, and a range of pyramid scams.

WHAT CAN EUROJUST DO?

Fraud investigations take up considerable resources, and may be more complex than enquiries into other criminal activities. Proceeds are difficult to trace and considerable difficulties in cross-border enforcement can arise. Money can easily disappear into offshore banking systems. Police and judicial authorities may be reluctant to start an investigation, especially in cases of breaches of contested and complex tax law.

Eurojust provides help in the fight against fraud with three main tools:

- ▶ Joint Investigation Teams (JITs) are increasingly recognised as an effective tool in the investigation and prosecution of serious crime such as fraud. The European Union has made Eurojust responsible for the co-ordination of the JITs Network. Eurojust also administers some funding for JITs on behalf of the European Commission.

- ▶ Co-ordination meetings, which bring together judges, prosecutors and investigators, can solve practical and judicial problems at every stage of the case.

- ▶ Facilitation of Mutual Legal Assistance (MLA) requests for their swifter execution. MLA requests in fraud cases can be very complicated, and seek wide-ranging and comprehensive measures. Here, Eurojust's MLA expertise can help secure rapid and effective results.

EUROJUST'S ADDED VALUE IN FRAUD CASEWORK

A total of 229 fraud-related cases were registered at Eurojust in 2010, which is 14 per cent of total casework. Six cases concerning criminal offences affecting the EU's financial interests were also registered. Eurojust held 17 co-ordination meetings under the category of fraud, where investigators and prosecutors from 10 Member States were involved.

As with other crime types, a common problem in cross-border fraud cases is the delay in the execution of judicial co-operation requests. Fraud cases typically involve dealing with

Case example 1: Money laundering

In July 2010, the Dutch Social Intelligence and Investigation Service, under the direction of the National Prosecution Service for Serious Fraud and Environmental Crime, arrested nine farmers in a case involving money laundering, false papers and membership in a criminal organisation. The Dutch Public Prosecutor's Office suspected the farmers of laundering tens of millions of euros through the use of a false business. In total, 225 law enforcement officers, as well as tax inspectors, were involved in the investigation. Investigations were also conducted in Poland, Cyprus, Belgium, Denmark, France and Switzerland. Arrests were made only in the Netherlands, but records were requested and money seized in all the involved countries. To achieve this coherent and co-ordinated cross-border action, several meetings, including a co-ordination meeting at Eurojust with investigators and prosecutors from the involved countries, took place to manage the gathering of evidence, seizing of assets and arrests.

Fraud investigations take up considerable resources, and may be more complex than enquiries into other criminal activities.



significant amounts of documentary evidence, creating demands on time and personnel of both the issuing and the executing judicial authorities, which must be diverted from other pressing national tasks.

The execution of international requests for judicial co-operation rarely figures among the performance indicators for domestic authorities, and may be seen as an impediment to achieving national performance objectives. Eurojust has acted to ensure that a co-ordinated response is nevertheless facilitated.

A related difficulty is that some fraud cases lead to a negative conflict of jurisdiction, where Member States are reluctant to take on investigation and prosecution. Territorial principles of jurisdiction can sometimes be an obstacle to ensuring that fraudsters are brought to justice. Organised criminal groups may calculate that committing offences in various locations and countries, with individuals of different nationalities, is safer. The suspects may operate in one Member

State but target victims in another Member State. They are thus located where the Member State does not feel the effects of the crime and where courts may not have competence to prosecute on the basis of principles of territoriality and nationality.

Eurojust has helped resolve such negative conflicts by using its powers through the National Members involved or through the College. Similarly, Eurojust acts to minimise duplication of resources and resolve positive conflicts of jurisdiction where two or more Member States may be in a position to take a case forward.

STRATEGIC PROJECTS

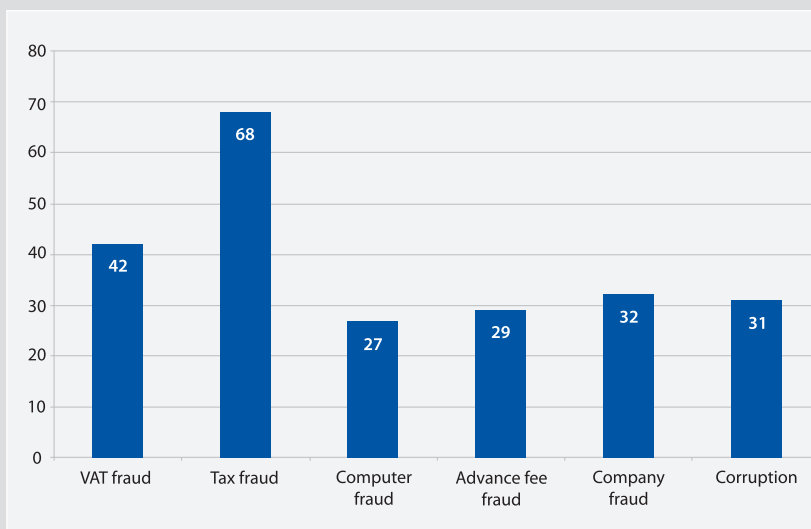
From a more strategic perspective, Eurojust progressed with the implementation of two ongoing projects in 2010:

- ▶ a strategic project on enhancement of exchange of information and MLA and improvement of judicial co-operation of the Member States in the area of cross-border VAT fraud; and
- ▶ a strategic project on enhancement of exchange of information and MLA between Member States and other European countries and territories in the area of economic and financial crime.

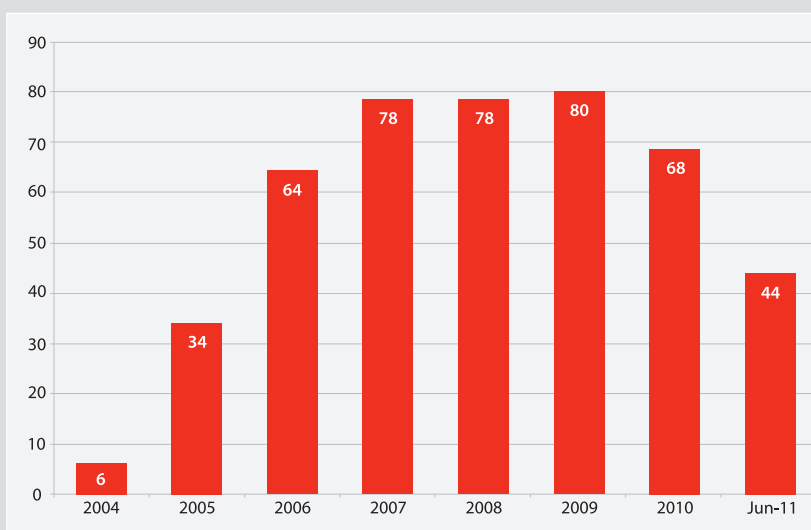
At the same time, Eurojust participated as an observer in the 5th round of mutual evaluations on financial crime and financial investigations. Eurojust observers played an active role during the evaluation visits and contributed to the drafting of the final evaluation reports, ensuring that sufficient attention was drawn to aspects of judicial co-operation in this area and that practical and legal obstacles were identified.

EUROJUST'S FINANCIAL AND ECONOMIC CRIMES (FEC) TEAM

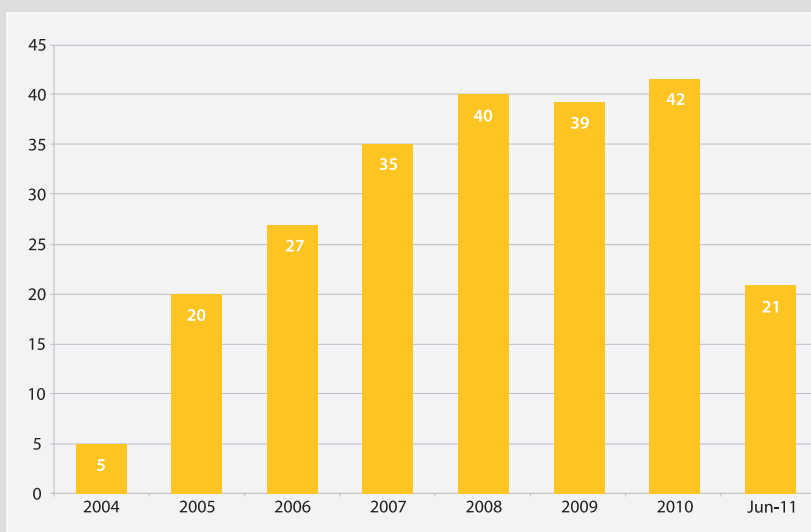
Eurojust's FEC Team is chaired by Ritva Sahavirta, National Member for Finland. Her specialist expertise is in money laundering, confiscation and tax fraud. The team looks beyond Eurojust by organising strategic meetings, and by involvement in partner organisations. Carlos Zeyen, National Member for Luxembourg, is



Types of fraud cases registered at Eurojust in 2010 (source: Eurojust)



Tax fraud cases at Eurojust (source: Eurojust)



VAT fraud cases at Eurojust (source: Eurojust)

Case example 2: Fraud

The Bulgarian authorities asked Eurojust's assistance in a case of fraud, with projects financed under the SAPARD Programme (a European Commission programme for improving and processing agricultural and fish products), committed between 2004 and 2006. The Bulgarian authorities had already started working on the case with OLAF, and Eurojust's assistance was needed to set up a JIT between Spain and Bulgaria. Bulgarian investigations were initiated to identify companies and individuals involved in the fraud scheme. The authorities needed to trace the goods, purchased with funds from the SAPARD Programme, as well as map out the money flows. Once the picture was put together, the Bulgarian authorities planned to confiscate the proceeds of the crime and bring the case to trial. Eurojust hosted a co-ordination meeting in June 2010 between Bulgaria, Spain, Hungary and OLAF, where it became clear that the investigation in one Member State was already at a very advanced stage, compared to the other. The co-ordination meeting allowed the entire case to be seen in perspective, even though, in the particular case, distinct prosecutions in different jurisdictions were appropriate.

the contact point for money laundering issues with the Organisation for Economic Co-operation and Development (OECD) and Financial Action Task Force (FATF). Lampros Patsavellas, National Member for Greece, is the contact point for cybercrime.

The FEC Team also works in close co-operation with both the Camden Assets Recovery Inter-agency Network (CARIN) and the Informal Platform of EU Asset Recovery Offices (AROs). The aim of CARIN is to increase the effectiveness of members' efforts, on a multi-agency basis, in depriving criminals of their illicit profits. Eurojust is represented in both bodies, which meet regularly to ensure an effective exchange of information on issues related to the identification and tracing of criminal assets as well as co-ordination and co-operation.

CAROUSEL FRAUD

A complicated and lucrative form of fraud is the VAT carousel, a type of Missing Trader Intra-Community (MTIC) fraud, which has been described as an organised criminal attack on the EU VAT system. In the UK alone (according to HM Revenue & Customs), loss of potential tax revenue from this type of fraud approached £ 2 billion between 2009 and 2010.

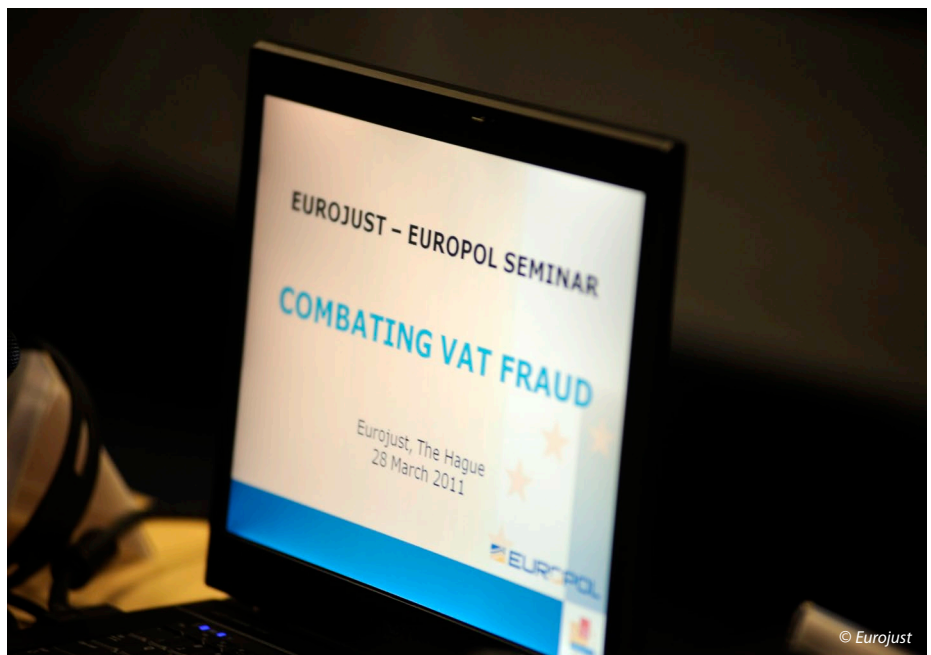
Typically, carousel fraud involves fraudulent traders (often from several companies) acquiring goods free of VAT from Member States. In many cases, the goods are small but high-value items such as mobile telephones, computer chips or electronic devices. In some cases, the fraudsters base their criminal activity on "virtual" transactions where no physical goods are in fact involved. At each stage, whether real or virtual goods change hands, VAT is added (sometimes up to 21 per cent) and each company involved in the carousel in turn disappears. At the end of the carousel, the exporter claims a government VAT refund and then also disappears. Many countries can be involved, and more than one carousel can be operating at the same time.

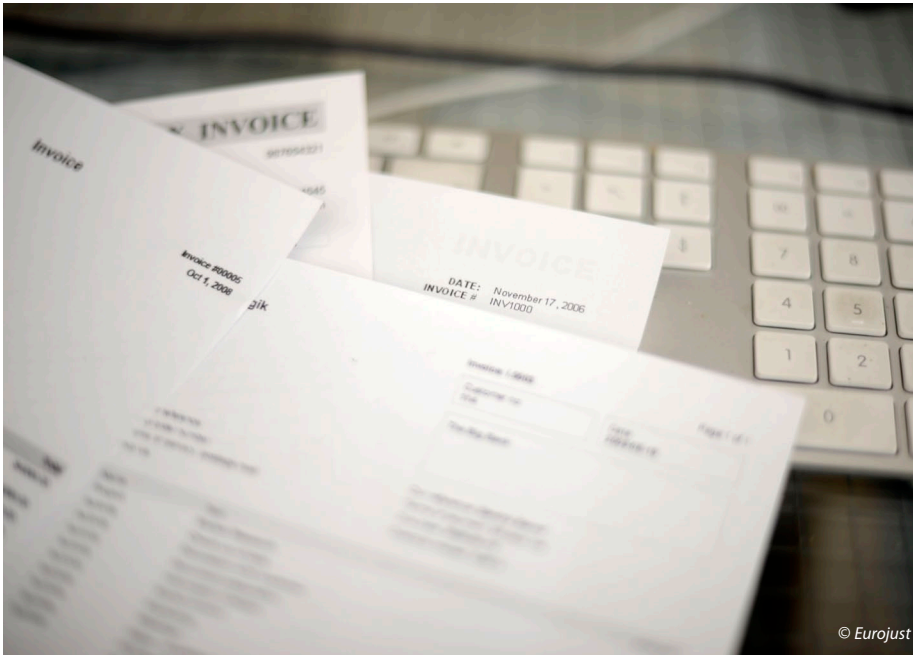
STRATEGIC MEETING ON VAT FRAUD

On 28 March, Eurojust hosted a strategic meeting on VAT fraud, co-

organised with Europol. This meeting examined existing problems in the fight against VAT fraud, the current legal framework and possible measures to prevent and combat this common crime type. The purpose of the meeting was to improve co-operation between law enforcement and prosecutorial authorities in the Member States when fighting cross-border VAT fraud. Eurojust and Europol highlighted the need for a common approach to make that co-operation more effective. Participants came from the European Commission, the General Secretariat of the Council of the European Union, and judicial representatives from the Member States. Delegates discussed the problems they encountered during the investigation and prosecution stages of VAT fraud cases, as well as potential European solutions to these problems.

The meeting was opened by Aled Williams, President of Eurojust and National Member for the UK, and Rob Wainwright, Director of Europol. The meeting was chaired by Ritva Sahavirta, Chair of the Financial and Economic Crimes Team at Eurojust and National Member for Finland. During his introduction, Mr Williams noted that "for the amount of money siphoned from the EU's economy each year, you can build hundreds of hospitals and schools", making ordinary EU citizens the true victims of VAT fraud, no matter how "bloodless" the actual offence might appear.





Mr Wainwright agreed with the emphasis on the serious nature of the threat from VAT fraud, which poses challenges because it can be committed relatively quickly and may only be uncovered as a crime after painstaking investigation, based on sound intelligence. With very little effort, fraudsters can create an opportunity for huge financial gain at the taxpayers' expense. Mr Wainwright said that more exchange of information at EU level will ensure better co-operation, leading to a better recovery of assets.

This strategic meeting on VAT fraud coincided with the conclusion of Eurojust's strategic project on enhancement of exchange of information and MLA between judicial authorities of the Member States in the area of VAT fraud.

ILLICIT TRAFFICKING OF WASTE

The FEC Team has monitored the negotiations concerning the Council Conclusions on preventing and combating the illegal trafficking of waste. This document emphasizes the importance of the powers conferred on Eurojust and Europol in the field of environmental crime and calls on the Member States to increase and optimise the use of existing organisations. (In one instance, Eurojust helped Member States in a waste trafficking case where illegal disposal allegedly led to serious illness and many fatalities.) The Council conclu-

sions also call on the Member States, Eurojust and Europol to combine their efforts and encourage the creation of JITs on this topic.

CORRUPTION

In 2010, 31 cases were registered under the crime type corruption, representing a 55 per cent increase compared to 2009. Corruption crimes featured in 11 of the 141 co-ordination meetings in 2010. One of the new provisions of the Eurojust Decision is the creation of the Eurojust National

Coordination System (ENCS) in each Member State. The ENCS will have contact points against corruption, together with other key national players in judicial co-operation. Council Decision 2008/852/JHA of 24 October 2008 on a network against corruption stipulates in Article 1 that: "in order to improve cooperation between authorities and agencies to prevent and combat corruption in Europe, a network of contact points of the Member States of the European Union shall be set up. The European Commission, Europol and Eurojust shall be fully associated with the activities of the Network." Eurojust will act to ensure that the anti-corruption network plays a full part in the implementation of the ENCS.

CYBERCRIME

The FEC Team has developed expertise in the study of cybercrime, and has supported developments leading to the Council Conclusions on an action plan to implement the concerted strategy to combat cybercrime. An official letter from the President of Eurojust was submitted to the MDG (multi-disciplinary group) in February 2010, supporting the suggestion to set up a cybercrime training centre made up of police officers, prosecutors and judges, as well as EU bodies operating in the field and willing to contribute to the feasibility study that will be carried out on cybercrime.

Cybercrime illustrates in stark form the difficulties in investigation and prosecution of crime that crosses national boundaries.

Case example 3: Fraud

Eurojust's early involvement averted a conflict of jurisdiction in a serious fraud case involving two Member States. Criminals in Member State A had targeted wealthy expatriates in Member State B and had defrauded them of several million pounds through the operation of a Ponzi scheme. Funds from one set of investors were used to pay dividends to other investors. Both jurisdictions had identified suspects and had started investigations. Eurojust was alerted to the existence of the parallel investigations, and called a co-ordination meeting, where the potential conflict of jurisdiction was raised, and where prosecutorial access to material held in the other jurisdiction was agreed in principle. Eurojust's early involvement meant a diminished risk of expensive fraud prosecutions continuing in parallel, fewer unnecessary costs for Member States and a greater likelihood of justice at trial.



Cybercrime illustrates in stark form the difficulties in investigation and prosecution of crime that crosses national boundaries. From its casework, Eurojust has noted that in cybercrime cases, which are often cross-border by their very nature, negative conflicts of jurisdiction have occurred: national authorities concentrate only on criminal activity within their boundaries rather than seeking to combat the problem on a more general level. Such situations involve a risk that the crime goes unpunished. In 2010, Eurojust worked with partners to combat such impunity.

Of particular note has been Eurojust's participation in the European Cybercrime Platform (ECCP), which

includes the Internet Crime Reporting Online System and Eurojust's analysis work file (AWF) CYBORG. Eurojust registered 27 computer fraud cases in 2010. There is an element of underreporting in these figures. Because national authorities have understandably concentrated on the results of cybercrime (dissemination of terrorism material, fraud, intellectual property theft, child pornography, etc) in their jurisdictions, the internet methods by which the crimes have been committed have not always been recorded.

MONEY LAUNDERING

In 2010, money laundering remained a major crime type, with a total of

146 cases. This figure represents a small but nonetheless significant increase in the number of money laundering cases, with 103 cases in 2008 and 125 in 2009.

Money laundering figured in 26 coordination meetings held at Eurojust in 2010. In nine of these meetings, Eurojust's involvement was also required. In 2010, three JITs in this crime area were established.

Eurojust, together with the Spanish Presidency of the European Union, hosted a strategic seminar in Granada, Spain, in 2010 on money laundering of the proceeds of crime and tracing and disposal of illegal assets. The main focus of the seminar was the exchange of information on financial crime between the Member States and the use of MLA and mutual recognition instruments in economic crime and asset recovery matters. Participants agreed that efficient national anti-money laundering systems, enhanced international co-operation, and a more active contribution by Eurojust in complex and multilateral cases of money laundering, freezing and confiscation of criminal assets are needed.

One specific judicial obstacle in the fight against money laundering occurs when national legislation requires that the predicate offence for money laundering is precisely established. Eurojust's casework shows that organised crime groups often diversify their criminality: drug trafficking may form part of a criminal business with trafficking in human

Case example 4: VAT carousel fraud

Hungary asked Eurojust's support in its largest VAT carousel fraud case. The case involved 13 Member States, 5 third States and Israeli citizens as the main figures. The estimated VAT loss in Hungary was € 33.4 million. The central role was played by a trading company to which a large number of companies from the involved countries supplied goods or simply false invoices, then "imported" them back through a large number of buffer companies with the sole aim of making it possible for the central trade company to unlawfully claim back VAT. The activities of some of these foreign import/export companies were already under investigation in the countries where they were registered, e.g. in Latvia and Spain, as part of a criminal network even larger than the one under investigation in Hungary. Offshore companies in the Seychelles Islands were used to launder the money gained through the criminal activity. The perpetrators made a double profit because they also sold the goods. The case is not a typical carousel fraud case, because on several occasions only false invoices were involved without actual goods, and sometimes the false invoices documented goods of another type or quantity. Due to the complexity of the fraud scheme, the Hungarian authorities requested the assistance of Eurojust and Europol. A co-ordination meeting in early 2010 at Eurojust with prosecutors and investigators from Bulgaria, Cyprus, Germany, Greece, Latvia, Lithuania, Poland, Romania, Spain and Slovak Republic shared information, helped prepare letters rogatory incorporating all the elements of the shared information, and created a strategy to dismantle the network. Owing to the co-ordination of Eurojust, most of the Hungarian letters rogatory were executed by the end of 2010.

beings, and a drug mule may also be trafficked for sexual exploitation. Requirements that the predicate offence be exactly specified can make the fight against money laundering particularly difficult.

In addition, the differences in organisational set-up of financial investigation and prosecution offices in various Member States may cause difficulty. Again, some Member States do not criminalise "self-laundering": money laundering in these jurisdictions is not subject to prosecution if it is carried out by the person who illegally obtained the funds. Thus, the flow of "black money" is very difficult to investigate and trace.

In the majority of complex money laundering cases, the predicate offence is drug trafficking. In Italy, such cases often involve mafia-type criminal groups. The illicit gains from their activities are usually laundered, in part in Italy. Alternatively, proceeds are invested in foreign property or companies, through several financial channels. "Pollution" caused by criminal involvement in legal com-

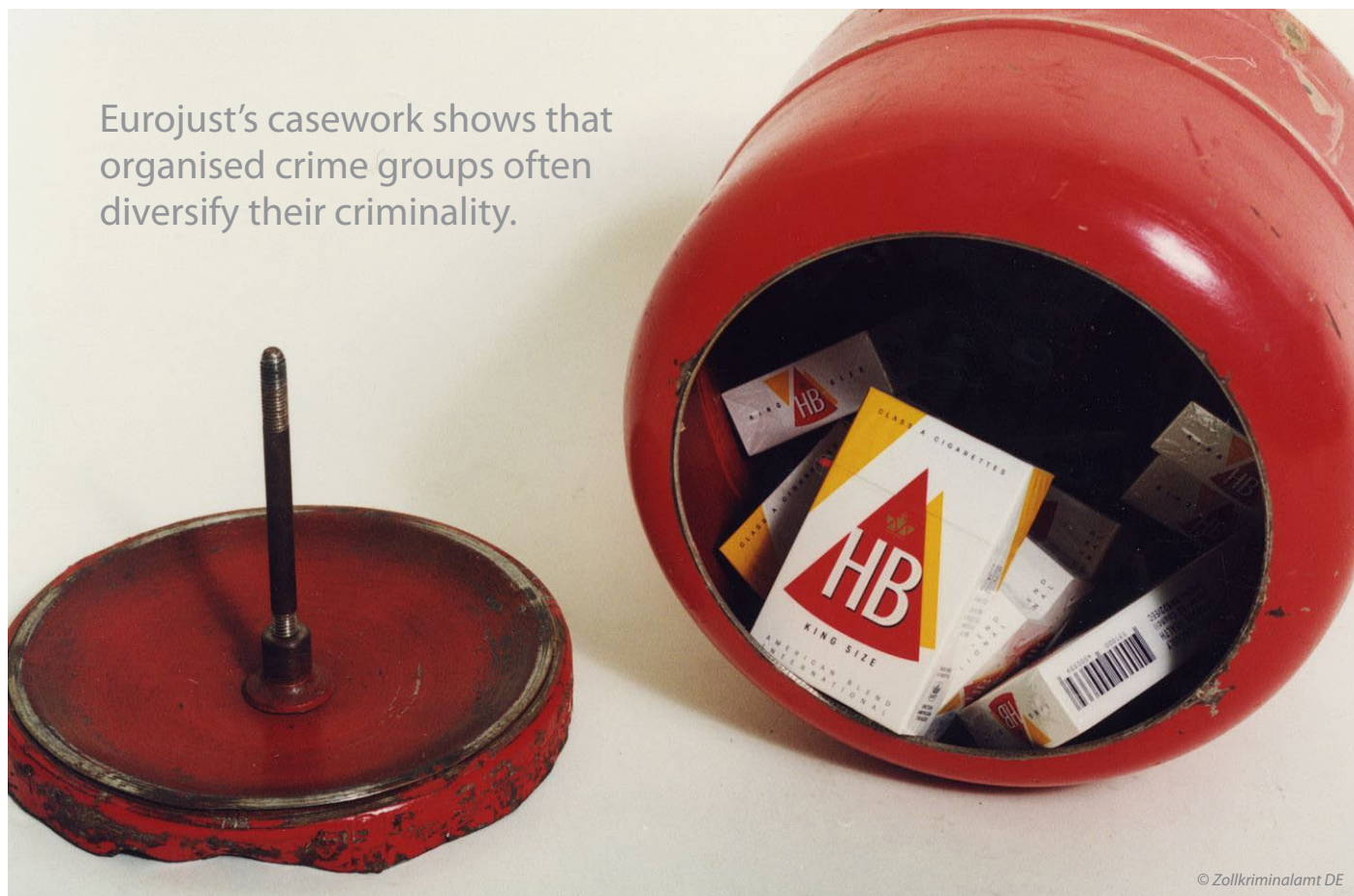
Case example 5: Carbon credit fraud

Organised crime groups have been quick to exploit the financial possibilities of fraudulent emissions allowance trading with the commission of VAT fraud and money laundering on an international scale. Since 2009, the alleged perpetrators had set up various carbon credit trading chains in Germany that were part of an international VAT carousel structure. A German "missing trader" purchased emissions allowances from foreign suppliers and provided his purchasers with invoices with openly declared VAT. When re-selling the carbon credits, the VAT was neither declared nor paid to the revenue authorities. The carbon credits were then sold and passed on to various "buffers" until they were exported again to another Member State by the so-called "distributor". This distributor made his claim for reimbursement of the prior tax charge to the revenue authorities based on the invoices received from the preceding members of the trading chain. Eurojust supported the investigation by co-ordinating over 100 searches and freezing of assets, all scheduled to be carried out simultaneously in nine Member States and in five third States. Due to the swift execution of the letters rogatory and the co-ordination through Eurojust, the General Attorney's Office in Frankfurt was able to seize a total of € 100,000,000. Thanks to the prompt transmission of the evidence that was seized in the different Member States, sufficient proof emerged of probable cause for the arrest of several heads of the organised crime group, who could be charged with more than one serious offence. The case illustrates the added value brought by Eurojust to Member States in tax fraud cases.

mercial activities can affect fair competition for other legal businesses. The distortion of market competition

may indicate possible money laundering activities derived from organised crime activities. ■

Eurojust's casework shows that organised crime groups often diversify their criminality.



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Interview with Matthew Wagstaff

Central Fraud Group, Crown Prosecution Service, England and Wales

Matthew Wagstaff is Head of Division of the Central Fraud Group (CFG) within the Crown Prosecution Service. His division has particular responsibility for prosecuting fiscal fraud, including all cases investigated by Her Majesty's Revenue & Customs (HMRC).

Eurojust: Can you tell us something about the work of the Central Fraud Group?

Matthew Wagstaff: "The Central Fraud Group was established last year as one of the specialist casework divisions within the Crown Prosecution Service, sitting alongside divisions that deal with organised crime, special crime and terrorism cases.

We have a broad remit to deal with financial and economic crime, both fiscal and non-fiscal. We deal with all cases that are investigated across England and Wales by HMRC – direct tax, indirect tax and excise duty evasion – as well as a range of other fraud cases where the complexities of the case require input from specialist and experienced prosecutors. In addition, we also deal with money laundering cases where the predicate offence is suspected to be fraud, as well as cases of arms smuggling and breach of UN sanctions."

What do you mean by financial and economic crime?

"There is no legal definition that applies but, in essence, I am talking about fraud – whether fraud on the government or against the general public. Let me give a couple of examples. Many of your readers will be familiar with the phenomenon of missing-trader or carousel fraud. These cases involve the repeated carouselling of high-value goods in such a way as to exploit the VAT-free status on intra-community transactions and so trigger massive repayment claims at the point of export. We have prosecuted many of these cases over the last decade. One case alone saw an organised criminal group steal at least £ 250 million from the UK Exchequer. We also deal with boiler room frauds, which tend to see vulnerable people in particular being targeted and duped into buying, for example, worthless shares. Again, we see organised criminals behind these kinds of frauds mak-

ing millions of pounds through their criminal activity."

What is your estimate of the cost of fraud to the UK economy each year?

"There is no doubt that fraud has a huge impact upon the UK economy. The National Fraud Authority, which exists to co-ordinate the UK's counter-fraud strategy, estimates that fraud costs the UK at least £ 38 billion a year – a truly staggering sum! In addition to the financial loss, there is also the fact that many other serious kinds of criminality are either linked with or fuelled by fraud, e.g. extortion, blackmail, violence and so on."

What trends have you seen in recent years as regards the growth or development of fraud in the UK?

"Well, as the figures above show, there is no doubt that fraud continues to be a major area of growth for criminals. At the same time, we have seen that the cost and complexity of prosecuting fraud cases has also grown exponentially.

The international element of our cases is perhaps just one of the most obvious indicators of that. It would now be truly exceptional for one of our large and complex fraud cases not to require evidence from another



Matthew Wagstaff (© CPS)

jurisdiction, and many of our cases now feature evidence from multiple jurisdictions. I was looking at one of our cases recently and I noticed that we had issued twenty-five requests for mutual legal assistance to other countries even before we had taken the final decision whether to bring proceedings against the suspects. That perhaps gives something of an indication of the size and complexity of some of the cases we are tackling.”

What tools are available to you as a prosecutor to tackle economic crime more effectively?

“Prosecutors in the UK have a whole range of tools that we can use to prosecute fraud cases (although it should be noted that the majority of these are not restricted just to cases of fraud; they can also be used for other serious crime cases). For example, we have legislation that permits us in appropriate circumstances to agree that we will undertake not to use certain information against defendants in return for their cooperation or even, in exceptional cases, full immunity from prosecution.

More commonly, we can enter into written agreements with defendants whereby they will agree to co-operate with us and in return we will put the fact of their agreement before the sentencing court with a view to them receiving a reduced sentence. We also have extensive powers to serve individuals suspected of holding relevant information with a disclosure notice, requiring them to answer questions, produce documents or otherwise provide information relating to a particular investigation.

In addition to the legislative tools available to us, we can also rely on guidelines issued by our Attorney General that permit us to initiate plea discussions with defendants or suspects in cases of serious or complex fraud. The important thing to note about any agreements reached under these guidelines is that no prosecutor can seek to bind a court in relation to the sentence to be passed – the courts here have made it clear that sentencing is exclusively a matter for them to determine.”

Do you have a procedure for recovering the proceeds of crime? If so, in what circumstances is it applied?

Case example 6: VAT carousel fraud

In a case that led to the largest asset confiscation order in UK history, two men were convicted of a carousel fraud amounting to £ 184.6 million. In 2002, a highly complex investigation began into the sale of computer processing units. The fraud earned the members of the gang £ 37.5 million. The criminal proceeds were then laundered; some proceeds were reinvested in gold bullion and in real estate in the UK and Dubai. Last year, 21 people from the criminal organisation received sentences totalling 74 years. When the two leaders of the gang, each then serving a seven-year sentence for the carousel fraud, did not repay criminal proceeds of £ 92.3 million within two months, each of their sentences was increased by an extra 10 years.

In addition to the financial loss, there is also the fact that many other serious kinds of criminality are either linked with or fuelled by fraud.

“Yes, we have legislation that permits us both to seek to freeze a suspect’s assets before conviction (sometimes even before charges have been brought) and to seek an order after conviction that they pay a sum of money equal to their benefit from the crime. Both our pre-conviction ‘restraint’ orders and our post-conviction ‘confiscation’ orders are subject to judicial oversight, and there are fairly stringent criteria in place that need to be satisfied if an order is to be granted.

For example, to obtain a confiscation order, the prosecutor needs to satisfy the court that a defendant has in fact benefitted from his crime, will need to demonstrate the extent of that benefit and that he has the assets available to him to satisfy any order. That said, where a defendant is deemed by a court to have a ‘criminal lifestyle’, the court will make various assumptions. For example, any property held or transferred to the defendant on or after the date of his conviction represents his benefit from crime and any such property is held free from all other interests. Where these assumptions apply, the burden is then on the defendant to disprove them. In addition, a defendant who does not pay the full amount of the order within a specified time is liable to have a ‘default sentence’ activated; i.e. he will be required to serve an additional period of imprisonment (up to a ten-year maximum for orders exceeding £ 1 million).

Given that financial crime is essentially acquisitive crime, this is an area of law and practice that is of enormous importance to us.”

What are some of the particular challenges you face in prosecuting financial crime?

“Well, just the size and complexity of many of the cases are challenges enough! Many of our cases involve mastering some arcane piece of tax legislation or require knowledge of the financial markets. Over and above that, though, there is no doubt that the disclosure regime has proved to be a major challenge for prosecutors over the last few years. By ‘disclosure’, I mean the process whereby we prosecutors are required to provide the defence with any material in our possession that is not part of the evidence that we are relying upon, but which might nonetheless either undermine our case or assist the defence being put forward by the accused.

Stated quite simply, the concept doesn’t sound too onerous or difficult. The reality, however, is that we have found that a wholly disproportionate amount of our time is spent dealing with disclosure. This is particularly so in our fiscal cases because of the sheer amount of material held by HMRC in relation to both the individuals under investigation and the surrounding companies. I mentioned earlier that we prosecute a large

Case example 7: Corruption

Thanks to Eurojust's intervention, a JIT between two Member States was formed to progress the investigation and prosecution of a case involving serious allegations of corruption. Funds had been made available for the purchase of medicines destined for countries where particular diseases were endemic. The award of the contract for the medicines was alleged to have been made corruptly. Because of the international nature of the case, particular problems arose in obtaining evidence from witnesses located in different jurisdictions. Eurojust facilitated the drafting and signing in The Hague of a JIT agreement between the Member States involved. Crucial evidence was obtained quickly and the case is ongoing.

number of missing-trader frauds; in one such case, the prosecutor has estimated that if you were to print off all of the unused material and stack it on top of each other, it would equal the height of the Eiffel Tower!"

How are you overcoming some of these challenges?

"One of the key lessons that we have learnt over the last few years is that early and rigorous case planning really are essential tools if these cases

are going to be prosecuted effectively and successfully. It's therefore vital that, as soon as we receive a new case from the investigators, we sit down and give careful thought to the strategy that we are going to adopt.

Getting a clear grip on issues such as the nature of the criminality being alleged, the likely size and shape of the case, the range of tools available to you as a prosecutor, the approach to be taken towards financial recovery and so on is a key discipline. In all cases of any complexity, we require the prosecutor to produce a written case plan setting out the strategy for the prosecution; this is then endorsed by a more senior colleague and subject to regular review."

What do you think is the future of financial crime prosecutions in the UK?

"I think it's interesting to note that financial crime seems very much to be at the forefront of the agenda here in the UK. I mentioned earlier the work of the National Fraud Authority. The fact that we now have an organisation that is devoted to co-ordinating the fight against economic crime is perhaps an indication of the importance ascribed to this type of crime. Given the current global financial situation, it seems to me that the focus is only going to increase further. In addition, the Coalition Government have announced that they are going to establish an Economic Crime Agency, and that will doubtless bring

further focus to this whole issue. One thing we can be sure of – there will always be those who will look to enrich themselves at the expense of others, so I'm quite certain that there will be no shortage of work for us in the years ahead!"

How has Eurojust helped you in your role in prosecuting financial crime? What do you see as the value that Eurojust can bring to your cases?

"There is no doubt that Eurojust has a key role to play in multi-jurisdictional cases where there are a number of different investigators and prosecutors, sometimes with different aims or objectives. The ability to sit down together and decide what is genuinely in the best interests of the case or cases cannot be overestimated. For example, some time ago, we were involved in a serious and complex missing-trader fraud case that involved a number of different countries, and there were competing views as to which country should prosecute the principal suspect. Eurojust hosted a co-ordination meeting in The Hague and we were able to discuss with the other countries concerned the issues raised and, eventually, reach a solution that was to everyone's satisfaction. More generally, having a list of contacts in other countries or simply being aware of a colleague in a different country who may have dealt with a similar problem to that which you are now facing can be extremely helpful." ■

Interview with Rafaël Rondelez

Operations Department, Criminal Finances & Technology Unit, Europol

Rafaël Rondelez is a Senior Financial Crime Investigator in Europol's Criminal Finances & Technology Unit, which provides intelligence, analysis, and technical and logistical support to fraud investigations.

Eurojust: What is Europol currently doing to combat financial fraud?

Rafaël Rondelez: "Europol was created to collect intelligence and information related to criminal investigations or intelligence-gathering operations regarding Missing Trader Intra-Community (MTIC) fraud (also commonly referred to as Value Added Tax (VAT) fraud), to have that information collected and analysed to create a matrix of criminal organisa-

tions and to identify criminal enterprises active in VAT fraud or active in related criminal fields such as money laundering or the financing of terrorism. Of course, with that intelligence, we also try to support asset-tracing initiatives. That is the intelligence aspect, but we are not an investigation unit. We do not have the competence (as Member States do) to go out and conduct investigations, but we try to give our customers (the judiciary and law enforcement officers) an in-

telligence picture that says 'OK, here is the status of financial fraud in Europe (or, eventually, in your country) and these are the people involved. Companies are involved in this way, money is transferred in this way, etc.' This is necessary in modern crime-fighting; you cannot simply look at your case and exclude it from the context of what is going on at European or international level. And as VAT fraud is by default international, in order to carry out a VAT fraud you need the involvement of at least two Member States. So if you investigate an MTIC fraud case, you have to look at it from a European perspective



Rafaël Rondelez (© Eurojust)

and not merely from your own country's perspective. You must take a broader view, because otherwise you might miss part of the larger scheme and subsequently lose the context."

So, helping Member States could avoid wasted effort, and make their investigations more efficient, if they were provided with a more complete intelligence picture at the beginning?

"Yes, this, of course, would then be beneficial to the investigations be-

cause then the Member States would have a better focus in their investigations. They would have a clearer picture of who the masterminds are, who the most important people in these criminal networks are. If you do not have that specific information, you might pursue an investigation of a person in your country who appears to be the most important member of a criminal group. But if you put that relationship in context, it may turn out that Mr Important is not such a big fish at all, but that the

big fish is in another Member State or even a third State and the criminal in your country is running the local arm of that operation. It is similar to taking a family photo. If you cut out some people, then you would think 'OK, this person's family is very small because it only contains a few people'. But if you bring together the entire photo, then you realise: 'Oh, the family is much larger'. And then you can make a smarter decision about which parts of the family are related to each other." ■

Case example 8: Computer piracy

Eurojust co-ordinated a Europe-wide police and judicial action in 13 countries against groups of computer servers hosting pirated material and networks disseminating this material. Since the start of the investigation in 2008, the four most prominent groups involved in the distribution on the internet of 80 per cent of the productions in the Dutch language or foreign languages with Dutch subtitles had been identified. The investigating judge and the Computer Crime Unit of the Belgian Federal Police involved Eurojust and Europol in co-ordination of international actions and assistance in the execution of letters rogatory to the Member States and the Liaison Prosecutors of Croatia and Norway. The international co-ordinated action was facilitated by both Eurojust and Europol. Its goal was to close down and seize 48 servers or groups of servers identified as part of the network hosting pirated material; 16 people were arrested. It was estimated that the pirated material represented a loss of authors' rights and income for production companies of € 30 million in Belgium alone and up to € 6 billion in Europe.

Relations with OLAF

In July, the newly appointed Director-General of the European Anti-Fraud Office (OLAF), Giovanni Kessler, visited Eurojust for the first time to meet with the President and the College of Eurojust to discuss how to improve co-operation in combating fraud, corruption and any other criminal offence affecting the European Union's financial interests.

With the adoption of the Lisbon Treaty, protection of the financial interests of the European Union has become a priority, requiring increased co-operation between national authorities and at EU level. Messrs Williams and Kessler agreed on the enhancement of co-operation and on the regular exchange of information on complex and multinational cases. A secure communication system, recently established, should facilitate this vital flow of information.

Mr Kessler said: "I was very pleased to receive such a warm welcome from Eurojust. Eurojust and OLAF should interact more than in the past, to have an efficient passage-



OLAF General Director Giovanni Kessler and Eurojust President Aled Williams (© Eurojust)

way to the national authorities via Eurojust's National Members and vice versa. We shared some cases, but we can do more. OLAF is determined to bring the necessary co-operation to a higher level." ■

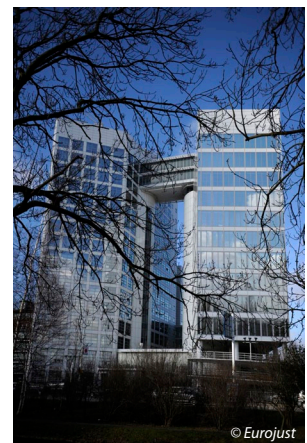
Case example 9: Fraud

One co-ordination meeting dealt with the difficulty of obtaining evidence related to money transfers. In this particular case, the funds transferred via Western Union from Greece had been set at a level that fell below the ceiling for controls. Different systems for such controls exist in the Member States, which can be evaded if, for example, money transfers are processed with the provision of financial or other products. Eurojust's involvement and the use of the co-ordination meeting brought added value in obtaining evidence: by clarifying legal provisions, facilitating the exchange of information between national authorities, re-drafting a request for MLA and providing supplementary information.

Eurojust is a European Union body established in 2002 to stimulate and improve the co-ordination of investigations and prosecutions among the competent judicial authorities of EU Member States when they deal with serious cross-border crime. Each Member State seconded a judge, prosecutor or police officer to Eurojust, which is supported by its administration. In certain circumstances, Eurojust can also assist investigations and prosecutions involving an EU Member State and a State outside the European Union, or involving a Member State and the Community.

Eurojust supports Member States by:

- *co-ordinating cross-border investigations and prosecutions in partnership with judges, prosecutors and investigators from Member States, and helping resolve conflicts of jurisdiction;*
- *facilitating the execution of EU legal instruments designed to improve cross-border criminal justice, such as the European Arrest Warrant;*
- *requesting Member States to take certain actions, such as setting up joint investigation teams, or accepting that one is better placed than another to investigate or prosecute; and*
- *exercising certain powers through the national representatives at Eurojust, such as the authorisation of controlled deliveries.*



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