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NOTE

From: Hungarian Delegation
To: Working Party on Cooperation in Criminal Matters
Subject: Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (EUROJUST) and the Proposal for a Regulation on the European Agency for Law Enforcement Cooperation (EUROPOL)

As already stated at the previous COPEN WP meeting on June 13th, 2014, the Hungarian delegation would like to express its concerns regarding the possible overlaps between Eurojust's and Europol's mandate. Therefore, consultation with the LEWP managing the Europol proposal should be considered.

As for their respective involvement in JITs, a more viable and efficient coordination between Eurojust and Europol is crucial. In accordance with Article 1 para 12 of the *FD No 2002/465/JHA* on joint investigation teams, as well as the corresponding provisions in the *2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, Eurojust and Europol can participate in JITs separately as well as jointly. Furthermore, Article 6 of the *Cooperation Agreement between Eurojust and Europol* enables both parties together, at the request of one or more Member States, to participate in the setting up of a JIT and to support national judicial and law enforcement authorities in the preliminary discussions concerning the setting up of

JITs. The JITs should obviously get all the funds they can apply for, but having information on the allocated funds, combined with Europol's input would be necessary. Although Article 6 para 4 of the above mentioned Cooperation Agreement foresees that the contracting parties shall inform each other of their participation in a JIT at the earliest opportunity, it does not seem to work properly in practice.

(In addition, in accordance with Art 13 of the EJD¹, Member States shall ensure that national members are informed of the setting up of a joint investigation team, whether it is set up under Article 13 of the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* or under *FD 2002/465/JHA*.)

Based on the information provided by the Hungarian experts, there seems to be a misunderstanding regarding JITs and similar forms of – not necessarily judicial - cooperation, The legal basis – besides the *2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* and *FD No 2002/465/JHA* on joint investigation teams, at least according to the JIT Manual – may be as follows:

- UN Convention against Transnational Organized Crime, 15 November 2000)
- Convention on mutual assistance and co-operation between customs administrations (Naples II Convention), 18 December 1997
- Police Cooperation Convention for Southeast Europe (PCC SEE), 5 May 2006
- Agreement on Mutual Legal Assistance between the European Union and the USA.

In our opinion, it would be quite beneficial to make a clear distinction between the instruments founded in accordance with the above conventions AND the “EU JIT”, as the JIT manual names the latter instrument in question, which is a tool of judicial cooperation.

¹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust

Furthermore, the mandate of the two agencies should be specified and separated along the concept of judicial – investigative authorities:

EUROJUST

- judicial cooperation (mutual legal assistance, EAW etc.)
- exchange of evidence
- formal cooperation in actual cases
- criminal procedure in accordance with the Member States' Code of Criminal Procedure
- setting up and finance JITs – hence the JIT Secretariat (*de facto* financial support)

EUROPOL

- cooperation of the investigative authorities
- information exchange
- informal cooperation
- criminal intelligence
- operative support to JITs (analysis, expertise)

In accordance with the above differentiation, setting up of coordination meetings and coordination with judicial authorities should be within Eurojust's mandate, and Europol would be responsible for coordination with investigative authorities and setting up of operative meetings.