

Initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Council Decision setting up Eurojust with a view to reinforcing the fight against serious organised crime

(2000/C 243/05)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to Title VI of the Treaty on European Union and in particular Articles 31 and 34(2)(c) thereof,

Article 1

Establishment

Having regard to the initiative of the Federal Republic of Germany, and also to that of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium,

The purpose of this Decision is to establish a judicial coordination unit, Eurojust, hereinafter referred to as 'Eurojust'.

Article 2

Having regard to the opinion of the European Parliament,

Composition

Whereas:

(1) The conclusions of the European Council in Tampere on 15 and 16 October 1999, in particular paragraph 46 thereof, concern the setting up of a unit (Eurojust) composed of prosecutors, magistrates, or police officers of equivalent competence, to reinforce the fight against serious organised crime.

Taking account of constitutional rules, legal traditions and the internal structure of each Member State, Eurojust shall be composed of one national member per Member State, being a prosecutor, magistrate or police officer of equivalent competence.

Article 3

National correspondents

(2) It is necessary and urgent further to improve judicial cooperation between the Member States of the European Union, in particular in combating forms of serious crime often perpetrated by transnational organisations.

Each Member State may appoint one or more national correspondents to Eurojust, hereinafter referred to as a 'national correspondent'. He shall have his place of work in the Member State that appointed him.

(3) The effective improvement of judicial cooperation between the Member States requires the immediate adoption of structural measures at European Union level to facilitate the coordination of action for investigations and prosecutions covering the territory of more than one Member State.

Article 4

Tasks

(4) It is desirable for Eurojust and Europol to establish and maintain close cooperation.

1. Eurojust shall have the task of improving and facilitating cooperation between the competent investigating and prosecuting bodies of the Member States in respect of combating the forms of serious international crime referred to in Article 5 where two or more Member States are affected by the forms of crime in question and the case requires coordinated action by the judicial authorities of several of them.

(5) This Decision is without prejudice to existing conventions and agreements, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and also the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted by the Council on 29 May 2000,

2. Eurojust shall perform its mandate by consensus under the leadership of the President and the management team.

Article 5

Competence *ratione materiae*

The competence *ratione materiae* of Eurojust shall cover:

- (a) the types of crime and the offences in respect of which Europol is competent to act pursuant to Article 2 of the Europol Convention of 26 July 1995;
- (b) trafficking in human beings as defined in the Council Decision of 3 December 1998 supplementing the definition of the form of crime 'trafficking in human beings' in the Annex to the Europol Convention ⁽¹⁾;
- (c) the acts of terrorism as defined in the Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property ⁽²⁾;
- (d) the protection of the euro, as defined in the Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment ⁽³⁾, as well as other forms of counterfeiting of money and means of payment;
- (e) computer crime;
- (f) the protection of the European Communities' financial interests, as defined in the Convention of 26 July 1995 ⁽⁴⁾ and in the Protocols thereto of 29 November 1996 ⁽⁵⁾, 19 June 1997 ⁽⁶⁾ and 27 September 1997 ⁽⁷⁾;
- (g) the laundering of the proceeds from crime within the meaning of the Council of Europe Convention of 8 November 1990 on the same issue and Joint Action 98/699/JHA of 3 December 1998 on the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime ⁽⁸⁾;
- (h) other forms of serious crime committed in connection with the offences referred to in this Article.

⁽¹⁾ OJ C 26, 30.1.1999, p. 21.
⁽²⁾ OJ C 26, 30.1.1999, p. 22.
⁽³⁾ OJ C 149, 28.5.1999, p. 16.
⁽⁴⁾ OJ C 316, 27.11.1995, p. 48.
⁽⁵⁾ OJ C 151, 20.5.1997, p. 1.
⁽⁶⁾ OJ C 221, 19.7.1997, p. 11.
⁽⁷⁾ OJ C 313, 23.10.1996, p. 1.
⁽⁸⁾ OJ L 333, 9.12.1998, p. 1.

Article 6

Powers

In order to accomplish its tasks Eurojust:

- (a) may ask a Member State to undertake an investigation or to prosecute specific acts or to allow that another Member State may be in a better position to do so; such a request shall not be binding. Should a Member State decide not to comply with the request, Eurojust should, in principle, be informed of the decision and the reasons for it;
- (b) shall ensure that the competent authorities of the Member States are informed reciprocally on interrelated investigations and prosecutions under way in several Member States;
- (c) shall assess whether the investigations and prosecutions in progress in two or more Member States should be coordinated and, where appropriate, ask the competent authorities of those Member States to coordinate those procedures;
- (d) shall assist the Member States, at their request, in ensuring the best possible coordination of investigations and prosecutions; to that end, shall invite the judicial authorities of the Member States to meet in order to consult;
- (e) shall contribute towards simplifying the execution of international letters rogatory, in accordance with the procedural rules in force;
- (f) in cooperation and consultation with the European Judicial Network, shall set up a documentary database to be constantly updated with the aim of providing legal and practical information and assisting the Member States' competent judicial authorities by means of advice and research;
- (g) shall assist Europol at its request, by providing it, in particular, with opinions based on analyses carried out by Europol.

Article 7

National correspondents

1. Where it deems necessary in order to simplify and improve its relations with Eurojust, each Member State shall create or designate one or more national correspondents.

2. The national correspondent may be a contact point of the European Judicial Network.

3. The national correspondent, if any, shall centralise and facilitate the transmission to Eurojust of the information referred to in Article 9(1). Relations between the national correspondent and the competent national authorities shall be governed by national law.

Article 8

National members

1. The national members referred to in Article 2:

- (a) shall be subject to the national law of their Member State of origin;
- (b) shall also be sent all information sent to Eurojust from their Member State of origin;
- (c) shall contribute to the exchange of information between the competent authorities of the Member States and the national correspondents, where appropriate; they shall also help coordinate actions for investigations and prosecutions.

2. Each Member State shall define the nature and extent of the powers it grants its national member in its own territory. The other Member State shall undertake to accept and recognise the prerogatives thus conferred.

3. With due respect for the obligations linked to data protection, the national member shall be empowered, in accordance with the provisions of his national law, to consult the criminal record of his Member State of origin, especially where persons are arrested; subject to the same reservations, such powers shall permit access to the Schengen information system.

4. A Member State's national member may contact his country's competent authorities directly according to the arrangements laid down by it.

Article 9

Information

1. The judicial authorities of the Member States and Europol may exchange with Eurojust any information that is useful for carrying out its tasks, especially where there is sufficient evidence to warrant initiating an investigation or prosecution in several Member States.

2. Eurojust shall be entitled to ask Europol and the Member States' judicial authorities for information.

3. Where a Member State, in accordance with Article 13(1) of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union⁽¹⁾, requests the setting up of a joint investigation team, it shall inform Eurojust thereof.

Article 10

Processing of cases

1. In order to perform its tasks, Eurojust shall process the data relating to the cases falling within its sphere of competence.

2. The data shall relate to the facts involving offences within the meaning of Article 5 and to persons who, under the national legislation of the Member States concerned, are suspected of having committed, or are being prosecuted for, one or more offences as defined in Article 5.

3. The data shall relate to the facts and the persons. They shall be adequate, relevant and not excessive in relation to their purpose, and sufficiently accurate and complete to enable Eurojust to fulfil its coordination task. They shall include the following aspects:

(a) if they come from the Member States:

- (i) the names, forenames and, where appropriate, the aliases or assumed names of the persons being investigated;
- (ii) the description and nature of the facts, the date on which they were committed, their criminal status, the level of progress of the investigations;
- (iii) the links with the other Member States concerned, the facts pointing to an international extension of the case and the known details enabling persons likely to be involved in the case abroad to be identified and located;

(b) if they come from Europol or another body:

- (i) the names, forenames and, where appropriate, the aliases or assumed names of the persons being investigated;

⁽¹⁾ OJ C 197, 12.7.2000, p. 1.

- (ii) the description and nature of the facts, the date on which they were committed, their criminal status in the various Member States concerned, the stage of the proceedings in each of them;
- (iii) an analysis of the coordination requirements.

Article 11

Access to data

The data received by Eurojust shall be protected. Access to them may be had, for consultation and investigation purposes, only by authorised personnel and national members.

Article 12

Confidentiality

1. As soon as information is transmitted to Eurojust, the staff, national correspondents, if any, and the national members shall be bound by an obligation of confidentiality.
2. The obligation of confidentiality shall apply to all persons and to all bodies called upon to work with Eurojust.

Article 13

Amendment, correction and deletion of personal data

1. At the request of a Member State's competent authorities, national member or national correspondent, if any, and under their responsibility, Eurojust shall amend, correct or delete personal data undergoing automatic processing that are transmitted or entered by that Member State, its national member or its national correspondent.
2. If it emerges that personal data undergoing automatic processing are incorrect or that their input or storage contravenes the provisions of this Decision, Eurojust shall amend, correct or delete such data.
3. In the cases referred to in paragraphs 1 and 2, all the addressees of such data shall be notified forthwith. They shall also subsequently amend, correct or delete those data in their own systems.

Article 14

Time limits for the storage of personal data

1. Personal data undergoing automatic processing shall be stored by Eurojust only for as long as is necessary for the performance of its tasks of coordination of investigations and prosecutions.
2. Personal data undergoing automatic processing may not be stored beyond:
 - (a) the date on which prosecution is barred under the statute of limitations of the Member State where the period of limitation is longest, in so far as two Member States are still concerned by the investigation and prosecutions;
 - (b) the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecutions which justified coordination by Eurojust became final;
 - (c) the date on which Eurojust and the Member States concerned mutually established or agreed that it was no longer necessary to coordinate the investigation and prosecutions.
3. In any case, a review of the personal data undergoing automatic processing stored in Eurojust shall be carried out no later than two years after they were entered, and subsequently every five years.
4. During the review referred to in paragraph 3, the States concerned and Eurojust may decide on continued storage of data until the next review, if this is still necessary for the performance of Eurojust's tasks.
5. Where Eurojust has coordinated an investigation or prosecutions, the Member States shall inform Eurojust and the Member States concerned of all the judicial decisions relating to the case which have become final, in order, *inter alia*, that paragraph 2(b) may be applied.

Article 15

Data security

1. It shall be the responsibility of Eurojust to take the technical measures and make the organisational arrangements needed to implement this Decision as regards data security and protection.

2. Within the framework of implementation of this Decision, Eurojust and each Member State shall take the necessary measures to guarantee a level of protection for personal data at least equivalent to that resulting from the application of the principles of the Council of Europe Convention of 28 January 1981.

3. Each Member State, especially where there is a national correspondent, and Eurojust shall, as regards the treatment of personal data by the Eurojust services, take the necessary measures to:

- (a) prohibit access to them by unauthorised persons;
- (b) prevent them from being read, copied, amended or withdrawn by unauthorised persons;
- (c) prevent, at a more general level, any intrusion, use or manipulation by unauthorised persons;
- (d) ensure that the system is reliable and that the data stored cannot be falsified by an error of manipulation.

Article 16

Relations with partners

1. Eurojust and Europol shall establish and maintain close cooperation, in particular by way of regular meetings between the heads of the respective bodies.
2. Eurojust and the European Judicial Network shall maintain privileged relations based on consultation and complementarity, especially between the national member, the contact points of the same Member State and the national correspondent, if any.
3. The Commission (European Anti-fraud Office) may, on a case-by-case basis, be involved in the processing of a case:
 - (a) on the initiative of Eurojust;
 - (b) at its request, where the national members concerned do not oppose such participation.
4. The liaison magistrates may, on a case-by-case basis and on the initiative of Eurojust, be involved in the proceedings where:
 - (a) the coordination of the investigation and the prosecution involves offences committed in the Member States in which they perform their duties;

- (b) the Member State they represent has an interest in the case;
- (c) the other Member State concerned accept such participation.

Article 17

Legal personality

Eurojust shall have legal personality.

Article 18

Organisation and operation

1. Eurojust shall adopt its rules of procedure.
2. Eurojust shall be managed by a President. The management team shall consist of at most, in addition to the President, two Vice-Presidents.
3. The President and the two Vice-Presidents, all chosen from among the national members, shall be appointed by the Council in accordance with the procedures provided for in Title VI of the Treaty, acting on a proposal from the national members, for a term of four years.
4. The President, assisted by the Vice-Presidents, shall ensure:
 - (a) that the tasks of Eurojust are carried out;
 - (b) the day-to-day administration;
 - (c) staff management.
5. In addition to the national members, other officials shall be seconded by the Council to Eurojust in accordance with the procedure provided for in Articles 37 and 38 of the Staff Regulations of officials of the European Communities. The President of Eurojust shall take part in the appointment of these staff and shall assign them so as to ensure that each national member has the same means at his disposal.
6. Under the guidance of the President, the staff shall fulfil its tasks bearing in mind the objectives and mandate of Eurojust, without seeking or accepting instructions from any government, authority, organisation or person extraneous to Eurojust.

*Article 19***Languages**

1. Eurojust shall be assisted by a team of interpreters and translators.
2. The annual report to the Council, referred to in the second subparagraph of Article 20(1), shall be drawn up in the languages of the European Union institutions.

*Article 20***Information of the European Parliament and of the Council**

1. The President shall report to the Council, in writing and every year, on his management and on the activities of Eurojust.

To that end, he shall submit to the Council an annual report on the activities of Eurojust and on criminal policy problems within the European Union; the President shall also submit any report or any other information that may be required of him by the Council.

2. Eurojust may also draft proposals in order to improve judicial cooperation in criminal matters.
3. Each year the Presidency of the Council shall forward a special report to the European Parliament on the work carried out by Eurojust.

*Article 21***Finance**

1. The salaries and emoluments of the national members shall be borne by their Member State of origin.

2. Expenditure relating to the operation of Eurojust other than that referred to in paragraph 1 shall be covered by Article 41(3) of the Treaty.

3. Where national members act within the framework of Eurojust's tasks, the relevant expenditure shall be regarded as operating expenditure within the meaning of Article 41(3) of the Treaty.

4. For expenditure not covered by paragraph 1, the budgetary procedure laid down in the Treaty establishing the European Community shall apply.

*Article 22***Location**

The headquarters of Eurojust shall be located in ...

*Article 23***Coming into effect**

This Decision shall take effect on the first day of the third month following its publication in the *Official Journal of the European Communities*.

Done at ...

For the Council

The President

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